



Disputes Outlook 2025 Insolvency

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Disputes are inevitable. Spotting future risks can help you prepare for a more effective resolution. Once you are aware, you can prepare - our team is here for what comes next.



LIVE ISSUES

Assignments of insolvency claims instead of funding agreements	3
Continued enforcement action relating to Covid loans	3
Increasing corporate insolvencies	4
Financial pressure on contractors	4



EMERGING TRENDS

More formal insolvencies involving financial intermediaries	5
Expanded claims against directors of insolvent companies	5
Digital and crypto assets featuring more often in IP asset recovery proceedings	6
Increase in issues across the construction industry	6

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LIVE ISSUES

Assignments of insolvency claims instead of funding agreements

Insolvency Practitioners (IPs) often look to third parties to fund proceedings to recover assets and maximise returns where there aren't any liquid assets. Litigation funding is usually supported by a conditional fee agreement dealing with legal expenses and insurance to cover the risk of a costs order.

However, we are increasingly seeing litigation funders offering to take an outright assignment of the claim and pursue it themselves. An assignment enables the funder to retain control and provides the IP with greater certainty and reduced cost risk.

- Creditors who are approached with a request for funding should ask the IP for details of the claim and all funding options. Take legal advice on the merits, anticipated cost and the risks.

Continued enforcement action relating to Covid loans

Recovery of fraudulently obtained finance under the Covid loan schemes continues to be a Government priority. The proposed appointment of a Covid Corruption Commissioner to recoup as much of this public money as possible was confirmed in the Autumn Budget 2024.

- With suppliers and customers under increasing pressure to repay these loans, due diligence and contingency planning can mitigate the risk of disruption in the event of insolvency in the supply chain.



Increasing corporate insolvencies

All types of corporate insolvency have increased from record low levels seen during the height of the pandemic in 2020 and 2021.

The number of administrations in England and Wales in September 2024 was 40% higher than in August 2024 and 19% higher than in September 2023 after seasonal adjustment (according to The Insolvency Service's monthly statistics).

In Northern Ireland (NI), October 2024 saw a 15% increase in company insolvencies compared to October 2023. Post-pandemic rules in NI requiring a money judgment or equivalent prior to petition have slowed the increase of insolvencies in that jurisdiction.

- If a company's solvency is in doubt its board should obtain advice from insolvency professionals with a view to putting in place a turnaround plan. Ongoing monitoring of key suppliers and customers will ensure appropriate action can be taken early when a supplier or customer appears to be experiencing financial distress.
- See our Commercial Disputes guide for more information about the other types of disputes that may arise as result of economic uncertainty.

Financial pressure on contractors

On 20 September 2024, one of the UK's biggest contractors, ISG, filed for administration. The collapse of such a prominent national contractor made headlines across the industry, but it was by no means an isolated instance and mirrors the concerns we have seen in the market over 2024. Financial fragility is felt in all corners of the construction industry, and the effects are broader than company insolvency.

Contractors are increasingly facing financial pressures because of substantial increases in materials and labour costs, resulting in squeezed profit margins or projects operating at a loss. Consequently, we have seen a slowing in the delivery of works on site because of cash flow concerns or an inability to make timely payments to the supply chain. This can be tactical, aimed at negotiating more favourable terms or additional payment, or can be a result of an inability to continue funding shortfalls in costs under the building contract.

- Be alert to any slowing in the delivery of works and utilise the contract where possible to rectify this. Contracts often provide remedies where a contractor has substantially suspended works and/or where there is a failure to comply with instructions. These contractual remedies can often be used to navigate apparent impasses.



More formal insolvencies involving financial intermediaries

During the period of ultra-low interest rates between 2009 and 2021 investors seeking a higher return needed to pursue alternative investment strategies. They were supported in this by financial intermediaries such as peer-to-peer lending platforms and independent financial advisors. When the businesses in question fail, there is a significant amount of unravelling that needs to be done to return funds to creditors, but often little available capital to fund the work or repay debts.

- ➔ Counsel for lenders should be alert to the increased risk of business failure in the financial services sector.
- ➔ Consider conducting security reviews and asking financial intermediary borrowers to provide details of their wind down plans and proposed minimum levels of liquid and capital resources, for monitoring purposes.

Expanded claims against directors of insolvent companies

In June 2024, the High Court found the former directors of collapsed retail chain BHS liable for wrongful trading, misfeasant trading and individual acts of misfeasance. This was the first time a court has considered and made an award for misfeasant trading.

You can read our summary here: [Wrongful trading and trading misfeasance - insights from the BHS decision - TLT LLP](#).

- ➔ Businesses should be aware that this represents a potential shift in the point at which individuals could be held liable for an insolvent company's debts. While it remains to be seen whether this decision will be appealed and/or how the concept is developed in the courts, this case demonstrates the need for directors to obtain specialist advice as early as possible if the company experiences financial distress.



Digital and crypto assets featuring more often in IP asset recovery proceedings

In April 2024, the UK Jurisdiction Taskforce issued a Legal Statement on Digital Assets and English Insolvency Law - summarised here: [Digital assets in insolvency - TLT LLP](#).

In essence this confirms that English insolvency law principles can apply to the recovery of digital assets without any need for legislative reform. This means that IPs can potentially challenge transfers of digital assets which took place prior to their appointment. As institutions increase their investment in digital assets at a time when insolvencies are also increasing, we anticipate more asset recovery proceedings by IPs involving digital and crypto assets.

- Boards will need to monitor the risk profile of any digital asset investments and work closely with in house counsel to manage risk.
- See our Financial Services Litigation guide for more information about the growth of disputes relating to cryptocurrency.

Increase in issues across the construction industry

In 2025, we will see an increase in issues across the market, from modular housing projects to refurbishment schemes. This will result in both contractors and employers attempting to renegotiate contract terms during the life of a project. We may also see parties seeking to agree termination of projects. Where terms can be agreed, this can provide a way to avoid the significant contractual consequences that would inevitably flow from projects not progressing but does require careful management and commercial consideration. There are steps parties can take to minimise the impact of solvency concerns, both before and during the works:

- Consider how the contract could or does deal with price increases or overspend through the adoption of fluctuation provisions in JCT contracts and pain/gain share in NEC contracts.
- Review contract termination provisions. Consider if there are grounds for repudiatory breach, especially where works have been abandoned.
- Ensure any claim has crystallised prior to termination. Review project security and other associated documents to understand if they will respond in the event of insolvency. Not all bonds respond to insolvency, but some insurance policies may.
- See our Commercial Disputes guide for more information about the impact of the current economic climate on disputes.

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