

INSOLNET — FOR ACCOUNTANTS

# Pre-Insolvency Adjustments to Company Accounts

*A Framework for Accountants Advising Company Directors*

Where the line falls between legitimate housekeeping in the year-end accounts and adjustments that would compromise the position of the Insolvency Practitioner or Liquidator — and create personal exposure for the accountant.

**Jurisdiction:** England & Wales

**Audience:** Accountants advising company directors

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Accountants who advise owner-managed companies regularly face a delicate moment: the client is in difficulty, the year-end accounts are due (or recently signed), and there is real pressure — sometimes from the director, sometimes from the accountant's own commercial instincts — to "tidy up" the figures in a way that looks better for the director if things subsequently go wrong. Reclassifying a few drawings, raising a year-end bonus, voting a dividend, writing off a small balance: in trading life, these are routine. In the run-up to an insolvent liquidation they are something quite different.

This framework explains how the Insolvency Practitioner, once appointed as Liquidator, will look at such adjustments, the statutory tools available to unwind them, and the practical lines an accountant should hold so that the client is properly looked after without compromising either the IP's position or the accountant's own.

## 1. Why this matters: the IP's perspective

When a company enters liquidation, the Liquidator inherits a statutory duty to investigate the conduct of those who managed it, identify recoveries that can be made for the benefit of creditors, and report on the directors' fitness to the Insolvency Service under section 7A of the Company Directors Disqualification Act 1986 (CDDA). The Liquidator does not approach the accounts neutrally: their job is to interrogate them.

That interrogation has two strands. The first is forensic — reconstructing what actually happened. The Liquidator will obtain bank statements, the nominal ledger, payroll records, VAT returns, dividend vouchers and board minutes, and will compare them with the filed accounts. The second is strategic — identifying transactions and entries that can be reversed under the Insolvency Act 1986 (IA86), or that found a personal claim against a director, a connected party, or an adviser.

An accountant who has, at the eleventh hour, "improved" the picture in the accounts will frequently find that the improvement is exactly what attracts the Liquidator's attention. A round-sum credit to a director's loan account immediately before insolvency, a backdated dividend, a sudden reclassification of drawings as expenses, an asset transfer to a connected company: these patterns are familiar to any experienced IP and are precisely the items that get pulled forward for investigation.

**The headline point.** Adjustments made shortly before insolvency that improve the director's position rarely succeed in doing so. They are commonly unwound and the act of making them frequently makes things worse for the director (and, in some cases, for the accountant) than the underlying figures would have done.

### 1.1 What the Liquidator is looking for

The Liquidator's investigation typically focuses on the following themes:

- **Director's loan account (DLA) movements** — balance, journal entries posted late, sudden reclassifications, "voted" dividends or bonuses without proper documentation.
- **Distributions** — whether dividends were lawful at the date of payment, supported by distributable reserves and contemporaneously documented.
- **Connected party transactions** — payments to family members, related companies, or trusts, particularly where unconnected creditors went unpaid.
- **Asset transfers** — sale of plant, intellectual property, customer lists or trade to a phoenix, with the consideration's adequacy at the heart of the question.
- **Provisions, write-offs and reclassifications** — especially those that have the effect of reducing what the director owes the company or increasing what the company owes the director.
- **Accounting records** — whether they are adequate under section 386 of the Companies Act 2006 (CA06) and whether changes were made to them after the fact.

## 1.2 The accountant's position is not neutral either

The accountant is not a passive scribe. They sign engagement letters, hold themselves out as competent, owe fiduciary-flavoured duties to the company (their client), and operate under the ICAEW (or ACCA, AAT, etc.) Code of Ethics. An adjustment proposed and posted by the accountant is not "the director's adjustment" simply because the director asked for it. If the adjustment is wrong, the accountant is on the hook with the director — sometimes in their place.

## 2. The statutory landscape

The Liquidator's principal toolkit sits in the Insolvency Act 1986 and the Companies Act 2006, supplemented by the CDDA 1986. Each section below identifies the provision, what it captures, the look-back period and what the court can order.

### 2.1 Insolvency Act 1986

#### Section 212 — Misfeasance

A summary procedure by which the Liquidator can bring claims against any person who has been involved in the management of the company (including, where relevant, professional advisers acting as de facto directors) for breach of fiduciary or other duty. There is no look-back period for the breach itself, but the proceedings must be brought within six years (or twelve, depending on the nature of the breach).

Misfeasance is the workhorse of director liability. It catches unlawful dividends, undocumented bonuses, undervalued asset transfers, and similar breaches of duty. An accountant who is found to have acted as a de facto or shadow director can be drawn in directly.

### **Section 213 — Fraudulent trading**

Where, in the course of winding up, it appears that any business of the company has been carried on with intent to defraud creditors or for any fraudulent purpose, the court may, on the Liquidator's application, declare that any persons who were knowingly parties to the carrying on of that business are liable to make contributions. Section 213 is a high-threshold provision (actual dishonesty must be shown) but it is not limited to directors — advisers who knowingly assist are within its reach.

### **Section 214 — Wrongful trading**

If, before the commencement of winding up, a director knew, or ought to have concluded, that there was no reasonable prospect of avoiding insolvent liquidation, and did not take every step a reasonably diligent director would have taken to minimise loss to creditors, the court may order the director to contribute to the company's assets. The relevant moment is when insolvent liquidation became inevitable (the "moment of truth" identified in *Re Produce Marketing Consortium Ltd (No 2)* [1989] BCLC 520). The standard is the higher of the objective and subjective measures.

Wrongful trading is rarely about the act of making an accounting adjustment in isolation, but the adjustment will frequently feature as evidence that the director knew the position and took steps to protect themselves rather than the creditors.

### **Section 238 — Transactions at an undervalue**

A transaction is at an undervalue if the company makes a gift or receives consideration significantly less than the value of what it provides. The look-back period is two years ending with the onset of insolvency. The company must have been unable to pay its debts at the time of the transaction (or become unable as a result), but this is presumed if the transaction is with a connected party.

The court can order the transaction be reversed, or compensation paid, under section 241. There is a defence where the company entered the transaction in good faith, for the purpose of carrying on its business, and in the reasonable belief that it would benefit the company.

### **Section 239 — Preferences**

A preference occurs where the company does something that has the effect of putting a creditor (including a guarantor) in a better position, in the event of insolvent liquidation, than they would otherwise have been

in, and the company was influenced by a desire to produce that result. The look-back is two years for connected parties and six months for unconnected creditors. For a connected party, that "desire" is presumed.

Classic examples include: repaying a director's loan while leaving trade creditors unpaid; granting a debenture to a connected party for past consideration; paying off a personally guaranteed bank facility just before liquidation. Section 241 gives the court a wide range of restorative orders.

### **Section 240 — Relevant time**

Sets out when the look-back clock runs. For sections 238 and 239, time runs back from the "onset of insolvency", which is usually the date of the winding-up petition (compulsory liquidation), the date of the resolution to wind up (CVL), or the filing of the notice of intention to appoint an administrator. The relevant time is two years (connected) or six months (unconnected), but in either case the company must have been insolvent at the time or have become so as a result.

### **Section 245 — Avoidance of floating charges**

A floating charge granted within twelve months of the onset of insolvency (or two years for connected parties) is invalid, except to the extent of new consideration provided at or after the time of its creation. Useful in pre-liquidation planning that involves a connected party suddenly acquiring security — another common adjustment to scrutinise.

### **Section 423 — Transactions defrauding creditors**

Unlike section 238, section 423 has no fixed look-back period. It applies where a transaction at an undervalue was entered into for the purpose of putting assets beyond the reach of a person who has or may have a claim against the company. The applicant does not need to be the Liquidator — any "victim" creditor can apply. Particularly important in the context of asset transfers to a spouse's company, trust structures, or phoenix arrangements.

## **2.2 Companies Act 2006**

### **Section 172 — Duty to promote the success of the company**

A director's general duty is to act in the way they consider, in good faith, would be most likely to promote

the success of the company for the benefit of its members as a whole. Section 172(3) preserves the rule, restated by the Supreme Court in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, that the director must, in certain circumstances, consider or act in the interests of the company's creditors. The duty is engaged when insolvent liquidation or administration becomes "probable" and intensifies as the prospect approaches inevitability.

The practical effect for accountants is that, once the company is in the "zone of insolvency", any adjustment whose effect is to prefer the director over creditors is being made at a moment when the director's primary duty has shifted away from shareholder benefit.

### **Sections 386 to 389 — Accounting records**

A company must keep adequate accounting records sufficient to show and explain its transactions and to disclose with reasonable accuracy, at any time, the financial position of the company. Failure is a criminal offence by every officer in default. The CDDA report on director conduct specifically requires the IP to comment on the quality and adequacy of the records.

An accountant who makes substantive after-the-event adjustments to records without contemporaneous evidence is contributing to the failure of records, not curing it.

### **Sections 829 to 853 — Distributions**

A dividend or other distribution must be made out of profits available for that purpose (section 830). The test is applied by reference to relevant accounts — either the last filed annual accounts or, if those do not justify the distribution, interim accounts that meet the strict statutory requirements (section 836). If a distribution is made when there are insufficient distributable reserves, it is unlawful, and section 847 makes the recipient (if they knew or had reasonable grounds for believing it was unlawful) liable to repay it.

In *Re Marini Ltd* [2004] BCC 172 and the BHS Group judgments, directors have been held personally liable to repay unlawful distributions on a misfeasance basis. Backdated dividends, or dividends declared by reference to year-end accounts that did not actually justify them at the date of declaration, are the principal target.

## **2.3 Company Directors Disqualification Act 1986**

### **Section 6 — Disqualification of unfit directors of insolvent companies**

The court must disqualify a director of an insolvent company whose conduct makes them unfit to be concerned in the management of a company. The minimum disqualification is two years; the maximum fifteen. Schedule 1 lists the matters the court must have regard to, including the extent of any breach of duty, any misfeasance, and the extent to which the director has been responsible for the company entering insolvency.

### **Section 7A — Reports on conduct**

The IP, on appointment, must submit a confidential report on the conduct of every director (and shadow director) who has served in the three years preceding insolvency. The IP's report is the gateway to disqualification proceedings brought by the Secretary of State. Adjustments to accounts that look engineered will feature prominently in any such report.

### **Section 15A — Compensation orders**

Following disqualification, the Secretary of State may apply for a compensation order requiring the disqualified person to pay compensation to creditors or the company. Used increasingly against directors whose unfit conduct has caused identifiable loss — including the kind of loss that flows from manipulated accounts.

## **2.4 Other relevant provisions**

**Proceeds of Crime Act 2002 (POCA).** Sections 327 to 329 create the principal money laundering offences. Section 330 imposes a duty on those in the regulated sector to make a Suspicious Activity Report (SAR) where they know, suspect, or have reasonable grounds to suspect, money laundering. Accountants and tax advisers are in the regulated sector under the Money Laundering Regulations 2017. The threshold is low.

**Theft Act 1968 and Fraud Act 2006.** False accounting (Theft Act s.17) and fraud by false representation (Fraud Act s.2) potentially apply to documents created with intent to mislead. Backdated minutes and fabricated invoices are obvious candidates.

**Companies Act 2006 s.993.** Fraudulent trading as a criminal offence (parallel to civil s.213 IA86). Carries a maximum 10-year custodial sentence.

### 3. Timing: look-back periods and the "zone of insolvency"

Time is the dimension that most accountants underestimate. An adjustment that would be entirely acceptable two years before any insolvency event may be capable of being unwound if insolvency follows within that window. The position is summarised in the table below.

Provision	Captures	Look-back	Connected party
IA86 s.238 — transaction at undervalue	Gifts, sales below value, write-offs	2 years	Insolvency presumed
IA86 s.239 — preference	Putting a creditor in a better position	6 months / 2 years (connected)	Desire to prefer presumed
IA86 s.245 — floating charge	Charges given for past value	12 months / 2 years (connected)	Solvency requirement waived
IA86 s.423 — defrauding creditors	Transactions putting assets out of reach	No time limit	Purpose, not connection
IA86 s.214 — wrongful trading	Conduct after "moment of truth"	From moment of truth	Same standard
IA86 s.213 — fraudulent trading	Knowingly party to fraudulent business	No fixed limit	Same standard
CDDA s.6 — unfit conduct	Conduct as director	3 years preceding insolvency	Same standard

#### 3.1 The "onset of insolvency"

The clock runs back from the onset of insolvency. For most CVLs that means the date of the resolution to wind up the company; for a compulsory liquidation, the date the petition was presented; for administration, the filing of the notice of intention to appoint or, where there is no such notice, the date the administration began. The earlier the onset, the earlier the look-back window opens.

#### 3.2 The "zone of insolvency"

The zone of insolvency — the period in which the director's duty to consider creditors' interests under section 172(3) CA06 is engaged — is harder to pin to a date. *BTI v Sequana* confirmed the duty arises when the directors know or should know that the company is insolvent, or bordering on insolvency, or that insolvent liquidation or administration is probable.

In practice, the Liquidator will use the management accounts, cash flow forecasts, going-concern assessments and the directors' own communications (often with their accountant) to fix the point at which the zone began.

Once it began, any adjustment that favours the director over creditors is being made against the background of an engaged duty to creditors.

**The two-year line.** If your client may face insolvency within two years, treat every connected-party adjustment as being inside the s.239 (and s.238) window unless and until that window closes. The clock does not run from the date of the accounts; it runs back from the date insolvency proceedings commence.

## 4. Adjustments that cause trouble

The following are the patterns the IP and Liquidator will look for. None of them is necessarily unlawful; all of them need to be made with the substance and the documentation right. Each is described with what it is, why it tempts the director or accountant, and how it tends to be unwound.

### 4.1 Reclassifying drawings to clear an overdrawn DLA

The most common scenario. The DLA is overdrawn at the year-end. The temptation is to reclassify some or all of the drawings as something else — an expenses reimbursement, a salary payment, or a dividend — so that the balance reduces or disappears.

**Salary** is the most defensible if the work was genuinely done, but it must be supported by a PAYE/NIC return and a payroll RTI submission to HMRC, ideally contemporaneous. A year-end "bonus" entered as a journal with no payment, no PAYE, no RTI and no board minute is an obvious red flag.

**Expenses** reclassification requires receipts and a business purpose. Reclassifying personal supermarket spend or fuel for a personal vehicle is not a journal entry — it is, potentially, false accounting.

**Dividends** require distributable reserves at the date of declaration, not at the year-end. See 4.2 below.

### 4.2 Backdated or year-end dividends

A dividend declared by reference to the year-end accounts six or nine months after the year-end, and posted in the books as if voted on the balance sheet date, is a particular trap. If there were no distributable reserves at the date of the actual decision — even if there were at the year-end — the distribution is unlawful and recoverable from the director under section 847 CA06 and on a misfeasance basis.

The lesson of *Re Marini* and the BHS line of cases is that the directors carry the burden of demonstrating that proper interim accounts justified the distribution at the moment it was made. The accountant who prepares the dividend voucher without checking the reserves at that moment is exposed.

**The backdating trap.** Dating a board minute or a dividend voucher with a date earlier than the day it was actually written is not "tidying up": it is, on its face, false accounting. The Liquidator will obtain the metadata. Word documents carry creation dates. Bookkeeping software audit logs reveal posting dates. Bank confirmations show when funds actually moved. The reconstruction is rarely difficult.

### 4.3 Writing off the DLA

Writing off the DLA is a release of a debt by the company. From the company's perspective, it is a transaction at an undervalue (the company gives up an asset for nothing in return). From the director's perspective, it is a taxable benefit attracting Class 1 NIC and income tax. From the Liquidator's perspective, it is a section 238 IA86

target if it falls within the two-year window — and a section 423 target without a window if its purpose was to put the asset out of reach of creditors.

#### **4.4 Connected party payments and intercompany journals**

Sudden settlement of intercompany balances owed to a sister company, payment of a long-standing director loan account credit, or repayment of family-member loans in the run-up to insolvency are all classic preferences. The Liquidator will look at the timing of payment relative to (a) when the company knew it was in trouble and (b) when other creditors were left unpaid.

Equally suspect are connected-party invoices raised late in the day — a "management charge" from a holding entity, "consultancy" from a spouse, a "licence fee" for IP held by another vehicle — with no contemporaneous agreement and no commercial substance.

#### **4.5 Asset transfers and phoenix activity**

Selling the plant, customer list, IP, brand, or whole trade to a new vehicle controlled by the same director, at a price not independently verified, is a textbook section 238 transaction. The standard defence — "the price was what we could get; the alternative was a fire sale" — depends on the existence of independent valuation evidence and a marketing process. Without those, the transfer will be reversed and the director (and the new vehicle's directors) face personal liability.

Phoenix activity is not, in itself, unlawful, but the Insolvency Service and Liquidators give it special attention. The connection with section 216 IA86 (restriction on re-use of company names) is also worth flagging to clients.

#### **4.6 Provisions, write-offs and reclassifications**

Increasing a bad-debt provision against a debtor that is in fact good, releasing an accrual that should still be in place, reversing a previously recognised liability to a connected party: all of these change the picture of what the company owes and is owed. If the accountant cannot show, on the contemporaneous evidence, that the new figure is the better representation of reality, the Liquidator will reverse the change.

#### **4.7 Stock, WIP and debtor manipulation**

Less common in OMB pre-insolvency adjustments but still worth flagging: revaluing stock upward to support a covenant or a loan, accelerating revenue recognition, or capitalising costs that should have been expensed. These look like solvency-driven adjustments but the IP will spot the pattern in subsequent investigation, particularly where they coincide with new borrowing or with a granting of security to a connected party.

#### **4.8 Granting security**

A debenture or fixed charge granted by the company to a connected party (or to a bank in respect of which the director has given a personal guarantee) in the months leading up to insolvency is a high-risk transaction.

Section 245 IA86 will invalidate a floating element if it secures past value; section 239 may unwind the preference of the connected lender; section 423 captures the broader pattern.

## 5. Money laundering, POCA and the regulated sector

Accountants and tax advisers are within the regulated sector under the Money Laundering Regulations 2017. The principal money laundering offences in sections 327, 328 and 329 POCA 2002 do not require dishonesty; they require only that the property in question is the proceeds of criminal conduct, and that the accused knew or suspected it.

This matters in two ways. First, where the accountant suspects that the figures they are being asked to "tidy up" represent the proceeds of a crime — for example, undeclared cash sales, falsely reclaimed VAT, payroll fraud, or evaded PAYE — a Suspicious Activity Report (SAR) to the NCA may be required. The threshold for section 330 (the "regulated sector" duty to disclose) is knowledge, suspicion or reasonable grounds to suspect: a low bar.

Second, where adjustments are being made for the purpose of disguising, concealing, converting or transferring proceeds of criminal conduct, the accountant making those adjustments may themselves be committing a section 327 or 328 offence. "Arranging" is broadly drawn.

Tip-off offences under section 333A POCA mean that, having made a SAR, the accountant cannot tell the client they have done so. Care is required.

**The interaction with insolvency.** Once the IP is appointed, money laundering considerations do not end. The IP has their own SAR obligations and will pick up where the accountant left off. Adjustments made by the accountant during the run-up that look like they were intended to hide the proceeds of criminal conduct will be reported in the CDDA report and, where appropriate, by separate SAR.

## 6. Personal exposure for the accountant

The accountant who oversteps is exposed on several fronts:

### 6.1 Civil liability to the company / Liquidator

Three principal routes:

- **Misfeasance under s.212 IA86** — where the accountant has acted as a de facto or shadow director. Section 212 is a procedural shortcut; the substantive duties are those of a director or officer (CA06 ss.171-177).
- **Dishonest assistance** — a common-law equitable claim against an adviser who has dishonestly assisted a breach of fiduciary duty by the director. The bar is dishonesty (Royal Brunei Airlines v Tan; Twinsectra v Yardley; Ivey v Genting Casinos), not just negligence.
- **Knowing receipt** — if the accountant has received company assets in circumstances where they ought to have known the receipt was a breach of trust.

- **Negligence** — a straightforward retainer-based claim, particularly where the accountant's advice has caused the director personally to be exposed to a recoverable claim.

## 6.2 Criminal exposure

Sections 327-329 POCA (money laundering); section 17 Theft Act (false accounting); section 2 Fraud Act (fraud by false representation); section 501 CA06 (false statements to auditors); section 993 CA06 (fraudulent trading as a criminal offence). These are not exotic charges; the CPS does pursue advisers in the right cases.

## 6.3 Regulatory exposure

ICAEW, ACCA, AAT, CIOT and other professional bodies will investigate complaints made by Liquidators (formally or via the CDDA report being picked up). Fundamental Principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour all bite. The ICAEW's Insolvency: Acting for a company near insolvency guidance is the standard reference point.

## 6.4 Professional indemnity

PII policies typically exclude dishonesty and fraud, and may exclude work outside the firm's stated discipline (e.g., "insolvency advice" given by a firm that holds itself out only as accountants and tax advisers). An accountant who has made post-event adjustments on instructions from a director may find that, when the Liquidator brings a misfeasance claim, the insurers decline cover. The personal exposure is then uncovered.

**De facto and shadow director status.** An accountant who routinely makes the financial decisions for an owner-managed client, signs cheques, instructs the bookkeeper, agrees the dividends and the bonuses, deals with HMRC on the director's behalf and effectively runs the finance function, is at material risk of being treated as a de facto or shadow director. That status engages every director duty and every director liability. Boundaries should be visible in the engagement letter and in practice.

## 7. A working framework: the eight principles

The following eight principles are designed to be applied at the moment an accountant identifies that an OMB client is in financial difficulty. They are not a substitute for case-specific legal advice but they will keep the accountant on the right side of the line in the great majority of cases.

### Principle 1 — Take the snapshot

At the moment financial difficulty is identified, take a dated, signed snapshot of the management accounts, the nominal ledger (extracted as PDF), the DLA, the aged debtors and creditors, the bank statements to date, and any open commitments. File the snapshot. Anything done after the snapshot is, by definition, "after-the-event" and must be capable of being defended as such.

### Principle 2 — Correct errors; do not make improvements

The accountant is entitled to correct errors. They are not entitled to make changes that improve the picture for the director without an evidential basis. The test is: would I have made this entry if the company were going to keep trading? Would I have made it last year on the same facts? If the answer is yes, the adjustment is housekeeping. If the answer is no, it is positioning.

### Principle 3 — Substance over form, and contemporaneous evidence

Every material adjustment needs three things: an evidential basis (invoice, receipt, contract, bank record), a contemporaneous decision (board minute, written instruction, email trail) and an explanation that fits the underlying commercial reality. A journal entry on its own is not evidence; it is the record of a decision that should be evidenced elsewhere.

### Principle 4 — Date things truthfully

Documents must be dated the day they are made. Board minutes prepared today and dated three months ago are false instruments. If a contemporaneous decision was made and not minuted at the time, the proper course is a current-dated minute that records what was decided then; never a backdated one.

### Principle 5 — Apply the "true and fair view" test

If the adjustment is required for the accounts to give a true and fair view (CA06 s.396), it is defensible. If it makes the accounts less representative of reality, it is suspect, even if it improves the director's apparent position.

### Principle 6 — Connected-party scrutiny

Treat any transaction with a connected party as if it were the cover photograph of the Liquidator's report. Apply independent valuation, market evidence and arm's-length terms. Document the rationale. If the transaction would not survive scrutiny in those terms, it should not happen.

## Principle 7 — Independent verification at material thresholds

For any material adjustment proposed in the zone of insolvency — the reclassification of a DLA, a dividend voted late, an asset transfer, a write-off, a grant of security — the accountant should require an independent reference point. That may be a valuation, a tax opinion, a legal opinion, or insolvency advice from an IP firm. The reference point should be obtained before the entry is posted, not afterwards.

## Principle 8 — Engage the IP early

Once insolvency is on the horizon, the right course is almost always to bring in an IP for an early, confidential conversation. A good IP will explain what can and cannot be done, what statutory tools are available (a CVA, an administration, a solvent MVL, a CVL), what the look-back implications are for each, and how to deal with the DLA and the dividends in a way that does not generate avoidable personal liability. This is positive for the director, positive for the creditors, and protects the accountant.

**Bank Analysis as a pre-appointment tool.** Insolnet's Bank Analysis runs over the last two-to-three years of bank statements and surfaces the connected-party payments, the DLA traffic, the dividend timing, the preference candidates and the s.238 candidates. Used *before* any adjustment is made, it gives the accountant and the director a clear-eyed view of what the Liquidator will find — and what can lawfully be remediated, by whom, and in what window.

## 8. Red flags and decision aids

### 8.1 Red flags — do not proceed without specialist input

Pattern	Why it's a red flag	Likely hook
Dividend voted late, dated to year-end	Reserves test applies at decision date	CA06 s.847; misfeasance
DLA cleared by journal with no PAYE/RTI	No real bonus paid; HMRC and IP will spot it	s.238; false accounting
Write-off of DLA	Company gives up an asset for nothing	s.238; s.423
Repayment of connected-party loan	Connected preference, 2-year window, desire presumed	s.239
Sale of trade/assets to new company	Phoenix valuation issue	s.238; s.216; s.423
Debenture given to family member	Floating-charge avoidance and preference	s.245; s.239
Reclassification of personal spend as business	False accounting; tax risk	Theft Act s.17; HMRC
Suppression or destruction of records	Criminal offence; CDDA reportable	CA06 s.387; CDDA Sch 1
Large management charges from holding entity	Likely lacks commercial substance	s.238; misfeasance
"Bonus" voted and credited to DLA only	No real payment; potential sham	PAYE failure; s.238

### 8.2 The proceed / pause / stop test

Question	If yes	If no
Is the company solvent on a cash-flow basis at the date of the adjustment?	Move to next question	Pause — specialist input needed
Is the company solvent on a balance-sheet basis at the date of the adjustment?	Move to next question	Pause
Is the adjustment supported by contemporaneous evidence?	Move to next question	Stop
Is the adjustment dated truthfully?	Move to next question	Stop
Does the adjustment improve the picture for the director relative to creditors?	Pause — connected-party scrutiny needed	Likely safe to proceed

Question	If yes	If no
Is the adjustment with a connected party?	Independent valuation / opinion needed	Lower risk but document well
Is the adjustment of a kind that would feature in a Liquidator's report?	Engage IP before proceeding	Proceed with normal care

## 9. Engaging the IP early — what good looks like

The instinct that an early conversation with an IP "tips the company over the edge" is misplaced. A competent IP will provide initial advice under a no-cost or fixed-fee arrangement and will frequently recommend that the company explores alternatives (refinancing, a CVA, a Time to Pay arrangement with HMRC, a solvent MVL where the company can pay all creditors in full) before any insolvency procedure is even discussed.

What an early engagement delivers:

- A view on whether the company is in fact insolvent, by reference to both tests.
- A view on whether the directors' duty to creditors is engaged and from what date.
- An assessment of which past transactions are at risk of being unwound and which are not.
- Practical advice on how the DLA, the dividend position, the connected-party balances and any asset transfers should be addressed.
- Where appropriate, a structured pre-pack or asset sale, with proper marketing and independent valuation, that protects the director from the criticisms that bedevil informal phoenix arrangements.
- A clear paper trail that protects the accountant.

For accountants who refer pre-appointment work to Insolnet, the typical sequence is: confidential triage call → Bank Analysis over the prior two-to-three years → written summary of options and risks → joint conversation with the director, accountant and IP → agreed plan. The accountant remains the trusted adviser; the IP brings the statutory expertise.

**P A R T B****Concise Briefing**

*A three-page summary suitable for printing or attaching to client correspondence.*

**10. 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 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.

The right approach is to take a snapshot at the moment difficulty is identified, only post adjustments that correct error or are supported by contemporaneous evidence and commercial substance, treat connected-party transactions as a high-scrutiny zone, and engage an IP early. Adjustments made transparently and lawfully before the zone of insolvency are usually defensible; adjustments made in the zone, without contemporaneous documentation, rarely are.

**11. Risk-at-a-glance table**

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

Adjustment	Risk if made in 2-year window	Risk to accountant
Backdated documents (any)	High — false accounting	Severe — criminal & regulatory

## 12. 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 items in the Liquidator's report.
5. Obtain independent verification — valuation, tax, legal, IP — before material adjustments.
6. Refer to an IP early; the consultation itself is rarely chargeable and usually protects everyone.
7. Document the rationale for every material adjustment in a contemporaneous file note.
8. Review the SAR threshold (suspicion or reasonable grounds to suspect) at the point of difficulty.

### Don't:

1. Backdate minutes, vouchers or contracts. Ever.
2. Post a year-end dividend without checking distributable 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 — protect the boundary.
8. Assume PII will cover post-event adjustments made on a director's say-so.

## 13. 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 (invoice, receipt, contract, decision record).
- 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, not the year-end.
- Reclassifications to clear DLA supported by PAYE/RTI submissions for any salary/bonus.
- Engagement letter and conduct boundaries reviewed against de facto / shadow-director risk.
- SAR / POCA review undertaken at the point of difficulty and re-assessed at each material step.
- IP engaged for a confidential conversation if the adjustment is material and in the zone of insolvency.
- File note recording the rationale for the adjustment, the evidence considered, and the advice obtained.

**Disclaimer.** This framework is provided for general information for accountants advising company directors in England and Wales. It is not legal advice and is not a substitute for case-specific advice from an Insolvency Practitioner, a solicitor, or a tax specialist. Statutory references are to the Insolvency Act 1986, the Companies Act 2006, the Company Directors Disqualification Act 1986 and the Proceeds of Crime Act 2002 unless otherwise stated. Case law referred to is current to publication. Readers should always take their own advice on a specific matter.