

COMMERCIAL ALERT

January 2009

Insolvency

In difficult times, the prospect of insolvency may become real.

If you think that your company may be facing insolvency, as a director you may be at risk of liability for wrongful trading under Section 214 of the Insolvency Act 1986. The following may be helpful:

What you should do:-

1 Hold Regular Board Meetings

All directors should be present if at all possible so the entire board discusses the company's financial status and no director can subsequently claim he or she was unaware.

2. Circulate Board Minutes

Minutes should be circulated immediately after meetings and will constitute evidence that decisions taken by the board minimise the potential loss to creditors (necessary to avoid liability for wrongful trading).

3. Examine all possible Sources of Funding

Draw up a list of all possible sources and document the fact that all have been considered.

4. Establish Financial Milestones

Draw up a time schedule showing when financial targets, such as obtaining new funding or realising cash from debtors, must be met. The schedule should identify the time when there is no longer any reasonable prospect of the company avoiding insolvency.

5. Obtain Professional Advice

You need to obtain, and document, all professional advice sought in relation to any major decision taken.

What you Should Not Do

1. Incur additional Liabilities

Do not incur any substantial new liabilities until new funding has been secured, unless the board considers that any such liabilities are essential and in the best interests of the company.

2. Wait to be served a Winding-Up Petition

The board must ensure they have up to date financial information at all times and closely monitor any financial covenants which may be part of agreements with lenders.

3. Bury your Head in the Sand

Judgements entered against the company, creditors putting on pressure, and late filing of accounts could constitute evidence of insolvency which a reasonable person should have known about.

4. Avoid Raising the Problem

As a director, as soon as you become aware that there is no reasonable prospect of avoiding insolvency for the company (or if you fear this is the case) you must raise the problem with the board.

5. Resign to Avoid the Problem

Directors must take every step to minimise potential loss to creditors. If they conclude that the company cannot continue to trade they must implement one of the insolvency procedures, such as liquidation or administration.

These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as sufficiently accurate or full to apply in any specific situation without first referring to us. We would be pleased to advise on any specific issue or problem.