

Enforcement Guide

Chapter 13

Insolvency

13.3 Petitions for administration orders or compulsory winding up orders: determining whether a company or partnership is unable to pay its debts

- 13.3.1** The *FCA* can petition for an administration order or compulsory winding up order on the grounds that the *company* or *partnership* is unable (or, in the case of administration orders, is likely to become unable) to pay its debts. The *FCA* does not have to be a creditor to petition on these grounds.
- 13.3.2** Under sections 359 (Petitions) and 367 (Winding up Petitions) of the *Act*, a *company* or *partnership* is deemed to be unable to pay its debts if it is in default on an obligation to pay a sum due and payable under an agreement where the making or performance of the agreement constitutes or is part of a *regulated activity* which the *company* or *partnership* is carrying on.
- 13.3.3** The *FCA* would not ordinarily petition for an administration order unless it believes that the *company* or *partnership* is, or is likely to become, insolvent. Similarly, the *FCA* would not ordinarily petition for a compulsory winding up order solely on the ground of inability to pay debts (as provided in the *Act*), unless it believes that the *company* or *partnership* is or is likely to be insolvent.
- 13.3.4** While a default on a single agreement of the type mentioned in **paragraph 13.3.2** is, under the *Act*, a presumption of an inability to pay debts, the *FCA* will consider the circumstances surrounding the default. In particular, the *FCA* will consider whether:
- (1) the default is the subject of continuing discussion between the *company* or *partnership* and the creditor, under the relevant agreement, which is likely to lead to a resolution;
 - (2) the default is an isolated incident;
 - (3) in other respects the *company* or *partnership* is meeting its obligations under agreements of this kind; and
 - (4) the *FCA* has information to indicate that the *company* or *partnership* is able to pay its debts or, alternatively, that in addition to the specific default the *company* or *partnership* is in fact unable to pay its debts.