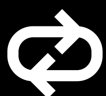
A Guide to Recovering Debts from an Insolvent Person or Company



debt-claims.com
solicitors

Recovering money owed from an insolvent business or person is a challenging procedure. There are seemingly endless processes and terms associated with insolvency, including bankruptcy, administration, winding-up, liquidation, CVAs, and statutory demands to name but a few. However, our highly experienced Insolvency Solicitors will ensure that you have the information required to recover as much of the outstanding debt as possible from a person who has fallen into bankruptcy or an insolvent company.

This guide provides an overview of what these terms mean, and the processes involved in recovering your debt if the Debtor is a person or a company that you suspect will become or already are insolvent.

In this guide, we go through our highly successful debt recovery process for companies and insolvent businesses or persons.

If the Debtor is solvent, please refer to **A Step-by-Step Guide to Debt Recovery**.

To find out more, you can email us at **info@debt-claims.com**.

Individuals who are insolvent or you believe to be insolvent

If you plan to issue Court proceedings against a debtor, you need to follow the Pre-Action Protocol For Debt Recovery and send a **Letter Before Action (Letter of Claim)**. However, if the debt is more than £5,000 you can send a Statutory Demand.

Never send a Statutory Demand without obtaining professional advice as the consequences can be costly if a dispute is raised after it is served. Our Solicitors will always inspect and approve any Statutory Demand created in the Debt-Claims portal.

A Statutory Demand is not technically a debt recovery procedure; however, many Creditors misuse them as such, often with costly repercussions. A Statutory Demand is an instrument to prove that the person (or company if the debt is £10,000 or more) cannot pay their debts and are therefore insolvent. If the debt is not paid within three weeks of the Statutory Demand for payment, you can issue bankruptcy proceedings against the Debtor. As you can imagine, faced with the threat of bankruptcy, many a reluctant Debtor reach for their chequebook.

The risk associated with issuing a Statutory Demand is that the Debtor will claim they have a defence and make an application to set aside the Demand. If they are successful, you are likely to be subjected to an adverse costs order. The alternative is to withdraw the Statutory Demand, often a good tactic as you now know the Debtor has the means and motivation to avoid bankruptcy (or winding up in the case of a company) and therefore you have a chance of being paid if you take your claim to Court.

The Debtor may call your bluff and ignore the Statutory Demand or not respond because they are actually insolvent. This will leave you with the following choices:

- Write off the debt under the assumption that the Debtor does not have the funds to pay,
- Begin the expensive and lengthy bankruptcy (or winding up) process which will result in all creditors being in line for payment, meaning there is no guarantee you will receive a penny, or
- Issue Court proceedings to receive a judgment in your favour that may be enforceable when the Debtor is in better financial health.

Insolvent businesses

As you will have read above, to issue a Statutory Demand against a company with the threat of winding up carries considerable risk and should not be pursued without legal advice. But what are your rights as a Creditor if the business that owes you money has fallen into administration or has implemented a CVA?

Administration

The administration is where an Administrator (usually an insolvency practitioner) takes over control of an insolvent company in order to achieve objectives set out in the Insolvency Act 1986.

A company can be placed into administration by a Court Order (this can be applied for by the company itself) or by certain parties lodging a series of prescribed documents at Court.

An Administrator's first objective is to rescue the company so it can continue to trade as a going concern and pay back its debts. If this is impossible, the Administrator must aim to achieve a better result for the company's creditors as a whole than would be likely if the organisation was put into liquidation. If this cannot be achieved the Administrator must sell the company's property and assets to pay its secured and preferred creditors.

When a company is placed into administration a moratorium is issued preventing creditors and others from taking or pursuing legal proceedings against the company whilst the administration is in progress.

In terms of payment, secured creditors will be paid first. Where a distribution is to be made in an administration, the Insolvency Act 1986 provides detailed rules for the order of distribution of assets and repayment of the company's unsecured debts.

Company Voluntary Arrangement (CVA)

A Company Voluntary Arrangement (CVA) is a legal arrangement made between a company and its creditors for payment of the debts owing, in part or in full, over a period of time. No legal proceedings can be brought against a company with a CVA in place.

A CVA is normally suggested by the company's directors. An insolvency practitioner is appointed to help them with the process. Once the CVA is approved by 75% of the company's creditors, there is a limited period in which a Creditor can challenge it on the grounds of either unfair prejudice or material irregularity.

Once the CVA is in place, all creditors are legally bound by it and will be repaid under the terms of the agreement. A CVA is one of the best insolvency options when it comes to creditors receiving at least some of the money they are owed when compared with winding up or liquidation.

Winding-up or Liquidation

If a Court orders a company to be wound up (also known as liquidated) it means the company will have to stop trading, its assets sold, and it will be struck off the Companies House register. The money generated from the asset sales is used to pay off creditors.

A company can choose to place itself into liquidation. If the liquidation is compulsory, the process would have begun with the presentation of a Winding Up Petition to the Court.

Proceeds from the asset sales will be distributed according to the rules set out in the Insolvency Act 1986. The order of payment preference is as follows:

1. Secured creditors with a fixed charge.
2. Liquidation fees.
3. Preferential creditors.
4. Secondary preferential creditors (this includes HMRC in respect of VAT and PAYE).
5. Secured creditors with a floating charge.
6. Unsecured creditors.
7. Shareholders.

Protecting yourself from having unpaid invoices due to the Creditor's insolvency or bankruptcy

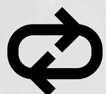
Continuing to trade with a company or individual that is in financial difficulty carries a risk. Most commercial contracts allow one party to terminate the contract if the other encounters financial difficulties or becomes insolvent. It is crucial that you understand these clauses and under what circumstances they will be triggered.

The threat to cease trading with a company or individual unless they pay their invoices is a powerful strategic tool. Therefore, before looking at any other debt recovery methods, seek legal advice as to whether terminating supply is an option.

How we can help

Our years of experience in debt recovery means
has enabled us to create a fast, effective,
user-friendly portal that will take you through
the stages of recovering debts
from an insolvent person or company.
And if you need help, our team of Solicitors
are always available.

Register here
to find out more about our
Debt-Claims portal.



debt-claims.com
solicitors