

# 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)

## Managing rising insolvency risks in the construction sector

According to the latest Red Flag Alert, there has been a nearly 40 per cent increase in the number of construction firms experiencing significant financial distress, rising to 83,559 companies compared to 60,275 in the same quarter last year. Additionally, 6,141 firms are now in a critical condition, marking a 27 per cent increase from last year.

This uptick in distress signals is further supported by recent Government data, showing a 5.7 per cent increase in construction firm insolvencies in the year to February. These figures reflect broader economic challenges pointing to issues in key sectors like real estate and construction as indicators of a strained UK economy.

Similar reports have noted that over a third of UK contractors fear they may not be trading by year-end, with two-thirds struggling to meet their tax obligations in full. The broader economic context is not promising. The persistence of high pressures from the previous year and the impact of the pandemic have led to depleted financial reserves and increased debt loads among UK businesses, many of which are now unsustainable.

Given these conditions, a large number of businesses currently in significant distress are likely to move towards critical distress and potential insolvency unless there is an economic turnaround. The Government's Insolvency Service has reported 4,403 firm insolvencies over the past 12 months, a 5.73 per cent increase year-on-year.

In light of these challenges, construction firms need to manage risks effectively. For accountants advising construction clients, it is crucial to focus on thorough

financial health checks and proactive financial planning. Encourage transparency in supply chain communications and advocate for fair payment terms to mitigate the risk of cascading failures. Additionally, when negotiating with HMRC regarding tax liabilities, ensure your clients are well-prepared with valid reasons and reasonable repayment plans to facilitate discussions.

This period demands a strategic approach to financial management, with an emphasis on resilience and adaptability to navigate the ongoing economic uncertainties in the construction sector.

**i** If you have clients in this sector affected by this downturn, **please get in touch for business recovery and insolvency advice.**



# Risks, Rewards, and Challenges of Antecedent Transactions

**Antecedent transactions are those entered into by a company before its insolvency that may be challenged by a liquidator or administrator once the company enters an insolvency process.**

Understanding these can profoundly influence how you advise your clients who are experiencing financial difficulty or are on the brink of insolvency. Five key types of antecedent transactions should be considered:

- 1. Transactions at undervalue** – These occur when a company transfers assets or provides services at significantly less than their true value. These are often scrutinised if they occur within two years before insolvency. If challenged successfully, a court can reverse these transactions unless the company proves it acted in good faith and for the benefit of its business continuity.
- 2. Preferences** – This is any transaction where a company puts one creditor in a better position over others within six months before insolvency (or two years if the entities are connected). The challenge here is proving the company intended to prefer the beneficiary. If established, these transactions can also be unwound by the courts.
- 3. Unlawful dividends** – Where dividends are paid and there are no reserves from which to pay them, they can be recovered from the directors or even from the recipients in many cases. This can be quite a common occurrence within insolvent businesses.
- 4. Invalid floating charges** – A floating charge created within a year before insolvency may be invalidated if it was meant only to secure existing debts without any new value given to the company. This period extends to two years if the entities involved are connected. If challenged successfully, these charges are typically set aside.
- 5. Transactions defrauding creditors** – These involve selling assets or providing services for less than their worth, with the intent of depriving creditors of due claims. Unlike the others, these can be challenged outside the standard timelines if it's shown that the transaction aimed to defraud creditors.

Understanding and advising on these transactions involves navigating both risks and rewards. The key risk, if not properly managed, is that these transactions can lead to significant legal and financial repercussions for a company already in distress. As indicated they may lead to court actions, that result in the unwinding of transactions, and further financial strain.

However, if properly handled, these rules can protect companies by allowing the recovery of assets or voiding unfair debts, ultimately benefiting the insolvency estate and increasing returns to unsecured creditors.



As an adviser, your role is to guide your clients through these complex legal landscapes by:

- Conducting thorough reviews of company transactions as part of your financial due diligence, especially if insolvency seems likely.
- Identifying red flags that could indicate problematic transactions which might later be challenged.
- Advising on restructuring company debts and transactions to avoid future challenges under insolvency laws.
- Educate your clients about the consequences of such transactions to ensure they make informed decisions about their financial strategies.

Antecedent transactions are a critical area in corporate insolvency with potential risks that can undermine the financial stability of a company, but also with opportunities to rectify precarious financial situations.

Your proactive advisory can make a significant difference in how these situations are resolved, potentially steering your clients back towards solvency or at least mitigating the impacts of insolvency. As always, understanding the legal implications and preparing for potential challenges is key to providing sound advice and safeguarding the interests of your clients.

 For experienced insolvency advice, **please speak to our team.**

# Effective communication in insolvency: Why you can't afford to get it wrong

As an insolvency practitioner, I believe it's essential for accountants to understand the significant role that language plays in the realm of insolvency. Proper terminology is not just a matter of semantics; it can profoundly influence perceptions and decisions in the business world, particularly in the sensitive area of financial distress.

Business failures have been escalating in Britain, with a notable number of established names succumbing to financial pressures. Since the 1980s, the UK has focused on developing laws to support struggling businesses, aiming to reduce failures and encourage recovery.

However, the efficacy of these legal frameworks is often undermined by the misuse of insolvency-related terms in public discourse, including media and political statements. This misuse contributes to a stigma that can deter companies from seeking necessary help.

All of us will know the key terms in the Insolvency Act 1986 and the Companies Act 2006 it never hurts to remember their true meaning:

- **Liquidation:** This is the process of winding up a company, where assets are sold to pay creditors, and the company ceases to exist. For instance, Lloyds Pharmacy recently underwent this process.
- **Administration:** Used to keep a company operational as it tries to resolve its debts. This process often gets misrepresented as a 'collapse', but it intends to save the business, not dismantle it.
- **Company Voluntary Arrangements (CVAs):** This is a flexible arrangement between the company and its creditors to restructure debts, allowing the company to continue trading, which contrasts with the more terminal processes of liquidation.
- **Standalone Moratorium:** This relatively new approach gives companies 20 days to explore rescue options without pressure from creditors.
- **Scheme of Arrangement and Restructuring Plans:** These are proactive procedures that can be used by companies foreseeing potential financial distress, allowing them to renegotiate terms and obligations with creditors.


The distinction between these terms is crucial. For instance, while both liquidation and administration involve significant intervention, administration aims at recovery and continuation rather than cessation of business. Miscommunication or the use of overly negative language can influence public and market perception, potentially escalating the stigma around seeking insolvency advice.

According to the Insolvency Service, in 2023 alone, Britain witnessed 26,595 corporate insolvencies, a stark increase from previous years, with a disappointing decline in actual rescue cases. This data suggests a hesitancy among businesses to engage with insolvency procedures that could potentially save them, partly due to fear of negative perception.

As accountants, you play a pivotal role in guiding your clients through these turbulent times. It is imperative to use precise and appropriate language when discussing their options. Encourage your clients to view insolvency procedures as tools for restructuring and potentially rescuing their business rather than as markers of failure.

Highlight the opportunities within insolvency laws designed to support business continuity and recovery. Advising clients with clarity and accuracy can help dispel fears and encourage them to take proactive steps towards managing their financial challenges effectively.

This is not merely a matter of legal compliance but of ensuring that businesses receive the support they need at critical times without the added burden of social stigma or misinterpretation.

 In these challenging economic times, clear and correct communication can be as crucial as the strategies you recommend. If you would like help supporting a client with an insolvency, **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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