Title:
Potential Implications of Insolvency for Directors

Word Count:
1380

Summary:
An article about the liabilities directors may face personally in the event of corporate insol

Keywords:
director responsibilities, director liabilities, insolvency, liquidation, insolvent, shadow di

Article Body:
Here is a note of the issues that a director of an insolvent company or potentially insolvent

Definition of Insolvency - Section 123 of the Act states that a company is "unable to pay its
the amount of the company’s liabilities (including its actual and contingent liabilities) exce
Where a company is or is about to become insolvent its directors must act in the best interest

The Corporate Consequences of Insolvency

Preference claim - A preference is a transaction which has the effect of placing a creditor i

Transactions at an undervalue

A transaction at an undervalue occurs when a company disposes of its assets for significantly

Personal Consequences of Insolvent Liquidation

Wrongful Trading - Section 214 of the Act states that, if the directors (including any shadow

The directors may be able to justify trading for a short period of time if they are:

Trying to sell the whole or part of the company’s business and/or assets as a going concern; o
awaiting a decision regarding further funding (for example by the shareholders or by a venture
In these circumstances the directors should: investigate whether the company’s overheads and c
postpone all other payments; not incur any new liabilities (except for immediate payment in ca
document their decisions (usually in suitably detailed minutes). Please note that such a minut

Fraudulent trading

Any director or shadow director who knowingly allows a company to continue trading with the in

Disqualification

If, following liquidation, administration or administrative receivership, the DTI is able to c

A director also faces disqualification if:

He breaches any fiduciary or other duty he owes to the company (this may include a situation w
he fails to comply with any of the duties imposed by the Companies Acts (for example the oblig

Options

Where the directors believe that there is a serious risk that the company may not be able to a

1. Continuing trading under the guidance of the IP;
2. Requesting further funds from the company’s shareholders;

3. Obtaining additional funds from a venture capitalist factoring or trade asset based finance
4. A sale of the company’s business and assets as a going concern outside any formal insolvenc
5. Administration, which is a court driven procedure which stops the creditors or any other pa
6. A company voluntary arrangement whereby the company agrees a payment schedule or some other
7. Making a request for the appointment of an administrative receiver if the company has grant
8. A creditors voluntary liquidation whereby the company convenes a meeting of its creditors t
compulsory liquidation whereby the company is wound up by the court following the presenta

Conclusion

Though incorporation can shield shareholders from liabilities, the directors (who are often th

http://www.kaltons.co.uk