

## Handling the Insolvent Tenant

*For cash-strapped tenants facing a raft of creditors the landlord is often one of the first to suffer. The usual remedies open to a landlord against a solvent tenant, including the use of bailiffs to levy distress or even forfeiting the premises, ensure that it can act swiftly to control an arrears situation. However, many landlords are unaware that their remedies are massively diluted if the tenant enters into a Voluntary Arrangement with its creditors or is placed into Administration.*

Once a tenant is in the temporary safe harbour of a Voluntary Arrangement or Administration, levying distress, forfeiture and in fact any court proceedings are only available with the permission of the Court, whilst the tenant is allowed a period of time to try to trade back into solvency. There is, of course, no guarantee that a tenant will be able to achieve this but in the meantime the landlord is potentially faced with mounting arrears of rent and very few options.

By contrast, if a tenant goes into Liquidation, whilst the usual remedies are available, there is often little point in pursuing a tenant for rent when it is clearly without funds. If the Liquidator determines that there is no value in the lease, he will often forfeit it shortly after his appointment or at the first creditor's meeting. But beware of the temptation to press for forfeiture as soon as possible - if the market is slow, there may be a strategic benefit in the liquidator holding the lease in the short term, thus keeping the landlord's liability for rates over any void period to a minimum.

For any insolvency situation, whether as a tenant or as a landlord, the focus should be on effective and co-ordinated management from the outset. As soon as a problem with arrears has been identified, it is in the interests of both parties to discuss a mutually satisfactory way forward. A properly structured agreement can preserve the landlord's position and ensure that, whether in a medium or longer term, there is the minimum risk of not recovering the arrears in full whilst allowing the tenant to continue to trade.

If the landlord takes good, commercial advice when negotiating lease terms with its tenants then the careful use of Rent Deposit Deeds and personal guarantees can also ensure that, even if insolvency strikes, he is not left high and dry.

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