

FREE

**Expert impartial advice for
worried directors of companies or
limited liability partnerships**

Foreword - The Ultimate Guide For Worried Directors*

*Or designated members of limited liability partnerships

In truth it is easier for a person to become a director of a limited company than to learn how to drive a car. There are no examinations to pass or qualifications needed, form the company and off you go. Literally anyone can form a limited company in the UK, it is usually simple, a company formation agent can arrange this online in under 20 minutes. Then the rest is less easy. There must be at least one director and it must be a human. It is possible to have a corporate director on the board of directors too, but at least one person must be on the board. So, that's the easy part, you formed a company congratulations!

Now what about the compliance, annual reporting to Companies House, management and annual accounting, tax, insurance, human resources, landlords and leases, products and employees.... well you get the point. This guide is designed to speak to directors in layman's terms wherever possible, to help ensure that you, the director, are able to understand the basics of being a company director in good, bad or difficult times.

If you are an director and you do **not** worry about:

- Starting up your business or growing your existing business
- Employment compliance and pensions, recruiting people to help it grow
- Marketing and product/ service delivery
- Producing meaningful management accounts on time
- Keeping up to date with tax reporting and legislation changes and filing annual accounts or tax returns
- Dealing with banks investors, online lenders, raising working capital
- Leasing or renting property
- Poor cashflow?
- What a personal guarantee means for you
- When your customers will pay your company
- How to pay HMRC
- How to win new work
- How to pay wages on pay day
- Wrongful trading or being made personally liable for company debts
- Suffering from stress or losing your property because of a badly performing business

Then you needn't read any further and well done!

However if ANY of the above issue are causing you concern or sleepless nights, then read on and we hope our guide will help you. Obviously it is a general guide, so if you want to talk to any of the expert contributors to this guide, please see **CONTACT DETAILS ON PAGE 77**. They will be happy to help or answer a burning question.

About KSA

We take hundreds of calls from directors of struggling businesses and every time they say they are worried about x, y, z. So we decided to write the definitive guide to the main worries that directors can and will have and help explain what the position is, any personal implications and what can be done about it!

In this guide we strive to answer every question a worried director might have about their new or growing business and the impact of the turnaround and insolvency processes.



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introduction

and our service to you and your company

For 20 years now professional advisors at KSA Group and its associated companies have been helping worried company directors. We have helped one man band companies with a single director who is the only employee, the chief cook, bottle washer, accountant and salesmen all rolled into one; through to boards of directors of plc companies owing hundreds of millions to creditors and pensions. All have similar issues just in differing scales and complexity.

Now we, KSA Group, are delighted to provide free of charge, this 80 page Experts Guide to the main things that might worry you as a director of the company (or as a designated member of a limited liability partnership (LLP for short).

Other contributors to this guide are practicing accountants, qualified solicitors, experts in the production and interpretation of management information & accounts, marketing experts, business growth planning experts. We have great content from expert non-executive directors, experts in raising new finance for companies, corporate finance brokers. All of us want to help grow and or turnaround good businesses, we want to ensure that inexperienced directors get the help they need either from this guide or hands on consultancy support on projects or the whole company.

KSA Group Ltd

We are very proud of the online service that we provide to thousands of companies every week in the United Kingdom. We don't talk to most of those people but we do know that we provide a service that they find helpful, useful and accurate - please visit www.companyrescue.co.uk or www.ksagroup.co.uk KSA has offices in London, Edinburgh, Berwick Upon Tweed, Gateshead, Manchester and Birmingham. See our contact details on PAGE 77.

"It sure is a risky business running a business nowadays, isn't it?"

Well in truth it always has been since introduction of the first Companies Act called the Joint Stock Companies Act 1844 which was soon followed by the Limited Liability Act 1855 . This introduced the process that led to the concept of directors, members and officers of the company had LIMITED LIABILITY

Company legislation is tedious and we are not going to go into it too much detail in this guide. However, every company director must be aware of what it means to actually be a director or officer of the company. You don't need to know the thousands of pages of text of the legal acts and case law and so forth, but what you MUST know are the basics. All of it is basically common sense: if it seems right it probably is right – but if it seems wrong then it probably IS wrong.

Often when things go badly wrong for a company there are lots of grey areas.

Our aim

Our aim here is to provide all company directors with a handy easy to access and read guide to their obligations, the duties, what happens when a company is formed, growing, needs working capital, people and properties. It is also important to know what to do when things go wrong in the company and to answer the commonly posed questions to us every day.

Our Guide

We hope this Guide answers all of your questions and concerns. But we know that running a business creates new problems and unusual issues on a regular basis therefore we are happy to provide, readers of this guide, a free support line service. This is open five days a week from 9 AM to 5 PM. Just call **0800 9700539**

We also offer a premium service where one of our 10 directors or managers can be available to answer questions about any of these topics in this guide on the telephone or conference call or face-to-face. The only cost to the premium service is that you register with KSA Group as a premium customer and agree to receive our update emails and we determine we can help the business on an initial call.

Our other contributors will also provide support initially free of charge and then on an agreed fee basis. Why not give them a call! They've given their time and knowledge and expertise to allow us to build this guide for directors like you.

Keith Steven, 2020

*Other charges may apply for travel to face to face meetings, but no time costs are charged for initial meetings. See! We even provide great face to face advice free if you qualify!

Advice for companies post Covid-19

Get you free video consultation now. Call 0800 9700539 to arrange

As a director you might be worried about the future of your business going forward but not actually thinking that it is about to become insolvent. Given the current situation there are more things to consider

- How many staff can I keep on after furloughing?
- Will I have enough working capital to restart?
- Can I afford to repay CBILS and Bounceback Loans next year?
- Will my customers return?
- Can I afford any refunds
- Impact on business due to social distancing rules

As licensed insolvency and turnaround practitioners we have seen the circumstances that can lead to insolvency and also we talk to many company directors that think their business will become insolvent but doesn't. We are therefore in a good position to "reality check" your business. So what does this actually involve?

We can "virtually meet" you and discuss the position.

If you can provide us with as much financial information as possible we will provide you with a full 20 page report on your position along with what the options are. All this advice is free.

Almost all of our clients say "I wish we had spoken to you earlier!" It is also worth remembering that if there are problems, then being able to move quickly when required greatly increases the chances of a solution and lowers any costs.

Call us on 020 7887 2667 if you are worried about your businesses future and think that your business could benefit from a reality check.



Author: Keith Steven



Special thanks to our contributors



Garry Mumford - Insight Associates

Garry is a highly experienced finance manager/director and one of the founding partners of Insight Associates, in 1992. He has held a number of senior financial roles in a variety of organisations, including Finance Directorships in both independent and family owned businesses. Garry is a Fellow of the Association of Chartered Certified Accountants (FCCA), member of the Institute of Directors, and a long standing Director of the Turnaround Management Association in the UK. He has significant experience in change management, turnarounds, systems development and implementation, company acquisitions and disposals, as well as being a skilled facilitator in strategic planning and development situations. Insight Associates can take control of your entire finance function. The Outsourced Finance Department professionalises your financial management so that it runs like clockwork – and helps your business thrive, instead of holding it back.

For more details go to www.insightassociates.co.uk

Insight Associates, Insight House, Riverside Business Park, Stoney Common Road, Stansted Mountfitchet, Essex, CM24 8PL, UK Tel: 01279 647447



Financial Management Centre - Bookkeeping

At The Financial Management Centre we are professional bookkeepers and we can save you time and money by assisting or taking over your bookkeeping and accounts. Working with us eliminates the time-consuming and often expensive recruitment process. We work with businesses of all shapes and sizes and exist to help take the burden and worry of looking after the financial element of your business. Not only do we have our range of services to support you, but we also have an app packed with useful features to help you run your business. We can be your bookkeeper, accountant, accounts department, finance manager, financial controller or even ad-hoc finance director. You can outsource your entire accounts function to us or maybe you just need us to look after a particular part or work alongside your own accounts staff.

You can contact the The financial Management centre on 0800 470 4820 or 0333 202 7198 or visit the website at www.tfmcentre.co.uk.



George E Davis Worcester Black

George is a director of Worcester Black Limited and a regional manager of KSA Group covering the Midlands. He has also worked as a Growth Coach on the former DBIS Growth Accelerator programme, and as a coach and mentor on the Aston University Growth Voucher scheme and MBA programmes. These programmes were designed to help small business to grow, and worked with a number of SME's their owners and directors.

Originally from a marketing background he is a highly experienced brands marketing and PR professional with wide-ranging national and international experience, including senior general management, project and interim management and internal/external consulting.

George E Davis of Worcester Black can be contacted on 07738 965280



Robert Moore - Company Funding Options

Company Funding Options Limited is a specialist FCA Authorised firm that can advise you on raising finance for your business! The founders have been involved with SME businesses for over 40 years. In that time we have seen a large number of banks being absorbed into 5 or 6 huge monolithic clearing banks, some of which as we all know how to be rescued during the financial crisis by the government. Interestingly since the financial crisis of 2008-10 we have seen an enormous number of new funding options made available to UK businesses. In fact that there are so many that we decided it would be sensible to build a database to keep tabs on the various products, services and options available for businesses.

"Company Funding Options Limited (Co Reg No: 09313307) Company Funding Options Limited is a Credit Broker and not a Lender. Authorised and Regulated by the Financial Conduct Authority. Reference Number 773468." www.companyfundingoptions.co.uk 0207 760 7524



Julian Donnelly, Rosa Associates Limited

Julian is managing director of James Rosa Associates Ltd – a firm specialising in “tailored financial reconstruction” which involves debt advice to individuals and businesses, insolvency support, assisted personal bankruptcy, and negotiated settlements. James Rosa Associates Ltd also offers civil and commercial mediation services. Julian is an expert in personal guarantees and has negotiated on behalf of individuals in this respect.

You can call him on 0845 680 7217



Tim Clarke Partner - Clarke Mairs

Tim qualified as a solicitor in 1987 and practised in London before moving to Newcastle upon Tyne in 1990. He was a partner at an established practice for 15 years before leaving to set up Clarke Mairs LLP in October 2007. Tim deals almost exclusively with commercial property transactions, acting in all types of commercial property acquisitions and disposals, together with general commercial matters – share acquisitions, buy-backs, company and partnership formation etc.

Email tjc@clarkemairs.com | Call: 0191 245 4730



Darryl Woodhouse, Advantage Business Partnerships

Darryl is a mentor, coach and speaker to small and medium sized business. He founded ABP in January 2012, motivated by the alarming research which evidences how many businesses fail and how hard it is for businesses to find the right advice and suppliers that they need to survive

and thrive. The quality, affordability and credibility of the business advice, coaching, training and consultancy services available to businesses is generally very disappointing.

You can find more info at www.darrylwoodhouse.com or call him on 0203 384 0276



Ali Akram Lexlaw

Managing Partner of Lexlaw – Practising Solicitor-Advocate (England & Wales) – Barrister (of Lincoln’s Inn) LL.B. (Hons), LL.M. (Law of Banking & International Finance) BVC – Inns of Court School of Law (Very Competent)

Ali has a wide breadth of legal experience with particular focus in Civil, Commercial, Insolvency and Financial Services Litigation. Ali acts for a wide range of clients from entrepreneurs, high net worth individuals, SMEs to listed PLCs. Ali serves on the executive committee of the Society of Asian Lawyers and is a member of the London Solicitors Litigation Association.



Margaret Sheppard Rosebud Consultancy Ltd

Margaret Sheppard is a Chartered Certified Accountant Rosebud Consultancy do Book Keeping, Accountancy, Company Secretarial and Payroll that becomes an internal finance function externally located for all our clients.

We will carry out all book keeping, vat, company secretarial and payroll, including auto enrollment, and other tasks as required.

Rosebud can be contacted on 01908 533 351



John Vause

John is a Certified Accountant having qualified, in 1988, whilst working in a leading provincial accountancy practice where he was responsible for his own portfolio of clients.

John has more than 35 years of experience working both in private practice and industry: in recent years working with a small number of companies in Finance Director / Financial Controller roles, where he is prepared to adopt a “hands on” approach and get involved in a project.

Contact John on 07967 68136 e: john@johnvause.com

1

being a company director



What does being a company director really mean for you?

If you are a director of a limited company, or a designated member of a limited liability partnership you are an officer of the incorporated vehicle². So what does that mean in English?

*What it means is that if you act reasonably and responsibly then you as a director have limited liability if the company enters into insolvency or fails. **PROVIDING YOU ACT PROPERLY.** It also means that you have a number of compliance requirements to ensure that the company is properly run and hopefully grows into the future.*

Why be Limited?

Well it often looks a little more professional than simply being a sole trader. It affords limited liability protection as above, which is not available to sole traders. Tax wise it may be slightly more advantageous (at the time of writing HMRC reviewing this Jan 2018) to be paid dividends from company profits than being employed on PAYE. As in life, there are pros and cons to every form of business status. No single method is perfect to all. You should weigh up the pros and cons on a two column sheet of paper and then decide what's best for you. Getting basic advice from experienced directors and

professional advisors is also a good and usually cost free investment.

If you choose to be a sole trader then much of this guide will be of little use to you. Trading through a limited company then means, the company and the directors need to co comply with many different laws but have a 'veil of incorporation' protecting them.

Let's start at the very beginning; if you are an experienced director you can skip this section.

How do you Register a Limited Company or a LLP?

You can approach a solicitors or accountants in your area and they will probably be happy to help you form the company or LLP and register it at Companies House in Cardiff or Edinburgh if forming and registering a Scottish company. In fact they do this on a pretty regular basis and will certainly ensure that you carefully check all the pro forma and future compliance requirements. These professional often act as a company secretary - although not normally needed for startups - and possibly help with accounting if you think it will trade quite soon. But it is actually very easy to do online.

Before you do go to a company formation agent, like our friends at www.rapidformations.co.uk we think you should set out a brief plan.



The following questions may act as a helpful checklist and you will generally need to be able to answer some of these and more, when you start applying online to form a new company:

- Why are you forming a company?
- What will it be used for?
- Will it start trading soon?
- Who will do the annual reporting to Companies House?
- Who will do the annual accounts and corporation tax return?
- Work out who will be a director?
- Who will the shareholders be? What percentage will each shareholder hold?
- Which bank will the company use if you plan to trade?
- Who will register the company for corporation tax purposes, PAYE and VAT registration?
- Will you be preparing a business plan?

If you are forming a new company to act as a one person or serviced company you can delay or put back some compliance issues, but they MUST be done, so start the way you mean to go on.

What if there are more people getting involved? If you are contemplating forming a company with a number of other people then it's best to have a simple plan, agree this with the proposed directors and/or proposed members (shareholders). Then form and register the company.

It can be confusing to remember what was agreed afterwards. Going forwards it is good practice to hold regular board meetings and note down all the major issues that were covered at the meeting, these are normally called board minutes. We strongly recommend that you keep these minutes and any agenda that drives the board meetings in the Company Register and/or backed up in the Cloud.

Once the company starts trading you as a director(s) are legally required to keep appropriate accounting information. Don't be tempted to put all the invoices in a box and say "I will deal with them afterwards when I need to file accounts or tax returns".

Think instead of getting an easy to use accounts package like Xero or Quickbooks. Ask your accountant or Rosebud Consultancy (see page 20) who are contributors to this guide to help set them up and or drive data entry. They will produce regular accounts quickly and accurately for your company.

Then you are free to be the entrepreneur, sales person, and "work getter" but with accurate information to back you up.

Trading as a Company - the language to use

We lose track of the times where people speak to us and say "my debt", "my creditors" and "my customers".

What they really mean to say is the "company's debts" the "company's creditors" and the "company's customers"!

Although it may sound like we are being pedantic most small company directors need to stop merging the company and themselves together in their minds. This is plain wrong.

You as a human being, when acting as a director are NOT the company! As a designated member you are not a limited liability partnership either. You are an officer of the company. Likewise the company assets and company debts are not (generally) yours personally either.

So, it is vital to recognise that there are four parts or "constituencies", to every limited company³.

It is important to separate these constituencies:

1. the company
2. the business
3. the directors
4. the shareholders or members

The **COMPANY** is a legally recognised entity that you can set up to run your **BUSINESS**. It is responsible in its own right for everything it does and its finances are separate to the **DIRECTORS OR SHAREHOLDERS** personal finances.

Any profit it makes is owned by the company, **NOT BY THE DIRECTORS** but after it pays corporation tax. The company can then share its profits with the **SHAREHOLDERS/MEMBERS**. This is not the same as directors' wages or salary.

Any profit the company makes is NOT YOURS as a director or employee.

See what I mean? Four. Different. Parts. Still not convinced?

Look at it another way. We liken it to a car. We all know what a car is, it can be the best car in the universe but it needs a driver (at least up to 2018!) to drive it – just like a director does for a company.

Now we could drive your car, but you own it. Thus large company directors seldom **OWN** the car, they act as drivers for the owners. So please stop calling the company "you", "me" and talking about "my debt", "my creditors" and "my customers"

The **BUSINESS** can happen in one car or in another car – this could happen in a sale of the business, or insolvency sale for example. The **BUSINESS** doesn't have to be in the same car (**COMPANY**).

In simple terms the **COMPANY** is not the **BUSINESS** it is a vehicle to carry the business and to protect its occupants (**DIRECTORS and MEMBERS**).

Ok? Lesson learned?

But what if I am both? Being both DIRECTOR and MEMBER.....

Every limited company has 'members' - the people or organisations who own shares in the company. These are commonly known as shareholders. That could also be you - as most small companies have common **DIRECTORS** and **MEMBERS**.

Directors are responsible for running the company. Directors often own shares, but they don't have to.

Legal Responsibilities for Directors

There are many legal responsibilities involved with being a director and running a limited company. We won't cover them all in this guide but we will look at ALL directors' responsibilities if things are going wrong with the company and the business.

What types of Company can you have?

Most limited companies are 'limited by shares'. This means that the shareholders' responsibilities for the company's financial liabilities are limited to the value of shares that they own, but haven't paid for.

So if the company's shareholding total 100 times £1 shares (therefore it has £100 share capital), but the **MEMBERS** haven't yet actually paid for those shares, then the **MOST** the **MEMBERS** can lose if the company fails is £100. Obvious huh? If that company fails, then the directors have **NO** financial risk if they have acted properly and if they haven't personally guaranteed the **COMPANY** debts.

But and it is a big **BUT** that goes to the core of this guide....They can have personal liability for the company debts if they acted **WRONGFULLY** or **FRAUDULENTLY**.

Or they may be held liable for the debts from the time they knew (or ought to have known) the company was insolvent and yet they failed to act properly. This is a huge area of uncertainty, which this guide seeks to help you understand and address.

In Summary then; company directors aren't personally responsible for debts the company/ business can't pay if it goes wrong, as long as they haven't broken the law.

² Designated members of limited liability partnerships may face differing tax issues, we do not offer tax advice on those

³ If you are a designated member of a LLP please take any further references to directors to mean you too. Almost everything that applies to directors in a limited company insolvency or turnaround situation, applies in the same way to you. We will show you any differences a little later on.

Our colleagues at Insight Associates or Rosebud Consultants, for example, will do all of the formation work, management accounts and annual reporting for the company.

⁴ See page 24 on personal guarantees

Top 10 things to remember if you are a Director of a Startup or a Fast Growth Company

1. You are not the company but you are responsible for its well being and reporting to Companies House and HMRC.
2. CASH is not easy to find! Funders, investors, venture capital companies are not waiting to throw cash at a business idea without structure, compliance and a properly formed company. Even with these, they are still not just waiting for your idea.
3. The company needs a business plan.
4. Directors must keep track of decisions usually by having a board meeting and noting what happened at that meeting.
5. You should keep records of the transactions of the company - it is called accounting - even when it hasn't traded yet. When the company hopefully has trading cashflow and money in the bank - it is not YOURS!
6. One sale or order does not mean you have a business.
7. No one person can do it all - support is easy to find and relatively inexpensive. Contact the contributors of this guide or look online for expert consultants.
8. 90% of all new start companies fail or close within 3 years. If this company does fail, make sure you are personally not liable for the company's debts. AND if it does fail - learn from it and start again.
9. Initial advice is free from the contributors to this guide. ACT quickly if problems arise.
10. You need a business plan.

2

business growth planning

by George E Davis,
Worcester Black Limited

The sources of the problems that we encounter have been many and varied, but one common theme has nearly always emerged, when we meet directors for the first time - a lack of planning!

- There were no formal written down plans.
- No business plan.
- No marketing plan.
- No financial plan.
- No long term strategic view and/or exit strategy.

Research has shown that businesses with formal, written plans, contributed to, available to, and read by all the key members of a management team, are far more likely to succeed, than those without such plan.

However, the majority of those individual owners, directors and managers with whom we have worked over many years it's probably fair to say that in each case they were experts in their field, passionate, committed and hardworking individuals who had left full-time employment to set-up and run their own businesses. However they were not experienced at producing business plans.

The Business Plan

Business Vision: To start with, in any business planning process we need to define the vision of the business, so as to determine what it is we want the business to become.

What is its purpose, and how will we measure the achievement of that purpose?

In considering the overall vision for the business, and in the preparation of business plans, managers and owners need to consider any number of factors, these might typically include:

- Overall market size (for the product and service), this might be local, or regional, national, international, or 'all of the above'.
- Macro environmental factors – the state of the economy,

interest rates or currency movements, raw materials price movements, legislation, tariff changes etc.

- Micro environmental factors – competitive activity, product substitution, marketing.
- Pricing policy – high volume/low margin (penetration), or low volume/high margin (niche).
- Supply chain – changes to etc.
- Customer activity, policy and changes.
- SWOT analysis (strengths, weakness opportunities and threats) – both for your business, and its key competitors.
- Detailed competitor studies – potential acquisitions, and potential acquirers.

The Three-Year Plan, versus The Annual Business Plan

Having thought about, and decided upon the vision, it's then time to identify what is most likely to be needed in order to achieve that vision, and to do so in stages. Whilst it's always difficult to forecast even a few months ahead, we need to do the best we can to build a model of what the business might look like in a few years time.

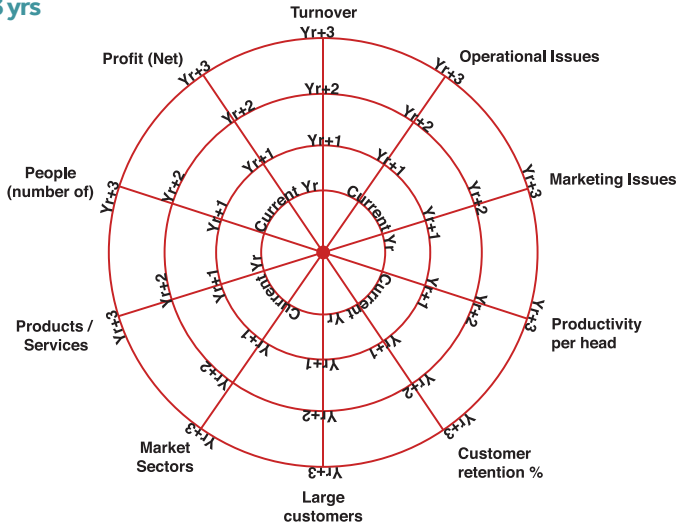
It sometimes help to use visual models, the first, called The Orbit Diagram - Oxford Innovation Ltd (see diagram) is a series of four concentric circles drawn on a large sheet of paper (A1), bisected by a number of straight lines radiating outward from the centre of the diagram to the outer circle. The circles represented points in time, current position, year one, two and three etc. The lines represented key planning objectives (including):

- Turnover
- Gross Margin
- Admin Costs
- Net Profit
- No of Staff
- Key Customer acquisitions
- Training
- Marketing
- Working Capital requirements etc.

Orbit for next 3 yrs

Axes might include:

Turnover
Profit
People
Products & services
Markets
Customers
Geographic spread
Operational Issues
Marketing Issues
Funding Issues



It is often a good idea to start at year 3 then work backwards to the 'current position'. This produces a simple diagram that can be reviewed constantly.

In working on the development of the three-year orbital diagram, it is important to plan what resources would be needed (people, processes, system/process changes, equipment, skills, support services etc) and when, and then to plot these milestones and key steps towards achieving the vision, on the diagram.

It is important to measure progress, and to decide what the key measurements will be, so as to make adjustments to the plans as needed (sales turnover, gross margin, net margin etc).

Purposes

Business plans can have many purposes; raise capital, keep the bank happy, prepare a business for sale even

But we should have a plan that helps us to run the business, one that includes contingency elements, 'what ifs', and one that will be reviewed monthly, in conjunction with management accounts, so that we can see what's working (we can ask why?), and what isn't, so that we can do something about it.

As above, such a plan should set out the objectives of the business, usually for the next three years, but then specifically for the next twelve months. It should show how the business is going to achieve these objectives, what new and additional, or replacement resources may be needed, and how performance against objectives will be measured and monitored, often referred to as Key Performance Indicators.

The annual business plan serves several purposes:

- It should provide an opportunity for the owner, the directors and managers to consider the operation of the business in a manner that identifies what activities need to be undertaken in order to achieve the company's objectives. This is true, no matter how small, or how large the business.
- It acts as a road map enabling managers to stay on course with the business objectives and, if monitored appropriately, it should give fair warning as to when new risks arise allowing actions to be taken, to bring things back in line, or for managers to seek further professional third-party advice if such risks appear to be significant.
- It should identify those resources that are required for the business plan to be a success, and should be expressed in terms of personnel, working capital, equipment, training, and marketing etc. and it should drive an appropriate financial budget requirement to meet such needs.
- If properly prepared and the disseminated, it should also enable all key members of staff to 'buy into' the plan, allowing them to identify how their own roles fit into the bigger business picture.
- As mentioned above if additional working capital is required, the plan, including its financial projections will be needed by potential investors, so that they can understand what it is they are investing in, the likelihood of a return on that investment, the timescales, the level of risk involved and confidence that the plan is fair, and feasible.
- Ultimately, and as part of any written plan, the financial projections become critical when measuring performance, and it is important to monitor not only sales growth (or lack of it), but also gross margin growth (or decline), and of course 'cash'.

A Simple Written Plan Outline (things to be considered)

Whilst the aforementioned diagrams form the basis of a visual working plan document, a business should still produce a written plan. What follows is by no means exhaustive, but simple concise paragraphs, and working spreadsheets should be produced that should ideally cover the following:

- The Executive Summary (one page)
- Products & Services
- Your Market
- Market Research
- Competitor Analysis
- Marketing Strategy & Plan(s)
- Financial Forecasts
- Summary and conclusions (a short narrative covering the following. Use the single page plan)
 - Where were we, what's changed, what needs to change, where do we expect to be in 12 months time?
 - What are the key issues?
 - What are the key activities?
 - Who is driving them?
 - By when?

Other sections of the plan might include:

- Inbound & Outbound Logistics
- Costs, & Pricing Strategy
- KPI's (key performance indicators) & Contingency Planning

Remember planning is not a one off exercise but rather a continuous process, one that constantly adapts and flexes with events, failures and successes, it needs to be a 'living', working document. Things change, opportunities arise, as do challenges, so it needs to be visible and in constant use, being reviewed and monitored in line with changing circumstances.

This guide to business plans is courtesy of George E Davis from Worcester Black Consultancy. George Davis has also worked as a Growth Coach on the former DBIS Growth Accelerator programme, and as a coach and mentor on the Aston University Growth Voucher scheme and MBA programmes. These programmes were designed to help small business to grow, and here again he met and worked with a number of SMEs their owners and directors.

You can contact George E Davis on 07738 965280



3

are you really in control of your numbers?

do you need a bookkeeper, accountant or financial director?

by Garry Mumford of Insight Associates

As your business grows, you need to make sure your accounting evolves as well.

"We're at breaking point," the husband told us.

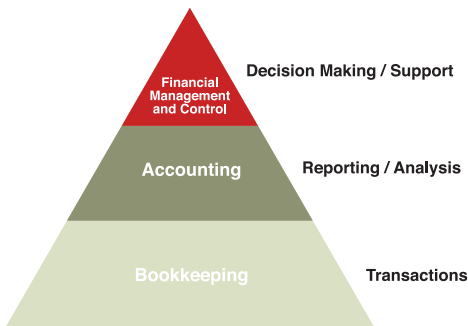
This gentleman and his wife ran a successful business, turning over £2 million. And yet, every week, they spent three days ploughing through their accounts themselves – just as they had when they turnover was £100k. It had become a barrier to growing their business, ate up their free time and put a strain on their relationship.

When we told them they could automate much of this, they almost cried with relief.

"The accounts have been dragging our whole lives down, but somehow we've never managed to delegate them," said the husband. "Getting rid of it would be an enormous burden off our backs."

What they were experiencing was typical of companies that move beyond the £1-£2 million mark. Financial systems that were fine when you were just starting up are no longer sufficient. Your financial management needs to grow up, as your business grows up.

So what stages does your financial management go through? Think of it as a pyramid.



1. The Bookkeeper

Bookkeeping is the foundation of your financial management. It's all about keeping the books up-to-date in a quality and timely manner by recording transactions, producing invoices and doing the payroll. If you're a really small business, it's probably all you need because as owner, you're close enough to the ground to know how the finances are doing, and where they're heading.

2. The Accountant

This is more complex and is mostly about analysing the raw data provided by bookkeeping, filling the gaps and making sense of it all. For example, your accountant should be analysing the costs of different operations, breaking down figures so you know which are the most profitable parts of your business, and which parts need help – or should be dropped. This is in addition to all the usual statutory and compliance tasks that need completing. Even simple numbers need to be put in context. Is cash flow fluctuating more than it did a year ago? Are your margins less than they were a month ago?

When your financial situation is known and understood at all times, you can plan ahead instead of day-to-day. Suddenly, numbers are something that help you, rather than something – let's be honest – that slightly frightens you.

But here's the thing. If you grow as a business, you'll need even more, which is when stage three comes into play – the financial director.

3. The Financial Director

Companies that are maturing go even further. They use those numbers to help them make strategic decisions and to challenge the management. How should you plan your budgets? Which way would make the most financial sense to structure your business? What pricing strategy is most sensible? To name but a few. The largest companies have financial management and control, usually led by a finance director who takes a bird's-eye view of what's going on.

Which One Is Right For You?

As you grow, you will work your way up the pyramid. However, it's important to understand that these three levels of the pyramid work together, they don't replace each other. One isn't fired as the next level is hired. Larger companies should have all three elements – the bookkeeper, the accountant and the FD - because they build on and complement each other's work. That is why, if you have just one person in your organisation managing your finances, you are unlikely to have the full financial capabilities of a larger and more mature company. It takes a team, with different skills.

Get to the Top of The Pyramid Now

Not quite there yet? Think big. If you want to become a £10m company start acting like one now. Put in place the same financial management they have. The advantages of having in-depth financial information and smooth financial management are so enormous, you will reach your growth goals faster. Just ask the couple we told you about earlier, who could finally concentrate on business development, because they no longer had to worry about their accounts.

If that's something you'd like to achieve, email more@insightassociates.co.uk . With our outsourced finance department, we provide companies turning over £1-£10 million the financial capabilities corporates take for granted. We will be delighted to help you too.

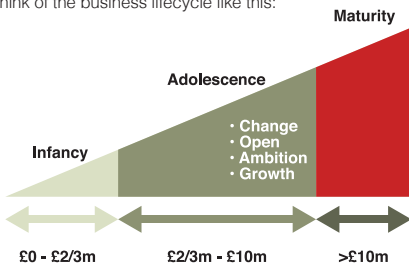
How mature is your business? How to Build Your Company For Growth.

If You Want Your Business To Develop, You Need the Right Foundations In Place - Now

Change is natural. Think back to the person you were when you were 20, and compare it to the person you are now. I would hope that while your essence has stayed the same, you have grown and matured. The same thing happens with businesses. They, too, grow and mature.

How a Business Grows

Think of the business lifecycle like this:



Infancy

At the Infancy stage, the business is still very dependent on the owner, who has most of the know-how and often does a lot of the work themselves. If the owner does not come to work, the business does not work. Typically businesses with a turnover up to around £1million fall within this category,

although there are much larger businesses who are still virtually completely owner dependent.

Adolescence

From there to around £10 million, your business is in adolescence. It starts to develop systems so that anyone can do the jobs involved well – even if the owner isn't there. You put in place the right technology, the right processes and the right staff, professionalising your company. This is a messy stage because it's about transition and change, putting into place the right elements so you can hit maturity.

Maturity

Maturity is when your business becomes systems-dependent rather than people-dependent. The systems run the business and the people run the systems. People come, people go, and the work still gets done. You can sell the business, because the value is inherent in it – it's not tied up with you, the owner.

You may have noticed that not every business gets all the way through this cycle. Many businesses never really emerge from 'childhood'. Years after they were founded, they're still operating in largely the same way and are still the same size. This is often exactly what the founder wants. Other times, though, it's despite their best efforts.

With businesses, change is most effective when it's deliberate. You need to understand just how 'mature' your business is now, how mature you want to end up, and plan how to bridge the gap.

Prepare for Growth

There's no right or wrong answer. But once you know where you want to go, you can put in the right building blocks to get there. And if you do want to move beyond infancy, that means systematising your business.

This might include a reliable marketing system, processes to deliver your product to your customers to a consistent standard, ways to manage your workflow smoothly and onboard new staff easily.

Your Financial Systems Have to Grow Up, Too

You need to systematise your financial management, too – although many business owners don't think about this until crisis hits. A business that doesn't have foolproof processes to manage its numbers might struggle to understand its true financial position and to manage its cashflow. This is a recipe for instability at best, failure at worst!

A company with good financial management, by contrast, gets timely and accurate financial reports. They have a deep understanding of their business situation, and make well-informed decisions as a result. They don't get surprised by bills and they rarely have to fire-fight. They are becoming mature.

So where is your business on that spectrum – is it infant, adolescent or mature? Where do you want to end up? And what do you need to put in place to get there?

Why Cash Really Is King

Cash is the lifeblood of your company. Monitoring your cashflow is your first duty as business owner. What's the one thing your business needs more than anything else? Talented staff? A good business model? Great processes? They're all important but they mean very little if you don't have cash. Without that, your business is in grave danger.

Cash crisis

Every year, countless profitable businesses have to close because they run out of cash. It can happen in a number of ways. Perhaps you're working on a large project and being paid at the end. It's an incredibly lucrative piece of work, but you have a lot of expenses to cover and in the meanwhile, you can't cover them.

Often it's down to the perennial enemy of the small business – late or non-payment of invoices. According to the Federation of Small Businesses only 51% of invoices are paid on time. Another report from Amicus Commercial Finance put the figure at 61% and warned that large companies were routinely running roughshod over their smaller counterparts. The report also found that 37% of businesses said they had experienced cash-flow problems because of late payment; 30% had been forced to use an overdraft and 20% said it had hit their profits.

So it's not nearly as uncommon as it should be. Indeed, it's not unknown for larger businesses to hold off paying a smaller supplier which is in trouble in the hope that the business will go bust in the meantime.

Missing information

There is, of course, another simpler reason. Sometimes a company doesn't have quite as good a view of its cashflow as it should, and this comes down to the way in which it manages its numbers. If your accounts aren't completely accurate and up to date it's easy to lose sight of how much money is in the bank, how much you are owed and when you're in danger of running out of cash. It's easy to assume that your bookkeeper or accountant is on top of your cashflow, but very often that simply isn't the case.

Confusing Profit with Cash

Then there's the business directors that confuse profit with cash. They see that they are busy; they see the invoices going

out and that the company is projected to make a healthy profit by year-end, but they forget to look at how much cash is actually in the bank. Sometimes, precisely because they are profitable, they aren't as vigilant as they should be about chasing up overdue invoices and collecting the money that's owed to them.

That's a problem, because no matter how profitable they look on paper, if they don't have the cash to cover the company's bills, they're going to end up in trouble.

Get a Daily Cash Flow Report

The only real solution to this is for businesses to be absolutely draconian about managing their cash flow. In fact, I'd argue that this is the number one duty of any business owner, because your business rises and falls on its cash. This means getting much more proactive about how you handle your accounts.

Make sure that your bookkeeper or accountant gives you a daily – yes, daily – report about how much money is in your account, and what they expect to come in and out of it over the next few days and the coming month. That way, you can clearly foresee shortfalls ahead of time, and act early to prevent disaster. Similarly, make sure you're receiving monthly accounts instead of quarterly reports, and that these are full and accurate.

Running a Business Is Like Captaining a Ship

Running a business in this respect is a lot like running a ship. The more you can see, the safer you'll be.

Cash is important – very important. It's the lifeblood of your company and if that stops so do you. Yet too many business owners don't pay enough attention to it. Every time a business forgets to look after its cash it takes a small risk with its own health and wellbeing. Make sure that you are safe.

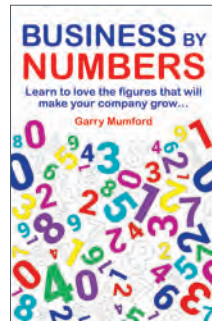
As they say, Cash is King....

KSA can provide a FREE daily cashflow

Email help@ksagroup.co.uk to get your copy

If your financial management is still in its infancy, If you would like help developing reliable financial reports, including daily cash flow reports email more@insightassociates.co.uk or call us on 0800 180 4265. For more info visit www.insightassociates.co.uk.

We help companies turning over £1-2 million get the financial systems of a much larger company – so you can build the mature company you're always dreamed of.



Please read this contribution from the Financial Management Centre who provide bookkeepers to small businesses.

Bookkeeping at its core, it is simply the process of logging income and expenditure. Doing it properly and comprehensively however, takes know-how and time. Effective bookkeeping should not only give you a financial snapshot of where your business stands, but it should be able to identify business opportunities or business critical threats. It is this aspect of bookkeeping that directors themselves may not be proficiently experienced in; we have come to rely on sophisticated software that crunches the numbers for us, but it takes the experienced person to extrapolate the information so that it has relevance to your business. DIY bookkeeping is not for everyone and furthermore, it can be extremely time consuming; more-so when your time may be better put to use elsewhere, such as networking or business development.

Enter, the bookkeeper!

Delegating this aspect of your business often leads to two options:

1. Employ a bookkeeper to work in your business
2. Hire an external bookkeeper to work on your business

At The Financial Management Centre we are professional bookkeepers and we can save you time and money by assisting or taking over your bookkeeping and accounts. Working with us eliminates the time-consuming and often expensive recruitment process. We work with businesses of all shapes and sizes and exist to help take the burden and worry of looking after the financial element of your business. Not only do we have our range of services to support you, but we also have an app packed with useful features to help you run your business. We can be your bookkeeper, accountant, accounts department, finance manager, financial controller or even ad-hoc finance director. You can outsource your entire accounts function to us or maybe you just need us to look after a particular part or work alongside your own accounts staff.

You can contact the The financial Management centre on 0800 470 4820 or 0333 202 7198 or visit the website at www.tfmcentre.co.uk



what accounting package should I use?

by Rosebud Consultancy

Keeping your bookkeeping up to date and ensuring it gives a company accurate data on a timely basis can be a chore. Especially for a small enterprise where the cost of employing a staff member to do this. However, with the advent of the new cloud based systems such as Xero, Quickbooks or Sage things became a lot easier.

Cloud computing accounting software is accounting software that is hosted on remote servers. It provides accounting capabilities to businesses in a similar fashion to existing systems that are downloaded onto company pcs but it is not static. Data is sent into the cloud where it is processed and returned to the user.

The beauty of these systems is that not only does the company have the ability to access the data but they can give access in full or in part to their accountants or other third party users. Therefore all parties are working on the same data.

By way of illustrating this see below for a short case study of their operation.

A has recently set up a company to operate a studio. A needs to keep control of the sales in order that she can monitor members subscriptions and wants to ensure all her payments

are up to date but she is not confident about ensuring the bank is reconciled each month or how to read the reports she can generate.

She asks for advice and the agreed result is that she retains standard access to the system to enable her to raise the sales invoices and post purchase invoices but gives adviser access to her accountant.

Each day A posts the sales invoice and any purchases that come in but at the end of the month she sends the bank statements to her accountants. On receipt the accountant then updates the bank details and reconciles the account.

The accountant can then produce the management reports for discussion with A. They will then read the same report to go through any issues that have been highlighted without having to print anything off and any adjustments can be made at the time of the discussion.

If you would like help with your accounting needs or advice on your accounting package, please call Margaret Sheppard (FCCA), Rosebud Consultancy Ltd on 01908 533351 or 07974420716



cashflows and forecasts

by John Vause

Cash flow forecasting is an important exercise to predict the likely cash incomings and cash outgoings of a business, essentially to ensure the business is not going to run out of cash and also to plan for possible future investment by using cash resources and to raise external finance. As described above by Insight Associates cash flow is "king": it is the lifeblood of all businesses and especially so in new business startups and SMEs.

It is essential that management forecast what is going to happen to cash flow to make sure the business has sufficient funds to survive.

As a starting point in compiling a cash flow forecast it is necessary to realistically predict the sales and all the outgoings of the business and reflect the timing of when those receipts and payments are anticipated to be made.

If a business is experiencing severe cash flow difficulties the management should be forecasting and reviewing and updating its cash flow on a daily basis. If the business is stable then weekly cash flow forecasting should be sufficient. Ideally a "rolling" cash flow forecast should be prepared which can be reviewed and updated on a regular basis. A prudently constructed cash flow forecast should provide management with the ability to identify potential shortfalls in cash balances to allow sufficient time for any problem to be addressed. This will help to ensure that the business has sufficient cash to pay its suppliers, to ensure continuity of supplies, and also, most importantly, that the employees are going to be paid!

The cash flow forecast may also indicate potential problems with the timing of receipts from customers, which may encourage the business to review its credit terms and debt collection procedures. This will not apply to retailers who receive immediate cash payments. Finally external finance providers may require regular cash flow forecasts to ensure the serviceability of any finance arrangements. It is also important that any forecasts are prepared as

robustly as possible and should not be overly optimistic to the point where they do not actually reflect reality or they will be rendered useless for any decision making process. Special care needs to be taken to ensure consistency in the sales / cost of sales relationship, that all overheads and payroll costs are included. Care should be taken that overheads are realistically estimated with some additional contingency for items such as advertising and marketing which can sometimes be difficult to gauge.

When considering additional payroll costs it is most important to ensure that increases in sales levels justify the increased costs. It may be useful in preparing cash flow forecasts to refer to historical figures, when available, but these should be used with some caution and as a guide only. Cash flow forecasts can be compiled in a number of ways: Excel or Google spreadsheets which may be individually constructed, financial institutions offer their own templates, templates are widely available on the internet and some dedicated software packages are also available.

John is a Fellow of the Association of Chartered Certified Accountants (FCCA) having qualified, in 1988, whilst working in a leading provincial accountancy practice where he was responsible for his own portfolio of clients.

John has more than 35 years of experience working both in private practice and industry; in recent years working with a small number of companies in Finance Director / Financial Controller roles, where he is prepared to adopt a "hands on" approach and get involved in a project. In his spare time John enjoys a variety music (being an aspiring saxophone player), spending time with his grandchildren and following his football team.

Contact John for more information on 07967 681363 or email john@johnvause.com

Every Company must file an annual form that is called a Confirmation Statement and a "PSC"

Every LLP or limited company must file a confirmation statement. It confirms the information which Companies House holds on record about every company and ensures that it is up to date. A statement must be filed at least once a year, but director's can may choose to file more often if there are several or regular changes. It costs £13 per year to do this. if you file more than one in a given year there is no extra fee.

For new companies, the review period starts on the date of the company's incorporation and ends 12 months later. For example, for a company incorporated on 1 January 2018, the review period will end on 31 December 2018. The next review period will begin on 1 January 2018.

Be aware that it is a criminal offence not to file your statement within 14 days of the end of the due date. If you don't file, your company and its directors may be prosecuted. Your company may also be struck off the register.

Persons of Significant Control. You also need to file a firm confirming who has significant control, this tells Companies House who has significant control over the company. The best guide to this is on the .gov website here

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf

These jobs must be done regularly so we suggest you set a diary reminder to do it or get your company secretary to perform these duties for you.

Collecting Debts Owed to Your Company- Debtor Management

How do I improve debtor collection?

It is vital that businesses explore the options available to them in recovering their outstanding debts before it is too late. By reading this you will hopefully improve your own debtor collection. See the late payment excuses below for good replies to the "cheque's in the post" excuses!

We are happy to introduce you to debt -collection companies to collect old or disputed debts. but why wait until something is too old to be factored.

One of the most important things for a business, of any size or type, is to have a credit policy. A credit policy will help when considering new customers, or what to do if an existing customer has failed to pay on time. Have this policy in writing, referring back to it whenever needed, and stick to it. Dealing with late payment and how to avoid it in the first place;

1. Introduce a strict policy for debtor collection built around specific target dates.
2. Make sure you have a proper application form/contract and terms & conditions that new customers will check and sign. If an account does go bad, it is vital that you are able to prove the trading terms, agreed between you and your customer. A verbal agreement will unfortunately mean next to nothing when chasing someone for money.
3. Assertively collect debts, it is your company's working capital

4. Consider the use of Direct Debits in collecting payments. Go Cardless is a popular provider that makes collecting money straightforward and the cost is only £2 per transaction. A simple
5. Take references up most do not. We are amazed at how many businesses fail to ask for references, how many fail to read and act upon any they get and how lax credit limit enforcement is when faced with "iffy" references.
6. Buy a subscription to a credit reference agency early warning system. This is particularly important if you regularly open new accounts and/or large accounts. It is so cheap to do and can save you, literally, thousands of pounds. Try Creditsafe
7. Refuse to supply even if a "good " customer is over limits, call them and ask what the problem is. Do they have the invoice, delivery note and are they satisfied? If yes ask for your money. If they still don't pay consider issuing:
8. Final warning letter - your company will commence action if you do not get paid within 7 days - this helps establish that the debtor accepts the debt.
9. Obtain a County Court Summons form from your local court; issue a copy of it with all details correctly filled in. (We are amazed at how many people go to the bother of issuing half filled out forms!)
10. Then, tell the debtor you will issue the summons in 5 working days unless the debt is paid or they agree a payment plan. If this fails:
11. Issue the summons to the court. After judgment is granted call the debtor for the money. If this fails
12. Proceed with a warrant of execution - basically an instruction to the court to collect the money (they send an enforcement officer or bailiff to do this). If this fails:
13. Consider issuing a winding up petition if the debtor is a company or a bankruptcy petition if the debtor is a sole trader or individual.
14. Up to the last step 13 above this is a relatively inexpensive way of debt collecting
15. Build a collection system, use "Xero" or "Sage" or other accounts package or use a manual system with trigger dates for every invoice.
17. Charge interest it's your company's money.
18. Go to the customer's premises and demand to meet the owner, MD or finance director. Say you will not leave until the company gives you payment or a cheque, even if its post dated.

Also consider getting a card payment terminal such as Square or iZettle both excellent for taking payments from debit or credit cards using your mobile phone. You or your employees can simply meet the debtor and take a payment on account - other apps allow you to issue invoices, statements or receipts too. Remember a good customer who does not pay is not a good customer long term!

The cheques in the post! Inevitably the excuses come out - see both sides of the argument overleaf.

Answers to late payment arguments

Q: "We have not got your invoice please send a copy"

A: Take their name and position in the debtor company. Fax, post and email a copy, then call for the person you spoke to and ask when payment will be made.

Q: "We can only pay you when a large debtor pays us"

A: Get the name and contact details and call the debtor yourself, check out the story, is it true? If yes ask the debtor when they envisage paying some or all of the money. Then set a reminder in your diary to call the customer when payment should have been received.

Q: "We cannot pay we are at the bank limit", or "the bank is not helping us we have a cashflow problem"

A: Ask if they know about s123 and s214 Insolvency Act 1986 (insolvency test and wrongful trading) write pointing this out. Tell them to look at our website www.companyrescue.co.uk. Refuse to supply until an agreement for payment is reached.

Q: "The person responsible for payments is away"

A: Ask the person how other essential payments are made such as utilities and wages. Get a commitment to pay you too - even some on account. There are many more excuses but all add up to the same thing - if the customer cannot pay, on your terms, then that company or sole trader may be insolvent. So beware. If they are a key customer go and see them; talk together about a plan to recover the position. You may accept staged payments over time provided that new supplies are paid to terms.

If the business or company is insolvent and the director readily admits the company has problems with the bank and the Crown then steer clear until the position is resolved.

Be terrier like, never let go until the debt is paid (even in stages) or they have gone into an insolvency mechanism. Then get full details of the liquidation, receivership, administration or company voluntary arrangement. It may still be possible to get some of the debt owed (particularly in a CVA or Administration).

Finally

Consider all of the options available to you before beginning legal action. Sometimes this option will be successful and force your debtor into acting positively. This will not always be the case however. Unfortunately taking legal action can often prove to be the most expensive and ineffective option.

Discuss your debt with an expert on debt collection, who will approach your debtor on your behalf. The debt collector will act in your best interests, with a view to ensuring that your debtor pays their outstanding balance as quickly as is possible.

4

company borrowing money



Fixed and Floating Charges And Personal Guarantees

by companyfundingoptions.co.uk

Most companies borrow money to grow, to build their business, to employ MORE people and to take on premises for example. That money may come from you originally, your credit cards, your family, the high street banks, asset based lenders or your peers via online platforms like Funding Circle etc.

When companies borrow money, the lender usually wants it back! So how does it make sure it will, as a lender, get its money back? Often the lender will require that the company gives some legal assurance that it will pay back the money and it will back that up by granting security over assets, or the company itself.

All company directors as people, would understand the concept of borrowing money to buy a house? Well the mortgage is a form of "security". This stipulates the borrower cannot sell the house without the lenders permission AND without the lender being repaid in full.

Companies can also grant securities, under the decisions of the directors. Typically these are debentures.

But what if the security is not enough to satisfy the bank or lenders' risk assessment?

Then they will often ask the directors to personally stand behind the security and offer to PERSONALLY GUARANTEE the SHORTFALL on the bank's lending - if the company is put into insolvency like liquidation, receivership or administration.

So directors can be at risk of the company failing and be personally liable for the company's debts?

Yes and no. Having acted properly and responsibly, they can only be liable for the part of the company's debts that they guaranteed. They can't be liable for all the other debts UNLESS they act wrongfully, fraudulently or plain stupidly – see later under the veil of incorporation and personal liability.



A Guide to FIXED and FLOATING Charges

The experts at Company Funding Options Limited www.companyfundingoptions.co.uk have written this guide to give a basic understanding of the types of securities and charges and a worked example of liquidation will hopefully illustrate it for you. But you should ask us for help on your own particular circumstances. When a company borrows money, the lender / bank usually takes some security for that debt, this is designed to protect the lenders' position and also to try and get the lenders' money back if the borrower fails.

What is a FIXED CHARGE?

A lot of people have mortgages on houses, that is an example of a fixed charge. The bank or lender may have provided money to acquire an asset like property, a printing press, trucks, car, etc. The company cannot sell the asset without the lenders permission. The debt must be repaid as per the loan agreement or facility letter.

Think of a mortgage, you borrow money to buy a house, you cannot own the house outright until the debt is repaid, **nor can you sell it without the lenders permission. The mortgage is a form of fixed charge.**

Another example is an assignment of a company's debtor book through factoring or invoice discounting. This means the bank buys the outstanding invoices and lends money against them. The debtor book is then subject to a FIXED charge. In effect, the book debts now belong to the bank or factoring company, NOT the company. A factoring or discounting fixed charge is the most common fixed charge, other than property.

Another fixed charge is the goodwill payment in administration. For example, if the business fixed assets, sold by an administrator, are worth £20,000, but the buyer pays £100,000 for the business, the databases, the customers and so forth, then £80,000 is a goodwill payment. This is usually paid to the bank or lender.

What is FLOATING CHARGE?

This is a charge that covers other assets like:

1. Stock, finished or raw material
2. Work in progress
3. Unfactored debtors
4. Fixtures and fittings
5. Cash
6. Vehicles or assets not subject to fixed charges

If you think about it, many of these are things that the company uses to generate business and trade, it would not be practical to stick a fixed charge over every item of stock or desks and chairs, would it?

So the floating charge allows the lender to recover some money if the assets are sold in future under insolvency proceedings (if they have any value). But the lender does rank behind some other creditors like wages, and the "prescribed part creditors". This is where it gets complicated!

What is a Debenture?

This is the document that sets out the FIXED and FLOATING charges and the attached terms and conditions. When signed by the company the lender sends a form to Companies House to register that charge. This prevents other people getting security against the assets in question, under a Deed of Priority is created (see below).

What happens if a company becomes insolvent?

This is where things get a bit more complex! Instead of theory, here is a simple example.

Suppose a software company has a debtor book of £350,000 against which Royal Bank has provided a factoring facility of £250,000 and an overdraft of £20,000. The company has £50,000 of fixed assets and 15 people. It owes £100,000 to tax and trade creditors. It loses a big client and enters liquidation. The debtor book would be collected (usually by the lender and directors who have provided personal guarantees). BUT debtors don't always get recovered in full, of course!

This is called a shortfall and results from disputed invoices, customers refusing to pay or saying that a new supplier of services had to be paid double time to redo work badly done by the failed company (unliquidated damages). In our fictional example, after insolvency costs, a total of £200,000 is collected in from debtors. The business is sold to a buyer for £30,000 goodwill and £25,000 for the assets like work in progress, PCs, equipment etc but not debtors. So a total of £255,000 is available.

The bank as a FIXED and FLOATING charge holder would be paid out as follows: Debtor proceeds of £200,000 go to pay fixed charge off. The Goodwill element is also a fixed charge "collection" and is paid to the bank as well. Thus the bank has a shortfall of £20,000 on the fixed charge.

There are arrears of staff salaries and holiday pay of £10,000. That is paid next, to the ex-staff from the £25,000 received for the assets. That leaves £15,000 available for the prescribed part creditors and then the bank under the floating charge collection. The cost of liquidation comes before the bank and prescribed part usually. That will probably mean the bank is still owed £20,000 under the fixed charge and also the overdraft of £20,000 remains. In this very simple example the bank would lose c£40,000. The preferential (staff) creditors are paid in full and unsecured creditors get nothing.

What is a Deed of Priority?

If there are a number of lenders and a number of loans a pecking (ranking) order is drawn up and the Deed lays out the order of priority if a default occurs.



is your business ready for finance

by Daryl Woodhouse of Advantage Business Partnerships

I am Daryl Woodhouse, key note speaker, top 50 business adviser and founder of award-winning business growth support group Advantage Business Partnerships, and below you will find some key considerations when assessing growth plans and possible finance for your business. I don't have all the answers, although I have been successfully advising and helping businesses with fund raises large and small for over 12 years at the time of writing this article.

It's one thing deciding you want funding to improve or grow your company, however it is a little harder to establish the right type of finance and the right provider. Then there is the headache of deciding how much to apply for. You don't want too much or too little! If you take too much, you are less likely to get the funds on reasonable terms, and you might pay interest unnecessarily on unused funds. If you don't take enough, then you risk running out of cash during a key growth phase and the possibility of re-applying to the lenders which might not look too great for your business image, and could also involve paying more in application or drawdown fees!

Maybe you are a worried business director? Worried about risk of borrowing and the many things that can go wrong! It partly depends on what you want to achieve and how much you want it. If you want a lifestyle small business, then growth might not be needed. If you want to build a business with an exit value or legacy to pass down your family, then borrowing funds in a calculated way to help facilitate faster growth should not be deemed as a bad thing. Most fast growing and multi-million turnover businesses upwards have taken growth finance on a number of occasions and profess to not being able to achieve much without it.

If you are in the camp of seeking growth and improvement, then it is important to plan ahead to ensure you are fit for the right type and amount of finance at the right time. Here are a few key pointers to help you along the way:-

1. Securing funding is a two-way street: Be clear about what potential investors or lenders are looking for and, from your perspective, what you are prepared to give them be it equity, paying an interest rate, or providing security which could be over a property or assets within the business such as client invoices. Finance can take many

different forms from a bank loan or seed capital at the start of a business' lifecycle, to buying out other investors or potentially buying the whole company outright further down the line. It could also be a combination of these first to raise money for developing a new product or service and then later stage investment to grow sales and expand into new markets. At each milestone for your business there are number of different and alternative finance options open to you especially with the rapid rise of the FinTech sector.

2. Plans realistically and clearly: You need to show a timeline for any investment or debt facility from the initial finance through to the funders exit. Funders appreciate this is not an exact science although quite rightly, they are looking to see how their finance will grow the business (or for lenders, the likelihood of full repayment), what goals and milestones you will achieve plus by when, and crucially how this investment or loan will end to satisfaction. Will they have a high chance of recovering their funds with a healthy return?

3. Wear the prospective funder's shoes: They want to be confident that you are going to be able to deliver on your business plan – their profit depends on it, just as your business depends on your customers to pay in order to make a profit and living. Do you have accurate and realistic financial information and projections? They want to see your past performance, up-to-date accounts and monthly management accounts. For future performance they are looking to see solid projected profit & loss, cash flow and balance sheets. They want to know how fast you can grow but need to be sure you can justify your forecasts. Lenders and investors do like to back people. In most cases they want to see you succeed and so will look for a strong management team who can take this plan forward and help you deliver it onto higher heights of success and reward.

4. The right figures and timings: Once you've got your business plan in place you need to decide what finance you need to fund anticipated and desired growth with sensible revenue and cash flow projections. This can seem daunting if you haven't done this before, although you don't have to do it alone – talk to your professional business mentor or non-executive adviser for guidance. Every sports player and sport team will have performance

coaches and mentors. The concept is similar in business, and businesses are statistically proven to be significantly more successful with quality external support, so if you don't have the help, then you should source it – just make sure they have the experience and credibility by asking for results case studies and speak to some of their clients whom are similar to your business and situation. If they won't oblige, then they are probably not as good as they say they are...

5. The right finance solution: It is not just a question of getting ready for finance, because finding the right finance solution and the right provider is also in need of careful consideration. How do you find the right kind of finance for your business? There are dozens of different business finance products, and hundreds of providers, especially with the rise of Fin Tech, alternative funding providers – many of whom provide innovative, affordable and flexible solutions often in stark contrast to the traditional high street Banks. Have a good search online for credible providers, and shop around just like you would with any other purchase. Please do not rule out the alternative funders just because they are 'new' – try them out, and do your due diligence (online reviews, case studies, competitor comparisons etc.)

As the guest author of this article I am delighted to offer complimentary access to our trademarked online business performance assessment diagnostic to readers of the **Worried Director's Guide**. You can access the **Strategic Performance Assessment (SPA)** <http://advantagebusinessitd.com/health-check-spa-2/> for a snapshot of where your business is right now and to help you identify any need for growth funding or other critical resource required to achieve your life and business objectives.



Guide To Different Types of Business Finance

This section is brought to you by Company Funding Options which helps SMEs to access finance not provided by the big banks. Please see www.companysfundingoptions.co.uk.

Since the financial crisis there has been a boom in what is called alternative lending which is, quite simply, finance provided by companies or individuals that has not come from traditional banks.

Platforms that have allowed "peer to peer" lending have proved popular as investors seek returns and borrowers like the quick decisions and new technology. Here we give a guide to the main forms of finance and their advantages and disadvantages.

What is Asset Based Lending (ABL)?

Asset-based finance or lending (ABL) is a general term for any form of finance to acquire, rent, lease or fund an asset. For example a property mortgage is an asset based lending product. Cars or vehicles financed by hire purchase

are examples of asset based lending. Factoring or invoice discounting are asset-based lending products too. The funder has normally has security over the assets and lends money to the borrower (your company) to acquire, rent or use the asset.

There are dozens of providers of asset-based lending products in the United Kingdom and it is important to try and understand what your actual requirements are to raise money for the business.

Normally we would say that asset-based lending is not sufficient on its own to fund a business' working capital requirements and it is likely that factoring or confidential invoice discounting would be a useful product to couple with asset-based lending.

Please call 020 77607524 and talk to us if you have any requirement for a blend of asset-based lending and other financial products or please use our search facility to check the type of finance that you require.

There are many types of asset-based lending, here are just a few:

Hire purchase: for vehicles, machinery, fixed assets, furniture, computers and hardware. Usually the company would put down a deposit and then take out a loan to pay the balance over 12-48 months. The business will own the asset only when paid for in full. The lender usually has a fixed charge over the asset until paid for in full or sold with its agreement.

Leases: can be used as a tax efficient method of acquiring 'assets' to use within your business and then these assets are either returned at the end of the lease period, refinanced, or sold to the business via a third-party.

Contract hire: is a cost effective form of leasing of assets such as cars, vans, trucks and that is one of the most common in the UK. Over half of all company vehicles are funded in this way for example.

Business contract hire agreements: allow a company to take on the management of vehicles /cars for a period of time between 12 months and 48 months and this rental is paid in the form of fixed monthly instalments. The company taking out this agreement will not own the vehicle, when the term of the contract is over, as the cars are returned to the leasing company. Normally there will be a low monthly cost and because the vehicle is returned to the leasing company this covers the final balance that may be due (often called a balloon).

Invoice Discounting or Invoice Finance

It is a process where the company can raise money by selling its invoices to its customers, to a funder or bank. For example if you are a manufacturer or you are a professional services firm and you raise invoices to companies for your products, then these invoices can be sold to and funded by a confidential invoice discounting company.

The lender will look at the invoices, the customer base and your business and decide how much to lend to your company or business based on the quality of their risk. Usually if you have a business issuing regular invoices to other businesses you will find that they can lend you up to 90% of the value of those invoices. Typically though, 75% to 80% is the norm.

Once your company signs up for a facility like this it does **NOT** have to disclose to its customers that it has sold (assigned) its debts to the CID company. Hence the term **CONFIDENTIAL INVOICE DISCOUNTING**.

So, your customers will generally never know the debt has been purchased by an invoice finance company. You would send out a letter to them (provided by the funder) to say that they have to pay to a different bank account. Usually though that process is quite easy to get set up.

The invoice finance company will set up that new bank account in your company's name to collect customer payments. This account will not be under your company's control but it acts as a receptacle to "catch" payments. Then the funder will allow you to "draw down" those funds when cleared. Each week or month, the factor will calculate how much your company has borrowed and charge according to the contract you agreed when setting up the facility.

Advantages

- If you were to issue an invoice for £2,000 plus VAT (£2,400) you could then sell this invoice to an invoice finance company for 75% of the value of £2,400 which is £1,800. You can often draw this money down the DAY YOUR INVOICE is passed to them. This is great for cashflow. Especially if your customer normally takes 75 days to pay!
- When your customer pays the bill in say 60-75 days, the money will be received into that special bank account set up by the funder. Typically the other 25% that is outstanding is paid to you upon receipt. Less any charges and interest.
- This can be a very efficient way of raising money but it normally requires the company (or other business like a sole trader /partnerships) to sell all of company's invoices to the factor.
- Some funders like Market invoice may buy single invoices if they're quite large.
- Your company will continue to manage the debtor book and collect out payments.
- It is relatively inexpensive.
- It is very quick and straightforward to set up if you have reasonable accounting information.
- A quarterly or half yearly audit will be carried out by the funder's staff to check that everything is in order.

Disadvantages

- If your company only has one or two customers then CID can be difficult to arrange because of what is called concentration issues. This is because

too much concentration in one customer can mean that the CID company cannot get adequate insurance cover or its own credit risk is too high.

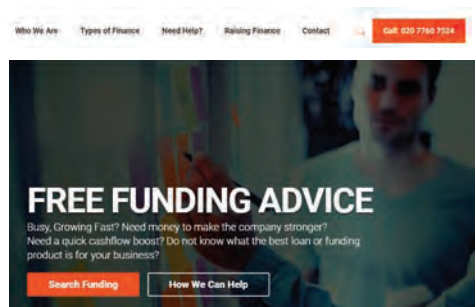
- It does cost money and charges vary according to your businesses customers, the size of the invoices etc.
- Directors or partners will have to provide ongoing financial information on a regular basis to the CID company. **DO YOU NEED HELP WITH THIS?** Our contributors can assist
- The funder will normally require 3 monthly or 6 monthly on site audits too. You may need to provide a personal guarantee or indemnity to the lender.
- If your customers pay later than 85 days it probably will not be a good product for your company

Conclusion

Confidential or undisclosed invoice discounting (CID) is an excellent product for businesses that produce goods or services and issue regular invoices to their customers. It can help the company grow, it is relatively inexpensive and the risk is relatively low. You may be required to provide an indemnity or personal guarantee to the CID company, this means that you will adhere to the rules and not issue false invoices for example. That's basically fraud!

Company Funding Options can introduce you to a large number of CID and factoring companies in the UK and abroad. There are over 40 companies in the market and competition is fierce. Therefore you can usually shop around or get our experts to help you!

CID is not suitable for property development companies and it isn't that easy to obtain for the construction sector. BUT! We have contacts with funders that love the construction sector and new products are being introduced all the time. Please call us if you wish to discuss any of the above issues.



Construction Finance

When you work in construction, getting such finance can be tough to obtain. You may be funding wages before receipts are available from the contract, whilst trying to buy new materials or labour, with a small overdraft facility or sourcing competitive invoice finance solutions. These issues, coupled with difficult clients and often poor work planning/productivity on site can cause cash flow headaches for any small company working in the sector. Specific new construction finance products have been designed to address this problem.

Typically a construction finance products is a bit like Invoice Finance. They provide pre-payments against applications, against stage payments and milestones for sub-contractors in construction or other industries, where contracts with their customers have been a barrier to finance from traditional lenders like the high street banks. Drawdowns (cash) are advanced at an agreed percentage of the outstanding invoice / application value, taking into account the longer contract terms typical within the construction sector. It is typically targeted at businesses with less than £2 million. fees are fixed at the beginning and are generally lower than unsecured short term loans.

The products can be confidential – the client need not know. Some providers have their own quantity surveyors too, so they fully understand contracts like NEC and JCT and they understand all the tricks of the construction trade! Having the finance and the technical knowledge can greatly enhance your business and its cashflow.

What Else Do Construction Funders Offer?

Some providers also offer asset finance which can be used to fund trucks, vans, diggers and other equipment. Overdrafts and property loans can also be used in a blend of finance products that can be very flexible.

What is Turnaround Capital or Turnaround Finance By Cheswick Capital

If your company cannot raise enough money from any normal bank or invoice finance providers, then the business is generally called 'sub-prime'. This may require looking at turnaround options with expert advisors such as KSA Group or Cheswick Capital. With new funding and a good plan then it is often possible to turn around even badly struggling companies. Turnaround capital providers are not fazed by insolvency, but they are very clear that CHANGE is required in the company and management before lending. Funders may fund situations below.

- Fast growth companies whose working capital is stretched or where their banks says NO!
- Companies that cannot get bank funding because of weak balance sheet or large liabilities

- Companies that need to be turned around, but need help to do it
- Funds to refinance a bank or factoring debt before any pre pack or CVA

Growth Finance

So, your company is growing quickly and needs more funding or "working capital" as the techy accounting people call it. You need growth capital to run the company and you need good financial information to secure it. Growth funding is usually sourced from family and friends, the bank of mum and dad, shareholders, the bank (huh?) new peer to peer lenders or alternative funders,

- It is usually in the form of a loan or overdraft
- Often banks will not lend to young companies

- It can be used for any purpose such as expansion, new premises or recruiting people
- Loan periods will vary from 6 months to 48 months
- Your company may have to provide security
- You may have to provide security in the form of a personal guarantee
- Interest rates can vary from 4% to 25%
- The minimum qualification tends to be at least 12 months trading and at least one year's filed accounts.

Please see www.cheswickcapital.co.uk.



Alternative forms of Finance

Following the reluctance of banks to lend following the financial crisis and the ability for investors/lenders to communicate better via the internet there has been an explosion in innovative forms of finance which has commonly been called Alternative Finance or AltFi. The 2 most prevalent of these types of finance are crowdfunding and Peer to Peer lending. Other types of finance like spot factoring and select invoice finance have been given a new lease of life when harnessing the power of the internet.

What is crowdfunding?

Crowdfunding is equity investment-based and is usually a way to raise capital for new businesses, start-ups or projects. Money is raised by asking companies or individuals to invest using an online platform. Benefits of investing can include receiving rewards like free merchandise, tickets to events and shares in the business.

Those seeking funding can create a profile to promote their idea or project as well as set a target of how much they need to raise on the crowdfunding website. There is usually a time-limit to reach the target so if this target is not reached, the project won't go ahead and investors won't put in any money. The platforms may extend the time to reach the target.

If you do list a project or business on a crowdfunding website, you are effectively selling your company on the market for others to share. By selling equity in your business you are also losing some control over the business as the equity holders will be asking questions and offering guidance some of which may not be welcome or helpful. You will need to get used to competing interests within your own business.

What is peer to peer lending?

This is often referred to as loan-based crowdfunding and is usually targeted at experienced investors in businesses who are looking for decent interest rates, risks and return. With many small companies finding it difficult to borrow from banks, peer to peer lending is an alternative route, allowing businesses to lend to a number of other businesses and seeing better interest rates than many ISAs and saving accounts out there.

It's worth noting that these lenders do not hold shares in your business, therefore the business continues to stay as your own. There are a great many of these peer to peer lending businesses now which have significant funds behind them such as Funding Circle, Ratesetter, Zopa, Archover, Funding Knight, Iwoca, Everline, Market Invoice. Many are backed by the government in the form of the British Business Bank. They often operate under what is termed a "platform" where lenders can see potential borrowers and pick and choose who to lend to or their funds are allocated to businesses depending on their risk appetite.

They can offer the full range of loans such as secured loans, invoice discounting, short term unsecured loans and cash advances. Although it should be remembered that most of the peer-to-peer lenders insist on personal guarantees even if they have also secured the loans against assets. The peer to peer lenders that operate can generally make decisions very fast and can offer some quite innovative and flexible products as they have nimble IT and risk assessment systems but overall they can be a bit more expensive than traditional banks etc.

The setting up of business premises is always a big leap forward for any business. Moving from the kitchen table to a proper office or small unit is an exciting and worrying time for the directors. It is therefore essential that you get proper advice before committing to a property lease. In this day and age there are many short term licence properties available but as you grow they start to get expensive with unpredictable rent increases and you could be forced to move out. So you may need to commit to a 3-5 year contract for instance. This can give you piece of mind and more predictable costs. In retail businesses the cost or premises can be very high so it is important to get it right.

Here is some advice from the law firm Clarke Mairs that we work with please see <http://www.clarkemairs.com/>

Most businesses will occupy their business premises under rental agreements, paying rent and service charge to the property owner – the Landlord. The document containing the terms of that occupation is a business lease, otherwise known as a business tenancy, with the occupier being the Tenant under the lease. The cost of the business premises will be a significant overhead the business will have and one which is likely to be an ongoing annual commitment for a few years, even if the circumstances of the business change leading to the Tenant needing to move on. Consequently, it is extremely important that the Tenant pays detailed attention to the lease terms, obtaining appropriate expert advice from both a surveyor and lawyer before committing itself to the business lease. Otherwise there could be some unwelcome consequences during and at the end of the lease. The following are some of the main points to focus on.

Rent

Traditionally the rent payable will be agreed as an annual figure which will be payable by four quarterly

instalments throughout the year in advance. The Tenant should seek to vary this so that the rent can be paid by monthly instalments.

The level of rent will need to be agreed and expert advice taken on this from a valuer. The valuer will also advise on any incentives the Tenant should be asking for, such as rent free periods, reduced rent or even reverse premiums paid by the Landlord to the Tenant, possibly to help with fit-out costs.

Length of the Lease

In most cases a Landlord will want a Tenant to commit itself to a lease for at least five years. For the Tenant, particularly if the business is still in its early years, it may be impossible to predict what need it will have beyond the next couple of years. The Tenant will therefore ideally want to agree a term with which it feels comfortable about committing itself to at this stage. A compromise can be to agree a longer term but then to have what is known as a break clause, allowing the Tenant to bring the lease to an end after an agreed minimum period by, usually, six months' notice.

Rent Review

A lease that continues for more than five years will almost certainly have a rent review clause, providing a mechanism whereby the rent payable under the lease is reviewed on an agreed date so that, from that review date, the rent then payable will be equal to the amount decided by the review mechanism. Usually the review is on what is called an open market value basis, meaning that it will then be set at whatever the rental levels are in the open market at that time. However, a Landlord will almost certainly qualify this to require the review clause to say that if the open market rents have decreased, so they are below what the Tenant is then paying, the rent should remain the same and should not decrease. In fact, this position is agreed as the norm and a Tenant may find it difficult to persuade the Landlord to agree otherwise. The second most common review mechanism is to have the

rent reviewed on an inflationary basis, meaning that it will be increased in line with the increase in inflation over the period.

Service Charge

Unless the lease is for the whole of the premises, so that the Tenant will arrange all of its services, a business lease will usually set out what services the Landlord is to provide, such as maintaining and repairing the main structure and any common areas. The Landlord will then want to recover the cost of providing these services from the Tenant through the operation of a service charge under which the Tenant will be responsible for paying a share of the total costs. It is important that the Tenant has as much information as possible as to the likely costs over the term and seeks to limit its liability for major capital items, such as replacement of lifts, the roof or other structural elements. Consider asking for the service charge to be set at an agreed figure or limited so that in any event it will not exceed an agreed amount each year.

Transferring the Lease and Subletting

Particularly if the lease is for a longer term and it does not contain a break clause, the Tenant should ensure that it has the ability to transfer the lease to another party if it decides it needs to move on and is able to find another party who is willing to take over the lease for its own business purposes at that time. The alternative to transferring the lease is to sublet, so that the Tenant will remain directly responsible under the lease to the Landlord but will have its own subtenant in occupation from which it will receive rent and obtain the subtenant's agreement to comply with all of the other obligations of the lease. Generally, the Landlord will want to exercise some control over who is in occupation and will therefore require that any transfer of the lease or subletting should only take place with the Landlord's consent.

Repair Obligations

The lease will almost inevitably impose obligations on the Tenant to keep the premises included within the lease in good repair, properly maintained and in good decorative order. It will say that at the end of the lease term the Tenant has to make sure that the premises are in this condition when they are handed back to the Landlord. This is one of the main areas of contention, particularly at the end of the lease, when the Landlord will usually arrange for its surveyors to inspect and then prepare what is called a Schedule of Dilapidations and serve this on the Tenant, setting out the items that the Landlord says the Tenant should have attended to and require the Tenant to pay the costs in now doing so. At the start of the lease the Tenant should seek to limit its obligation as far as possible. This can be done by having a Schedule of Condition, to say that the Tenant cannot be required to give the premises back in any better state of repair etc than is evidenced by that Schedule. In addition, the Tenant should seek to impose strict time requirements on the Landlord so ideally by the end of the term the Tenant will know exactly what the Landlord

may say about the condition of the premises, so that the Tenant can carry out the work itself if it is agreed this is required. This will always be less expensive than the costs the Landlord will set out in the Schedule of Dilapidations.

Personal Guarantees and Rent Deposits

A Landlord is likely to ask for some form of security from a Tenant, either at the start of the lease or as a condition of giving consent to a transfer of the lease, particularly if the Tenant or proposed new tenant doesn't have a sufficient sound financial track record. The security may be one, or a combination of, asking for personal guarantees from directors of a company tenant, and/or a rent deposit whereby the Landlord will typically ask for an amount equivalent to six months' rent to be placed on deposit so that if there is any default, the Landlord will be entitled to then draw on that deposit.

Forfeiture

A business lease will almost always contain a forfeiture clause which says that if the Tenant does fail to pay the rent or is in breach of any other lease term, then the Landlord can bring the lease to an end without having to pay any compensation. The Tenant should ensure that the forfeiture clause provides suitable periods of time to enable the Tenant to deal with any default the Landlord complains of, before the Landlord can exercise this right.

Generally, the above are the main points a Tenant will be concerned about, but they are by no means exhaustive. There will be many other points which will be covered by the Lease and which the Tenant must be aware of before committing itself. Initially the Tenant should obtain expert advice from a surveyor who will negotiate on the main terms and agree a Heads of Terms document with the Landlord. At this point, the Tenant will need expert advice from a solicitor experienced in dealing with commercial leases to negotiate on the precise lease terms and provide the Tenant with a detailed report, in a form which the Tenant can readily review and understand, before finally agreeing and committing itself to the lease.

Tim Clarke Partner - Clarke Mairs LLP

Tim qualified as a solicitor in 1987 and practised in London before moving to Newcastle upon Tyne in 1990. He was a partner at an established practice for 15 years before leaving to set up Clarke Mairs LLP in October 2007. Tim deals almost exclusively with commercial property transactions, acting in all types of commercial property acquisitions and disposals, together with general commercial matters – share acquisitions, buy-backs, company and partnership formation etc.

Email tjc@clarkemairs.com | Call: 0191 245 4730



6

auto enrolment - pension schemes

by Rosebud Consultancy

Most companies should by now have staged (set up pension and started making contributions) their auto enrolment process. However, there are two circumstances where this may not be the case. Firstly if prior to this you were not required to enrol (e.g. because you were an owner/director with no other staff) and due to a change of circumstances you are now required to do so, or if you are a new company formed on or after 1st October 2017. In the first case you must inform The Pensions Regulator (TPR) of the change and arrange for your account to be reopened in order that you can access the details and start the service. Steps for auto enrolment will then be the

same as existing companies. For the latter the duties for auto enrolment commence on the 1st date that the 1st member of staff started work. This is known as the duties start date and they must comply straight away. In the first instance they will need to tell TPR who the point of contact is for automatic enrolment. The TPR website is a useful starting point to follow the requirements of initially setting up their pensions.

The table below shows the details of the current assessment criteria.

Monthly gross earnings	Age			Weekly gross earnings
	From 16 to 21	From 22 to SPA*	From SPA to 74	
£490 and below	Has right to join a pension scheme ¹			£113 and below
Over £490 up to £833	Has a right to opt in ²			Over £113 up to £192
Over £833	Has a right to opt in	Must be enrolled ³	Has a right to opt in	Over £192

Figures correct as of 2017/2018. * SPA=state pension age

1. Has a right to join a pension scheme

If they ask, the employer must provide a pension scheme for them, but the employer doesn't have to pay contributions into a pension scheme.

2. Has a right to opt in

If they ask to be put into a pension scheme, the employer must put them in a pension scheme that can be used for automatic enrolment and pay regular contributions.

3. Must be enrolled

The employer must put these members of staff into a pension scheme that can be used for automatic enrolment and pay regular contributions. The employer doesn't need to ask their permission. If a member of staff gives notice, or the employer gives them notice, to leave employment before the employer has completed this process, the employer has a choice

whether to enrol them or not. The employer also has a choice whether to enrol a director who meets these age and earnings criteria.

As you can see the qualifying age for automatic enrolment into an employer's pension scheme is currently 22 years, but a new proposal plans to reduce the age to 18 by the mid -2020s.

If you are currently operating an auto enrolment scheme then your duties do not finish when you stage your payroll and set your first employees up for deduction of pension contributions. There are ongoing duties for each pay period, annually and every three years.

Each pay period all staff members need to be assessed to ensure that there are no changes to their status. This could be due to birthdays and therefore now falling within the scope of

the scheme, pay rises bringing them into the scheme or even an additional payment in that period such as holiday pay, overtime or bonus's that take existing employees over the limit.

In addition there will be new starter, leavers and people who opt in or out of the scheme to be taken into consideration and the correct assessments made. Most payroll software will be able to handle this for you but checks on the pension scheme website should be made to allow for those who opt out. With new starters, especially those who are possibly on temporary contracts it is possible to postpone this category of staff from being enrolled into the scheme for a period of up to three months. However, if they ask to join prior to the postponed date then you have to enrol them.

Annually a check must be made to ensure the correct deductions are being made as they are likely to change.

Every Three Years The Company is required to reassess its workforce on the third anniversary of its staging date. This means they will have to re-enrol any current staff who have opted out and ensure that all deductions are correct. Staff can then opt out again but must do so via the pension provider and not the company.

All companies must have a pension scheme available to enrol staff into even if this is a low as one employee. They must be automatically enrolled into that scheme with effect from the staging date and they can then decide whether they want to continue in the scheme or not.

One final point, if the company is late and misses its staging date but then starts the auto enrolment process, the company must backdate the contributions to the staging date. However, staff can decide to only start their contributions in the first pay period when deductions are made.

Current deduction rates are	2% - 1% employee and 1% employer
From 1st April 2018 rates will be:	5% - 3% employee and 2% employer
From 1st April 2018 rates will be:	8% - 5% employee and 3% employer

For more information contact Margaret Sheppard (FCCA)
Rosebud Consultancy Ltd - 01908 533351 / 07974420716



The biggest worry that directors tend to have about marketing is “am I doing enough?”

“Is it all a bit of mumbo jumbo and a waste of money?”
“How come my competitors have done so well yet my service/product is just as good?”

Put simply, marketing is the process by which you get your business's offering in front of potential customers. There are lots of crossovers in the other disciplines of sales, brands, and public relations so it is common for these to be handled by the same person or same teams.

Marketing is a crucial part of any business and without it the business would fail. Of course, any business is almost always marketing itself in some way and this is often done in the first instance by the owner/founders as they believe in the product and service and want to get their story out.

In small businesses this is not usually an issue but as soon as it grows in size to 10 or more then the necessary sustainable growth required has to be backed up by marketing expertise. It is often just a question of being efficient.

As the business grows the MD will not have time to write brochures, email prospects, build website content, do market research, seek out testimonials, develop new products/ services, organise events and simply keep up with the huge advances in technology and the digital age. As the company grows it is important to therefore have someone who is responsible for the marketing.

Marketing should run through many areas of the business. Messaging and communication of the products or services to increase sales and customer retention

Advertising

Market Research and finding new markets for existing products and help develop new ones. Help develop the brand and company persona or image (in bigger organisations this is often a completely separate function covered by the branding.

So what are the 6 key factors of successful marketing?

1. Do your research including competitors.
2. Keep up to date with technology and trends.
3. Talk to customers and those in the organisation who sell to them.
4. Always test new ideas and old ones that didn't work before.
5. Have a plan of promotion and set up monitoring systems.
6. Know the true cost and value of a sale.

Do your Research

This is vital to ensure that your product or service has a place in the market. There is no point having a great idea only to discover that it would be too expensive or everyone else is doing it. Unless you are sure that you can deliver a better offering that people are prepared to pay more for OR you can offer something that is much cheaper. Think Dyson Vacuum Cleaners vs Ryanair flights!

Keep up to date with Technology and Trends

You have a fresh and modern website? If no then you are in a bad place.

A good website is your principal way of promoting your business to people who you may not have had contact with you previously. Be aware though that it is easy to spend lots of money on digital marketing and website design so make sure that you are not being ripped off. Always check references, see what they have done for other clients. One of the easiest ways to waste money is "paid for" digital marketing such as Facebook, Google Adwords and other social media channels. Make sure you are targeting customers properly by area, keyword etc. Do not be too generic.

Talk to customers and those in the organisation who sell to them.

Simple questions salespeople should try to ask:

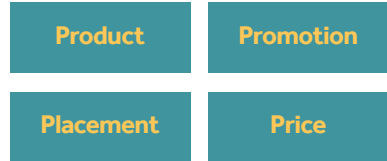
"How did you find us?"

"What do you think of the product or service?"

"How can we improve?"

"What stopped you from buying? Why did you buy?"

These questions can help you decide what is known as the 4 P's of marketing.



Always test new ideas and old ones that didn't work before!

Do not rely in gut instinct when deciding where perhaps to advertise or promote your business. If you have talked to customers, done your research, know where sales come from then you can make a more informed decision. For instance if you have noticed (by doing research) that you are getting a high number of sales in a certain area, or demographic then consider advertising in that area. Targeted promotion is usually much better value than a blanket approach.

Have a Plan of Promotion and set up Monitoring Systems

Have A Marketing Plan

A marketing plan is essential even if it is not followed to the letter. It stores ideas, helps motivate staff and keeps things moving forward. Even more important is to monitor your marketing. For instance, can you track exactly where all your sales are coming from? In digital marketing this is relatively easy to determine as there are lots of sophisticated tools and people leave a digital footprint but it is much harder in other areas.

There is an old saying that "half of the marketing budget is wasted but I don't know which half". This no longer applies to digital but in many ways it applies more than ever before to mainstream marketing as there are so many channels that customers can have contact with you. They see an advert and then search online for instance. How do you track the return on investment in this area? The technical term for this is attribution modelling.

Obviously the subject of marketing is a large one but there is a generally held view that an established business should have a budget/spend of approximately 10% of turnover. So ask questions if it is significantly above or below this figure.

Worried About Your Information Technology?

- This is an area of business that can keep directors up at night!
- Is all my data backed up?
- Is it all secure?
- What if I lose my email?
- Am I using my customer list properly?
- Do I have all my leads in one place?

The most important answer to the question on IT is to make sure you place your systems with a reputable IT management company if you run servers, remote workers etc. Also make sure you have someone within the organisation who understands IT. This does not need to be someone senior as quite often it is the younger members who know the most!

Your IT systems are mission critical so make sure the support company has everything covered. don't assume that they are doing the backups? Ask!
One bit of obvious advice! - Make sure your systems are up to date and that security patches are applied!

Customer Relationship Management Systems (CRM)

This is the one of the most important areas of the business. It holds leads, clients and contacts, and it determines how your business communicates with its customer and plays a major role in converting leads into sales.

There are some very good ones out there such as Salesforce, Hubspot, Zoho which operate in the cloud but they can be expensive so not suitable for very small businesses. Insightly is a good cheap alternative. To get the most out of your CRM ensure that it is upto date



HM Revenue and Customs (HMRC) have actively sought to clamp down on tax evasion or avoidance and increasingly more businesses are subject to tax investigations without strong proof of wrongdoing. The tax authorities have very wide powers and are effectively self-governed by their own guidelines.

The minefield of constantly evolving tax legislation, littered with compliance and due diligence traps can seem daunting, complex and time-consuming for any director. However, tax disputes can be contested successfully if legal advice is sought: HMRC have lost many cases that are brought to court. The following is a brief guide on how your business can protect itself from being adversely affected by HMRC tax penalties and assessments.

Appealing against an Initial Tax Assessment

It is a misconception to suggest that HMRC always assess your tax liability correctly and in fact it is common that your liability may have been assessed excessively. Your first recourse is to complete an appeal form attached to HMRC's decision letter in which you essentially present what you believe the correct figures to be. It is essential to appeal promptly within 30 days and seek early specialist advice as a late response can be fatal to any appeal. Specialist solicitors have the competency to unblock negotiations with HMRC.

If you disagree with HMRC's review decision, your second recourse is to appeal to the First Tier Tax Tribunal. You can appeal immediately to the First Tier Tax Tribunal on HMRC decisions regarding indirect taxes such as VAT, excise duty or customs duty. The Tribunal is completely independent of HMRC and the court will consider the evidence of both parties, equally whilst the judge heavily relies on previous case law.

LEXLAW have highly experienced tax solicitors and barristers that are available to aid you at every stage of the HMRC appeal process. Members of our legal team have first-hand experience and working knowledge of the internal workings of HMRC. We can provide you with the very best representation in negotiations and in front of the Tax Tribunal. We staunchly protect our clients from being targeted with aggressive tactics. Our team specialises in successfully challenging HMRC decisions and will assist you in every aspect including

developing a strategy. We are experts in adeptly presenting evidence and employing bespoke arguments combining the facts of your case, previous cases and current legislation to ensure your appeal is a successful one.

Hardship Applications

When HMRC make an assessment of your VAT liability (often a considerable amount), normally this amount is due and must be paid before HMRC's decision can be appealed. Relief is available if you can show that you would suffer hardship if required to pay before the appeal. This is known as a hardship application.

Tax or VAT Evasion

VAT fraud is the simplest and most prevalent form of evasion uncovered by HMRC. VAT registered traders can face accusations of failing to declare their true liability on VAT returns by suppressing sales and/or inflating purchases. HMRC have an arsenal of legislative penalties to target businesses (in particular those that are primarily cash-based):

Code of Practice 8 (COP 8) Investigation

This is ordinarily a civil tax investigation if managed carefully by expert representation. This tax avoidance investigation is conducted if HMRC's Specialist Investigations team suspect a "serious" tax loss without evidence of tax fraud. Often, HMRC use these powers to challenge tax avoidance schemes. Tax avoidance structures are used to minimise tax exposure and can be considered perfectly legal if a particular interpretation of tax legislation is applied. If the planning of a scheme has been challenged by HMRC, it is essential to consult legal tax specialists as an adviser who promoted the scheme will lack the objective clarity to honestly review and defend the arrangement. LEXLAW have a deep understanding of the legal issues and will put forward strong technical arguments to defend the arrangement.

Code of Practice 9 (COP 9) Investigation

HMRC commence COP 9 investigations if they suspect "serious" tax fraud has been committed by deliberate action. HMRC have targeted particular professions and it is our understanding that over 1,300 doctors and dentists are subject to this investigation. HMRC offer a director a civil

solution for potentially criminal evasion by allowing a full disclosure under contract (Contractual Disclosure Facility) or one can deny the allegation of fraud. It is crucial that once under revenue investigation specialist tax solicitors are instructed as COP 9s are often poorly managed by non-specialist accountants. We regularly liaise with HMRC at formal meetings, agree what the scope of the disclosure should be and prepare the report on your behalf and reach a civil settlement with HMRC. LEXLAW have wide-ranging experience in assisting those facing a COP 9 investigation whilst helping to navigate the rigid time-limits and strict rules.

Criminal Investigation

Intentional evasion of VAT is a criminal offence and if your case meets the criteria for prosecution then HMRC will seek to commence proceedings in the criminal courts with the maximum penalty being 7 years imprisonment and an unlimited fine. HMRC have the power to: conduct dawn raids, freeze assets and damage your reputation. HMRC often use these strong powers where, amongst others, a business is suspected of: deliberately filing inaccurate tax returns; money laundering; missing trader intra community ("MITC") or carousel fraud (the abuse of VAT rules on cross-border transactions within the EU). LEXLAW have the expertise and knowledge to assist and defend allegations against our clients before the criminal courts.

VAT liability on Transfers of Assets

If you plan on selling your business or any part of your business, Capital Gains Tax ("CGT") will likely be at the forefront of your mind, but VAT should be right alongside it. Assets sold by a VAT registered business (your VAT taxable turnover is more than the £85,000 threshold in a 12-month

period or you expect to go over the threshold in a single 30 day period) are normally subject to VAT. However, certain legislative provisions provide that where a VAT registered/registrable business (or part of business) is transferred as a going concern (TOGC) (a business is operating and making a profit), the business assets if sold as part of the business fall outside of the scope of VAT – in other words, no VAT is required to be paid.

The law in this area can be complicated and it is advisable that specialist tax advice is sought, however generally speaking, the main conditions for when TOGC apply are:

- The assets are sold as part of a business which is a going concern.
- The assets are used by the buyer with the intention of carrying on the same type of business as the seller.
- If the seller is VAT registered, the buyer too must be (or become) VAT registered.
- In respect of land/buildings, the buyer must notify HMRC that they have opted to tax the land and notify the seller that their election to tax has not been disapplied (both notifications by the relevant date) (Unless the buyer is selling land/buildings in respect of which there has been no election to tax, in which case notification is not necessary).
- If only part of the business is sold, that part must be capable of operating separately; and
- There must not be a series of immediate transfers of the business.

While the business or part of the business may include assets, such as land or machinery, the buyer must be buying all or part of the business, not just the assets.

LEXLAW Case study:

Our client, the Appellant, was a special purpose vehicle ("SPV") which bought and sold a commercial property. The property was let out to tenants already in occupation at the time of the purchase and also to tenants entering possession after the purchase. The SPV later sold the property and was issued with a VAT assessment of over £1m. HMRC argued that the sale was not a transfer of a going concern (they alleged that the use of the property following the sale differed from the use before). The SPV instructed us as tax specialist lawyers to negotiate with HMRC and then prepare and represent them in an appeal before the Tax Tribunal.

We took the following successful steps:

- Appealed against the assessment outside of the 30 day limit
- Delayed payment of the assessment pending appeal; and ultimately
- Had the assessment withdrawn reducing the assessment amount to nil.

If you need HMRC tax investigation advice, LEXLAW Solicitors & Barristers can assist in dealing robustly with HMRC. We provide urgent advice and representation to clients from our unique expert team of established tax and duties specialist solicitors and barristers with a proven track record of delivering authoritative results. Just call us on 0207 1830 529, or email contact@lexlaw.co.uk.

Visit our website at www.taxdisputes.co.uk for more information.



9

Warning Signs of trouble



This section covers warning signs that your company is insolvent (or soon to be). KSA Group's managing director Keith Steven looks at how to spot a change in relationship with the bank and creditors and what to do next.

Some warning signs are more obvious than others. The sooner you can identify them, the better chance you'll have at resolving the issues and avoiding any long-term damage to the business. Your company's relationship with the bank.

Clearly the relationship with the bank is of primary importance. If this relationship is under pressure, then the causes and effects must be examined by the directors and turnaround advisors. Here are some signs to look out for:

- Your overdraft is always at the limit. This is called "ceiling borrowing". Does your bank facility history show constant borrowing at or above the facility?
- Your bank keeps asking for more information
- Your bank has returned cheques - if you have written cheques when insufficient funds are available this is a clear sign of insolvency
- Your bank has refused to increase your overdraft or provide a loan
- Your bank has asked for your facilities to be reduced
- Your bank wants to introduce investigating accountants
- Your bank asks for increased security
- Your bank wants personal guarantees
- Your bank wants to increase personal guarantees
- Your bank wants security against your own property

The bank, in our experience, will only resort to aggressive action if the debtor is delinquent, fails to respond to reasonable requests or does not provide sensible financial information.

Banks use sophisticated computer programmes to highlight badly performing accounts, so they will be keeping an eye on the business performance well before you highlight any problems to them. It is always best to keep the bank apprised of cash flow issues and when problems arise. Use a common sense approach and don't brush problems under the carpet. Even if it isn't good news, it's best to keep your bank in the loop.

Almost all banks do NOT want to close distressed businesses, however they will take action if the directors seem incapable of running the business, will not take professional advice or if the bank has lost faith in the directors.

Your company's relationship with creditors

- Your company cannot get new credit or extend existing credit
- You do not pay to creditors' terms
- You have had red warning letters
- Creditors regularly phone you chasing payment
- You spread credit around by opening accounts with new suppliers
- You have had a Court summons or judgment
- You have arranged deals with creditors to pay them over time
- You have broken promises to creditors
- You have had visits from Sheriffs or bailiffs
- You have had a statutory demand or a winding up petition

In our experience, the cashflow pressure that distressed businesses suffer starts quite early on. The directors get used to dealing with minor issues; however they often grow into much bigger issues quite quickly. Failure to collect debtor payments on time can lead to missed payments to creditors. This leads to loss of trust and the breakdown of communication.

Talk to your suppliers and creditors. It is common sense to involve them otherwise they will feel that you are willfully avoiding them. Arranging deals with creditors over time can be a successful way to deal with cashflow problems. However, as a director, you should be asking the bigger picture questions such as:

- Is the business viable?
- Can we make profits over the next period?
- Are we missing the fact that our cost base is much too high for our income levels?
- Should we be taking advice from turnaround advisers?

If you are considering proposing a deal with creditors, we recommend building a cashflow projection that is realistic and apply common sense to it. What happens if a promised customer payment does not come in on time? Will you be able to meet promised creditors payments? Always ensure that the payments required or promised are based on cashflow and profitability.

Do not forget things like PAYE, VAT (see below), bank loans, direct debits etc. These are easily forecast-able as are salary payments and rent etc. All payments promised must be achieved otherwise the creditor could take legal action. Your company's relationship with HMRC

- You are not paying the monthly PAYE & National Insurance Contributions (NIC) deductions on time.
- You have not prepared or filed the required PAYE paperwork (P35, P11D, P60) with HMRC.
- You are not filing VAT returns or paying the VAT due on time.
- You have been issued VAT penalties or VAT surcharges.
- The local tax collector has passed your file to the enforcement office or the debt recovery unit.
- You have done deals with the taxman to pay back arrears over time (known as time to pay deals or TTP) but you have failed these arrangements.
- HMRC has taken legal action against your business It has issued a CCJ or worse, a winding up petition.
- You have paid unsecured creditors instead of paying the Crown debts.

It should be remembered by directors and business people that HMRC are involuntary creditors. In other words HMRC does not choose to give credit, your business takes it. So the only way HMRC can ensure payment is to impose collection rules and regulations upon the business or force liquidation if compliance cannot be obtained through enforcement action.

Failure to adhere to these rules may lead to HMRC agents taking action to recover the arrears and this could

include winding up petitions, a Notice of Enforcement or 'Taking Control of Goods' among others.

And finally...your relationship with the company

- You end up 'fire fighting'. You don't get your work done because of a lack of focus/dealing with aggressive creditors.
- There is a lack of (or even wrong) business or accounting information and you often end up concentrating on non-essential issues.
- You 'compartmentalise' problems. Do you deal with one creditor or business critical problem and ignore others?
- Do you blame the bank? Creditors? Debtors? Accountants? Advisors? Everyone but yourself?
- You don't have a business plan. Your company doesn't have regular team, management and board meetings.
- You company has arrears of tax, PAYE and VAT.
- You don't like changes.
- Directors are taking big salaries and expenses ('it's my business anyway!')
- Do you think that one more sale, one more contract, one big customer payment will solve the cashflow problem? It won't.
- You have an overdrawn directors loan account (see below guide for further information).

Do you identify with a few or most of these? Take the next steps.

Take proactive steps to deal with each issue and speak to a legal or turnaround advisor. You may be able to come to a formal arrangement with creditors to pay back a proportion of debt over time or even secure extra funding to help with cash flow. Solving one problem may also solve another.

Prolonging the issues will only make the situation worse. You may be able to avoid putting your company into administration or liquidation by arranging a repayment plan or turnaround strategy for your business. Throughout this turnaround section, you'll find further information on the different legal obligations you face as a director and the best way to deal with cash flow problems.

Is my company insolvent and how do I tell?

There are three key tests for insolvency of a UK company or a LLP



The Cashflow Test for Insolvency

Simply - can the company pay its debts when they fall due?

For example, if your company is not paying the deductions from employees for NIC and Income Tax across to HMRC on the 19th of the month following the month they were deducted, then the company could be insolvent. This has of course now changed as a result of RTI in that PAYE is paid across to HMRC in real time. However, the company may have built up arrears in the past.

If your trade company's creditors sell to the company on say 30 days terms and the company regularly pays on 90+ days, then this could mean the company is insolvent.

A director has a legal requirement to understand this issue. If they believe that the company has insufficient cash to pay its liabilities on time then they must take advice/action.

So if the company is insolvent you must act to MAXIMISE CREDITORS INTERESTS. Failure to do so could lead to personal liability for the directors.

The Balance Sheet Test for Insolvency

Simply – does your company owe more than it owns as a company, or are the company's assets exceeded by its liabilities? If yes, then the company could be insolvent.

It is important to point out that this test should include contingent or prospective liabilities. These might be where a court is yet to make a decision on how much the company owes as a result of a court action or dilapidations on a building your business is due to vacate. (If you need advice on these issues email us at help@ksagroup.co.uk.)

Many directors tell us that on a balance sheet test the company is not insolvent therefore they do not need to act. However, under the cashflow test above the company may still be insolvent. So you must act properly if it is.

In our experience, an apparently solvent balance sheet may include items that are overstated, such as obsolete or low realisation value stock and work in progress, or debtors that are not really collectable. After deducting these items many balance sheets become insolvent. So be prudent - you are legally required to present accounts to show a true and fair picture of the business.

So if the company is insolvent you must act to MAXIMISE CREDITORS INTERESTS. Failure to do so could lead to personal liability for the directors. Call now if you have questions – 0800 9700 539 or 020 7887 2667.

The Legal Action test for Insolvency

If a creditor has obtained a County Court Judgment, this may demonstrate the company's insolvency and the creditor might petition to wind up the company. (See compulsory liquidation).

If a creditor has obtained a statutory demand for greater than £5000 (from 1st October 2015) and it remains unpaid for more than 21 days, then the creditor may petition to wind up the company. But in truth any debt over £750, that your company does not dispute, is fair game to issue a winding up petition and the creditor doesn't need to issue a statutory demand

If you believe that any of the above tests are positive for your business, it is vital that you and the board of directors take action to address the insolvent position. However, don't panic. Look carefully at all pertinent issues and consider the rest of this guide.

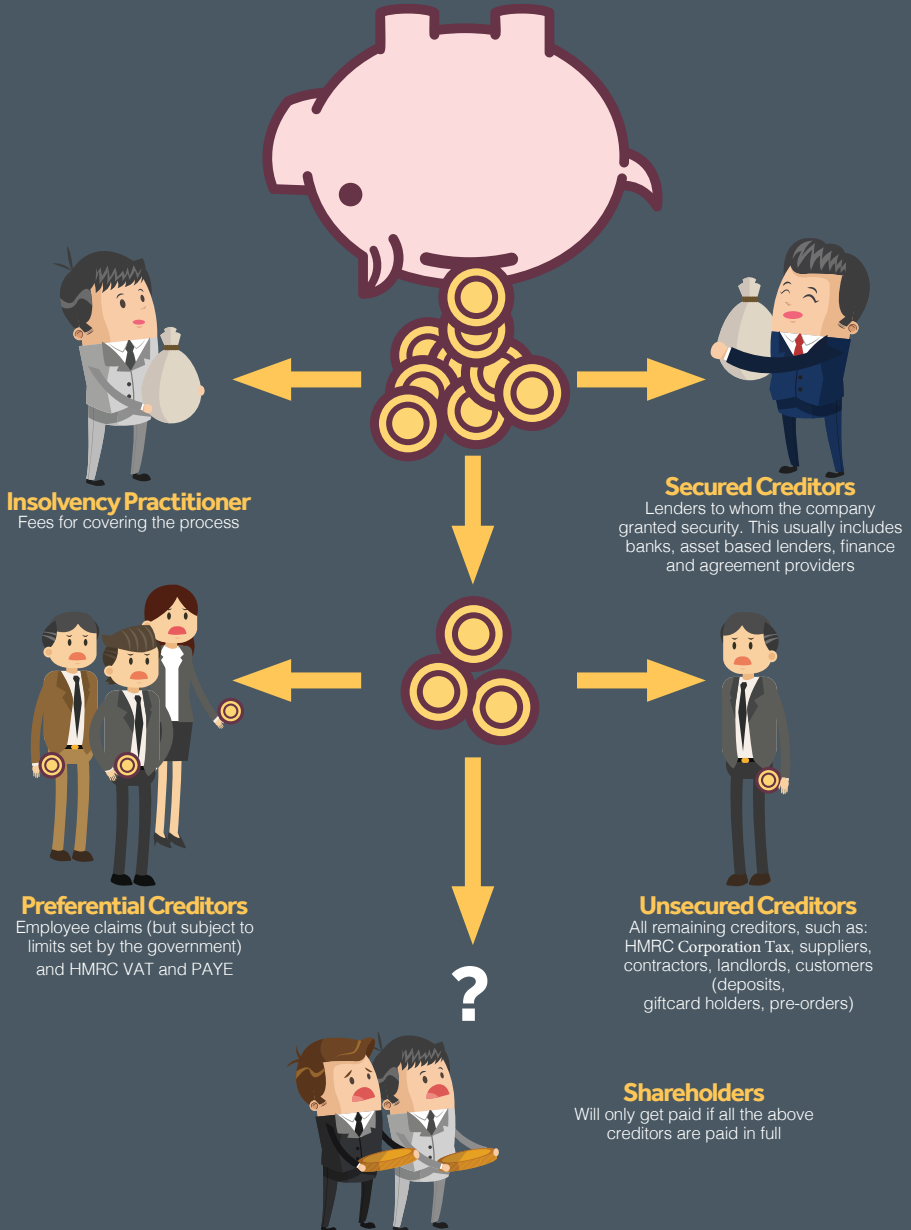
Remember, if the company is insolvent, you must as directors act to maximise creditors' interests. If there is no reasonable prospect of the following happening then the directors may be accused of wrongful trading.

The tests for insolvency are covered under section 123 of the Insolvency Act 1986

<https://www.companyrescue.co.uk/assess-your-situation/is-my-company-insolvent-take-this-insolvency-test/>

Who gets paid when a company goes bust?

When a company goes into administration or liquidation, it can be a very stressful time for employees, creditors and customers. Below is an illustration of the order of priority and who ranks above whom when money is owed.



I am a worried director. So what is wrongful trading?

We are often asked what this means because directors have talked to their accountants, advisors, insolvency practitioners or a man in the pub. They may have said "be careful if your company is insolvent then you will be guilty of "wrongful trading"! Often this is simply not true, it is based on poor and incomplete knowledge and often scaremongering! The simple explanation is this:

Is the company insolvent? If yes, then the directors must act properly and responsibly. If they do not act properly or the way any reasonable person would have acted, then this could possibly be seen as acting wrongfully or trading whilst insolvent.

If wrongful trading is proven, then the directors can be made personally liable for the company's debts from the time they knew the company was insolvent. BUT it is generally a high burden of proof for a liquidator or the Insolvency Service to take action for wrongful trading.

The tests for wrongful trading actions include:

1. Not filing annual returns for the company at Companies House.
2. Not filing annual or audited accounts at Companies House.
3. Not operating the PAYE scheme correctly, failing to pay PAYE and NIC when due, building up arrears. (see below).
4. Not operating the VAT scheme correctly, building up arrears (see below).
5. Taking excessive salaries when the company cannot afford them.
6. Taking credit from suppliers where there was no "reasonable prospect" of paying the creditor on time.
7. Willfully piling up debt.
8. Using deposits from customers to pay off historic debts when there is no prospect of the goods being delivered.

Please note you don't have to tick all of the above tests to be at risk of wrongful trading! Although being guilty of points 7 and 8 are the most risky.

Formal insolvency procedures

Wrongful trading can only apply in terminal insolvency and can only be commenced after a formal insolvency event. A formal insolvency event is, for example, creditors voluntary liquidation, administration, administrative receivership or compulsory liquidation.

Wrongful trading does not apply in company voluntary arrangements, trading out or refinancing.

What if there is no insolvency event?

These actions may occur even

though the company may not enter any formal insolvency. If that happens, then be very careful.

ALWAYS keep records of why returns were not filed on time and write careful minutes of board meetings and shareholders meetings. Keep everything filed and ready to refer to. In future they may help protect you as a director when being interviewed by an insolvency practitioner or the Official Receiver⁹. The common sense answer to avoid accusations of wrongful trading is this - if your company is insolvent and you know it, don't ignore it and make the situation worse. Take turnaround or legal advice immediately.

What does failing to operate the PAYE/VAT scheme actually mean?

Not paid the deductions of PAYE and NIC across to HM Revenue & Customs? Well, as you will now know that is something they do not like! Basically, its tax payer's money and the collectors are there to collect it.

HMRC has a central database and can spot slow payments or missed payments quickly, especially through the Real Time Information system. If your company is not paying PAYE & NIC on time, it is most likely insolvent. Non payment of tax is a failure to comply with the tax legislation and also signifies publicly (loud and clear to HMRC) that the company is potentially insolvent. So, you need to act properly and deal with this serious threat to your company.

What are the available options?

Prevent wrongful trading by looking at the following options:

1. Time to pay deal with HMRC – debt is paid back over affordable installments up to a year.
2. Trading out - This can avoid formal approaches like voluntary liquidation,

CVA, compulsory liquidation and administration. Cut costs, raise finance or restructure the business to solve cash flow problems.

Top tips

1. Don't wait until legal actions have been taken against the company to ask for a "time to pay" deal with HMRC.
2. Try to plan the cash flow of the business well in advance - you have a legal obligation to be able to meet cash flow requirements! If the directors do not think the company has sufficient cash to trade, they should consider their obligations and options and plan a way forward.
3. Don't be too ambitious in planning repayment; you will have bad months as well as good, so be careful with the cash flow forecasts.
4. Be realistic about your expectations. Ask for 18 months to pay back PAYE, knowing that you will probably get 9 months at most.
5. Ask for 6 months to pay back VAT.
6. If your cash flow forecast shows the company cannot afford to repay tax that quickly, consider a company voluntary arrangement (CVA). We think that, if the company is viable but insolvent, this is the most powerful way of dealing with a serious cash flow problem and tax arrears.
7. HMRC supports well proposed CVAs.
8. In a CVA, the company does not have to pay back all of the debt and directors remain in control.

⁹An official receiver manages at least the first stage of bankruptcies and companies wound up by a court.

What is Fraudulent Trading?

Put simply, fraudulent trading is the continuation of trading with no reasonable prospect of repaying debts and with the intentions of defrauding creditors.

Trading this way can lead to steep fines, disqualification and even imprisonment. Fraudulent trading is considered as more of a serious offence than wrongful trading, however both should be avoided at all costs to prevent harm to the business.

Transactions defrauding creditors (s423 Insolvency Act 1986)

A company does not have to be insolvent to be found guilty of this.

Examples of transaction defrauding creditors include:

- Assets are purposely put beyond reach to creditors (intention must be proved).
- The transaction is a gift or at an under value.

Different from other provisions in the Act, there is no statutory time limit set on the occurrence of the transaction and its recovery.

Antecedent transactions (s238-239)

Antecedent means 'going before'. In this case, any transactions done before a company is insolvent could be considered as an antecedent transaction. A recovery could be made if, for example, one creditor is paid more than another in the lead up to the company's insolvency.

This is known as a 'preference' under s239 of the Insolvency Act 1986 (see below) and would be referred to as an antecedent transaction.

Preference

A potential preference occurs when a company pays a specific creditor or group of creditors(s) before going into a formal insolvency like administration or liquidation. This makes that creditor "better off" than the majority of other creditors. However, the second important test to prove preference is there must be a "desire" to make that particular creditor better off.

This is an area of insolvency law that is commonly misunderstood, but can cause many problems for those who create the preference. If the preference is proven, it can lead to action against the beneficiary, the directors, lifting of the veil of incorporation, personal liability and if wrongful trading proven, disqualification under other provisions of the insolvency legislation.

So how does preference happen in a real-life scenario?

Here is a fictional case study:

Acme Nuts and Bolts Company Ltd has been trading for many years and has seen a steady decline in sales and profits over recent times. Mr Bolt, the managing director, sits down with Mr Washer, the FD, and they read the accounts, look at the cashflow and decide that the company is insolvent. It is likely that the company will breach the bank overdraft if all creditors' demands for payment are met.

The PAYE is already 2 months behind and the most recent VAT quarter has not yet been paid.

Mr Bolt thinks that a smaller leaner workforce, operating in a much smaller property would be a viable business but the company's long term employees would be too expensive to pay off. Redundancy costs alone would be £100,000. They cannot see how to pay this and decided to slowly wind the company down before starting again.

One of the suppliers to Acme is a company owned by Mr Bolt's brother. It is owed £12,000 for supplies and has always been paid on time by Acme. Another supplier is owed £16,000 and it has a small factory property available, that Mr Bolt would very much like to use to start the new company.

Mr Bolt tells Mr Washer to pay both these amounts as soon as possible and then he decides that they will talk to an insolvency practitioner about the options for "dumping the company". Some eight weeks later the company enters liquidation and the liquidator begins to examine the conduct of the company in the period leading up to the liquidation.

He discovers that Mr Bolt's brother was paid £12,000 and the other supplier was paid £16,000, just before the company decided to cease trading and go down the liquidation path. VAT, PAYE and over £500,000 worth of other creditors' debts were not paid.

Under s239 of the Insolvency Act, the payment to Mr Bolt's brother is a clear breach of the Act as the company paid the debt when not paying PAYE/VAT and other creditors. But was there a desire to create a preference?

Because the brother was a 'connected creditor' or associate through blood, the law automatically assumes that Mr Bolt wanted to make his brother better off. The liquidator demanded the money back from Mr Bolt's brother and the court agreed.

On first inspection by the liquidator, the other payment to the company with the spare property was less clear cut. Was a payment made? Yes. Was it paid when other creditors were not paid? Yes. Was a desire to create a preference in place? Possibly, but not conclusively.

However, after a few weeks the liquidator noted that Mr Bolt had started a new company and the address was the same as the paid customer of Acme, so he took action to recover that money too. Interestingly, some of the company's assets appeared to have mysteriously found their way to that property too!

The 'desire to create a preference' test is much more difficult to prove in other cases. Often the threat of the liquidator taking action sees a deal being done where some of the debt is repaid, to the liquidator, for the benefit of other creditors. This is a difficult subject matter but a vitally important one for every director to consider when reviewing the company's insolvency and how they have acted.

This is a path that requires professional advice, common sense and full discussion by the board, and proper documentation of decisions to pay suppliers taken at board and management levels.

Clearly, paying friends and family is risky. Paying back directors' loans is a preference if the company subsequently enters liquidation. Finally, remember preferences are only crystallised by a formal insolvency like administration and liquidation.

How do we avoid creating a preference?

Common sense dictates that if the decision to pay someone seems 'off', it usually is!

The safest route is to ensure that all creditors are treated 'equally'. If that is not possible, then ensure there is a very strong commercial reason if one creditor is being paid faster than others. For example, you may wish to pass a board resolution to pay XZY Ltd as it maximises the interest of creditors to pay XZY Ltd as they're the only supplier of something essential to the business.

By paying XZY, operations can continue to generate debtors. **YOU MUST** get rescue and insolvency advice at the same time.

Typical examples of company assets?

- Company Cars
- Computer hardware
- Office Furniture
- Machinery
- Office Buildings



Directors have asked us in the past if a company's assets can be sold to another company so the insolvent company can be knocked over. This area of insolvency is very complex and can lead to trouble for the average director if handled the wrong way.

Directors must first be aware of 'Transaction at an undervalue', s238 of the Insolvency Act 1986.

If the company is no longer viable and the directors believe the company has no future, it may be tempting to 'move' or sell some of the assets across to another trading company or partnership.

Think carefully before doing this! If the company has assets that actually

belong to say a bank or hire purchase company, then these assets must not be sold or transferred without their explicit written approval. However, if the assets are unencumbered and are then sold below their proper value, or moved for no payment (consideration), then there is a possible breach of s238 Insolvency Act 1986 - transaction at an undervalue.

This applies in the case of a company where the company enters administration or liquidation.

Where the company has, at a relevant time (typically two years if a connected party and six months if an unconnected party), entered into a transaction with any person at an undervalue, the

office-holder may apply to the court for an order under this section.

The court shall make such order as it thinks fit, usually this means it will make an order to restore the company to its previous position before that transaction. Thus the court has the power to reverse that sale or movement of assets.

This could also lead to an investigation report of wrongful trading.

How can assets be moved or sold correctly?

If there is a plan to sell any asset, then the safest policy is to get the asset(s) independently valued and make sure the valuation has going concern and forced sale values. Typically, you should use a business valuation expert, accountant RICS qualified valuer or surveyor to perform this task.

We suggest the assets are sold at or above forced sale values and the consideration banked to maximise the interests of the company's creditors. Keep careful records of these transactions.

It's also best if a board meeting minutes the transactions as being formally approved by the board.

We can arrange a business asset sale for the company, please do contact us to discuss how we will ensure the sale is legally compliant.

Can't afford to buy assets?

We suggest that you liquidate the company and then offer to buy the assets over time (deferred consideration) from the liquidator. **DO NOT** remove the **COMPANY'S** assets thinking there is no harm. Remember, they are not **YOUR** assets!

Directors may be made personally liable for the company debts if there is evidence of improper actions.

Can assets or the business be hived up, or across to another company?

This is a complex area of law, however the basic principles above apply. Hive across assets **ONLY** after seeking proper legal advice, ensuring values have been established and a consideration paid by the other company.

Again KSA Group are experts in this process, call 0800 9700539 to discuss how we can lead this innovative process.



10

personal liability situations

By Keith Steven of KSA Group
and Julian Donnelly of James
Rosa Associates

What is an Overdrawn Directors Loan Account (ODLA)?

NB: THIS MEANS YOU OWE THE COMPANY MONEY AS A DEBTOR!

In more than 75% of our enquiries from directors of struggling companies, we find that this is a major problem. So what is an "overdrawn director's current or loan account"?

Well, usually the company is making some profits and accountants advise on saving tax by paying directors a small salary. Directors then take drawings every month from the reserves of profits made in the past and current year.

Then at the end of each month, quarter or year the board can vote to pay dividends to the shareholders. This way the drawings are canceled out and the dividends voted through to cover the drawings. But this is NOT SALARY it is a payment of dividends to shareholders.

Saving a small amount of tax (notionally) can create a large amount of problems for the directors if the business is not profitable. If the business starts to perform badly, directors can end up with serious personal liability problems.

Technical issues

All accounts filed at Companies House should refer to any overdrawn current accounts as loans to the director concerned. You must try to get these paid back or reversed in subsequent periods as HMRC will tax YOU PERSONALLY on a fairly penal rate if you do not.

FACT: If the company has no distributable reserves, it cannot pay dividends.

So, if your company's balance sheet starts a year with nil or negative reserves, then if you make no profit you MUST STOP taking dividends as soon as you are aware of this. You should not take drawings that cannot be covered by nonexistent dividends as essentially you are taking the company's money **AND THEREFORE YOU OWE IT BACK AS A DEBTOR.**

It is much better to pay yourselves through PAYE and pay the tax/NIC. If the company cannot afford to pay you GROSS then it is likely to be insolvent AND is not likely to be viable?

In English if you are or were to be paid through PAYE at a competitive rate and the company cannot make a profit, then it isn't a viable business - yet perhaps you would argue!?

ODCA case study

Mr Jones and Mr Smith set up a limited liability company based in London. It is a design and marketing company.

Sales built quite quickly based upon their contacts in the marketing sector and the company grew to £1.2m sales. Their accountant told them the company had made £80,000 net profit in year one and this would be taxed for corporation tax purposes at roughly 20%.

The accountant advised them to leave their PAYE salaries at a lower level each month in year two and take dividends from the reserves and future profits. They did this for a number of years and paid themselves quite well as the company was profitable each year.

Then something happened. Their biggest debtor went bust owing the company c. £158,000. Silly but

let that debtor take as much credit in our view, but their view was 'after all, the company was a well known big name customer and we never thought it would fail'. It had been good regular business for them so we understand why it got to be such a big debtor.

The company's failure led to a situation that was clearly not planned for. In 2010, the company had a bad trading year on top of the customer's insolvency, and so had to write the bad debt off. This made a huge loss for the year of £250,000. As a result, the balance sheet became negative and they saw the first flashes of a cash flow crisis looming.

So no further dividends could be taken AND the directors now had overdrawn directors' current accounts to the tune of £50,000 in that accounting year that had to be paid back somehow.

Our advice in this situation would be to set out your objectives, look at the viability of the company and then make a decision to ACT.

What can be done if the company goes into any form of insolvency?

Options include:

- Repaying the loans you personally owe to the company.
- Offsetting any loans the directors have made TO the company (this is called set off).
- Taking your full salary but reduce the cash you take out of the business to gradually offset the account. So pay yourself £4,000 per month but take £1,000. Remember to pay tax on the £4,000.
- Making lots of profits in future periods to allow dividends to be paid
- Use a company voluntary arrangement (CVA) to restructure the company (see more information on this rescue method further down in this guide). You will still have to repay the loan within 6-36 months normally

What happens in liquidation if there are overdrawn loan accounts?

The liquidator can demand directors repay their overdrawn director's current account to the company for the benefit of the creditors. **Legal action can be taken to make directors pay this which could even lead to personal bankruptcy.**

Insolvency options and ODCA's

Referring back to the case study, if the company entered a formal terminal insolvency like administration, receivership, voluntary liquidation or compulsory liquidation, then the insolvency practitioner/liquidator could have demanded that the directors repay the £50,000 back to the company for the benefit of creditors.

The key test of any business in trouble is viability. One bad year and a huge bad debt did not equate to a bad business - far from it. The business in the case study showed dedicated directors and staff.

In a case like this, we would recommend a CVA would be the best solution. The directors' drawings

for the current financial year were treated as being net pay through the PAYE scheme in that year because there were no distributable profits, therefore dividends could not be paid. The prior year overdrawn directors' account was repaid to the company in six months (a standard HMRC requirement) by the directors.

This of course generates a slightly larger PAYE and NIC liability. But using the CVA, the debt would be bound by the process. Along with reduction in employees and managers (the lost contract meant that they had too many people), the company was forecasting a modest profit at best or just below break-even at worst.

Creditors would benefit as they get a deal paying 55% of their old debt back over 5 years, and they kept their customer. The benefits for the company are a downsized business, lower costs, long term survival, no lost contracts. We removed cashflow pressures whilst keeping the bank happy.

Directors would be able to avoid:

- Personal liability
- Business failure
- Bank personal guarantees being called up

Personal guarantees

This is the biggest single directors worry we discuss every day with callers and our clients.

We often are asked what happens with a personal guarantee. Obviously it is a stressful time when a business is in difficulty and people hope for the best but fear the worse. However the thorny problem of personal guarantees (PGs) does loom up.

Basically, you simply cannot just "get out" of a personal guarantee. The only way is to either renegotiate the contract so that your lender no longer insists on a PG, or if it is called in, then pay it, or come to some sort of agreement to pay it, or in the worst case go into an IVA¹⁰ or personal bankruptcy¹¹.

Some insurers offer personal guarantee insurance which may go a little way to covering costs should the worst happen. The cost of this insurance will depend on the level of cover or the risk involved. Insurers will also look at cash flow forecasts, any previous defaults in payment and the type of industry the company is in.

So who asks for personal guarantees?

As a director of a limited company, it is standard practice for lenders (and indeed some trade suppliers) to request that you sign a personal guarantee (PG) to act as security for company borrowing.

By doing this, the creditor will have recourse to the director, personally, in the event the company defaults or closes down. PGs are not used for sole traders or partnerships (except LLPs) as any debt is already deemed as a personal liability of the business owner(s) and so an official PG is not required.

If you have been asked to sign a PG, you should always seek independent legal advice before signing anything, as the terms can vary (it is not uncommon for the banks to request a legal charge over your home at the same time). The best advice is...

"if you do not understand what the personal guarantee will mean in the event of failure of the borrower (e.g. the company), then get independent advice from a solicitor".

It is also worth noting that most banks will keep a PG on file indefinitely, even once the borrowing has been repaid. If you are in doubt write to the bank to cancel the PG.

¹⁰ Individual Voluntary Arrangement - applies to individuals, not companies.

¹¹ An option that can be used if a person cannot pay their debts as and when they fall due

Next steps - Courtesy of James Rosa Associates

In the event that a PG is called upon, the next steps can vary depending on the creditor and the amount being called on. The usual routes are:

1. The creditor will write to you at home stating the borrower (the company) has defaulted on the loan or borrowing. This letter will put you on notice that the lender will want you to pay the money back, if it doesn't received any money from the borrowing company (recovery).
2. Often the lender will issue a Statutory Demand (providing that the debt is over £750). This will give you 21 days to either settle the debt or reach an agreement to pay. If this is not possible, the creditor can start bankruptcy proceedings (again, providing the debt is over £750). Previously it was £750, however new rulings enforced from 1st October 2015 increased the threshold.
3. The creditor can apply for a County Court or High Court Judgement. They can then get a Warrant of Execution and get the bailiffs into your home to seize goods¹⁴ or belongings.
4. The lender can for larger amount, seek a Charging Order to secure the debt against your home.
5. If a PG is called upon, the first route you must take is to get legal advice to ensure it is valid.
6. If it has not been drawn up and or executed correctly, it could well be invalid.
7. The second route is to talk to the creditor (if you haven't already). Legal action can be a lengthy and costly affair and most creditors would entertain a negotiated settlement as long as there is a strong commercial case for them to do so.
8. The best way to protect yourself would be to seek professional help prior to the default event which causes a PG to be called upon. The earlier the professionals get involved, the more tools they have at their disposal to help you.
9. If you have a PG that is being called upon, do remember there is still help at hand, but the available options are somewhat reduced.



For Further advice on challenging a PG call James Rosa Associates on 0845 680 7217

Some words of warning:

A personal guarantee is personal. It may be to secure company borrowing but the person providing the PG is liable if the company does not repay the debt upon request.

A lender may be able to take a charge over your home so that they can recover the debt in the event that you cannot pay and they have had to go to court. Also be aware that the company deciding to pay creditors who have also taken PGs - before creditors that have not - do not may be considered as paying a preference¹⁶.

Landlords do often ask for personal guarantees for rent and the liabilities under the lease. It should be remembered that landlords do try and call these in. If your company is building up arrears with the rent, then you must take advice. Lease obligations can be bound in a CVA¹⁷ and the power of a CVA enables your company to vacate premises if necessary. It may be possible to assign the lease to another operator, to ensure that you are not on the hook for the remainder of the rent.

Personal liability

Many people believe that having a company entering insolvency automatically means they are liable for the company debt, but this could not be more wrong!

If your company uses a Company Voluntary Arrangement (CVA), goes into administration or liquidation, it's important to remember the company's debt belongs to the company (unless you've acted wrongfully or fraudulently). There are instances where directors can be made personally liable for National Insurance contributions:

Personal Liability Notices

Who can issue them and what can be done about them?

Section 121C, Social Security Administration Act 1992 gives HMRC the power to issue a notice to an individual officer of the company to be personally liable for National Insurance Contributions or NIC. This power arises where in the opinion of HMRC there has been fraud or serious neglect by the company to pay National Insurance.

The legislation allowing HMRC to issue and enforce PLN's only applies to National Insurance Contributions and late payment interest and penalties arising from them. PLN's do not apply to income tax. An officer of the company is not just the director. Senior managers and shadow directors can be liable as well.

HMRC do not want to penalise directors of struggling companies, so generally HMRC may consider a case to involve more serious neglect where it can be established that, whilst not paying NIC, the company was making significant and/or regular payments to:

- Other creditors
- Themselves as directors
- Connected companies

HMRC will also only issue a PLN if they think there is a good chance of recovering the debt. As such, they are not used very often.

What happens during the Personal Liability Notice Investigation?

An Inspector from HMRC will:

- Examine the company books and records.
- Invite representations from the officers of the company.

- Determine the reasons for the company's failure to pay the National Insurance Contributions.
- Consider the extent of the negligence or fraud.
- Respond to representations by the persons named in the notice.

The burden of proof is on HMRC to show wrongdoing.

Obviously the best way to avoid personal liability is by paying the NIC or appealing to the Tax Tribunal.

Veil of Incorporation

As a director you are protected from the consequence of a failed company by the 'veil of incorporation', provided you acted reasonably, responsibly and within the law. Failure to do so can make directors personally liable for the company's debts. The 'veil of incorporation' is lifted and the directors lose protection and may even be disqualified.

The key points to remember are if your company is insolvent, the directors have to take care. Under UK law, trading whilst insolvent can breach several provisions of the Insolvency Act 1986, already mentioned above like transaction at under value and preference.

¹² A court with jurisdiction over one or more counties. This type of court deals with civil (non-criminal) matters.

¹³ Her Majesty's High Court of Justice is based in Westminster and is senior to a County Court.

¹⁴ The Enforcement Officer takes away and sells goods to pay off debt owed.

¹⁵ Secures the debt against a property so if it is sold, the creditor can take what they're owed from proceeds.

¹⁶ This is complex law, please call for advice.

What can be done about personal liability?

The main thing to realise is this is not necessarily a disaster personally as there are options if PGs are called upon. You have the option of going into an individual voluntary arrangement (IVA) which is much the same as a CVA in that you do a deal to pay the debt over a period of time. This is usually preferable to the creditor than making you bankrupt.

Obviously if you have substantial personal assets such as equity in house then this will be called upon, but often people can keep their house. There are complex rules about residential rights and personal insolvency so you need to consult our experts on this.

Personal Credit rating When My Company Fails

Can your personal credit rating be affected if your limited company is insolvent?

The simple answer is generally no! The debt belongs to the company, not you therefore your credit rating will remain unaffected.



How does being in a Partnership affect your personal credit rating?

The partnership structure is completely different to that of a limited company. If you trade as a partnership, the business's debt becomes your debt and you are personally liable if the business gets into financial trouble. By having to pay off the debt from your own savings and investments, your own financial situation and credit rating will be harmed. In some cases, individuals have had to declare bankruptcy because they are unable to afford the partnership's debts. It may be worth considering changing the business to a limited company to avoid this risk in the future.

Your company's credit rating

If any business falls into financial difficulties, the company's credit rating will undoubtedly suffer. If there have been County Court Judgements, debt and general cash flow problems, credit agencies will pick up on this. Of course if things improve, so will the company's credit rating.

A company's credit rating in a Company Voluntary Arrangement (CVA)

A company in a CVA will have no credit rating. This is not the same as having a low credit rating – the company is simply not rated. This seems strange as prior to a CVA the company is very likely to have an adverse rating and will be on the brink of collapse under its debts. Following a successful proposal the creditors have agreed to write off some of their debts and hence improve the company's balance sheet.

Some contracts may need to be re-tendered.





Re-using company name (s216 Insolvency Act 1986)

If you have been director of a liquidated company and you decide to set up a new company, it cannot have the same or a similar name to the old company as it would lead to possible confusion of creditors of the old company. This is called passing off and under section 216 Insolvency Act 1986 it can lead to criminal action against the director. The Director can also be held liable for all of the debts of the new company should it too go into liquidation.

It is possible to buy the name through administration, or the liquidator can agree to sell the name and a court application can support this. However, any court application will need to show why the rules of section 216 should not apply to you - not always easy. It should be borne in mind that if you were to buy the business you will need to pay a fair price and this will have been valued by

a chartered surveyor or asset valuer. The other problem of setting up a new company with a similar name is that it can result in bad feelings between creditors and the company as people believe that the directors are being disingenuous by using the same or similar name even if it is all done by leave of the court. In essence there is nothing to stop you setting up a new company just because a previous one under your control has gone into liquidation. However, if this was not the first time that one of your companies has gone into liquidation, and HMRC were a large creditor, then they may insist on a VAT or PAYE deposit to protect their position.

Section 216 Insolvency Act 1986

This section applies to a person where a company (the liquidating company) has gone into insolvent liquidation on or after the appointed day and he/ she was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.

For the purposes of this section, a name is a prohibited name in relation to such a person if -

(a) It is a name by which the liquidating company was known at any time in that period of 12 months, or

(b) It is a name which is so similar to a name falling within paragraph (c) as to suggest an association with that company

Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation -

(a) Be a director of any other company that is known by a prohibited name, or

(b) In any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or

(c) In any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(d) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both. The court means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.

Shareholders, directors and ownership

In law, if a company is insolvent then the directors have a duty to the creditors, not themselves or the shareholders. As such, the first thing to do is establish whether the company is insolvent.

If your business is insolvent then you must act to ensure that you do not make the creditors' situation worse. Some directors are guilty of willfully piling up debt with no hope of paying back creditors - by doing this they are risking an action for wrongful trading that can lead to disqualification and personal liability for the company's debts.

Another trap that directors often fall into is assuming that the assets and monies in the company's bank account belong to them personally. Even if a director has funded the business by putting his/her own money into the company this does not mean that assets belong to them. **THEY BELONG TO THE COMPANY** and the company owes them.

If the company goes into a formal insolvency process they would be classed as a creditor and may receive some of the money back. But this is not guaranteed. Ultimately our advice is not to fund a company personally without any sort of security for the debt.

Obtain proper advice from specialist turnaround practitioners to ensure you are acting in the best interest of the creditors

What should you do to ensure you are compliant with your duties as a director? Try these tests below and see where you might be.

The 'magic wand' test!

If you feel you could continue your business profitably - if only you could sort the debt that is hanging over your company as a result of a bad trading year or one big creditor - then perhaps a company voluntary arrangement or a pre-pack may be the solution.

The "I need to stop" test!

If the business has no future and is unlikely to be able to continue, then a creditors voluntary liquidation (CVL) may be the answer. This is preferable to having your business wound up in the Court which is a long and drawn out affair and the Court's official receiver has a statutory duty to investigate your conduct as a director. A CVL is ensuring that the business is closed down in a legally correct and orderly way and the creditors can be handled by the liquidator who will remove the creditor pressure for you.

The other options are really just a variation on the above. If you have a buyer for the business then a pre-pack

could be an option but these are becoming less used these days and need careful consideration. Administration is a powerful tool to protect your business from all creditors, including the bank, but it means that you lose control of the business and it can be costly and damaging to the business going forward.

Warning signs for Shareholders to look out for

Is the company insolvent? Look out for those following signs:

1. Your board fail to communicate financial information to you.
2. The directors cannot agree to the best policy and/or appear to be at war with each other.
3. High staff and management turnover.
4. Late management accounts, audited accounts and or annual returns.
5. Autocratic leadership - is one person making all the decisions?
6. Different answers to the same questions to different directors.
7. Targets/ budgets are regularly not met.
8. The board regularly asks for new investment.
9. You have to introduce new directors or advisors.
10. The bank wants to introduce investigating accountants.

The basic fiduciary duty of the directors is to inform the members at all appropriate times as to the company's performance. However, few directors realise that when a business becomes insolvent, then the duty of care shifts from a duty to act on behalf of the shareholders to the body of creditors as a whole.

Professional regulators and Insolvent Companies

Many directors worry about the impact of any financial difficulties might have on their ability to continue to practice in their chosen profession. The Solicitors Regulatory Authority, for instance, is mainly concerned with any reputational damage to the profession and the protection of client's monies.

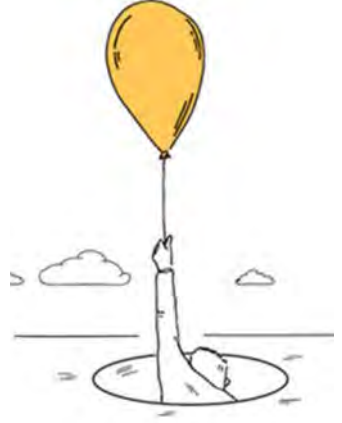
They and many other regulators accept that financial problems are inevitable in business so they do not strike off people just because they got into difficulty. However, they do want to see full disclosure and cooperation as the price for their support. Having read this part I suspect you will know if you are likely to be struck off – Do not use client money to plug financial gaps!

We are experts at dealing with all professional regulators and advising company directors on the best options and the right course of action for

them as individuals. We have worked with firms of solicitors, Independent Financial Advisors, Chartered Surveyors, Chartered and Certified Accountants, Barristers, Dentists, Doctors and so on.

“And their regulators all want the same thing a grown up approach, open dialogue, honesty and good communications on the plans and the issues with professional advisors to assist the company or LLP”.

Call KSA Group now on 0800 9998 777



“The Various Options; CVA, Administration, Liquidation – what do they mean to me”?

Below, we've included everything you need to know about cashflow and insolvency rescue methods and more formal insolvency procedures like liquidation.

Time to Pay (TTP) arrangement with HMRC

If your company can't pay VAT or PAYE on time, we would suggest that you contact HMRC first. Have a look at the Business Payment Support Service pages and ask for a time to pay arrangement. A time to pay deal allows your company to pay back affordable instalments to HMRC over a year.

What are the criteria for HMRC to accept a time to pay arrangement?

Well, simply, HMRC will give your company time to pay its taxes provided they are happy that you will stick to this arrangement and repay all the taxes in full in a period to be agreed. So you will need to convince them that this can be done. The company will need to put forward reasonable proposals that set out exactly what you wish to pay and back it up with evidence that these payments can be met.

This may take the form of cashflow forecasts and forecasting sales, evidence that you are able to cut costs and a general determination to pay the company's taxes. As a guide, HMRC will generally ask for around 6-12 months for you to pay back the taxes your company owes, but in some cases it can be longer. It is very important that you do not offer to pay back more than your company can afford as otherwise HMRC may well reject it – leaving the company in a worse situation.

From 3rd August 2015, customers have had to pay HMRC time to pay arrangements in instalments by direct debit only. HMRC will make this method mandatory to ensure the process runs more smoothly for both the customer (your company) and HMRC. **Direct debits will also provide guarantees to protect the customer.**

If your company can't pay corporation tax that is due from the previous year then this can also be included in a time to pay arrangement. This situation is more common for those that are contractors/consultants in industries such IT/banking.

Avoid being rejected

Poor compliance with the rules and regulations surrounding your tax affairs i.e. fines and late filing of paperwork. HMRC will also take into consideration your line of business and their history of meeting TTP arrangements. It only makes sense really that they are going to be less likely to affectively 'lend' to business that are deemed high risk.

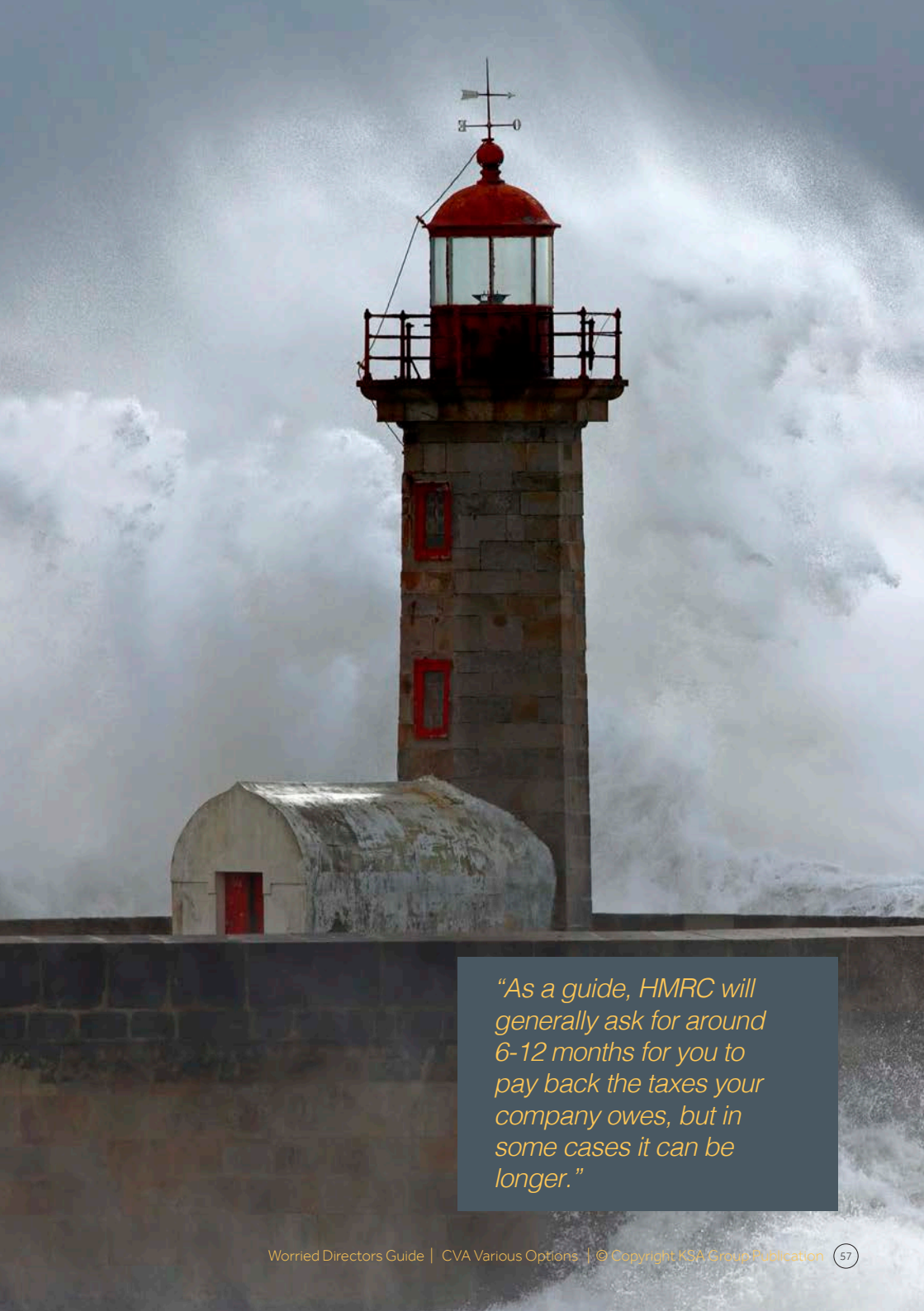
If your company has had a TTP in the past, HMRC will still consider another TTP. However it is common knowledge that the HMRC are looking to scale back the level of the TTP scheme as it does not look particularly fair to be cutting public services but not collecting tax owed.

If HMRC does not accept a time to pay deal, we would suggest that you contact us or a similar advisor to see if you can get a suitable deal in place. This would require some work on a statement of affairs and a financial forecast. It is possible that this may be acceptable to HMRC – because the directors have taken external professional advice will show that the board and the advisors think the business is viable and can afford to repay the debts over a comfortable period.

We call this our **Plan A plan**. Effectively if the business is able to pay off the debts over a year say and the HMRC accept this then that is all well and good.

However, if the company is still viable but HMRC doesn't accept any TTP offers then a company voluntary arrangement (CVA) is the best option¹⁸. Sometimes even the threat of insolvency is enough to persuade them to agree.

Although a formal insolvency tool, a CVA is a powerful way to restructure the business, the debts and buy a breathing space to recover from the cashflow shock.



“As a guide, HMRC will generally ask for around 6-12 months for you to pay back the taxes your company owes, but in some cases it can be longer.”

Company Voluntary Arrangement (CVA)

A CVA is a deal between the company and its unsecured, trade and tax creditors, to repay them from future profits. Alternatively a deal may be written to sell assets and pay back creditors from the proceeds.

The arrangement is based on preserving the company, protecting cashflow, rebuilding sales and profits and then paying debts back over an agreed period. Directors remain in control of the company, personal guarantees don't usually get called in and your business is given a fighting chance to survive.

The vital components of a successful CVA are:

- A viable business that can return to profitability.
- A commercially structured deal - where the company does not pay too much too soon.
- The introduction of appropriate levels of working capital in addition to the restructuring of debt.
- A management that accepts that there has to be change in the company.
- Determination and hard work is essential, plus a bit of luck helps.
- Directors need to use expert CVA advisors to build the deal. Always ask advisors claiming to do turnarounds - just how many CVAs they've had approved!!
- Don't expect life in CVA to be easy! Focus on cautious forecasts.

If your company can be viable in future, but current pressure is mounting, this could be a good solution. Remember if your company is insolvent, the directors must aim to maximise creditors' interests - by continuing to trade, your company will maximise their interests with a CVA.

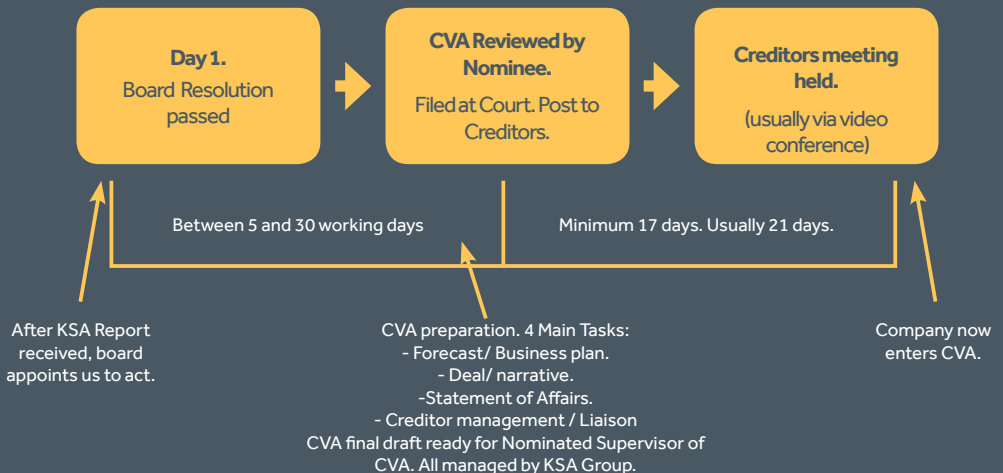
After the directors have considered the long-term viability of the company, it is essential to take appropriate advice from experienced turnaround or insolvency practitioners. We believe that it is vital to have commercially pragmatic and creative specialists involved, from as early a stage as possible.

If the CVA does work, then the company will be profitable and valuable for the shareholders.

Who can propose a CVA?

A CVA may be proposed by the directors of the company. When the company is either in liquidation or administration, the liquidator or administrator can propose a CVA. A CVA can only be proposed if a company is insolvent or contingently insolvent. How long does it take? Below is a time-bar summary of the CVA process: in practice it often takes 7-10 weeks although the summary below is possible if all of the required information is available from the outset.

The Company Voluntary Arrangement Time Bar (approximate).



1. The directors appoint advisors, such as turnaround practitioners or an insolvency practitioner (IP) to assist in the construction of the proposal. During this "hiatus" period, the company should not materially increase or decrease debts to any creditor, suppliers should be paid for supplies made (not always easy!) and activity of the company continues.

2. A review of the company, its people, markets and systems must be undertaken. This is an important part of the process. Typically the CVA will include a detailed 3-5 years worth of financial forecasts to help the creditors to make their decision to support the deal or not.

3. Once the draft proposal is ready, the directors will typically review and refine it and agree that the proposal is appropriate, achievable, and maximises creditors' interests. If the directors do not believe that it is sensibly structured, or that the process has highlighted weakness in the business, then it may be advisable to close the business.

4. Once the final CVA drafting has been completed, the directors should then discuss the position with the company's secured creditors. Experience tells us that the ability to deliver a quality draft proposal at this stage is preferable to verbal assurances that a CVA will be written and the bank told what the contents are when it's ready! We find that the banks are very keen to get involved and assist where they see a viable company. Often they will want to see how the company will repay the bank's debts. This should be included in the outline of the document. The bank may not agree with the suggested secured debt structure but will usually be open to negotiation with the directors and their advisors.

5. During the CVA production or hiatus period, current assets such as WIP and debtors are collected and turned into cash, which should improve liquidity. This can be used to fund the difficult period between appointment of CVA advisors and the filing of the document at the Court.

6. The CVA proposal are then filed at court, only to ensure that the proposal is ratified and carries a legal originating number. It is then printed and the proposal is distributed to all creditors. The court does not have an active part to play in this process, but the CVA proposal sent to creditors must be a true signed copy of the document filed at court.

After the proposal is completed:

1. The proposal must then be sent to all creditors, who then consider it for the minimum notice period as above before the creditor's meeting can be held. This is usually held at an independent venue (theoretically at the convenience of creditors). We find that the HMRC team, called the Combined Voluntary Arrangement Service, prefers to have up to 3 weeks to consider the proposals, so we always allow more than the statutory 14 day minimum period for consideration.

2. The meeting will be chaired by the advisor or an insolvency practitioner (IP). Creditors are often represented by technical professionals from other insolvency firms. The aim of the meeting is to allow the creditors to question the director's proposals; however it is NOT a place for settling disputes.

3. At the meeting, the creditors vote on the proposal and the proposal will be approved if a majority vote of 75% by value of the total value of creditors at the meeting (whether in person or by proxy) vote in favour. A second vote, excluding connected creditors, is taken and provided that not more than 50% of creditors vote against the proposal, it is approved. For an example of votes at a creditors meeting click here

4. In our experience, the voting at meetings is an area that concerns many directors. However, if the work has been done thoroughly before the CVA is filed at court, the worry should be reduced. In our CVAs, the Voluntary Arrangement Service, (VAS) which represents HMRC will always support viable proposals that are well built and show proper care and attention to detail. Given that the VAS often represents the largest votes, then we ensure that they are comfortable

with the CVA process very early in the cycle of events. Proper communication with creditors is a vital part of KSA's strategy for helping you build a CVA deal.

5. The chairman controls the ability to vote, and provided creditors have been asked to consider a sensibly structured deal, almost all proposals are accepted by creditors. The creditors may wish to modify the proposal - once again, the modifications need to be approved by the majority votes (see above). This often done by HMRC to ensure future debts are paid on time and future filing of tax returns is done correctly. Occasionally, other creditors may ask for a modification to the proposal.

6. At the same time as the creditors meeting, the members (shareholders) meeting is held. Members decide whether to accept the proposal as made or modified and a vote of 50% in favour is required.

7. If both meetings approve the proposal, the meetings close. The chairman must then issue a chairman's report, within 4 days, to all creditors and the court, stating what happened, who voted and how they voted.

8. Once approved, all notified and included creditors are legally bound for the debt "frozen" in the proposal. No further legal action (except by leave of court) can be taken against the debtor company, and the creditors will receive dividends from the supervisor as described in the proposal.

9. After the approval, the company must make the agreed contributions to the trust account administered by the supervisor. Failure to keep up with contributions is deemed a default and the company voluntary arrangement can be "aborted". This usually leads to liquidation.

10. In our opinion, the best way to avoid this is to structure the deal on the following basis. Prudent forecasts of directors should be further scaled back and modest forecast profits should be used as the basis for contributions BUT

i. No more than 50% of profits after tax and debt repayments over the deal period should be contributed.

ii. Contributions should be stepped to match profits achieved.

iii. Any lump sum contributions during the currency of the CVA should be avoided where possible.

iv. The use of a profits ratchet allows higher repayments if modestly forecasts profits are exceeded.

Even if the approach outlined here leads to small repayment levels of 20-50% to unsecured creditors, the creditors usually prefer sensible contributions to hopelessly optimistic forecasts.

Provided the company conforms to the CVA proposal and makes its contributions, then the CVA continues for the agreed period. The supervisor is generally not involved in the business and the directors remain in control. If the company is not performing well and yet it would still appear to be viable, then it is theoretically possible to reconvene the creditors meeting at any time to ask the creditors to consider amendments.

If the Supervisor has concerns, he can also ask the court for directions. In most cases, the directors should inform the supervisor if there are any material changes to the company or its business.

What happens at the end of the CVA period?

Once the agreed period is completed and the supervisor has issued a completion certificate, then the company leaves the CVA state. Any remaining unsecured debts (where partial repayment was approved) are written off and the directors continue to run the business for the shareholders.



“What does the company entering into a CVA mean for me (personally) as a director, shareholder and provider of a personal guarantee”?

If your company enters into A CVA what does this mean for you as a director of the company, a provider of personal guarantees, as a shareholder and for your credit rating?

As a director it makes little difference to you save for the fact that it may be difficult to obtain personal borrowing for example for a mortgage or remortgage, given that your main source of income is from a country that is insolvent. Lenders will require

detailed financial knowledge of your affairs given the company is your main source of income. It will have no effect generally on your credit rating per se.

The fact that the company is in a CVA will be registered at Companies House. When making applications for insurance products you will be asked (often) whether you have been a director of an insolvent company. You will have to provide details of the company and CVA.

With regards to your shareholding situation: no dividends can be paid to shareholders as the company is in a CVA. Given that most CVA deals last between three and five years long then you will not receive any dividends as a shareholder until it is satisfactorily completed.

If you have provided personal guarantees to the company's creditors then these guarantees may be called in if the company enters into CVA BUT only if the lender has not taken security over the company. In plain English if the bank has lent money to the company but hasn't taken any charges against the company, but it HAS taken a personal guarantee against you - then this money will be repayable by you. This is a complex area please talk to KSA about personal guarantees and company voluntary arrangements for your company.

If you provided loans to the company (and these are unsecured loans) then you are regarded as a connected creditor by HMRC. Generally HMRC will require that your loans are not repaid and are written off during the course of the CVA. We do not agree with this policy of HMRC, however as the largest creditor (often) in CVAs then our advice would be to agree this modification. Again please talk to KSA Group about this complex matter. There are solutions to this requirement of HMRC including conversion of the debt into other forms such as preference shares or even ordinary equity.

You may also wish to write the debt off personally, as this demonstrates your faith in the CVA plan.

Generally a CVA leaves you in control as a director or directors and allows you to drive and grow the business. It is the best insolvency solution in the UK.



Administration And Pre Pack Administration

Administration is a very powerful process for gaining control, when a company is insolvent and facing serious threats from creditors. The Court may appoint a licensed insolvency practitioner as administrator. This places a moratorium around the company and stops all legal actions. The administration must have a purpose and the Government encourages the use of company rescue mechanisms after administration. Under the administration option, it is possible for the company and its directors (or a creditor like the bank) to apply to the court to put the company into administration through a streamlined process, by applying to the High Court.

However, the law requires that any finance provider (like a bank or lender), with the appropriate security, is contacted and the aims of the administration be discussed and approved. The finance provider must have a fixed and floating charge (usually under a debenture) and the charge holder will need to give permission for the process to go ahead. Five days clear notice is required.

Pre-pack administration

In the UK, a pre pack administration sale is a powerful, legal way of selling the business on to a trade buyer, third party or to the existing directors operating under a new company (or 'newco') if the business is facing serious problems and creditor threats. If a winding up petition is threatened, this can be a powerful solution. Don't wait until a winding up petition is issued through, because pre-pack is not permitted after it has been issued.

The main advantage of pre-pack administration is the continuity of the 'business'. When the plan is ready and a contract of purchase is drawn up, the company is quickly protected by the Court - allowing the administrator to sell the 'business and assets'. This gets rid of debts, unwanted or onerous contracts and possibly some employees (although in most circumstances there could be issues that need to be addressed). There is usually no interruption to the BUSINESS, which in itself can destroy value. Another big advantage is that the cost of the process is lower than a trading administration, as the administrators do not need to find funding to trade the business. The process, including the preliminary marketing, professional valuation work and discussions with creditors, can be very quick and done in a few days if necessary. If the business is to be sold to a connected party, i.e. the former directors, they will need to be able to fund the acquisition of the assets. The business and the assets will need to be independently valued to avoid problems of under valuing assets.

pack can generate negative publicity if the former directors are seen to be shedding liabilities. However, it should be remembered that the business was already insolvent prior to any appointment and a protracted process ending in liquidation could have been the alternative - possibly with the loss of many more jobs.

Insolvency practitioners are subject to strict codes of practice to avoid abuse - this is called SIP 16¹⁹. Recently this form of insolvency procedure has been further regulated with restrictions on sales of assets to connected parties. These now have to be approved by a pre pack "pool" of experts. Consequently this has made pre packs less viable as likely delays will lead to more erosion of value.

Next steps

If the plan is to sell the business (not the company) to a 'newco' then a business plan for the newco must be drawn up. We recommend that this includes detailed profit and loss forecasts. This will give an indication of working capital requirements. The proposed administrator will require this as evidence that the new company can be viable. If the plan is to sell to an existing trading competitor company, the IP will require copies of management information and accounts from that buyer. Again this is necessary to ensure the acquirer is viable and can afford any payments for the assets being acquired. A qualified accountant should be contracted to provide this forecast pack.

Compliance issues

Under insolvency practitioners guidelines (known as SIPS), the IP must market the business. Often this requires sending sales memos to a database of potential buyers, or the IP may place an advert on their website and/or a local or national newspaper. If they get no interest or no indication of interest they can then sell to the 'newco' or third party. If there is a lot of interest and several offers, beware your business could fall into a competitor's hands! You may still be able to buy the business back, but the outcome is not under your control. The IP will also have to get formal valuations of the assets, intellectual property and or goodwill of the insolvent company by RICS qualified surveyors. Generally any offer needs to be commensurate with such valuations. If your company reaches this stage and you and your colleagues are planning to buy the business, you must be careful with regards to your personal position. As directors of the dying company, you have a fiduciary duty of care to the company's creditors. Starting 'newco' can put you at risk of conflict of interest. It's likely that you will need separate legal advice on both companies. It's best to talk to lawyers with insolvency and pre-pack experience. The IP will take advice from his lawyers as to compliance and risk. He may require this advice to be paid for along with his disbursements. Strictly speaking he cannot charge time costs in advance for the pre-pack work but he will charge for consultancy and fees.

Warning: Ensure that the pre pack process can be carried out under your current client contracts, and your connections to the bank. The current stand point of several clearing banks is they won't support pre packing to the incumbent directors/shareholders. Will your landlord(s) allow a new company to occupy their property? Are your suppliers prepared to supply a newco? Will your creditors be angry about this approach?

Finance

You will need finance to fund the acquisition of the assets and business. There are many specialist lenders who can provide: factoring, asset based lending, loans and bank facilities. Some venture capital companies or angels may help fund the pre-pack as part of a 'buy and build' strategy. Financing a pre-pack is likely to be very difficult and will probably require personal guarantees from the directors for SMEs. Larger companies may find that the private equity and venture capital buyer removes the directors as part of the pre-pack conditions. Please speak to the experts at Company Funding Options today for funding a pre pack or similar restructuring 0800 9665443322

Step 5

Assuming that your new co has raised the finance, the proposed administrator has satisfied their compliance requirements and the board of 'newco' believe they can fund the acquisition, then it's all systems go. A contract is likely to be drawn up that appoints the proposed administrator formally. They will then initiate the pre-pack administration by contacting any floating charge holders like banks or lenders with security. If they have no objections (and often they are involved in funding newco) then they can proceed. Beware some banks will NOT allow a pre-pack to a related party. RBS, HBOS and HSBC for example will not generally countenance a phoenix with/to directors /members of the failed company. So it may be necessary to "take out" the bank first. Assuming all is approved, the administrator makes an application to Court stating his proposals. Almost immediately after that the business is sold to a newco or third party. This can be done on a Friday night and by Monday the business is trading virtually uninterrupted. Having bought the company name, the "oldco" see its name changed to something else, often something similar (but not kept exactly the same).

TUPE

TUPE is the acronym for Transfer of Undertakings (Protection of Employment) Regulations. The idea of TUPE is to ensure that if a business is sold to a new owner, then the employees are protected and their contracts are honoured by the new owner. In theory the newco will need to take over all the employment contracts which might make cost cutting difficult. However, the law is quite fluid on this point and we would advise that you take legal advice on this aspect before considering on this course of action.



“What does the company entering into Administration mean for me (personally) as a director, shareholder and provider of a personal guarantee”?

Being a director of a company that enters into administration is a challenging time. Usually what happens is the administrator takes over the management of the company and the business (for a short while) and the directors' duties cease although responsibilities have not yet ended.

If you are also a director of the Newco or purchasing company then you have to be very careful to keep both companies matters and affairs separate. It's worth taking legal advice from an insolvency solicitor on this point.

Given the purpose of administration generally is to sell the BUSINESS (not the company) then if you have provided personal guarantees to lenders to the company, it is highly likely that these guarantees will be called in. Please see the section above on personal guarantees. So you may be fighting with the administrator on the deal, setting up newco and looking for funding, arguing

with lenders on personal guarantees meanwhile, still trying planning to run the business! As you can see this is a very stressful time. Your powers as a director of oldco are effectively removed.

As a shareholder, the outcome is generally nothing for shareholders as most creditors are not paid in full. Given the ranking of shareholders is at the foot of the table of (who gets paid when a company becomes insolvent) then shareholders will receive nothing. The powers of prepack administration or trading admin cannot be underestimated but it requires a licensed insolvency practitioner(s) who are officers of the court, to maintain and run the company whilst the administration process is underway. Is possible to extricate the business from the company very quickly, but you will have to pay for that and/or a trade buyer will have to pay for that. With regards to your activities of the director there will be a formal investigation into these by the administrator.

Typically at the end of the administration process the company is placed into creditors voluntary liquidation (see guide below). This will require a full investigation into all of the actions and activities of the directors and officers of the company, including shadow directors.

If you have acted reasonably and responsibly and taken legal advice and insolvency advice then there should be little to worry about. However if you haven't then there are lots of tripwires to affect you personally. So, our advice throughout this guide, please take advice from KSA Group as soon as possible when your company is facing insolvency.

Creditors Voluntary Liquidation (CVL)

Every day people ask us what is a voluntary liquidation?

Creditors voluntary liquidation or compulsory liquidation means the end of the company's life and its assets are then sold and turned into cash for the creditors if possible. Creditors voluntary liquidation is the most common form of liquidation in use in the UK. Around 8000 companies will be closed this way per year.

Usually the company has run out of cash, the directors do not think it is viable, they know the company cannot pay its debts on time and the directors are concerned that the business may build up more debts. They are also worried about Wrongful Trading

A CVL can bring a quick end to the worry, if you act soon enough and have acted properly as directors. Yes, you can be a director of another company after a liquidation, but it is important to note that there are strict controls over the re use of a company name (mentioned earlier in this guide). Remember, it is a criminal offence to use a same or similar sounding name.

Next steps

The directors of an insolvent company elect to call an extraordinary general meeting of the company. At this shareholders (members) meeting, the directors will report that the company is insolvent, and there is no reasonable prospect of paying existing creditors. They must explain that they believe it would be wrong to take further credit and advise the shareholders that the company should voluntarily enter liquidation.

At this general meeting the members (shareholders) will generally pass a resolution to cease trading and elect to nominate a liquidator. This liquidator then conducts a relatively quick investigation into the statement of affairs of the company, and calls the creditors to a meeting. Pass details of any company assets over to the proposed liquidator, and valuers may get these valued. This will independently set the value of the assets for going to auction, or you may wish to buy them. Make sure you take notes of any major decisions, write down important dates and the board's actions. Always write to creditors and banks, that way you will create a written record of the issues. Have regular

meetings of the board, shareholders, management and if it's just you, make sure you write everything down! Who does the company owe money to? You'll need to provide all company information, books and records. A company director will need to 'chair the meeting of creditors'. In actual fact, the liquidator will run the meeting but you or one of your directors must attend it by law. The meeting of creditors is usually a simple short meeting with no one attending. The liquidator must place an advert in the London Gazette and in two local newspapers calling this meeting and then write to all known creditors inviting them to submit a claim for their debts. The liquidator is then appointed by the creditors at a creditors meeting (s98 Insolvency Act 1986).

If required, the creditors can elect to form a creditor's committee, to monitor the activities of the liquidator during the course of the liquidation. This may be to monitor fees, or the sale of assets or investigation into the director's conduct. A creditors committee must have between 3 and 5 members.

The liquidator has four main tasks:

1. To convert the assets of the business into cash (hence liquidation)
2. To adjudicate the claims of the creditors (work out how much is owed by the company)
3. To investigate and report upon the conduct of the officers of the company (directors and shadow directors)
4. To make payments (where dividends are available) to creditors in order of priority

Very often, the directors will have tried many other avenues to save the company and the remaining unfettered assets will be modest (unfettered means the assets have no outside owners like the bank or HP companies).

In many other cases, the liquidator is asked to sell the assets of the business to another party. This can include the former directors or shareholders. This process is commonly known as a "phoenix". Phoenixism²⁰ is legal - provided the rules are observed and the liquidator maximises the interests of creditors, the business assets can be sold to a 'connected party'.

In this event the liquidator must

1. Obtain the best possible value for the assets. Having typically advertised the assets for sale in the media and or on the internet.
2. Ensure the creditors interests are not compromised, by

investigating the conduct of the directors prior to the liquidation.

3. Confirm that the trading name of the new company is not the same or similar to the liquidated company. (Although this restriction on re-use of a trade name can be lifted if the court agrees).

Often a phoenix company will require new cash (in the form of investment) to get the company going. This can sometimes be a stumbling block too as can the fact that the new company may have to take on the employees' rights from the old company (TUPE).

Typically, if the company is very distressed and the board decided to cease trading, the normal liquidation process starts but the directors or shareholders or both buy some of the assets from the liquidator. The new company starts to trade, often under a similar name - this can be a legal minefield so make sure you get good advice if you wish to set up a phoenix company.

What are the main advantages of a CVL?

The directors may avoid the risk of "wrongful trading", they draw a line in the sand - and crystallise the situation (often this is a very important benefit because it brings to an end the period of worry and terrible uncertainty). In addition to this, the creditors' interests are hopefully maximised.

The benefits to creditors are that the directors' conduct will be investigated by a liquidator (or ultimately the DBIS), and that their position is crystallised and not worsened. Because it is the creditors who appoint the liquidator, alongside a creditors' committee they can be sure that the company issues are dealt with correctly.

What are the main disadvantages of a CVL?

From a directors and shareholders point of view - any tax losses built up in the period prior to the liquidation are lost, goodwill is lost (even if there is a phoenix), the director's conduct will be investigated and it is a costly exercise. In virtually all cases there is no return for the shareholders and (because they are connected creditors) the directors.

From a creditor's perspective, a CVL can be a negative step because assets tend to be sold for very much less than book value and creditors' claims can be much higher (for example claims from employees, landlords and secured creditors), there is often no prospect of continued trade. Coupled with the actual cost of doing the insolvency work, the return to creditors in liquidation is usually very low.

²⁰ An insolvent company is closed down and the business is moved to a new company to avoid paying debt.

Compulsory Liquidation and Winding Up Petitions

by Lexlaw Solicitor Advocates

Professional Legal Solutions for Directors facing a Winding-up Petition

If a winding-up petition is brought against your company, the consequences could be significant for your company and for you personally. Petitions can also be issued against partnerships. This guide will help directors or members to understand the consequences and what steps can be taken when facing a petition or the threat of one.

What happens when a Winding-up Petition is issued?

The presentation of a petition to the court will render any transfer of your company's property voidable unless validated by the court (per section 127 Insolvency Act 1986) and will almost certainly cause damage to your company's commercial reputation. If the petition is subsequently advertised in the London Gazette, your company's bank accounts could be frozen and the impact may therefore obviously be catastrophic to your business. Also, if the petition is advertised, other creditors may support the petition, and in some cases even take it over. This means that even if the petitioning creditor is paid, the winding-up hearing will still take place and the Court could make an order winding-up your company.

What to do if a Winding-up Petition is brought against your company

If presented with a petition you should employ one of the following solutions within 7 days (after 7 days the petitioner is allowed to advertise the petition):

Pay the creditor

This is the obvious way to prevent the petition from being advertised and halt the process of your company's liquidation. You may be required to pay the creditor's costs in bringing the petition.

Reach an agreement

Agree with your creditor(s) how you can pay your debt and request that they withdraw the petition. You may be required to pay the creditor's costs in bringing the petition.

Company Voluntary Arrangement (CVA)

A CVA is a legally binding agreement with the majority or all of your creditors allowing you to pay back the debt (or part of the debt) over a period of time. This is especially useful if your inability to pay is the result of a cashflow problem.

Administration

An insolvency practitioner is appointed administrator of your company. This will stay all legal action against your company, including a winding-up petition. The Administrator will be granted control of your company and he/she will work to pay creditors in the best way possible, for example by selling assets or by means of a CVA.

Dispute the existence or amount of debt

If you do not believe that you owe the debt or the amount of debt being demanded, you or your legal representatives need to write to the creditor giving reasons why the debt is disputed and requesting that they withdraw the petition. If the creditor is unwilling to withdraw, your company may be able to urgently obtain an injunction preventing advertisement of the petition.

Handling aggressive creditors and abusive tactics

Some creditors or debt collection agencies will threaten you with near immediate presentation or early advertisement of a winding-up petition in order to apply improper or undue pressure. Before a petition may be presented however, a 21 day Statutory Demand for payment must usually be delivered to you. Some debt collection agencies will demand costs from you, however they may not always be entitled to their costs – a specialist solicitor will be able to advise on this question.

Many debt collection agencies include words like 'law' or 'legal' in their company name, giving the impression that they are law firms when they are not. If in doubt, you should consult your own solicitor for advice.

If you are faced with a demanding creditor who is adopting questionable tactics, you should consider urgently obtaining an injunction restraining against the presentation of a petition.

How to avoid a petition being presented against your company

Communication is key. Negotiate with your creditor(s) and look to come to an agreement about how you can pay your debt. Often negotiations via legal representatives can avoid a stalemate in negotiations and help to broker time to pay agreements.

If your company is in dire financial trouble, and in order to avoid possible 'wrongful trading' you may wish to consider a Creditors' Voluntary Liquidation (a 'CVL') – this is where a company is voluntarily brought to an end by its directors and shareholders.

What happens if the Court orders a compulsory winding-up?

All of your company's employment contracts will be terminated by operation of law and the Court will appoint an official receiver to handle liquidation of your companies affairs. He/she will liquidate your company and use the proceeds to pay creditors.

What are your liabilities as a director of a wound-up company?

You may be held personally liable for some or all of the company's debts for example if there has been 'wrongful trading'. This takes place where at some point before the winding-up of your company began, you knew (or should have known) that there was no reasonable prospect of your company avoiding being wound up and you did not take all reasonable steps to limit the losses to the company's creditors. There is other misconduct which could result in your personal liability, examples of which include (but are not limited to):

- Using company money for non-business purposes;
- Making non-legitimate or illegal payments of dividends;
- Selling company assets below market value; and
- Falsifying accounts and misleading company creditors.

The penalties for wrongful trading can include fines, disqualification from being a company director for up to 15 years and potentially even imprisonment. Therefore, it is extremely important for directors concerned about potential wrongful trading to obtain specialist legal advice in order to minimise risk of personal liability.

Do I need specialist legal advice?

The insolvency regime and the winding-up rules and the procedure before the Companies Court are often complex and technical areas of law, therefore obtaining specialist professional advice is usually the most sensible course of action. Below are just some of the ways a specialist solicitor can assist:

A specialist legal adviser may be able to assist in restructuring and possibly writing off debt. Additionally, they will be able to assist by liaising and negotiating with creditors and advising on administration, CVAs and other voluntary arrangements.

Injunctions

A specialist adviser may be able to assist you by obtaining injunctive relief, restraining the creditor from a particular course of action, for example, restraining a creditor from presenting or advertising the petition.

Case study – Injunction

The directors of a care home business were served with a statutory demand for payment of a debt of over £50,000 debt relating to a contract for supply of goods. The directors instructed LEXLAW, who applied for an injunction to restrain the creditor from presenting a winding-up petition for the debt. We argued that the creditor had contracted to supply a specific quantity of goods and so was not entitled to recover anything until it had completed the entire contractual obligation. The Companies Court decided that there was evidence of a genuine and substantial dispute regarding the creditor's performance of the contract and therefore granted the injunction. The issues between the parties were then resolved on terms that were more favourable to our client. Validation Orders - This should go into a different box as it is a separate contribution

If the petition has been advertised then it may be that a Validation Order is needed. (Courtesy of Pitmans Law)

Once a bank finds out that its customer has a petition issued against it, accounts will be frozen. The reason for this is that any 'disposition of assets' (which includes use of cash at bank) by a company after the date a petition is issued is void. This means that suppliers and staff can't be paid and advisers (including a proposed CVA supervisor – see below) will not accept the payment of fees from the company. If they do the payment could be clawed back. This makes it difficult for directors to get the help they need. The company will therefore need to borrow money from other sources, usually its directors and these loans may be irrecoverable if the company cannot be saved.

The Court can order that the company may use its cash to make certain critical payments (e.g. to pay staff or pay for business critical supplies) if this will mean that the company will be in better (or at least no worse) shape, should it go into liquidation, than it would otherwise would be. This way the Court can ensure that the general body of creditors are not worse off as a result of certain other creditors receiving payment in priority. However, to obtain this 'validation order' from the Court the company needs to navigate the legal system, file evidence, put forward a compelling argument and deal with objections and is likely to need to engage the services of a lawyer. The company will need to find funds to pay these fees from elsewhere. This means that few companies can afford to make a court application.

Adjournments

In cases where HMRC (as a creditor) or other creditors are refusing to give your company more time to pay, with specialist help, your company may be able to obtain an adjournment – i.e. extra time to pay, enter into a voluntary arrangement, or otherwise resolve the problem.

Opposing the petition

Most companies will instruct a law firm to represent them at the hearing and to advise on the best way to deal with the petition and the claimed debt. Such work may include making a damages claim if for example a malicious petition has been issued or procedure adopted that is an abuse of the proper process of the Companies Court.

When a company ends up in compulsory liquidation, it is usually a sign that a creditor has given up trying to recover money from the company, or it indicates that a Crown or Government agency has wound up the company, using a winding up petition under the public interest.

Clearly, this is a very serious action for creditors to take (not least because of the cost) and if the company is subject to this process it can severely curtail the ability to conduct business.

It is possible to stop compulsory liquidation, but you have to act quickly if your company has been 'served a winding up petition'.

The costs of compulsory liquidation are not insubstantial and a creditor has to decide whether the debtor is likely to pay up. A debt of over £5000 (from 1st October 2015) must be undisputed and the creditor must have notified the debtor of its intent to collect the debt. This often involves issuing a statutory demand first. If the debtor fails to pay the statutory demand in 21 days and does not dispute the debt, then the creditor may issue a winding up petition.

The costs vary between solicitors but a typical cost of the action will be £250-£500 for a statutory demand, and £1,000-£2,000 for a winding up petition (includes Court costs). Despite this for larger debts it is a very effective way of collecting larger debts when the creditor believes that there is sufficient resource to pay it. Many larger companies use established debt collection law firms to collect their debts this way.

The application for a petition will be granted in cases where it can be proven to the Courts satisfaction that the debt is undisputed, attempts to recover have been undertaken and the debtor is not compliant. A petition will be issued and court hearing date granted. The date is usually well in the future because of court pressures. Once the petition is correctly served upon the company it has a period to pay the debt or to defend the action. This is expensive as the action is always in a High Court and requires a barrister to attend. The costs of such defence are high. If the case is found the company is wound up by the Court.

Note: even if the debt is paid (always with full costs) the fact that a petition is issued means that a winding up hearing (in the High Court) MUST be held. Between the date of the payment and hearing it is possible (and often happens) that another creditor learns of the petition and 'substitutes' their debt for the paid debt (thus 'piggy-backing' the action in order to get ahead of other creditors and get paid).

Case study – Malicious petition

Our corporate client carried on a vehicle supply and repair business and entered into a contract for the supply of vehicles. Our client considered that the vehicles supplied were of unsatisfactory quality; however the Petitioner presented a winding-up petition to apply undue pressure on the company. By way of witness statement evidence and exhibits prepared by us, the company was able to demonstrate to the Court that there was a substantial and bona fide dispute as to the quality of the vehicles and that the petition had been partially intended to dissuade our client from continuing legal action against an associate of the petitioner. The company was awarded significant costs against the petitioner in light of their conduct.

You can obtain specialist professional advice on any topic covered in this guide from LEXLAW Solicitors & Advocates. Call us on 02071830529 or email contact@lexlaw.co.uk. Visit our website: www.windinguppetitionsolicitors.co.uk for more information about our legal team and our successes.

Problems Caused by A Winding Up Petition

Once a company has been served a winding up petition there are some serious problems to consider. The best lesson we can give is this **DO NOT LET A CREDITOR TAKE THE ACTION IN THE FIRST PLACE.**

Once the petition has been issued and served it must be **HEARD**, this means the Court will have to consider the petition even if the debt is paid before the hearing. This means the company cannot

- Issue a notice of intention to appoint administrators
- Nominate a liquidator
- Pay suppliers as the bank account may well be frozen*
- Pay wages for the same reason*

*We can arrange for a validation order to allow the bank account to be used, but this can be an expensive process.

- Dispose of or sell assets
- Sell the business
- Secure new loans

Notice details

Type:

Corporate Insolvency
> Petitions to Wind Up
(Companies)

Publication date:

9 February 2016, 15:44

Edition:

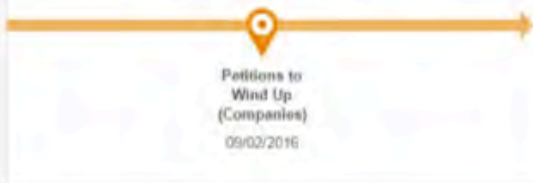
The Edinburgh Gazette

Notice ID:

2475772

Company number:

Notice timeline for LOCHFERN LIMITED (SC411255)



Petitions to Wind Up (Companies)

Actions

- ☆ Save notice to My Gazette
- 🖨️ Print notice
- ↔️ Share this notice
- 🔗 Linked data view
- 🕒 Provenance trail

Digital Signature

- 📄 Signed Document HTML
- 🔒 Signature for HTML Document

Advertisement of the Petition

A minimum of 15 days before the hearing, the petition can be 'advertised' in the London Gazette. Of course, all high street banks and lenders monitor this very carefully because if a customer is involved in such an action they usually MUST freeze the bank account immediately - thus stopping any trading. The purpose of this is to stop assets being sold, or other transactions, that may worsen the creditors' position being carried out. This is to stop disposition of assets under s127 Insolvency Act 1986.

This mechanism is used mostly by HM Revenue & Customs. Over 60% of all petitions are issued by the crown agencies.

HMRC are 'involuntary' creditors. Because you are trading and employing people, the debt to the crown ticks up. If you have tried to do deals to repay outstanding PAYE and or VAT and still fail to make payments, the crown debt will be rising. So HMRC decides to wind the company up. The company will then pay, enter a CVA or administration or simply cease trading.

Government petitions:

If the Crown (either tax agencies or the DBIS) believes that a company is contravening legislation, such as the Trading Standards legislation or is acting against the public or government interest, it is possible for the company to be liquidated compulsorily.

This is very serious action to take, and is not used very often. In such cases criminal and or disqualification proceedings are quite common.



What does the company entering into Liquidation mean for me (personally) as a director, shareholder and provider of a personal guarantee?

If the company enters into liquidation (whether it is compulsory liquidation or creditors voluntary liquidation) you will have to conform with the rules and the liquidators requests for information. Failure to do so is potentially a criminal offence..

As a director you will have to fill out a detailed questionnaire explaining what happened to the company, why the directors decided not to pay certain creditors such as HMRC, when the company became insolvent? And so forth and so on. This is typically a 40 page questionnaire and thereafter do you will be interviewed by the liquidator or his members of staff.

As director you must provide the books and records of the company to the liquidator upon appointment. The liquidator will then investigate these books and records and must store them for 12 years.

If you provide a personal guarantee to the lender to the company, then the liquidation is a default event and will lead to the lender asking providers of personal guarantees to repay

whatever shortfall they have from the company going into liquidation. We can assist you with this situation please call KSA Group to discuss how we can assist with personal guarantees and negotiation of settlement.

As a shareholder you will receive nothing and you may be required to pay your share capital if you have not already done so to the company's liquidator.

If you have provided loans to the company you will be an ordinary creditor. And you may be eligible for a dividend if there are any funds to distribute by the liquidator.

If you have an overdrawn director's current-account (or directors' loan account,) then you will be required to repay this to the liquidator - please see the section on overdrawn directors current-account.

The fact that the company has failed will also be registered at Companies House and your name as a director will be shown by credit

reference agencies as having been a director of an insolvent company.

You may be asked questions by future insurance providers as to whether you have been a director of a limited company that has entered into insolvency, you must disclose the name of this company that has failed.

However your personal credit rating is unlikely to be affected. What it really means is that if you set up a new company then a cautious supplier may well check your history as a director and indeed a lender who you are asking to fund a new business venture will also be interested. It may affect you personally if you are going to be working in a sensitive industry such as banking finance, insurance or defence.

13

Free Directors Toolkit

Insolvency Toolkit for Directors

This toolkit is available as a discreet USB device (we do not mention insolvency on the drive itself). You do not need to be connected to the internet to read all the guides to your options.

What does it cover?

- The tests for insolvency
- Establishing if your business is viable.
- How to ask for time to pay your debts to HMRC
- Extensive guides on pre pack administrations, liquidation, company voluntary arrangements.
- A guide to all the legal actions that creditors might take and the issue of personal liability.
- What is an overdrawn directors account and why does it matter.
- How to raise finance to ease cashflow pressure.
- Your duties as a director of an insolvent company.



Just plug in the drive and you can easily navigate to all the menus.



14 Summary

We hope you found this guide useful. If you have read through it all, by now you will understand there are very many factors affecting individuals when a company, LLP or partnership becomes insolvent or challenged.

The common theme that you will have seen running through this guide is - you should take advice as soon as possible, when a company looks like it may become insolvent.

As directors we all have a duty under the Companies Act legislation to act in the best interests of the shareholders normally. But when a company is or looks likely to become insolvent you must act in the best interests of the creditors.

In the "twilight zone in between" there are lots of grey areas and our advice as always speak to us (which is free of charge!) to ask any questions that you may have. What have you got to lose it is free?

You will get a sympathetic hearing, we will ask you questions about the business and what it does and what the issues are. Then we will ask what you WANT to do. Then we will give you options. All free.

You don't have to disclose the name of the business but we do need to have basic information to give you general advice, on your options as a director of a limited company which is facing cashflow and insolvency problems.

Just like having an illness, the quicker you go to the doctor the better generally! Having a company with these problems is a sign that something is wrong with the company. You should therefore take advice from experts who, like doctors, spend all day looking after companies that have distress, insolvency or turnaround issues.

Remember, you ARE NOT AN EXPERT in insolvency or turnaround just because you are a director, get advice from experts now call 0800 97005 39 FREE.



15 Top tips

Finally as a director of a limited company here are the key things to remember - the top ten rules!

1. The company's debts are not your debts.
2. You are not the company.
3. You are a director of the company (or designated member of a limited liability partnership) and if you have acted reasonably, then the debts will not fall at your doorstep.
4. As a simple rule if you provided a personal guarantee to lenders to the company and the company can't repay it all - then you will have to repay some or all of the borrowing! Get advice
5. As a simple rule if you've acted reasonably and responsibly and you have not provided any personal guarantees to support the company's borrowing, then entering into insolvency such as CVA, administration or liquidation should not have any major bearing on you.
6. As a simple rule if you have been advised by your accountant to take c£10,000 a year through PAYE and draw the rest of the money you need to live, out in advance of paying dividends to shareholders, then this advice is not good advice if the company is fragile. If the company becomes insolvent you will have to pay these borrowings back to the company.
7. As a simple rule; NO you will not lose your house if the company becomes insolvent.
8. As a simple rule after a company goes into liquidation you can be a director of as many companies as you like. Providing and always providing you have not been disqualified as a director or been made bankrupt.
9. As a simple rule, corporate insolvency is complex!.
10. When a company enters insolvency all simple rules are not simple anymore! Get advice early!

Please do contact our free helpline on 0800 9700 539 for friendly and accurate advice. We hope you found this guide and please do send it to any of your colleagues as a PDF.

Unfortunately this business is full of jargon as are many others so we've put together a glossary of insolvency terms used in this guide.

For turnaround and insolvency KSA Group has put together a glossary of insolvency terms used in this guide.

Administration

When a company goes into administration, it is usually because it has fallen into financial difficulties, so an administrator is called in to run the company to see whether the company can continue or be sold so that new owners can turn the company around. If it can't then the company will be closed down and the assets sold to cover its financial responsibilities.

Administrator

A person who acts as a controller of the company when a firm goes into administration. All company actions must go through the administrator and the administrator has overriding control over the whole business. He is appointed by the Court.

AGM

An Annual General Meeting where the shareholders voice any issues and directors give information of the past year and forecasts for the future, they also vote on any changes that are eligible to be made within the meeting, i.e. change of auditors and directors. This MUST be held every year. Does your company do this?

Arrears

A term used when you have not paid invoices/made payments on debts and has built up and needs to be paid, if you do not pay the debt holder may take action to claim the money back. Asset An asset is something which you own that holds value should you come to sell it, i.e. a house or stock etc.

Asset

An asset is something which you own that holds value should you come to sell it, i.e. a house or stock etc

Balance Sheet

A statement of the assets, liabilities, and capital of a business or other organisation at a particular point in time, detailing the balance of income and expenditure over the preceding period.

Bankruptcy

An option that can be used if a person cannot pay their debts as and when they fall due, or they owe more than they own. This causes you to lose control of your assets and cannot be a company director for the period of the bankruptcy ban period. Bankruptcy also adversely affects your credit rating.

Cash Flow Definition: The amount of cash or cash-equivalent which the company receives or gives out by the way of payment(s) to creditors is known as cash flow. Cash flow analysis is often used to analyse the liquidity position of the company. It gives a snapshot of the amount of cash coming into the business, from where, and ...

CCJ

A County Court Judgment or court action where a company/person will take you to court because you have not paid a debt. The court will order you to pay the debt within an allotted time and if you don't the company will be able to take further action.

Charging Order

If a creditor can't retrieve monies owed through a CCJ, they can apply for a charging order. This secures the debt against a property so if it is sold, the creditor gets their money from the proceeds.

Comparison of Outcome

When a company faces insolvency and proposes an Administration, the Insolvency Practitioner has to set out what might happen in the event of a complete close down and liquidation of the company would be and then compare it with their own proposal

Companies House

This is where ALL Ltd and PLCs are registered, they store all information and make this info available to the public i.e. accounts, directors. Companies House also act to incorporate and dissolve companies.

County Court

A court with jurisdiction over one or more counties. This type of court deals with civil (non-criminal) matters. Businesses usually go through the County Court to recover money they are owed.

Credit Rating

A tool that banks and financial service providers use to assess how likely you are to be able to honour your debt, if you have a good rating you will have access to more funds than if you have a poor rating. Your rating is assessed on whether you have defaulted before or have any court judgements.

Creditors

A company or persons who owe money to another company for services provided. Creditors are classed as liabilities as it is money outstanding.

Creditors Petition (bankruptcy)

Creditors can petition for a debtor to be made bankrupt if an individual creditor is owed more than £750. Alternatively, creditors can join together to meet the £750 requirement. Proceedings normally take place at the debtors local county court with bankruptcy jurisdiction. Creditors can only ask for someone to be made bankrupt if: the debt is unsecured; and for a fixed sum which the debtor appears unable to pay.

CVA

A Company Voluntary Arrangement: Where a company is in an insolvent position a CVA may be used in order to set up a deal where a percentage of the debt is paid over a period time in order to ease the current cash flow problems and pressure on the directors. This allows the directors to focus on improving the business.

CVL

Creditors Voluntary Liquidation: The liquidation of a company means to cease trading, sell all the assets and terminate all contracts. It is initiated by the shareholders of the company and done by an insolvency practitioner (see below). Debtors A company or persons who owe you money for services you have provided, but not yet paid for. Classified as a current asset.

Debtors

A company or persons who owe you money for services you have provided, but not yet paid for. Classified as a current asset.

DBEIS - Department of Business, Energy, Innovation and Skills:

This has replaced the DBEIS. It is a Government agency which acts in the interests of all and aspire for higher productivity in all industries by promoting enterprise innovation and creativity. The DeBIS also aid in employment issues such as redundancy. The DeBIS runs the Insolvency Service in England & Wales.

Debenture

A form of security over assets of a company in exchange for a loan.

Debtors petition (bankruptcy)

Where a debtor decides they want to make themselves bankrupt, in order to do this the debtor must petition to the county court. See bankruptcy above.

Dilapidations

When a lease comes to an end there is normally a duty on the tenant to make good any damage and put the property back into a lettable state. A surveyor draws up a list of repairs and work that is known as a schedule of dilapidations. The costs can be quite high.

Directors

The decision makers of the company. The directors control the business and are responsible for its successful running and management. They're protected from personal risk by limited liability, but generally only if they act correctly!

Directors Disqualification

If a person is declared bankrupt or has committed certain insolvency offences then he or she can be barred from acting as a director by the DBEIS. It becomes illegal for that person to be a director or manager of a company for the period of disqualification.

Dissolution

A process that legally breaks up a company that no longer wishes to trade. In order to start the dissolution process the company must have ceased trading for 3 months.

Distraint

A popular tool for landlords where rent or other payments are not made. If the landlord has agreed a payment deal and the company is not keeping to it the landlord has various powers. Distraint means that an agent of the landlord can effect entry to remove goods or assets for sale to pay for the debt due. He /she does not need to wait for a long period for this to happen. In theory 1 week after a rent payment is due they can distraint. Nor does he/she need a judgment.

Domino effect

If a partner as an individual has an insolvency problem (perhaps from overspending/borrowing, gambling or drinking (or all of these)) and is being pursued by a creditor(s) this can lead to problems. It is even possible for the spouse of a partner to become insolvent, thus leading to the loss of the matrimonial home which, for example, may underpin security granted to a bank.

Factoring

A service provided by financial institutions such as banks and lenders who pay the company for unpaid invoices and help collect the remaining funds for a fee and they charge for lending the company money for a period until the debt is repaid.

FinTech

Is the term coined for technology companies that are involved in the finance sector such as mobile banking, online credit providers, credit cards and other transactions.

Fixed and Floating Charge

A mortgage, debenture or other security documentation, is likely to create charges over particular assets as security for borrowings or other indebtedness. There are essentially two types of charge, floating and fixed. A floating charge is appropriate to assets and material which is subject to change on a day to day basis, such as stock. Individual items move into and out of the charge as they are bought and sold in the ordinary course of events. The floating charge crystallises if there is a default or similar event. A floating charge is not as effective as a fixed charge but is more flexible.

Fraudulent trading

Put simply fraudulent trading is the continuation of trading with no reasonable prospect of repaying debts and with the intentions of defrauding creditors.

Going Concern

Where the company is continuing to trade for the current period and can cover its costs and make some money.

High Court

This is known as Her Majesty's High Court of Justice, is based in Westminster and is a senior to a County Court. It is the third highest court in the country. Cases made already in lower courts can be appealed here.

HMRC

Her Majesty's Revenue and Customs: the government body which collects and regulates PAYE, NIC VAT etc

Glossary cont.

Insolvency practitioner

A professional who specialises in insolvency and is licensed by the DBEIS. Insolvency practitioners often act to close a company in the best possible way for all parties involved. Only IPs can be a liquidator or Administrator.

Insolvent

A term that is used when a company/person cannot pay or cover their debts with the assets or funds they have as liabilities exceed assets.

Insolvent company

A company that cannot pay its debts as and when they fall due. The company will suffer from major cash flow problems and cannot pay what it owes thus it is insolvent.

Interim order

When someone is applying for an IVA (see below) they can ask the court to protect them from legal or bankruptcy actions by someone they owe money to.

Investigating accountants

Accountants who look at the business you run for the bank that is lending it money, they check accounts, forecasts, marketplace and management. The real reason the banks appoints them is to find out how secure debt is that the company holds! See a guide to Investigating accountants.

IVA

An Individual Voluntary Arrangement: Very similar to a company voluntary arrangement. However the IVA is for individuals as opposed to companies and removes the burden of personal debt to make a fresh start and improve their lives.

Joint Several Liability

Joint and Several Liability implies that all members are liable for the partnership debts in full or in part individually, dependent usually on their ability to pay. Thus a creditor(s) /liquidator can "go after" the member with the most assets to satisfy debts then the next and so on until all debts are satisfied or until all partners made bankrupt.

Liability

A Liability is something that you owe to somebody, i.e. a mortgage, loan payment credit/store cards.

Limited Company

A business that legally sets itself as a separate person so that its directors and shareholders are not liable for any of its (proper) actions. The businesses are usually privately owned.

Limited Liability

A mechanism that allows Limited company and PLC shareholders to limit their responsibilities if the business falls into difficulties, where shareholders will lose no more than their investment in the business should it default.

Liquidation

When a company dies. Once the process starts the company is administered by a liquidator who disposes of all assets, and distributes the proceeds to creditors and any remainder to shareholders. The company is then struck off from the companies register once this process is complete.

Liquidator

A liquidator is a person responsible for dealing with the winding up of a company and he/ she must be an insolvency practitioner.

Moratorium A period of time during which a certain activity is not allowed or required. Usually a moratorium is put in place to protect a person, business or company

No fault bankruptcy

Under the Enterprise Act 2002 the UK Government significantly relaxed the rules regarding bankruptcy. From April 2004 the sole trader or partner in a partnership, who has a failed business (where there are no issues of fraud, misfeasance, recklessness etc) is able to file for bankruptcy (see process above) and be discharged from that bankruptcy within say 12 months.

Nominee

A nominee is a licensed insolvency practitioner who helps propose a deal with their creditors under a proposal of a CVA/IVA and deals with legal issues and compliance such as chairing the creditors meetings, checking management accounts and forecasts.

Official Receiver

The Official Receiver is a civil servant in The Insolvency Service and an officer of the court. He (or she) will be notified by the court of the bankruptcy or winding-up order. He will then be responsible through his staff for administering the initial stage. This stage includes collecting and protecting any assets and investigating the causes of the bankruptcy or winding up.

Partnership

Similar to a sole trader, however there is more than one owner and there can be several different people that own different amounts of the business.

PAYE Pay As You Earn

A government scheme where your tax is deducted from your monthly wage and paid for you by your employer so that you do not have to calculate your own tax and National Insurance payments. The employer is responsible for collecting this tax and paying to the government. Failure to do so on time is a sign of insolvency

Phoenixism

An insolvent company is closed down and the business is moved to a new company to avoid paying debt.

Pension Fund

This is a pot of money into which contributions are made to build a fund to pay retirement pensions and funds that are drawn on to pay these pensions to ex-employees who were eligible for a pension.

Personal Guarantee

A personal guarantee is a tool which financial service providers can use to guarantee their debt by requesting the director or partner in a business to personally guarantee the debt regardless of whether the debt is used by the company or not. Should the debt default, then the bank will call on this personal guarantee and the guarantor may/will have to pay the remaining debt.

PLC

A Company that trades shares of its business on the stock exchange which can be owned by anyone. The company has limited liability and are generally quite large firms and have to disclose all actions. The minimum share capital level is 50,000 and it must file annual accounts within 6 months of the year end.

Prescribed Part

Is a fund that is used by the Administrator or Liquidator to pay dividend to the unsecured creditors. The Prescribed Part is calculated as; 50% of the first £10,000 available; and 20% thereafter up to a maximum of £600,000

PVA

A Partnership Voluntary Arrangement: The same process as a CVA however this is used for a company that is a partnership as the proprietors are joint and severally liable. The PVA has the same benefits as the CVA.

Receiver

A receiver is appointed by a bank normally to collect and administer a company's assets. The receiver then has a duty to collect the bank's debts only by selling the assets; he/she is not generally concerned with the other unsecured creditors or shareholders exposure.

Receivership

When a company defaults on a loan or payment the debt holder can call on a receiver to go into the company to sell the companies assets in order to pay back some or all of the debt. The company in receivership will lose control of the business while the receivers sell the assets and the company will usually be liquidated, the business may be sold and there is usually a loss of jobs.

Redundancy

A reason for dismissal, redundancy involves the closure (either temporary or permanent) of the business as a whole or closure of a particular department this could suggest that the business has no further use for the department you are working in, are downsizing or could be facing difficulties.

Reverse Premium

Is where a landlord may actually pay a tenant to occupy their premises. This may take the form of a contribution towards fit out costs or an actual lump sum.

SFLGS

Small Firms Loan Guarantee Scheme: By providing a government guarantee against default by borrowers, the Scheme enables high street banks and other financial bodies to lend between £5,000 and £250,000 to new and existing businesses. The DBEIS underwrites 75% of the loan. So if the company failed the bank will be able to claim up to 75% back from the DBEIS.

Shareholders

Owners of the business, someone who has bought shares on the open market if it is a quoted PLC. Or owns a stake in a limited company. They have a say in how the business is run and earn a share of the profits as a dividend.

Seize goods

The Enforcement Officer takes away and sells goods to pay off debt owed.

Simultaneous Voluntary Arrangements

Basically as the title suggest the mechanism is to link together a number of simultaneous individual voluntary arrangements to protect the partnership and the individual debtors. It allows the partnership arrangement to deal with partnership debts and individual arrangements to deal with any individual debts. It also protects the individual partners from the "fallout" of the partnership debts to the individual.

SIP 16

This stands for Statement of Insolvency Practice 16 and refers to pre-pack administration. Insolvency practitioners must adhere to these regulations and ensure this type of administration is not misused and all relevant disclosures are made to creditors.

SOFA

Statement Of Affairs: A statement of what you own, what assets you have and your liabilities and cost of living to summarise your financial affairs

Sole Trader

An owner of a business who is wholly responsible for the day to day running of the business and its debts. They are generally small firms with few employees

Statutory Demand

Usually this action is taken after a creditor has obtained a Judgment. It is a formal demand for payment of an undisputed debt (over £5000 from 1st October 2015) - the debt must be paid within 21 days of the demand being issued. Failure to pay a statutory demand can lead to a winding up petition or bankruptcy being issued. In any event, the creditor has to pay to issue this document/action and therefore he/she/it is now becoming much more serious.

Supervisor

The Supervisor collects payment of CVA/IVA contributions and ensures that contributions are kept up to date; failure to keep up to date can cause the supervisor to default and abort the CVA/IVA leading to liquidation/bankruptcy.

Trading Out

Working through problems, this phrase is used where you continue to trade through tough times in order to rectify your problems and improve your company's health.

Trustee in bankruptcy

A Person who holds property in trust for another. In bankruptcies the IP holds the property of the bankrupt in trust for creditors and is referred to as the trustee.

Turnaround practitioner

An advisor who specialises in helping ailing companies solve their problems and get back on their feet, a simple analogy of this would be to describe a turnaround practitioner as a company doctor.

Glossary cont.

Turnover

The money that a business takes in over a period of time through its activities is known as turnover. It is not all PROFIT!

Tribunal

This is a body that can rule and pass judgement on certain kinds of disputes. They often includes judges that are not necessarily legal professionals but specialists in their field.

Unique Selling Proposition (USP)

Why do your customers buy from you what is it about your product and/or service that distinguishes your from your competition)? You may have more than one for different product/service lines or segments of your business.

Validation Order

A validation order is a court order a company can apply for to 'unfreeze' the company's bank account. This order prevents a liquidator from holding the bank liable for money being withdrawn.

VAT Value Added Tax

A duty that is paid on qualifying goods of 17.5% above the company's selling price less any VAT paid for goods the company has bought in the same period. This is collected by companies for the HM Revenue & Customs.

Walking Possession

A bailiff (for the County Court) or Sheriff (for the High Court) has visited your premises and obtained entry. He /she has asked for payment of the proven debt. If you have not paid this plus the court and his costs he can "take possession" of the goods, equipment, fixtures, stock etc on the premises. Effectively if you do not reach a deal or pay in full he can remove and sell the assets in 5 days. To sell the assets after they are covered in this way is a criminal offence. If the bailiff has obtained a walking possession he can force entry to recover the goods after the 5 day period.

Warrants

In law, a warrant can mean any authorisation. Often in statute the warrant of a particular person is required before certain administrative actions can take place. As the creditor has not been paid under the judgment the creditor can apply to the court for a warrant of execution. If the debtor is in another area the court can forward this to the local court. A notice of warrant will be issued to the debtor. If payment is not made a bailiff of the court can be sent to collect payment or seize goods.

Wrongful trading

A Director may be held liable for wrongful trading if they allowed the company to continue in business when they knew or ought to have known that there was no prospect of meeting the company liabilities as they fell due. Put simply lying about the current state of the company and hiding from reality.

WUP

Winding Up Petition: A tool that can be used should a debtor continuously refuses to pay its debts so the company presents its petition to the court to have the company closed down.

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Disclaimer

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Contact Details

"Every business is different and every situation is unique."

If you give us a call we can advise you on which course of action suits your particular circumstances. We have years of experience with HMRC, banks, creditors, suppliers, shareholders, lenders etc and we know their likely impact on your business. In many cases, you may not be the best person to judge your business's viability as you are too close to it. Reality check the situation with us and we can advise further and follow up with a free meeting for piece of mind. Health warning about advice from friends and family!

Below are the offices we currently have across the UK.

London

1st Floor, 99 Bishopsgate
City of London
EC2M 3XD
Tel: 020 7887 2667

Essex

Insight House
Riverside Business Park
Stoney Common Road
Stansted Mountfitchet
CM24 8PL
Tel: 01279 647447

Manchester

Chancery Place
50 Brown Street
Manchester
M2 2JG
Tel: 0161 956 8671

Edinburgh

66 Albion Road
Edinburgh
Scotland
EH7 5QZ
Tel: 0131 242 0081

Nottingham

35 Park Row
Nottingham
NG1 6EE
Tel: 0115 971 7063

Belfast

Midtown Business Centre
25 Talbot Street,
Cathedral Quarter
Belfast
BT1 2LD
Tel: 02890 160 467

Birmingham

2 Snow Hill
Birmingham,
B4 6GA
Tel: 0121 378 0671

Bristol

One Temple Quay
Temple Back East
Bristol
BS1 6DZ
Tel: 0800 9700539

Gateshead

C12 Marquis Court,
Team Valley
Gateshead
NE11 0RU
Tel: 0191 482 3343

Berwick

Units 7 & 8,
The Chandlery
Berwick Upon Tweed
Berwick
TD15 1HE
Tel: 01289 309 431

