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MODERNISATION OF INSOLVENCY LAW

Consultation Response Document

February 2023

Consultation overview

Background
Insolvency law in the Island is located in a number of different pieces of law from the Companies Act 1931 to various laws relating to bankruptcy enacted in the 1800s, and the Preferential Payments Act in 1908. The law has been under review since at least 1994. Based on the fact that insolvencies and winding up proceedings continue as they have done since the various laws were enacted it may be concluded that our insolvency and bankruptcy laws are fit for purpose and do not require reform or improvement.

Government has been aware for a number of years that, whilst insolvency law has proved its worth, it would nevertheless benefit from review and modernisation.

In recent years the Treasury has embarked on a 3-phase project to review and reform the laws relating to the whole area of debt and debt recovery.

- Phase I resulted in the Administration of Justice and Other Amendments Act 2021, which makes provision to empower the publication of a publicly accessible register of debtors.
- Phases II and III, relate to the reform of insolvency and bankruptcy law and the law and functions relating to Coroners.

Following the General Election in September 2021, the formation of the new Government, and the approval of the Government's 'Our Island Plan' in February 2022, it is considered that the time is right, at this stage in the life of the Government, to seek views on overall policy and proposals for law reform.

The consultation
In October 2022, the Treasury launched a public consultation on policy areas concerning the modernisation of insolvency law in the Isle of Man.

The consultation was split into a number of key discussion areas as follows –

"Creditor friendly" insolvency law

"Creditor accessible" insolvency law
"Debtor friendly" insolvency law
The challenge and the opportunity
Administrative Receiverships
Automatic discharge of bankrupts
Insolvency practitioners
Official receiver
Priorities

The consultation also sought any other views or comments from consultees.

In total 28 responses were submitted through the consultation hub portal. In addition there were 10 further responses submitted to Treasury via email or post.

Most respondents were content for their responses to be published in full or anonymously. For the purpose of this response document, publishable responses have been anonymised.

Consultation response
This consultation response document outlines the responses received to the discussion areas. Where responses have been received in written form (i.e. outside of the structure of the consultation hub) any comments that relate to certain discussion areas have been, and will continue to be, taken into account.

You Said – We Did
Treasury is grateful for all the responses received, whether included in this document or not. In particular, the many written responses giving detail as to the views held and expressed. Indeed, this document gives a good indication of the quality and care taken by respondents. Given the depth and variety of views, Treasury will seek and take appropriate advice and consider the responses carefully in the light of that advice before forming a firm view, and preparing the necessary legislation.

Next steps

In the light of its review of the responses, and the advice received as indicated above, Treasury will form a view and prepare Drafting Instructions for a Bill to bring forward appropriate reform of insolvency law. This may take some time. Subject to the outcome of any further public consultative exercise on the detail of a Bill, as subsequently drafted, there is provision with the Government's legislative programme for an insolvency reform Bill to be introduced into the House of Keys during the 2024 – 2025 Parliamentary Year.

"Creditor friendly" insolvency law

Summary of consultation feedback

The number of responses to questions indicated below is of those who responded using the online survey. Additional responses have been included from other respondents who had indicated they were content for their responses to be published. Where responses have not been included below, the views expressed have been received, studied, and will be taken into account in forming a view as to the approach to be taken in formulating detailed proposals for a Bill to reform and to modernise insolvency and related law.

Consultees were asked -

> **Question 1:** Is the risk to some outweighed by the benefits of lenders being attracted to, and having confidence in, the Island?

Online responses were broadly split as shown below –

Option	Total
Yes	16
No	5
Not Answered/unsure	7

Some consultees explained their position in respect of this question, as follows –

Lenders already insist on personal guarantees of borrowings, the existence of a Ltd company becomes irrelevant.
The level of risk is aligned to the interest rates being offered for the credit facility it is at the lenders discretion whether the level of risk is appropriate
No. The Isle of Man now lags well behind comparable jurisdictions as well as its major trading partners, notably the UK, in not having restructuring options in insolvency legislation. Isle of Man legislation should be amended to introduce restructuring options such as was done very recently in the Cayman Islands with the introduction of a statutory process for a company to appoint a restructuring officer where it is or likely to be unable to pay debts. Due account should be taken of the UNCITRAL Model Law on insolvency as well as ongoing efforts within the EU to harmonise insolvency legislation. The Isle of Man may consider an opt in regime whereby certain insolvency options are only available to companies which opt in.
No. The current balance is driven by the duties of directors to act in the best interests of the company as a whole (as eloquently explained and examined in the UK case of BTI 2014 LLC v Sequana SA & Ors [2022] UKSC 25 (05 October 2022)) and therefore there is scope within the current law and regulations for companies that can be saved to be saved via schemes of arrangement.
Like it or not, the financial services industry is critical part of the island's economy. It operates in a competitive global marketplace. Its competitors are largely not major onshore jurisdictions like the UK or USA but smaller offshore jurisdictions. However, its business often comes from referrals from onshore law firms, accountants and others. Those referrers have a wide choice of offshore jurisdiction to recommend. Many factors are taken into account, such as respective regulatory and tax regimes. Choice of jurisdiction is also influenced by less direct factors, such as ease of availability of finance for structures and projects. Put simply, if advising a client to choose one of two broadly similar offshore jurisdictions to use for their structure, a soft factor (such as ease of availability of finance) even if more perception than reality can swing the decision in favour of the

jurisdiction where finance is more freely available. Whilst some offshore jurisdictions do have a slightly more debtor friendly regime (Guernsey for example has a form of court supervised administration), most do not. There is no "first mover advantage" in being an early adopter of a more debtor friendly regime and potentially a significant disadvantage in so doing. It should be noted that even in Guernsey the regime is far less debtor friendly than in the UK for example. Then considering the other side of the coin, consideration must be given to how many IOM businesses could be saved if a more debtor friendly regime was put in place. We have very little in the way of large manufacturing industry (which is fertile ground in the UK for rescue by way of administration). Most Manx businesses are small, often family owned and with very limited assets. This makes turnaround (by way of administration) often economically impossible. There would be a significant risk, if a less creditor friendly was brought in, that the island's attractiveness to new business would be harmed without any meaningful benefit by way of turned around and saved local businesses. Government should remember that the vast majority of Isle of Man companies do not operate locally, employing local staff or renting local property. They are asset holding companies operating worldwide. There is a risk of seeking to solve a small perceived local problem and in doing so, do great harm to a much larger part of the sector.

The Isle of Man is not blessed with its own financial institution which can provide lending if the other recognized, traditional lenders withdraw from the island. Every business faces business risk, it's just a fact of life. Not many start-ups can begin to operate without some form of credit from financial institutions and suppliers, just as not all businesses can grow organically. More often than not some form of finance is required. Lenders by their very nature look for a return, repayment and security. If the island introduces legislation which makes any of those factors less attractive and more risky to lenders, then we need to accept that lenders may have less confidence in the Isle of Man as a jurisdiction. In turn, this may actually result in businesses or debtors that we are trying to protect moving away from the island to jurisdictions which lenders have more confidence in. As such, I do believe the benefits of lenders being attracted to the island outweighs the risk to some borrowers.

The Isle of Man should remain as a creditor friendly jurisdiction.
The nature of businesses on the Island is that we do not have large trading or manufacturing businesses which might be able to trade out of insolvent situations like some businesses in the UK have been able to do. According to the UK Insolvency Service, only about 5% of insolvent companies go into administration - creditors voluntary liquidation is the most common route (87%). I understand that the vast majority of administrations end up in liquidation, although the Insolvency Service doesn't record them separately in their published statistics.

They key benefit of being a creditor friendly jurisdiction is that it is attractive to investors, lenders and the corporate finance sector. Business for the financial services industry often comes from referrals from onshore law firms, accountants and others and those referrers have a wide choice of offshore jurisdiction to choose from. Referrers take many factors into account when making recommendations, including regulatory and tax regimes but the choice of jurisdiction is also influenced by factors such as ease of availability of finance for structures and projects and security of financing. When choosing between broadly similar offshore jurisdictions to use for their structure, ease of availability of finance and security, even if more perception than reality, can result in a decision in favour of the jurisdiction where finance is more freely available. The ease with which a creditor is able to get their money back when a business fails is of great importance. We are aware of a number of financial institutions that actually encourage clients to use Isle of Man companies for borrowing purposes precisely because they are more comfortable with the creditor friendly insolvency laws in the Isle of Man and the fact that we have a public register of charges.
We have to be cognisant of the Island's competitors. Some offshore jurisdictions do have a slightly more debtor friendly regime but the majority do not. There is no advantage in being an early adopter of a more debtor friendly regime and potentially a significant disadvantage in doing so. Consideration should also be given to the number of Isle of Man businesses that could be saved if a more debtor friendly regime was put in place. Most Isle of Man businesses are small, often family owned and with limited assets. This makes turnaround (by way of administration, for example) often economically impossible.
There would be a significant risk to the Island's finance sector, if a less creditor friendly regime

was brought in, that the island's attractiveness to new business would be harmed without any meaningful benefit by way of saved local businesses. The vast majority of Isle of Man companies do not operate locally, employing local staff or renting local property. They are asset holding companies operating worldwide and access to lending is fundamental to their business. There is a risk of seeking to solve a small perceived local problem and in doing so, negatively impact a much larger part of the sector.

It is the view of the …. that creditor interests are put first, whilst ensuring strong regard for other interests and stakeholders as a whole.

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Additional views submitted via email or post:

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The availability of unsecured credit for consumers and businesses is vital to the continuation and development of the economy of the Island. It is essential to the effective and efficient operation of such a system that potential lenders have confidence in the statutory regime to enforce recovery of debts in the event of default, especially that arising from abuse of the privilege granted to borrowers. It is equally essential that potential borrowers have confidence that, in the face of unanticipated events, as have been so prevalent of recent times, that they will have some protection in the event of temporary cash flow difficulties.

It follows therefore that an insolvency regime, if it is to provide efficient and effective support to economic development must carefully balance the rights of creditors and debtors.

Of course, it is, and should remain, open to lenders and borrowers to enter into secured arrangements both being aware of the results on their rights and obligations and the balance of power between them. Where such arrangements are freely entered into, and where details are publicly available to potential unsecured lenders of the borrower, then it should remain a matter

for the two parties to decide upon the circumstances in which the lender can fully exercise their rights of recovery. All creditors, large or small, experienced or inexperienced, should have access to a clearly understood and accessible process of debt recovery and where debt recovery fails, access to a clearly understood and accessible insolvency regime which provides an appropriate degree of protection to the interests of creditors and debtors and which contains adequate powers to penalise those who may seek to deliberately or recklessly abuse their position as borrowers.

Consultees were then asked –

Question 2: At what point should creditors have the upper hand (if any)?

Responses to this question were as follows -

Creditors should always have the upper hand but there should not be preferential creditors, in particular government being a preferential creditor. Businesses supply goods and services in good faith, the very ethos of business, unsecured creditors should be given equal standing.
Creditors should not have the upper hand.
When information provided to them has been falsely declared or withheld
Should be a level playing field. Creditors profit massively with little or no risk. Borrowers often risk everything to fund a dream.
Only when in default as per law, notices, final warnings and lapse of period to continue to administration, foreclosure etc. Note of caution individuals, directors, owners and CEO's names should all be held in public register if company default to insolvency, a specially if government funding was obtained, even if not. 5 to 10 year exclusion to obtain government funding or support should also apply. This [is] preventing individuals taking advantage or opening up systems for abuse to the disadvantage of tax payers, government, governance, public and Isle of Man reputation. Further individuals whom are wealthy should not have access to government subsidiaries nor financial assistance from government. Again all names should be held in a public register, with government checks to ensure persons are reputable, no criminal, nor financial history, bad poor credit records for not paying their debt or records of insolvency/ foreclosure/ late payments and being under administration. This so to excluded nor open or make Isle of Man from outside or inside an easy target for individuals or Trust Companies, businesses to take advantage of any financial aid or benefits that they shouldn't have been entitled to. Thus, only individuals and companies, trusts with beneficial owners names public to qualify. Let all be aware and have full public knowledge of whom we are dealing with. Good debtors and bad debtors or persons behind structures or being themselves or otherwise using others as a front to either obtain government funding etc lets get the links of who is who and whom are we really doing business with or allow a licence to do any form of trade. Thus discourage and are able to do checks to uncover scrupulous individuals, trusts, beneficial, wealthy individuals, historic bad debt individuals and criminals plus tax evaders from getting any benefits or damaging our Isle of Man reputation. Also name and shame those whom abuse our system .
When all reasonable alternatives measures have been exhausted
Creditors should not be afforded a legislative "upper hand". Rather, their commercial dealings with debtor companies should clearly set out their creditor rights against the legislative background. Ultimately, creditors have to be permitted to act commercially and in their own interests and this is entirely consistent with a period of statutory breathing space during which time a dialogue between interested parties can occur without threat of proceedings. Legislation should be designed so as to prevent recalcitrant minority creditors from holding the majority to ransom and if necessary they should be compelled to accept the will of the majority by cram down including across different creditor classes if necessary.

Currently, creditors only have the "upper hand" if there is a creditors' voluntary liquidation and that is the correct time for creditors to be asked to step forward and supervise a liquidation. Apart from that time, the creditors currently would not get and should not get the upper hand as it is the interests of the company, as a whole, that should remain paramount, with the directors/liquidators taking into account the various competing interests, such as contributors & creditors when deciding what those best interests are. (BTI 2014 LLC v Sequana SA & Ors [2022] UKSC 25 (05 October 2022))
This is a badly phrased question. Whilst a company is solvent, its owners' interests already take priority, but once it gets insolvent, the owners' economic interests rightly sit behind those of creditors. Without this long-established position, why would a creditor ever lend money to a business? It is for this reason that creditors must always "have the upper hand".
I believe creditors should always have the upper hand. Managers and controllers are handsomely rewarded when a business is successful but more often than not to achieve this success they need credit from financial institutions and suppliers. To ensure that those financial institutions and suppliers are protected it is important that the Isle of Man retains creditor friendly legislation which enables creditors to take swift action when things go wrong. Without that legislation there is a real risk that creditors (lenders) will see that as a business risk, which they are not willing to take.
The availability of money is always important for a new business. Creditors should only have the upper hand if the money available from them is the only alternative.
It would depend on the length of time the money was owed and also on the history of individual directors of the company.
Creditors should have the upper hand at the point at which a company passes the point of no return and is clearly not going to be able to avoid insolvency. At that point, the directors of the company should consider the interests of creditors as paramount, as per current Isle of Man law.
It is only once a company becomes insolvent that the rights of the company's creditors rightly take and should continue to take precedence. If this were not the case, it would be difficult to see why a creditor would lend money to a business. It is in this context that creditors should always "have the upper hand".
The ….. believes, that upon insolvency the creditors interests should be upheld.
Only once a company has become insolvent do the rights of its creditors take precedence. This should continue to be the case. If this were not the case, it would be difficult to see why a creditor would lend money to a business. It is in this context that creditors should always "have the upper hand".
It is only once a company becomes insolvent that the rights of the company's creditors rightly take and should continue to take precedence. If this were not the case, it would be difficult to see why a creditor would lend money to a business. It is in this context that creditors should always "have the upper hand".
Additional views submitted via email or post:
The availability of unsecured credit for consumers and businesses is vital to the continuation and development of the economy of the Island. It is essential to the effective and efficient operation of such a system that potential lenders have confidence in the statutory regime to enforce recovery of debts in the event of default, especially that arising from abuse of the privilege granted to borrowers. It is equally essential that potential borrowers have confidence that, in the face of unanticipated events, as have been so prevalent of recent times, that they will have some protection in the event of temporary cash flow difficulties. It follows therefore that an insolvency regime, if it is to provide efficient and effective support to economic development must carefully balance the rights of creditors and debtors.

Of course, it is, and should remain, open to lenders and borrowers to enter into secured arrangements both being aware of the results on their rights and obligations and the balance of power between them. Where such arrangements are freely entered into, and where details are publicly available to potential unsecured lenders of the borrower, then it should remain a matter for the two parties to decide upon the circumstances in which the lender can fully exercise their rights of recovery. All creditors, large or small, experienced or inexperienced, should have access to a clearly understood and accessible process of debt recovery and where debt recovery fails, access to a clearly understood and accessible insolvency regime which provides an appropriate degree of protection to the interests of creditors and debtors and which contains adequate powers to penalise those who may seek to deliberately or recklessly abuse their position as borrowers.
It is only once a company becomes insolvent that the rights of the company's creditors rightly take and should continue to take precedence. If this were not the case, it would be difficult to see why a creditor would lend money to a business. It is in this context that creditors should always "have the upper hand".

"Creditor accessible" insolvency law

Summary of consultation feedback

Consultees were asked -

> **Question 3:** Do you agree the Isle of Man should be a jurisdiction that continues to have primary regard to the interests of creditors?
>
> If you have answered yes, please explain why you think it important to prioritise the interests of creditors.
>
> If you have answered no, it would be helpful if you would explain why you do not agree, and say what alternative, in your view, insolvency system the Island should adopt?

Responses were as follows –

Option	Total
Yes	19
No	5
Not Answered	4

Those in favour of the proposal validated their responses as follows

Creditors have supplied their services in good faith and that should be honoured. Debtors know they are incurring a debt and they too should honour that rather than using others to finance a failed venture. There should be consequences to incurring debt and not repaying it. We all pay for failed businesses.
With protection to creditors primary, gives some faith to do business extend credit. If there is no priority, protection, then it opens system for abuse. Further all assets of individuals should be

attachable in case of insolvency, to prevent unscrupulous individuals, directors, CEO'S, shareholders, silent partners, beneficial owners from shifting company assets to other legal capacity or structures to prevent foreclosures or attachment, thus draining company of assets or equity etc so that there is no recourse for creditors. Further to stop this practice were companies declared insolvent, but individuals still wealthy in assets etc with creditors being out of pocket. Further for such unscrupulous individuals not to be able to start another company , doing the same again.
To provide lenders with the right platform to lend
The current regime works other than the absence of a court appointed official receiver. If such a role was filled, as originally envisaged by the 1931 Act and 1934 winding up rules, creditors of limited means would be afforded the same access to recompense. In fact, the absence of an appointed official receiver, arguably, makes the Isle of Man a jurisdiction, which only has primary regard for creditors who can afford to engage a provisional liquidator privately.
Without creditor interests being given priority, credit will either be harder to get or much more expensive. Either way, it would greatly harm the Island's economy and make the place a much less attractive place to live, work and establish business. The real problem is the absence of a state funded Official Receiver. This means companies that are insolvent but only owe small amounts to each of their creditors are allowed to stagger on, incurring further debt and harming further creditors. It also means that directors can misbehave, break the law, but only get their comeuppance if a creditor is prepared to fund the winding up. However, a funded Official Receiver would be of significant expense, and one wonders whether Treasury may have more worthy recipients to consider.
The Isle of Man should want to attract business to the Island which intends to be successful. Those types of business will not be concerned by the fact that the interests of creditors are protected by the Island's primary legislation. Without that protection there is a risk that we will encourage phoenix enterprises to the island.
Debts are incurred by companies and there is a duty to pay these debts. If they are unable to pay, why are they trading (it can be a deliberate policy to accumulate debts and then set up another company therefore making the debts uncollectable)? The company could be struck off at the Companies Registry and a record available of the Directors in order to highlight any repeat offenders. Depending on the debt, Directors could be personally liable for certain debts.
Creditors should be protected, otherwise they may be unwilling to lend or otherwise extend credit to Isle of Man companies, which would restrict their ability to borrow. Most large lenders are multi national and they will lend money elsewhere to the detriment of the Isle of Man economy. Also, if debtors are protected from the consequences of their actions, they can take excessive risks with their creditors' money. Being debtor friendly will have the effect of prolonging the life of unprofitable companies which should close down, this being to the detriment of creditors.
It is a key requirement. Being a debtor-friendly jurisdiction could mean that some businesses are allowed to continue when there is no realistic prospect of the business actually becoming viable, and may mean that creditors are unable get their money back. Without creditor interests being given priority, credit will be harder to get and or much more expensive. The Island would be a much less attractive place to live, work and establish business and this would have a negative impact on the Island's economy. Government should look to rectify the absence of a state funded Official Receiver. Without this, companies that are insolvent but only owe small amounts to each of their creditors can continue trading, incurring further debt and harming further creditors. It also means that errant directors continue to act and may only be accountable if a creditor is prepared to fund the winding up without the benefit of any meaningful cost/benefit analysis or indeed assessment of the prospects of recovering their original debt.
The ….. is of the view that the creditors' interest should be maintained, but the statute and rules be updated, to allow for recovery mechanisms for the debtor and / or estate to better repay its debts. This would be a regime, that fits the Island's needs, that attempts to create a better return for the company's creditors or shareholders, as opposed to the abrupt liquidation of the company.

Such a regime will need to have provision to allow for the immediate liquidation of the company, if there is no reasonable prospect of recovery.
Being a debtor-friendly jurisdiction could mean that some businesses are allowed to continue when there is no realistic prospect of the business actually becoming viable, and may mean that creditors are unable get their money back. Without creditor interests being given priority, credit will be harder to get and/or much more expensive. The Island would be a much less attractive place to live, work and establish business and this would have a negative impact on the Island's economy. Government should look to rectify the absence of a state funded Official Receiver. Without this, companies that are insolvent but only owe small amounts to each of their creditors can continue trading, incurring further debt and harming further creditors. It also means that errant directors continue to act and may only be accountable if a creditor is prepared to fund the winding up without the benefit of any meaningful cost/benefit analysis or indeed assessment of the prospects of recovering their original debt.
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Those against the proposal validated their responses as follows –

Debtors should have the chance to repay the debts – given greater scope. Current insolvency gives the creditors too much power.
The lenders have accepted the risk and when a business fails the debtor must be protected from harassment and ridicule in what is a stressful time that is often come about due to factors outside of the business control.
In almost all examples the creditor can afford to employ professional's to pursue any debt. A borrower, in default, cannot. Nor is there adequate provision for the payment of professionals to represent the borrower under the legal aid system. I do believe that the insolvency of limited companies that are actually partnerships or nothing more than fronts for either sole traders should be addressed. As should the requirements for being a limited company. We should not give huge financial institutions any more power to target individuals. We should reduce their ability
The Island needs a modern insolvency regime, which affords indebted companies breathing space in which to restructure their affairs to the benefit of all stakeholders including creditors.
In some situations, the interests of the business may be more important although the availability of financial assistance will usually be most important.
Additional views by email or post:
Yes – it is a key requirement. Being a debtor-friendly jurisdiction could mean that some businesses are allowed to continue when there is no realistic prospect of the business actually becoming viable, and may mean that creditors are unable get their money back. Without creditor interests being given priority, credit will be harder to

get and or much more expensive. The Island would be a much less attractive place to live, work and establish business and this would have a negative impact on the Island's economy.

Government should look to rectify the absence of a state funded Official Receiver. Without this, companies that are insolvent but only owe small amounts to each of their creditors can continue trading, incurring further debt and harming further creditors. It also means that errant directors continue to act and may only be accountable if a creditor is prepared to fund the winding up without the benefit of any meaningful cost/benefit analysis or indeed assessment of the prospects of recovering their original debt.

As previously noted any new insolvency regime should seek to provide an appropriate balance between the rights of creditors and debtors.

While the current regime provides strong support to the rights of well-resourced creditors and has proven less accessible to more poorly resourced creditors who, potentially, face more serious risks to their own solvency in the event of default.

The disparity between well-resourced and poorly-resourced creditors principally arises from the need to provide guarantees for the potential funding of liquidators.

As previously noted any new regime should provide access to a clearly understood and easily accessible process for debt recovery and, where that fails, insolvency action.

Any new regime should facilitate and support access to 3rd party funding of the insolvency process, whether at the state or commercial level.

In particular the regime should define the priority of recovery of 3rd party funding from the liquidation estate, the priority of recovery of any profits arising from such funding and should provide clarity on the ability of liquidators to pursue civil proceedings in the winding up without incurring limitations as a result of potential issues of Maintenance as a result of any 3rd party funding.

"Debtor friendly" insolvency law

Summary of consultation feedback

Consultees were asked –

> **Question 4:** If you answered no to Question 3, do you think the Isle of Man should change its focus and instead become a jurisdiction that has primary regard to the interests of debtors?
>
> If you have answered yes, please explain why you think it important to prioritise the interests of debtors.
>
> If you have answered no, it would be helpful if you would explain why you do not agree, and say what alternative insolvency system the Island should adopt?

Responses were as follows –

Option	Total
Yes	6

No	16
Not Answered	6

Those in favour of the proposal validated their responses as follows –

This would give the debtors the chance to re-group/re-structure etc. to finance repayment and perhaps continue trading.
to protect them from harassment when often businesses fail due to outside factors.
All parties should be fairly protected in business. If a company is not financially viable in the first instance, then it should cease to exist. No ling preventing the inevitability from happening, prolonging the process and incurring more debts or harming people's lives. If it is over, then people can move on to other jobs, opportunities and honest creditors can continue to offer services and remain solvent.
This concept of debtor interest versus creditor interest is a mis-nomer. Creditors and all external stakeholders dealing with companies in Isle of Man are interested in the outcome of the process above all – will they get more or less than the alternative which is usually liquidation and experience in other jurisdictions would indicate that overall a better overall outcome is achieved through a restructure than a liquidation. The debate should be about initiation of the process – who can initiate, in what circumstances and on notice to whom – and the implications once initiated – notably whether an external experienced practitioner should be appointed, the extent of their remit and powers, the ongoing responsibilities of the company directors and the period of any moratorium
The balance is correct.
Not applicable
The ….. has answered yes to this question as well, in light of its response to question 3. The ….. believes that both a creditor, and perhaps a more debtor friendly jurisdiction is possible, subject to the jurisdiction maintaining its primary regard to the creditors. Any formal restructuring regime would need oversight and control from an appointed insolvency practitioner, and relevant restriction on incumbent management powers.
The current insolvency system can be made fit for purpose by updating the current legislation to make it more comprehensible and user friendly. If it is (wrongly in our view) considered absolutely essential to be seen to bring in some kind of administration regime, it should still not prevent secured creditors and the tax authorities from exercising their secured/priority rights. Out of Court administration, such as that seen in the UK, should not, in my view, be adopted.

Those against the proposal validated their responses as follows –

Debtors must assume the responsibility of the debt, it is all too easy to accumulate business debt and simply walk away. Indeed it could be argued business failure is inflationary due to the provision that must be made for those that cannot pay.
Should be a level playing field. The scale's of justice should be balanced. Even if you are a banker.
A note, staff of insolvent companies, should always be offered via job centre, retraining skills and Isle of Man companies, should always have a portion of staff positions available for skill set retraining and opportunities today for our future business leaders and workers. Develop untapped individuals here on the Isle of Man. Nurture our talent, population, young and old. The current roll out initiative by the Police to recruit or work experience, placement, youth and special officers is fantastic and will attract more individuals to enter the profession. This should

be rolled out to teaching, nursing, all spheres of government structures services, fire, lifeboat, our pillars of our society and private businesses should also open opportunities and schemes alike. Win win for all residents young and old alike.
Whilst answering no, there needs to be a better mechanism to attack deliberate company default by directors with limited recourse for unsecured creditors
The current law & rules are flexible enough to allow for the equivalent of an "administration" status or "Chapter 11" scenario. Creative use has been made of using the combination of placing a company into provisional liquidation, to protect the insolvent company from aggressive creditors whilst negotiating a scheme of arrangement (s. 152 Companies Act 1931).
Another badly phrased question - The island's current insolvency system can easily be made fit for purpose by updating the current legislation to make it more comprehensible and usable. If it is (wrongly) considered absolutely essential (for political reasons) to be seen to bring in some kind of administration regime, it should be limited to companies employing a certain number of people resident full time on the island (say 25+) and should still not prevent secured creditors and the tax authorities from exercising their secured/priority rights. Out of Court administration, such as that seen in the UK, should not be adopted. The Court supervised administration model is the one to be adopted, otherwise the Island will be at a significant competitive disadvantage as against its competitors.
Arguably, access to the Courts for debtors whose claims exceed the small claim Courts limit could be simplified, but other than that needing some modernisation, I don't think the current system needs much amendment.
This is probably always a difficult situation. From my background, I suggest that each case may be different and require a different solution!
The current insolvency system can be made fit for purpose by updating the current legislation to make it more comprehensible and user friendly. If it is (wrongly in our view) considered absolutely essential to be seen to bring in some kind of administration regime, it should still not prevent secured creditors and the tax authorities from exercising their secured/priority rights. Out of Court administration, such as that seen in the UK, should not, in our view, be adopted.
The current insolvency system can be made fit for purpose by updating the current legislation to make it more comprehensible and user friendly. If it is considered absolutely essential to be seen to introduce some kind of administration regime, which would be wrong in my opinion, it should still not prevent secured creditors and the tax authorities from exercising their secured/priority rights. Out of Court administration, such as that seen in the UK, should not be adopted, for the reasons I have given above.
Additional views by email or post:
No – this would clearly have a negative impact on the Isle of Man finance sector. The current insolvency system can be made fit for purpose by updating the current legislation to make it more comprehensible and user friendly. If it is (wrongly in our view) considered absolutely essential to be seen to bring in some kind of administration regime, it should still not prevent secured creditors and the tax authorities from exercising their secured/priority rights. Out of Court administration, such as that seen in the UK, should not, in our view, be adopted.

The challenge and the opportunity

Summary of consultation feedback

Consultees were asked –

Question 5: Is there a "third way", an "Island friendly" way, that meets the concerns of creditors, who want to be sure they will get their money back, and those who have got into debt and who wish to clear their debts?

Your views would be helpful. You may feel that a jurisdiction has to be either creditor friendly or debtor friendly. If you do, it would be useful to know why you feel the Island cannot be open to both in the community.

Views received in respect of question 5 were as follows –

There are many examples of failed businesspersons that eventually become a success. When their latest company succeeds, do they repay those debtors from their past? No they do not. The success of a few is sometimes built on the loss of many. It's easy to make money when you leave all the debt behind.
Methods that allow ordinary people to get out of debt and discharge all the money they owe.
There needs to be some common ground through trust, where if a business genuinely acted in good faith before and during the agreement then they must be given credit for holding their account in good stead and provide correct and accurate information when requested. An adjudicator can review the cases and decide the level of debt to be repaid over what term.
Enforced negotiation, at no cost, with an official independent moderator prior to any significant debt judgments.
If there is no money assets, then they can go and work their debt back to either the creditors or community services or were labour of any shape or form is required. Nobody should get away with just not paying unless there are genuine circumstances out of their control. We reap what sow. Let's build a better society, community, together we are stronger as a nation and healthier.
An official receiver, or public receiver, might benefit the Island, but the drawback is the cost and administrative burden. However, if this could be funded perhaps by some form of insurance policy that companies or creditors could sign up to this may limit or eliminate the public cost.
No, this is nonsense. There are plenty of precedents in comparable jurisdictions that can be introduced / copied and there is no need to invent a third way which no one outside of the Isle of Man will understand and which will probably cause more harm than good.
No. There is however an easy first step that will not require any additional legislation and that is to appoint and properly fund the position of Official Receiver. This is both a civil role in that it provides for small creditors of small companies to obtain some compensation for their loss and a law enforcement role in that the Official Receiver would be able to pursue delinquent directors for breach of duty in the run up to insolvency and obtain both financial damages to make good on any breach whilst also prosecuting them for any offences under the Companies Acts that they have committed. In respect of compensation for breach of duty, please refer to the case of Templeton Insurance v Corlett 18 June 2013
1. Fund an Official Receiver. 2. Bring in a Court Supervised Administration regime for companies employing over 25 people resident on the island, but which does not interfere with secured creditor rights. 3. Consider bringing in an out of court Company Voluntary Arrangement regime for small companies employing between 2 and 24 people resident on the island; such regime to not interfere with secured creditor rights.
I think it would be extremely challenging, and dare I say incredibly protracted, to draft one piece of legislation, which protects both a debtor and creditor. The reality is those two parties have conflicting interests. That said I agree that there should be options for ordinary people to "get out of debt", but the Island has built its economy and reputation on being a creditor friendly jurisdiction. As such I think primarily it should look to retain that position, but with some legislation to help debtors to get back on their feet.

There may be! Each case will be different and it may be wrong to try to provide a solution that meets all cases.
There could be a 'third way' but this would involve structured payments and a willingness / ability to for the creditor to allow more time for the debt to be settled. Some creditors may be relying on their debt to be settled in order to pay their own creditors so this would need to be handled carefully.
No.
In an insolvency, a quick and efficient resolution is often the best way forward for all concerned. The introduction of an automatic discharge within a sensible period of time for individuals would be a significant improvement. Consideration could be given to funding an Official Receiver.
The ….. believes in order to create a restructuring regime that best fits the Isle of Man needs, incremental change is needed, rather than wholesale reform, with a statutory regime that is capable of evolving with the Island's growth. In order for this to be achieved, it is likely the Government will need to consider creating a framework to work within that works hand in hand with relevant trade associations, businesses, advocates and practitioners of the Isle of Man. As a matter of potential caution for the Island's consideration of a "third, Island friendly way", if the Isle of Man deviates too far from other partner insolvency regimes, this could lead to confusion between stakeholders. Greater creditor engagement may be achieved by adopting some aspects of neighbouring insolvency law.
In an insolvency, a quick and efficient resolution is often the best way forward for all concerned. The introduction of an automatic discharge within a sensible period of time for individuals would be a significant improvement. Consideration could be given to funding an Official Receiver.
In an insolvency, a quick and efficient resolution is often the best way forward for all concerned. The introduction of an automatic discharge within a sensible period of time for individuals would be a significant improvement. Consideration could be given to funding an Official Receiver.

In response to the sub-question regarding whether a jurisdiction has to be either creditor or debtor friendly, comments were as follows –

It is a simple matter of fairness, borrow the money in good faith at a reasonable cost, this must come with an obligation to repay that money. If it were not for the lender taking a risk, the successful businesses would never even be born.
The Island can be open to both. Surely there is a Civil Servant within Government that is qualified to sort this out.
The current regime of creditor friendly is ok but the balance is too skewed to secured creditors and allows unscrupulous behaviour to some extent. Recourse for unsecured creditors needs looking at.
There is an urgent need to modernise personal insolvency legislation and to introduce options for Isle of Man people to avail themselves of a process such as an individual voluntary arrangement where they have too much debt and will never repay it all as long as they live. I suspect that there is a personal debt time bomb out there in IOM, and our laws from 1892 still provide that people should be imprisoned if the don't pay their debts. Seriously, as a society, is that what we wish to be known for? The problem for creditors of the current system is that they have to underwrite personal bankruptcy costs to collect on a personal debt. Commercial interests are better served by taking what they can and learning from the experience so they make better lending decisions going forward. The change is therefore needed for both debtors and creditors.

Actually, I consider the legislation to have the balance right. I feel that it is in the application of that legislation that both debtors and creditors are let down. I consider that this would be best address by: 1) Appointing and resourcing the office of Official Receiver; 2) Reviewing the Coroners' powers of enforcement and, where necessary, putting in resources and support to enable them to enforce the judgments of the court instead of the current situation where many debt judgements remain outstanding for years.
If limited to "in the community" i.e. businesses employing people resident on the Island, that may be possible, but a one size fits all approach could do serious harm to the financial services industry.
If the right people are making the decisions then the system will be neither creditor friendly nor debtor friendly! Each decision will be different and will depend on the circumstances.
I don't see how you can favour both sides of the deal. The Isle of Man should remain creditor friendly, subject to the following. I think that "ordinary" people who have fallen on hard times should be able to start again after a set period of time, provided they have fully cooperated with the appointed official/the Court. However, people who have aggressively taken risks with creditors' money should not have such protection and there should be no time limit on their bankruptcy process. It is always possible for debtors to seek an accommodation with their creditors if they have financial problems.
If limited to businesses employing people resident on the Island, that may be possible, but the market likes certainty. Having both systems could lead to confusion and misconception, risking significant harm to our economy.
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If limited to businesses employing people resident on the Island, that may be possible, but the market likes certainty. Having both systems could lead to confusion and misconception, risking significant harm to our economy.
Additional views by email or post:
See previous answers.
In an insolvency, a quick and efficient resolution is often the best way forward for all concerned. The introduction of an automatic discharge within a sensible period of time for individuals would be a significant improvement. Consideration could be given to funding an Official Receiver.

Administrative Receiverships

Summary of consultation feedback

Consultees were asked –

> **Question 6:** Do you believe administrative receiverships should be available in certain circumstances?
>
> If you do believe administrative receiverships should be available, please explain why and outline the appropriate circumstances.

Responses to question 6 were split as follows –

Option	Total
Yes	17
No	6
Not Answered	5

Those in support of administrative receiverships commented as follows –

If there is a floating charge over all the business assets.
To enable some businesses to survive albeit in different form
Admin receivership was introduced in the UK in the 1986 Insolvency Act. It was widely used through the 1990s but stopped being used in the UK following from the 2002 Enterprise Act, which shifted the balance to Administrations. Introducing AR in IOM now, almost 30 years after the UK introduced it makes no sense whatsoever.
The Act currently allows for the equivalent to the statutory equivalent of an administrator receivership via properly worded charge documentation. There is no need for additional legislation as this could, potentially, restrict the flexibility currently available to holders of floating charges.
It is arguable that the current regime where a secured creditor can appoint a receiver out of court in accordance with the terms of its security is sufficient and does not need to be changed. However, if it was considered that administrative receivership would be beneficial, it should be very closely based on that included in the UK Insolvency Act 1986, which has an extensive body of judicial decisions to aid interpretation. To create a uniquely Manx Administrative Receivership regime would create plenty of work for lawyers and provide little benefit to the island. This concept of "simple" receiverships is likely to turn out to be anything but, and should be avoided.
Where you have a business which can show that they have got into financial hardship and/or trouble through no fault of their own (e.g. a sudden loss of a key supplier), then I believe that business should be given the opportunity to explore avenues which may enable it to survive (for instance, in my above example a replacement supplier may be available but may require some debt restructuring to enable it to finance that replacement as well as time to put those changes into force). In this scenario an administrative receivership may protect the company and its directors from further criticism and/or losses whilst a survival package is arranged. The Administrative Receivers would be able to conduct these negotiations without the exposure to personal losses, an opportunity which may not be available to the company's directors and officers. In turn this may save some companies from insolvency proceedings so that they can continue to provide employment, and its contribution to the Manx economy.
Every case will be different. Administrative receivership should be available if the particular case will benefit from that approach. This does not mean that it should always be available or that it is in any way the best approach.
Administrative receiverships should be available but this would depend on the size of the debt and the consequences of that debt not being paid. They could also be available should there be no current directors of a company.
It is arguable that the current regime where a secured creditor can appoint a receiver out of court in accordance with the terms of its security is sufficient and does not need to be changed. Out-of-court receivership is already permitted. This should continue to be the case. There is no rationale to add administrative receivership provisions to the Isle of Man statute book. However, if it was considered that administrative receivership would be beneficial, we would suggest that it be very closely based on that included in the UK Insolvency Act 1986. This would mean that there was an extensive body of judicial decisions to aid interpretation. Creating a uniquely Manx administrative receivership regime would create plenty of work for lawyers and provide little benefit to the Island.

The ….. is open to the concept of Administrative Receivership, that secure legitimate rights of secured creditors, as long as appropriate counter balances are in place to ensure the rights of preferential creditors, unsecured creditors and directors.

Alternatively, Administrative Receivership, or a variant of it, might be designed to only be applicable to international trade and holding companies, thereby alleviating some of the concerns of Administrative Receivership.

For example, the local trading market is likely to perceive Administrative Receivership has too heavy a bias toward secured creditors interests.

As an information point, Administrative Receiverships have reduced significantly in the UK since the Enterprise Act. It may be perceived as a backward step for the Isle of Man to introduce them now.

Perhaps more modern business rescue measures are possible; however, the …… is able to see the benefit and attraction of Administrative Receivership for the Island's international business who hold large corporate structures.

The current regime where a secured creditor can appoint a receiver out of court in accordance with the terms of its security is sufficient and does not need to be changed. Out-of-court receivership is already permitted. This should continue to be the case.

There is no compelling reason to add administrative receivership to the Isle of Man statute book. However, if it was considered that administrative receivership would be beneficial, we would suggest that it be very closely based on that included in the UK Insolvency Act 1986. This would mean that there was an extensive body of judicial decisions to aid interpretation. Creating a uniquely Manx administrative receivership regime would create plenty of work for lawyers and provide little benefit to the Island.

It is arguable that the current regime where a secured creditor can appoint a receiver out of court in accordance with the terms of its security is sufficient and does not need to be changed. Out-of-court receivership is already permitted. This should continue to be the case. There is no rationale to add administrative receivership provisions to the Isle of Man statute book. However, if it was considered that administrative receivership would be beneficial, we would suggest that it be very closely based on that included in the UK Insolvency Act 1986. This would mean that there was an extensive body of judicial decisions to aid interpretation. Creating a uniquely Manx administrative receivership regime would create plenty of work for lawyers and provide little benefit to the Island.

Additional views by email or post:

It is arguable that the current regime where a secured creditor can appoint a receiver out of court in accordance with the terms of its security is sufficient and does not need to be changed. Out-of-court receivership is already permitted. This should continue to be the case. There is no rationale to add administrative receivership provisions to the Isle of Man statute book. However, if it was considered that administrative receivership would be beneficial, we would suggest that it be very closely based on that included in the UK Insolvency Act 1986. This would mean that there was an extensive body of judicial decisions to aid interpretation. Creating a uniquely Manx administrative receivership regime would create plenty of work for lawyers and provide little benefit to the Island.

Recent world events have demonstrated that even the most prudent and responsible businesses can find themselves temporarily unable to meet their debts as they fall due. It is especially the case in a smaller jurisdiction like the Island that where such situations arise that otherwise successful businesses are able to trade through such temporary shocks. The premature winding up of a key business on the Island could have major and catastrophic effects upon the population and economy.

Of course, conversely, if such protection were too readily available it could have serious consequences upon the availability of credit to Island businesses.

It follows that some form of tightly controlled and limited form of administrative receivership may have clear advantages to the economy of the Island and to the public interest. Any such limited regime should have regard to the interests of creditors and may warrant provision for some form of statutory interest or premium provision in respect of creditors. It should also be appropriately time limited and subject to appropriate rules on preference of debts.

Consultees were then asked -

> **Question 7:** If you do not believe administrative receiverships should be available please explain why, and suggest what alternative provision (if any) you think ought to be made in terms of receivership.
>
> If you believe there should be provision, but only for "simple" receiverships, please define "simple".

Three respondents provided some comments in relation to this question as follows –

Criminality should have no preferential treatment. Individuals, directors, CEO nor shareholder and silent partners and a specially beneficial owners of trust companies should have no protection to cease or attach their assets to settle bad debts or outstanding taxes, salaries etc. By pure memorandum of operatus of dishonesty or criminal intent all protection should be null and void. Full letter of the law and recourse to apply *What does "simple receivership" mean?* Poor health, long term, serious life charging critical issues.
This question belies an apparent misunderstanding of the difference between administrative receivership (i.e. an appointment by a qualifying charge holder of an individual to trade the business to the exclusion of the directors and subject to the terms of the charge and subject to certain obligations to others notably employees and creditors), and receivership which is simply the appointment of a receiver by a charge holder to deal with charged assets. A receiver acts as an agent of the company and owes duties to the company, so the assets can't simply be sold for little or nothing. However his or her primary duty is owed to the charge holder and receivers derive their powers from charge documents agreed between the debtor and creditor at the outset of the credit relationship. These charge documents often include provisions that the receiver can trade he business and this should stay as is. Legislation should not interfere with contractual rights. *What does "simple receivership" mean?* Having been a receiver numerous times, there is no such thing as a simple receivership.
See above
I suspect it is extremely difficult to define a "simple" receivership. As an alternative I would suggest a time limit is provided (i.e. a company could only enter into administrative receivership for a specific time period, say no more than three months, with any extensions to the same requiring Court approval). If the Administrative Receiver ultimately decided that Receivership was never an option but suspected that the application was done primarily as a stalling tactic, then the existing against Directors and Officers could be expanded to include a reset of the applicable time to the date the company was initially placed into Administration.
Secured creditors should be able enforce their security if the necessary conditions are met. However, this should be done through a liquidator, who has an obligation to act in the interest

of all creditors, rather than an administrative receiver who acts only in the interests of the secured creditor. Administrative receiverships were effectively banned in the UK under the 2002 Enterprise Act. According to R3 (the UK insolvency trade association), most companies which went into administrative receivership ended up in liquidation anyway once the administrative receiver had finished their appointment. Administrative receivers are unable to pursue claims against third parties, unlike liquidators. Therefore, there seems to be no ultimate benefit in permitting administrative receiverships. *What does "simple receivership" mean?* No comments received
What does "simple receivership" mean? The concept of "simple" receiverships is likely to turn out to be anything but, and should be avoided.
The …… believes that regardless of the name of the procedure, Business Rescue, Administration, or a variant therein, it is likely a moratorium period is needed in distressed situations that balances the rights and interests of all relevant stakeholders. Such procedures are normally instigated by secured creditors, and subject to the fact matrix of the insolvent estate, can in practice have primary regard for the secured creditor as well. *What does "simple receivership" mean?* It is the view of the …… that the concept of simple receiverships would not fit with the Island's needs. Notable litigation cases are still progressing in the Isle of Man Courts, that have been ongoing since 2016, concerning a particular debtor and their various interests, arguably damaging the Isle of Man's standing with those secured creditors for lack of a more structured receivership regime, that would at the very least convey basic powers and authorities to the Receiver to progress the case. By deploying only 'simple' receivership cases (as effectively seems to be the case on the Island), such an approach could rely too heavily on the quality of the debenture, and its associated formalities, that might then in the main, lead to a higher uncertainty of outcomes in contentious receivership cases, when and not limited to, poor quality debentures and / or formalities have been employed.
N/A *What does "simple receivership" mean?* The concept of "simple" receiverships is likely to turn out to be anything but that, and it should be avoided.
What does "simple receivership" mean? The concept of "simple" receiverships is likely to turn out to be anything but, and should be avoided.
Additional views by email or post:
The concept of "simple" receiverships is likely to turn out to be anything but, and should be avoided.
See our response to question 6 above.

Automatic discharge of bankrupts

Summary of consultation feedback

Consultees were asked -

> **Question 8:** Do you have any views in relation to –
> (a) the concept of the automatic discharge of bankrupts, unless circumstances dictate otherwise, and
> (b) the period – 3 years is suggested?

In relation to question 8(a) views were submitted as follows –

This should not be allowed. Bankrupt is bankrupt.
Yes agree automatic right should apply
Agreed subject to reasonable circumstances
There should be a period of oversight of the affairs of bankrupt people by suitably qualified practitioners so that due enquiry can be made as to why they went bankrupt and to take any actions necessary in creditor interests. The circumstances to prolong bankruptcy should be clear including where there is evidence of deliberate acts to the detriment of creditors. The existing provisions in the legislation from 1892 are good.
I am in favour of automatic discharge. Without that, no one would voluntarily enter bankruptcy and that is sometimes a useful solution for both debtor and creditors.
I think in a modern society (i.e. the existing legislation dates back to 1892) there should be some scope for bankrupts to be discharged, but I'd suggest that this shouldn't be a formality (i.e. it should be case specific and probably need Court sanction).
Assuming this relates to personal bankruptcy, yes. The circumstances precluding discharge should include indications that assets were hidden or moved out of the reach of the process, or failure to comply.
There will always be situations where there should be automatic discharge of bankrupts.
In the case of "ordinary" people who have fallen on hard times and, say, been made redundant or their small business has failed, I believe that there should be a process whereby, provided they have cooperated fully with their Trustee in Bankruptcy, they can be automatically discharged after a standard period. However, in the case of people who have taken excessive risks with creditors' money or have been dishonest, or who have not fully cooperated with their Trustee in Bankruptcy or the Court, there should be no automatic discharge and no limit to the period of their bankruptcy.
We would support automatic discharge of bankrupts. Without this, no one would voluntarily enter bankruptcy and that is sometimes a useful solution for both debtor and creditors.
The ….. agrees with the concept of an automatic discharge for individuals.
I would support automatic discharge of bankrupts. Without this, no one would voluntarily enter bankruptcy and that is sometimes a useful solution for both debtor and creditors.
I would support automatic discharge of bankrupts. Without this, no one would voluntarily enter bankruptcy and that is sometimes a useful solution for both debtor and creditors.

In relation to the 3 year period proposed in question 8(b), comments received were as follows –

Should be longer, too easy to ride out bankruptcy via a partner or friend
Bring in line with UK
5 years minimum
No least 5 to 10 years

Too long. People are restricted during bankruptcy and cannot be as economically active as they might otherwise be. This costs money (public £ benefits and £ support from families), and that money could be better spent. The interests of society and the public purse would suggest that people should be allowed back, economically active, within a shorter time frame. Creditors can then decide whether and on what terms to lend them money going forward. The period needs only to be long enough to allow due enquiry to be made by the trustee.
3 years is probably too short as it takes time for a trustee in bankruptcy to fully investigate a bankrupt's affairs and get in and distribute assets to creditors. I would suggest 5 years.
I think 3 years is too short. Personally I think it should be a minimum of 5 years.
Ireland seems to have discharge after 1 year, but with an obligation to pay from surplus income for another 2 years.
But three years does not seem sufficient time. The statute limitations is six years so this would seem more appropriate.
I would suggest two years. I think three years is too long for a society which wishes to see people being able to recover and rebuild their lives.
It takes time for a trustee in bankruptcy to fully investigate a bankrupt's affairs and to deal with the assets. 3 years may prove too short in some circumstances and consideration should be given to 5 years being more appropriate.
The …… believes a 3-year period is a reasonable first step towards a modern bankruptcy regime. The …… believes with an updated and effective regulatory environment, the automatic discharge period could be shortened in the near to medium term future, to 1-2 years assuming there is a robust suspension of discharge process and there is adequate time for Trustee to make due enquiry.
It takes time for a trustee in bankruptcy to fully investigate a bankrupt's affairs and to deal with the assets. 3 years may be too short in some circumstances and consideration should be given to 5 years being more appropriate.
It takes time for a trustee in bankruptcy to fully investigate a bankrupt's affairs and to deal with the assets. 3 years may prove too short in some circumstances and consideration should be given to 5 years being more appropriate.
Additional views by email or post:
(a) the concept of the automatic discharge of bankrupts, unless circumstances dictate otherwise.: We would support automatic discharge of bankrupts. Without this, no one would voluntarily enter bankruptcy and that is sometimes a useful solution for both debtor and creditors. (b) the period – 3 years is suggested: It takes time for a trustee in bankruptcy to fully investigate a bankrupt's affairs and to deal with the assets. 3 years may prove too short in some circumstances and consideration should be given to 5 years being more appropriate.
Save as to stating that the prohibition on undischarged bankrupts acting, without the consent of the Court, as Company Directors should be continued, we have no views on the general concept of introducing the concept of automatic discharge. Publication of an easily accessible list of currently undischarged Isle of Man bankrupts would be in the public interest and if automatic discharge (or continuation) would aid the accuracy of such a publication then we would favour such a concept. The general updating and modernisation of the Island's bankruptcy is, in our view clearly called for and essential to the development of the Island as a mature and effective jurisdiction in which to live and do business and to the benefit of both creditors and insolvent individuals.

Insolvency practitioners

Summary of consultation feedback

Consultees were asked -

Question 9: Do you think there should be a list of recognised (licensed?) insolvency practitioners?

Responses were as follows –

Option	Total
Yes	22
No	3
Not Answered	3

Comments were also received as follows –

Qualification and regulatory.
Same as Uk
Credit, criminal, debt checks, directors names, full transparency , fixed address of individuals and business premises, further any links to other business in any shape or form of whom we are dealing with, no more layering
Given the small island then certain individuals should be allowed to qualify such as chartered accountants or advocates with relevant experience
Regulation of insolvency practitioners is being introduced in the UK amid much concern from the industry particularly around the costs of regulation and dealing with complaints from vexatious bankrupts. Here in IOM the requirements should be qualification based - experienced accountants and lawyers should be permitted. Company directors should not be permitted to liquidate insolvent companies that they were directors of.
The Island has a number of professions within which there are people who have the skills to act as liquidators in various circumstances. There is no evidence presented that the lack of a class of professionals registered as "insolvency practitioners" has caused any issues and, in my time involved in insolvency related matters, such an absence has never been an issue.
I would grandfather in those presently on the Court list and require all new entrants to be licenced in the UK as an insolvency practitioner. I would prohibit the conduct of voluntary liquidations by overseas insolvency practitioners save where undertaken jointly with one on the Court list.
I wouldn't necessarily say there needs to be a list BUT I do believe the legislation should state that liquidators should be independent and resident. The fact that Fiduciary Service Providers ("FSPs") can liquidate their own clients is, in my opinion, flawed and wrong. How can anyone ensure that the liquidators duties and obligations are being properly followed when the legislation enables them to ignore clear conflicts of interests when accepting an appointment. For example, how can any Government or Regulator ensure that a FSP's "in-house" liquidator will fulfil their obligations under say CODA, if it means reporting one of their colleagues and/or co-Directors?
It would be good for confidence. However, it might be disproportionally expensive to set up our own examination scheme as opposed to recognising a UK qualification. This should be a matter for consultation with professional bodies.
If that is the most appropriate way!

A list of recognised insolvency practitioners could be useful. This would need to be regulated.

I think there should be a list of recognised insolvency practitioners and that all insolvent liquidations should be carried out by a recognised IOM insolvency practitioner. They should be Isle of Man resident and be able to demonstrate sufficient insolvency experience. It should be possible for an insolvency practitioner from another jurisdiction to act as a joint liquidator with a recognised IOM insolvency practitioner to enable access to specialist expertise or additional resources, for example, where the insolvent company has operations or interests in another jurisdiction. It is important that there must be at least one recognised IOM insolvency practitioner on each liquidation so that the liquidators can be held properly accountable to the Isle of Man Courts.

It is important for the credibility of the Isle of Man that it is seen as being able to sort out its own problems.

Regulating insolvency practitioners in a jurisdiction like the Isle of Man and would require flexibility. For example, there would need to be flexibility over the expectation of the hours spent annually on insolvency, as when the Isle of Man economy is going well, the number of insolvencies will be low. In the UK, insolvency practitioners are regulated, which has resulted in a significant cost overhead, which may not represent good value for money for creditors. Insolvency practitioners can, in any case, be held accountable through the Courts or their professional bodies for unprofessional acts or omissions. I do not believe that the regulation of insolvency practitioners on the Isle of Man would bring benefits beyond a qualification based list approach.

Require all new entrants to be licenced in the UK as an insolvency practitioner. Conduct of voluntary liquidations by overseas insolvency practitioners should not be permitted except where it is undertaken jointly with a practitioner on the Court list. This is a position that the BVI is currently implementing.

The …., as a previous licencing body of UK Insolvency Practitioners, recognises the significant importance of regulated and responsible individuals involved with insolvency proceedings. The …… is of the view that it is of paramount importance that appointment takers are regulated in the Isle of Man.

The qualification requirements would likely be best placed using the UK Joint Insolvency Examination Board, for lack of a practical alternative, assuming the Isle of Man does not significantly depart from UK common law principles.

In the early stages of regulation, qualification by relevant experience is likely acceptable.

Require all new entrants to be licensed in the UK as an insolvency practitioner. Conduct of voluntary liquidations by overseas insolvency practitioners should not be permitted except where it is undertaken jointly with a practitioner on the Court list. This is a position that the BVI is currently implementing.

Require all new entrants to be licenced in the UK as an insolvency practitioner. Conduct of voluntary liquidations by overseas insolvency practitioners should not be permitted except where it is undertaken jointly with a practitioner on the Court list. This is a position that the BVI is currently implementing.

Additional views by email or post:

Yes

If you think there should be a list, what do you think the requirements for inclusion on the list ought to be qualification based or requirements met by regulatory means?

Require all new entrants to be licenced in the UK as an insolvency practitioner. Conduct of voluntary liquidations by overseas insolvency practitioners should not be permitted except where it is undertaken jointly with a practitioner on the Court list. This is a position that the BVI is currently implementing.

The Island is, and has been, fortunate to have a relatively small number of highly competent and skilled insolvency practitioners operating within it. The Company Officers (Disqualification) Act 2009 contains provisions permitting the High Court to disqualify persons from acting as liquidators where it considers them to be unfit to do so. Such disqualification provisions have been exercised and should continue to be available. If a new insolvency regime is to be introduced and is to be easily accessible then it follows that creditors should be able to call upon a formal list of insolvency practitioners who they can be confident have the appropriate knowledge and skills to fulfil their duties. If a new regime is to facilitate the 3rd party funding of winding up then potential funders will wish to be satisfied that insolvency practitioners have the appropriate skills and knowledge to fulfil their duties. In order to support the development of the Island as a mature and attractive jurisdiction, it is essential that the Island continues to maintain and to develop a local professional and competent pool of local insolvency practitioners. The current size of the sector in the Island likely does not warrant a dedicated formal supervisory regime, however, inclusion on (or removal from) a list of persons qualified to act should be based upon a clearly stated set of criteria/qualifications (effectively acting as a licence to practice). The same set of criteria/qualifications should apply if the High Court retains a discretionary power to appoint practitioners who are not on the list. We have no views on who should control inclusion or removal from the list but whoever does so should have the ability to exercise discretion over inclusion or removal from such a list subject to appropriate provisions to seek a review of such discretionary decisions.
A: Yes we consider that there should be a licenced insolvency practitioner and what form this takes could be a further debate, however we would be open to the individual to be qualification based but also regulatory due to the nature of the business.

Official Receiver

Summary of consultation feedback

Consultees were asked –

> **Question 10:** Do you agree there should continue to be provision for the appointment of an Official Receiver?

Responses were as follows –

Option	Total
Yes	22
No	4
Not Answered	2

Those supporting the proposal that there should be an official receiver commented as follows –

Should be within the AGs office.

Dept for Enterprise – not Treasury as they're simply not commercial.
Should be a suitably qualified, government employed accountant and auditor. One that is not department affiliated. Utopia.
Funded via tax levy or part of every company licencing to operate. Further person should be attached to the Tax department, qualifications,, must be suitable qualified in law, insolvency, and have a good track record in the field. Should have a team working with person also with position/s to train, interns of laymen to threw work experience and studies are able to progress in years to come for senior position or the role.
See above. Would not work unless private sector e.g. via insurance funds this.
There should be an official receiver. He or she should be in the IOM Treasury. The OR should only take appointments if there is not a willing private sector office holder. The OR should be publicly funded. However, there should be a scale of fee based on assets recovered. I'd suggest around 15% – and any revenue earned from this fee would offset the costs incurred by the public purse. It is of vital importance that every company that is dissolved other than through a liquidation be reviewed to some level by the OR to see if there are opportunities for revenue for IOM government – for example undeclared shareholder loans etc.
The Official Receiver should be a Crown appointment and an officer of the Court. It should be a person who has successfully practiced in the area of insolvency and is recognised, by the Isle of Man Court, as being an effective and efficient liquidator.
The office of Official Receiver should be funded from Registry fees, with a charge over recoveries in a liquidation, falling behind secured creditors but ahead of all others. To be truly independent, it should not fall within the FSA.
I think the Court should retain a list of individuals (much like the Court appointed Liquidators "list") and the Official Receiver should be appointed from that list. I don't necessarily believe they need to be appointed within a Government Department or Office, like Liquidators they can be individuals working within the industry. The Official Receiver could be funded primarily from the assets of the entity to which they are appointed but with an "underwriting" fixed fee payment from the monies recovered under bona vacantia
If (as I hope) there is modernisation of personal insolvency, then it makes sense to have an official receiver who can both oversee corporate and personal insolvency. In corporate insolvency, having an official receiver, must surely increase the efficiency of the process? As I understand it, the UK insolvency service charges fees which are recovered from the petitioner and from the assets of the company (or the individual as the case may be). That seems a reasonable model. No opinion on where in Government.
The person would need to have finance qualifications and possibly legal qualifications. This would seem to sit best in the Treasury Department and funded out of Bona Vacantia funds.
The office of Official Receiver should be funded from Registry fees, with a charge over recoveries in a liquidation, falling behind secured creditors but ahead of all others. It should not fall within the FSA.
If the Official Receiver is not taken up by a Civil Service appointee, then the …… believes the Deemed Official Receiver should be a qualified and regulated person, ideally resident on the Isle of Man, as the Official Receiver role is a public interest role for the Island. The …… believes that in the case of public funded cases, the Official Receiver once appointed, should not be changed, unless for reasons of unfitness or incapacity to ensure the public interest is maintained. Again, the …… suspects the UK Joint Insolvency Examination Board a good benchmark for individuals wishing to take this role, but perhaps additional government led training and examination would be of benefit to the Isle of Man. Again, in the early stages of regulation, qualification by relevant experience is likely acceptable. Among other matters, funding for the Official Receiver can be obtained through the use of the Court Account and relevant charges, and maintenance of crown preference. There are likely many

other measures that could be implemented to ensure the Official Receiver role is funded. The …… believes this is a large topic in itself that may benefit from its own consultation. The …… understands that there is little, to no provision, for an Official Receiver to be appointed to a Bankruptcy estate. The need for an Official Receiver in personal insolvency is also paramount, especially where creditors are unwilling or unable fund the officeholder's costs.
The office of Official Receiver should be funded from Registry fees, with a preference over other recoveries in a liquidation, falling behind secured creditors but ahead of all others. It should not fall within the FSA.
The office of Official Receiver should be funded from Registry fees, with a charge over recoveries in a liquidation, falling behind secured creditors but ahead of all others. It should not fall within the FSA.

Those against the proposal commented as follows –

There is no realistic alternative to an OR.
The provision in IOM legislation for an Official Receiver dates back to a time when all IOM companies were small and only traded locally or with the UK. The appointment of an Official Receiver would not represent value for money for the Isle of Man Government. Properly resourcing an Official Receiver would be very expensive. IOM companies carry on business all over the world and acting as Official Receiver of an IOM company which operates extensively, say, in the Far East, would be very expensive and difficult to resource. The current system, where the Liquidator is Deemed Official Receiver, is well understood and works.
Additional views by email or post:
Yes If you do agree with provision for an Official Receiver, please offer your suggestions as to how that person should be appointed (including the appropriate qualifications you think are required), funded and in which Department or Office of Government that person should be located: The office of Official Receiver should be funded from Registry fees, with a charge over recoveries in a liquidation, falling behind secured creditors but ahead of all others. It should not fall within the FSA.
The last "state appointed" Official Receiver retired from office in 1950. Since that time it has been common practice for the High Court to exercise its power to deem persons to be Official Receiver, generally those persons who it has appointed as provisional liquidator and/or subsequently confirmed as liquidator. While undoubtedly the skills and professionalism of such liquidators have permitted the role to be fulfilled it is arguable whether this has met the full capabilities of the role within the existing regime. An important role for the Official Receiver is to protect the wider public interest whereas the primary role of the liquidator is to act in the interest of the creditors and contributories. While often these interests may be aligned that is not always the case. Where that is not the case then there is an obvious conflict in the duties of the two positions. There should be a state appointed Official Receiver whose duties should include oversight of the public interest within liquidations (with powers to require appropriate reporting from and assistance by liquidators) as well as oversight of the general operation of and development of the insolvency regime to ensure that it remains relevant and appropriate to the economy of the Island and to its population. Any Official Receiver should have the power to co-ordinate with and report to the appropriate Authorities those who are suspected of abusing the availability of credit or the operation of the insolvency regime in order to maintain public trust and protect the future broad public interest. It may be appropriate an Official Receiver to be given responsibility for maintaining a list of persons suitable for appointment as liquidators and for presenting applications for winding up in the public

interest and potentially in co-ordinating and overseeing any provisions for the 3rd party commercial funding of liquidations if such is to be facilitated by the new regime.

Any Official Receiver would need knowledge of the Insolvency Regime and general management and co-ordination skills but would not necessarily need to have professional insolvency skills, depending on the exact nature of the duties and powers that they are granted. They must, however, have sufficient power to call upon such skills when required.

The appointment of an Official Receiver is, we feel, critical to the effective and efficient operation of an appropriate insolvency regime for the Island.

Priorities

Summary of consultation feedback

Consultees were asked –

Question 11:
Do you think the order of priorities for the payment of debts is correct?

If you think the priorities for the payment of debts ought to be varied, please specify in what way and why you think your alternative order of priorities would be fairer than currently applies.

Responses were as follows –

Option	Total
Yes	16
No	7
Not Answered	5

Those who felt the priorities needed to be varied provided comments as follows –

Government should fall into general creditors
Workers, salaries, pensions, creditors , bankers, taxes then only if anything left and very last insolvent owner
Rules too old and complicated. I don't have an exact answer but would look at competing jurisdictions and seek the best of the best
I don't think all Government debts such as rates, water rates, and all other debts to the Crown etc. etc. should be given a preference. They are a supplier like anyone else and I don't see why they should be preferred over other unsecured creditors. For the avoidance of doubt I do not include ITIP & NIC's in the above.

In addition people who supported the existing priorities commented as follows –

Crown preference should be retained. The amounts in the Preferential Payments Act should be reviewed more regularly due to inflation – particularly for wages etc. There should be a time limit for government debt – VAT/ITIP etc. of say 6 or 12 months – after which old government reverts to unsecured. The argument being that if the government does not collect the debt due in a timely manner then it should lose its right to preference. For banks, there should be a

preferred amount for smaller depositors to minimise the risk under the deposit compensation scheme. I'd suggest up to £50000 preferred and the balance of bank deposit liability unsecured.
The …… believes, in the main yes, and that Crown Preference should be maintained.
Additional views by email or post:
Yes.
The order of priority for the payment of debts should reflect the social and economic priorities of the Island. We have no issues with the current order of priorities save to note our previous comments regarding the facilitation of 3rd party insolvency funding and the potential desirability of clarifying the priority of recovery of such 3rd party funding. We would note that paragraph 7 of Schedule 3 to the Insurance Act 2008 may, in certain circumstances, create a situation analogous to a priority in relation to insolvent insurance business. Consideration might be given to including a reference to the provisions of that paragraph in the list of priorities for the sake of clarity. We have noted, in the progress of historic liquidations that we have been a party to, a degree of confusion amongst Company Officers, Creditors and Debtors with regard to the definition of Crown Debts. We are aware that the continuation of Crown Debt priority has been the subject of recent public and political discourse. If Crown Debt priority is to be retained we can see a value in including a clear and consolidated definition of the Government debts falling within that class in order to enhance the understanding of Company Officers, Creditors and Debtors.

Consultees were then asked –

Question 12: Do you think the Island should adopt some form of provision for ordinary debtors?

Responses to this question were as follows –

Option	Total
Yes	20
No	6
Not Answered	2

Those who felt that some form of provision should be adopted provided additional comments as follows –

Yes, both but with protection for small traders based on the Island
Yes. Means tested. Creditors should do their proper credit checks. Lending money, getting people in debt when they can't afford it is not acceptable. Making the situation worse all way round to all concerned.
These are sensible schemes and should be copied.
It has to be a Manx solution that takes into account the circumstances found in the Isle of Man. not only the debtor but also the creditors, who are often small businesses themselves and find that getting settlement of any judgments from the small claims court harrowing, expensive and often fruitless. Well-informed debtors seem to be able to avoid the coroners with ease whilst small, often family owned, businesses have to take the losses on the chin, causing financial hardship, reduction in investment and suspicion of any new customers.

I believe the DRO and DRS would be appropriate in the Isle of Man
Whichever options are selected, I strongly believe that the Island should adopt an approach which: (a) allows debt relief measures short of bankruptcy for local people who have got into a position where there is no realistic prospect of them ever repaying, but where the sums involved are still relatively modest (e.g. in the low tens of thousands). This can happen quite easily where people fall ill or are unable to pay off debts before they retire. (b) makes bankruptcy administratively simpler and with a realistic prospect of discharge for those with larger debts but (c) is not so generous as to prompt bankruptcy tourism.
Debt Relief Orders seem very short-lived and do not provide enough time for a debtor to clear their debts. They also do not seem fair for the creditors as they are unlikely to get any funds. With regards to the 'Breathing Space', there are few business that would start any legal action within 60 days of a debt being due so this does not seem to achieve anything.
I am in favour of Debt Relief Orders provided the person cooperates fully with the appointed official. I also think that the Debt Respite Scheme could be used; however, it should only apply to people who owe less than £30k, the same as for the DRO. Also, I am concerned that this could be abused by, for example, fraudulent traders who run up debts and then leave the Island.
The …… supports most, if not all, aspects of improvement in the personal insolvency procedures, appropriate to a modern restructuring regime. Personal insolvency can unduly impact the lives of Manx residents. Conversely, a modern personal insolvency regime, would allow the Island to recover assets more effectively from delinquent debtors and wrongdoers, in a cost effective and proportionate manner. An effective and proportionate personal insolvency regime will likely support and enhance the anticipated corporate insolvency reform, in the near to medium term future.

Those who felt that some form of provision should <u>not</u> be adopted provided additional comments as follows –

People must be accountable for their debt, relieving this after 12 months is ridiculous. Please put yourself in the shoes of one owed money.
Often the creditors affected on island will be small local businesses (shops, plumbers, electricians etc). These measures prioritise the interests of the individual debtor (who may well have simply managed their money badly) over those of the small businessperson who may have run their business well but would be crippled financially by a debtor's non-payment. This model is too debtor friendly and will harm the Island's competitiveness globally.
Often the creditors affected on Island will be small local businesses. These measures prioritise the interests of the individual debtor (who may well have simply managed their money badly) over those of the small businessperson who, through no fault of theirs, could be crippled financially by a debtor's non-payment. It is too debtor friendly and will harm the Island's competitiveness globally.
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financially by a debtor's non-payment. It is too debtor friendly and will harm the Island's competitiveness globally.
Additional views by email or post:
No If you do not favour either or both of these suggested provisions, please explain why: Often the creditors affected on Island will be small local businesses. These measures prioritise the interests of the individual debtor (who may well have simply managed their money badly) over those of the small businessperson who, through no fault of theirs, could be crippled financially by a debtor's non-payment. It is too debtor friendly and will harm the Island's competitiveness globally.
We have no views on this issue save as to note our previous comments regarding the desirability of ensuring an appropriate balance between the rights of creditors and debtors and ensuring that any provisions are clear to creditors and debtors.
…. the … does not support the introduction of bespoke Manx debt relief orders but does support the Treasury exploring the possibility of the introduction of a bespoke Manx debt respite (breathing space) scheme.
We would agree that both options should be considered as a Debt Relief Order is a debt solution, Breathing Space is not a full debt solution and is only available for a maximum of 60 days. **Debt Relief Order** – this would be accessible to many of the individuals that currently receive assistance from our Debt Advice Service, however there are limitations in relation to any individual that has assets over £2000. We do favour this suggestion – however there is also a Scottish option (MAP) detailed under the next question which you may wish to also consider. **Breathing Space** – we understand that this is administratively heavy for a debt advisor to complete as there is a requirement for the advisor to update the online portal regularly in the review and that a client needs to stay in touch with the advisor. Currently most creditors allow a moratorium in excess of 30 days automatically which can be extended. We consider that the mental health breathing space may be helpful for individuals to be able to seek help for mental health issues, many creditors already have policies in place in relation to mental health issues, however this legislation will assist someone receiving mental health crisis treatment if they are: • detained for assessment or treatment under the Mental Health Act 1983 • removed to a Place of Safety under that Act • receiving crisis, emergency or acute care or treatment in any setting from a specialist mental health service (i.e. crisis treatment from a crisis home treatment team, liaison mental health team, community mental health team or any other specialist mental health crisis service) for a mental disorder of a serious nature. Consideration would be needed as to whether Isle of Man Approved Mental Health Practitioners would agree to sign the relevant paperwork in relation to the crisis.

Consultees were finally asked –

> **Question 13:** Following on from Question 12, if you favour debt provision but not the UK model, what model, and from which country, do you think would work better for us in the Isle of Man?

The UK is fine for IOM.

I see no reason why the UK model could not be adopted verbatim.

I cannot comment on which is better but would suggest that we should also look at the Republic of Ireland.

The …… believes that the Island should consider all commonwealth regimes, both from its close neighbours, UK, Northern Island but also consider further afield to identify a proportionate personal insolvency regime that meets the Island's needs.

The ….. does not propose a particular alternative, other than the suggestion to prioritise the need to modernise the fundamental of the Islands insolvency regime, with better regulation, powers and requirements of those in office, to better protect the creditors, debtors and other stakeholders of personal insolvency.

Arguably, personal insolvency is the bedrock of a modern insolvency regime, from which corporate insolvency dovetails into.

Additional views by email or post:

We have no views on this issue.

A respondent provided information here and at question 14 on a number of debt solutions they suggested may be appropriate for the Island's community:

Minimal Asset Process (MAP)

Minimal Asset Process'(MAP) is the name given to a special type of bankruptcy in Scotland. You need to have a low level of debt and very few assets to use this process. In order to go bankrupt using the MAP process, you have to meet the following criteria.

- total debts are at least **£1,500** but no more than **£25,000**. Student loans aren't counted when working out how much you owe;
- total assets are worth no more than **£2,000**. Basic household items and furniture you need for everyday living are not counted;
- no individual assets are worth more than **£1,000**. (A car that is reasonably needed will not be counted as long as it is not worth more than **£3,000**);
- no land or buildings are owned;
- a valid certificate for sequestration has been issued. This is a formal document confirming that the individual cannot pay their debts as they fall due. See the later section **Certificate for sequestration**.
- a money adviser must assess the individuals income and expenditure using the Common Financial Tool (in Scotland, IOM uses the Standard Financial Statement). This must show that the individual doesn't have funds available (after essential bills) to pay to creditors. I f income is made up of only benefits, and the individual have been in receipt of them for at least **six months** before the application, the individual would automatically meet this condition;
- have not been made bankrupt under the minimal asset process rules in the last **ten years**;
- have not been made bankrupt under other rules in the past **five years**.

https://nationaldebtline.org/fact-sheet-library/ways-clear-your-debt-s/

Protected Trust Deed

Bankruptcy is not the only solution for people with serious debt problems. A 'trust deed' is a voluntary agreement with your creditors to repay part of what you owe them. It is less formal than bankruptcy and may also avoid some of the legal restrictions which follow from being made bankrupt.

A trust deed may involve transferring assets to a trustee so that they can be sold to raise money to pay creditors. A trust deed will often involve an individual making a contribution from their income. If you set up a trust deed on or after **28 November 2013**, it will last for at

least **four years**. After this time you will no longer be liable for the debts included in the trust deed having been discharged.

Providing it meets certain conditions, a trust deed may be recorded in the Register of Insolvencies as a 'protected trust deed'. This prevents creditors from taking further action against you to get their money back, as long as the individual sticks to the terms of the trust deed.
https://nationaldebtline.org/fact-sheet-library/trust-deeds-s/

Moratorium

A moratorium is a period of debt relief during which creditors cannot take any action against an individual for debts owed to them. It is a good idea to request a Moratorium whilst considering other forms of bankruptcy, a trust deed or Debt Arrangement Scheme (DAS).

If the moratorium is granted, the Accountant in Bankruptcy will register this on the Register of Insolvencies and the DAS Register. From this date, the individual will have **six months** to decide if they want to proceed with an application. If the individual is granted a trust deed or bankruptcy then any interest, fees or charges will either be settled or written off once completed. Under DAS, these will be written off on completion of the debt payment programme.
https://www.aib.gov.uk/debt/deal-debt/what-moratorium [Salvation Army]

Other views and comments

Summary of consultation feedback

Consultees were asked as follows –

Question 14: Views on other issues

Do you have any other views that you feel would assist Government in improving our current legal provision in the Island in relation to insolvency or bankruptcy law, or provisions for debtors and creditors in general?

Responses were received as follows –

The coroners are hopeless, just collecting their fee but not collecting any money. These functions should be moved to government where transparency of enforcement could be shown. Too many times coroners don't pursue where they can and once the debt is passed to them, they are all powerful in whether they collect or not.
Ordinary people and businesses should not be able to find a way around the Insolvency and Bankruptcy Laws. For example, going Bankrupt and then registering a new business in your wife's, children's names. The common person should be able to obtain a list of Bankruptcies.
These laws have knock on impact on credit availability for IOM residents. Perhaps if we modernised these laws we may be able to access other funding sources such as equity release schemes- reading available in UK and Jersey but not IOM.
Very few wish to default on debt. Those who do so deliberately in order to gain should be subject to criminal, not civil, proceedings.
Yes – the cost to the Treasury is a key factor and should be minimal or nil.
Please make these changes this time around. This has been considered and dropped a number of times before. Also ensure that the insolvency rules are also modernised and brought into the digital age. Scotland did a project recently to modernise its rules including providing for electronic filings. Costs could be lowered if there was a central insolvency notice board within the gov.im website and the requirement for local courier/examiner adverts was removed. The government could charge a fee for each advert and this would generate some revenue. It could then be left to

the discretion of the office holder as to whether a local or other advert was needed. Also, consider whether a London Gazette notice is really needed for an insolvent IOM liquidation.
Revisit and consolidate the personal bankruptcy law as that is sometimes difficult to navigate.
The Court presently publishes its judgments on www.judgments.im. This site is poorly designed and often not capable of being searched. The Island should go back to having judgments recorded in the Manx Law Reports which can be accessible at Tynwald library for litigants in person and online for lawyers (who pay a fee).
I think the legislation and in particular the Winding-Up Rules could do with some updating, if only to recognize the 21st century's modes of communication. I also believe there should be a method to convert a MVL into a CVL and recognition of the same at the Companies Registry. This is not currently possible. I have a MVL which was formally converted to a CVL via a Consent Order issued by the Isle of Man High Court. The Registry still record that liquidation as a MVL and initially refused to accept the replacement forms. To this date they have still not listed the Consent Order. As previously stated I strongly believe any liquidator should be independent and resident on the Isle of Man (or in the case of Joint appointments at least one of the Joint Liquidators should be resident on the Isle of Man). The definition of independent could be as described by the ICAEW in their guidance to Insolvency Practitioners. Finally, I think the four month deadline for avoidance of preferences, as stipulated in section 31 of the Bankruptcy Code 1892 is woefully short. Given the time that it can take for a Bankruptcy application or a winding-up application to be heard in Court, or even the way that the timing of voluntary liquidations can be manipulated to avoid this time period, I think the period should be either extended or completely revised.
Only that I think modern society in general has an unhappy combination of supply side push into getting into debt with multiple forms of "buy now pay later", combined with a stigmatisation of those who then find that they cannot repay what they borrow. Many people seem to lack the financial literacy necessary to see the problem until it's too late. There is a role for education here. Not just in schools but amongst adults too. I'd like to see a free course offered to every 21-year old.
Access to the publicly accessible register of debtors as per the Administration of Justice and Other Amendments Act 2021 would be useful. It would also be useful if the Isle of Man Courts were able to appoint an Official Receiver. A Local Authority has had to deal with some companies who had no Directors or had complex arrangements while owing monies to the Local Authority (possibly deliberately in order to avoid payment) and an Official Receiver would have assisted with this. Unpaid salaries should be covered as part of the recommendation if a company goes into Liquidation.
The calculation of interest due to creditors in insolvencies is archaic and should be simplified. This can cause additional work in liquidations where a surplus is achieved and it is difficult to explain the logic to creditors.
Access to up to date Court judgments should be improved. The Court presently publishes its judgments on www.judgments.im which is difficult to search, even more so since the introduction of the pdf judgments. Easier access to our own case law should be restored with litigants in person being able to access Manx Law Reports through the Tynwald library and online for lawyers (who pay a fee).
The …… believes that the Island would benefit from phased incremental change and adaptation of the Island's insolvency reform, and would be very interested in supporting the Government further in this respect.

Access to up-to-date Court judgments should be improved. The Court presently publishes its judgments on www.judgments.im which is difficult to search, even more so since the introduction of the pdf judgments. Easier access to our own case law should be restored with litigants in person being able to access Manx Law Reports through the Tynwald library and online for lawyers (who pay a fee).
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Additional views by email or post:
A respondent contributed further with comments on the following – **<u>Individual Voluntary Arrangement (IVA)</u>** – this can be explored if the individual wishes to avoid bankruptcy and has at least £50 a month available income and/or a lump sum or non-essential asset available to pay her/his creditors. **<u>Bankruptcy</u>** – The respondent suggested that consideration needs to be made for individuals with assets and reviewing the legislation around bankruptcy, updating the legislation around this and perhaps consider emulating the UK current bankruptcy legislation. **<u>Credit Searches</u>** – The respondent notes that many Island organisations are not reporting credit applications (or liabilities) to the credit agencies. As a result this may mean organisations are making lending decisions in siloh and not being totally aware of a person's liabilities. The use of credit a credit search enables organisations to correctly assess credit applications for loans and Hire Purchase agreements, informing the lending of the risk indicator and whether a client is managing their repayments. It also shows when credit applications have been rejected by other finance houses – which would be an indication for a lender on whether an individual is experiencing financial difficulties.
Another respondent commented on the current system and noted that some people know how to game the system. If an individual trader or business is found at fault there should be a mechanism (online register?) by which potential customers can easily find if they have a court history.