

Property in Quarantine

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Liquidation Foundation: The Basics of Property Insolvency Part 1

Introductory Concepts

- What is insolvency?
- Why is it important?
- Main types of insolvency
- Liquidation
- Administration

What is insolvency?



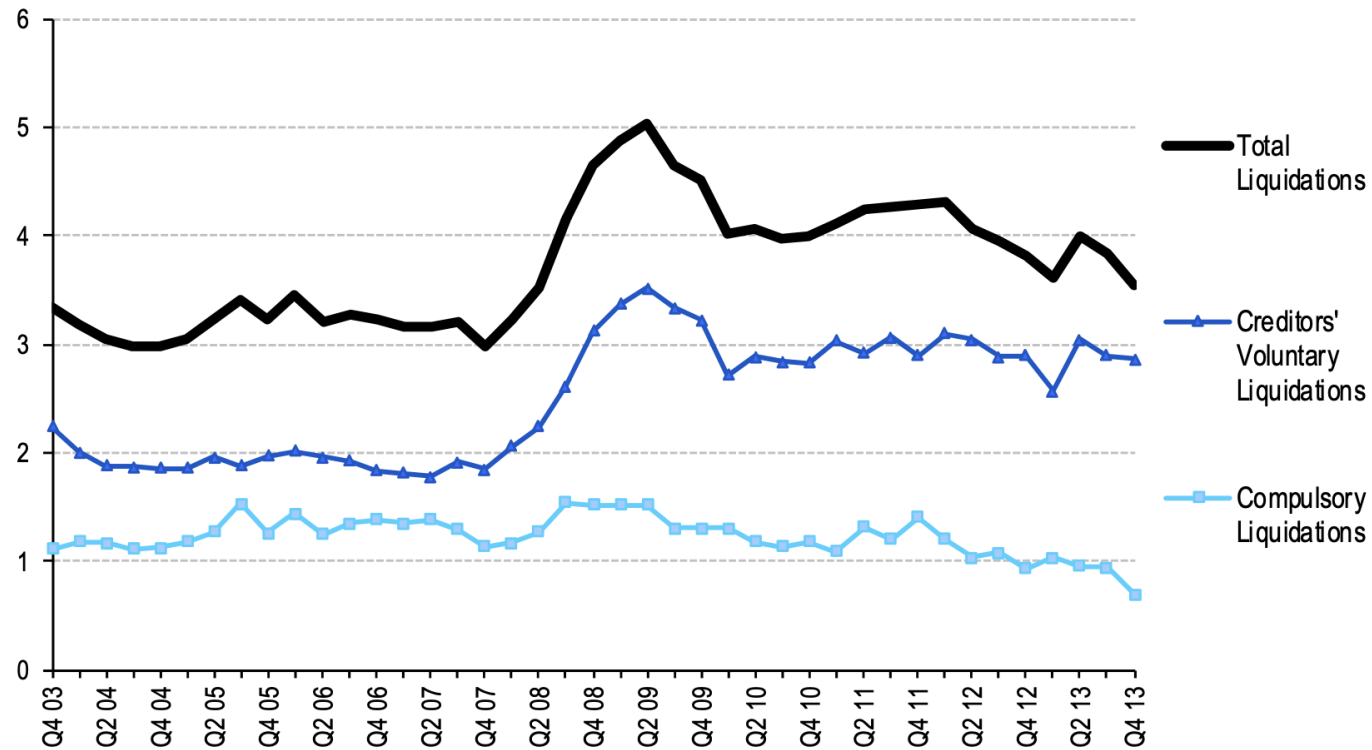
Essential principles

- Cash flow test – *unable to pay debts as fall due*
- Balance sheet test – *shortfall of assets in relation to liabilities*
- *Pari passu* principle / collectivity
- "Rescue Culture"
- Sources: Insolvency Act 1986; Insolvency Rules 2016

Trends in insolvency (1)

Figure 1. Company Liquidations in England & Wales

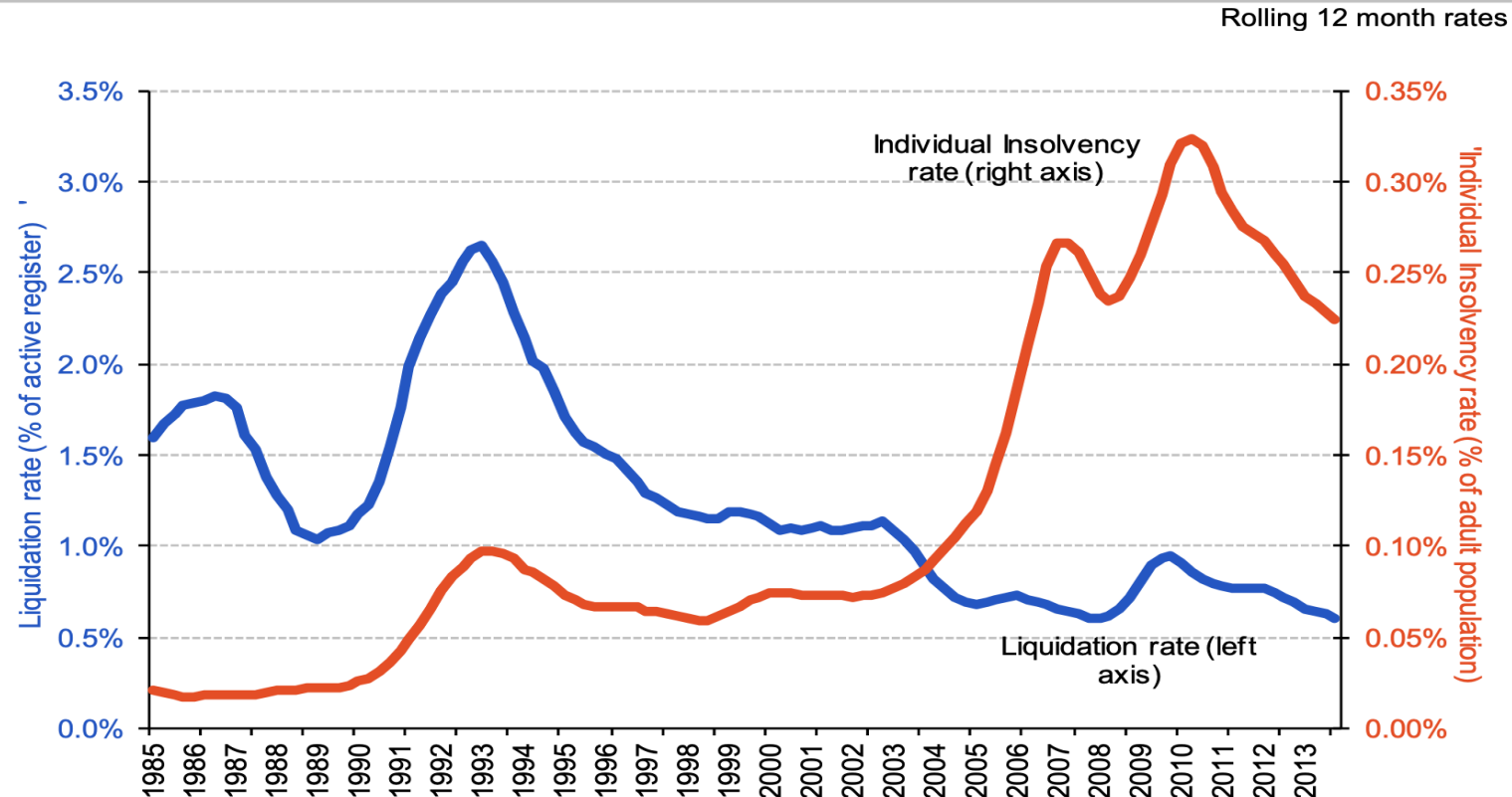
Thousands, seasonally adjusted



Source: Insolvency Service and Companies House

Trends in insolvency (2)

Figure 4. Company Liquidation and Individual Insolvency Rates in England & Wales



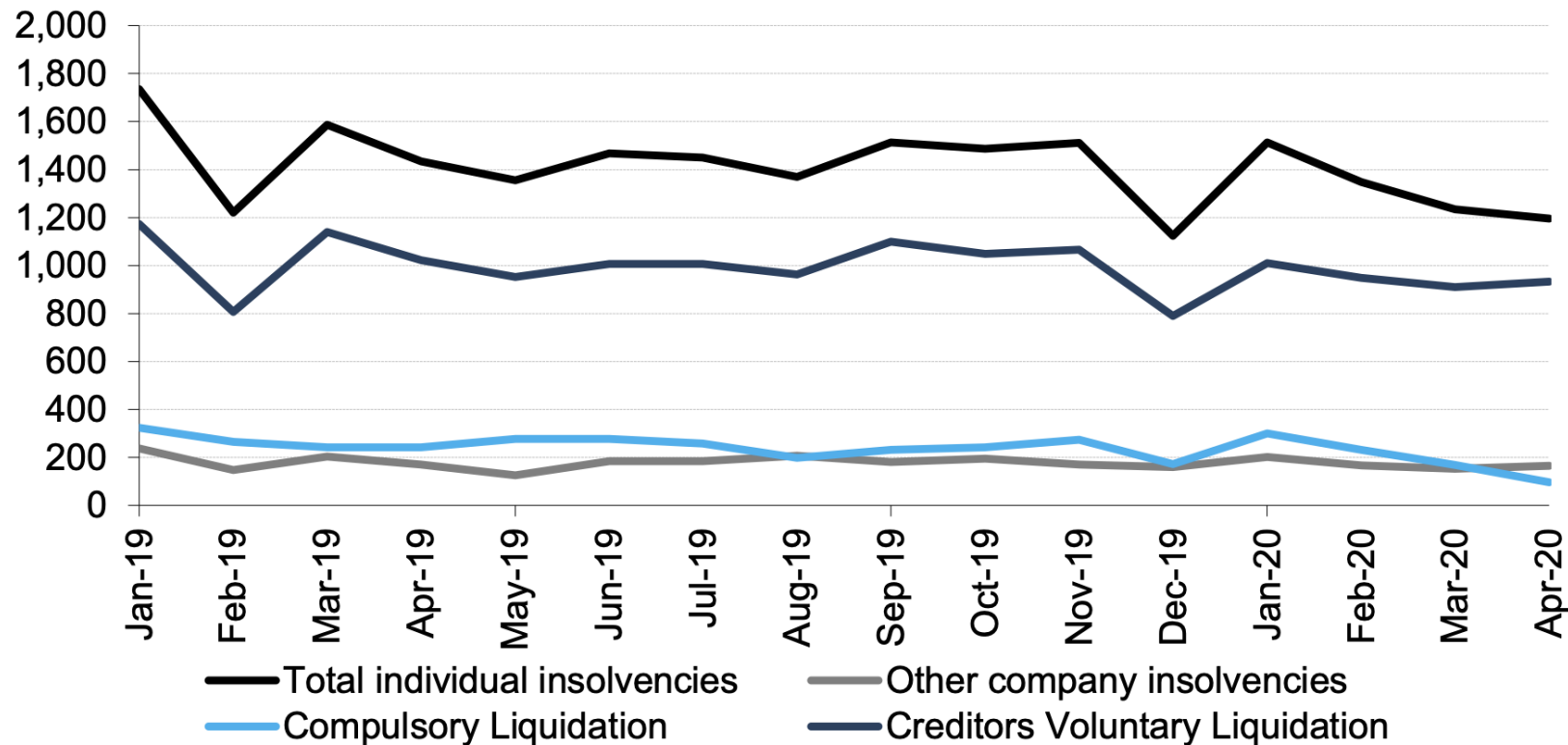
Source: Insolvency Service, Companies House and the Office for National Statistics

The company liquidation rate is calculated from the number of company liquidations in the latest twelve month period divided by the average number of companies in that period.¹

The individual insolvency rate is calculated from the total number of new bankruptcies, IVAs and DROs in the latest twelve month period divided by the average estimated adult (18+) population of England & Wales.

Trends in insolvency (3)

Figure 1: Company insolvencies in England and Wales, by insolvency type and month^P
1 January 2019 to 30 April 2020, not seasonally adjusted



Sources: Insolvency Service (compulsory liquidations only); Companies House (all other insolvency types)

^P Figures are provisional

Insolvency in time of Coronavirus

- Temporary suspension of wrongful trading
- 28 day moratorium before liquidation / administration
- Prohibition on suppliers enforcing termination clauses
- New restructuring vehicle
- Moratorium on lease termination for non-payment of rent
- Temporary ban on use of statutory demands / winding-up petitions
- 90 day moratorium on use of CRAR



Insolvency processes

- Bankruptcy
- Individual Voluntary Arrangement
- Company Voluntary Arrangement
- Administration
- Liquidation:
 - Compulsory
 - Voluntary
 - Members
 - Creditors

Objectives

- Restoring company to profitable trading
- Maximising returns to creditors
- Providing a fair and equitable system ranking claims
- Identifying causes of failure
- Addressing mismanagement

Administration – Sch. B1

- Objective
 - Focus on rescue as a going concern
 - Or achieving a better result for creditors than liquidation
- Appointment
 - By the court
 - Or out of court by holder of floating charge
 - Or out of court by directors

Administration (2)

Moratorium:

- No winding up
- No enforcement of security
- No repossession of goods
- No forfeiture
- No legal process

Except with consent of administrator / permission of the court

Liquidation

- Members Voluntary – solvent
- Creditors Voluntary
- Compulsory

- Liquidator:
 - Duty to collect in assets, realise them
 - Distribute according to order of priority

Liquidation (2)

Effect:

- Deemed to commence on presentation of petition – retrospective
- No action against the company except with leave
- Official Receiver controls the assets
- Directors' appointment and powers are terminated
- Employees discharged

Administration vs Liquidation

Focus on rescue

Administrator may run the business

Tends to be cheaper

Potential for better return

Focus on winding-up

No power to carry on business

Tends to be more expensive

Rare for unsecureds to recover

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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