

Liquidators' Claw-Back

If a company pays money to a creditor while it is insolvent and shortly afterwards goes into liquidation, the liquidator can recover ("claw back") that payment from the creditor. However, the payment is protected from clawback if the creditor can prove that:

- It had no reasonable grounds for suspecting that the company was insolvent when the payment was made; and
- A reasonable person in the creditor's circumstances would not have suspected that the company was insolvent at that time.

A business should decide whether a payment may be suspect based on risk assessment and risk management, while taking all known details of payers into account. A prerequisite to making an effective assessment is ensuring that all relevant information has been collected. The law does not make allowance for the fact that information may be spread through different locations within a business: at the end of the day, what individuals in the business know is deemed to be known to that business.