

## Insolvency of Individual Partners

<p>Will individual Partners be made bankrupt if the partnership becomes insolvent?</p>	<p>This depends on some extent upon the distribution of assets and liabilities between individual and partnership estates. The following are all possible:-</p> <ul style="list-style-type: none"> <li>• Insolvency proceedings in respect of the partnership and its assets only;</li> <li>• Insolvency proceedings in respect of one or more partners only; or</li> <li>• Insolvency proceedings against both the partnership and the individual partners.</li> </ul> <p>The first option is more likely where partnership assets are ultimately likely to be sufficient to substantially or fully satisfy creditors' claims and/or proceedings are instigated by the partners themselves. From a creditor's perspective, proceeding against individual partners may be perceived as having some tactical advantages. Bankruptcy of each individual partner is, however, by no means either inevitable or, even from a creditor's perspective, desirable in all instances as overall returns to creditors are likely to be poor.</p>	<p>Each individual partner's situation will depend upon the likely shortfall in the partnership estate and personal assets available to meet both personal and partnership liabilities.</p> <p>Can partners enter into individual voluntary arrangements (IVA)?</p> <p>Yes. These may be either linked with some or all of the other partners and may deal with partnership and/or individual liabilities or may be stand alone. Interlocking IVAs are complex and difficult to administer with partnerships consisting of more than a few partners. Larger partnerships would probably be better suited to having the partnership estate dealt with under a separate procedure such as liquidation, PVA or Administration and individual estates deal with under stand alone IVAs.</p> <p>The procedure, voting and failure requirements are broadly the same as for IVAs.</p>
<p>What are the advantages and disadvantages of individual voluntary arrangements for Partners?</p>	<p>Often proposals are drafted or modified to provide that all partners must fulfil their obligations under the terms of their individual arrangements and if 'one fails all fail'.</p> <p>This means that an element of uncertainty is introduced into arrangements, where one partner may suffer as a result of the default of another.</p>	<p>They are also potentially complex and expensive to implement and administer due to the numerous different estates involved.</p> <p>The main advantage is that the cost of separate proceedings in respect of the partnership may be avoided.</p>

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<p><b>Bankruptcy</b></p>	<p>As noted above, each individual partner is jointly and severally liable for payment of partnership debts. An individual partner might, therefore, find himself being pursued individually for payment of all of the debts of the partnership.</p> <p>While he would usually have a right of indemnity from his fellow partners, this may be of little practical value if the other partners</p>	<p>are unable to pay their share of partnership debts. If a voluntary arrangement is not possible, then bankruptcy may be the only available option.</p>
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### Partnership Administration

<p><b>Is it the same as company administration?</b></p>	<p>The procedure closely follows that applying to companies, see the Administration section of our website for further details.</p>	<p>The main differences is that personal and partnership law does not generally recognise floating charges, with the exception of agricultural floating charges and charge holder appointments are likely to be limited accordingly.</p>
<p><b>Can the appointment be made without a court hearing?</b></p>	<p>Yes. The entitlement to make an appointment rests with the partners as a whole. Unanimity would therefore appear to be required although the application itself may be made by an individual partner or partners acting on behalf of the partnership as a whole. The partnership must be insolvent and the statutory purposes (survival of the partnership or better realisation for creditors than winding up) must be capable of achievement.</p> <p>As with company administration, an application may not be made without a hearing where a pending petition for winding up has not been disposed of.</p>	<p>In these cases an application must be made to the Court by the partners. Creditors may only seek to have an administrator appointed by application to the Court which will be disposed of at a formal hearing.</p> <p>The interim and final moratorium on creditors' enforcement rights which apply to companies also apply to partnerships subject to administration. The moratorium prevents insolvency or other proceedings being instigated or continued against the partnership or its property without the permission of the administrator or consent of the Court.</p>

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<p><b>How does the administration end?</b></p>	<p>The administration will automatically end 12 months after the appointment of administrators but may be extended for a further period of 12 months with consent of creditors. The administrator might choose to exit from administration by a number of means</p>	<p>including: exiting from office and returning the partnership business to the partners having restored it to solvency; proposing a voluntary arrangement; or entering into liquidation.</p>
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### Partnership Voluntary Arrangement

<p><b>What is a Partnership Voluntary Arrangement?</b></p>	<p>Partnership Voluntary Arrangements (PVAs) are modelled on the Company Voluntary Arrangement (CVA) procedure.</p>	
<p><b>Who can benefit from it?</b></p>	<p>PVAs are applicable to Partnerships which the courts in England and Wales have jurisdiction to wind up. The procedure is mainly used for Partnerships with a significant number of members who wish to avoid the consequences of bankruptcy as well as excluding personal assets from any arrangement and for which the interlocking IVA</p>	<p>procedure would become particularly complicated. In particular the procedure is well suited to medium to larger-sized professional practices who have not incorporated and continue to trade as a Partnership.</p>
<p><b>The procedure in brief</b></p>	<p>The procedure is virtually identical to that of a CVA, see Company Voluntary Arrangement information on our website for further details.</p>	<p>The proposals for the PVA are drafted by the members of the Partnership rather than the directors of the company, although in practice this is handled by the insolvency practitioner.</p>
<p><b>Key components for a successful PVA</b></p>	<p>In addition to the key components contained within the CVA section, unless the partnership agreement specifies the requisite majority of members required to vote for a resolution in favour of formulating proposals for a PVA, a simple majority of partners only</p>	<p>will be required to approve the terms of a PVA proposal. 75% in value of creditors voting in person or by proxy will also be required, in order for the proposal to be approved and become binding on partnership creditors.</p>

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<p><b>Advantages of a PVA</b></p>	<p><i>The Partnership</i> Once approved the PVA will bind all creditors of the partnership.</p> <p>Costs are significantly less than if the Partnership was wound up as an unregistered company or placed into Administration.</p> <p><i>The Partners</i> The Partners remain in control of the day to day affairs of the Partnership.</p>	<p>Avoids the stigma of bankruptcy, see information on Bankruptcy on our website for further details.</p> <p>Provides partners with continued income.</p> <p><i>Creditors</i> Can provide opportunity for better return to creditors than if the Partnership were wound up. If continued trading of the Partnership is envisaged a PVA enables creditors at their discretion to continue a trading relationship with the Partnership benefiting from future sales.</p>
<p><b>Disadvantages of a PVA</b></p>	<p>See disadvantages of CVA section of this website. Additionally, the agreement and implementation of a PVA will not bind creditors of individual partners if the debt was incurred by them personally rather than on behalf of the partnership. In the event that individual partners have significant levels of personal debt in addition to partnership debt they may also have to consider</p>	<p>entering into individual voluntary arrangements in respect of personal debt or consider bankruptcy. If the majority of the partners also have individual debts a series of separate individual voluntary arrangement covering both partnership and personal debt for each partner might be preferable to a PVA.</p>

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## Partnership Winding Up

<p><b>General</b></p>	<p>Partnerships may be wound up as unregistered companies. There is no procedure analogous to creditors' voluntary liquidation for partnerships and the partnership must be wound up by petition to the Court which can either be presented by the partners or a creditor.</p> <p>Winding up proceedings may be issued either with concurrent petitions for the bankruptcy for some or all of the partners or without.</p> <p>In the event that the partnership estate is insufficient to pay partnership creditors in full, the shortfall may be claimed against the separate estates of individual partners by the liquidator and such claims rank equally with ordinary non partnership claims in that partner's estate.</p>	<p>Any funds recovered from individual partners will be dealt with by the liquidator, as partnership assets and distributed to partnership creditors accordingly. The main disadvantage with a winding up is the likely cost and expense incurred and it rarely represents best value to creditors, although is sometimes inevitable, once all other avenues have been exhausted.</p> <p>Partnership assets will be realised by the liquidator appointed and paid in satisfaction of partnership debts. Any surplus will be returned to partners in accordance with their profit and capital entitlements under the partnership agreement or the Partnership Act 1890.</p>
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