

Latest Developments in Insolvency and Recovery of Council Tax and National Non-Domestic Rates'

Hemal Mistry *mipa mabrp*

Licensed Insolvency Practitioner
Corporate Member IRRV

t: 0161 763 3183

M: 07989 691 841

e: hemal.mistry@horsfields.com

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John H C Lee *mipa mabrp*

Licensed Insolvency Practitioner
Corporate Member IRRV

t: 0161 763 3183

e: john.lee@horsfields.com



Topics

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1. Insolvency landscape
2. Entry routes and types of insolvency
3. Impact of insolvency on debt recovery
4. Case studies
5. New developments in insolvency
6. Passive or Reactive?

Insolvency Landscape



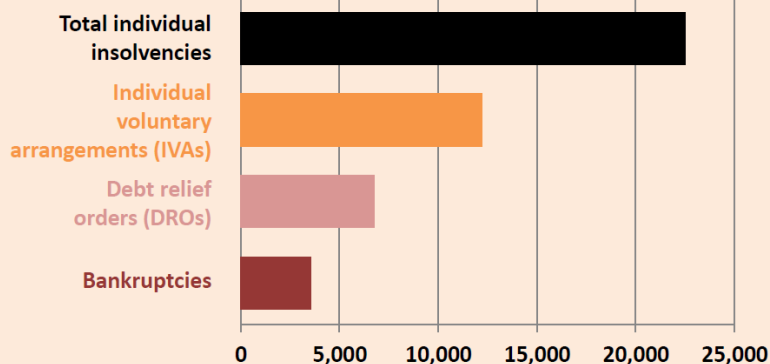


The Insolvency
Service

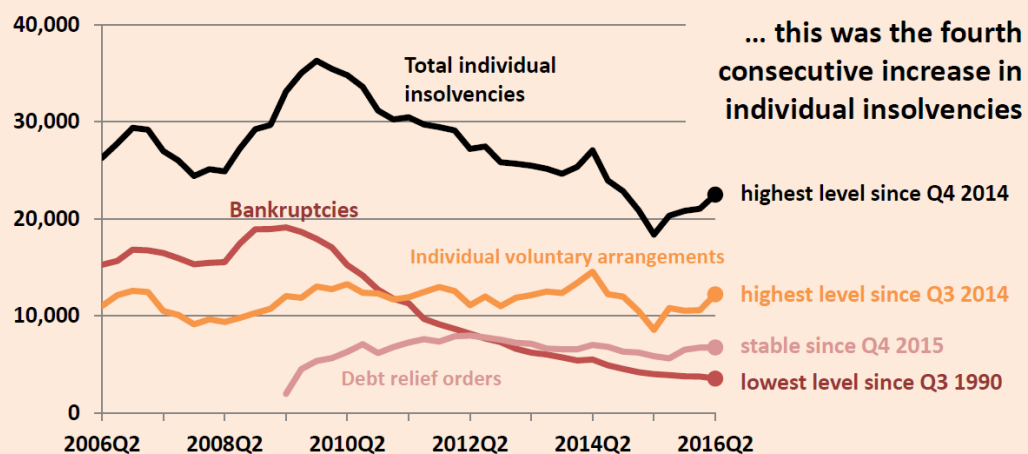
Q2 2016 Individual Insolvency Statistics England & Wales



**Total individual insolvencies increased,
driven by an increase in IVAs...**



Q2 2016 Total	% change from Q1 2016
22,503	↑ 6.9%
12,225	↑ 15.4%
6,741	↑ 0.3%
3,537	↓ 5.4%



**In the year ending Q2 2016,
one in 541 adults
became insolvent**
(year ending Q1 2016: one in 569)

For further information see:
<https://www.gov.uk/government/statistics/insolvency-statistics-april-to-june-2016>

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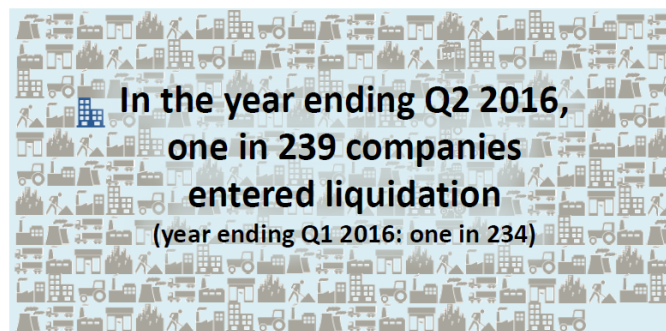
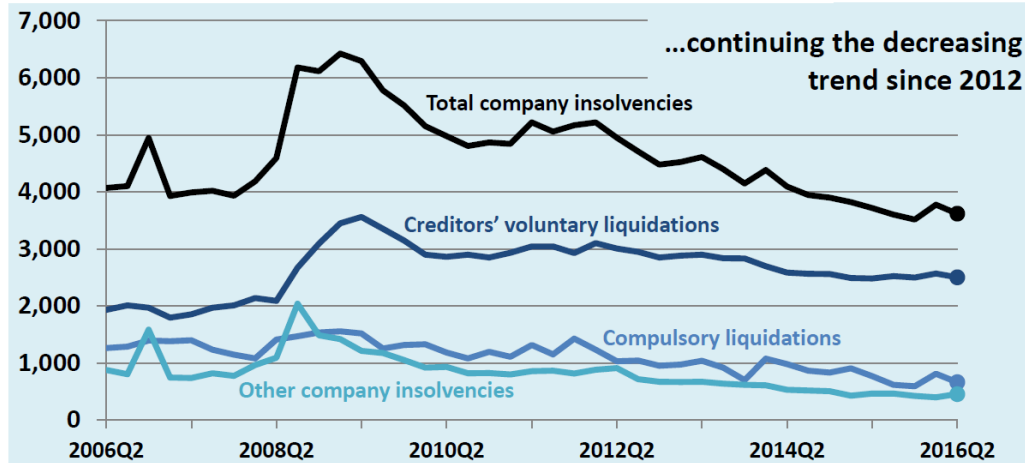
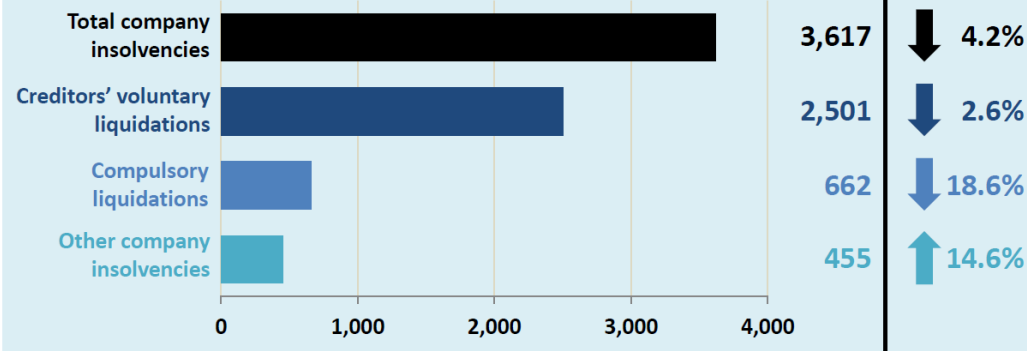


The Insolvency
Service

Q2 2016 Company Insolvency Statistics England & Wales



Company insolvencies decreased compared with the previous quarter...



**In the year ending Q2 2016,
one in 239 companies
entered liquidation
(year ending Q1 2016: one in 234)**

For further information see:
<https://www.gov.uk/government/statistics/insolvency-statistics-january-to-march-2016>

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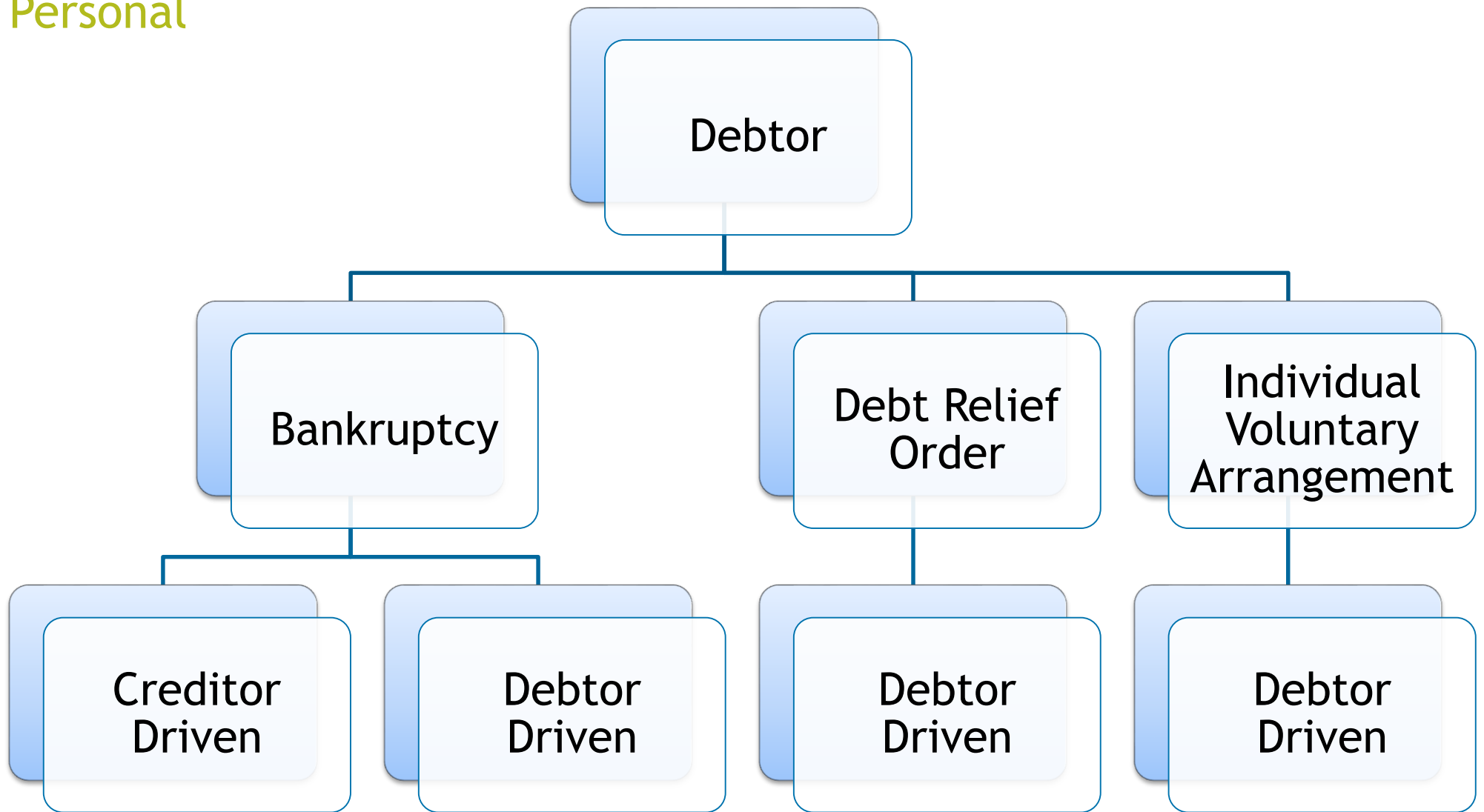
INSOLVENCY PRACTITIONERS

Entry Routes and types of insolvency



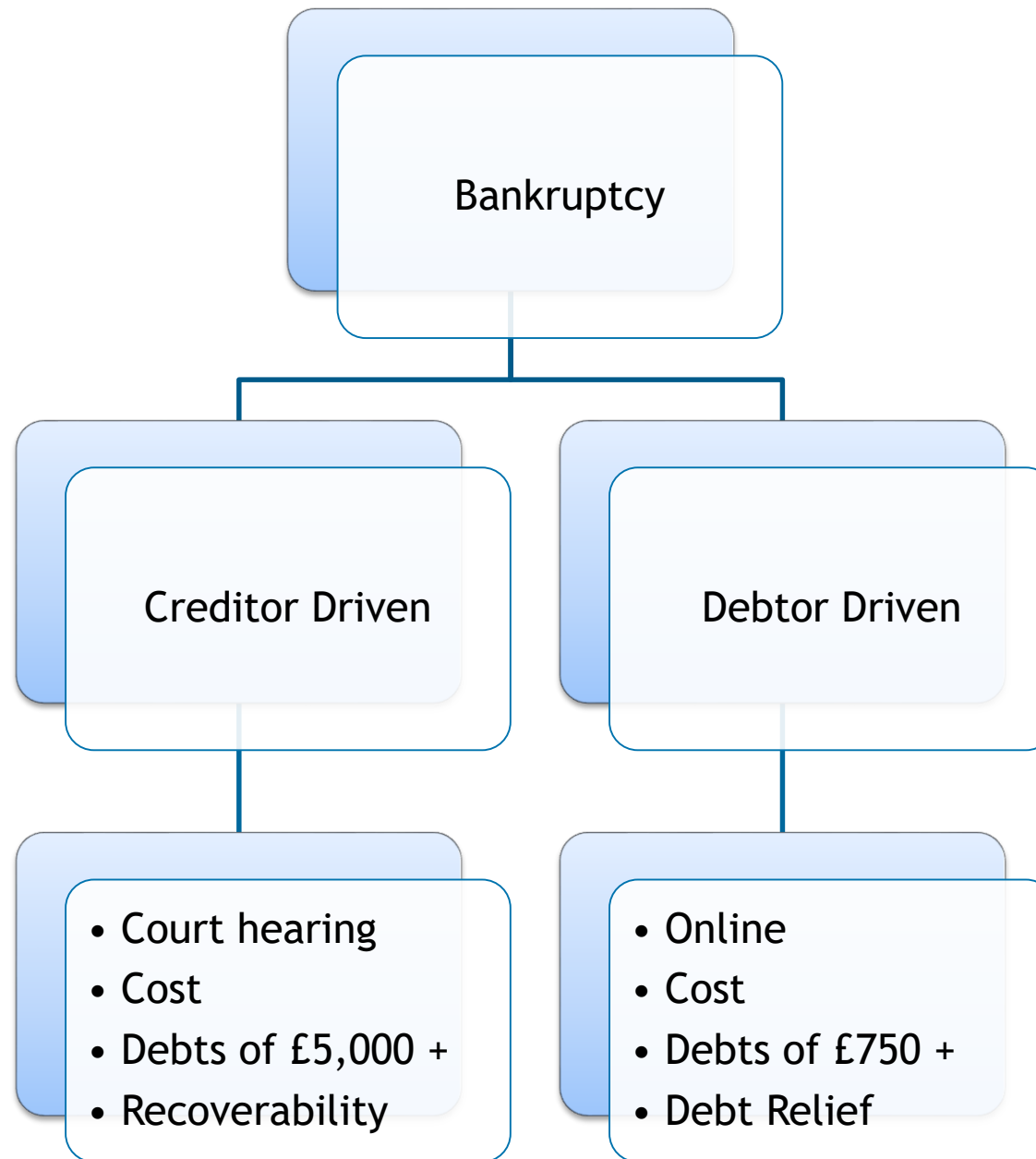
Insolvency Types

Personal



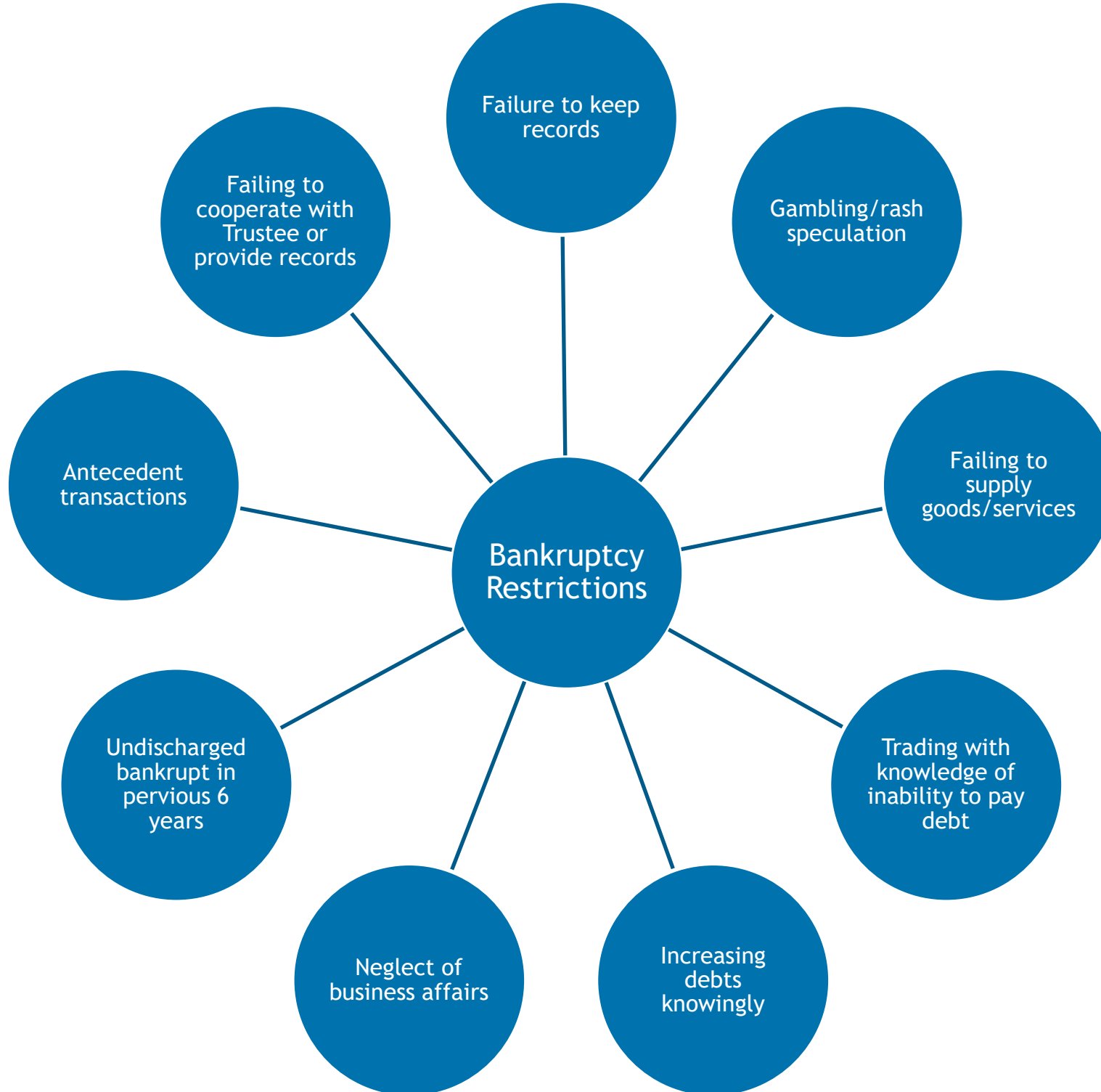
Insolvency Types

Personal



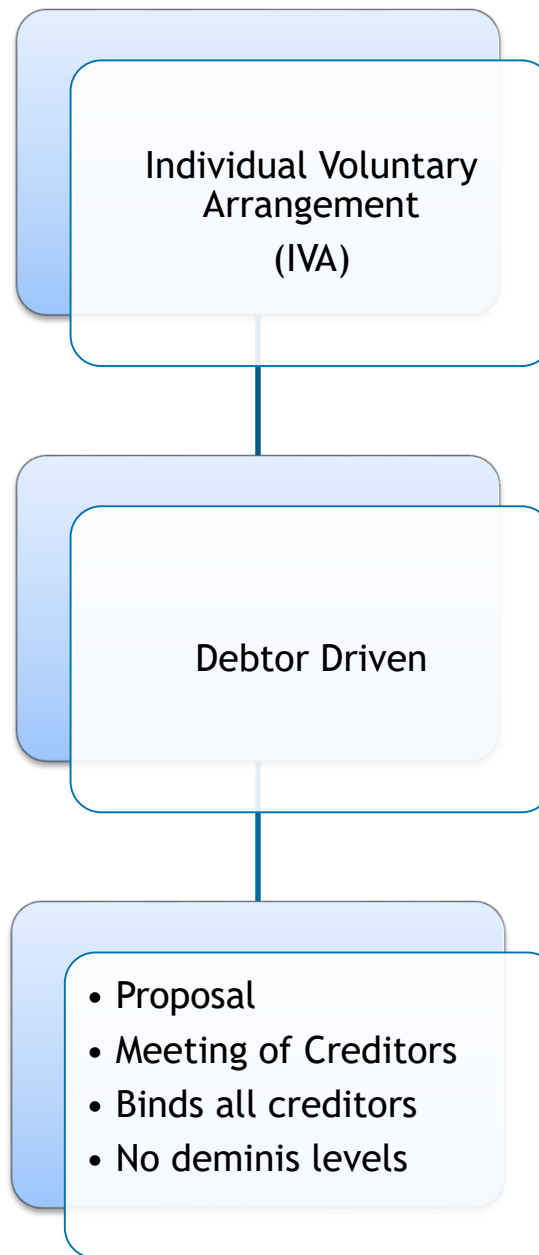
Bankruptcy

- Court procedure only for Creditor Petitions
- Full debt forgiveness in most circumstances
- Disabilities brought on by bankruptcy
- Stigma
- Creditors included even on a contingent basis
- Duration
- Bankruptcy restrictions undertaking/order



Insolvency Types

Personal

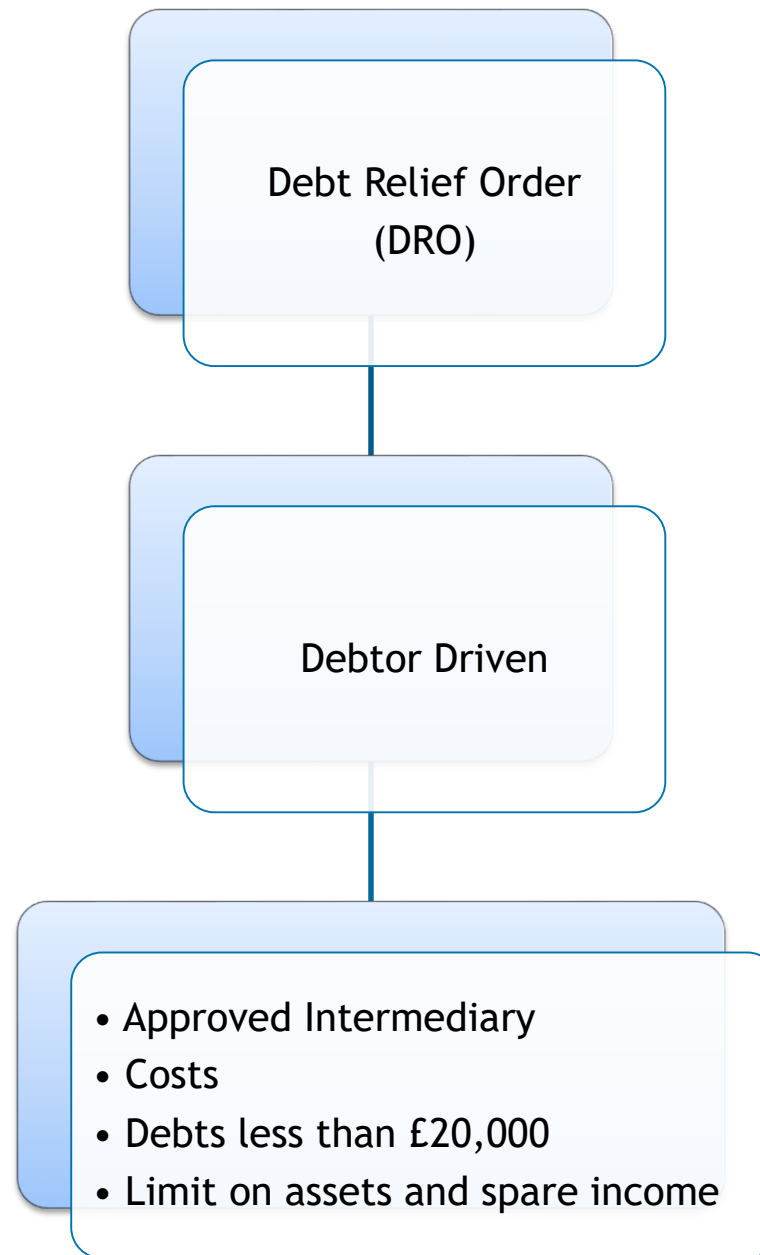


Individual Voluntary Arrangements

- Schemes to compromise or write off debt
- Mixture of third party contributions, asset realisation and/or income contributions
- Must be a better return than in bankruptcy
- Flexibility
- IVA protocol or bespoke terms and conditions
- Creditors bound even if not had notice
- Current year liability included
- Current year liability excluded
- Voting rights
- Unfair prejudice

Insolvency Types

Personal

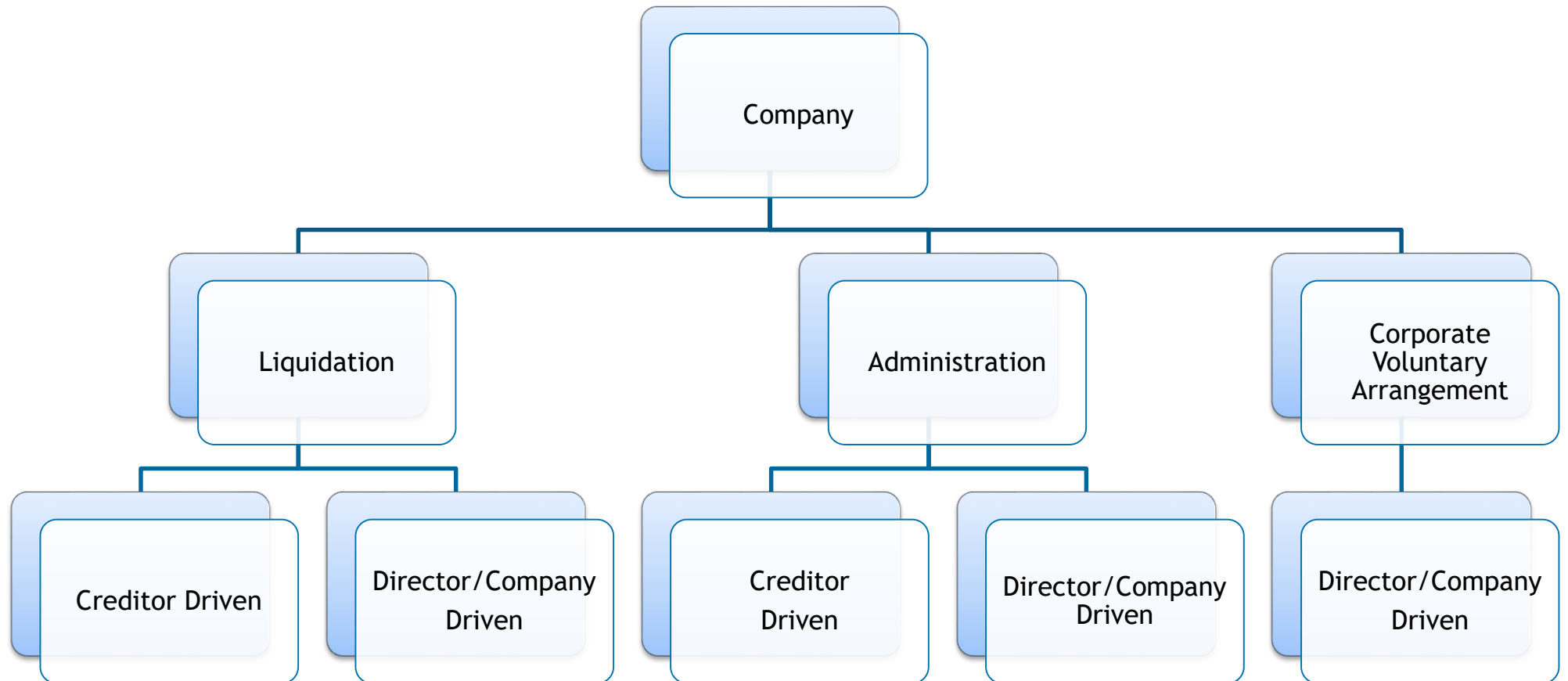


Debt Relief Orders

- Application through approved intermediaries
- DRO granted via Insolvency Service
- Official Receiver Plymouth has supervision
- Debts as scheduled are granted relief
- Objections can be considered

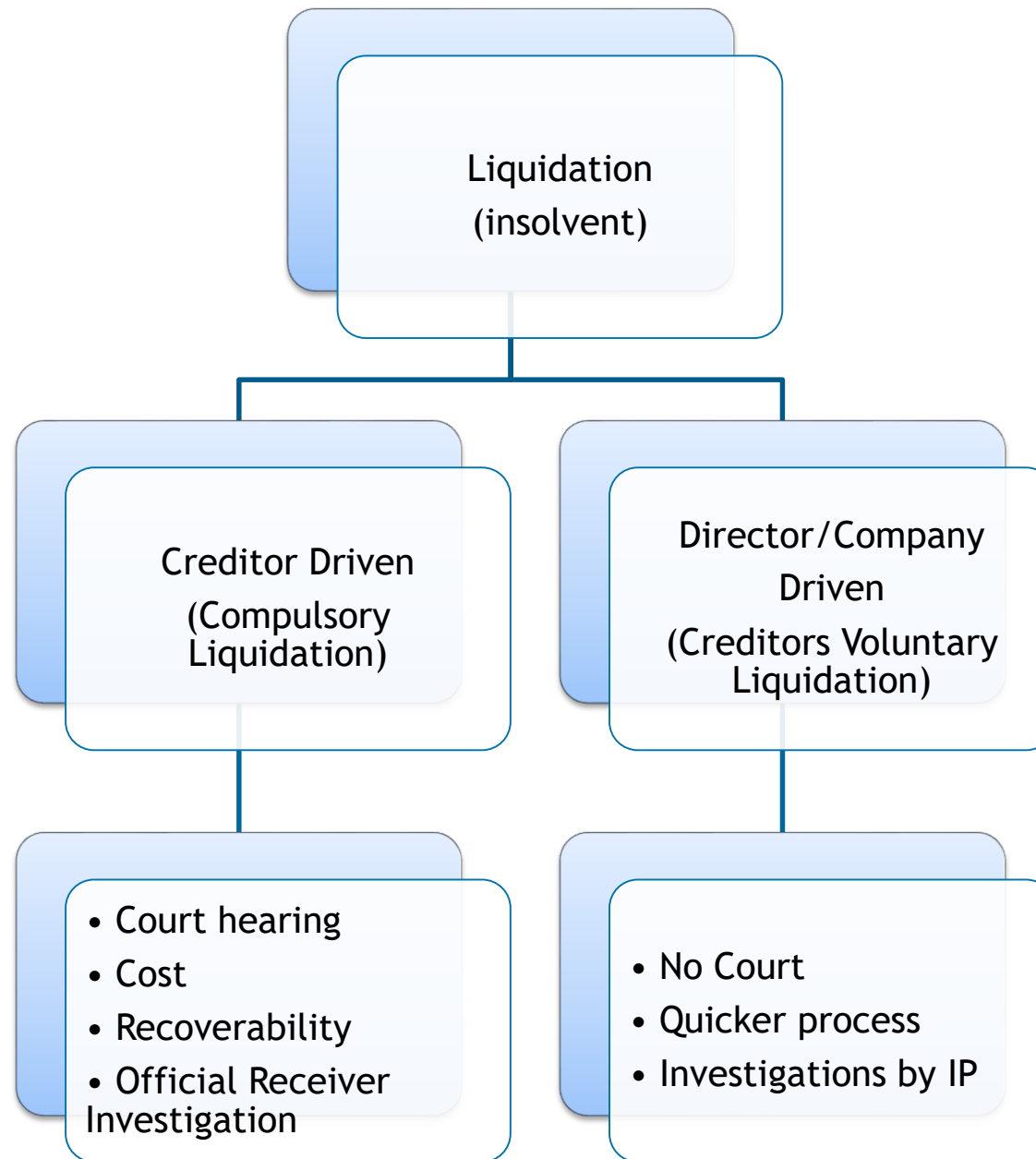
Insolvency Types

Corporate



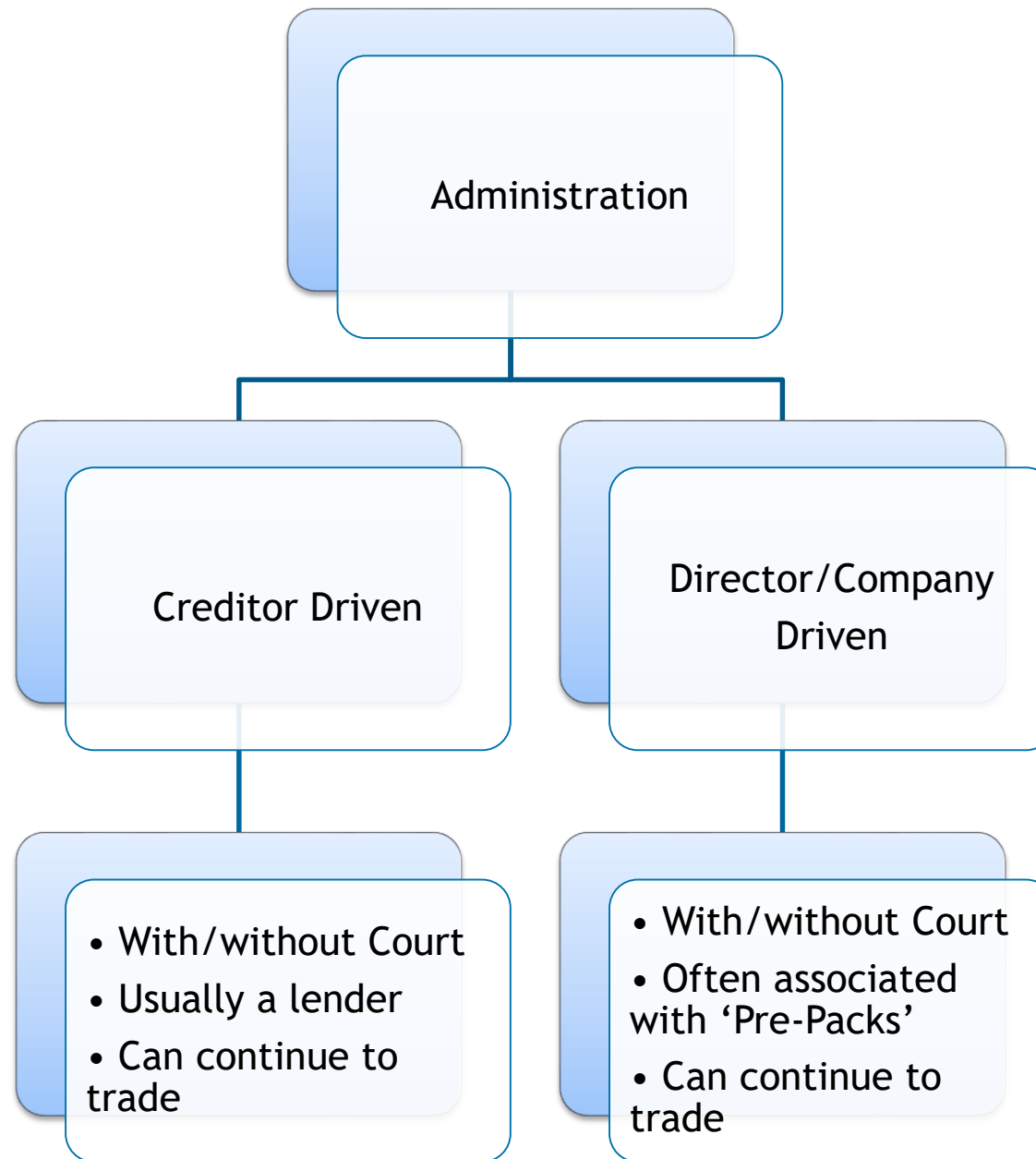
Insolvency Types

Corporate



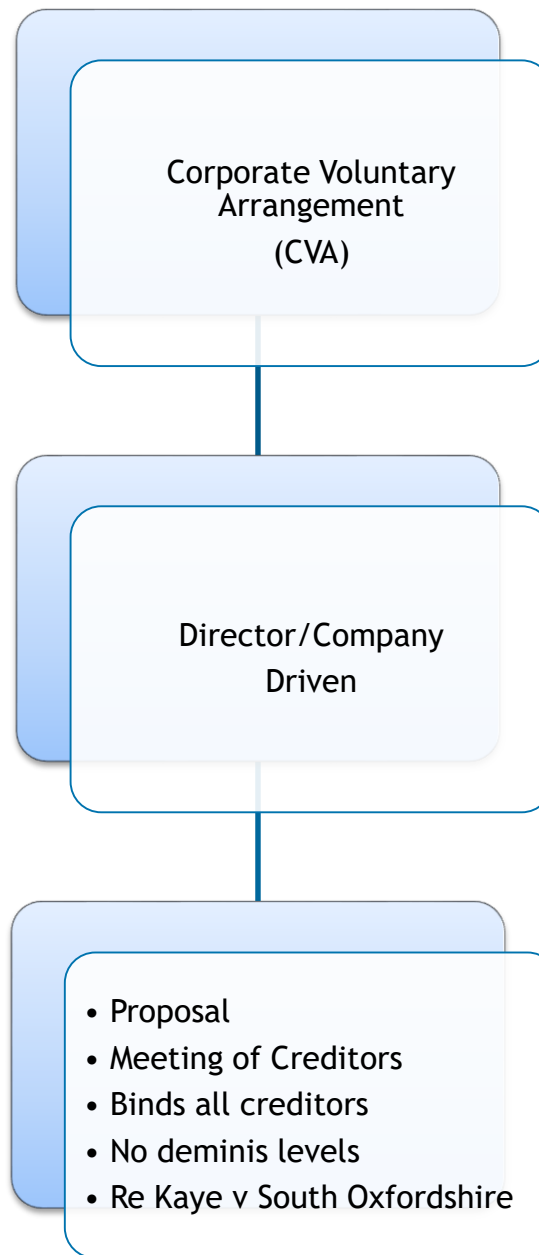
Insolvency Types

Corporate



Insolvency Types

Corporate



Impact of insolvency on Debt Recovery



Bankruptcy

Type of Debt	Provable in Bankruptcy?	Discharged by Bankruptcy?
Utility bills	Yes	Yes
Bank overdraft	Yes	Yes
Parking fines	Yes	Yes
Mortgage	In part	In part
Overpayment of benefits	Yes	Yes
Council tax/ Business rates	Yes	Yes
Joint credit card	Yes	Yes
Magistrates fines	No	No
Student loans	No	No
Matrimonial relief	No	No
Benefit fraud	Yes	No

Corporate Insolvency

Type of Debt	Provable in a corporate insolvency	Further considerations
Utility bills	Yes	
Business Rates	Yes	Lease disclaimer. Occupational liability
HMRC (VAT/PAYE/Corporation Tax)	Yes	
Lease creditor	No	May prove for o/s balance
Landlord	Yes	May charge for ongoing
Employee claims	Yes	Usually paid by Redundancy Payments Office

Case Studies



Avoidance Schemes

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- Voluntary Liquidation with and without appointment of a Liquidator
- Members Voluntary Liquidation with a Liquidator
- Associated companies
- Rights of occupation
- Charitable and other reliefs
- Overseas corporations

Case Study 1 - Car Park X Ltd

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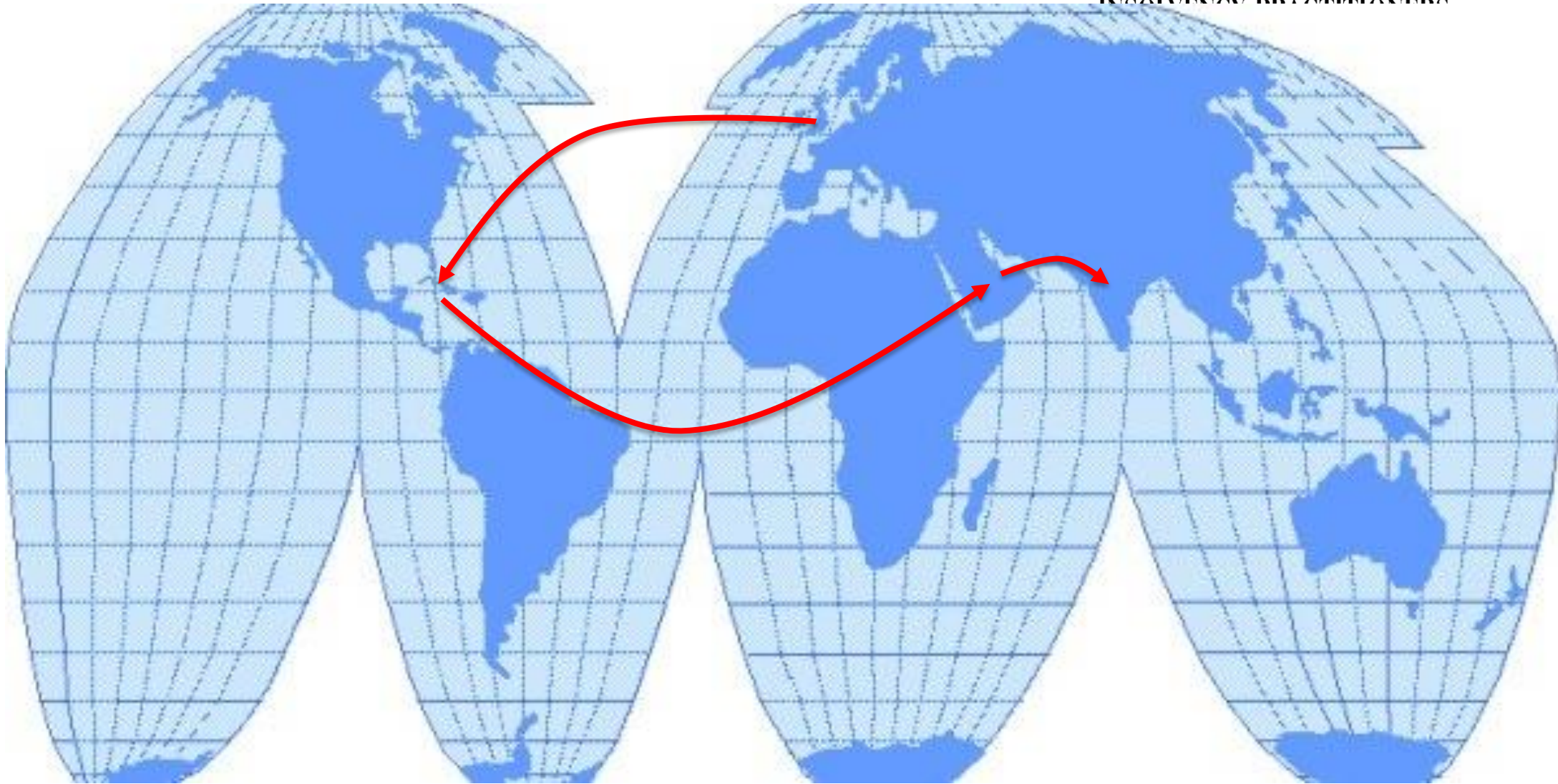
- Car Park - Fully Occupied
- Rateable Value for 2014/15 £102,000
- Debt due to Local Authority £260,812
- Assets sheltered overseas
- Winding Up Petition Issued

Case Study 1 - Car Park X Ltd

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Case Study 1 - Car Park X Ltd

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- BVI Registered Company
- Winding up Order made in High Court of Justice
- Land transferred out of Company
- Liquidator appointed
- Transfer of Land Void
- Land Value £5 million unencumbered

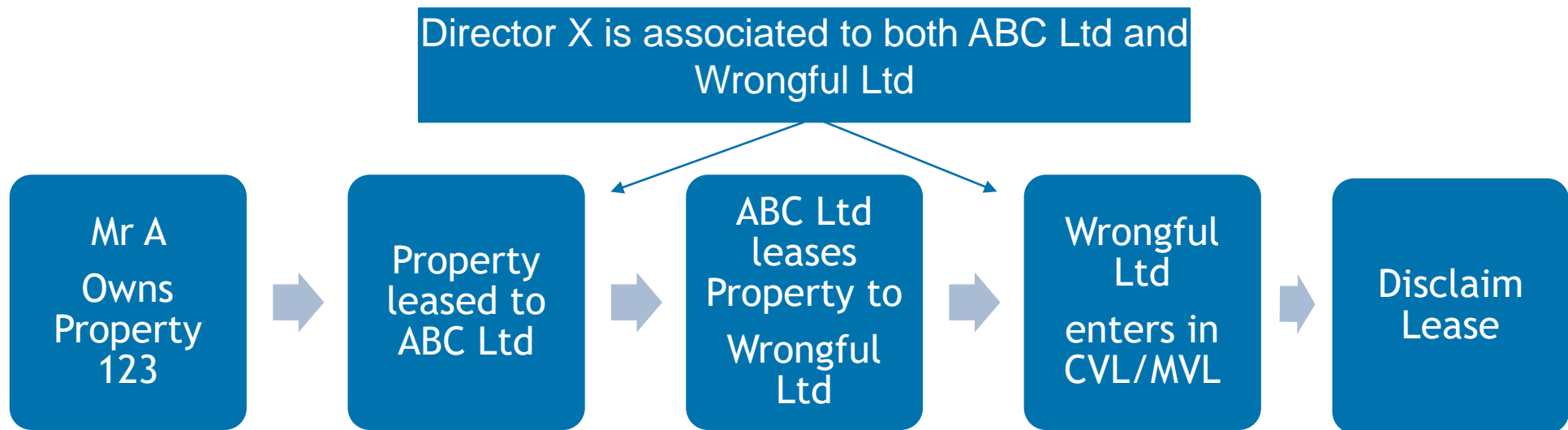
Case Study 2 - LeaseX Ltd

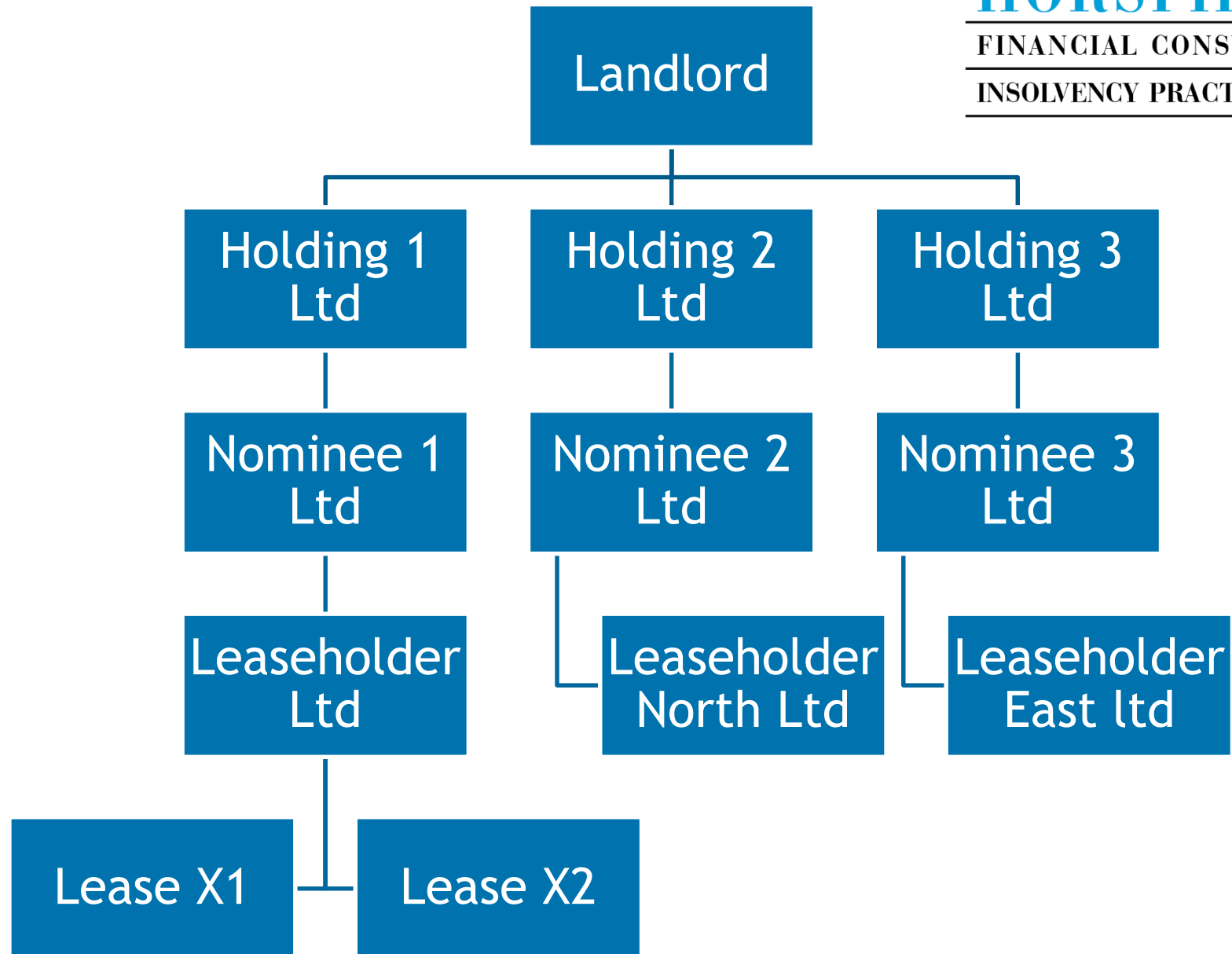
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The Lease





Case Study 3 - A Bankrupt

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- Sole trader
- Debts of circa £230,000
- Disclosed assets £140,000
- Asset uncovered to date £200,000+
- Isle of Man accounts, money held in alias account

New Developments in Insolvency



New developments in insolvency - What's new?

- New provisions effective as of 1 October 2015
- New provisions as of 6 April 2016
- New provisions as of 21 July 2016
- New IVA protocol effective 1 October 2016
- Insolvency Rules Modernisation predicted April 2017

- New provisions effective as of 1 October 2015
 - Administrators, Liquidators in insolvent liquidations and Trustees in Bankruptcy will be required to provide advance information to creditors before having the basis of the fees approved
 - The minimum level of debt of which a creditor can present a bankruptcy petition has increased from £750 to £5,000 for petitions presented on or after 1 October 2015
 - The maximum level of debts for eligibility for a debt relief order (DRO) has increased from £15,000 to £20,000 and the maximum value of property from £300 to £1,000 from 1 October 2015

- **Conditional Fee Arrangements and Cost Recoveries in Insolvency**
 - With effect from 6 April 2016 the reforms to cost recoveries in cases funded by conditional fee arrangements recommended by the Jackson report will apply to insolvency litigation.
 - With effect from 6 April 2016 success fees and after the event insurance premiums will no longer be recoverable in insolvency proceedings brought by liquidators, administrators, trustees in bankruptcy, and companies in liquidation or administration. See the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 12) Order 2016 (SI 2016/345 (C. 19)).

- Changes to the Director Conduct Reporting Process
 - Changes to the director conduct reporting process come into effect on 6 April 2016.
 - The main change is that practitioners will be required to report on director conduct within three months of their appointment using a single online return. This replaces D1/D2 forms which need to be submitted within six months.
 - The supporting legislation is The Insolvent Companies (Reports on Conduct of Directors) (England and Wales) Rules 2016 (SI 2016/180).

- **New Procedure for Debtor Bankruptcy Applications**

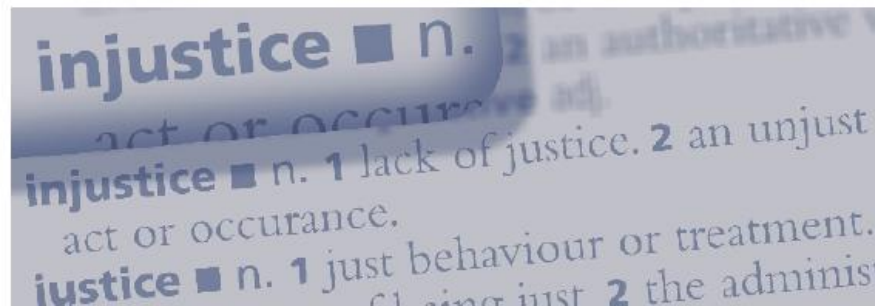
- A new procedure for debtors' bankruptcy petitions comes into effect on 6 April 2016. From 6 April 2016, debtor bankruptcy petitions will no longer be made to the courts; instead, applications will be submitted online via the central UK Government website, gov.uk, to an **adjudicator** within the Insolvency Service.
- The fee to submit an online application for bankruptcy will be £130. Applicants, or someone on their behalf, will be able to pay online or in cash and will also be able to pay in instalments (online only). With the required deposit remaining at £525, this will mean the total amount required to apply for bankruptcy will fall to £655.
- Online applications will not affect the current bankruptcy process subsequent to the granting of an order. The supporting legislation is The Insolvency (Amendment) Rules 2016 (SI 2016/187) and The Insolvency Proceedings (Fees) (Amendment) Order 2016 (SI 2016/184).
- The new procedure will not apply to partnerships or deceased insolvent estates.

The Insolvency Proceedings (Fees) Order 2016

- Commencement 21 July 2016
- Bankruptcy Administration Fee increased to £2,775
- General Fixed Fee £6,000 to replace sliding scale Secretary of State fee
- Trustee/Liquidator fee of 15% of any asset realisations

New developments impacting on enforcement

- LGO Focus Report revisited
- New enforcement regulations in taking control of goods
- Business Rate retention
- Ongoing issues in and around rate avoidance including the Liquidation exemption
- Activities amounting to fraud/criminal offences
- HMT Discussion Paper December 2014 on Business Rates Avoidance



Can't pay? Won't pay?

Using bankruptcy for council tax debts

Focus Report: learning the lessons from complaints

www.lgo.org.uk

Avoiding maladministration in council tax recovery

We are likely to find maladministration if a council:

- > does not have a formal, published Debt Recovery Policy covering bankruptcy, committal to prison or charging orders
- > has not gathered and considered information about an individual debtor's circumstances
- > does not include in its Debt Recovery Policy the steps officers must take before deciding on bankruptcy, committal to prison or charging orders, or
- > pursues bankruptcy without clearly recording that each of these steps has been taken and making a record of each outcome.

Source : Local Government Ombudsman – Focus Report: learning the lessons from complaints



Department for
Communities and
Local Government



HM Treasury

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Business Rates Avoidance

Discussion paper

December 2014

Passive or Reactive ?

6

Creditor Meetings in Insolvency

Insolvency Type	Notice Period	Documents to be supplied
Bankruptcy	14 days	Notice of meeting Report to creditors Proof of Debt and Proxy forms
Voluntary Arrangements	14 days	Notice of meeting Proposal document Proof of Debt and Proxy forms
Creditors Voluntary Liquidation	7 days	Notice of meeting Fee estimate documentation Proxy form
Compulsory Liquidation	14 days	Report to creditors Proof of Debt and Proxy forms
Administration	14 days	Administrators Proposal Proof of Debt and Proxy forms

Voluntary Arrangements

Problem areas

- Bound to participate even if not had notice
- Current year liability included
- Current year liability excluded
- Voting rights
- Unfair prejudice
- Fees and expenses
 - Category 1 or Category 2?
 - Practitioner fees
- Standard modifications

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