International Comparative Legal Guides

Restructuring & Insolvency 2026

A practical cross-border resource to inform legal minds

20th Edition

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1 Overview

1.1 Where would you place your jurisdiction on the spectrum of debtor- to creditor-friendly jurisdictions?

England and Wales has historically been pro-creditor. Secured creditors can usually enforce security and appoint insolvency officers without court involvement and are protected by powerful legal rules, such as the "Gibbs rule" (see question 7.3). However, some debtor-friendly measures have been introduced more recently, including a "standalone moratorium" ("**Moratorium**") (see question 2.2) and "restructuring plans" ("**RPs**"), which allow debtors to impose restructuring terms on dissenting creditor classes through cross-class cram down without observing an absolute priority rule.

1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

Yes. Informal work-outs can be achieved under contractual loan and intercreditor agreement provisions and are commonly used for maturity extensions, covenant amendments, re-tiering of indebtedness and debt-for-equity swaps.

Where a contractual solution is not achievable, formal restructuring procedures are available, including company voluntary arrangements ("**CVAs**"), schemes of arrangement ("**Schemes**") and RPs. CVAs are typically used where a debtor has significant liabilities to unsecured creditors (such as retail leases). Schemes and RPs are commonly used in the largest complex restructuring cases.

The main formal insolvency procedures are administration (a rescue procedure) and liquidation. Administration is commonly used to achieve a better result for creditors than liquidation. If administration objectives cannot be achieved, a company is likely to enter liquidation.

2 Key Issues to Consider When the Company is in Financial Difficulties

2.1 What duties, key considerations and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

Directors must ordinarily act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole. If insolvency is probable, directors must consider creditors' interests, which become paramount if insolvency is inevitable.

Under English law, there is no mandatory point at which directors must file for insolvency or commence a restructuring. However, directors of financially distressed companies must continuously assess the company's financial position and consider filing at the appropriate time.

Directors may be personally liable for wrongful trading if, before insolvency, they knew or ought to have known there was no reasonable prospect of avoiding insolvency and they failed to take every step to minimise loss to creditors. Other potential liabilities include fraudulent trading, misfeasance and director disqualification.

2.2 Which other stakeholders may influence the company's situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes that apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

Various stakeholders may influence a company's financial distress.

Distressed companies often rely on shareholder support, especially where lenders are unwilling to advance further credit. Shareholder approval may also be required for corporate actions needed to implement a restructuring.

HMRC is a secondary preferential creditor (see question 4.6) and has adopted an increasingly robust approach in distressed situations, including challenging compromises in CVAs and RPs where tax liabilities are substantial.

Trade creditors and suppliers can significantly impact the prospects of rescuing a business. The right to terminate supply contracts because a counterparty is subject to insolvency proceedings (including RPs and CVAs) is limited, but suppliers retain the right to terminate for post-commencement breaches (such as non-payment). In restructurings involving a change of control, negotiating waivers of change of control provisions may be crucial. A statutory moratorium arises upon entry into administration and (on an interim basis) upon filing a notice of intention to appoint an administrator. The moratorium prevents security enforcement in most circumstances, though safe harbours apply for financial collateral arrangements. Fixed charge holders may only enforce with administrator consent or court permission.

Under the Corporate Insolvency and Governance Act 2020, a Moratorium was introduced for certain eligible companies. Although debtor-in-possession, an independent monitor (an officer of the court) must certify that the Moratorium will likely result in the company's rescue as a going concern. Companies party to capital markets arrangements (e.g. bond issuances) over £10 million are ineligible. The Moratorium has an initial 20-business day duration, extendable by directors for a further 20 business days, with creditor consent for up to one year, or by the court for any period. During the Moratorium, most enforcement is paused, no winding-up petitions may be presented, and (with limited exceptions) landlords cannot forfeit leases and creditors cannot enforce security without court approval. The Moratorium does not prevent financial creditors accelerating debts that become due and are not paid during the Moratorium. For this reason, and due to its short initial duration and eligibility criteria, the Moratorium is often unsuitable for large-scale restructuring cases.

2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

Insolvency officers have broad powers to challenge transactions antecedent to insolvency if the company was insolvent at the time or became insolvent in consequence (the "**Insolvency Requirement**"). If successfully challenged, a court may (i) require a transferee to return property, pay compensation or account for profits, (ii) set aside security, or (iii) cancel or vary obligations under the impugned transaction.

Challengeable transactions include:

- **Transactions at an undervalue**: A company enters into a transaction at an undervalue if it makes a gift, receives no consideration, or the consideration received is significantly less than that provided. Transactions are reviewable if occurring within two years prior to insolvency proceedings. The court will not intervene if (i) the company entered into the transaction in good faith for the purpose of carrying on its business, and (ii) there were reasonable grounds for believing it would benefit the company. The Insolvency Requirement is rebuttably presumed in relation to transactions at an undervalue with connected persons.
- **Preferences**: A company gives a preference if it does anything that places a creditor in a better position in insolvency than they otherwise would have been, and was influenced by a desire to do so. Such desire is presumed for connected persons. Preferences are reviewable if given within six months prior to insolvency, or two years for connected persons.
- **Invalid floating charges**: The court may invalidate floating charges granted to secure past indebtedness. If the charge also secures new money advanced when granted, it will validly secure such new money. The charge must be created within 12 months before insolvency proceedings, or two years for connected persons. A floating charge can be invalidated even if the debtor granting it was not insolvent at the time.

3 Restructuring Options

3.1 Is it possible to implement an informal work-out in your jurisdiction?

Yes, see questions 1.2 and 3.2.

3.2 What informal or formal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies?

As described in question 1.2, informal work-outs can achieve maturity extensions, covenant amendments and re-tiering of indebtedness using contractual amendment mechanisms. English law intercreditor agreements also offer a powerful tool to restructure liabilities by empowering the security agent, at the direction of an instructing group of creditors (typically a simple or two-thirds majority), to enforce over and sell a debtor's secured shares to a third party or vehicle owned by existing lenders, and release the debt subject to the intercreditor agreement (a "**Distressed Disposal**" or "**Intercreditor Drag**"). As consideration, creditors may receive cash, equity (debt-for-equity swap) or alternative debt instruments with extended maturity, different economics, covenants, and sometimes different ranking. Creditors outside the instructing group are generally protected by a requirement that the security agent obtain fair value consideration (consistent with its common law duty as mortgagee). A conclusive presumption of fair value often applies if the security agent obtains a fairness opinion from an independent financial adviser. The intercreditor agreement may also include consultation periods and conditions on permitted consideration.

Administration is a management-displacing insolvency procedure in which an administrator pursues (i) a rescue as a going concern, (ii) a better result for creditors than a winding up, or (iii) a sale of assets to make distributions to creditors. The administrator must pursue a going concern rescue unless not reasonably practicable, or if an alternative would achieve a better return for creditors. The third objective cannot be pursued unless the first and second are not reasonably practicable and it would not unnecessarily harm creditor interests as a whole.

Schemes, RPs and CVAs are the other formal rescue procedures. These differ in eligibility criteria (see question 3.5), court involvement (see question 3.6), and availability of cross-class cram down (see question 3.4).

3.3 Are debt-for-equity swaps and pre-packaged sales possible? In the case of a pre-packaged sale, are there any restrictions on the involvement of connected persons?

An administration can take place in "pre-pack" form, whereby a business transfer is arranged prior to administrator appointment and implemented immediately thereafter. This can only occur if the administrator is entitled to pursue the second statutory objective rather than a going concern rescue.

Sales of substantial parts of a company's business or assets to connected parties must either be approved by creditors (subject to disenfranchisement rules for secured creditors and connected parties) or supported by an evaluator's report covering the grounds for disposal and whether the consideration is reasonable.

Administrators are subject to professional guidelines emphasising proper marketing and valuation in pre-packs. An administrator must justify any marketing strategy (or lack thereof) and explain why the approach will deliver the best outcome for creditors. It will typically be necessary to run a marketing process or obtain an independent valuation to support consideration received.

Debt-for-equity swaps can be implemented out of court through a Distressed Disposal, via contractual exchange, or via Schemes, RPs or an (often pre-pack) administration.

3.4 To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

During administration, secured creditors cannot enforce security without administrator consent or court approval (see question 2.2), except that a qualifying floating charge holder can appoint an administrator out of court, giving negotiation leverage. No automatic moratorium applies to CVAs, Schemes, or RPs, so securing creditor standstills or forbearance agreements before starting these processes is important to prevent disruptive enforcement actions.

CVAs cannot bind secured or preferential creditors without consent and can be challenged within 28 days on grounds of unfair prejudice or material irregularity. Schemes/RPs can be challenged on jurisdictional, class composition, fairness and procedural grounds. If successful, the CVA, Scheme or RP will fail.

CVAs, Schemes and RPs all allow a dissenting minority to be overridden by statutory approval thresholds. A CVA requires 75% approval by debt value of eligible voting creditors. In a Scheme, each affected class must approve by majority in number and 75% in value. In an RP, the required threshold is only 75% in value.

RPs provide the most powerful cram-down mechanism: cross-class cram-down. The court may cram down dissenting classes if (a) the dissenting class would be no worse off than in the most likely alternative outcome (the "**Relevant Alternative**"), and (b) at least one approving class would have a "genuine economic interest" in the Relevant Alternative. Even if the conditions are met, the court may refuse sanction if not just and equitable.

3.5 What are the criteria for entry into each restructuring procedure?

Administration: A company can only enter administration if it currently is, or is likely to become, insolvent on a cash flow or balance sheet basis. Companies can be placed into administration by shareholders, directors or creditors. A creditor holding a floating charge over all or substantially all of a debtor's undertaking has priority in selecting the administrator and can appoint out of court.

RPs: A company must have encountered, or be likely to encounter, financial difficulties impacting its ability to carry on as a going concern. The plan must be a compromise or arrangement with creditors and/or shareholders, the purpose being to eliminate, reduce or mitigate the company's financial difficulties.

Schemes: Unlike RPs, there is no "financial difficulties" criterion, so Schemes can be used by solvent and distressed companies alike. The Scheme must constitute a "compromise or arrangement" with creditors and/or shareholders, requiring an element of "give and take".

CVAs: A company need not be insolvent to propose a CVA, which can be proposed at any time (e.g. at early signs of financial distress).

3.6 Who manages each process? Is there any court involvement?

Administration is managed by insolvency practitioners who are court-appointed officers (though an administrator can sometimes be appointed out of court). The court may become involved through its supervisory role if there are challenges to the administrator's conduct, if the administrator seeks directions, or on applications to remove or replace the administrator.

CVAs are contractual compromises supervised by an insolvency practitioner (known as a "nominee") with low court involvement. The court may become involved if a creditor challenges the CVA on grounds of unfair prejudice or material irregularity.

RPs and Schemes are court-supervised debtor-in-possession procedures. At a first hearing, the court considers jurisdictional issues and proposed classes. At a second hearing, after creditors/shareholders have voted, the court determines whether statutory conditions are satisfied and whether to sanction the Scheme/RP (a discretionary matter even if all classes approve), considering fairness (including whether to permit cross-class cram-down, if applicable) and prospects of recognition in relevant foreign jurisdictions.

3.7 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?

Entry into insolvency or restructuring procedures often triggers contractual termination rights. Suppliers of goods and services may not terminate contracts based solely on a counterparty commencing formal proceedings (including CVAs and RPs, but not Schemes), though they retain the right to terminate for post-commencement breaches (such as non-payment). For other material contracts, restructuring support agreements are customarily used to agree not to exercise termination provisions.

Otherwise, contracts and set-off rights are only modified to the extent within the scope of the CVA/Scheme/RP. Administrators may weigh the benefit of continuing to perform an onerous contract against the impact of an unsecured damages claim on overall creditor outcomes. The administration moratorium (see question 2.2) prevents most enforcement action without administrator consent or court approval.

Mandatory insolvency set-off applies in administration, creating an automatic set-off of credits and debits from mutual dealings to produce a single provable balance. Safe harbours exist for close-out netting in financial contracts.

3.8 How is each restructuring process funded? Is any protection given to rescue financing?

There is no statutory rescue or "DIP" financing regime in English law affording priority to financing advanced to fund a company through a restructuring or insolvency procedure. Administrations are often funded through income from continued trading or asset realisation proceeds. Administrators can borrow with priority ranking as an administration expense but cannot grant security over already encumbered assets without existing fixed chargeholder consent. In CVAs, Schemes and RPs, funding is typically provided by shareholders, existing lenders, or new lenders on a contractual basis. Existing secured creditors may agree to give emergency/bridge funding super senior status.

4 Insolvency Procedures

4.1 What is/are the key insolvency procedure(s) available to wind up or rescue a company?

The primary, formal rescue procedure is administration (see question 1.2 and section 3). If a statutory purpose of administration cannot be achieved, a company may be wound up by resolution of its members through a voluntary liquidation or by order of the court through a compulsory liquidation.

4.2 On what grounds can a company be placed into each winding up or rescue procedure?

There are two forms of voluntary liquidation: members' voluntary liquidation ("**MVL**") and creditors' voluntary liquidation ("**CVL**"). An MVL requires directors to swear a statutory declaration of solvency and members to pass a special resolution. A CVL requires a members' special resolution but not a directors' declaration of solvency. A company unable to pay its debts (on a cashflow or balance sheet basis) may be subject to compulsory liquidation ordered by the court.

4.3 Who manages each winding up or rescue process? Is there any court involvement?

Liquidation is managed by the official receiver or a licensed insolvency practitioner (generally officers of the court). Court involvement is not required to commence an MVL or CVL. The court may become involved if a stay is sought (in a CVL), the liquidator seeks directions, or creditors challenge the liquidator's conduct.

4.4 How are the creditors and/or shareholders able to influence each winding up or rescue process? Are there any restrictions on the action that they can take (including the enforcement of security)?

A CVL is broadly under creditors' control, as creditors choose the liquidator. Creditors are not automatically prevented from pursuing actions against the debtor, though a moratorium can be granted by the court. Creditors may form a liquidation committee, which must be consulted and may give guidance to the liquidator.

There is no automatic moratorium under an MVL, but under compulsory liquidation, creditors are prevented from enforcing security or initiating legal actions after a winding-up order has been made.

4.5 What impact does each winding up or rescue procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

A liquidator has the power to disclaim onerous property, which covers contracts that are unprofitable. A contract is unprofitable if the performance of future obligations would prejudice the liquidator's obligation to realise the assets and make a distribution to creditors.

Restrictions on suppliers terminating contracts and mandatory insolvency set-off apply in liquidation, similar to administration (see question 3.7).

4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

The ranking of claims in liquidation and administration is as follows:

(1) fixed charge holders are entitled to proceeds from their secured assets without deduction;
(2) expenses of the estate including liquidator or administrator fees;
(3) preferential creditors (including occupational pension schemes, salaries (subject to £800 per person limit) and certain tax liabilities);
(4) the prescribed part (50% of the first £10,000 of floating charge realisations and 20% thereafter, capped at £800,000) set aside for unsecured creditors;
(5) floating charge holders are entitled to proceeds from their assets subject to deductions for priority claims;
(6) unsecured creditors on a *pari passu* basis; and
(7) members in accordance with their rights.

If a company is wound up within 12 weeks following a Moratorium, liabilities incurred during or after the Moratorium and certain priority claims rank ahead of expenses but after fixed charge holders.

4.7 Is it possible for the company to be revived in the future?

Following dissolution, a company can be restored within six years (no time limit if restoration relates to a personal injury claim). Restoration generally requires a court order and is rare.

5 Tax

5.1 What are the key tax risks that might apply to a restructuring or insolvency procedure?

Certain insolvency procedures can result in changes to tax groupings, which may give rise to de-grouping tax charges and prevent group members accessing tax reliefs, thereby increasing cash tax triggered on (for example) a member of the group subsequently ceasing to trade. However, a positive tax effect to certain insolvency procedures can be that debt releases may be more straightforwardly non-taxable for a borrower if the borrower is undergoing such a procedure.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

Liquidation: Compulsory liquidation automatically terminates employment contracts from the date the winding-up order is published.

Voluntary liquidation does not automatically terminate employment contracts, but as liquidation results in business cessation with limited scope for trading, termination of employment contracts would be expected. Most employee debts are unsecured (see (6) under question 4.6), save for a limited remuneration allowance ranking behind fixed charge holders (see (4) under question 4.6). Employees may also recover redundancy payments from the Redundancy Payments Service.

Administration: As administration often aims to save the company as a going concern, it does not result in automatic employment termination. Administrators have 14 days to determine whether to "adopt" employment contracts, renegotiate them, or let employees go. Following adoption, sums due to employees rank as expenses of the estate ahead of administrator fees.

Schemes, RPs and CVAs: These procedures do not directly impact employees.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

Liquidation, administration and CVAs are available to foreign incorporated companies that have their centre of main interests ("**COMI**") in the UK, or their COMI in the EU with an establishment in the UK.

For a foreign company to use a Scheme or RP, it must have sufficient connection to England and Wales, determined by analysing relevant facts and circumstances. Sufficient connection may be established by COMI, or by other factors such as the governing law of debt instruments that are subject to the Scheme/RP. For the court to sanction a Scheme/RP, it must be satisfied that the Scheme/RP is likely to achieve its purpose, including consideration of recognition in jurisdictions where recognition would be necessary for effectiveness of the Scheme/RP.

7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

Recognition of foreign insolvency proceedings is available under the Cross-Border Insolvency Regulations 2006 ("**CBIR**"), which implemented the UNCITRAL Model Law on Cross-Border Insolvency. Under the CBIR, foreign proceedings may be recognised as "foreign main proceedings" (where the debtor has its COMI in the foreign jurisdiction) or "foreign non-main proceedings" (where the debtor has only an establishment).

Recognition as foreign main proceedings grants an automatic stay. Foreign non-main proceedings may benefit from discretionary relief.

Recognition is also available, mainly for Commonwealth jurisdictions, under Section 426 of the Insolvency Act 1986, pursuant to which relevant jurisdictions may apply to UK courts for assistance. The court has wide discretionary powers under Section 426. Finally, UK courts have jurisdiction to co-operate with foreign insolvency proceedings under common law principles of modified universalism and comity.

7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

Given the flexible and well-established procedures under English law, it is rare for companies incorporated in England and Wales to use foreign proceedings. The use of foreign proceedings is also constrained by the "Gibbs rule", which requires English proceedings to compromise English law liabilities if the creditor has not submitted to the foreign court's jurisdiction.

8 Groups

8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

There is no concept of group insolvency in English law; each group company must enter insolvency separately.

Coordination and value maximisation can be promoted through parallel appointments, subject to officeholders' obligations to act in each entity's creditors' interests. The UK intends to adopt the UNCITRAL Enterprise Group Insolvency Model Law ("**MLEG**"), becoming the first jurisdiction to do so. If adopted, English courts would be able to recognise foreign group representatives, participate in group coordination proceedings and approve group solutions binding multiple jurisdictions.

9 The Future

9.1 What, if any, proposals exist for future changes in restructuring and insolvency rules in your jurisdiction?

Following adoption of MLEG (see question 8.1), a modified form of Article X of the Model Law on the Recognition and Enforcement of Insolvency Related Judgments is anticipated. This would clarify that discretionary relief available to foreign representatives includes recognition and enforcement of foreign judgments. Although potentially diluted, the "Gibbs rule" will not be entirely eliminated as English courts will not be obliged to recognise foreign compromises of English law debt.

9.2 What, in your opinion, is the outlook for the restructuring and insolvency market in your jurisdiction over the next year? Are there any specific macroeconomic factors expected to cause, or any particular sectors expected to be impacted by, financial distress?

Market trends from 2025 are expected to continue into 2026, with financial stress driven by elevated interest rates, weakened consumer demand and a challenging refinancing environment. Fragile balance sheets, wage inflation and energy costs may drive sector-specific pressure in construction, retail and hospitality. 2025 saw significant RP jurisprudence, with courts emphasising that additional value created by an RP compared to the Relevant Alternative (see question 3.4) must be allocated fairly among creditor classes, potentially requiring out-of-the-money creditors to receive more than nominal payment. This focus on allocation is expected to continue, with companies adducing more detailed evidence, including "plan benefits" reports, to demonstrate fair stakeholder treatment. RPs involving new money injections will increasingly require benchmarking or market testing evidence to demonstrate lenders are not receiving a bounty. Conversely, enhanced RP scrutiny may make informal work-outs (including Distressed Disposals) more attractive for companies and creditors seeking efficient, predictable outcomes.

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- Restructuring Options
- Insolvency Procedures
- Tax Risks
- Effects on Employees
- Cross-Border Issues
- Treatment of Groups
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