WORRIED ABOUT THE FINANCIAL HEALTH OF YOUR COMPANY? CONCERNED IT COULD BE INSOLVENT?
HERE’S OUR GUIDE TO THE POTENTIAL SOLUTIONS FOR STRESSED DIRECTORS
In this FREE company debt guide for stressed directors, we cover everything you need to know. That includes:

**YOUR CONCERNS**
- Everything from an inability to pay HMRC the money you owe
- Creditor pressure
- Late payments
- Security charges
- Lease and finance agreements
- Compliance visits,
- Asset seizure
- Winding-up petitions and more

**THE RISKS**
- What are the implications of your position?
- What do you do if you receive a statutory demand or a CCJ?
- How should you handle payment demands from HMRC?

**WHAT SHOULD YOU DO?**
- Is your home at risk if you have signed a personal guarantee?
- Will you be made personally liable for your debts?
- How should you ease those money worries?
- Can you get your customers to pay you on time?
- What if your company becomes insolvent?
- How do you handle an HMRC investigation?

**THE SOLUTION**
- What rescue procedures are available?
- Could alternative finance sources help you raise the money you need?
- Will HMRC give you more time to pay?
- Perhaps an insolvency procedure like a company voluntary agreement (CVA) is the best option for you?

This guide is full of free, impartial and expert advice to help directors of companies and LLPs turn their company around and resolve their situation effectively.

If you require specific advice, or simply a no-obligation chat about your situation, please call...

**AABRS**  
**TEL:** 020 8444 2000  
**EMAIL:** SC@AABRS.COM
There are different legal responsibilities involved in becoming a company director. The truth is that running a company can be a risky business, but many people do not take the time to consider just what it means. While you don’t need to go through the thousands of pages of legislation, you MUST understand the basics. We won’t cover all your responsibilities in this guide, but we will look at all those that could impact you when things start going wrong.

The truth is that much of what you need to know is actually quite basic, and with a little common sense you should be able to get by. As a general rule of thumb, if something seems wrong then it probably is.

**WHAT DOES IT MEAN TO BE THE DIRECTOR OF A LIMITED COMPANY?**

If you are the director of a private limited company (LTD), or a designated member of a limited liability partnership, (LLP) then, as long as you act reasonably and responsibly, you receive limited liability if the company fails. That means you are only financially responsible for the company’s debts up to the value of the money you have invested.

One incredibly important point some directors fail to understand is the difference between themselves and the company. As a director, you and the company are separate legal entities. The business is responsible for everything it does, and its income and debts are separate to yours. Any profit the company makes is not yours as a company director. Failing to understand this distinction is one of the biggest causes of problems when things start to go wrong.

**THE DIFFERENCE BETWEEN DIRECTORS AND SHAREHOLDERS.**

Another important distinction to understand is the difference between company directors and shareholders (or members). Every limited company has ‘members’ who own shares in the company. Company directors are responsible for running the business on behalf of its shareholders. In many cases, directors are also shareholders in the company, but they do not have to be.

Most companies are limited by shares. That means shareholders’ liability for company debts is limited to the value of the shares they hold. If a company director is not a shareholder, then as long as they have acted properly in the running of the company and have not signed any personal guarantees, they have no personal liability for company debts. The only way company directors can be made liable to repay company debts, in this case, is if they have acted wrongfully or fraudulently, or continued to trade despite knowing the company was insolvent.
Potential causes for concern include:

As a company director, there is a wide range of potential problems that could give you cause for concern. You may be worried about the financial future of the business, but don’t think it’s currently insolvent. Alternatively, you could be facing increasing creditor pressure and are unsure how to respond. Whatever concerns you have, it’s essential they are addressed immediately to prevent the problem escalating.

UNABLE TO PAY HMRC

This can include VAT, PAYE and Corporation Tax. If this situation goes unchecked it could lead to threats of legal action, an HMRC investigation, compliance visits, personal liability notices (PLN), the seizure of assets, security bonds, winding-up petitions, and ultimately the liquidation of your company.

CASHFLOW PROBLEMS

A cashflow shortfall can arise when company expenses exceed income. This can be caused by a dip in sales, the loss of a key customer, poor stock control, inefficient debt collection processes or a lack of proper cashflow forecasting. Cashflow problems can leave otherwise viable businesses without enough cash to pay their suppliers, repay debts or pay the staff’s wages.

CREDITOR PRESSURE

One major worry for company directors is creditors that relentlessly chase the payment of debts they cannot afford. This is a situation thousands of UK companies find themselves in every year, with suppliers, landlords, business rates, utilities and equipment providers all needing to be paid.

BORROWING MONEY

At one point or another, most companies will borrow money to grow, build the business, employ more people and move to bigger premises. But with so much choice out there, and some lenders requiring security and personal guarantees, directors can worry about finding the right source of finance and personal liability.

LEGAL PRESSURES

As a company starts to struggle there are a range of legal procedures, creditors can use. Lawyers and debt collection agencies can become involved and statutory demands and country court judgements (CCJs) can be issued. Ultimately, if the debt remains unpaid, a winding-up petition can force the closure of the company.
Although they may be stressful, many of the above common causes of concern can be easily resolved. For example, if you’re struggling to pay your VAT bill then you should contact HMRC immediately to negotiate more time to pay. That may be all you need to get your business back on track. Alternatively, if you’re experiencing cash-flow issues, some minor restructuring or basic debt advice could free up some extra cash.

The real problem starts when a number of these events occur at the same time. Or, each event is so serious, such as an unpaid corporation tax bill or a growing list of unpaid creditors, that it cannot be easily resolved. In that case, the real risk is that the business becomes insolvent.

WHEN DOES A BUSINESS BECOME INSOLVENT?

A UK company is considered to be insolvent if it is unable to pay its debts. There are three tests for company insolvency:

THE CASHFLOW TEST

Can the company pay its debts when they become due? A company director has a legal requirement to understand this issue. If they believe the company does not have enough cash to pay its liabilities on time, they must take action or seek professional advice.

For example, if the company is struggling to pay National Insurance contributions and PAYE tax over to HMRC when it is due, this could be a sign that the company is insolvent. On the other hand, it could be that the company is consistently exceeding the payment terms it has agreed with creditors. Rather than paying within 30 days, it is commonly taking 60+ days to pay up.

THE LEGAL ACTION TEST

If a creditor has served a formal demand for an undisputed sum at the company’s head office, and this has not been paid for three weeks, this is an indicator that the company could be insolvent.

WHAT IF THE COMPANY IS INSOLVENT?

If any of these tests indicate that the company could be insolvent, you must act to maximise the creditors’ interests. If you bury your head in the sand, continue to trade and accrue further debts you could be accused of wrongful trading. You may then be made personally liable for a proportion of the company’s debts.

“A UK COMPANY IS CONSIDERED TO BE INSOLVENT IF IT IS UNABLE TO PAY ITS DEBTS.”
As soon you are aware that the company is insolvent, as a company director, you must act properly and responsibly and do everything you can to maximise your creditors’ interests. Failure to do so could see you accused of wrongful trading or trading while insolvent.

You do not necessarily have to stop trading if you think your company could be insolvent. As long as you make every effort to repay your creditors and there is a realistic prospect of doing so in the future, you can continue to trade. However, if you have received a statutory demand then you must either settle within 18 days or pay the creditor in full within the following 3 days, 21 days in total.

Wrongful trading can only apply if a company is involved in a terminal insolvency situation (one that results in the closure of the company). This is also after a formal insolvency procedure, such as a creditors' voluntary liquidation (CVL), administration or liquidation has taken place. You cannot be accused of wrongful trading if you enter into a company voluntary arrangement (CVA), trade your way out of insolvency or successfully refinance the business.

**WHAT CONSTITUTES WRONGFUL TRADING?**

If the liquidator or the Insolvency Service believes you have been involved in wrongful trading, an investigation will take place. If the accusations are proven you could be made personally liable for the company's debts from the time you knew the company was insolvent.

Examples of wrongful trading include:

- Not filing annual returns at Companies House
- Not filing audited or annual accounts at Companies House
- Failing to pay National Insurance contributions or PAYE tax when due
- Not paying VAT when due
- Paying yourself an excessive salary when the company is insolvent
- Taking credit from suppliers when there is no reasonable prospect of repayment
- Accruing debts you cannot repay
- Taking deposits from customers when there is no prospect of delivering the goods

However, wrongful trading is not the only risk you need to be aware of:

**FRAUDULENT TRADING?**

Fraudulent trading takes place when a company carries on its business with the intent of purposefully deceiving or defrauding its creditors. Examples of fraudulent trading include accepting credit from suppliers that cannot be repaid or maximising the amount of money coming into the business prior to liquidation.

Fraudulent trading is a very serious allegation that can lead to a prison sentence, director disqualification and/or financial penalties. It is considered to be a more serious offence than wrongful trading, so, if the company is facing voluntary or compulsory liquidation, extreme care must be taken.
TRANSACTIONS DEFRAUDING CREDITORS

In this case, the company does not have to be insolvent for an accusation to be made. For example, questions may be asked if a company restructure or similar arrangement seems to preserve value for shareholders at the expense of creditors. It is not uncommon for companies to restructure to separate successful parts of the business from those that are underperforming.

The old business can then be stripped of its most valuable assets leaving creditors with no way to claim the money they are owed. Transactions may also be made as a gift or at less than market value. Failure to achieve maximum value acts to the detriment of creditors. In this case, it may be possible to recover the asset, or make the buyer pay the full price so the creditors can receive the money they are owed.

ANTECEDENT TRANSACTIONS

As a company director, you must be careful about any transactions that put assets beyond the reach of creditors before a company becomes insolvent. This can range from crude transactions to more subtle or calculated approaches. The most basic example is where a debtor transfers property to a spouse or a family member prior to the insolvency. However, there may be less obvious transactions to be investigated. For example, the debtor may have made preferential payments to some creditors at the expense of others.

PREFERENCE

One common risk company directors face is showing a preference to a particular creditor. This occurs when payments are made to specific creditors before entering into a formal insolvency procedure. If the payment makes the creditor better off than the majority of creditors, and it can be proven you had the ‘desire’ to make that creditor better off, you could be made personally liable for the payment. You could also be disqualified from acting as a company director for up to 15 years.
There are also a separate range of risks associated with borrowing money that can give company directors cause for concern. Most companies, at one time or another, will need to borrow money from banks, friends and family, asset-based lenders and even private investors. Some lenders will ask for legal assurance that the money will be repaid by granting security over company assets or even asking for personal guarantees.

**DIFFERENT TYPES OF SECURITY**

When a company enters a formal insolvency procedure there is a defined hierarchy to determine which creditors are repaid first. The first payment covers the insolvency practitioner’s fee. Then the secured creditors are paid, followed by preferential creditors, with unsecured creditors ranking near the bottom of the list. The secured creditors will generally be banks and other asset-based lenders that hold a fixed or floating charge over the company’s assets. When the business enters an insolvency procedure, the specific charge over which security is held can be sold to repay the debt. Secured creditors fall into two categories:

**THOSE WITH A FIXED CHARGE ON A BUSINESS ASSET(S)**

A fixed charge is held over the specific asset financed by the lender. That could be the business’s premises, as in a mortgage, or a particular vehicle or piece of machinery. In this case the charge is registered at Companies House. Another example is in the case of invoice financing, when a factoring company effectively ‘buys’ the business’s sales ledger and the charge is held against that asset. A company cannot dispose of a secured asset in the ordinary course of its business unless the loan is repaid.

**THOSE WITH A FLOATING CHARGE ON A BUSINESS ASSET**

A floating charge ensures that in the event of insolvency, the company holding the charge will be placed higher up the creditor hierarchy than it would be if the debt was unsecured. A floating charge does not apply to a particular asset until the company becomes insolvent, at which point the floating charge crystallises and becomes fixed. For this reason, the company is free to dispose of its assets in the ordinary course of business.

**UNSECURED CREDITORS**

There are also creditors who do not have any security. HMRC, suppliers, contractors and customers are all examples of unsecured creditors. In the event of insolvency, these creditors are amongst the last creditors to be paid, only ahead of the shareholders. For this reason, unsecured creditors rarely receive all the money they are owed from insolvency companies.

“MOST COMPANIES, AT ONE TIME OR ANOTHER, WILL NEED TO BORROW MONEY FROM BANKS, FRIENDS AND FAMILY, ASSET-BASED LENDERS AND EVEN PRIVATE INVESTORS.”
PERSONAL GUARANTEES

One of the greatest potential causes of stress for company directors is personal guarantees. In some cases, securing the debt against a company asset is not enough to satisfy the lender’s risk assessment, so they may ask for a personal guarantee.

As a director of a limited company, you should always think extremely carefully before signing a personal guarantee. You should also seek independent legal advice as the terms of the agreement will vary. For example, it is not uncommon for banks to request a legal charge over your home at the same time.

If you have signed a personal guarantee and the business becomes insolvent, enters administration or goes into receivership, you will be personally liable for the part of the company’s debt you have guaranteed. Once a personal guarantee has been signed, the likelihood is you will have to pay.

The only way to get out of a personal guarantee is to renegotiate the contract so the lender no longer insists on the guarantee. Otherwise, if it is called on, you will either have to pay, come to some sort of agreement with the lender, or go bankrupt.

“I APPROACHED AABRS WHEN EXPERIENCING DIFFICULTY WITH A PERSONAL GUARANTEE THAT I SIGNED, PRIOR TO MY BUSINESS COLLAPSING. AABRS WAS A GREAT SUPPORT AND COMFORT AT A PARTICULARLY STRESSFUL TIME AND I WOULD HAVE NO HESITATION IN RECOMMENDING THEM TO OTHERS.”
We have covered the ways in which you can be made personally liable for company debts. That includes being found guilty of wrongful or fraudulent trading; being involved in antecedent transactions; entering into transactions that deliberately defraud creditors, or creating a preference. However, there are another couple of ways in which you could be liable.

**DIRECTORS’ LOAN ACCOUNT**

If you take money out of a company which is not classed as salary, you may be creating a director’s loan. A director’s loan is a legitimate way to take money out of a business. If you take more money out of the business than you pay in, your director’s loan account becomes overdrawn. The problem then comes if the company is insolvent, as this loan will have to be repaid.

**OVERDRAWN SHAREHOLDERS’ LOAN ACCOUNTS IN INSOLVENCY SITUATIONS**

If a company makes no profits or has no distributable reserves then it cannot pay a dividend. Directors MUST stop taking dividends as soon as they are aware there are no reserves to cover them. Any money taken during this time is effectively a loan from the company and must be repaid.

If a company becomes insolvent and an overdrawn director’s loan account exists, the liquidators appointed to repay the company’s creditors will see the loan as an asset to pursue. Legal action can be taken to make the director repay the money to help satisfy the company’s creditors. In cases where these loans cannot be paid, a director could find their company’s insolvency leads directly to their own personal bankruptcy.

**PERSONAL LIABILITY NOTICES**

The personal liability notice system was introduced to act as a deterrent and enable HMRC to recover money from directors of companies that had abused the National Insurance system.

A notice can be issued by HMRC where it believes a company has failed to pay National Insurance contributions due to the neglect or fraud of an ‘officer’ of the company.

An ‘officer’, in this case, includes company directors, the company secretary, shadow directors and the manager of the business as a whole. The individual issued with the personal liability notice becomes personally liable for the National Insurance contributions debt specific in the notice.

HMRC does not want to penalise companies that are genuinely struggling and are not making National Insurance contributions simply because they cannot afford to do so. However, if you do not pay NICs while making payments to other creditors, yourself as a director or connected companies, you could be subject to an investigation.

**A DIRECTOR’S LOAN IS A LEGITIMATE WAY TO TAKE MONEY OUT OF A BUSINESS.**
WHAT HAPPENS DURING A PERSONAL LIABILITY NOTICE INVESTIGATION?

HMRC will launch an investigation if it believes the lack of a National Insurance payment is down to fraud or neglect and it expects to recover all or a significant proportion of the unpaid amount. As part of the investigation you will be visited by an HMRC inspector who will:

Look carefully at the company’s books;

• Ask the company’s officers to explain why the failure took place;
• Try to determine the facts and circumstances around the failure to pay;
• Consider the extent of fraud or neglect on the part of each company officer;
• Seek to apportion the debt fairly between the company’s officers based on the part they played;
• Consider and respond to representations from the company’s officers.

If you are the subject of a personal liability notice investigation and accept liability for the underpayment you can make representations to negotiate a settlement.

PERSONAL LIABILITY NOTICES IN INSOLVENCY

If your business is insolvent and the HMRC suspects fraud or neglect, it will ask the liquidator or official receiver for access to company’s books and records. It will then decide whether to issue a personal liability notice.

“CREDIT CARDS, INLAND REVENUE, VAT, BUSINESS LOANS AND OVERDRAFT, YOU NAME IT I HAD IT... JUST PICKUP THE PHONE TO AABRS, IT’S THE BEST THING TO HAVE HAPPENED TO ME IN A WHILE.”
The first thing you must do to protect yourself is to recognise when the business is in trouble. A business does not start to struggle overnight. There will always be a number of signs that your business is under pressure, at risk or has become insolvent. Not only should you be able to spot the warning signs, but you should also act on them at your earliest opportunity to give your business the greatest chance of survival.

The worst thing you can do is to bury your head in the sand as this will increase the risk of being accused of wrongful or fraudulent trading. The longer you take to recognise and act on the warnings signs, the fewer the options available to you and your business.

**THE WARNING SIGNS OF A STRUGGLING BUSINESS**

Anything unusual or out of the ordinary that is not what you would expect from a busy, healthy and profitable business could be a sign that it’s starting to fail. It's crucial company directors can identify what is normal and what's not. Below are just a few signs that everything is not as it seems.

**INSUFFICIENT CASHFLOW**

If your company consistently lacks the funds to cover essential operating expenses it could be a matter of time before it becomes insolvent.

**CREDITOR PRESSURE**

Are you under pressure from creditors? A payment demand could be just around the corner if lenders, credit card companies, HMRC, mortgage providers or other creditors regularly chase you for payments. If payment is still not forthcoming, a winding up petition could be the next step.

**LIABILITIES GROW**

Have you reached your maximum credit limit from lenders such as banks or suppliers? This could be a sure sign your business is on the verge of insolvency.

**WAGE COMMITMENTS**

A business’s inability to pay its employees is a common indicator of looming insolvency.

**STAFF TURNOVER IS HIGH**

Below average terms and conditions and a poor working environment are often signs that a business is underperforming.

**INCREASE IN DEBTOR DAYS**

The lack of an effective credit control policy and an increase in late payments could be a sign of distress.

**YOUR REPUTATION SLIDES**

The company’s reputation could take a hit due to cost cutting and the inability to retain key staff.

**THE BANK ASKS FOR INCREASED SECURITY OR PERSONAL GUARANTEES**

This is a sure sign that the bank’s confidence in your business is low.

**LATE PAYMENTS TO HMRC**

You have not paid VAT, PAYE or corporation tax on time and have incurred a penalty or asked for more time to pay.

**LATE FILING OF COMPANY ACCOUNTS**

You have not filed company accounts or the company’s annual return at Companies House. If your business is starting to fail then the likelihood is you will experience at least one of these symptoms, and as soon as you do, you need to act. The first thing you should do is check whether your company is insolvent using the insolvency tests described on page 4 of this guide.
**THE BUSINESS IS SOLVENT**

If you are not currently insolvent and believe you have a good chance of trading your way out of the current difficulties, it is essential you seek immediate professional advice to remedy the problems you have.

It may be that restructuring will allow you to concentrate on the successful part of the business, or alternative sources of finance could be accessed to inject capital into the company. Alternatively, contacting HMRC to arrange a payment plan or renegotiating existing contracts could provide the lifeline you need. At this point, you should be extremely wary of investing further personal funds into the company or accessing finance that is secured against your home or requires a personal guarantee.

On the other hand, you may decide that the business is no longer viable and your best option is to close it down before the situation gets any worse. In this case, you can get it struck off the Register of Companies or enter into a members’ voluntary arrangement (MVA), but only if the company has no debts.

**THE BUSINESS IS INSOLVENT**

As the director of a solvent company, your main duty is to promote the success of the company, for the benefit of its shareholders. However, as soon as you are aware the business is insolvent, all that changes. From that point on, your duty is to act in the best interests of your creditors. You must now decide whether to enter a formal insolvency procedure immediately, or to continue trading, perhaps with the help of a company voluntary arrangement (CVA). If you decide to continue trading you must ensure the company’s assets are preserved and protected and the creditors’ debts are not made worse. Failure to do so and you could be accused of wrongful trading and be made personally liable for the repayment of company debts.

Making sure company debts do not increase during this period is more difficult than it sounds. You may believe you have a good chance of trading your way out of insolvency, but to do so debts like rent, rates and wages will inevitably accrue. Some directors will try everything possible to save their failing business, even if the strategy is extremely risky and wrongful trading claims can arise. In some situations, directors deliberately incur debts despite knowing they will never be repaid.
SO WHAT SHOULD YOU DO?

If you decide to trade while insolvent you must be extremely careful. Here’s what you should do:

SEEK PROFESSIONAL ADVICE IMMEDIATELY

The earlier you get in touch with an insolvency professional the greater the chance the business will be saved. This will also help to reduce the risk of wrongful trading accusations.

RECORD EVERYTHING

At this time you must ensure a record is kept of all the decisions you make and why. This will help to show that the decisions were made for the right reasons. This includes minutes of board and shareholder meetings.

REVIEW YOUR POSITION

You should also regularly gather, review and retain copies of all information pertaining to the company’s financial position. This includes documenting the assets and liabilities.

EVALUATE FUTURE INCOME

If you’re going to successfully turn the business around then a healthy level of future income is essential to demonstrate the company’s viability. This should be done regularly and objectively.

KEEP STAKEHOLDERS INFORMED

At this stage, you must also inform all stakeholders, such as clients, suppliers, creditors and employees, of your position and keep them regularly updated.

WHAT SHOULD YOU NOT DO?

HOPE THE SITUATION WILL RESOLVE ITSELF

Sticking your head in the sand is the worst thing you can do. It is your responsibility to take action. Failure to do so will only make the situation worse, but it could also lead to accusations of wrongful trading.

MAKE OPTIMISTIC ASSUMPTIONS

Now is not the time to predict a 50 percent spike in sales or improved performance unless you have solid reasons to do so. Dealing in facts is the only way to find the most appropriate solution.

IGNORE CREDITOR CONTACT

You should keep in contact with your creditors, including HMRC, and respond to requests for legal documentation and other information.

MAKE PROMISES YOU CAN’T KEEP

It might be tempting to reduce creditor pressure by telling a supplier they will be paid next week, but if the payment doesn’t arrive it will only make things worse.

HIDE THE ISSUES

To resolve the situation in the right way you must ensure relevant information is shared with all parties and the issues are dealt with head on.

If you continue to enter into new contracts and trade with no intention of repaying creditors, you could be found guilty of wrongful trading and be banned from acting as a director of any company for 15 years.
We have so far detailed the most common concerns, and the associated risks, that company directors face. We have also considered how company directors should act in situations when the business is struggling or has become insolvent.

But what strategies are available to help company directors rescue their companies and resolve these situations?

A FAILURE TO PAY TAX TO HMRC

If your company is unable to pay its tax liabilities in full when they are due, you must contact HMRC immediately to explain the situation. Failure to do so and you will face payment penalties and escalatory legal action that could result in a winding-up petition being served to close the company down. So, you need to act quickly and responsibly to deal with this serious threat to your company.

At this point you have three options:

1. AGREE A ‘TIME TO PAY’ DEAL WITH HMRC - This allows you to pay the money you owe in affordable instalments over a period of up to a year. If a time to pay deal is agreed, all other taxes will have to be paid when they are due or the arrangement will be in default. If there is a default you are likely to lose the confidence of HMRC. This will considerably reduce the company’s options to settle with HMRC in the future. For this reason, it is essential you only agree to monthly instalments you can realistically afford.

2. PROPOSE A COMPANY VOLUNTARY ARRANGEMENT (CVA) - If your cashflow forecast shows that the company cannot afford to repay the tax over a time period that’s acceptable to HMRC, consider a CVA. If the company is viable but insolvent, this is a powerful way of dealing with a cashflow problem and tax arrears realistically afford.

3. TRADING OUT - Seek professional advice to help you cut costs, raise finance or restructure the business to solve your cashflow problems. This can avoid formal insolvency procedures like voluntary liquidation, compulsory liquidation, administration and a company voluntary arrangement (CVA).

IF YOU’RE COMPANY IS UNABLE TO PAY ITS TAX LIABILITIES IN FULL WHEN THEY ARE DUE, YOU MUST CONTACT HMRC IMMEDIATELY TO EXPLAIN THE SITUATION.
If your company is experiencing serious cashflow problems then alternative finance options could be an effective way to jumpstart the business before things get worse. Companies with serious cashflow issues are likely to have a low credit score, but that doesn’t mean there aren’t finance options available. Asset financing, invoice discounting or factoring allow you to use company assets, outstanding invoices or accounts receivable as security on a loan. Although this does mean putting the assets at risk, if all you need is some extra capital to kick start an otherwise viable business, this could be the solution for you.

Alternatively, if you do not have the necessary assets to allow for this type of financing, a company voluntary arrangement (CVA) is another option you should consider. In this case, an insolvency practitioner will review your current debt situation and help you draft and submit a proposal to creditors on your behalf. If the CVA is accepted by your creditors then you will be able to repay all or a proportion of the company’s debts over a longer period of time.

If creditors are threatening to wind up your business and have already issued a statutory demand or a CCJ against your business, you must act now to prevent this from happening. In this case, a company administration procedure, that ceases any ongoing legal action, could give you the time and protection you need to propose a CVA or liquidate some of the company’s assets to repay the debts.

If you think your level of debt is so great that the likelihood of a recovery is slim, a pre-pack administration is one option you could consider. In this case, the assets of the insolvent business are sold to a new company which is unburdened with debt. This effectively allows business to continue operating under a new name but with the same customers, employees, equipment and other assets.
In this guide, we have discussed a range of formal insolvency procedures, such as company voluntary arrangements, pre-pack administrations and voluntary liquidations. We will now describe each of these procedures in more detail and explain exactly how they are likely to affect you as a company director.

**COMPANY VOLUNTARY ARRANGEMENT**

A company voluntary arrangement (CVA) could be an option if your insolvent business is viable in the future but current pressure is mounting. In this case, a CVA is generally considered to be one of the best insolvency procedures available. Not only does it leave you in control of the business and cease any ongoing legal action, but it also allows you to repay company debts from future profits over a typical period of 3-5 years. In many cases, personal guarantees are also not called in, giving you and your business the very best chance of survival.

However, it is important to note that not all CVAs are successful. The company must be able to show that it will have enough capital in the future to cover the debt repayments. The proposed CVA must also be accepted by 75 percent of the creditors before it can be agreed. For this reason, it is essential you seek the advice of an insolvency practitioner who will discuss the situation with you and determine whether a CVA is appropriate. If a CVA is a feasible route, the IP will create a CVA proposal that the company can afford, but which also stands a good chance of being accepted by the company’s creditors.

**HOW DOES A CVA AFFECT COMPANY DIRECTORS?**

- A CVA will not affect your personal credit rating;
- When applying for insurance products you will often be asked if you have been a director of an insolvent company and will have to provide details of the CVA;
- No dividends can be paid to shareholders during a CVA;
- Personal guarantees may be called in if the company enters a CVA but only if the lender has not taken security over the company.

**ADMINISTRATION**

Administration is a powerful process aimed at rescuing and turning around insolvent companies. During this time a moratorium will be placed on the company to protect it from legal action from all creditors, including the bank. While the process is ongoing the company will be managed by an administrator, whose job it is to restore the company to profitability. Company directors will lose control of the business during this time but must cooperate with and assist the administrator.

An administrator’s primary aim is to rescue a company, but after evaluating the situation they may find it’s more appropriate to realise some of the company assets for the benefit of its creditors to sell the company as a going concern. Within eight weeks of their appointment the administrator will produce a written statement explaining the action they intend to take.
HOW DOES ADMINISTRATION AFFECT COMPANY DIRECTORS?

• Administration can be an expensive and public process, which can have an impact on the company in the future;

• Although an administration could end up providing a positive outcome in the long-term, it could also mark the beginning of the end of your business;

• Once an administrator has been appointed there is little that can be done to reverse the process.

• If the administrator decides to close the company any outstanding directors loans will have to be repaid;

• If the company is closed down you will also be responsible for repaying any debts you have personally guaranteed.

• If the company is put into liquidation you will also lose your job.

PRE-PACK ADMINISTRATION

A pre-pack administration could be an appropriate solution in situations where there are considerable creditor pressure and a winding-up petition is threatened. The process involves the sale of the more profitable parts of the business to buyers who have already been found.

In many cases, the jobs of existing employees can also be saved.

If the business is sold to the former company’s directors, they will have to fund the acquisition of the assets at market value. The company assets will be independently valued to ensure a fair price is paid.

A pre-pack administration is another powerful tool you could use to sell the business to a third party, trade buyer or the existing directors operating under a new company. This process is not simply a way for a company to avoid repaying its existing creditors. In fact, in many cases, this process actually provides a better return for the creditors than the alternatives.
HOW DOES A PRE-PACK ADMINISTRATION AFFECT COMPANY DIRECTORS?

- It will allow you to continue working on revenue producing contracts to which the company is committed;
- A pre-pack can generate negative publicity if the former directors are seen to be shedding liabilities;
- The sale of the business as a going concern reduces the impact on the continuity of business operations;
- You keep some control over the business during this type of administration;
- It can provide an opportunity to restructure the company in whole, from employees to contracts;
- Your conduct will be open to investigation in regard of the liquidation of the old company;
- HMRC may disallow VAT registration by the new company if misconduct has been uncovered. The newly-formed company may have to pay a bond before it can register for VAT;
- You will need to find the necessary funds to buy the business’s assets;
- Creditors will call in any personal guarantees and you will be personally liable.

CREDITORS’ VOLUNTARY LIQUIDATION

If the business is insolvent, has no future and could accrue further debts, a creditors’ voluntary liquidation (CVL) could be the most appropriate way to close the company down. A CVL will bring an end to the company and its assets will be sold for the benefit of its creditors. Although no director wants to see their company closed down, if the company cannot pay its debts on time and you are worried about wrongful trading accusations, a CVL could be the answer.

A CVL is the most common form of liquidation in the UK and is preferable to having the company wound up in court. The primary reason most directors choose to liquidate the company voluntarily is to reduce the level of scrutiny they face.

In the case of a CVL, the decision to liquidate is made by a board resolution, which is instigated by the director(s). Once the decision has been made, a licensed insolvency practitioner will be appointed to act as the liquidator and a creditor’s decision process meeting must take place. At this point, the liquidation of the company can go ahead. The liquidator will advertise the liquidation, dispose of the company’s assets and attend to various administrative matters.
HOW DOES A CVL AFFECT COMPANY DIRECTORS?

As a company director, if you have acted properly in charge of the company then a creditors’ voluntary liquidation can bring a quick end to the creditor pressure you have been facing. Once the company has been liquidated there are also no restrictions on your ability to become the director of another company, although there are strict limitations about the re-use of the company name. Perhaps the greatest benefit of a CVL for a company director is the ability to bring an end to a period of great worry and uncertainty. As well as putting an end to the creditor pressure, there’s also the hope that the creditors’ interests will be maximised.

As part of the liquidation process, whether it’s a creditors’ voluntary liquidation or a compulsory liquidation, you will have to comply with the liquidator’s requests for information. Failure to do so may constitute a criminal offence.

To enable the liquidator to complete his duties, you will have to hand over the company books and records and fill out a detailed questionnaire. This will explain exactly what happened to the company, why particular creditors could not be paid and when the company became insolvent. You will also be interviewed by the liquidator in more detail.

The liquidator will also report on the conduct of the directors and shadow directors of the company.

One of the biggest benefits of choosing to liquidate a company voluntarily (rather than being liquidated by the court) is the professional guidance you will receive before, during, and after the procedure. This reduces the risk of making any ill-informed decisions that could lead you to be held personally liable.

In terms of personal guarantees, the extent to which your personal assets become part of the liquidation will depend on the kind of personal guarantee you have signed. Any liability from the liquidation of the company will be met by the sale of assets and reduce, but not necessarily mitigate, your personal guarantee. However, with professional assistance, you may be able to negotiate a settlement rather than repaying the full amount.

If you have loaned any money to the company, you will join the list of unsecured creditors and may be eligible for a dividend if any funds remain at the end of the liquidation. An overdrawn director’s loan account will have to be repaid to the liquidator for the benefit of the creditors. As a shareholder of the company, you may also be asked to pay the liquidator if your shares are not paid up in full.
COMPULSORY LIQUIDATION

The one eventuality you really want to avoid is compulsory liquidation. This usually occurs when a creditor, such as a supplier or HMRC, has given up any chance of recovering the money it is owed and simply wants to close the company down. This is an extremely serious action for creditors to take which will be initiated by a winding up petition being served against the company. At this point, it is possible to prevent the compulsory liquidation but you must act quickly.

To serve a winding up petition there must be an undisputed debt of more than £750 owing and the creditor must have notified the company of its intent to collect the debt, usually by way of statutory demand. If you fail to pay the statutory demand within 21 days and do not dispute the debt, the winding up petition can be served and a court hearing granted. At this point, you still have a short period to pay the debt or to defend the action in court, although this is expensive as a barrister will have to attend the High Court on your behalf.

HOW DOES COMPULSORY LIQUIDATION AFFECT COMPANY DIRECTORS?

Once the petition has been issued it must be heard, which means the court will consider the petition even if it has been paid. For this reason, we always recommend company directors to act before this can happen.

As a company director, from this point you cannot:

• Secure new loans
• Sell the business
• Nominate a liquidator
• Issue a notice of intention to appoint a liquidator
• Pay suppliers as the company bank account may be frozen
• Pay employee wages

The main benefits of a CVL over a compulsory liquidation are the opportunity you have to prepare for the liquidation and the protection it provides against accusations of misconduct. Wait for your creditors to send the company into liquidation and the financial consequences, and the impact on your career could be much greater.

WHATEVER THE SITUATION, WE CAN HELP

If you are a stressed director then we hope this guide has allayed some of your fears and answered many of the questions you may have. You should understand that whatever situation you are in, there are many different ways we can help. The key is to seek advice as quickly as possible, particularly if you think your company is insolvent. If you are concerned about your company’s financial problems, or would simply like a professional team to reality check your situation, we can help.
CALL 020 8444 2000 TO TAKE ADVANTAGE OF OUR FREE DEBT ADVISORY SERVICE

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