

SFP



Directors Responsibilities



Is your Company **Insolvent** & What is the Impact on you as a Director?

Read on for more information on how a director can face personal liability and how to avoid it.

Is My Company Insolvent?



The technical definition of Insolvency is:



You have more
liabilities than assets

and/or



You can't pay your
debts as they fall due

If you satisfy one or both of these definitions, then your company is technically insolvent.

If you are a director of an insolvent company – or if you are concerned about becoming insolvent - you should seek professional advice from an Insolvency Practitioner.

What is **Wrongful Trading** & How Can a Director Become Personally Liable?



Wrongful Trading is a term used when:

A company is technically insolvent and the directors of the company have continued to trade past the point when they:

- Knew, or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation or Administration; and
- They did not take every step with a view to minimising the potential loss to the company's creditors.



If an Administrator or Liquidator makes a successful claim against a director for wrongful trading, then the director will become personally liable for the loss they caused by continuing to trade.

How Can a Director Avoid **Wrongful** **Trading?**



When a company is technically insolvent, then the directors must proceed with caution to avoid personal liability.

The directors' main defence in these circumstances is to prove, as far as possible, that every step was taken to mitigate any further losses to creditors generally.

Normally the best way to achieve that is to seek professional advice immediately from an Insolvency Practitioner.



With professional advice you can formulate a strategy to move forward. The key is to establish, as soon as possible, whether or not the company has a future.

If it doesn't, then the directors should consider ceasing to trade immediately and/or consider insolvency options with the intention of maximising the return for creditors.

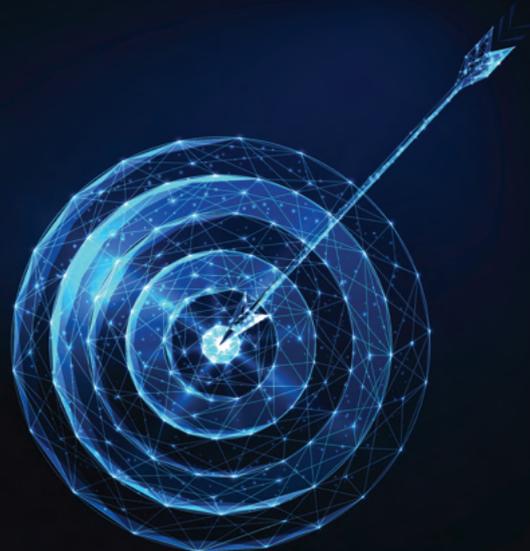
If it does have a future and the business continues to trade, the director should put in place certain protective measures.

A sensible protective measure would be to hold regular Board meetings where financials are provided such as profit and loss forecasts and cash flow projections to support any decisions to continue to trade alongside pursuing strategies to return the company to a solvent position.



As long as any Board decisions to continue to trade are reasonable and based on the financials then any accusations of wrongful trading (in the event of the company entering into Administration or liquidation at a later date) will be significantly mitigated.

What are the Other **Hot Spots** to Watch out for in Insolvency?



Once a company enters into Administration or Liquidation, then there is an obligation on the Administrator or Liquidator to determine any actions taken by management or a third party which can be overturned / challenged on behalf of the creditors.

The most common actions that are taken against directors and third parties by Administrators and Liquidators are:

- **Overturning transactions at an undervalue**
- **Overturning preferences**
- **Proving misfeasance**
- **Overturning illegal dividends**
- **Recovering overdrawn loan accounts**

Furthermore, any misuse of the Government Support Schemes by management during the Pandemic is now also being considered.

Please follow the link on our Business Survival Website which provides far more details on each one of these areas here: <https://www.bizsurvival.co.uk/directors-concerns/>

The additional main hot spots are disqualification proceedings and Compensation Orders. Administrators and Liquidators are obligated to submit a report to the Insolvency Services on the conduct of the directors.

The Insolvency Service will then decide whether or not to bring Disqualifications proceedings against a director. If those proceedings are successful, then:

- **A director could be disqualified for a period of 2 to 15 years; and**
- **The Insolvency Service will then have the power to pursue a Compensation Order making directors personally liable for a quantifiable sum based on a certain criteria.**

To learn more about Compensation Orders, please visit this link within our Business Survival Website: <https://www.bizsurvival.co.uk/directors-disqualification-and-compensation-orders/>

How Do You **Mitigate** Any Exposure?



Taking professional advice from an Insolvency Practitioner as soon as your Company is technically insolvent is the key to mitigating your exposure.



How can **SFP** Help?

- ✓ SFP is an award-winning Restructuring firm operating across England and Wales. Our Insolvency Practitioners (and expansive network of professional partners) provide clear and concise guidance to help Directors understand their duties and to decide on the best way forward.
- ✓ Our complimentary consultation is often the best starting point, so that we can understand your difficulties.
- ✓ We will then suggest appropriate next steps and only ever recommend an insolvency process if it appears right for your company.

**Five Times Winner - Business Moneyfacts Awards -
Best Business Recovery Specialist**



This guide has been prepared to assist company directors in certain scenarios and should not be taken as any formal advice. As a consequence, it should not be relied upon and instead we always recommend taking professional advice before proceeding down any formal insolvency route .

Contact us

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