

## Glossary

### Our words and their meanings



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#### A

##### **Accountant**

An accountant is a qualified person who is skilled at managing and analysing business financial records.

##### **Adjudication**

Adjudication or 'order of adjudication' means the filing of a debtor's petition, or Court order adjudging a person bankrupt on a creditor's petition.

##### **Administrator**

In relation to Voluntary Administration, an administrator is a person appointed by a company in financial difficulty, a liquidator, a secured creditor or the Court to examine the company's affairs with a view to preparing a proposal to creditors for the rehabilitation or reorganisation of the company.

##### **Administration**

This refers to the work undertaken by the Official Assignee in relation to all insolvent estates including bankruptcies, liquidations, No Asset Procedures and to a lesser extent Summary Instalment Orders. For bankruptcies and liquidations, this will involve the investigation of a person or company's affairs and possible sale of their assets for the benefit of their creditors.

##### **Affidavit**

A sworn written statement

##### **Annulment**

The process where a Court declares a bankruptcy invalid or sets it aside.

##### **Appeal**

A bankrupt or creditor or any other person whose interests have been negatively affected by an act or decision of the Official Assignee, may apply to the Court to reverse or modify the act or decision complained.

##### **Applicant**

A person that makes an application for entry to bankruptcy, a No Asset Procedure (NAP) or for a Summary Instalment Order (SIO). Upon acceptance of their application by the Official Assignee, the applicant ceases to be an applicant and becomes a bankrupt, a NAP debtor or a SIO debtor.

##### **Arrears**

Being in arrears means you have an unpaid overdue debt.

## **Assets**

For the purposes of the Insolvency Act an asset is something which is owned by a bankrupt prior to bankruptcy, or bought or received during bankruptcy (or by a company in liquidation).

## **Assignee**

Please refer to '[Official Assignee](#)'.

## **Associate Judge**

A judge of the High Court that presides over bankruptcy and liquidation matters. An Associate Judge adjudicates a person bankrupt or places a company into liquidation following an application by a creditor, director or interested party.

## **Attachment Order**

An order that can be obtained which requires a debtor's employer to deduct a set amount of money from the debtor's income and to pay it directly to the party that obtained the order. The Official Assignee may obtain an attachment order where a bankrupt refuses to voluntarily make contributions after being assessed for contributions.

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## **B**

### **Bankrupt**

A bankrupt is a person that has been adjudicated bankrupt by the courts because they are unable to pay their debts as they fall due.

### **Bankruptcy**

A legal process where the assets of an insolvent person are administered and distributed by the Official Assignee for the benefit of all of their creditors.

### **Bankruptcy notice**

A notice served on a debtor by a creditor seeking repayment of a debt and giving notice that bankruptcy proceedings may result if the amount remains unpaid.

### **Banned director**

A person who is banned or prohibited from being a company director or managing a company. The length of time a person is prohibited varies, depending on the way in which the prohibition occurred.

### **Beneficiary**

A beneficiary in the broadest sense is a natural person or other legal entity who receives money or other benefits from a benefactor.

### **Budget advisor**

A budget adviser is able to help you sort out your financial problems by offering assistance such as preparing a budget or contacting creditors.

### **Budget form**

A form completed by a bankrupt listing their income and expenses. This form is reviewed by the Official Assignee to determine if the bankrupt is in a position to make contributions to the Official Assignee for the benefit of their creditors.

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## **C**

### **Cash flow**

The movement of money that you have coming in and going out.

### **Certificate of discharge**

A certificate which confirms the date of a person's discharge from bankruptcy.

### **Citizens Advice Bureau**

Citizens Advice Bureau is a voluntary organisation providing free, confidential information and advice to anyone about any query or problem.

### **Claim**

A creditor can file a claim with the Official Assignee for the right to payment from a debtor or the debtor's property.

## **Consent to travel**

Any person who is an undischarged bankrupt must obtain the express written consent of the Official Assignee prior to leaving New Zealand.

## **Contract**

A binding agreement that is enforceable by law between two or more parties.

## **Contributions**

Every bankrupt receiving an income is required to complete a budget form listing the bankrupt's income and expenses. The Official Assignee will assess whether the bankrupt is able to afford to pay anything towards their creditors during the period of bankruptcy.

## **Credit**

A means of borrowing money from a person or company and repaying it at a later date, usually with interest charged on top of the initial sum borrowed. A current bankrupt cannot obtain credit for themselves or someone else of more than \$NZ100 without disclosing their bankruptcy status.

## **Creditor**

Someone to whom a person owes money. There are two types of creditors; [secured](#) and [unsecured](#).

## **Creditor's petition**

An application to the Court by a creditor to have a debtor made bankrupt.

## **Credit report**

A document that lists your credit history and was created and updated using information from banks, merchants and other creditors.

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## **D**

### **Damages**

The legal term for monetary compensation which may be recovered in the courts by any person who has suffered loss or injury through the unlawful act or omission or negligence of another.

### **Debtor**

A person or party who owes payment (usually money) to a creditor.

### **Debtor's petition**

An application to the Court by a debtor who wishes to be adjudicated bankrupt.

### **Debts**

A specific sum of money that is owed. A person who owes debt is called a debtor. A person to whom the debt is owed is called a creditor.

### **Deed of Company Arrangement**

A document prepared by an administrator during a Voluntary Administrator and considered by creditors at a watershed meeting. It sets out how the affairs of a company in financial difficulty will be restructured to enable it to continue operating and to service its financial obligations.

### **Deed Administrator**

A person, usually a chartered accountant, responsible for putting into effect the terms of a Deed of Company Arrangement approved by creditors at a watershed meeting.

### **Director**

The person that alone or with the assistance of other directors is responsible for managing a company's activities. Directors have the duty to act in the best interests of the company and its shareholders under the Companies Act 1993.

### **Discharge**

The end of a term of bankruptcy. Discharge from bankruptcy frees you from the conditions imposed by bankruptcy and, except for certain exemptions, releases you from all of the debts you owed at the date the bankruptcy order was made. Discharge usually occurs automatically on three years after adjudication, but may occur earlier or later in certain circumstances.

### **Dividend**

Payment made to creditors from a bankruptcy or liquidation.

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## **E**

### **Earnings**

The total amount earned, usually by a worker as wages, or by a firm as profits.

### **Evidence**

Supporting documentation used to prove or disprove something.

### **Expenditure**

Any payment, purchase or gift of money or anything of value.

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## **F**

### **Fraud**

In the broadest sense, fraud is a deception made for personal gain.

### **Furniture and tools of trade**

Your assets at the date of your bankruptcy vest in the Official Assignee and you are not able to deal with them. However currently you are entitled under the Insolvency Act to keep cash up to \$NZ400 out of that held at the time of bankruptcy, tools of trade to the value of \$NZ500 and furniture and personal effects to the combined value of \$NZ2000.

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## **G**

### **Guarantor**

A guarantor is a person giving a guarantee who agrees to pay another person/s or company's debt e.g. if they default on their loan payments.

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## **H**

### **Hire purchase**

A form of finance where the borrower agrees to pay for goods by instalment basis and the legal ownership only passes to the borrower only when the goods have been paid for.

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## **I**

### **Income**

The amount of money received from employment, profit, from interest or dividends, or other sources such as Social Security and pensions.

### **Insolvency**

The inability of an individual to pay their debts as and when they fall due.

### **Insolvency and Trustee Service**

The Insolvency and Trustee Service is a government organisation which administers all personal bankruptcies in New Zealand and some court-appointed liquidations.

### **Insolvency Officer**

An Insolvency Officer is employed by the Insolvency and Trustee Service to administer bankruptcies and some court-appointed liquidations.

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## J

## K

## L

### **Liabilities**

Liabilities are all the debts owed by a person or company.

### **Liquidation**

A legal process where the assets of an insolvent company are administered and distributed by the Official Assignee or Liquidator for the benefit of all of the creditors.

### **Liquidator**

The person appointed to deal with the assets and liabilities of a company in liquidation.

### **Loan**

A loan is money borrowed that is usually repaid with interest.

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## M

### **Manager**

A person responsible for directing and running an organisation or project.

### **Means Test**

See [Budget Form](#).

## N

### **No Asset Procedure**

The No Asset Procedure (NAP) is an alternative to the three-year form of bankruptcy. It is designed for people who have accumulated consumer debt (min \$1,000, max \$40,000) and for whatever reason find that their financial affairs have become unmanageable. Provided you qualify, the NAP provides an alternative and more flexible way to resolve your financial situations than going into bankruptcy. It aims to get you back on your feet sooner.

## O

### **Official Assignee**

The Official Assignee is a government official responsible for administering all bankruptcies and some court-appointed liquidations. Each bankruptcy and liquidation has an Insolvency Officer allocated to administer it on behalf of the Official Assignee.

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## P

### **Personal Property Securities Register**

The PPSR is a form of 'electronic' notice board where secured parties can record specific details about security interests in personal property. More information can be obtained at [www.ppsr.govt.nz](http://www.ppsr.govt.nz).

### **Petitioning creditor**

A petitioning creditor is a creditor who files a bankruptcy petition against a debtor.

### **Preferential debts**

These are debts that are paid ahead of ordinary unsecured debts. Claims for such things as unpaid wages, holiday pay, GST, and the cost of obtaining an adjudication or liquidation order are examples of preferential debts.

### **Proof of debt**

A proof of debt is a written statement which is completed either manually or online by a creditor to provide details of a debt being claimed in a bankruptcy or liquidation estate.

## **Provable debts (bankruptcy)**

All debts owed by a bankrupt at the date of their adjudication and for which creditors can file a claim. Specific exemptions include court fines, reparation, advances or overpayments from WINZ, child support and any debts incurred after the date of adjudication.

## **Provable debts (liquidation)**

All debts and liabilities, present or future, certain or contingent, to which a company is subject at the time of its liquidation.

## **Public examination**

When the bankrupt is examined on oath about their affairs before a judge of the High Court.

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## **Q**

## **R**

### **Realise**

To sell assets for monetary benefit. The Official Assignee will collect and realise assets for the benefit of a debtor's creditors in bankruptcy or liquidation.

### **Realisable Assets**

Assets that are economical to sell and will lead to a dividend being paid to a debtor's creditors.

### **Receivership**

Where a receiver is appointed under the terms of a security, or by a Court, to realise assets or manage the business of a company for the benefit of the security holders.

### **Repossession**

Repossession is where a lender takes back items that were bought on credit or were pledged as security for a loan from a borrower who has fallen behind on loan payments.

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## **S**

### **Secured creditor**

A person or a company who holds some form of security over money owed — which may be in the form of a mortgage, charge, pledge, security interest under a Personal Property Security Act, or other security interest over assets owned by the borrower. Common examples include the security that a finance company takes over a car for the money it has lent to the purchaser of the car, or goods purchased on a hire purchase agreement, or a mortgage.

### **Shareholder**

The owners of a company. Shareholders invest in the company by buying shares and share in any profits made by the company.

### **Statement of Affairs**

A Statement of Affairs form is a document completed by a bankrupt which provides details of their assets and liabilities.

### **Summary instalment order**

An alternative to bankruptcy that involves a debtor with debts totalling \$NZ40,000 applying to the Official Assignee to get an order preventing their creditors from enforcing their debts provided the debtor continues to make regular payments through a supervisor to all creditors over a period of up to three years.

### **Summons**

A summons is a legal notice (usually served on a bankrupt or on a person who has knowledge of a bankrupt's affairs) which requires a person to attend the Official Assignee's office to be examined on oath.

### **Supervisor**

A person appointed by the Official Assignee to monitor a debtor's compliance with the terms of a Summary Instalment Order.

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## T

### **Tax refund**

A tax refund is an amount that government gives back to a taxpayer who has paid more tax than was due.

### **Termination**

In relation to a No Asset Procedure, it refers to when the procedure is brought to a premature end due to the debtor's conduct prior to or during the life of the No Asset Procedure. A termination has the effect of returning the debtor to the position they were in prior to entering the No Asset Procedure. Creditors are free to pursue the debtor for payment of what is owed to them upon termination of a No Asset Procedure.

## U

### **Undischarged bankrupt**

A person who is currently bankrupt.

### **Unsecured creditor**

A person or a company who has lent money without any form of security. For example phone and power companies that provide services and credit without taking security over the power user's assets.

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## V

### **Voidable gift**

A gift made by a bankrupt for little or no consideration in the period leading up to their adjudication. The Official Assignee can seek to recover the asset or its value.

### **Voidable preference**

Payment made by a bankrupt to a creditor in respect of an outstanding debt prior to bankruptcy, which has the effect of leaving that creditor in a better position than other creditors in the bankruptcy. The payment may be recoverable by the Official Assignee for the benefit of all creditors.

### **Voidable security**

Where a bankrupt grants a previously unsecured creditor security over their assets prior to bankruptcy, giving that creditor an unfair advantage over other creditors by being able to repossess and sell the secured assets in case of default.

### **Voluntary administration**

A corporate rehabilitative procedure designed to be employed by companies that are insolvent or likely to become insolvent and before liquidation becomes inevitable. It provides a company in financial distress with some breathing space from creditors to allow an appointed administrator to review and put a plan in place to rearrange the company's affairs so that it can avoid liquidation

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## W

### **Warrant for search and seizure**

Where the Official Assignee has reasonable grounds to believe that the bankrupt or another party is concealing any of the bankrupt's financial documents or assets, he can seek a warrant for the search and seizure of any of the bankrupt's documents and assets located at a specified premises.

### **Watershed meeting**

Preceded by a First Meeting held within 8 working days of an Administrator's appointment, this is the second meeting of creditors during a Voluntary Administration. It is held within 25 working days of the Administrator's appointment. At this meeting creditors vote on whether to approve or reject the proposal put forward by the Administrator for the restructuring of the company (Deed of Company Arrangement); bring the Administration to an end and return control of the company to its directors; or if the company is not already in liquidation, whether to resolve to appoint a liquidator.

### **Windfall**

The Official Assignee may make a claim to all or any part of a significant windfall during the term of the bankruptcy. In the event that you have a windfall, you are required to disclose this to the Official Assignee and failure to do so may be considered in breach of your obligations under the bankruptcy.

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**X**

**Y**

**Z**