

WATER INDUSTRY COMPANIES SPECIAL ADMINISTRATION REGIME – NEW RESCUE FOCUS AND REFRESH OF LEGISLATION

A special administration regime for water industry companies which ensures the continued provision of essential water and sewerage services has been around for a while, albeit unused to date. The regime relied upon the transfer of business to a new provider as the means of preserving the continuity of services to consumers.

New objectives

On 11 January 2024, dormant legislative provisions (from 2010) relating to objectives for the water industry company special administration process, namely (i) rescue and (ii) hive down (within the transfer mechanisms) were 'switched on' by [The Flood and Water Management Act 2010 \(Commencement No. 10\) Order 2024 \(legislation.gov.uk\)](#). There is now a hierarchy of objectives in an insolvency situation with rescue first and then transfer (including hive down). These provisions are in force now. Transfer will remain the only mode of intervention where there are performance-based breaches relating to the companies' licensing requirements.

Key changes

Once the remaining regulations and rules (see below) are brought into force and assuming they are largely adopted in their current form, the key changes include providing special administrators with:

- a new legislative framework to rescue a water industry company as a going concern or transfer it to another provider - where the company is insolvent, rescue as a going concern takes priority;
- the ability to propose a restructuring plan or scheme of arrangement under the Companies Act legislation;
- where rescue is not possible, the ability to transfer the assets of the company, including to a wholly owned subsidiary known as a 'hive-down' – a hive down of the business to a subsidiary make may it more attractive to potential purchasers;
- powers to investigate prior transactions that may have contributed to a water industry company's financial difficulties;

- express power to recognise the priority of government support provided during the special administration (in the form of grants, loans, indemnities, or guarantees); and
- the ability to apply to court for an order to sell assets subject to a fixed charge - an account has to be made to the fixed charge holder for realisations, but the requirement is to top-up the amount payable to the charge holder to the best price reasonably available in a sale consistent with the purpose of the special administration, rather than up to "market value" (being the standard in the context of "ordinary" administrations), which raises the prospect of lower returns to secured creditors.

Modernisation

Draft regulations accompanying these legislative amendments ([The Water Industry \(Special Administration\) Regulations 2024](#)) [have also been published, with the purpose of these being](#) to facilitate a more modern operation to the water industry company special administration regime itself. Those draft regulations are largely aimed at updating the framework, so that instead of the old administration regime from 1986 being used, the latest legislative framework for "ordinary" administrations will apply in a modified form. Other draft legislation ([The Water Industry Act 1991 \(Amendment\) Order 2024](#)) makes provision about transfer schemes upon the termination of an appointment or transfer of a licence of a water or sewerage company, to include provision regarding transfer schemes in cases where there is a transfer of assets by hive-down.

Parliamentary approval and missing rules awaited

The draft regulations need approval and are currently making their way through the Parliamentary process. While there is no fixed timetable for this process, we assume that it will simply be a matter of weeks before approval is obtained. Interestingly, draft regulations setting out, for example, the various powers of the special administrators state that these shall have retrospective effect such that they can apply to a company that has entered water industry company special administration at a date prior to the commencement of the draft regulations themselves. We have not yet seen any updated draft water industry company special administration insolvency rules, but these are also anticipated in the draft regulations and will replace the current Water Industry (Special Administration) Rules 2009.

Why now?

According to the detailed explanatory memorandum to the draft [The Water Industry \(Special Administration\) Regulations 2024](#) the updates are designed to bring the special regime into line with general insolvency and restructuring developments and other special administration regimes following a recent review by DEFRA.

CONTACTS



Philip Hertz
Global Head of
Restructuring and
Insolvency, London

T +44 207006 1666
E philip.hertz
@cliffordchance.com



Iain White
Partner,
London

T +44 207006 2825
E iain.white
@cliffordchance.com



Melissa Coakley
Partner,
London

T +44 207006 1963
E melissa.coakley
@cliffordchance.com



Chris Norman
Senior Associate,
London

T +44 207006 3097
E christopher.norman
@cliffordchance.com



Christopher Poel
Senior Associate,
London

T +44 207006 2902
E christopher.poel
@cliffordchance.com



Gabrielle Ruiz
Knowledge Director,
London

T +44 207006 1615
E gabrielle.ruiz
@cliffordchance.com

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www.cliffordchance.com

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London, E14 5JJ

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