EUROMONEY

UK insolvency rules under scrutiny as timelines extend

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Does the high number of drawn-out insolvency cases in the UK suggest a failure of regulation?

Lord Sikka | Photo: UK Parliament

Insolvency data is always closely analysed as a barometer of the commercial health of the nation. The figures for April show that after seasonal adjustment, the number of registered company insolvencies in England and Wales was 2,177, 18% higher than in the previous month.

However, it is the length of time taken to complete the process that has attracted the attention of Lord Sikka, professor of accounting at the University of Sheffield and emeritus professor of accounting at the University of Essex. In response to a written question in the House of Lords about how many liquidations began five, 10 and 15 years ago but are still not finalised, he was told that as of the end of last year, 8,189 companies had been in liquidation for between 10 and 15 years and a further 20,822 had been in the process for more than 15 years.

Lord Sikka is a long-time critic of the insolvency profession, which he has previously described as a "licence to print money". In a post on X in March he said: "Insolvency practitioners will feed off the carcass until no more money is left and administration/liquidation will magically end".

Reasons for delay

Adrian Hyde, incoming president of the Insolvency Practitioners Association, insists that there are many reasons why liquidations can take extended periods of time.

“Certain industry-specific liquidations in insurance, banking and, more broadly, financial services will take many years to unravel,” he explains. “It is not unusual for insurance company insolvencies to run for 20 to 30 years while the reinsurance schemes are run off.”

Hyde notes that a liquidation involving a key piece of litigation against a related party could take two or three years to investigate, three to five years to bring to trial, depending on the complexity, and two years for appeals before the liquidators deal with distributions to creditors, which can also involve proceedings where there are competing interests and different classes of creditors.

“Liquidations where there has been fraud or misfeasance on the part of the directors will also add a layer of time,” he says. “A liquidator may take time realizing assets, and during the period taken to do that, identify claims against the director/directors or other parties in relation to the shortfall. The extent of the shortfall may not be apparent until all of the realizations are completed. Only then will the liquidator conclude that it is worthwhile pursuing the director/directors.”

“It is very rarely the case that liquidation takes a while due to non-action on behalf of the appointed liquidator”

Claire Middlebrook, Middlebrooks Advice

In co-dependent cases involving one or more of the above it is not unusual to have a company in liquidation that is a creditor of another company in liquidation. In this scenario, the creditor company liquidator needs to continue the liquidation while awaiting receipt of proceeds of litigation, which will then ultimately be distributed to that company’s creditors by way of dividend.

Tim Cooper, president of the UK’s insolvency and restructuring trade body, R3, and a partner at Addleshaw Goddard notes that the type of liquidation will also affect the speed at which it is completed. For example, a

members' voluntary liquidation proceeds more rapidly than a creditors' voluntary liquidation or a compulsory liquidation because the business is solvent.

“There are no set timescales for a liquidation to take place,” he says. “The final factor that affects how long it takes to complete these processes is the jurisdiction in which they take place as liquidations are administered slightly differently in England and Wales compared to Scotland and Northern Ireland.”

Many of the process for how liquidations are managed and administered are set out in the 2016 Insolvency Rules for England and Wales and the 2018 Insolvency Rules for Scotland, which are currently under review. Cooper says the profession is also looking at how artificial intelligence and digital technology can be safely integrated into the process. It has made progress in this area by securing the support of all the creditors in an insolvency for the adoption of digital online creditor portals, which has allowed reports and information to be sent to creditors digitally.

A lack of cooperation from directors means the insolvency practitioner could have to undertake investigations to glean the information they require under statute, explains Claire Middlebrook, managing director Middlebrooks Advice.

“There could be apathy from creditors, without whom certain parts of the liquidation cannot progress – for instance, agreement to certain expenses, leading to further court process, which can also delay matters,” she says. “It is very rarely the case that liquidation takes a while due to non-action on behalf of the appointed liquidator.”

Speed check

Lord Sikka has suggested that there is insufficient regulatory oversight of insolvency practitioners – a view also disputed by practitioners.

Hyde says The Insolvency Service monitors firms and makes regular visits to review cases against certain standards – one of which is case progression – and that the information the regulator sees when choosing the cases to review includes the age of the case.

“If we are not progressing cases sufficiently quickly then that results in unnecessary costs to the estate,” he says. “We are required to carry out internal reviews on a regular basis, which are used to ensure we are progressing matters as quickly as possible. We are also required to report to creditors regularly, so if work is not proceeding as quickly as it should be then costs will inevitably be higher.”

Hyde accepts that from the outside it may appear that a large number of cases take a very long time to conclude.

"However, I do not believe that these numbers provide evidence of a system that is failing, or of a failing in regulation," he concludes. "The vast majority of cases will have a wide range of reasons why they remain in liquidation after 10 years or more."

"It is hard to see what more could be done in terms of introducing greater regulatory oversight of the process without making it more cumbersome"

Tim Cooper, R3

The profession is governed by a strict ethical code that has severe financial and professional sanctions for breaches, says Cooper, who adds that practitioners follow statements of insolvency practice that set out how processes should be conducted in line with best practice.

"It is hard to see what more could be done in terms of introducing greater regulatory oversight of the process without making it more cumbersome, which would affect returns to creditors and the wider economy," he adds. "When it comes to the liquidation process, I think everything that could be in place from a regulatory perspective is there already."

Middlebrook also believes there is more than enough regulatory oversight of the liquidation process, noting that practitioners are under scrutiny on a case-by-case basis by the creditors of that estate, to which they must turn for varying levels of agreement.

"During the take-on process, a proposed liquidator is subject to the usual anti-money laundering check," she says. "There are also hefty ethics expectations, which include why certain external parties, such as solicitors, may be used."

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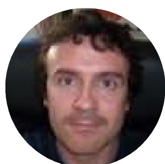

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Paul has written about finance since the early 2000s, with a particular emphasis on foreign exchange, treasury and wealth management. He is a regular contributor to several industry titles in addition to Euromoney.