



# Insolvencyalert

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cbp

## Financial Turmoil

Not since the 1987 crash have we seen anything like this - a 25% depreciation in the Dow Jones which would have been even higher if Lehman Brothers was still trading. If the US Congress fails to implement a suitable rescue package the situation could get a whole lot worse.

Only recently we thought that we were past the worst of the credit crunch but it seems that it will continue and get worse. Credit will be more difficult to obtain. Banks nervousness will not be helped by the fact that most of the people in the banks making the decisions have not seen anything but good times.

In that context, company directors need to be conscious of their duties and their own position. There is no such thing as a back room or part time director.

Do not allow any company of which you are a director to incur a debt at a time when the company is insolvent.

In considering whether or not the company is insolvent, analyse the company's financial position and ask:

- Are any cheques being dishonoured or provided on a post dated basis?
  - Is the company trading outside of its usual terms?
  - If the company relies on a parent company, how is the parent company travelling?
- If a company goes into liquidation the liquidator will use insolvent trading as a potential tool to make a recovery for creditors for the losses sustained whilst the company traded insolvently.
- Do not make the liquidator's job easier by failing to keep proper books and records. A presumption of insolvency arises if the records are **not** maintained in a proper form.
- Be aware that there are defences to insolvent trading. However, remember that such defences are difficult to maintain.
- If you are unlucky enough to find yourself in circumstances where an insolvent trading claim is brought against you, remember there are civil penalties, including potential barring orders preventing you from remaining a director and criminal sanctions. People have gone to gaol for insolvent trading in circumstances where they have been trying to do their best to save the business.
- Remember also that there are ways in which the

- Is the company suffering continuing losses?
- Are there taxes that are overdue?
- What is the company's relationship with its bank?

company that has allowed itself to trade insolvently can be saved legitimately.

Through voluntary administration and a deed of company arrangement, most directors can potential create a win / win situation whereby they avoid insolvent trading claims and creditors get a better return than they would in liquidation.

Now more than ever directors need to take their positions very seriously. It is easy to rely on the limited liability concept underlying company law. That protection evaporates if the company trades insolvently.

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