

# Newman & Partners

Licensed Insolvency Practitioners

## RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at [insolvency@newmanandpartners.co.uk](mailto:insolvency@newmanandpartners.co.uk)

## Can businesses be acquired by your client out of administration without phoenixism?

**Phoenixism costs the taxpayer an estimated £800 million a year, according to new data from HMRC. The risk of phoenixism should not, however, deter legitimate buyers from acquiring a business out of administration. For advisers, it is important then to understand the distinction between phoenixism and a legitimate pre-pack and whether the business should or can be acquired.**

### What is the difference between phoenixism and a legitimate pre-pack?

As you will be aware, phoenixism involves directors using the insolvency process to defraud creditors by liquidating a business with the aim or relaunching it at a later date. Typically, assets are acquired at undervalue with no genuine intention to repay debts to creditors, effectively giving the company a fresh start. This is a very deliberate act by directors.

A pre-pack administration is a legally recognised process where a sale of the business, sometimes back to the existing directors, is agreed before the administrator is appointed and completed immediately on appointment. The key test is whether the deal provides a better outcome for creditors than any alternative, including liquidation.

Some businesses become insolvent through circumstances largely outside directors' control, such as the sudden failure of a key supplier or an unexpected market shock. In those cases, directors may have a genuine desire to preserve the business and its jobs, which is where a pre-pack administration may be the most appropriate tool.

### What do directors need to get right?

Any director considering buying back his or her business through a pre-pack must ensure:

- **They are not subject to a bankruptcy order or director disqualification:** Any director who is cannot lawfully act in the management of a company.
- **The consideration paid is a fair value:** An independent valuation is essential and the administrator's duty is to creditors, not the buyer.

- **The deal is reported to creditors:** Since 2021, connected party pre-pack sales must either be approved by creditors in advance or subject to an independent written opinion from a pre-pack pool evaluator.
- **The old company name is not reused without following the restrictions under the Insolvency Act 1986:** Using a prohibited name to trade again is a criminal offence.

Done properly, a pre-pack can preserve jobs and goodwill while delivering a better return for creditors than a break-up sale. Done badly, it exposes directors to disqualification, personal liability, and criminal prosecution.

**i** If you want to understand whether one of your client's proposed transactions is compliant, ***please speak to our team today.***



# Protecting customers and clients when a business is approaching insolvency

Insolvency rarely arrives without warning and there are often a number of signs that a company is struggling. These typically include an inability to repay debts, poor cashflow and declining credit ratings. In some cases, insolvency may be more sudden, such as the loss of a key customer, but most directors will, or ought to be, aware that insolvency is a possibility.

Those facing the prospect of insolvency have certain legal obligations that they must meet, which will affect the way that they handle customer and client commitments.

## The key legal constraint: Wrongful trading

Once a director knows, or ought to conclude, that there is no reasonable prospect of avoiding insolvent liquidation, they are required to take every step to minimise potential losses to creditors. Continuing to accept new client money or take on new customer commitments beyond that point risks a wrongful trading claim under s.214 Insolvency Act 1986.

Under s.214 of the Act, directors can be made personally liable for the increase in net deficiency during the period of wrongful trading, regardless of the protections offered by incorporation. There is no grace period and good intentions are not a defence. If a director later claims they believed the business could trade through, that belief must have been reasonable and supported by proper financial information at the time.

## Practical steps directors should be taking


If you suspect a client's business is likely to face insolvency in the months ahead you should be advising them to:

- Stop taking new client or customer deposits or prepayments unless those funds can genuinely be delivered or refunded.

- Ringfence customer funds held for future delivery. Mixing them with general trading funds creates creditor exposure and potential trust law complications.
- Assess whether continuing to provide a service creates safety or regulatory risk. If it does, the case for early insolvency proceedings rather than continued trading is stronger.
- Seek early professional advice and act on it. If advice is taken early, this could put them in a substantially better position if their conduct is later scrutinised.

When insolvency proceedings do begin, customers and clients typically rank as unsecured creditors – usually positioned behind secured creditors such as banks and preferential creditors including HMRC and employees.

The best protection for customers is for the business to avoid reaching insolvency, if at all possible. Failing that, an orderly process with an insolvency practitioner involved gives the best chance of recovery.

-  To help your clients understand their obligations when financial difficulty hits, [\*please speak to our team today.\*](#)



# Does the increase in the BADR rate affect Members' Voluntary Liquidations?

From 6 April 2026, the rate of Capital Gains Tax (CGT) available via Business Asset Disposal Relief (BADR) for qualifying distributions increased from 14 per cent to 18 per cent. Up to 6 April 2025, the rate was 10 per cent. For shareholders using a Members' Voluntary Liquidation (MVL) to extract value from a solvent company, instead of a more typical route such as dividends, this is a material change worth understanding before any action is taken.

## How an MVL works

An MVL is available to solvent companies, where they are able to pay all debts in full within 12 months. A licensed insolvency practitioner is appointed as liquidator, creditors are paid in full and the remaining assets are distributed to shareholders of the company. Those distributions are treated as capital receipts, not income, making them potentially subject to CGT rather than Income Tax and National Insurance.

Where the shareholder qualifies, BADR reduces the effective CGT rate on those distributions if shareholders qualify for this relief. To qualify for relief, both of the following must apply for at least two years up to the date the owners sell their business:

- They are a sole trader or business partner or shareholder.
- They have owned the business for at least two year.

These same conditions apply if a business is being closed down, but the owners must also dispose of all of their business assets within three years to qualify for relief. The change in rate from 14 per cent to 18 per cent increases the tax cost for business owners, but the rate is still far below the main rate of CGT for disposals that do not qualify.

## Is an MVL still worthwhile?

That will depend on the individual circumstances. For shareholders with significant retained profits in a company, they wish to close, the MVL route is likely to remain more tax-efficient than dividend extraction even at the revised dividend rates, which are as follows:

- **Basic rate:** 10.75 per cent (for income within the basic rate band).
- **Higher rate:** 35.75 per cent (for income £50,271 to £125,140).
- **Additional rate:** 39.35 per cent (for income over £125,140)

The break-even point will shift, but for most situations, the MVL will still compare favourably.

Beyond tax, the MVL offers a clean, structured closure overseen by an insolvency practitioner, with formal discharge of liabilities and an orderly distribution of assets. That continues to have value regardless of the rate change.

Where clients have not yet factored in the revised 18 per cent rate, now is the time to revisit projections and model the updated position.

 To discuss how to advise clients on MVL in light of the BADR changes, [\*please speak to our team today.\*](#)



CAREFUL CONSIDERATION IS NEEDED BEFORE TAKING OUT ANY FORM OF FINANCE AND SPECIALIST ADVICE SHOULD BE SOUGHT. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US.

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