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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**

Insolvency hits construction the hardest

Last year, a record-breaking 4,371 companies in the construction sector collapsed in England and Wales. It was the only industry to suffer more than 4,000 insolvencies – though food, administration, science, hotels, and retail were not far behind. It's the highest number of insolvencies since the 2009 financial crisis.

No doubt one might blame this on the usual characters: Supply chain disruptions, the lingering effects of Brexit and the pandemic, labour shortages and increased material prices. But the lessons we can draw from the statistics far outweigh the doom and gloom associated with this amount of insolvency.

Some of your clients may be in the construction industry (some may even have gone bust last year – despite your best efforts). If this is the case, or you are worried that your clients may enter insolvency this year, there are a few things you should do.

When construction companies go bust

You've no doubt done everything you can to prevent insolvency for your client, but if their business has collapsed nonetheless, your job isn't necessarily over. As their financial adviser, you should now be looking to optimise the time between the insolvency announcement and the engagement of a practitioner (like *Newman & Partners*).

You should suggest engaging an IP as soon as it becomes apparent that the client cannot avoid insolvency as early engagement can lead to more options for rescue or restructuring. In some cases, we may not even need to become fully involved and can suggest remedial strategies to quickly get the business back on its feet.

When you come to us, all the client's documents and information should be in order so that we can act fast and efficiently. You know as well as any the value of organised financial information.

We also recommend that you keep records of all communications with the client (including email, calls, etc.) as evidence of advice provided and to aid in disputes or disagreements later down the line. This also supports transparency and can help in any handover procedures.

In short, being proactive and assertive with your practices can benefit you, the client and the insolvency practitioner in getting the best result from the insolvency process.

If you think one of your clients might be entering insolvency, please get in touch with one of our experts.

Call our team on: **020 8357 2727** or email: **insolvency@newmanandpartners.co.uk**

Is insolvent trading illegal?

We get asked this question often by accountants who are unsure of their client's obligations and whether insolvent trading is directly breaking the law. In short, we usually suggest that trading ceases immediately upon declaration of insolvency, however, it's a bit of a grey area.

What is insolvent trading?

Insolvent trading is when a company continues to operate and incur debts at a time when it is unable to pay its current debts or liabilities. It can expose directors to legal consequences, including personal liability for the company's debts if they fail to take appropriate action upon recognising the company's insolvent status.

In essence, the laws around insolvent trading are designed to protect creditors, ensure fair treatment in the distribution of an insolvent company's assets, and maintain the integrity of the business environment.

Is insolvent trading always illegal?

Insolvent trading, while heavily regulated, is not unequivocally illegal under all circumstances. The law provides for exceptions where directors, engaging in efforts to rescue the company or minimise loss to creditors, may continue trading. This includes situations where the company is undergoing administration, engaging in a *Company Voluntary Arrangement*, or directors are operating within a 'safe harbour' framework aimed at turning around the company's financial situation.

Directors must navigate these scenarios with caution, ensuring their actions aim to restore the company's health or achieve a better outcome for creditors, all while adhering to legal advice and diligently documenting their decision-making processes to demonstrate consideration for creditors' interests.

As their accountants, you may find that it is your responsibility to advise directors through this process and ensure they remain financially compliant.

When is insolvent trading definitely illegal?

Insolvent trading becomes definitively illegal in the UK when directors continue to operate a company with knowledge, or ought to have known, that there was no reasonable prospect of avoiding insolvent liquidation or administration, without taking every possible step to minimise potential losses to the company's creditors.

This situation primarily falls under the scope of wrongful trading, as outlined in Section 214 of the Insolvency Act 1986. Under which, the conditions for wrongful trading include:

- Directors continuing to incur new debts despite knowing the company cannot pay its debts as they fall due.
- Failure to act in a way that minimises the potential loss to the company's creditors once they knew, or should have known, the company was insolvent.

The penalties for wrongful trading include:

- **Personal liability:** Directors found guilty of wrongful trading can be held personally liable for the debts incurred by the company during the period of wrongful trading. This means their personal assets can be at risk to cover the company's debts.
- **Disqualification:** Directors can be disqualified from holding any directorships for a period of up to 15 years. This disqualification is a significant professional repercussion, limiting their ability to manage or control a company during that time.
- **Criminal penalties:** Although wrongful trading itself is a civil offence, if fraudulent trading (intentionally deceiving creditors) is identified, directors might face criminal charges. This can result in fines and, in severe cases, imprisonment.
- **Reputational damage:** Beyond legal penalties, the stigma of being found guilty of wrongful trading can have long-lasting effects on a director's professional reputation and future business ventures.

Because of these firm and long-lasting consequences, you should be advising your clients both on their responsibilities and their rights under insolvency trading laws.

If you require help with this, please feel free to ***reach out to one of our insolvency team***.

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What is the role of accountants in pre-pack administration?

Pre-pack administration is a process where a company arranges to sell its assets or business to a new owner before officially declaring that it's in financial trouble and entering administration. Then, as soon as the company goes into administration, the sale happens almost immediately.

This keeps the business running smoothly, saves jobs, and gets the best possible deal for the creditors by avoiding the damage that can happen if a company's troubles become public knowledge and its value starts to drop.

During this process, you – the accountant – play an important role on numerous fronts.

Your advisory role

You'll need to assess the company's financial situation to determine whether a pre-pack administration is a viable and appropriate option. This involves reviewing the company's assets, liabilities, cash flow, and trading prospects. Then advising the company's directors on the viability of a pre-pack administration, considering the potential outcomes for the business, its creditors, and employees. (We can help you with this if you need advice).

You should then ensure that the pre-pack administration process complies with relevant laws and regulations, including the Insolvency Act 1986 and the Statement of Insolvency Practice 16 (SIP 16), which governs pre-pack sales in administration.

Your role in facilitation

You may find yourself involved in valuing the company's assets to ensure that the pre-pack sale is conducted at a fair value, protecting the interests of creditors. You may also need to assist in negotiating with potential buyers, creditors, and other stakeholders to facilitate the pre-pack deal. This includes discussions on the terms of the sale and the future of the business.

Accountants often find themselves preparing the financial projections and business plans for the new entity post-sale, supporting the case for the pre-pack administration, and demonstrating its viability to creditors and buyers.

Your role as an intermediary

You may have to communicate with creditors on behalf of the company, explaining the pre-pack administration process, the rationale behind it, and how it impacts creditors.

You are also in a position to guide the company's directors through the legal and fiduciary duties involved in the pre-pack administration process, including the need to act in the best interests of creditors.

Your role in ethics and compliance

You play a crucial role in ensuring that the pre-pack administration process is transparent and fair to all parties involved, particularly unsecured creditors who might be concerned about the fairness of the sale.

Although we, as insolvency practitioners, ultimately carry out the pre-pack administration, we can work closely together, providing necessary financial information, assisting with the preparation of reports, and ensuring a smooth transition during the process.

Please don't hesitate to get in touch if you'd like more advice on the process – we can guide you through your requirements and responsibilities. Call our team on: **020 8357 2727** or email: **insolvency@newmanandpartners.co.uk**

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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