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Newman & Partners
Licensed Insolvency Practitioners

# RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at **insolvency@newmanandpartners.co.uk**

## Where does UK insolvency law actually come from?

**As an accountant, you may have to deal with the challenging reality of a client's insolvency at some point, whether you like it or not. While today's framework is a meticulously structured system of corporate and personal insolvency, its origins are far from orderly. In fact, UK insolvency law has been shaped by a series of historical influences, from biblical texts to medieval punishments and modern commercial pragmatism.**

We felt that, whilst this is a nuanced subject, you might find it both useful and entertaining to read about the history of insolvency law. Certainly, we often look at the context of insolvency for deeper understandings of what we should do in certain circumstances – perhaps this will give you a deeper understanding of insolvency from the modern perspective as a result.

### Ancient foundations: Jewish scripture and Roman law

Before there were limited companies, share capital, or the Insolvency Act, there were still debts. Where there were debts, there was – of course – insolvency. Some of the earliest recorded insolvency laws can be found in the Talmud and other central texts of Jewish law.

For example, in the *Mishnah*, we are presented with the *"contested garment rule"*, wherein two parties claim full ownership of the same item. Each claimant swears they own the entire garment, and the court, lacking clear evidence, orders the item to be divided equally or the equivalent value shared.

Judaism contains many more examples of civil and bankruptcy law, but this principle highlights a key connection to modern insolvency concepts, particularly in ensuring proportional claims to a debtor's limited assets. While not directly equivalent to modern corporate insolvency law, the core idea of maintaining an orderly and fair process for creditor rights remains fundamental to insolvency legislation today.

Meanwhile, the Romans had their own approach to insolvency – though it was, one might argue, more extreme. Generally, Roman law was far more creditor friendly and was absolutely brutal upon debtors. For example, debt bondage (the pledge of a person's services as security for the repayment of a debt, also known as debt slavery) was common until 313 BCE and even after this point, debtors were often forced to perform manual labour or imprisoned.

However, the Romans later introduced *cessio bonorum*, in which an insolvent debtor could voluntarily forfeit their property to their creditors to avoid personal liability (which was usually prison or loss of legal rights). Here we see the basis of modern bankruptcy law in that personal liability is still a topic of discussion within insolvency proceedings today.

### The medieval era: Debtors' prisons and royal control

In medieval England, insolvency was a personal failing rather than a commercial difficulty. If you couldn't pay your debts, you would end up in a debtors' prison. By the 13th century, King Edward I's Statute of Merchants (1285) introduced a process whereby a debtor's assets could be seized by a creditor – but this still didn't stop imprisonment for unpaid debts.

In this period, insolvency was regarded as a moral issue, and bankruptcy was often seen as outright fraud. There was little distinction between unfortunate debtors and cheats, and there was no concept of corporate insolvency – because companies, as we know them today, did not yet exist.

*Lincoln Prison where debtors were held from 1787 - 1878*

### The first bankruptcy law: The Bankruptcy Act 1542

The Bankruptcy Act 1542, introduced under Henry VIII reign, was England's first formal piece of bankruptcy legislation. However, it was not designed to protect debtors – it was designed to protect creditors. Bankrupts were considered criminals, and creditors where empowered by law to seize assets and even imprison bankrupt individuals.

The act set a precedent for state intervention in insolvency matters, but it was hardly debtor friendly. In fact, some bankrupts could be punished by death for their financial misfortunes. Fortunately, attitudes softened in later centuries.

### The Victorian reform: The Bankruptcy Act 1869

As the industrial revolution took hold, commerce expanded, and more individuals engaged in business. With this came an increasing recognition that bankruptcy was often the result of economic downturns rather than personal failings.

The Bankruptcy Act 1869 marked a shift towards recognising that insolvency was sometimes unavoidable and that debtors should not always be criminalised. This act allowed voluntary bankruptcy, a concept that survives today, albeit in a much-evolved form.

### The 20th century: Corporate insolvency takes shape

By the 20th century, corporate insolvency was finally being distinguished from personal bankruptcy. ***The Companies Act 1929*** introduced provisions for winding up companies, while ***The Companies Act 1948*** further refined the rules around liquidation and directors' duties.

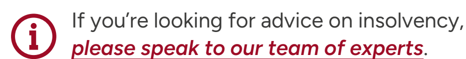
However, the true revolutionary moment was ***The Insolvency Act 1986***, which remains the backbone of insolvency law today. This act introduced key mechanisms such as administration, which allows companies to be rescued rather than liquidated and Company Voluntary Arrangements (CVAs), which enable businesses to negotiate with creditors rather than face immediate closure.

### Modern developments: The Enterprise Act 2002 and beyond

More recent legislation, such as ***The Enterprise Act 2002***, has further refined insolvency procedures by prioritising business rescue over liquidation where possible. This act introduced administration as the primary corporate insolvency mechanism, reducing the stigma of insolvency and emphasising recovery.

Today, insolvency law continues to evolve. ***The Corporate Insolvency and Governance Act 2020***, introduced in response to the COVID-19 pandemic, provided new restructuring tools and moratoriums to help struggling businesses survive. Whereas insolvency was once seen as a moral failing or even a crime, today's framework recognises that business distress is often the result of broader economic forces.

If you are working with struggling businesses, we hope that having an understanding the origins of insolvency law provides some insight into why today's procedures exist and how they can be leveraged to achieve the best outcomes for your clients.



If you're looking for advice on insolvency, ***please speak to our team of experts***.

## Why Governments technically can't go bankrupt

**Governments, like businesses, borrow money, accumulate debt, and face financial difficulties. However, while companies can and do go bankrupt, technically speaking, Governments cannot. The key distinction lies in the way insolvency works and how assets are distributed when an entity can no longer meet its obligations.**

When a company becomes insolvent, it enters administration or liquidation, during which its assets are distributed among creditors according to a strict legal hierarchy.

Secured creditors take priority, followed by preferential creditors, then unsecured creditors. Directors may also face personal liability in wrongful trading cases.

In contrast, there is no equivalent process for Governments. There is no administrator to seize assets, no creditors' meeting to determine repayments, and no formal liquidation where assets are sold off to repay debts. A Government controls its own taxation, can issue bonds, and – if it has its own currency – can even print money (albeit with economic consequences).

Similarly, while businesses must balance debt with revenue to remain viable, Governments have more flexibility. A business that cannot pay its debts when they fall due will eventually collapse, leaving creditors to recover what they can.

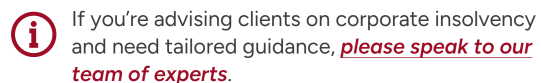
However, Governments borrow based on their long-term ability to tax, making repayment less of an immediate concern. Even when defaulting on debt, Governments negotiate restructures rather than facing dissolution.

### What can you learn from this?

For accountants advising businesses, the key takeaway is that corporate insolvency is governed by strict legal frameworks, while sovereign debt crises are managed through diplomatic and financial mechanisms.

Unlike Governments, businesses cannot rely on taxation or monetary policy to bail them out – making careful debt management essential for corporate survival.

Equally, cashflow and other key metrics should be at the forefront of insolvency-prevention.



If you're advising clients on corporate insolvency and need tailored guidance, ***please speak to our team of experts***.

# The mechanics, risks and benefits of pre-sale packs

**When one of your clients is facing financial distress, a pre-pack administration sale can provide a structured exit that preserves business value while satisfying creditor obligations. A pre-pack involves negotiating the sale of the business and its assets before it formally enters administration. The sale is completed immediately or shortly after an administrator is appointed which minimises disruption, protects jobs, and retains customer confidence.**

A key element is the valuation process, ensuring the fair sale price that reflects the fair market value. Creditors must be informed via a Statement of Proposals, and compliance with the Pre-Pack Pool reassures stakeholders of the transaction's legitimacy.

## Benefits and challenges of pre-pack sales

For the right business, a pre-pack can be an optimal rescue strategy, offering:

- **Business continuity:**
  Operations can continue with minimal disruption.
- **Job preservation:**
  Employees are often retained under TUPE regulations.
- **Enhanced returns:**
  Secured creditors often recover more than they would in a liquidation scenario.

However, this should be judged on a case-by-case basis with the guidance of an insolvency practitioner. This is because, while pre-packs can be effective, they carry regulatory and reputational risks.

Such as:

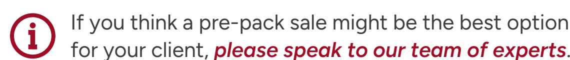
- **Creditor scrutiny:**
  Creditors may challenge the sale if they feel undervalued or excluded from the process.
- **Connected party sales:**
  If directors or associated parties are purchasing the assets, the deal must be demonstrably fair and transparent.
- **Perception of "phoenixing":**
  If a business appears to shed its liabilities while continuing under a similar name, there may be legal and ethical concerns.

Again, having an insolvency practitioner assisting you with a pre-pack discussion is always worthwhile as they will know the full scope of the operation you are undertaking and the potential downsides for your client.

## Our advice

You play a crucial role in helping your clients navigate financial distress and should ensure that a pre-pack is the most appropriate solution compared to other insolvency options. An independent valuation is essential to protect against accusations of under-valuation, particularly when connected parties are involved.

Transparency is also key – advising clients to communicate clearly with creditors can help mitigate disputes and maintain trust. If a pre-pack is the best course of action, it must be executed with care, ensuring compliance with all regulatory requirements while safeguarding the long-term viability of the business.


If you think a pre-pack sale might be the best option for your client, *please speak to our team of experts*.

**CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.**

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The content of this bulletin should not be considered by any reader to comprise full proper legal advice and should not be relied upon.