

## Directors – You Need Protection

Directors of companies which become insolvent can find themselves in the firing line if they are found to have been complicit in the company engaging in ‘wrongful trading’ – continuing to trade and to incur debts when there is no realistic prospect of the company avoiding insolvent liquidation. In such circumstances, directors may be required to contribute personally towards the losses of the creditors.

A director’s duty in such circumstances is to act in the best interests of the creditors of the company. Some directors are unaware that when an insolvent company is liquidated, the liquidator is required to prepare a report on the conduct of the directors, which can be used as the basis for a decision to ban a director from holding directorships or to require a director to make a contribution to the company’s creditors.

It is therefore very important for company directors to ensure they keep abreast of the company’s current financial position and to take advice when doubts arise: the defence against a charge of wrongful trading is that the director took every reasonable step to minimise losses to the creditors of the company.

If you are unable to persuade your fellow directors to take your advice, you should be doubly careful: even paying some creditors and not others can create a liability. Pleading ignorance is not a defence: directors are expected to keep themselves up to date with the company’s financial position.

The Institute of Directors has published a useful guide for directors, which can be downloaded from the Internet at <http://www.iod.com/intershoproot/eCS/Store/en/pdfs/dutiesresponsibilities.pdf>.

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