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helpsheet

ASSISTING clients through the tough times

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Directors should be aware of their duties and responsibilities which can be onerous.

When a company is in financial trouble, directors’ duties shift and their primary focus should be to act in the best interests of all creditors and shareholders. Directors should also note that the actions they take now may impact on them if the company subsequently enters into an insolvency procedure.

Failing to act in the best interest of creditors may expose directors to potential claims such as wrongful trading and may lead to disqualification proceedings.

So what steps should directors take when their company is facing financial difficulties?

* Hold regular, full board meetings and keep detailed notes of any decisions made and who made them.
* Be aware of the exact financial position, including the extent of any creditor pressure and any potential court or recovery action which may become likely.
* Prepare short term cash flow and profit forecasts.
* Monitor the financial position on a regular basis and compare with the forecasts.
* Any decisions made should be in the best interests of the general body of creditors and should not worsen their position.
* Do not incur any further credit.
* Do not pay one creditor in preference to another.
* Take steps to preserve and protect the assets.
* Keep the assets insured.
* Do not write out cheques that you know the company is unable to honour.
* Do not take deposits for orders you know the company may not be able to fulfil.
* Most importantly, do not continue to trade when the company is insolvent and its financial position is going to worsen. Directors should only allow the company to continue to trade if they can demonstrate that the company’s financial position will improve.
* If in doubt – shout out and take professional advice.

Many directors will first seek advice from their existing professional advisors. The above is not an exhaustive list but we hope you find it a useful guide when advising your clients.

We urge any clients you may have in financial difficulties to seek professional advice at the earliest opportunity as this widens the options open to their businesses. Seeking professional advice at an early stage can also protect the directors personally from any claims brought by an insolvency practitioner and may protect them if any disqualification proceedings are issued.

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