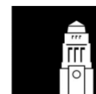
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DEALING WITH LARGE INSOLVENT COMPANIES WHERE THE PUBLIC INTEREST INTRUDES: SOME FORWARD THINKING?

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I Introduction

In recent years several large companies have entered compulsory liquidation in circumstances where one might have thought that they would have been more suited to entering administration under Sch B1 of the Insolvency Act 1986 ('the Act'). This is because even if companies were to be eventually wound up, administration has often been used as the precursor to either winding up or dissolution, especially where there is a viable business that was to be traded and then sold off at an opportune time. The common factor with the companies that we are referring to and which have been taken into liquidation, appears to be that secured creditors who could have appointed administrators did not do so because they did not wish to fund an administration which could be very costly, and potential administrators declined appointment as serious issues existed in relation to these companies' businesses leading to a clear public interest element that had to be taken into account. As a consequence, winding-up petitions were presented by the directors and in due course the Official Receiver ('the OR') was automatically appointed as liquidator.[1] In these cases, and of particular note are Sahaviriya Steel Industries UK Ltd,[2] Carillion plc,[3] British Steel plc,[4] Thomas Cook plc[5] and Baglan Operations Ltd,[6] private sector insolvency practitioners were appointed as special managers by the court under s 177 of the Insolvency Act to assist the OR.[7] This was done as the companies were to continue to carry on their businesses while a buyer was found, and the businesses involved the need for specialist expertise that could be provided by senior private insolvency practitioners. The most pertinent example of this is British Steel plc, whose position we discuss later in some detail.

Yet notwithstanding the liquidation process being chosen over administration in relation to the situations set out above, Sir Kenneth Cork, who was appointed the chair of a committee, the Insolvency Law Review Committee, charged in the late 1970s with compiling a report (*Insolvency Law and Practice* ('the Cork Report')) on the state of UK insolvency,[8] said in a book published after the delivery of his report in 1982, that it was reasonably clear that

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[1] Section 136(2)
[2] Winding-up order on 2 October 2015.
[3] *Re Carillion plc* (unreported 15 January 2018).
[4] *Re British Steel Ltd* [2019] EWHC 1304 (Ch), [2019] BCC 974.
[5] *Re Thomas Cook Group plc* [2019] EWHC 2626 (Ch).
[6] The winding-up order was made by Marcus Smith J on 24 March 2021. There is no report of the judgment on the winding-up petition that was presented but see *Re Baglan Operations Ltd* [2022] EWHC 647 (Ch) which involved an application to review the liquidator's decision to terminate the carrying of business.
[7] For a discussion of special managers, see Andrew Keay, Peter Walton and Joseph Curl QC, *Corporate Governance and Insolvency: Accountability and Transparency* (Edward Elgar, 2022), Chapter 10.
[8] HMSO, 1982, Cmnd.8558.

administration was introduced to allow, inter alia, situations where: 'an administrator should be brought in … where in the national interest the Government should take a hand.'[9]

The aim of this paper is to examine whether compulsory liquidation is the most appropriate route to be taken where a large insolvent company engages in a business(es) which is impacting or can impact on the public interest, and, if it is not, what other approach might be more appropriate. In achieving our aim, we make a distinction between public utility companies, that is those which are established to undertake a public service, such as a water company and those companies whose activities affect or could affect that public interest. It is on the latter type of companies we focus.

The paper develops as follows. First, there is a brief examination of the nature and purpose of liquidation. Secondly, the paper discusses the regime of administration and, also, considers special purpose administrations. This is followed by an analysis of the case of *Re British Steel plc.*[10] Fourthly, there is an examination of the way that companies whose businesses affect the public interest have been dealt with in the past. Fifthly, we provide an analysis which builds on our findings detailed earlier in the paper, and with a suggested way that things may be taken forward in the future. Finally, we offer some concluding remarks.

II The Nature and Purposes of Liquidation

As noted above, large insolvent companies whose businesses affect the public interest have been subject to compulsory liquidation rather than administration. Therefore, this part of the paper explains the nature of liquidation and what purposes it has. This enables us to understand compulsory liquidation and relate this to the cases that have been decided and those which may arise in the future. Also, consideration of the nature and purposes of liquidation enables us to determine whether the present approach, using liquidation for large companies whose affairs affect the public interest, is appropriate.

Liquidation is a process that involves the assets of a company being collected and realised, and the resulting proceeds being applied in discharging all the company's debts and liabilities, with any balance which remains after paying the costs and expenses of winding up being distributed among the members according to their rights and interests, or otherwise dealt with as the constitution of the company demands;[11] typically it is a process which prepares the company for its dissolution. Liquidation is regulated, primarily, by Part IV of the Act.[12] It first became a matter for legislative regulation in 1844, at the beginning of the emergence of what we might term the era of the UK's modern company law, with the passing of the Winding up Act of that year.[13] Its long title was: ;An Act for facilitating the winding up the affairs of Joint Stock Companies unable to meet their pecuniary engagements.' The Winding-up Act's purpose was, according to Turner LJ:

[9] Kenneth Cork, *Cork on Cork* (Macmillan, 1988), 195.
[10] British Steel (n 4).
[11] *Ayerst v C & K (Construction) Ltd* [1976] AC 167.
[12] Parts V and VI and Schedule 4 are also relevant.
[13] 7 & 8 Vict c 111

> First, to extend the remedies of creditors against the property of companies; secondly, to facilitate the winding up of companies; and, thirdly, to make provision for the discovery of abuses attending the formation and management of companies.[14]

A company can be subject to either voluntary liquidation, which is commenced by way of a resolution of the general meeting of the company or compulsory liquidation, instigated by the order of a court on the petition of an applicant for winding up. While the Winding up Act 1844 was concerned with companies that could not discharge their financial obligations, there are several grounds on which liquidation could be ordered, but by far the most common is an inability of the company to pay its debts, that is, insolvency. Orders are made on winding-up petitions and for the most part they are presented by creditors who will plead that the company is insolvent. In the case of companies referred to earlier, Carillion, Thomas Cook Group plc and British Steel, the directors were the petitioners who sought the order.[15] Although there is no judgment, the winding-up order in relation to Baglan Operations Ltd[16] showed that the winding-up petition was also presented by the directors. The directors acting as petitioners is unusual, although not unheard of.[17]

With an insolvent company the debts and liabilities of those creditors who have no priority rights will not be paid in full. In a liquidation the creditors are treated collectively[18] and will, unless they enjoy some priority right, share equally and rateably in the company's funds, that is on a pari passu basis.[19]

The purposes of the liquidation of insolvent companies have been articulated, in *McPherson and Keay's Law of Company Liquidation,*[20] to be three-fold:

> first, providing a procedure that allows for an equitable and fair distribution of the assets of the debtor company amongst its creditors...second, in providing for the winding up of a company which is hopelessly insolvent, liquidation serves the community at large as it is not good for society that companies who are insolvent are able to continue to trade; third, liquidation is designed to allow for an investigation of the company's affairs…with particular emphasis on the circumstances which precipitated the winding up.[21]

When a winding-up order is made in England and Wales, the OR automatically becomes the liquidator.[22] The OR carries out important roles in relation to various aspects of insolvency law and practice; is a government officer who acts under the directions of the Secretary of

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[14] *Re Royal British Bank; Ex p. Marcus* (1856) 26 LJ Bk 1, [3].

[15] They are permitted to do so by s 124(1) of the Insolvency Act. Until the introduction of this provision, they could not do so.

[16] Order made on 24 March 2021 by Marcus Smith J.

[17] A rare instance occurred is reported in *Re Minrealm Ltd* [2007] EWHC 3078 (Ch).

[18] *Re Lines Bros Ltd* ([1983] 1 Ch 1, 14; *The Joint Administrators of LB Holdings Intermediate 2 Ltd v the Joint Administrators of Lehman Brothers International (Europe)* [2017] UKSC 38, [198].

[19] See Insolvency Act 1986, s 107 for voluntary companies and Insolvency Rules 2016, r 14.12(2) for compulsory liquidations.

[20] Sweet and Maxwell, 5th ed, 2021.

[21] Ibid [1.005]. Footnotes omitted.

[22] Insolvency Act 1986, s 136.

State; and is an officer of the court when exercising those functions.[23] When ORs are appointed as liquidators they cease, when appointed: 'to be civil servants in the proper sense of servants of the Crown employed in the business of government within (in this case) a department of state.'[24]

In order to achieve the first purpose of liquidation (and perhaps the leading purpose) the assets of the company are sold off as expeditiously as possible. Any businesses which the company operates are to be wound up. According to the Privy Council in *Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc*:[25] 'The purpose of bankruptcy [and liquidation by analogy] proceedings … is… to provide a mechanism of collective execution against the property of the debtor by creditors whose rights are admitted or established.' Thus, winding-up is a collective procedure designed to bring about the distribution of the assets to the creditors according to their pre-liquidation entitlements; at the core of liquidation is a distribution of assets.

Liquidation plays a vital public role[26] and this is particularly the case where either a company is hopelessly insolvent, as it is not good to have such companies operating in society, or where, on the petition of the Secretary of State for Business Energy and Industrial Strategy ('SoS') under s 124A of the Act, a court is convinced that a company should be wound up as it is just and equitable so to do. Generally, the leading idea concerning the public role liquidation plays is that it provides a procedure for insolvent companies to be removed from trading and to ensure that the general body of creditors receive as much as possible, and that the company is investigated in order to enhance commercial integrity. Although companies like British Steel, as we will see shortly, were clearly insolvent, it is questionable whether one would say that they were hopelessly insolvent. Liquidation, and the way that it was to proceed, seemed to be founded on what was best in the public interest.

III Administration and Special Administration

Administration, the regime which might have seemed the most appropriate for companies in a situation like British Steel, was introduced by the Act on the recommendation of the Cork Committee. It was recognised that a company's business could often be saved by the appointment of a receiver and manager by a debenture holder with a floating charge over a company's undertaking (an office holder labelled an administrative receiver by s 29 of the Act). Administration was designed to be a similar process to administrative receivership but one which could be initiated where no administrative receivership was possible. Administration under the original Part II of the Act was commenced by the court making an administration order.

The Enterprise Act 2002 took things further as it prospectively abolished the power of a holder of a floating charge over the company's undertaking to appoint an administrative

[23] ibid, s 400(2).
[24] *Re Minotaur Data Systems Ltd* [1999] 2 BCLC 766, 772 (Aldous LJ).
[25] [2006] UKPC 26, [2007] 1 AC 508, [2006] 3 WLR 689.
[26] Andrew Keay, 'Insolvency Law: A Matter of Public Interest?' (2000) 51 NILQ 509; Rizwan Mokal, 'What Liquidation Does For Secured Creditors, And What It Does For You' (2008) 71 MLR 699. See *Re Pantmaenog Timber Co Ltd* [2003] UKHL 49, [2004] 1 AC 158.

receiver.[27] It replaced the power to appoint an administrative receiver with the power to appoint an administrator. For the vast majority of companies, it replaced the original Part II of the 1986 Act with a new Sch B1, which made it possible for a company or its directors to appoint an administrator (subject to any qualifying floating charge holder's consent). It did, however, retain the power for the court to make an administration order. The 2002 Act also amended the purposes for which a company could enter administration. Those purposes remain centred on the duty of an administrator to act in the best interests of creditors (taking no account of public interest or other factors).[28]

As mentioned in the introduction to this paper, Sir Kenneth Cork's opinion of administration was that it should be used in cases where in the national interest the Government should take a hand. This idea has found its way into the legislation but in a rather piecemeal fashion.[29] Certain categories of companies have been identified as carrying on business in areas where there is a public interest. In such cases, legislation has introduced special administration regimes. The list of special administrations has grown longer over time and looks set to continue to grow. The following are examples of companies that are subject to their own special administration processes: water companies;[30] railways;[31] energy companies.[32]

In an ordinary administration the administrator is under a duty to act in the best interests of creditors. There is no public interest obligation. Special administration, in those industries where it is available, generally requires the administrator to act in the public interest as well as considering the interests of creditors. [33] The statutory objectives for special administration are generally amended to take account of the public interest involved. For example, in an echo of the statutory company legislation from the nineteenth century, special administration of railways, water companies and protected energy companies recognises the benefit of ensuring the services provided by the company are continued. To that end the respective regimes allow the SoS to provide an indemnity to special

[27] Enterprise Act 2002, s 248.

[28] See the original s 8 of the Insolvency Act 1986 (old administration regime) and para 3 of Sch B1 of the Insolvency Act 1986 (new administration regime).

[29] When the 2002 changes were made, certain categories of companies already subject to their own special administration regimes, whose businesses involved a public interest element, were excluded from the new Sch B1 provisions. Section 249 of the Insolvency Act 1986 listed water companies, protected railways, air traffic controlling companies, certain public-private partnership companies and building societies. This list has been expanded over the years. An interesting point to note is that different iterations of administration (either old or new regime) apply to different categories of companies subject to special administration largely depending upon what primary legislation was in force at the time of the introduction of the individual special administration regime.

[30] The Water Industry Act 1991 and the Water Industry (Special Administration) Rules 2009 (SI 2009/2477).

[31] Railways Act 1993, ss 59–65 of the Railways Act 1993 and the Railway Administration Order Rules 2001 (SI 2001/3352).

[32] A special administration regime exists for a 'protected' energy company within the meaning of s 154(5) of the Energy Act 2004. A separate special administration regime exists for energy supply companies within the meaning of the Energy Act 2011 (see Energy Supply Company Administration Rules 2013 (SI 2013/1046).

[33] See the enlightening discussion at 5.2 – 5.3 Inga West and Giles Boothman 'Should Administration or Compulsory Liquidation be the process of choice for national interest insolvencies?' available on the Insolvency Service website and at <https://www.youtube.com/watch?v=xUxbbf1cLQc>accessed 15 August 2022.

administrators against liabilities, losses or damage incurred in the conduct of the administration.[34]

Where a company enters special administration, the Government may or may not have a direct involvement in securing the public interest is served. The obligation is a matter for the private sector administrator. It might be considered that where special administration applies, there is a core idea that the Government or other public body should have some influence over the outcome. If a clear golden thread linking the respective special administration regimes could be identified, it might assist in expanding the availability of special administration to other public interest scenarios. One obvious issue with special administration as it currently operates is that it is only available in those industries where specific legislation exists. It would not have been available in, for example, the compulsory liquidation cases of British Steel, Thomas Cook or Carillion. Even where it is available, it is not always used.[35]

IV The Public Interest and British Steel

A Context

As mentioned earlier, there have been several large companies that have been subject to compulsory liquidation in recent years and where the carrying on of the company's business has impacted on the public interest. In these companies the OR has been appointed as the liquidator of the company and at the time of appointment it was envisaged that there would be a continuation and eventual sale of the company's businesses. In this part we focus on one such liquidation, that of British Steel plc[36] where the most consideration of the issues raised by this paper has been given.

B What Happened?[37]

British Steel, which was a company based in the north-east of England, was one of Europe's largest steelmakers with approximately 20 subsidiary companies and over 4,000 staff employed. It also had another 1,300 agency and sub-contract workers. The company's accounts to March 2018 indicated that the company had a turnover of nearly £1.2 billion but with a loss recorded of nearly £19 million. In the latter part of 2018, the company experienced several financial blows including a fall in sales causing severe cash flow difficulties. This decline in demand was partly a result of the uncertainties related to Brexit,

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[34] See, eg, Railways Act 1993, s 63. The commentary in this paper does not consider special administration in relation to financial institutions. In such cases the emphasis may be on the continuation of the institution's business or it may instead focus on the return of funds to investors (see, eg, Banks (Former Authorised Institutions) (Insolvency) Order 2006 (2006/3107), Part 3 of the Banking Act 2009, Investment Bank Special Administration Regulations 2011 (SI 2011/245) and Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (SI 2010/3023)).

[35] In *Re VTB Capital plc* [2022] EWHC 1106 (Ch) the company applied for an ordinary administration even though a bank administration order appears to have been possible.

[36] British Steel (n 4).

[37] The following section draws on Andrew Keay and Peter Walton, 'British Steel: Is it a Wind up?' (2019) *Corporate Rescue and Insolvency* 125.

competition from alternative suppliers in Europe, falling demand from car makers, and falling revenue from the French railway industry as well as an increase in commodity prices.

The company had, potentially, two main sources of credit available to it: an asset-based lending facility from a syndicate of lenders which was secured on the undertaking of the company; and a revolving credit facility between its immediate holding company, British Steel Holdings Limited, and its indirect parent company, Olympus Steel Limited. However, both facilities were in default and neither its asset-based lenders nor its parent companies were willing to provide any further financial support. The UK Government was approached for assistance including support to fund a possible administration process. In the absence of confirmation that such support would be on a commercial basis, a necessary requirement for state aid, such state aid was not forthcoming.

The company held sufficient cash for less than one week's continued trading. The asset-based lenders, who were the only creditors entitled to appoint administrators out of court under their security, did not agree to fund an administration.[38] Due to the potential environmental and health and safety issues,[39] neither Ernst & Young, which had been advising the asset-based lenders, nor PwC, which had been advising British Steel, were prepared to accept appointment as administrators. British Steel could have instigated administration itself, either out of court or by obtaining a court order. Possibly it did not seek to do so because it could not find an insolvency practitioner who was willing to take on the administration. Consequently, the company's directors petitioned for the winding up of British Steel on the grounds that it was unable to pay its debts. A majority of the secured creditors backed the proposed liquidation.

C The Judgment

The petition was heard by Snowden J (as he then was) on 22 May 2019 and he was satisfied that the company was, or would in the immediate future be, unable to pay its debts as they fell due and so made a winding-up order. The OR, who was represented at the hearing of the petition, became the liquidator. The evidence adduced by the directors was that unsecured creditors were unlikely to receive any dividend in the insolvency greater than the maximum payment of £600,000 under the prescribed part provisions of s 176A of the Act. [40]

In his judgment Snowden J acknowledged the significant environmental and health and safety issues connected to British Steel's business. He stated that, without careful and continued supervision, there was a risk of gas explosion, a safety risk of flooding to surrounding areas as well as the inherent dangers of having very significant amounts of hazardous materials on site. The environmental and health and safety concerns were currently managed by the company's management and the judge ruled that it was essential that skilled supervision was continued in a controlled manner within a formal insolvency process.[41] Thus, this was a company whose business could have a significant impact on the public interest.

[38] British Steel (n 4) [13],

[39] Ibid.

[40] Now £800,000. See, Insolvency Act 1986 (Prescribed Part) (Amendment) Order 2020 (SI 2020/211).

[41] British Steel (n 4) [12]

At the hearing of the petition, and immediately after the winding-up order was made, the OR applied for the appointment of special managers. The OR's request was made on the basis that the company's business would be traded, and the OR's office did not have either the necessary expertise or human resources to fulfil the various tasks likely to be necessary in the liquidation. The company's business was complex, extensive and international, and it had a significant turnover. Snowden J agreed to appoint partners in Ernst & Young as special managers.

D Commentary

As indicated already, it was somewhat surprising that the company decided to seek a winding-up order as one would normally expect a company in the position of British Steel to have entered administration as that would usually have been regarded as more suitable. This is because the critical element of the insolvency was that the business would be traded, perhaps for some time, while a buyer was sought and then a seamless handover of the business could take place.

While the decision of the court to order winding up and appoint special managers might be thought to be a practical solution to a difficult situation it does raise some issues and poses some interesting questions.

The first one, as we noted earlier, is that liquidation is an insolvency regime that is designed to have the assets of the company sold off as expeditiously as possible and for any businesses which the company operates to be wound up so that there is a collective execution against the property of the debtor on behalf of creditors whose rights are admitted or established.[42] This is because winding-up is a collective procedure designed to bring about the distribution of the assets to the creditors according to their pre-liquidation entitlements; at the core of liquidation is distribution of company assets. Yet, Snowden J was told that the unsecured creditors were unlikely to get anything from the liquidation save, possibly, a share of the prescribed part. This was because any funds would be exhausted in continuing to run the company's business. There was no concern over what the creditors would get; the focus was on the sale of the business and the environmental and health and safety issues associated with the business, and the possible liability of an officeholder in managing the company's affairs.[43] The problem with undertaking a liquidation to address a public interest issue in large insolvent companies, such as British Steel, means that it is likely that there will be no distribution to the unsecured creditors. The thinking at the time of the winding-up order in British Steel was for the company's business to continue to run and then to be sold as a going concern[44] and this would consume any company funds. The same approach has been taken in other liquidations such as Baglan Operations Ltd.[45] In this latter case the court ordered, when the OR proposed to discontinue the company's business, the continuation of the operation of the business as that was in the public interest even though this would deplete the company's available funds. If the focus

[42] See, *Cambridge Gas Transport Corporation v Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26, [2007] 1 AC 508, [2006] 3 WLR 689.
[43] British Steel (n 4) [11].
[44] R Davies, 'What went wrong at British Steel?' *The Guardian* (London, 22 May 2019).
[45] See, Baglan Operations Ltd (n 6).

was on the first purpose of liquidation in British Steel and Baglan Operations the liquidator would terminate the operations of the company's business as soon as possible, thereby retaining any funds in the company's accounts for creditors.

A second issue is that unlike administration which often involves having, as an aim, the continued running of a company's business in order to secure a buyer, liquidation is not generally a regime, certainly in relation to a company the size of British Steel, where trading a business is central. Clearly, liquidators do have power under the Act to trade a company's business, but, although there are a few historical instances of businesses being traded for substantial periods,[46] it is most often done for a relatively short period. Paragraph 5 of Sch 4 to the Act permits the carrying on of business in liquidation but only so far as necessary for the beneficial winding up of the company. What is meant by this is not clear but due to space we will not address it here. What happened with British Steel was that it was traded for 10 months before being sold.[47] This had the hallmarks of a quasi-rescue, for which the regime of liquidation was not established.[48]

Earlier, in the part titled 'The Nature and Purpose of Liquidations,' we considered the purposes of liquidation. The second and third purposes identified have a public element to them, namely they provide that it is for the benefit of the public to ensure hopelessly companies are no longer able to obtain credit and trade and it is in the public interest that the affairs of the company are investigated to ascertain whether there has been any wrongdoing.[49] The latter one is designed to protect the public against the abuse of the concept of limited liability,[50] and there is a public interest that broadly derives from the need to ensure that good corporate governance and commercial morality exist.[51] While it is clear that the public interest is an element in winding up and may affect how a liquidator functions, in British Steel the public interest was the primary reason for the making of the winding-up order and the appointment of special managers and the public interest was going to determine what action the liquidator was going to take. Thus, the traditional purposes of liquidation were not considered.

In the House of Lords decision in *Re Pantmaenog Timber Co Ltd*[52] Lord Millett, with whom the other judges agreed, said that that there can be a public interest that is contrary to the financial interests of creditors and shareholders and the liquidator can engage in actions which will fulfil the public interest,[53] but his Lordship said this in the context of a liquidator's investigation of the company's affairs and bringing proceedings against miscreant company

[46] For example, see *In re Lundy Granite Co* (1870-71) LR 6 Ch App 642.
[47] British Steel was traded for 10 months before selling the business to the Chinese company, Jingye Group: 'British Steel sale to Jingye Group completes' BEIS Press Release, 9 March 2020 (<https://www.gov.uk/government/news/british-steel-sale-to-jingye-group-completes>accessed, 29 July 2022.
[48] Although there are early instances of companies entering liquidation and then agreeing a scheme of arrangement with their creditors where the company's business and assets were transferred to a purchaser: see, eg, *Re Bessemer Steel and Ordnance Co* (1875) 1 Ch D 251 and *Re Dynevor, Dyffryn, and Neath Abbey Collieries Company* (1879) 11 Ch D 605.
[49] *Bishopsgate Investment Management Ltd v Maxwell* [1993] Ch 1, 31
[50] Pantmaenog Timber (n 25) [77].
[51] *Whitehouse v Wilson* [2006] EWCA Civ 1688; [2007] BPIR 230, [76].
[52] Pantmaenog Timber (n 25).
[53] ibid, [79], [80]. Also, see Whitehouse (n 50), [84].

officers so as to ensure the enhancement of commercial morality, traditionally a critical element of the third purpose of liquidation. In *Re Pantmaenog Timber Co Ltd,* there was no obvious public interest concern, as there was in British Steel, before and when the company entered liquidation. The public interest emerged as the liquidator investigated the actions of the company's officers.

Of course, one interpretation of what happened in British Steel could be that it is nothing more than an unusual case, involving a company that has, as set out in the judgment, a complex and potentially dangerous business,[54] and it is a case that will be replicated very rarely, if at all. However, as we noted earlier, winding-up orders have been made in other cases in recent years where it appears they were made to protect the public interest. In Carillion, a construction and facilities management services company, there was concern over the construction, maintenance and running of hospitals, schools and other government buildings and in Thomas Cook, which conducted a travel business, thousands of UK citizens would have been stranded overseas if the OR had not become liquidator and engineered their repatriation in the largest peace-time evacuation.

Are we seeing with British Steel and other cases like Carillion and Thomas Cook the dawn of a new era where liquidation is employed where there is a distinct public interest or the company's activities or business have an effect on the public interest, and that is, essentially, the rationale for adopting compulsory winding up? In the past we have seen judges saying that liquidators must consider the public interest in what they do during the course of the winding up,[55] but with British Steel we saw the company being liquidated and then its business continuing primarily because of the public interest and not to fulfil the traditional purposes of liquidation. If administration cannot be embraced, for the reasons we find in British Steel, does it mean that a company must be liquidated? One of the potential problems with this is knowing what constitutes the public interest, because 'public interest' is a notoriously difficult concept to define[56] due to the fact that it is a slippery concept. Another problem is determining how serious does the effect, or potential effect, of the company's affairs or business on the public interest have to be, before an order is made? What criteria will a judge use to determine whether there is a public interest in the company's liquidation? Another major issue, and one that will concern creditors and prospective creditors of companies is: can the OR conduct the liquidation with a focus totally on the public interest issues and eschew creditor concerns? In British Steel the business was to be continued and yet in doing that the company was going to lose any cash that it had, and creditors were likely to get nothing. It seems that the interests of creditors are to be sacrificed on the altar of public interest.

A final question that arises, in light of the decision in British Steel is: if, as seems likely, British Steel was wound up at the taxpayer's expense, is that in the public interest? One might think that in a world where public money is not plentiful that it would not be in the public interest. However, one has to balance that with any potential safety and environmental concerns. Is it in the public interest that the public pays to address health and safety issues that are extant

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[54] British Steel (n 4) [20].

[55] For instance, see *Faryab v Smith* [2001] BPIR 246, [19] where Robert Walker LJ referred to the judgment of Neuberger J made earlier in the same litigation, but not reported.

[56] Keay (n 25).

in the company's business? The concern with a positive answer is that the secured creditors may, as in British Steel, suffer no or limited loss. They have their security and the assets subject to the security cannot be used to pay for the general cost of liquidation.[57] The liquidation in fact benefits the secured creditors at the expense of the public. It might be said, of course, that if the secured assets were able to be used to discharge liquidation expenses,[58] then this might lead to lenders being more reluctant to lend to businesses like British Steel that conduct industries that have the potential to impact on the public interest, and that might not itself be in the public interest. The problem is that there are so many dimensions to public interest that might have to be considered in the resolution of the insolvency of any large company.

V Historical Development and Reflections

Thus far we have seen that in recent times compulsory liquidation has been the regime of choice when it comes to dealing with large companies that might not be engaged in running critical public services like railways, water and energy, but whose businesses and the way that they operate affect the public interest in an important way. We now consider what has happened in the past as far as dealing with companies that are tied in some way to the public interest.

A Public Service and Utility Undertakings

Until incorporation of registered companies under the Companies Acts became relatively straightforward in the latter half of the nineteenth century, corporations could be formed by either the grant of a Royal Charter or by a private act of Parliament being passed. Such corporations were often major concerns and with the advent of the Industrial Revolution many companies incorporated by private act of Parliament (statutory companies) were formed to provide services which would be viewed today as public services or utilities, for example, railways, tramways, canals, ports and harbours, cemeteries, gasworks, electricity supply and waterworks.[59]

Such statutory companies borrowed money according to the restrictions contained within their authorising statute. The terms for such borrowing became standardised and were codified in the form found in Sch C to the Companies Clauses Consolidation Act 1845 ('CCCA') which permitted a company to execute a mortgage of its 'undertaking'. This type of mortgage was interpreted by the courts as being a security interest over the business as a going concern.[60] Due to the nature of the business being carried on, there was a public

[57] *Buchler v Talbot* [2004] UKHL 9, [2004] 2 AC 298.

[58] See the discussion in Peter Walton 'Fixed and Floating Charges: the Great British fund-off?' (2015) 8 *Corporate Rescue and Insolvency* 18 and (2015) 30 *Butterworths Journal of International Banking and Financial Law* 3.

[59] See, eg, C Stebbings 'Statutory Railway Mortgage Debentures and the Courts in the 19th Century' (1987) 8(1) *Journal of Legal History* 36.

[60] The term 'undertaking' was interpreted as: '… the proper style, not for the ingredients, but for the completed work, and it is from the completed work that any return of moneys or earnings can arise. [T]he undertaking … is … made over as a thing complete … as a going concern, with internal and Parliamentary powers of management not to be interfered with; as a fruit-bearing tree, the produce of which is the fund dedicated by the contract to secure and to pay the debt.' (1867) 2 Ch App 201, 217-8 (Cairns LJ).

interest in ensuring the company's business continued. Consequently, a mortgage of a company's undertaking did not give its holder the usual mortgagee rights to foreclose or enforce the sale of the company's assets whilst the company continued its business. The mortgagee had no lien over the company's individual assets because if it did, and it were enforced it would paralyse the company's business.

The leading case of *Gardner* v *London, Chatham and Dover Railway Co*[61] involved a mortgage of the undertaking of a statutory railway company. It was held not to give mortgagees the enforcement advantages of an ordinary commercial mortgage where they could assert 'their rights as mortgagees by taking and impounding not merely the proceeds of surplus lands, but the capital, the cash balances, the rolling stock, and even their own money advanced.'[62]

The unpaid mortgagee's remedy was against the income of the company by obtaining the appointment of a receiver.[63] It was, however, seen as improper for the court to appoint a manager over the undertaking,[64] as the court would be assuming the management of the undertaking.[65] The power of management was only to be exercised by the company to which Parliament had entrusted important responsibilities.[66]

Whilst the undertaking continued to trade, the company's assets were still at the mercy of execution creditors but execution was only allowed over surplus assets not required for the provision of the public service.[67] The court's protection from enforcement ceased, and a mortgage could be enforced once the undertaking had ceased to be a going concern or (with the consent of Parliament) the company was being wound up.

Although the Court in *Gardner* considered that in entrusting such undertakings to statutory companies Parliament was acting in the public interest,[68] the court's refusal to allow such an undertaking to be broken up appears to be largely based upon the statutory authority to carry on the undertaking being entrusted to that company and that company alone.[69] There was a clear statutory restriction on anyone else being put in as manager of the business or to bring an end to the undertaking by selling off its constituent parts.[70]

[61] ibid.
[62] ibid 217 (Cairns LJ).
[63] *Great Eastern Railway Co* v *East London Railway* (1881) 44 LT 903; *Carmichael v Greenock Harbour Trustees* [1910] AC 274; *Fripp v Chard Railway Co* (1853) 11 Hare 241.
[64] Interestingly, in order to protect the position of execution creditors in the wake of the *Gardner* decision, Parliament subsequently passed the Railway Companies Act 1867 which permitted an execution creditor to apply to court for the appointment of a receiver and 'if necessary' a manager (s 4).
[65] See also *Parker v Camden London Borough Council* [1986] Ch 162, 173 per Sir John Donaldson.
[66] *Gardner v London, Chatham and Dover Railway Co* (1867) 2 Ch App 201, 217.
[67] See eg *Legg* v *Mathieson* (1860) 2 Giff. 71 and *Wildy* v *Mid-Hants Railway Co* (1868) 18 LT 73.
[68] Gardner (n 66) 212 and 215 (Cairns LJ).
[69] See the discussion in A Wardrop 'Not Ordinary Trading Companies: Common Law Responses to Insolvent Utilities in the United Kingdom, Australia and the United States' (2011) 40 CLWR 40.
[70] 'When Parliament, acting for the public interest, authorizes the construction and maintenance of a railway … it confers powers and imposes duties and responsibilities of the largest and most important kind, and it confers and imposes them upon the company which Parliament has before it, and upon no other body of persons. These powers must be executed and these duties discharged by the company. They cannot be delegated or transferred,' (Gardner (n 66) 212 (Cairns LJ)).

Later cases came to emphasise the public interest as being the basis for the courts' protection of these statutory company undertakings.[71] In *Marshall* v *South Staffordshire Tramways Company*[72] Lindley LJ explained the rationale behind the protection of statutory companies:

> Speaking generally, the owner of an equitable charge or lien on property as a security for money which is due and payable has a right to a judicial sale of that property in order to satisfy the charge or lien… But this right does not extend to property, of what is called an undertaking, which has been acquired under statutory powers for *public purposes*, if those purposes will be defeated, or at all events seriously affected, by a judicial sale. This exception to the general rule is as well settled as the rule itself.[73]

Statutory company undertakings were, and are, seen as carrying on their respective businesses in the public interest. The courts have identified that it is in the public interest that such undertakings should (absent Parliamentary intervention) remain intact as going concerns even when secured creditors attempt enforcement action or the company enters liquidation.

B Re Panama and the Floating Charge

The ability simply to register a company under the Companies Acts in the latter half of the nineteenth century encouraged traders and promoters to incorporate their businesses without the expense of requiring a private act of Parliament. Company registrations started to increase after the Limited Liability Act 1855.[74] Companies carrying on any type of business, whether or not that included any public interest element, were capable of being formed with relatively minimal formality.

When drafting security instruments issued over the assets of companies formed under the Companies Acts, it was natural for such registered companies to borrow the term 'undertaking' from the mortgage instruments of statutory companies.[75] The courts' interpretation of such security documents relied partly on the established reasoning in the

[71] See also *Re Woking Urban District Council (Basingstoke Canal) Act 1911* [1914] 1 Ch 300, 309 (Cozens-Hardy LJ): '[I]n the case of a statutory company formed for the purpose of carrying on a public undertaking, I think it is clear that the company could not assign the undertaking, with its rights and obligations.'

[72] [1895] 2 Ch 36.

[73] ibid, 50 (emphasis added). In *Blaker v Herts and Essex Waterworks Company* (1899) 41 Ch D 399 the same principle was held to apply to a waterworks company. See also Sir John Romilly MR in *Furness v Caterham Railway Co* (1859) 27 Beav 358, 361: '… the debenture-holders cannot take possession of the land and use it so as to put a stop to the undertaking, and that mortgages of the undertaking do not enable the mortgagees to put an end to it.' The idea that the mortgage might take possession and thereby put an end to the undertaking was earlier described by Coleridge J as 'a very monstrous and improbable supposition' in *Doe d Myatt v St Helen's and Runcorn Gap Railway Co* (1841) 2 QB 364, 374. Also, see *Re the Nottingham General Cemetery Co* [1955] Ch 683, 694.

[74] Figures provided by Companies House show that there were 5,000 incorporations in the period 1862-69, 9,900 in the 1870s, 18,000 in the 1880s, 36,600 in the 1890s and 45,000 in the first decade of the twentieth century.

[75] See Edward Manson 'The Growth of the Debenture' (1897) 13 LQR 418, 420.

public interest cases. Significantly, they did not afford Companies Act companies the protection and permanence enjoyed by public interest companies.

In *Re Panama, New Zealand, and Australian Royal Mail Co*[76] the company had issued a number of debentures in the form of a charge which copied the form of mortgage found in Sch C of the CCCA. The only significant difference from Sch C was that the debenture created a charge rather than a mortgage[77] over the company's undertaking. The company was wound up and the debenture holders successfully claimed they had priority over the company's general creditors when the proceeds of sale of the company's assets came to be distributed. The company had owned a number of steamships and had carried on a business of delivering mail to the British colonies of New Zealand and Australia via Panama.[78] The liquidator had relied on the argument that *Gardner* governed the case and that the charge holder was only entitled to a charge on the income of the company.

The Court of Appeal dismissed this argument as *Gardner* involved 'a peculiar subject matter … a permanent railway, which it was well known to everybody was permanent, and could not be mortgaged, or sold, or dealt with in any way.'[79] Without discussing public policy arguments, the Court of Appeal in *Panama* decided the term 'undertaking' on the facts of the case included all the company's property both present and future. The company's business could continue and the debenture holder could not interfere unless the debenture's terms were breached. Giffard LJ explained that: 'the moment the company comes to be wound up, and the property has to be realized, that moment the rights of these parties, beyond all question, attach.'[80] This in itself goes no further than the private Act mortgage cases.[81] The company had ceased to be a going concern and its assets were available for distribution to its creditors. The debenture holder has priority in any such distribution over the company's unsecured creditors.

What makes *Panama* such a significant case is Giffard LJ's obiter comment: 'My opinion is, that even if the company had not stopped the debenture holders might have filed a bill to realize their security'.[82] This last sentence is the change from the public interest approach. Either the company being wound up or its entering receivership to realise the secured assets would lead to the company's inability to carry on its undertaking which in turn would cause the charge to become enforceable. In modern parlance it is the inability to carry on its undertaking due to the liquidation or receivership which causes the floating charge to

[76](1870) 5 Ch App 318. There had been three earlier inconclusive decisions on the effect of registered companies' charges over their undertaking. See *King v Marshall* (1864) 33 Beav 565; *Re Marine Mansion Co* (1867) LR 4 Eq 601; *Re New Clydach Sheet and Bar Iron Co* (1868) LR 6 Eq 514.

[77] This was probably to avoid the likely requirement to register a mortgage under the Bills of Sale Act 1854 (see Roger Gregory and Peter Walton 'Fixed Charges over Changing Assets – the Possession and Control Heresy' [1998] CfiLR 68).

[78] *Kennedy* v *Panama, New Zealand, and Australian Royal Mail Co* (1867) 2 QB 580.

[79] *Re Panama, New Zealand, and Australian Royal Mail Co* (1870) 5 Ch App 318, 321 (Giffard LJ).

[80] (1870) 5 Ch App 318, 322-3.

[81] *Re Glyn Valley Tramway Co* [1937] 1 Ch 465.

[82](1870) 5 Ch App 318, 322-3.

crystallise. *Panama* effectively introduced what became known as the floating charge[83] by partly following the reasoning in *Gardner* but also by extending it.

In *Gardner* (and subsequent decisions following its reasoning) the court's protection from the break-up of the company's undertaking was driven by public interest considerations. In *Panama*, the court had to construe a set of words, whose meaning had been largely driven by questions of public interest, in a context in which that public interest was not merely not decisive but actually inappropriate.

C Liquidations

We endeavoured to ascertain whether there were any companies in the past, not established to undertake a public facility, that have been the subject of a winding-up order due the fact that their activities had or might have an impact on the public interest.[84] Although there are cases where the liquidator is, once appointed, faced with a possible public interest issue, there was only one case found where concern over the public interest had precipitated the winding up. This was the decision of HH Judge Purle QC (sitting as a High Court judge) in *Re Marches Credit Union Ltd*.[85] Here the directors of a credit union had petitioned for the company's winding up, with the petition only being presented on the day that it was heard, as a matter of urgency. As a result of the apparent embezzlement perpetrated by one of the directors, the company was plainly insolvent. The concern was that once any of the company's problems became widely known, there was every risk that there would be a run on the company by customers which would cause disorder and dismay.[86] The judge was told that if a winding-up order could be made immediately there was a strong likelihood that the Financial Services Compensation Scheme would ensure that all creditors would be paid out in full within seven days or so.[87] His Lordship made a winding-up order on the basis of the court's inherent jurisdiction as winding up would introduce an orderly means by which the investors could be paid out what was due to them, avoiding an unseemly scramble, and that was, in the judge's view, very much in the public interest.[88] This case is quite different from, say British Steel, as there was concern over what the creditors would get and no thought of continuing the business after customers were paid out.

D Section 124A of the Act and the public interest

If the SoS believes, where given a report or information obtained as a result of an investigation under various pieces of legislation[89] that it is expedient in the public interest

[83] See in particular *Re Florence Land and Public Works Co* (1878) 10 Ch D 530 and *Re Colonial Trusts Corporation ex p Bradshaw* (1879) 15 Ch D 465 (where at 472 Jessel MR first used the phrase 'floating charge'). For a full account of the creation of the floating charge see Gregory and Walton (n 76).
[84] The following terms were searched in Westlaw: 'liquidation' & 'public interest,' and separately: 'winding-up order' & 'public interest.'
[85] [2013] EWHC 1731 (Ch).
[86] ibid, [1].
[87] ibid [2].
[88] ibid [9].
[89] For example, see Part XIV of the Companies Act 1985. For detailed discussion, see Andrew Keay, 'Public Interest Petitions' (1999) 20 *Company Lawyer* 296.

that a company should be wound up, the SoS may present a petition for the company to be wound up and a winding-up order may be made if the court thinks it just and equitable. In taking any action the SoS is acting in the interests of the public.[90] This power has been available since the enactment of s 169(3) of the Companies Act 1948. When the 1948 Act was amended by the Companies Act of 1967, s 60 of the latter introduced a provision similar to the present s 124A of the Act.

It is plain that the use of s 124A is not appropriate for the kind of situations in which companies considered in this paper find themselves. Action is only taken by the SoS under s 124A where the SoS has received a report or information and there is some form of wrongdoing or improper activity, such as where there have been serious breaches of the Companies Act by the company,[91] the affairs of the company are being conducted fraudulently,[92] or the company is involved in a conspiracy to defraud customers.[93] Thus, petitions under s 124A will not usually be appropriate for the kinds of companies that we have considered in this paper. These latter companies were liquidated because of insolvency and the fact that there was a significant risk that there would be an impact on the public interest and not because of some improper practice.

VI Analysis and a Proposal

We have seen that where an insolvent company's business is affecting, or likely to affect, the public interest the recent approach has been generally to seek compulsory liquidation of the company. Where this occurs the OR acts as liquidator and the court appoints special managers to assist the OR. This might seem to work well and has been perceived as the best (only) practical option. While this might seem to be the case at the point a winding-up order is made, to ensure that some independent and competent persons take control of the company, we submit that there are problems and questions raised by taking such a route. As discussed earlier, liquidation is traditionally designed to provide for an orderly process that involves an equitable and fair distribution of the assets amongst the company's creditors, and yet with the liquidation of the kinds of companies on which we have focused this purpose is not realised. Companies, like British Steel, have traded on in liquidation with the object of a sale and this is done notwithstanding the fact that it is likely to lead to an annihilation of any funds which would be paid out to the creditors. If a liquidator was acting in line with the purposes of liquidation, he or she would terminate a company's business forthwith or as soon as reasonably possible so that the company's funds are not exhausted. Also, s 143 of the Act provides that the functions of the liquidator of a company in compulsory liquidation are to secure that the assets of the company are got in, realised and distributed to the company's creditors but when the OR administers the affairs of a company in liquidation the OR might not be fulfilling these functions. Other issues like carrying on business might become all important even though it is not going to ameliorate the ultimate position of the creditors. For instance, in *Re Baglan Operations Ltd*[94] the OR's decision to stop carrying on the business of the company because of the funds that it was

[90] *In re Rubin, Rosen and Associated Ltd* [1975] 1 WLR 122, 129; *Re Xyllyx plc (No2*) [1992] BCLC 378, 379.
[91] *In re Allied Produce Co Ltd* [1967] 1 WLR 1469.
[92] *In re Golden Chemical Products Ltd* [1976] 1 Ch 300.
[93] *Re Highfield Commodities Ltd* [1985] 1 WLR 149, [1984] BCLC 623, (1984) 1 BCC 99,277.
[94] Baglan Operations (n 6).

sucking up was successfully challenged by customers of the company on the basis that if the business was to terminate it would damage the public interest.

Another option is to place companies in ordinary administration rather than liquidation.[95] It appears to have been utilised in respect of some large companies that have an effect on aspects of the public interest, such as Jarvis plc[96] which engaged in large construction and civil engineering projects largely in support of the railway industry. However, unlike, for instance, British Steel or Carillion (whose business activities are perhaps comparable to Jarvis), in Jarvis there was support from secured lenders for the business to continue. The fact is though, that the use of administration is problematic for several reasons. Foremost is that the administrator must administer the company according to the purpose of administration contained in para 3 of Sch B1 to the Act, and with companies like British Steel and the intended strategy that was devised, it would be unlikely that an administrator could comply with those purposes. Thus, administration would not be appropriate.

A further option might be special administration. Historically, as we saw earlier, the undertaking of a financially distressed statutory company carrying on business as a public utility was protected. The public interest required the undertaking to remain intact. The modern system of special administration is very much an echo of that approach. Where, for example, a railway or water company encounters financial difficulties, special administration requires the administrator to keep the company's undertaking intact and encourages the sale of the undertaking to a purchaser. Special administration appears to work successfully where available, but it has been used in relation to companies that are conducting some form of public utility and are not the kind of companies we have considered here, where the companies' activities simply impact on the public interest.

There could be more uniformity as to how special administration operates. Each case could be subject to effectively the same rules. In the nineteenth century standard conditions were made applicable to statutory companies under the CCCA. Something similar might be possible with special administration. Uniformity would bring more certainty as to how special administration works and might make extension of the special administration regime to other industries, where a need arises, more efficient.

Special administration, of course, currently only applies in those industries with the benefit of bespoke primary and secondary legislation. The list of industries where the public interest is recognised by the availability of special administration continues to be expanded. Such development is both piecemeal and, significantly, limited to instances where the nature of the industry is clearly linked to the public interest. The list of industries where special administration is available reads like an updated twenty-first century version of the nineteenth century statutory companies. Piecemeal expansion of special administration may eventually spread to all public utility-type industries. However, it is unlikely, as currently conceived, that businesses of companies which are not public utilities (or have some other obvious link to the public interest) will be included, even though there is a strong public interest in maintaining the undertakings of such companies. Cases such as

[95] See Sch B1 to the Insolvency Act 1986.
[96] It eventually was liquidated after a buyer could not be found: S Arnott, 'Winding-up of Jarvis puts 1,100 out of work,' *The Independent* (London, 23 October 2011).

British Steel, Carillion, Thomas Cook and Baglan Operations are such cases. They fall outside the special administration net. The public interest is not an inherent part of their respective businesses but is engaged when those businesses begin to fail.

It may be possible to introduce a generic form of special administration to cover this latter kind of cases. Whenever the SoS (or other public official) recognises there is a public interest in the continuance of a financially distressed company's undertaking, the SoS could apply, or be a party to an application, for a special administration order. If a standard form of rules could be created for special administration as suggested above, it would be within the court's powers to make a special administration order (if it agreed with the view that the public interest was engaged) and identify specifically the purposes of the special administration in any individual case. The purposes of the special administration would be identified in the order. This would overcome the need for an administrator having to adhere to the purposes set out in para 3 of Sch B1. It would allow the proposed generic special administration regime to be applied to any company whose failure involves the public interest. It would be mostly non-utility type companies such as British Steel, Carillion and Thomas Cook who would benefit from this proposed regime but it would also, to some extent, futureproof the system as it would no longer be needed to promulgate bespoke legislation to deal with newly-recognised instances of businesses which inherently impact the public interest.

A number of ancillary matters would need to be covered by the generic rules applicable in relation to such special administration cases. It is clear from recent compulsory liquidation cases that the Government ultimately pays or underwrites the fees of special managers in addition to the costs of the OR acting as liquidator. If special administration is seen as a more appropriate vehicle for the maintenance of a company's undertaking where the public interest is involved, an indemnity from the Government for the fees (and other potential liabilities) of the special administrator would likely need to be part of the process.[97] Adopting this approach would seem to chime with what the Cork Committee had envisaged. We refer to the comment of Sir Kenneth Cork which we set out in the Introduction, where he said that: 'an administrator should be brought in … where in the national interest the Government should take a hand.'[98]

This proposal is not without its shortcomings, the primary one being that the creditors might still lose out, but at least the regime created would be designed more specifically for the kind of situation which we have addressed in this paper, and it would not involve the use of liquidation in a way which was not intended. Also, it might be less expensive having an administrator rather than the OR acting with special managers.

VII Conclusion

[97] This appears to have happened in the special administration case of Metronet, a consortium of companies responsible for the maintenance, renewal, and upgrade of the infrastructure on nine London underground railway lines. In 2008 the company emerged from administration and its responsibilities were returned to public ownership under the authority of Transport for London: BBC News, 'Metronet's takeover is complete,' 7 May 2008.

[98] Cork (n 9).

This paper has been concerned with examining what happens and what should happen to large insolvent companies whose businesses have, or might have, an impact on the public interest. In recent times such companies have been placed into compulsory liquidation. We have discussed the leading case of British Steel plc as an instance of this occurring and submitted that it raises several difficult issues. The paper has questioned, given the purposes of liquidation and administration, whether they are in fact appropriate routes to be taken for companies the subject of the paper. Furthermore, the paper has ruled out special administration, as it presently exists, as a route forward, as it is used for public utility companies which encounter financial difficulties and requires bespoke legislation and is thus not viable for the kind of companies we have considered here. It has been submitted that it would be preferable if a generic form of special administration were developed to cover the kind of cases discussed in the paper. This would allow for greater flexibility and would mean that liquidation was not employed in a way which was not intended. Admittedly, government funding would be needed to support the company whilst it was subject to the special administration process, but clearly that has occurred in respect of companies, like British Steel, that have entered liquidation.