

## INSOLNET — FOR ACCOUNTANTS

# Pre-Insolvency Adjustments — Concise Briefing

*A short briefing for accountants advising company directors*

## The position in summary

When a company enters insolvent liquidation, the Liquidator will look back at the previous two to three years of trading and accounting decisions, with statutory powers under the Insolvency Act 1986 to unwind transactions that prejudiced creditors and to bring personal claims against directors (and, where appropriate, advisers).

Accountants who make adjustments in that window that favour the director — reclassifying DLAs, voting late dividends, writing off director balances, posting connected-party invoices, transferring assets, granting security — create risks that are usually larger than the underlying problem they were trying to solve.

Adjustments made transparently and lawfully before the zone of insolvency are usually defensible; adjustments made in the zone, without contemporaneous documentation, rarely are.

## Key statutory hooks

Provision	Captures	Look-back
IA86 s.238 — transaction at undervalue	Gifts, sales below value, write-offs	2 years
IA86 s.239 — preference	Putting a creditor in a better position	6 months / 2 years (connected)
IA86 s.245 — floating charge	Charges given for past value	12 months / 2 years (connected)
IA86 s.423 — defrauding creditors	Transactions putting assets out of reach	No limit
IA86 s.214 — wrongful trading	Conduct after "moment of truth"	From moment of truth
IA86 s.213 — fraudulent trading	Knowingly party to fraudulent business	No fixed limit
IA86 s.212 — misfeasance	Breach of duty by directors / officers	6 years (procedural)
CA06 s.172(3) + s.847	Duty to creditors; unlawful distributions	BTI v Sequana 2022
CDDA s.6	Unfit conduct, mandatory disqualification	3-year reportable period
POCA 2002 ss.327-330	Money laundering; SAR duty	No limit

## Risk at a glance

Adjustment	Risk in 2-year window	Risk to accountant
Reclassifying drawings as salary (with PAYE/RTI)	Low if genuine and paid	Low if documented
Reclassifying drawings as expenses (no receipts)	High — false accounting	High — PII may not cover
Year-end / backdated dividend	High if reserves test not met at decision date	High
Writing off DLA	High — s.238 / s.423	High
Paying off director / family loan	High — s.239 preference	Moderate
Connected-party management charge	High if no substance	High
Asset sale to new vehicle	High without independent valuation	High
Granting debenture to connected lender	High — s.245 / s.239	Moderate
Voted bonus to DLA, no PAYE	High — sham risk	High
Backdated documents (any)	High — false accounting	Severe

## Top dos and don'ts

### Do:

1. Take a dated snapshot of the records the moment difficulty appears.
2. Date every document — minute, voucher, journal — the day it is made.
3. Apply the "would I do this if the company were going to keep trading?" test.
4. Treat connected-party transactions as front-page Liquidator's-report items.
5. Obtain independent verification — valuation, tax, legal, IP — before material adjustments.
6. Refer to an IP early; the consultation is rarely chargeable and protects everyone.
7. Document the rationale for every material adjustment in a contemporaneous file note.
8. Review the SAR threshold at the point of difficulty.

### Don't:

1. Backdate minutes, vouchers or contracts. Ever.
2. Post a year-end dividend without checking reserves at the date of decision.
3. Clear a DLA with a journal that has no real payment behind it.
4. Write off a director's loan in the run-up to insolvency.
5. Process connected-party invoices that lack commercial substance.
6. Sell trade or assets to a connected vehicle without independent valuation.
7. Take on quasi-director responsibilities for a struggling OMB.
8. Assume PII will cover post-event adjustments made on a director's say-so.

## One-page checklist

*Before posting any material adjustment for an OMB client in difficulty:*

- Snapshot of accounts, ledger, DLA and bank position taken and filed.
- Solvency tested on both cash-flow and balance-sheet bases at the date of the adjustment.
- Adjustment supported by contemporaneous evidence.
- All documents dated the day they were actually made — nothing backdated.
- True-and-fair-view test applied: does this make the picture more, or less, accurate?
- Connected-party adjustments independently valued or evidenced at arm's length.
- Dividends, where voted, supported by reserves at the date of declaration.
- Reclassifications to clear DLA supported by PAYE/RTI submissions.
- Engagement letter and conduct boundaries reviewed against de facto / shadow-director risk.
- SAR / POCA review undertaken and re-assessed at each material step.
- IP engaged for a confidential conversation if the adjustment is in the zone of insolvency.
- File note recording rationale, evidence and advice obtained.

**Disclaimer.** This briefing is general information for accountants advising company directors in England and Wales. It is not legal advice. Take case-specific advice from an Insolvency Practitioner, a solicitor, or a tax specialist.