



OPERATIONAL SELECTION POLICY OSP33

RECORDS RELATING TO COURT ACTIONS
FOR CORPORATE INSOLVENCY
(CASE FILES & DATASETS)
1973-2003

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Introduction

1 Authority

- 1.1 In 1998 the Public Record Office (hereafter to be referred to as The National Archives) published its first Acquisition Policy. This sets out the principles that would guide the selection of records for permanent preservation in The National Archives. The following year the Archives produced a complementary Disposition Policy dealing with the selection of public records to be held in places of deposit for public records other than The National Archives.
- 1.2 The acquisition policy identifies the type of record that will be preserved at The National Archives itself. The disposition policy identifies the type of record that, although judged to be worthy of permanent preservation, would be more appropriately preserved by a local authority record office or specialist archive.
- 1.3 Both acquisition and disposition policies are being implemented through the production of Operational Selection Policies. These are detailed statements of appraisal plans as they apply to categories of records found in one or more government departments. They are developed by The National Archives in partnership with other government departments and in consultation with other repositories appointed by the Lord Chancellor as places of deposit. They are subject to public consultation.
- 1.4 Operational Selection Policies are intended to be working tools for those involved in the selection of public records for permanent preservation. They may be reviewed and revised at any time in the light of comments from record producers, reviewers or users of the records or as a result of newly discovered information. The extent of any review or revision exercise will be determined according to the nature of the comments received.
- 1.5 Operational Selection Policies do not provide guidance on public access to selected records.
If you have comments on this policy, please e-mail:
records-management@nationalarchives.gov.uk
or write to:

Acquisition and Disposition Manager
Records Management Department
The National Archives
Kew
Richmond
Surrey
TW9 4DU

2 Scope

2.1 This policy concerns the case file records of the

- Supreme Court of Judicature: High Court of Justice, Companies Court of the Chancery Division
- Court of Appeal, Civil Division – Winding-up jurisdiction
- County Courts – Winding-up jurisdiction files

2.2 This paper does not directly concern the selection of records for:

- Companies House
- The Insolvency Service

See Operational Selection Policy ***Case Files and Datasets generated by the Government Regulation of Companies (OSP25)*** for The National Archives' collection policy concerning these records.

3 Background and functions – The Companies Court

3.1 ***Origins*** The organisation of modern judicial insolvency proceedings dates from the Judicature Act of 1873 which created the High Court in 1875: replacing the Ancient Court of the Queens Bench, Court of Common Pleas, Court of the Exchequer, Chancery Court and Probate, Divorce and Admiralty Court with new judicial bodies. The Chancery Division of the High Court comprised one of these new organisations. Part of the responsibility of the Chancery Division was to hear corporate insolvency disputes and winding-up actions.

The High Court became part of the Supreme Court of England and Wales under the Supreme Court Act 1981, which articulates its current jurisdiction.

4 Courts within the Chancery Division with responsibility for corporate insolvency

4.1 ***Corporate insolvency*** The Companies Court of the High Court has jurisdiction over corporate insolvencies most recently covering applications and proceedings under the Companies Act 1985, The Financial Services and Markets Act 2000 and the Insolvency Act 1986 Parts I to VII in relation to companies registered in England and Wales, and the Company Directors Disqualification Act 1986. Proceedings concerning insolvent partnerships, under the Insolvent Partnership Order 1994 are also brought in the Companies Court, as are those brought against limited liability partnerships under the Limited Liability Partnerships Regulations 2001.

4.2 The Companies Court has its own separate administrative procedure from the Bankruptcy Court whereby proceedings are issued in the Companies Court General Office and managed by Registrars.

Petitions for winding up, petitions for confirmation by the court of reduction of capital (e.g. where a limited company wishes to write off a loss of capital in shares caused by wastage of assets), and interim applications for directions in proceedings by shareholders are among the principal matters heard by Registrars. A Registrar may direct that a Judge is to hear any case (depending on the level of complexity of the case).

4.3 The High Court is based at the Royal Courts of Justice, on the Strand, London but also sits at 26 Crown Court centres throughout England and Wales throughout the following legal circuits: Midland & Oxford; North Eastern; Northern; South Eastern (comprising London and Greater London); Wales & Chester and Western. Under the Courts and Legal Services Act 1990, s.61, Sch. 1, any case that does not require to be heard by a High Court Judge and falls within the jurisdiction of the County Courts may be transferred to and heard by the latter. The local District Judge who will decide whether the case is to be heard at the High Court in London or by a County Court, carries out the action of disposing of corporate insolvency proceedings lodged by petitioners at the High Court regional centres. It is unusual for a case to be transferred to London, unless a difficult point of law requires the attention of the High Court. Usually the cases are heard locally.

4.4 This Operational Selection Policy covers corporate insolvency court records created from 1973 to 2003. The Enterprise Act 2002 was enacted from September 2003 and changed some of the procedures that had been in place previously. Notably, these introduce new features such as, the use of Notices of Intention to Appoint an Administrator / Notice of Appointment of an Administrator and the abolition of certain preferential creditor rights. As these were introduced late in the period under discussion this Policy will focus upon the records produced by the earlier procedures that were in place for the majority of the period from 1973 to 2003.

5 Hearings of corporate insolvencies in the English and Welsh regions

5.1 The County Courts were established under the County Courts Act 1846. As the main civil courts in the regions, part of their jurisdiction covers hearings for individual and corporate insolvencies.

Some County Courts have jurisdiction in most corporate insolvency cases outside London. If any question arises in any winding-up proceedings in a County Court which a party to the proceedings and the judge of the court desire to have determined in the High Court, the judge shall refer the facts as a special case and transmit the proceedings to the High Court for determination. Where the amount of a company's share capital paid up or credited as paid up does not

exceed £120,000, then the county court or the district in which the company's registered office is situated has concurrent jurisdiction with the High Court in London to wind up the company.

6 Appeals against corporate insolvency decisions

Appeals against County Court (Circuit or District Judge) decisions concerning corporate insolvency cases are directed to the High Court Appeal Office and heard by a Chancery Judge. The Court of Appeal only hears appeals concerning orders made by a High Court Chancery Judge. Every such appeal is limited to a review of the decision of the lower court. The appeal will be allowed if the decision of the lower court was incorrect or if it was unjust because of a serious procedural irregularity in the proceedings in the lower court.

7 Acquisition policy collection themes

7.1 The Acquisition Policy Statement outlines certain themes, which form the basis of The National Archives' appraisal and selection decisions. Of these themes, the following are of potential relevance in considering Court case records relating to corporate insolvency cases.

2.1.4 Policy and administrative processes of the state: administration of justice and maintenance of security.

2.2.1 The economic, social and demographic condition of the UK, as documented with the state's dealings with individuals, communities and organisations outside its own formal boundaries.

7.2 This Operational Selection Policy considers records relating to **corporate insolvency** cases. The paper is organised as follows:

- A brief outline of the procedural options and activities that can take place during each corporate insolvency court case
- Records selected for permanent preservation in The National Archives to date: including criteria for preservation (if any)
- Records deposited locally to date by The Court Service: including any available criteria for disposal (if any)
- Proposals for the future permanent preservation and disposal of records

Corporate Insolvency

8 Corporate insolvency procedures Limited companies that are run by boards of directors, owned by shareholders (members) and that are legal entities in their own right can be subject to corporate insolvency actions. Additionally, some body corporates such as limited liability partnerships may be subjected to these procedures,

and certain other entities such as partnerships, unregistered friendly societies and foreign companies, which have been carrying on business in Great Britain, may be wound up as unregistered companies under the Insolvency Act. A corporate insolvency rescue or reorganisation action can be applied when a company runs into financial problems and becomes, or is likely to become, insolvent, in order to take measures to reorganise its finances and to keep the business going. Where this cannot be achieved, the company may be legally terminated by the use of winding-up procedures.

8.1 **Procedural Options** The insolvency of a company can be dealt with in four ways

- Administration
- Company Voluntary Arrangement
- Administrative Receivership
- Compulsory or Voluntary Liquidation (Winding up)

Details of the above corporate insolvency proceedings are held on the individual company's file at Companies House, Cardiff, and is available online at www.companieshouse.gov.uk.

8.2 **Administration** The term "*in administration*" is used commonly to describe this procedure. This procedure is intended for insolvent companies to have a reasonable prospect of rescue and survival when they get into financial problems – e.g. through arrangements with their creditors or through disposal of part of the company's operation as a going concern. This procedure is designed to avoid the company being 'wound-up' or the sale of the company's assets by secured creditors at well under-value prices.

8.2.1 Prior to the 15 September 2003 the basic administration procedure was as follows:

The company directors, or the company itself or a creditor of the company could apply to the Court for an Administration Order. This application was supported by an independent report on the company's affairs by an Insolvency Practitioner who was proposed as the **Administrator**. In practice, it was not possible for the company to receive an Administration Order if the report was not favourable: the Court would not grant an Administration Order unless it was satisfied that it would achieve the aim of either enabling the company to survive, or come to satisfactory arrangements with creditors for payment, or allow the company's assets to be sold off in a more advantageous way.

8.2.2 From 15 September 2003 the Administration procedure changed and became more streamlined to make it faster, fairer and focused on rescue. A company can enter administration either by court

order following an application to court, or by the filing of prescribed forms at the relevant court by the company, its directors or the holder of a qualifying floating charge. The purpose of administration is to seek to rescue viable companies and achieve better results for the creditors of companies that cannot be saved.

8.2.3 The application for an interim Administration Order or the filing of a notice of intention to appoint an administrator prevents any further enforcement action against the company until the application has been dealt with in the Court.

- No winding up order may be made
- No steps can be taken to enforce any security over the company's property or to repossess goods in the company's possession without the permission of the Court
- No other proceedings or other legal process may be commenced or continued without the Court's permission
- If the Company enters Administration, this protection will continue

8.2.4 Once a company enters Administration, the Administrator calls a meeting of creditors, who must approve the administrator's proposals for the company. If the creditors do not approve the proposals, the Court may provide that the appointment of the administrator shall cease to have effect from a specified time. If the proposals are agreed, the Administrator will do whatever is necessary to implement the plan.

8.3 **Company Voluntary Arrangement (CVA)** The procedures for this action are set out in **Appendix 3**. The aim of this procedure is to save the company. The basic procedure is as follows.

1. Directors of the company employ an independent Insolvency Practitioner to develop proposals for getting the company out of its financial difficulties
2. Proposals are filed at court
3. Meetings of the company's shareholders and the creditors are held to vote on the proposals. If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to court. Preferential creditors (e.g. Employees and secured creditors (e.g. a mortgage lender) cannot be bound by the arrangement without their consent

Subject to that, assuming that the required majorities are achieved (usually 75% by value of creditors present or by proxy must vote in favour of the arrangement), all creditors will be bound by the decision of the meeting whether or not they received notice.

8.3.1 Unlike Individual Voluntary Arrangements for individual

bankruptcies (see Operational Selection Policy **OSP32 - Records relating to Court Actions for Individual Insolvency (Case Files and Datasets) 1973-2003**), the Court does not create an Interim Order and does not protect the company from any enforcement action by creditors while the proposal is being considered. A creditor can, therefore, petition for the 'winding-up' of a company prior to the approval of the CVA. For this reason, CVA proposals are often made following the use of the Administration procedure. However, from 1 January 2003, a moratorium has been available for 'small' companies entering a CVA, which gives the company protection from any enforcement action by its creditors.

- 8.4 **Administrative Receivership (AR).** The term "*in receivership*" is used commonly to describe this procedure. This procedure is followed where a bank has a "*floating charge*" over a company's asset. A floating charge is where the creditor has securities on the whole of a company's assets and undertakings: not a "*fixed charge*" where the creditor only has securities for its loans on a particular property or asset. Only a registered company, or a limited liability partnership, can grant a floating charge to creditors. When a company goes into liquidation, enters administration appoints a receiver, or ceases trading as a going concern the floating charge then 'crystallizes' or fixes on the assets comprised in the charge. A creditor who holds a floating charge over a company's property created before the 15 September 2003 (see below) can pre-empt an administration by taking steps to appoint an AR upon receiving notice of an application for an administration order or notice of intention to appoint an Administrator, that such a creditor is required to be served with. The Courts must dismiss any administration application if an AR is already in office unless the person by whom the receiver was appointed consents to the appointment of the administrator. **N.B.** A holder of a floating charge created after the 15 September 2003 is prohibited from appointing an AR, subject to various exceptions, and therefore the holder of such a charge would have to make use of the administration procedure to enforce the charge.
- 8.4.1 **Who is the Administrative Receiver?** An AR is an Insolvency Practitioner appointed by a charge holder (usually a bank) under the terms of its floating charge to recover its loan from the company. The AR cannot be appointed until the charge holder has made a formal demand for the repayment of the loan. The charge holder may act because it feels that its security is inadequate or is at risk if the company continues to trade as it has done.
- 8.4.2 The AR's primary duty is to act in the interests of the charge holder that appointed him in selling off the company's assets. AR's, unlike Administrators, are not required to carry out their actions in such a way as to ensure the survival of the company. The AR has the power to carry out the business of the company for the purpose of

getting a better price for it through selling it as a going concern.

8.4.3 The AR attempts to get the best price for the company's assets. He then uses the proceeds of the sale to discharge the secured debts of the company in the following order of precedence.

- Preferential creditors (e.g. Employees unpaid wages are paid first from the sale of the assets. **N.B.** From 15 September 2003, the Crown gave up its preferential status – see 8.4
- The floating charge creditor (e.g. usually a single financial institution) is paid next
- Any surplus is paid back to the company, or to any liquidator subsequently appointed

8.5 **Compulsory Liquidation** The term “*Winding-Up*” or “*In Liquidation*” is used commonly to describe this procedure. A creditor who is owed an amount exceeding £750 can apply to the Court for a *Winding-Up Order*. The end result that is sought is to pay off all the debts owed and terminate the existence of the company as a legal entity.

8.5.1 **Voluntary Liquidation** A company can only be put into voluntary liquidation by its shareholders. The shareholders must hold a general meeting of the company and pass a resolution for voluntary winding-up. The company can nominate a liquidator. It must also call a meeting of creditors at which the creditors receive details of the company's financial affairs. The creditors can also nominate a different liquidator if they so wish and, should they do so, that liquidator would replace the shareholders' nominee.

8.5.2 The Companies Court in London and its satellite stations in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne and Preston District Registries (which have concurrent jurisdiction), together with those county courts that have insolvency jurisdiction, deal with the compulsory liquidation of companies and other matters under the Insolvency Act 1986 and the Companies Acts. Registrars deal with most proceedings in the Companies Court but Judges can hear certain applications.

8.5.3 **Appendix 1** The table indicates that a total of 10,148 Winding-up petitions were presented during 2001, out of which 4,417 resulted in Winding-up orders. The table also shows that the London Court deals with a majority of these actions.

8.5.4 **Appendix 5** outlines the procedures for the compulsory liquidation or winding up action. The **Official Receiver**, a Department of Trade and Industry official, plays a substantial role in investigating the company's dealings and reporting to the Court.

8.6 Investigation of Directors

8.6.1 Generally, a company being a legal entity in its own right is solely liable for its own debts. However, company directors can also find themselves liable in the following circumstances.

8.6.2 **Personal guarantees** Many large creditors will refuse to grant credit unless the directors personally guarantee the company liability. If the company is unable to pay for the debt and there are no assets out of which the creditor can obtain payment, the creditor can then enforce the liability against the individual director and his assets (e.g. his house).

8.6.3 **Fraudulent trading** If during the winding up of the company, the Liquidator discovers that the company's business has been carried out with intent to defraud the company's creditors, or for any fraudulent purpose, he can apply to the Court for an Order that any director who was party to this activity is liable to make a contribution to the company's assets of such an amount that the Court thinks fit. This involves proving that the person actually knew that the company would be unable to pay its debts.

8.6.4 **Wrongful trading** The Liquidator can apply for an Order against a director who knew that there was no reasonable prospect of the company avoiding an insolvent liquidation. It is a defence for the director to show that he took every step he ought to have taken to minimise the potential loss to creditors.

8.6.5 **Directors' Disqualification** The Court can also disqualify from acting as a director for between two and 15 years any person who is or has been a director of an insolvent company and whose conduct makes him unfit to be concerned in the management of a company. Breach of the Order is not only a criminal offence, but the individual may also be made personally liable for any debts incurred by the company while he was acting as a director.

9 High Court records preserved in The National Archives to date relating to cases of corporate insolvency

9.1 The **Report of the Committee on Legal Records (Cmnd 3084) (known as the Denning Report) August 1966** restricted preservation to High Court records only and noted that there were, generally, two kinds of records involved in corporate insolvency cases:

- Winding up cases – see s.8.5 above
- Chancery cases – encompassing all other company cases not concerned with winding up – see s. 8.1 to 8.4 above

9.2 The Denning Report concluded that there was little significant

information in the court **case file** records that is not duplicated in a more convenient form in the Board of Trade records that were available for permanent preservation at the time. For this reasons, it recommended the following preservation decisions

- Winding up files – permanently preserve selected files on the grounds of their historic, social, economic and procedural interest. These have been deposited into The National Archives series **J 13 - Supreme Court of Judicature: High Court of Justice, Companies Court: Companies (Winding-up) Proceedings**
- Chancery files - permanently preserve selected files on the grounds of their historic, social, economic and procedural interest. These have been deposited into The National Archives series **J 137 - Supreme Court of Judicature: High Court of Justice, Companies Court: Chancery Files.**

9.3 The Denning Report had also recommended that **registers**, which provide a conspectus of the cases dealt with should all be permanently preserved. To date the registers that have been permanently preserved in The National Archives are as follows.

- Court Books preserved in The National Archives series **J 100 - Supreme Court of Judicature: High Court of Justice, Companies Court: Court Books. N.B.** From 1993 the preservation of these Court Books was terminated: Registrars no longer took note of proceedings (the activity was delegated to his associates) and case number system that took over from this date could not cross-refer to the court lists. The notes themselves also became less detailed.
- Registrar's Notes preserved in The National Archives series **J 107 - Supreme Court of Judicature: High Court of Justice, Companies Court: Registrars' Notes.** The reason for the termination of these records after 1948 is unknown. However, the Registrars have since made notes on the corporate insolvency case files themselves and so it may be guessed that the Registrars Notes were terminated for this reason.
- Registers of Petitions preserved in The National Archives series **J 119 - Supreme Court of Judicature: High Court of Justice, Companies Court: Registers of Petitions. N.B.** An electronic case management system called WIPETS was used from 1986 to 1994 that recorded the Petitions. It is unclear what has happened to 1987-89 WIPETS reports. From 1994 the *Bacchus* computer system print-outs have been identified by The Court Service as

worthy of permanent preservation. These Bacchus reports of petitions cannot be migrated to the UK National Digital Archive of Datasets in e-format: no e-archiving facility exists for this dataset.

10 Corporate insolvency case papers – preservation of High Court (London) records since the *Denning Report*

10.1 From the Denning Report (1966) to the mid-1980's a 2% random sample of High Court Chancery files had been selected on an annual basis instead of the selection of files on the grounds of their historic, social, economic and procedural interest. The reasons for this change of strategy is unknown but it is possible that it was felt a random sample would better reflect the typical business of the High Court, Companies Court. The Court Service reduced this to a 1% random selection in 1998. The majority of Chancery files in J 137 date from 1952. Those that are not selected for permanent preservation are destroyed 15 years after the last paper on the file.

10.2 The most recent guidance from The Court Service is the ***Supreme Court of Judicature Companies Court Records Schedule (AMS: 4/26/9)*** created 16 July 2002. HM Court Service continues to employ a 1% random selection to extract files for permanent preservation. This published guidance only refers to the records of the High Court – Companies Court in the Strand, London.

11 Corporate insolvency case papers – preservation in the regions of England and Wales.

11.1 The ***Revised High Court (District Registry) and County Court Record Schedules*** created in the late 1990's provides disposal recommendations for companies' public records created by these Courts in the regions of England and Wales. Decisions on preservation are given as follows.

- The District Registry (High Court) records schedule recommends that companies' files must be destroyed after 15 years from the last paper. It is stated, "***those files of local or historical interest must be preserved in a local place of deposit after 30 years***". It also states, "*this is a selection that must be made at the court and could amount to several files a year or maybe none.*"
- The County Court Companies (winding up) files disposal decision make no recommendations for permanent preservation: all files are to be destroyed 15 years after the date of the last paper.

12 Appeals to the Chancery Division, Companies Court on the Orders and Judgements of County Courts.

12.1 Appeals on company court case orders generated in the County Courts are referred on appeal to the Companies Court in London. Examples of these records (where they have been preserved) may be found in **J 137 - Supreme Court of Judicature: High Court of Justice, Companies Court: Chancery Files**.

13 Court of Appeal (Civil Division) corporate insolvency case files – preservation from the Denning Report to the present.

13.1 The Court of Appeal (Civil Division) created in 1966 hears appeals on orders made by the High Court Companies Court. These can involve cases of corporate insolvency, although the exact number of cases on this subject is unknown. Grounds for appeal are stringently applied by the High Court Judges: only 25% of civil appeal applications proceed to the Court hearing. Appeals that proceed to Court can, of course, fail: there is no guarantee that the Court will find in favour of the appellant even though the right to appeal has been granted.

13.2 The **Supreme Court of Judicature Civil Appeals Office Draft Records Schedule (AMS: 4/26/2)** created 16 July 2002 is the latest guidance on records disposal from The Court Service for this Court. This makes the following recommendations for permanent preservation.

- **Civil Appeal case files.** Case details are recorded on the RECAP computer system. Selections of notable cases are selected for preservation annually. Files have been deposited to date in The National Archives series **J 157 - Supreme Court of Judicature: Court of Appeal (Civil Division) Office: Case File**
- **Computer archive tapes consisting of full case details.** Consultation is ongoing between RCJ IT Branch and The Court Service Records Management Unit on the permanent preservation of these tapes. None preserved in The National Archives to date
- **Court of Appeal Orders (from 1986).** Orders are removed from files due for destruction. When this is completed the Orders will be permanently preserved. None preserved in The National Archives to date

From 1981 to 1995 approximately 1000 civil appeal case files per year were created in the Court of Appeal (Civil Division). To date 183 case files have been selected for preservation in J 157 covering the years 1981 to 1995. This represents approximately 1% of the total case files created during this period. **Appendix 1, Table 5** indicates that during 2001 some 33 cases were directed to

the High Court from the District Registries but it is unclear whether these referred to individual bankruptcies or corporate insolvencies. It is also unclear as to what proportion of J 157 files concern corporate insolvency: case files in this series are described by appellant's name v. petitioner's name and do not indicate the nature of the case.

14 Companies Court, Chancery Division of the High Court monthly returns datasets

14.1 These returns were traditionally included in the ***Judicial Statistics Annual Reports*** distributed by the Lord Chancellor's Department (from July 2003 known as the Department for Constitutional Affairs (DCA), and from 9 May 2007 as the Ministry of Justice (MoJ)). They provide a summary of the rate of work managed by the Companies Court and those matters passed over to the County Courts. An agreement exists to capture these statistics at the UK National Digital Archive of Datasets (NDAD) in the Judicial Statistics dataset CRDA/8 series (The National Archives series LE 1). The information recorded includes the following.

- Name of the companies court
- Duration of data collection (e.g. from ... to...)
- Number of Winding Up Petitions (applications filed)
- Other petitions, applications and summonses (applications filed)
- Number of appointments before the Registrar listed
- Number of appointments before the Registrar unlisted
- Orders made – Winding up
- Orders made – but dismissed / withdrawn
- Orders made on other petitions, applications and summonses
- Petitions transferred to county courts

14.2 **Appendix 1** The table indicates that for the year 2001 the High Court and its regional District Registries, and the county courts having insolvency jurisdiction, dealt with 10,148 winding-up petitions, of which approximately 44% ended in winding up orders being made.

15 The National Archives policy on the preservation of Department of Trade and Industry (DTI) and agencies corporate insolvency case file records

15.1 Actions carried out in the Courts concerning corporate insolvencies conclude the pre-trial work (sometimes detailed investigative work) carried out by the DTI, its agencies and officials. The National Archives has issued a draft Operational Selection Policy on ***Case Files and Datasets generated by the Government Regulation***

of Companies (OSP25) in 2003. As the investigative work and court proceedings are initiated in different government departments this paper will refer to the selection proposals of Operational Selection Policy OSP25 as they will have some bearing on the selection of Court records relating to corporate insolvency by The National Archives.

15.2 **The principle of selecting the most information in the smallest space.** The Committee on Public Records (Grigg Committee) was set up in 1952 to examine the management of government records. Its proposals were influential in the drafting of the Public Records Act 1958. One of the recommendations of the ***Report of the Committee on Public Records (The Grigg Committee Report, 1954)*** concerning “particular instance papers” or case files was “*to determine what papers, if retained, would give the greatest amount of information in the smallest amount of space*” (para. 109, clause c)). The Committee’s aim was to avoid preserving duplicate information in the Public Record Office from other government departments that worked in the same business / functional area. The National Archives continues to adopt this general principle when selecting case files. The National Archives has a public duty to select public records efficiently and to avoid selecting duplicate information where no purpose will be served for researchers. Consequently, where Department A has copies of the majority of important working papers from Department B as well as the fuller investigative records created by Department A, it would not be The National Archives practice to select both sets of records: only those created by Department A would be selected.

15.3 The following DTI agencies have been identified as creators of records worthy of permanent preservation: The Insolvency Service; DTI Companies Investigation Branch; DTI Legal Services Directorate, Prosecution Branch. These records involve the investigation of companies by DTI and are relevant to this Operational Selection Policy as they involved decisions to prosecute and legal orders and actions in Court.

16 **The Insolvency Service records**

16.1 Official Receivers’ (Official Receivers’ Offices) case files including those in the regions of England and Wales are to be preserved as follows.

- **All cause célèbres cases: famous or infamous individuals/ companies or received substantial media interest**
- **OR cases that set a legal precedent; referred to in OR published report.** These contain copies of relevant court papers
- **An annual random selection of 1% of the remaining OR**

case files. These are to be held at The National Archives

16.2 Dissolved Companies case files including those in the regions of England and Wales are to be preserved as follows.

- **Of the Companies House case records of dissolved companies, to preserve in The National Archives 100 case files of those which have the highest company authorised or nominal capital (originally stated in the Memorandum of Association for the company).** These are likely to have nominal capital in excess of £250, 000. This is to ensure that records of the largest public and private companies that had significant economic influence locally and that, subsequently, became insolvent are preserved.

16.3 Official Receivers' (Public Interest Unit) case files.

- **An illustrative sample of cases to be preserved annually: only 80 companies wound up in public interest during 2002-03 – 2 files per year are to be preserved at The National Archives in the future**

16.4 Disqualification of Directors (Insolvency Service Prosecution Unit) case files.

- **Annually preserve a 1% illustrative random selection sample of the processes involved in disqualifying directors**

16.5 Prosecution case files (Insolvency Service Prosecution Unit), 1986 to date. Initial case files identifying suspected malpractice reported from Official Receivers, Insolvency Practitioners or from members of the public. These are eventually forwarded to the DTI Legal Services Directorate, Prosecution Branch. The following selection decision applies to these records

- **A random sample of 1% of these Prosecution Unit case files will be selected annually**
- **All cases that include legal precedents are to be preserved**

17 DTI Companies Investigation Branch records

17.1 These comprise the case files where criminal activity was suspected and where an investigation (always) and court action (sometimes) ensued.

1. COS series files, Companies Investigations Branch
2. CIB series files, Companies Investigations Branch

- Prosecution case files
3. BBSE series files, Companies Investigations Branch

From these file series the following preservation decisions apply.

All files and reports relating to inspections where a report was published will be preserved.

A ½% random sample of all complaint files in the BBSE themes 1 and 2 series will be preserved.

A 5% sample of all cases in which an investigation of alleged misconduct was initiated will be preserved.

Unpublished reports relating to selected files will also be preserved.

Working papers will not be selected.

18 DTI Legal Services Directorate, Prosecution Branch records

18.1 The Operational Selection Policy relating to the Regulation of Companies (OSP25) did not include records of legal proceedings generated by an investigation into a company's or its director's conduct.

18.2 It is felt that a greater number of relevant copies of court case records will be companies found on the Department of Trade and Industry, Legal Services Directorate, Prosecution Branch case files. Typically they contain the following, which would include copies of court records and more documents relating to the background of the investigation and prosecution.

- DTI Companies Investigation Branch Reports
- Copies of Companies Court records from the DTI Prosecuting Solicitors Branch
- Evidence used and set aside
- Reports issued post investigation
- Court orders
- Correspondence
- DTI Prosecuting Solicitors Branch reports on the case
- Director of Public Prosecutions advice

18.3 It is proposed that the selection of the above DTI case files follow the following criteria.

- Cause célèbre and precedent cases
- Cases that were subject to Criminal investigation Branch published reports

- A random illustrative sample of other Prosecution Branch case files: no more than 50 files per annum
- A random 1% illustrative sample of director disqualification Prosecution Branch records

As court records usually only contain scant information and the court order, the fuller record is likely to be held by the Department for Trade and Industry.

19 Proposals for the future permanent preservation and disposal of records of corporate insolvency court case files

19.1 Records relating to corporate insolvency that provide a national context

19.1.1 *Annual Judicial Statistics*
concerning national trends in corporate insolvency / winding up court actions created by the Department for Constitutional Affairs and its successor, the Ministry of Justice, to be preserved at the UK National Digital Archive of Datasets (NDAD) every year. These tables are to be contained in the UK National Digital Archive of Datasets (NDAD) series CRDA/8 and The National Archives reference LE 1: High Court of Justice – Chancery Division: Matters dealt within the Companies Court.

19.2 Companies Court and County Court corporate insolvencies Chancery case files

19.2.1 *Companies court case files concerning ‘cause célèbre’ and malpractice*
Companies Court and County Court case files will not be permanently preserved as they exist in a more convenient and fuller form in the case files to be selected from the DTI Prosecution Branch – see 18.3. Formerly, these records would have been accessioned into The National Archives series J 137 - Supreme Court of Judicature: High Court of Justice, Companies Court: Chancery Files or series J 13 - Supreme Court of Judicature: High Court of Justice, Companies Court: Companies (Winding-up) Proceedings.

19.2.2 *Court case files that involve significant levels of capital*
No court case files are to be permanently preserved as they exist in a more convenient and fuller form in the case files to be selected amongst the Insolvency Service Official Receivers’ Offices records and the DTI Companies House records and – see 16.1 and 16.2 respectively. Formerly, the High Court examples of these files were accessioned into The National Archives series J 137 - Supreme Court of Judicature: High Court of Justice, Companies Court: Chancery Files or J 13 - Supreme Court

of Judicature: High Court of Justice, Companies Court: Companies (Winding-up) Proceedings. County Court files were formerly transferred to relevant places of deposit for public records.

19.2.3 ***Routine case files***

These refer to the records that do not involve cases of malpractice, where the Nominees', Administrators' or Administrative Receivers' (Insolvency Practitioners') reports submitted to the Insolvency Courts throughout England and Wales were of a routine nature. Such actions had the objective of keeping the companies subject to insolvency actions running as a going concern. Procedures likely to be captured by such records are Company Voluntary Arrangements, Administrations and Administrative Receiverships – see sections 8.1 to 8.4 of this paper. The following selection of records for permanent preservation should be made.

19.2.3.1 **Records that demonstrate developments and changes in the way corporate insolvency was managed by the High Court and the County Courts are to be selected: in policy and the process / procedures of law. Each county / region to select illustrative example files that demonstrate changes in procedures and the application of new policies concerning corporate insolvencies in their region. Only a small number of files need to be selected: e.g. under 10 files. Initially these should cover existing arrangements: the three Chancery insolvency procedures available to the Companies Court in London, each District Registry and County Courts in the regions of England and Wales should be preserved.**

- **Notice of Intention to Appoint an Administrator**
- **Notice to Appoint an Administrator**
- **County Court Administration Order**
- **Company Voluntary Arrangements (N.B. AO and CVA procedures are normally mutually inclusive, see 8.2 and 8.3 of this paper)**
- **Administrative Receivership**

Once illustrative examples of changes in policy or in administrative procedures have been preserved for each region no further records need be preserved until further changes in policy or administrative procedures have been introduced: there is no requirement to preserve files annually unless such changes in policy or procedure happen to occur on an annual basis. High Court files should be accessioned into The National Archives series J 137 - Supreme Court of Judicature: High Court of Justice, Companies Court: Chancery Files. County Court files should be transferred to local places of deposit for public records.

19.3 **Compulsory liquidations (winding up) Court case files**

19.3.1 These records concern the winding-up of companies' procedures in the High Court and County Courts whereby the objective is to terminate the existence of the company as a legal entity. Some are likely to concern cases of malpractice, which would have been initiated in the Courts by The Prosecution Branch and Prosecuting Solicitors Branch of the DTI Legal Services Directorate. The following represents the proposals for the selection of records from Courts throughout the regions of England and Wales.

- **No winding-up of companies' case files are to be preserved from the High Court, District Registries or the County Courts.** Copies of the court records exist in a more convenient and fuller form in the case files to be selected from the Insolvency Service Official Receivers' Offices. See 16.1 and 16.2 of this paper
- **Companies' wound-up involving malpractice.** DTI Legal Services Directorate; Prosecution Branch case files will contain copies of most of the relevant Court case papers in addition to the fuller DTI investigation papers. Consequently, it is appropriate to select records from this source rather than the Court papers – see 16.1 to 16.3 of this paper
- **Routine cause célèbre companies' winding-up cases and cases of legal and historical significance.** OSP 25 – *The Regulation of Companies* will identifies those records worthy of permanent preservation that will include copies of most of the court papers – see 16.3 of this paper

The decision not to take any Court papers for the above is made with the Grigg principle in mind: to select "*the greatest amount of information in the smallest amount of space*" – see also s.15.2 – Denning Report recommendation.

19.4 **Disqualification of Directors case files**

Directors' Disqualification is sanctioned under the Company Directors Disqualification Act 1986. Where a director's conduct is considered to be unfit disqualification proceedings can be brought against the director for a period of between 2 and 15 years in the Courts. The Insolvency Service will initiate this Court action. The following preservation decisions are to be made for the High Court and the County Courts.

- **No Court case files concerning Director Disqualification are to be selected for permanent preservation from the High Court, District Registries or the County Courts.** The Insolvency Service will select a 1% illustrative example of its own case files that are also likely to contain copies of Court papers – see s.18.3 of this paper. Further, the incidences of directors making court appearances are likely

to be reduced in future due to a change in procedures by the Insolvency Service whereby the Director will sign an undertaking rather than make a Court appearance.

19.5 **Court of Appeal (Civil Division) corporate insolvency case files**

Successful grounds for appeal that proceed to the Court of Appeal (Civil Division) on corporate insolvency are likely to be legally significant – clarifying points of law - and may set legal precedents. However, the information is recorded more succinctly in other sources: most notably, precedent cases are recorded in the Law Reports. Court case file contents are usually restricted to summonses, appeal applications and judgements / orders made by the Court. Therefore;

- **No Appeal Court (Civil Division) records concerning corporate insolvencies will be permanently preserved at The National Archives. Interesting and precedent cases will be referred to in the OR published reports or in the published Law Reports.** Formerly, these files would have been accessioned into The National Archives series J 157 - Supreme Court of Judicature: Court of Appeal (Civil Division) Office: Case Files.

Implementation of the Policy

The corporate insolvency court case papers selection proposals presented in this paper largely comprise negative recommendations: proposals not to preserve the Court papers. This negative recommendation on Court papers is qualified by The National Archives' intention to select for permanent preservation an appropriate type and quantity of files from the Department for Trade and Industry and the Insolvency Service. Please refer to **OSP25 – Case Files and Datasets generated by the Government Regulation of Companies**.

Appendix 1

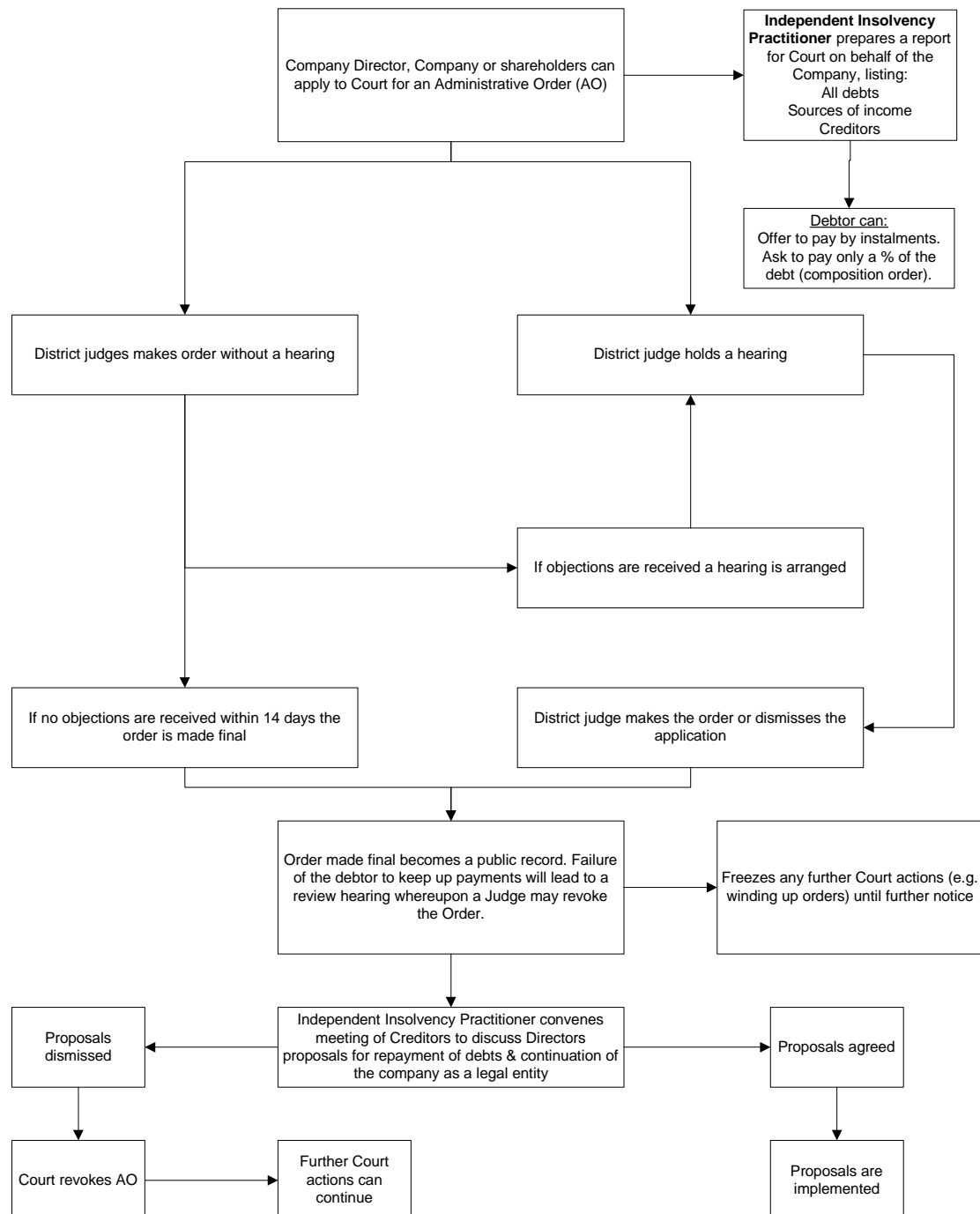
Summary of Corporate Insolvency Statistics for the High Court and County Courts 2001

Orders made	London	Outside London	Total
Winding up orders made	2, 567	1, 850	4, 417
Winding up orders dismissed / withdrawn	3, 458	2, 273	5, 731
Transfers to County Courts	1, 824	1, 716	3, 540
Total	22, 263	7, 074	29, 337

All data extracted from the Lord Chancellor's Department Judicial Statistics 2001 publication.

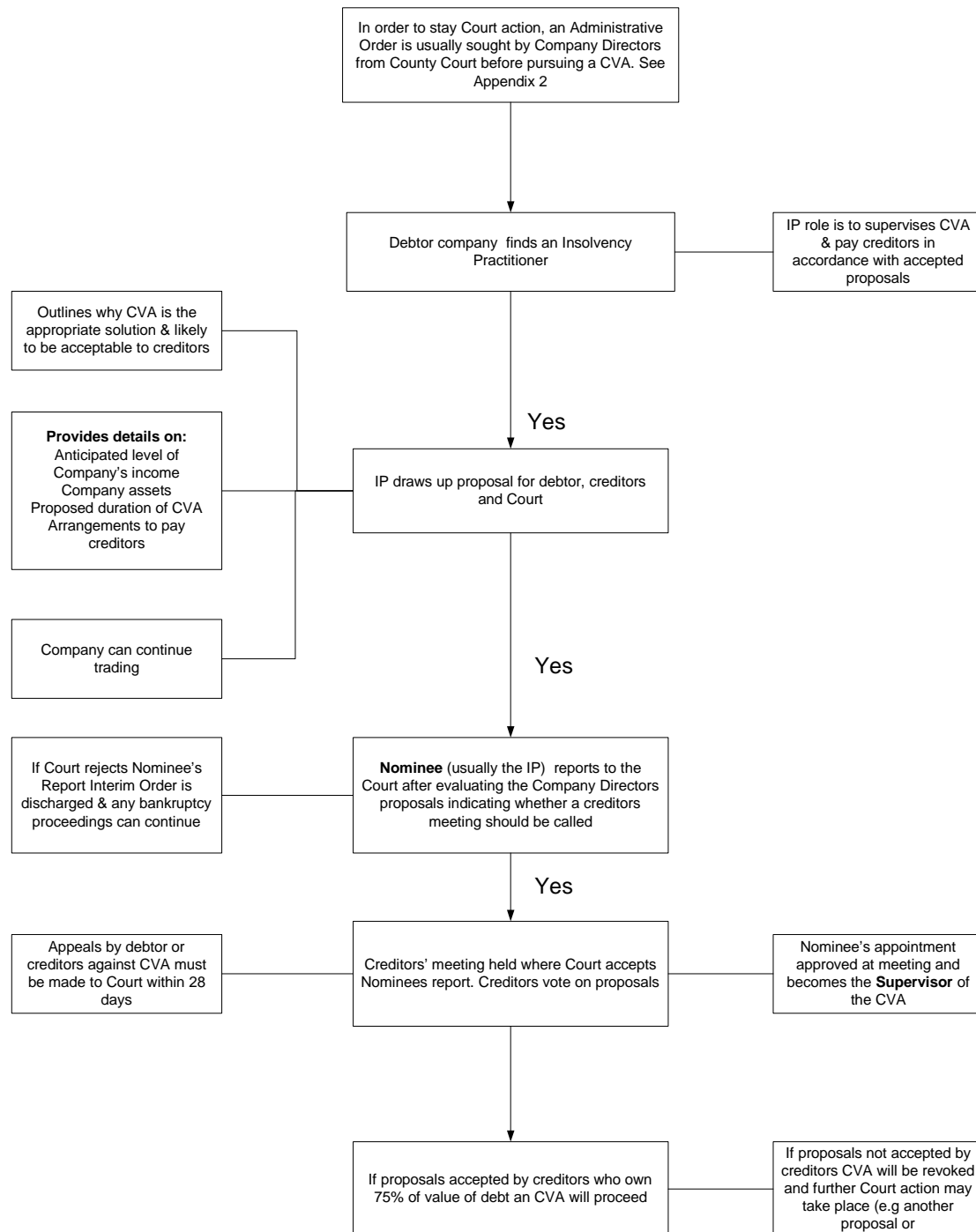
Appendix 2

Administration procedure to 2003

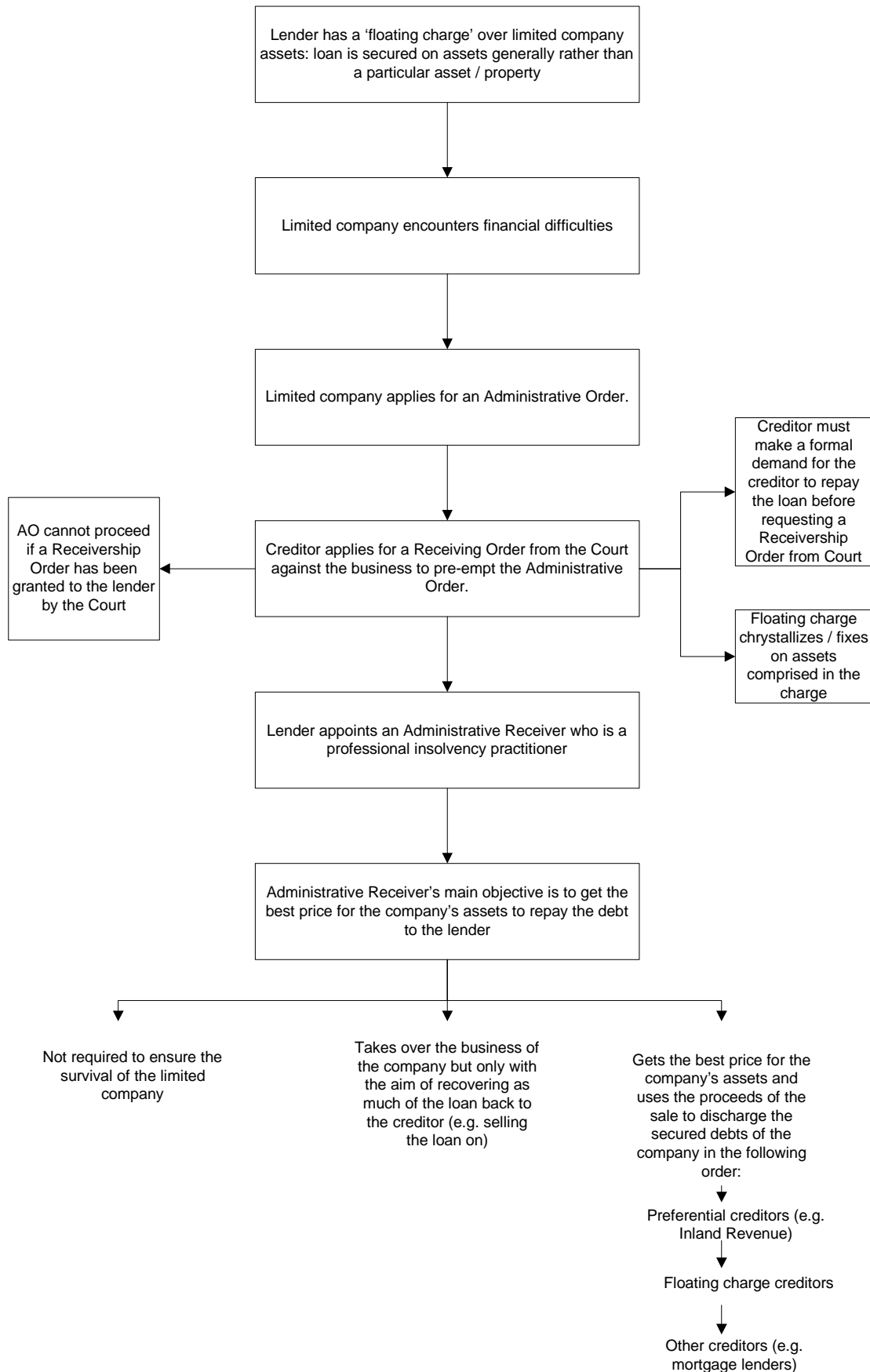


Appendix 3

Corporate Voluntary Arrangement procedure to 2003



Appendix 4 – Administrative Receivership Procedure to 2003



Appendix 5

Winding Up Procedure to 2003

