

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

AML and KYC obligations during insolvency

If you are an accountant or financial professional and one of your clients is facing insolvency you need to understand where the integration of Anti-Money Laundering (AML) and Know Your Customer (KYC) regulations comes into the process. Here's an explanatory guide on how these regulations intersect with insolvency procedures and some of the scenarios that you may encounter.

The role of KYC and AML in insolvency

Insolvency practitioners are required to apply stringent KYC and AML standards, just as you are. This encompasses customer due diligence, which involves collecting and verifying detailed information about the insolvent entity, including its legal status, ownership structure, and the nature of its financial activities.

As well as ongoing monitoring throughout the insolvency process. During this, regularly reviewing the financial activities of the insolvent entity is essential and ensures that any unusual or suspicious transactions are identified promptly.

Regulatory framework

The UK's regulatory landscape for KYC and AML is governed by several key legislations and overseen by the Financial Conduct Authority (FCA).

The Money Laundering Regulations 2017 ensure the UK aligns with international standards and outline specific protocols for Customer Due Diligence and Risk Assessments. While the Terrorism Act 2000 and Subsequent Legislation criminalise the funding of terror groups and include provisions for freezing assets related to terrorism. Failure to comply with either of these regulations can result in significant penalties, including imprisonment and fines – even during insolvency proceedings.

What does this mean for insolvency practitioners?

Just like accountants, insolvency practitioners must be vigilant in their compliance with KYC and AML regulations. This includes:

- Thorough identification checks: Ensuring the insolvent entity's identity is accurately verified.

- Risk assessment: Evaluating the risks associated with the entity, particularly focusing on any red flags that may indicate money laundering or terrorist financing activities.
- Record keeping: Maintaining comprehensive records of all checks and assessments carried out.

The FCA's role

The FCA is the primary regulatory body enforcing KYC and AML regulations in the UK. It's responsible for ensuring that financial services firms, including those handling insolvency matters, adhere to these regulatory standards to maintain the integrity of the financial system. Here are some practical strategies for staying compliant:

- Implement robust systems: Establish systems for thorough identity checks and ongoing monitoring.
- Stay informed: Keep abreast of changes in legislation and regulatory guidelines.
- Training and awareness: Ensure staff are trained and aware of their responsibilities under KYC and AML regulations.

For accountants and financial experts involved in insolvency procedures, integrating KYC and AML regulations into their practice is vital in upholding the integrity of the financial system. If you are worried or confused about your AML and KYC obligations during insolvency proceedings, please don't hesitate to get in touch and we can talk further on these matters.

If you require more advice on AML and KYC compliance, please feel free to **reach out to one of our insolvency team**.



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

The role of an accountant in pre-insolvency planning

As accountants and financial professionals, you can be invaluable partners for your clients who are facing financial distress. You can offer financial expertise as well as guidance on navigating pre-insolvency situations.

If you believe that a client's business has entered pre-insolvency proceedings, you should reconsider your role and reassess your strategies – and contact an insolvency practitioner, where necessary.

The crucial role you play in pre-insolvency advising

Accountants are often the first to identify early signs of financial distress in their clients' businesses. These signs may include declining profitability, cash flow issues, mounting debts, or shrinking working capital. Recognising these indicators is the first step in providing proactive assistance to clients who may be teetering on the brink of insolvency.

One of the primary responsibilities of an accountant in this context is to offer expert financial analysis. By delving deep into the client's financial statements and operations, accountants can identify issues and develop tailored solutions. This can involve strategies such as effective cash flow management, debt restructuring, or cost reduction measures.

However, it's important to acknowledge that, in some cases, the complexity of financial distress may necessitate the involvement of insolvency practitioners – like us. We can provide specialised insights and solutions that go beyond an accountant's scope, ultimately benefiting the client's financial health. Recognising when to engage insolvency practitioners is a key part of maximising your effectiveness as an accountant.

Strategies for accountants in pre-insolvency situations

Accountants can employ several strategies to assist clients in improving their financial position before considering insolvency.

- **Effective cash flow management:** In our experience, cash flow issues are often at the heart of financial distress.
- **Debt restructuring:** You can play a pivotal role in negotiating with creditors to restructure the client's debt in a way that is manageable and feasible for the company.
- **Collaboration with insolvency practitioners:** While you can offer essential financial advice and strategies, it's crucial to recognise when a client's financial situation requires the expertise of insolvency practitioners. We are equipped to handle more complex insolvency scenarios, including legal compliance, stakeholder negotiations, and asset liquidation.

- **Proactive financial planning:** Often, clients with robust financial plans that address immediate challenges pave the way for long-term financial stability.

The value of expertise: Accountants as trusted advisors

You know better than anyone, that your principle aim during hard times is to offer your clients the best possible advice and guidance. Pre-insolvency advising is just as important as advising start-ups.

Clients trust their accountants to provide objective, data-driven insights into their financial situations. This trust is built on a foundation of professionalism, integrity, and a commitment to the client's best interests.

Accountants can offer an objective view of the client's financial health and guide the most prudent course of action. By maintaining transparency, accountability, and ethical conduct, accountants foster trust with their clients, even during challenging times.

It is also the case that, as accountants, you have the responsibility of informing your client when an insolvency practitioner is required. You have the ability to recommend the best firm for the job and your clients will appreciate it if your recommendation provides them with a smooth and seamless insolvency procedure.

When to engage insolvency practitioners

Recognising when to involve insolvency practitioners is perhaps the most crucial aspect of pre-insolvency advising. While accountants can offer essential guidance, there comes a point when the complexity of the client's financial distress demands the expertise of seasoned insolvency practitioners.

Preparing clients for this transition is another vital role for accountants. You can help clients understand what to expect when engaging insolvency practitioners and ensure a smooth handover. Having a collaborative effort between accountants and insolvency practitioners can lead to more successful outcomes for clients facing insolvency.

If you think one of your clients may need the assistance of an insolvency practitioner, please feel free to **[reach out to one of our insolvency team](#)**.

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Where does Capital Gains Tax come into insolvency?

We often find ourselves answering questions about which taxes come into insolvency and which can be ignored. It's a complicated subject, with a lot of moving parts, and misunderstandings can lead to compliance issues and possible penalties. However, one of the most important ones to understand is Capital Gains Tax (CGT), which, during insolvency, is crucial for any accountant.

Who pays CGT during insolvency?

In insolvency situations, whether Capital Gains Tax (CGT) is payable, and by whom, depends on several factors, including the type of insolvency, the nature of the assets involved, and specific legislative provisions. Here are some scenarios where CGT might be relevant during insolvency proceedings:

Asset disposal by the insolvent individual before insolvency

If an insolvent individual disposes of assets before formally entering into insolvency, any capital gains realised from these disposals may be subject to CGT. This is because the disposals occur while the individual still has control over the assets.

Asset disposal by the trustee or liquidator

In cases where assets are disposed of by a trustee in bankruptcy or a liquidator, the situation becomes more complex. Under the *Taxation of Chargeable Gains Act (TCGA)*, the transfer of assets to a trustee or assignee in bankruptcy is disregarded for CGT purposes.

This means the insolvent individual is not considered to have disposed of the assets for CGT purposes. However, if the trustee or liquidator subsequently sells the assets, the gains or losses from these sales are usually assessed against the insolvent estate, not the individual. The trustee or liquidator is responsible for dealing with any CGT liability arising from these disposals.

Individual Voluntary Arrangements (IVAs)

In an IVA, the individual may still be liable for CGT on asset disposals, depending on the terms of the arrangement. The proposal should specify how tax liabilities, including CGT, are to be treated.

Company insolvency

In the case of company insolvency, such as liquidation, the company may still be liable for CGT on the disposal of its assets, depending on the specific circumstances and the timing of disposals.

Death of the insolvent individual

If an insolvent individual dies, the rules change. Under TCGA, sections 62 and 66, assets vested in a trustee or other person are deemed to be acquired by the trustee as if they were a personal representative. This can have implications for CGT, especially in the calculation of gains or losses upon subsequent disposal of these assets.

Are you worried about your client's CGT liabilities?

We understand that being able to provide solid advice to your client is of the highest importance, both for their financial well-being and your firm's reputation. We would like to offer our services to you and your clients in the matter of insolvency and we're happy to provide advice and guidance on which taxes they are likely to be liable for.

To allow us to walk you through this complex regulatory issue **[reach out to one of our insolvency team](#)**.



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.

Newman & Partners Insolvency
Lynwood House
373/375 Station Road
Harrow
Middlesex HA1 2AW

T: 020 8357 2727
F: 020 8357 2027

E: insolvency@newmanandpartners.co.uk
W: www.newmanandpartners.co.uk

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