



Analysis

Explaining Special Administrations

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Biography

Nick Hood is the Senior Business Adviser at the Opus Business Advisory Group (<https://www.opusllp.com>), the largest independent advisory, restructuring and insolvency firm in the UK.

Nick was a licensed Insolvency Practitioner, working in the business rescue market for 25 years. He is a committed internationalist, having created the largest global network of independent business rescue firms and having also worked overseas in Canada, Milan and Bahrain.

In his earlier career and after qualifying as a Chartered Accountant in 1970, Nick held senior executive positions in major companies in the construction, engineering and media sectors, as well as working for a boutique investment bank.

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Abstract

Some business rescues involving regulated public services require a different and more targeted approach, focused on maintaining those services and specifically prioritizing consumers. In this article, the author looks at the Special Administration regimes now in place to satisfy this need and how they differ from other Administrations governed by the Insolvency Act 1986, and why they serve as a vital, "nationalization-lite" mechanism, bridging the gap between insolvency law and public interest by ensuring essential service continuity over creditor repayment.

Introduction

The recent appointment by the High Court of Opus Restructuring as Special Administrators of the foreign exchange money transfer specialists, Currency Matters Limited under the Payment and Electronic Money Institution Insolvency Regulations 2021 has raised the profile of these unusual insolvency procedures.

A similar solution to the financial and operational issues at Thames Water has been touted in the media now for many months, with regular references to the government potentially taking control of the utility through the appointment of Special Administrators.



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So, what is a Special Administration and why are they special?

The rationale for Special Administration regimes (SARs)

A Special Administration is essentially an insolvency process for businesses, which provide a statutory or critical public service or supply, or where there is a wider public interest in there being a tailor-made insolvency procedure with different purposes than in a standard Insolvency Act Administration. The objective of any particular SAR usually involves ensuring the continuation of essential services or activities or preserving the struggling entity's business operations.

The creation of SARs recognizes the reality that the Insolvency Act cannot be an appropriate vehicle for dealing with the financial difficulties of every type of business, no matter how well the Courts have adapted it over nearly three decades to a vast range of insolvency scenarios. As a matter of public policy, essential services require another, more bespoke approach which can address a different set of priorities.

What is a Special Administration?

For companies carrying out a wider public interest function, such as energy companies, or financial institutions, there are a series of specific Special Administration regimes available to them to use if it is necessary for them to take advantage of a rescue procedure.

If a company is put into Special Administration, the Administrators will have specific objectives, that may differ and be additional or alternative to those applicable under the Insolvency Act 1986 for normal Administrations.

Administrations in general and SARs in particular are not intended to be a long-term solution, so the Special Administrators must move forward with fulfilling their objectives as soon as they can to resolve the position of the company concerned without delay and to protect stakeholders such as consumers, students or tenants, depending on the industry concerned.

Which sectors have Special Administration regimes?

There are a number of bespoke SARs already in place. These are for specific industries and companies that operate within them. Examples include:

- **Travel** – air traffic licensee companies.
- **The voluntary sector** – incorporated charitable institutions operating in regulated sectors.
- **Energy supply companies** – including gas transportation and electricity transmission and distribution companies, as well as licensee nuclear companies and smart meter communication licensees.
- **Water supply companies** – water and sewerage undertakings, and other qualifying licensed water suppliers.



- **Education institutions** – further education and sixth form colleges.
- **Financial institutions** – including investment banks, co-operative societies, community benefit societies and credit unions, e-money and payment institutions, banks, building societies and companies providing services under a public-private partnership agreement.
- **Healthcare** – including the NHS Trusts and other NHS bodies.
- **Protected railway services** – including train operators and essential rail freight operators.
- **Postal services** – such as the Royal Mail.
- **Providers of social housing** – including housing associations and for-profit providers which are registered with the Regulator of Social Housing.

The number of SARs is expanding as new industries emerge or old industries become more significant in public service and public interest terms. Potential additional SARs could be created to apply to airlines, insurers and cryptocurrency providers in due course. Established SARs are also evolving, as with the updating of the water industry SAR in 2024 to impose a stronger business rescue imperative in the face of the threat that Thames Water might fail.





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How is Special Administration different from an Insolvency Act 1986 Administration?

Each SAR has bespoke objectives, relevant on the specific requirements of the industry concerned and with a view to protecting those stakeholders most affected by the Special Administration, in particular consumers.

Insolvency Act 1986 Administrations have a number of objectives they must work towards, in a set order of priority:

- rescuing the company as a going concern; or
- ensuring a better outcome for creditors as a whole than would be likely if the company were wound up; or
- a realization of the company's assets in order to make a distribution to one or more secured or preferential creditors.

Depending on the particular SAR, these primary objectives may differ both in their requirements and the order of priority.

It may also be the case that the government will provide financial support to ensure that consumers and other stakeholders are not adversely affected by the Special Administration, while also allowing the time necessary for the business to be transferred into new ownership and ensuring uninterrupted service in the meanwhile.

Each SAR has the ability to give certain specific powers to Special Administrators to enable them to achieve their objectives. These powers are in addition to those available in an Insolvency Act Administration.

A final distinction in many Special Administrations is the close involvement of the relevant regulator in the run up to the Appointment of Special Administrators, the choice of the appropriate professionals and the high level of scrutiny the regulator can impose on the conduct of the case,

Practical examples of Special Administrations

Key examples, frequently backed by government support, include the energy, financial, water, and transportation sectors. Of note are:

1. **Bulb Energy** – In November 2021, Ofgem secured the appointment of Special Administrators to Bulb, an energy supply firm, which had been supplying gas and electricity to 1.5 million UK customers.

In November 2023, the Parliamentary Public Accounts Committee reported that ministers believed the administration to have been a success. It reported that the SAR process had so far reached a cost of £3.02 billion, but the Special Administrators estimated that £2.96 billion of the taxpayer funding would be recovered from the successor supplier, leaving a relatively modest eventual shortfall.



2. **Sberbank CIB (UK)** – While this financial institution was balance sheet solvent, as a result of the introduction of UK sanctions regime in 2022 following Russia’s invasion of Ukraine, it couldn’t function in any normal way and had no means to pay its debts.

The operational difficulties were such that the Court concluded in a demonstration of the flexibility and broad application of the relevant SAR that it was fair to place the Company into Special Administration. It was in the interests of creditors that Special Administrators were appointed to engage with other banks, apply for licences and ensure compliance with sanctions while winding up the Company’s affairs in an orderly way.

3. **Reyker Securities plc** – The collapse of this wealth management firm in October 2019 left its 11,500 clients in limbo, unable to access their assets or to make arrangements to transfer them to new custodians and investment managers. The appointment of Special Administrators led to the recovery of 80% of client funds and assets by early 2021, an outcome which may have been unachievable under standard Insolvency Act processes.

In conclusion

Special Administration Regimes are vital, specialized insolvency tools in the UK and exist to balance the necessity of corporate failure management with the urgent need to protect public services, client assets, and financial stability. SARs serve as a controlled “breathing space” for companies whose failure could result in systemic risk or severe public detriment and provide a vital safety net for the nation’s critical infrastructure.

Ultimately, the success of SARs hinges on their ability to adapt to modern, complex financial structures while staying true to their original purpose: maintaining vital public services. As seen in the evolving legislation and recent precedents, the UK government is actively refining these tools, ensuring they are not just effective at dealing with failure, but also capable of creating opportunities for sustainable restructuring.

As the UK continues to update its regulatory framework, special administrations will continue to play a crucial role in safeguarding public interests, ensuring that when essential services face distress, they do not fail the public they serve.