

Dealing with insolvent Credit Hire Organisations: A practical guide

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This article deals with the effect on claims, both pre-litigation and post, which are driven by Credit Hire Organisations (CHOs) who are insolvent or begin an insolvency process. We have focused on practical considerations to identify such claims as well as what you will need to bear in mind when handling credit hire claims where the CHO is insolvent.

Background

There are three main strands: -

1. Where a company has been wound up as a result of becoming insolvent, the legal entity no longer exists. Section 130(2) of the Insolvency Act 1986 states that when a winding up order has been made, no action or proceeding shall be proceeded with except with permission of the court. This would involve restoring the company to the Companies House register and applies where the CHO is Ltd or a Plc and is a party to the litigation.
2. When a company enters a formal insolvency process, such as administration or liquidation, it retains any claims in law it may have before insolvency, including claims for breach of contract. The administrator or liquidator (office-holder) will take on the mantle of pursuing any such claims on behalf of the CHO, whether by sending a payment pack pre-litigation or by virtue of issuing proceedings. An office-holder can be identified by visiting The Gazette.
3. A CHO may assign its rights to another company. An assignment is the transfer of a right from one party to another and a cause of action by which a party may be able to enforce a right is, in principle, capable of assignment. Any assigned rights take effect from the moment they are transferred and may extend to claims that have yet to be issued. Therefore an assignee may, in principle, send a payment pack seeking payment of hire charges even though they were not an original party to the agreement. The requirements for legal assignment are listed within section 136 of the Law of Property Act 1925 and include giving assignment in writing signed by the assignor and giving notice of the assignment to other parties to the claim.

Key terms defined

Dissolution: involves voluntarily striking a solvent company off the register at Companies House.

Insolvent: where a company is either unable to pay its debts as they fall due or where the value of the company's assets is less than the amount of its liabilities.

Administration: an insolvency process which allows for the reorganisation of a company or the realisation of its assets in order to achieve one of the statutory purposes of administration.

Liquidation: another insolvency process whereby the assets of a company are realised and distributed to creditors in satisfaction of the debts that they are owed and in the order of priority set out in the Insolvency Act 1986.

Winding up: involves ending all business affairs and includes the closure of the company. Winding up is the process that leads up to the dissolution of a company

Bankruptcy: a legal process applicable to individuals and not companies, where the bankrupt's estate is realised and distributed by a trustee.

How to check the status of a CHO

Before validating and paying a payment pack, it is important to check the status of the CHO. To do this you can:

- Conduct charge free open source investigations via Companies House website^[1]. These searches will provide basic company information, including company status and insolvency information.
- Check company status and insolvency information on Companies House :
 1. Search the register and identify the key company via name, address or company number
 2. Company status, incorporation date and dissolution data (if applicable) will be available on the company overview

landing page. Full access to company information held on the platform is via multiple “tabs” which are accessible by clicking on the required tab via the landing page.

3. The Insolvency “tab” will provide you with the following information:

- Petition date
- Commencement of; and conclusion of winding up dates
- Dissolution due date

4. The filing history “tab” will provide all filed documentation history and access said filed documents (PDF format); including the following:

- Notices of compulsory strike off / suspensions and discontinuances
- Winding up orders
- Annual returns / accounts

- In addition to basic company searches, it may also be beneficial to contact in house or panel firm intelligence teams to get an understanding of the wider fraud risks associated with the company.

What to do if the CHO is insolvent

There are 3 main aspects to consider when dealing with such claims: -

1. In the vast majority of cases, credit hire charges are claimed by the individual who has contracted with a CHO for a replacement vehicle. Therefore, any assignment as between the insolvent CHO and its successor ought to have no effect on the litigation. However, as those charges will ultimately be paid to the assignee, it is vital that where a CHO is known to have entered into an insolvency process, confirmation is sought as to whether the assets of the CHO are intended to be assigned. If so, a Notice of Assignment should be obtained which will provide peace of mind that any payments arising from credit hire charges will be made to the correct entity.
2. If it transpires that a CHO has entered a formal insolvency process but has not assigned their rights to another entity and does not intend to do so, the office-holder is likely to take a fairly pragmatic view of any live claims that may benefit the CHO. Office-holders are unlikely to have strong feelings about commercial claims against unconnected parties and in any event, are unlikely to have any knowledge of the factual background to a claim. In those circumstances, pressure may be exerted on the office-holder to discontinue the part of a claim relating to hire charges.
3. In circumstances where the CHO has dissolved during the course of proceedings, the legal entity no longer exists and as such, there is no contract as between the hirer and the CHO that can be enforced against the defendant. Where that is the case, you should look to make an application for summary judgment on the part of the claim that relates to hire charges.

[1] <https://www.gov.uk/government/organisations/companies-house>

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