



### **Director's Responsibilities:**

Directors' primary responsibility is to shareholders, until the company is or is likely to become insolvent. Generally, directors are required to shift their focus from protecting members to looking after the interests of the company's creditors when the directors 'know or should know that the company is or is likely to become insolvent'. This applies to all directors of each legal entity in a group, and they must consider the creditors of each individual entity, rather than on a group-wide basis.

Recognise the warning signs

- Directors need to be aware of the warning signs that a company is in distress – and some of these will be more obvious than others.
- The company is unable to meet the payroll
- The company frequently hits its overdraft or loan facility limits
- Its auditors cannot or will not sign off the accounts
- Cashflow forecasting suggests a fatal liquidity level
- Payments to HMRC are habitually late
- A bank has restricted access to finance (by reducing its loan or overdraft facility, for example) and/or financial services (by limiting its access to credit cards and BACS)
- Bonding facilities have not been renewed
- A significant creditor has issued a CCJ or statutory demand -
- Credit insurers are reducing or withdrawing cover.

But there are other signs that also indicate that the business is in trouble such as:

- Payments into the company pension scheme(s) have been deferred
- Capital expenditure has been delayed
- A major customer or supplier has entered insolvency
- Drawdown limits have been imposed on asset-based loan facilities

- Financiers are requesting more information about financial and liquidity performance
- The relationship team at a key financier has changed
- The company has lost a large number of clients
- Suppliers are refusing to advance further credit until arrears are paid - The creditors' balance, and/or creditor days, has increased - Inventory levels have increased.

Paying attention to these indicators and acting early could give you the time you need to develop a solution that saves the business.

### **The consequences of not acting now**

When a company goes into an insolvency process, the insolvency practitioner will look closely at the actions of everyone who has acted as director over the previous three years (including de facto and shadow directors). The findings of the insolvency practitioner are sent to the Insolvency Service, which could decide that a director be disqualified from acting as a director in the future.

The insolvency practitioner is also obliged to assess whether wrongful trading has taken place. According to the Insolvency Act, a director (including a de facto director or shadow director) is guilty of wrongful trading if they knew, or should have known, that the company was likely to become insolvent, but failed to take the necessary steps to minimise the losses of creditors.

There's a two-stage test of wrongful trading: An objective test assesses what a competent director in the director's position should have known, and what action they should have taken. A subjective test is then applied to the director's own knowledge, skills, and experience.

If a director is found guilty of wrongful trading, they will be personally liable for the debts the company incurred.

### **Advice for directors**

Accurate financial information is essential – financial records should be up-to-date, with a detailed 13-week cash flow forecast. This will help to plan a recovery path.

Financial projections should be realistic and not overly optimistic.

Review the company's cost base to identify cost savings.

Hold regular board meetings for each legal entity impacted and take accurate minutes.

Contact your bank and other stakeholders. If you need help with this, you can consult a restructuring adviser.

Develop a clear policy for paying creditors which should be closely followed to avoid accusations of preferential treatment.

Engage with creditors who are threatening legal action or who have issued CCJs. A lack of clear communication from the company could result in them issuing a winding up petition.

Specialist advice is essential, so consult experienced and appropriately qualified financial and legal advisers who have the experience and perspective to provide support.

Contact our experienced team at BSFC LTD today.



[info@bsfcltd.co.uk](mailto:info@bsfcltd.co.uk)

07713862515

01617061300