

What is trading whilst insolvent?

Trading whilst insolvent is a legal term that describes a limited company that continues to trade when it cannot pay its debts or its liabilities exceed its assets.

The action is considered "wrongful trading" under the Insolvency Act 1986, section 214.

What does the Insolvency Act 1986 say about trading whilst insolvent?

The Insolvency Act 1986 is a cornerstone of UK insolvency law, introducing several provisions to regulate companies in financial distress.

[Section 214 of the Act](#) specifically addresses wrongful trading, where a company continues to trade when there's no reasonable prospect of avoiding insolvency.

Directors found guilty of wrongful trading may be held personally liable to contribute to the company's assets and could be disqualified from acting as directors for up to 15 years.

How do I know if my company is or is going to become insolvent?

Here's how to tell if your company is insolvent.

1. Does the company have cash flow problems?

If your company has been losing money over the past three months, it could have trouble paying bills. You might want to consider whether the company is making payments on loans.

2. Are creditors threatening to take action against the company?

Creditors can include banks, suppliers, landlords, and others who provide goods or services to the company. They can threaten to sue your company if it doesn't make good on its debt obligations.

3. Is the company unable to borrow additional funds?

Your company might be able to raise capital by selling stock, borrowing from friends and family, or getting a loan from a bank.

However, if your company hasn't raised any additional funds within the past six months, it probably won't be able to find a lender.

What to do if the company trades whilst insolvent and you want to keep it running?

Recognising insolvency does not always mean the end for a company.

Several strategies can be employed to turn the situation around, primarily aiming to protect creditors' interests whilst keeping the company afloat.

1. An informal agreement with creditors

One such strategy could be reaching an informal agreement with creditors.

This option involves negotiating revised payment terms directly with creditors, helping ease immediate cash flow pressures.

However, it requires complete transparency and relies on the creditors' goodwill.

2. Company voluntary agreement (CVA)

A CVA is a formal agreement between a company and its creditors.

It allows the company to pay back a proportion of its debts over a period of time whilst continuing to trade.

A CVA needs to be proposed by a director and requires the creditors' approval of 75% (by debt value).

3. Administration

Administration is a formal insolvency procedure where an insolvency practitioner is appointed to manage the company, primarily rescuing the company as a going concern.

The administration process offers a moratorium period that protects the company from legal action by creditors, allowing time for restructuring or a possible sale.

What to do if the company trades whilst insolvent and you want to close it?

If rescue or recovery isn't viable, or if the directors choose to cease trading, orderly winding up of the company is crucial.

This process involves realising the company's assets and distributing them to the creditors in order of priority.

Use a CVL

The most common option, [accordingly to latest official statistics](#), to close an insolvent company is a [CVL](#), a Creditors' Voluntary Liquidation, as directors and shareholders can ultimately dictate the timing.

A CVL is a liquidation process to close down a limited company when its liabilities outweigh its assets, or it can no longer pay its creditors; at least 75% of shareholders must formally agree to the process.

The process involves appointing a liquidator who sells all the assets and distributes the proceeds amongst the creditors.

When the CVL is complete, the company's name disappears from the Register of Companies held at Companies House.

Once the company has been liquidated through the CVL, restrictions exist on [re-using the same or similar trading name](#).

You should check with your insolvency practitioner before setting up any new companies, and failure to do so could result in you being personally liable for the new company's debts.

FAQs

What is the penalty for trading while insolvent?

Directors can be held personally liable for the company's debts, face disqualification for up to 15 years, and, in severe cases, may face a fine or imprisonment.

Is it a criminal offence to trade while insolvent?

While trading while insolvent is not automatically a criminal offence in the UK, it can lead to criminal charges if fraudulent trading is identified.

This occurs when business is conducted with the intent to defraud creditors.

Are directors liable for trading while insolvent?

Yes, directors can be held personally liable for trading while insolvent if found guilty of wrongful trading.

The court may order them to contribute to the company's assets to compensate for the increased deficit caused by continuing to trade.

Conclusion

If your company is facing insolvency, seek professional advice and let's tackle the challenge together.

Contact our experienced team today for tailored, confidential advice.