

Institute and Faculty of Actuaries  
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Insolvency Insight, Chapter 11 and PPF  
Insolvency Events

**Helen Hancock**



# Cross Border Insolvency - Overview

- Meaning of insolvency
- Types of insolvency proceedings in Great Britain
- Overseas insolvency proceedings and impact on schemes in Great Britain
- Common pitfalls and issues
- PPF/tPR involvement in overseas insolvency proceedings (e.g. Nortel)
- The influence of secured creditors

# Meaning of Insolvency

## ■ S123 Insolvency Act 1986

## ■ Triggers

- Unsatisfied debt of more than £750
- Otherwise “unable to pay its debts as they fall due”

## ■ Balance sheet insolvency

## ■ Cashflow insolvency

# Types of UK Insolvency proceedings

- Liquidation: creditors' voluntary winding up/winding up by court (without solvency statement)
- Administration
- Administrative receivership
- LPA receivership
- Company Voluntary Arrangement (CVA)
- Other - Companies Act 2006 scheme of Arrangement and “informal restructurings”

# Insolvency in pensions context

- Status of pension liabilities on insolvency of employer
  - unsecured creditor
  - ranks behind secured creditors
- Insolvency events triggering:
  - S75 debt
  - commencement of PPF assessment period
  - ability to wind up Scheme
- Overseas proceedings do not count!

# Impact of overseas insolvency

## ■ Example – Ch 11 Proceedings in the US

- Potential extraterritorial reach – assets in the US
- Impact on UK subsidiaries
- Debtor in possession financing and super priority
- Automatic stay or moratorium
- S363 preferred bidder auction process
- Squeeze on unsecured creditors

# Impact of overseas insolvency

- Recognition of overseas insolvency proceedings in UK
- EU Insolvency Regulation (Council Regulation (EC) No. 1346/2000)
- UNCITRAL Model Law
- Cross Border Insolvency Regulations 2006 (SI 2006/1030)
- S426 Insolvency Act 1986

# Impact of overseas insolvency

- Concepts
- Foreign main proceeding and foreign non main proceeding
- “COMI”
- “Foreign representative”



# Impact of overseas insolvency

## ■ Cross Border Insolvency Regulation:

- Prohibition on disposal of assets or grant of security
- Stay of any proceedings and of execution against assets
- Query ability to take proceedings to preserve claim or initiate insolvency proceedings or enforce security?
- Provision of assistance to foreign representative
- Right of foreign representative to initiate or intervene in secondary insolvency proceedings

# Common pitfalls

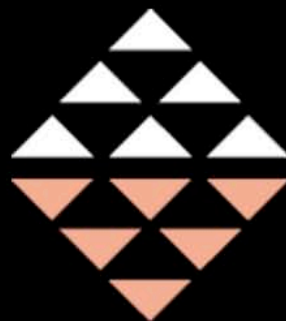
- Ability to enforce security or take action to demand or obtain payment of debts
- Preference issues
- Preferred bidder pre-pack type auctions - clearance
- Squeeze out of unsecured creditors
- Information and understanding impact – cost
- Taking proceedings and intervening
- Impact on other Group companies

## Example - Nortel

- Background facts
- PPF issues Financial Support Direction
- US/Canadian Courts block it
- PPF issues further FSD in July 2010
- Ability to recover? Unsecured creditor of insolvent entity
- Remember Sea Containers?
- Bonas Group Contribution Notice in June this year

# The role and influence of secured (bank) creditors)

- Impact on availability of contingent assets
- Intercreditor arrangements
- Permitted payments
- Standstills, restrictions on enforcement or demand, turnover trusts and “follow my leader” provisions
- Compromise of S75 debt?
- Structural subordination – e.g. shares charge/stake



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