

Insolvency

Director's responsibilities if your company is failing



verisonalaw

Fact Sheet

Introduction

As a Director of a limited company you have various legal responsibilities – for example to act in the best interests of the company, to file accurate accounts and returns, and generally to behave honestly.

If you believe the business has become insolvent, you must put creditors' interests first. Failing to do so could leave you personally liable for any debts that run up.

This is a good reason to put the company into some form of insolvency process, whereby an officially sanctioned insolvency practitioner or administrator supervises the business.

By doing so you ensure you stay on the right side of the law - and it may well increase the chances of rescuing the business, for example through restructuring or by finding a buyer.

How are Directors held accountable?

Generally Directors have no personal liability for the debts of a limited company unless they have provided loan guarantees or agreed to contribute funds as part of their agreements.

The only exceptions to this are if they behaved improperly and this will be investigated during any insolvency process, such as administration or insolvent liquidation.

The following provide an important list of what not to do as a director of an insolvent company:

- Wrongful trading: did you continue to trade while knowing the company had no reasonable prospect of surviving?
- Fraudulent trading: did you conduct business in a way that set out to defraud creditors (for example by misrepresenting your accounts)?
- 'Misfeasance': did you take or misuse the company's property?
- Transactions at an undervalue: did you sell assets to another party below market value to prevent them being used to pay creditors?
- Preferences: did you pay one creditor in preference to another when the company was insolvent?
- Personal guarantees: have you personally guaranteed any of the company's loans or transactions?
- Fraud and misconduct: have you contravened the requirements of the Insolvency Act?
- Re-use of the insolvent company's name: if you use its registered name or trading name for another business, have you taken the necessary steps to avoid contravention of the statutory provisions?

It is not always easy to determine when your business becomes legally insolvent and it is tempting to try to trade your way out of difficulty. Take advice on treading these fine lines.

Disqualification of Directors

If your conduct as a Director seriously breaches the Insolvency laws, then the Secretary of State may apply for an order that disqualifies you from being a Director for up to 15 years.



Find out how we can help,
contact Nick Oliver

023 9231 2050

e: nick.oliver@verisonalaw.com



verisonalaw

www.verisonalaw.com