

| Term   | Insolvency Act ref. | Notes   |
|--|---------------------|---|
| <b>Definitions:</b>  |                     |   |
| <b>Insolvent</b>   | - s123(1)(e)        | “Inability to pay debts as they fall due”.<br>(Most common definition.)   |
|  | - s123(2)           | “Assets less than liabilities including contingent and prospective liabilities.”<br>(Rarely used in practice as too wide a definition - although may be used in wrongful trading action.)                   |
|  | - s214(2)(b)        | “Knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation.”<br>(Definition for Wrongful Trading Purposes)  |
| <b>Going Concern</b>   |                     | Ability to continue in operation for the foreseeable future, even if this means curtailing some of the charity’s operation, provided that the primary purpose can be continued.                             |
| <b>Wrongful trading</b>  | - s214              | A director can be ordered by the court to contribute to the deficiency if, when they ought to have known that the company was going into liquidation, they did not take all steps to protect the creditors. |
| <b>Preference</b>  | - - s239            | Where a creditor has been paid in preference to other creditors. Gives the court the right, on application by the liquidator, to make an order restoring the position.                                      |
| <b>Director</b>  | - s251              | Any person occupying position of a director "by whatever name called".  |
| <b>Shadow Director</b>   | - s251              | Any person "in accordance with whose instructions the directors are accustomed to act".   |
| <b>Procedures: (“IP” = IP in control)</b>                            |                     |   |
| <b>Compulsory liquidation</b><br><i>IP</i>                           | - s117              | Winding-up of <b>insolvent</b> entity under the control of the court, and the Official Receiver (a government officer) (and the creditors, as the members have no further financial stake)                  |
| <b>Creditors voluntary liquidation</b><br><i>IP</i>                  | - s98               | Winding-up of <b>insolvent</b> entity under the control of a liquidator (and the creditors, as the members have no further financial stake)   |
| <b>Members voluntary liquidation</b><br><i>IP works with members</i> | - s90               | Winding-up of <b>solvent</b> entity under the control of a liquidator (and the members)   |
| <b>Striking-off</b>  | - s1003<br>(Co Act) | Option to ask the registrar of companies to dissolve a solvent company – form DSO1.   |

**Administration** - Sch B1 Increasingly (especially after Enterprise Act 2002) the route of choice, whereby insolvent company can manage a wind-down or restructuring. Requires both Court and creditor consent, and often is combined with a CVA or liquidation.  
*IP*

**Company Voluntary Arrangement** - s1 Procedure by which an arrangement can be agreed between insolvent company and its creditors to either pay the liabilities over a period, or to pay a reduced sum. Generally involves payment from future revenue streams.  
*Board - working with IP*

**Licensed Insolvency Practitioner (IP)** Term given to individual who has to carry out any formal procedures under the Insolvency Act.

**Staff claims:**

**Preferential** – if funds exist = - s175 *Arrears of pay* to £800 & *holiday pay*. *Pensions* = payable before general claims member contributions 4 months, employer 1 year

**General** – ie ranking alongside rest of creditors *Rest of staff claims*, inc. *redundancy pay*, and *arrears* in excess of preferential limits

**Department of Employment** – - Under Will pay statutory entitlement of staff. Briefly:  
In practice = source of most **Employment Protection Act** - *Arrears of wages* to 4 months @ £489 pw (2017)  
payments to employees in an - *Holiday pay* for the current tax year  
insolvency. Act - *Pay in lieu of notice & redundancy pay* – dependent on age and length of service

**Charity terms:**

**Restricted Funds or Reserves.** Where assets are held under a condition imposed from outside and have to be held or used for a particular purpose. Per CC12 = “separate charities”

**Designated Funds or Reserves** Where management has decided to set monies aside for a particular purpose, for instance for a redundancy fund.

**Endowments** “**Permanent**” where funds are given for the charity’s ongoing use – and the capital must be retained intact. In an “**expendable**” endowment the trustees have the power to apply the capital for revenue use

**The above is a very brief summary – and professional advice should be taken before making any decisions.**

**Useful sources of information on technical aspects:**

**Insolvency Act 1986** – as amended, inc 2006.. and **Enterprise Act 2002**

**Charity Commission** - guidance CC12 “*Managing Financial Difficulties and Insolvency in Charities*”, “*Helping charities through the Economic Downturn*” = section on website, including “*The economic downturn - 15 questions trustees need to ask*”

**CFG, NCVO, PwC, Institute of Fundraising guidance and periodic surveys**

**Voluntary Sector Legal Handbook** – by Russell Cooke legal team & Sandy Adirondack

**DSC Book** “*Managing in a Downturn: Staying Solvent and Surviving Well*”

**Jean Warburton book on Unincorporated Associations**