



Glossary of Terms – The United States of America

Standard Insolvency and Related Terms	
Adequate Protection	Adequate protection payments are payments, liens, administrative claims and/or other forms of value, typically provided to a secured creditor to compensate such creditor while the automatic stay is in place in order to protect the secured party from any diminution of the value of its collateral.
Administrative Claim	A bankruptcy claim represented by value which the claimant has provided to the debtor, such as for products delivered, certain taxes, wages, rent and professional fees, in order to help preserve the bankruptcy estate.
Adversarial Proceeding	A bankruptcy court action instituted by a party in interest through the filing and service of summons and complaint upon one or more defendants.
Antecedent Transactions	Transactions that were made prior to a company's filing for bankruptcy. These transactions may be recoverable for the benefit of the bankruptcy estate if the debtor was insolvent at the time they were made.
Automatic Stay	An automatic injunction that halts actions by creditors, with certain exceptions, to take actions against the debtor, including for the collection of debts from a debtor who has declared bankruptcy.
Bankruptcy	A federal legal proceeding instituted under the U.S. Bankruptcy Code by or against a person or business that is unable to timely satisfy their outstanding debts.
Bankruptcy Judge	A judicial officer of the United States district court who is the court official with decision-making power over federal bankruptcy cases.
Bankruptcy Trustee	The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the U.S. trustee or bankruptcy administrator. The trustee is a private individual or corporation appointed in all chapter 7, chapter 12, and chapter 13 cases (and some chapter 11 cases by the Court upon certain findings). The trustee's responsibilities include reviewing the debtor's petition and schedules and bringing actions against creditors or the debtor to recover property of the bankruptcy estate. In chapter 7, the trustee liquidates property of the estate, and makes distributions to creditors. Trustees in chapter 12 and 13 have similar duties to a chapter 7 trustee and the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.
Bar Date	Date by which a proof of claim must be or must have been filed, as established by the Clerk's deadline or an order of the Bankruptcy Court.
Chapter 5	Chapter 5 refers to a portion of the Bankruptcy Code. There are 3 subchapters broken out as follows: Subchapter 1 – Creditors & Claims, Subchapter 2 – Debtor's Duties and Benefits, Subchapter 3 – The Estate
Chapter 7	A liquidation bankruptcy that discharges most of the Debtor's general unsecured debts without the need to pay back balances through a repayment plan. A bankruptcy trustee is appointed to administer the case. In addition to reviewing the bankruptcy papers and supporting documents, the Chapter 7 trustee's job is to sell the non-exempt property (property that you can't protect with a bankruptcy exemption) to pay back the Debtor's creditors. If there are no non-exempt assets, the creditors receive nothing.
Chapter 11	A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy. A chapter 11 case must culminate with a plan of reorganization or plan of liquidation approved by the Court. An individual with certain debts may file a chapter 11 but the majority of them are filed by business debtors.
Chapter 12	Chapter 12 is a reorganization proceeding of a family farmer or fisherman. Under chapter 12, debtors propose a repayment plan to make installment payments to creditors over three to five years. Generally, the plan must provide for payments over three years unless the court approves a longer period "for cause."
Chapter 13	Also called a wage earner's plan, it enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make instalment payments to creditors on their mortgage or other secured debt over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause."
Chapter 15	Chapter 15 is the U.S. adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Chapter 15 is filed by a foreign fiduciary (representative) as an "ancillary" proceeding to a main insolvency proceeding of the debtor in another jurisdiction outside of the U.S. Chapter 15 is typically filed to protect and allow the foreign representative to administer the debtor's U.S. assets with a bankruptcy stay in place as to those assets and the debtor. With some exceptions, the "main" insolvency case takes precedence over the Chapter 15 and the U.S. Bankruptcy Judge is to be guided by the rulings in the main case. Assets and claims may be liquidated in the Chapter 15 for the benefit of the debtor in its main case.
Chapter 22	Refers to a company's second chapter 11 bankruptcy filing.
Classification of Creditors	Creditors and interest holders are classified together or separately under a chapter 11 plan depending upon the similarity of their claims and interests.
Clawback Period	Allows the trustee to look at the debtor's financial transactions before the debtor filed for bankruptcy, to determine if the debtor improperly transferred or gave away property that should be part of the debtor's estate. If so, the trustee can bring an action to "claw it back", undoing the transaction and bringing that property into the debtor's estate. If the



	property is not exempt, the trustee can sell it for the benefit of the debtor's creditors.
Company	A business entity most often formed under applicable law.
Consent Judgment	A judgment that a defendant agrees to have entered against it as opposed to a judgment rendered against the defendant by the decision of the court or a jury.
Contingent Claim	A claim that may be owed by the debtor under certain circumstances (e.g., where the debtor is a co-signer on another person's loan and that person fails to pay).
Cram Down	When the debtor requests the court to confirm a plan of reorganization over the disapproval and objection of a dissenting class of creditors. The Bankruptcy Code has specific "cram down" requirements which the debtor's plan must satisfy.
Creditor	An entity that has a claim against the debtor for a debt which arose at the time of or prior to the petition date.
Creditor Meeting	Also known as a 341(a) meeting, a meeting is held in a bankruptcy case shortly after it is filed. It is conducted by a representative of the Office of the U.S. Trustee and permits creditors and other interested parties to ask the debtor general questions about the bankruptcy case.
Creditor's Committee	A group of creditors in a case appointed by the U.S. Trustee Office to sit on a committee and act as a fiduciary representative of the interests of all of the creditor body in the case. Typically, the committee is appointed in a chapter 11 case to represent the interests of unsecured creditors.
Creditors' Voluntary Liquidation	In the U.S., creditors may request that the debtor voluntarily wind up a business formally or informally. There is no formal "creditors' voluntary liquidation" proceeding under U.S. law but there are alternative proceedings which may or may not involve the debtor's consent (i.e., voluntary winding up under state law; chapter 7, assignment for the benefit of creditors).
Critical Vendor	Certain U.S. bankruptcy jurisdictions permit the debtor to designate (with Court approval) vendors as critical because of the nature of the goods or services they provide to the debtor which in turn may allow the debtor to pay or satisfy some or all of that vendor's pre-petition claim against the debtor.
Debentures	A debenture is a type of debt instrument unsecured by collateral. Since debentures have no collateral backing, debentures must rely on the creditworthiness and reputation of the issuer for support. Both corporations and governments frequently issue debentures to raise capital or funds.
Debtor in Possession	Also known as a "DIP", this is a debtor who has retained control over its assets in a Chapter 11, 13 or 15 as opposed to relinquishing control of the same to a trustee in a Chapter 7.
Debtor in Possession Financing	Debtor in Possession ("DIP") financing is a special form of financing provided to a debtor during a restructuring proceeding to allow it to operate under chapter 11 of the Bankruptcy Code. The terms and conditions of the DIP financing must be approved by the Bankruptcy Court on notice to interested parties including secured creditors who might be effected.
Defendant	An individual (or business) against whom a lawsuit is filed.
Discharge	Refers to an order entered by the Bankruptcy Court relieving the debtor of its debts other than those which it has re-affirmed during the case. A corporation does not receive a discharge under the Bankruptcy Code.
Disclosure Orders	Parties to litigation identifying and making available to each other (unless privileged or otherwise confidential) relevant documents in their control, in accordance with a court order.
Disclosure Statement	A document that must contain information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor to make an informed judgment about the debtor's plan of reorganization.
Dissolution	The last stage of liquidation, the process by which a company (or part of a company) is brought to an end, and the assets and property of the company are finally distributed.
Equity Committee	A group who represent a company's stockholders in a bankruptcy proceeding. This type of committee may be appointed by the U.S. Trustee Office but most often it is an "ad hoc" committee.
Fee Applications	A detailed statement of services rendered, time expended, and amounts requested that is submitted by estate professionals to the Bankruptcy Court in a request for compensation.
First Day Motions	Customary motions, applications and related proposed orders filed by chapter 11 debtors and debtors in possession in or around the first day of the Chapter 11 case. Such relief is usually requested on an emergent basis to allow the debtor to continue with its business operations without additional disruption.
Forbearance Agreement	Lender's agreement to modify or suspend for a period of time its right to receive payments from the debtor.
Fraudulent Transfers	Assets or interests conveyed by or on behalf of the debtor prior to the case for less than reasonably equivalent value and made when the debtor was insolvent or rendered insolvent by such transfer.
Guarantee	The legal promise of another (usually to pay) to pay the debt of the primary obligor if it fails to pay the debt as and when due.
Injunction	A court order that compels a party to do or refrain from doing specific acts.
Insider (of corporate debtor)	A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the debtor.
Insider (of individual debtor)	Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or a corporation of which the debtor is a director, officer, or person in control.
Involuntary Petition	A bankruptcy proceeding initiated typically by three or more creditors of the debtor. An involuntary bankruptcy petition must be filed with the court to initiate the proceedings, and



	<p>the alleged debtor may contest the petition on various grounds including that the creditors' claims are in <i>bona fide</i> dispute. Petitioning creditors are qualified to file an involuntary petition if they hold claims against the debtor that equal at least \$16,750 (as of January 2020); and demonstrate that the debtor is generally not paying debts as they become due.</p> <p>If the debtor has less than 12 qualifying creditors, an involuntary petition may be filed by a single qualifying creditor. If a debtor has 12 or more creditors, at least three creditors must join an involuntary petition.</p>
Ipso Facto Clauses	The phrase <i>ipso facto</i> is Latin for "by the fact itself." <i>Ipso facto</i> clauses are sometimes included in lease and purchase contracts, and they provide that if the lessee or purchaser becomes insolvent, or files for bankruptcy protection, then the contract automatically terminates. <i>Ipso facto</i> clauses are typically void and unenforceable in a bankruptcy proceeding in the U.S.
Judgment	A court decision, order and/or decree determining a legal matter, typically a complaint or other contested matter.
Lien	An interest granted by the debtor, or which arises legally by statute, to a creditor pledging or otherwise securing as a matter of law, the debtor's property as collateral or security for that creditor's claim. Typically, a lien arises by an agreement between the debtor and creditor or under a statute which grants a lien as a matter of law to secure the claim (i.e., tax lien).
Limited Liability Partnership	LLPs are a flexible legal and tax partnership entity that allows all of its partners to benefit from economies of scale by working together as a company while also limiting their liability for the actions of their other partners.
Liquidation	The sale or other realization of value of the assets of the debtor. Liquidation may be voluntary through a formal or informal process or involuntary if permitted by the court.
Liquidator	A person appointed to sell or otherwise realize value from the assets of the debtor. Liquidators may be retained or appointed solely to sell the assets of a company or vested with wider responsibilities such as winding up the company. In the U.S., liquidators are often private companies that specialize in selling assets for the bankruptcy estate. They are often brought in at the inception of a case, or during it, to help the debtor sell its assets.
Members' Voluntary Liquidation	The U.S. does not have a "members' voluntary liquidation" statute but does have similar laws which allow a company's owners to voluntarily liquidate the company privately under state law or through a formal liquidation proceeding such as a state court receivership, an assignment for the benefit of creditors or a bankruptcy.
Non-Dischargeable Debt	A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, debts for alimony or child support, certain taxes, fines and penalties, certain environmental liabilities, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime.
Operating Reports	A report of the debtor's financial operations filed with the Bankruptcy Court on a monthly basis.
Partnership	A formal arrangement by two or more parties to manage and operate a business and share its profits.
Petition	The document filed by the debtor (in a voluntary case) or by creditors (in an involuntary case) which commences the bankruptcy case. There are official forms for bankruptcy petitions. A case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile, residence, principal business or assets for at least the prior 180 days. A petition may be a voluntary petition, which is filed by the debtor, or it may be an involuntary petition, which is filed by creditors that meet certain requirements. A voluntary petition must adhere to the format of Form 1 of the Official Forms prescribed by the Judicial Conference of the United States. Unless the court orders otherwise, the debtor also must file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement of financial affairs.
Plan Confirmation	This is the Bankruptcy Court's approval of a plan of reorganization or liquidation in chapter 11, or payment plan in chapter 12 or 13. The court will conduct a plan confirmation hearing to be certain that the debtor's plan meet the requirements of the Bankruptcy Code including that it is proposed in good faith and is fair and equitable in its treatment of claims and classes of claims.
Plan of Reorganization	In a chapter 11 bankruptcy, this is the document filed by the debtor which provides for the structure pursuant to which the debtor will ask the court to allow it to emerge from bankruptcy. The plan will provide for adjustment of debts pursuant to certain priorities and classifications of claims proscribed by the Bankruptcy Code. It may provide for the debtor to emerge as a new, reorganized business or it may provide for the liquidation of its assets, or both. The plan binds all creditors and other parties in interest on notice of the plan. A corporate debtor is not discharged from its debts but the claimants on those debts are bound by the plan treatment of their claims like a contract.
Post-petition transfer	A transfer of the debtor's property made after the commencement of the case.
Preference	<p>A "preference" is defined by Section 547 of the Bankruptcy Code as:</p> <ol style="list-style-type: none"> 1) Payment on an "antecedent" (meaning a previously incurred as opposed to current) debt; 2) Made while the debtor was insolvent (meaning its assets are less than its liabilities); 3) To a non-insider creditor, within 90 days of the filing of the bankruptcy;



	4) That allows the creditor to receive more on its claim than it would have, had the payment not been made and the claim paid through the bankruptcy proceeding.
Proof of Claim	A bankruptcy form document pursuant to which creditors and others may file "proof" of the nature and amount of their claim against the debtor in the bankruptcy.
Receiver	In a receivership, the U.S. state court appoints an independent fiduciary, who effectively manages all aspects of a troubled company's business under state receivership law.
Receiver appointed under a court order	An officer appointed by the court who is given control of the assets of a business, or specified assets, with direction to operate and often to liquidate them and distribute the proceeds. A court order is typically required to appoint a receiver, unless the company consents to the appointment, and the terms of the order describe the receiver's duties and powers.
Receivership	A state court proceeding whereby the company is placed (usually involuntarily) into a proceeding where a fiduciary known as a receiver is appointed to take control of the company's assets for purposes of operating them and most often liquidating them for the benefit of the company's creditors.
Schedules	Detailed lists filed by the debtor along with (or shortly after filing) the petition showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)
Secured Creditor	A creditor with the benefit of a security interest or other lien granted in or otherwise arising over some or all of the assets of the debtor.
Security Interest	A lien granted by the debtor to the creditor (typically a lender) on the debtor's property to secure the debt (typically a loan).
Shadow Director	Holder of controlling or majority stock (share) of a private firm who is not (technically) a director and does not openly participate in the firm's governance, but whose directions or instructions are routinely complied with by the employees or other the directors.
Single Asset Real-Estate	A single property or project, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental. In a chapter 11, a single asset real estate debtor must comply with different, often tighter and more secured creditor (mortgagee) favourable guidelines and timelines in order to emerge from bankruptcy.
Sole Proprietorship	This is an unincorporated business that has only one owner who pays personal income tax on profits earned from the business.
Solvency	With reference to an entity other than a partnership and a municipality, balance sheet insolvency is generally a debtor's financial condition such that the sum of the entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of: 1) property transferred, concealed or removed with intent to hinder, delay, or defraud such entity's creditors; and 2) property that may be exempted from property of the estate under section 522 of the Bankruptcy Code. Solvency may also be viewed from the perspective of whether the debtor is paying its debts as they become due in the ordinary course of its business.
Statement of Financial Affairs	A financial form filed by the debtor at the time of the petition (or shortly thereafter) setting forth the debtor's financial condition and other financial information, such as its balance sheet, income statement and other pertinent financial data concerning its operations, assets, liabilities and documents representing them.
Trustee Fees	In a chapter 11, the Office of the U.S. Trustee is entitled to collect quarterly fees from the debtor based on its expenditures in the case. In Chapter 7, 12 or 13 cases, the Trustee collects fees from the debtor (its assets) based on formulas which are driven by the recovery and distribution of assets in the case.
Unsecured Creditor	A claim in a bankruptcy which is not secured by a lien on assets of the debtor.
US Trustee	An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties. Two jurisdictions in the U.S. (Alabama and North Carolina) have a bankruptcy administrator's office and program which is very similar to the U.S. Trustee Offices in other states. The bankruptcy administrator is appointed to oversee the case rather than a trustee.
Voluntary Liquidation	A self-imposed wind-up and dissolution of a company that has been approved by its shareholders.
Voluntary Petition	An insolvent debtor files a petition with the court to declare bankruptcy because he or she (in the case of an individual) or it (in the case of a business entity) is unable to pay off debts.
Winding Up Order	There is no winding up order in the U.S. The equivalent would be the Order of Discharge in a Chapter 7 or the Plan Confirmation Order in a Chapter 11, 12, or 13.

Frequently Used terms	
Going concern	A company that has the resources needed to continue operating indefinitely until it provides evidence to the contrary. Larger companies (and almost all public companies) will receive annually a "going concern" opinion from its auditors. This lets creditors and shareholders know that the company is solvent and has the resources to continue with its operations in the ordinary course.



Insolvency-Related Legislation	
U.S. Bankruptcy Code	https://www.law.cornell.edu/uscode/text/11
Delaware Receivership Statute	https://law.justia.com/codes/delaware/2014/title-8/chapter-1/subchapter-vii/section-226
Delaware Dissolution Statute	https://law.justia.com/codes/delaware/2014/title-8/chapter-1/subchapter-x/
New York Receivership Statute	https://law.justia.com/codes/new-york/2014/bsc/article-12/
New York Non-Judicial Dissolution Statute	https://law.justia.com/codes/new-york/2012/bsc/article-10/
New York Judicial Dissolution Statute	https://law.justia.com/codes/new-york/2014/bsc/article-11/
California Assignment for the Benefit of Creditors Statute	https://law.justia.com/codes/california/2010/ccp/493.010-493.060.html
Small Business Reorganization Act (CARES)	https://www.archerlaw.com/impact-of-the-cares-act-on-the-small-business-reorganization-act/

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