

Group 1

1. Where business is carried out by an individual, or more individuals having full liability for the debts generated by their business, the business may be closed or cease to exist at any time the individual decides so, or if he or she becomes bankrupt or should he or she die.

The death of a sole trader brings the organization to an end and the executors who are in charge of the sole trader's affairs will either have to sell the business as a going concern to someone else or sell the assets one by one to other businesses. If the assets of the business have been left to a person by the will the executors will have a duty to transfer those assets to that person as part of the winding-up of the estate, unless it is necessary to sell them to pay the deceased's debts. If a sole trader becomes bankrupt, there is no way in which he can legally continue in business because if he obtains credit beyond a prescribed amount (currently 500) either alone or jointly with someone else, without telling the person who provides the credit that he is an undischarged bankrupt, he commits a criminal offence.

The death, bankruptcy or retirement of a partner in an ordinary partnership can lead to the firm closing down business, but it is usual for a partnership agreement to provide that the business shall continue under the remaining partner or partners.

However, the continuing partners or sole partner will have to find the money to buy out the share of the deceased, bankrupt or retiring partner. As regards limited liability partnerships, clearly the firm, being a person at law, is not dissolved by the death, bankruptcy or retirement of a member of the firm, but the personal representatives or the former member on retirement are entitled to receive any amount to which the former member was entitled.

Compiled from Keenan & Riches' Business Law (9th ed.)

Source: New Introduction to Legal English
2011 edition, pp. 107 + 108

Group 2

10. The following text is a part of documents issued for debtors and creditors by the UK Department for Business, Innovation and Skills (former Department of Trade and Industry). You can search www.insolvency.gov.uk for details.

The most commonly used definition of insolvency is the inability of an individual or company to pay debts when they become due. The term *insolvency* is also used to describe the various formal proceedings that may apply to an individual or company.

4 Insolvency law provides a system of dealing fairly with the assets of the insolvent and the claims of creditors. The law also deals with what happens to the individual or company following the insolvency.

The procedures that can apply to *individuals* are (a) bankruptcy, (b) individual voluntary arrangement, or (c) fast track voluntary arrangements.

The procedures that can apply to *companies* are (a) compulsory liquidation (winding up by the court); (b) administrative receivership; (c) administration; (d) company voluntary arrangement; (e) creditors' voluntary liquidation; or members' voluntary liquidation (applies to solvent companies only but is regulated by the Insolvency Act 1986).

NOTE:

Voluntary arrangements is an agreement with creditors and means restructuralizace dluhu se souhlasem věřitelů (soudů).

Administrative receivership essentially corresponds to what is termed *pučená správa* in Czech.

Source: New Introduction to Legal English
2011 edition, pp. 111 - 112

Group 3

17. As already mentioned, *bankruptcy* can only apply to individuals (including sole traders and individual members of a partnership) in the UK. Read the text explaining the procedure.

Bankruptcy petitions (or petitions for a bankruptcy order) may be filed with the court by the individual, by creditors who are owed 750 or more, or by the supervisor of an individual voluntary arrangement, if the individual has not complied with the terms of the arrangement. A bankruptcy order is issued by the court; it makes the debtor 'bankrupt' and causes his property to vest in a trustee for the benefit of his creditors. When referring to a person before the bankruptcy order is made he should be designated 'the debtor'; subsequently he is referred to as 'the bankrupt'.

The official receiver normally acts as receiver and manager of the bankrupt's estate and will become trustee unless an insolvency practitioner is appointed. The trustee realises any assets, called *bankrupt's estate* (except for certain assets, including basic domestic items needed by the bankrupt and his or her family, and items such as vehicles, equipment, tools and books needed for the bankrupt's job). After paying fees and the costs of the proceedings, the trustee distributes the remaining money to the creditors in a strict order of priority.

Compiled from <http://www.insolvency.gov.uk>

NOTE:

1. A meeting of creditors is usually called and creditors choose and appoint an insolvency practitioner to act as trustee. Should there be no meeting (due to any reason) the official receiver automatically becomes trustee.

3. Bankrupt's estate (or estate in bankruptcy) means "konkurzní podstata" or "majetková podstata" in Czech (under the new Czech Insolvency Act 2006).

4. Assets are usually that part of property which can be sold in order to satisfy creditors' claims ("jmen" or "aktiva" in Czech).

Source: New Introduction to legal English

2011 edition, pp. 113 + 114

Group 4

14. There are two types of officials in insolvency proceedings in the UK, namely official receivers and insolvency practitioners.

Official receivers (OR) are civil servants and officers of the court to which they are attached. As well as administering cases, ORs have a duty to investigate the affairs of individuals in bankruptcy and companies in compulsory liquidation. They report evidence of criminal offences to a prosecuting agency. They report unfit conduct to the Secretary of State, who will decide whether to begin court proceedings to disqualify a director.

Insolvency practitioners (IP) work in the private sector. They are usually accountants or solicitors. They are required by law (the Insolvency Act 1986) to be authorised to act as IPs. Authorisation is by one of the recognised professional bodies (RPBs), although a small number of people are authorised directly by the Secretary of State for Business, Innovation and Skills. RPBs are approved by the Secretary of State to authorise their members. About 90% of IPs are authorised by RPBs. IPs acting as liquidators in creditors' voluntary liquidations, administrative receivers and administrators have a duty to report to the Secretary of State any evidence of unfit conduct by company directors. Compiled from <http://www.insolvency.gov.uk>

NOTE:

A receiver is a disinterested person appointed by a court to administer the property of a bankrupt; "správce" in Czech

British insolvency practitioners are very close by their nature to Czech "insolventní správce".

2. British terms trustee, receiver or insolvency practitioner, although each indicates a slightly different position, can all be translated as "správce" or "insolventní správce" into Czech since Czech law does not distinguish similar nuances.

Source: New Introduction to legal English

2011 edition, pp. 113 + 114

Group 5

26. If companies in the UK become insolvent they are subject to a procedure different from that applicable to individuals.

Compulsory liquidation (winding up by the court) is an insolvency procedure that applies to companies (and partnerships) and is started by a court order called a *winding-up order*. A petition is filed with the court, normally by a creditor, stating that the company owes a sum of money and that the company is unable to pay its debts as they fall due. It may also be filed by the company itself, its directors or its shareholders.

Directors of a company should know its financial position and whether any creditors are pressing for payment by letters, statutory demands and court proceedings. These may lead to a petition to wind up the company. When a winding-up order is made, the court will notify the official receiver, who will then send notice of the order to the directors.

When the company has been wound up members / directors will no longer have control of the company's business, assets and property. Most of the powers of director will cease.

An official receiver will normally handle the early stages of a bankruptcy or compulsory liquidation. If there are significant assets, an insolvency practitioner may be appointed as trustee / liquidator in place of the OR. When the winding up is complete, the OR / IP will apply to be released from the office of liquidator. ORs are released by the Secretary of State. IPs are released following a final meeting of creditors. On release, the OR/IP sends a notice to the Registrar of Companies and the company will usually be dissolved 3 months later. It then ceases to exist.

Compiled from <http://www.insolvency.gov.uk>

Source: New Introduction to Legal English
2011 edition, pp. 118 + 119

Group 6

59. The following text is a brief outline of Czech insolvency procedure under the Insolvency Act 2006. It is a summary of the comparative lecture delivered by Professor Paul B. Lewis (The John Marshall Law School Chicago) to Czech insolvency judges in April 2007.

Unlike the US Bankruptcy Code, the Czech Insolvency Act (sec. 3) explicitly describes when a debtor is insolvent; there is no such definition in the US Code. Under the Czech Act, an insolvency petition must be accompanied by schedules of the debtor's assets and liabilities, although, like in the US, verification of whether the list of assets and liabilities corresponds to the real condition of the debtor can be quite problematic. The Czech Insolvency Act introduces the institution of *moratorium* (also the term of UK law), which has its counterpart in *automatic stay* in the US. Moratorium prevents the company's creditors from proceeding against the company during the relevant period, whilst allowing the directors to remain largely in control of the company and its business.

Creditors must submit their claims to the Court and the Court issues a ruling on insolvency determining that insolvency has been established, that a trustee has been appointed, that creditors are requested to submit their claims, and that the debtor must submit to the trustee a list of assets and liabilities, etc.

The Court, rather than the debtor, determines the method of insolvency resolution, selecting one of three options:

- i. Bankruptcy, according to the liquidation schedules;
- ii. Reorganization, according to the plan; and
- iii. Discharge from debts, by performance.

Source: New Introduction to Legal English
2011 edition, pp. 129