

Director Update

The current downturn in the economic climate continues to see many companies suffer vastly reduced profits, financial difficulty and insolvency. Alongside this there has been a dramatic increase in the number of directors facing personal liability for company losses as a result of decisions made whilst trading; it is clear that the law behind director's duties is now more important than ever.

~~The Companies Act 2006 ("CA 2006") provides that a director's core duty is to promote the success of the company for the benefit of its members (*section 172(1)*). However, when a company finds itself in financial difficulty such that insolvency is likely (i.e. if its liabilities exceed its assets, or it is unable to meet its debts as they fall due), the interests of potential creditors must then be considered.~~

Director Disqualification

If the court considers a director, by virtue of his conduct, unfit to be involved in the management of a company, it has power to disqualify that director (or person acting in that capacity) from being involved in the promotion, formation or management of a company for a minimum of two years (*section 1 Company Directors Disqualification Act 1986 ("CDDA 1986")*). There are strict reporting duties on liquidators, administrative receivers and administrators to record acts of directors, and in considering a director's 'unfitness' a court may consider a wide range of matters.

Practical Tip

Remember the Revenue and Customs should be treated equally with other creditors – don't hold back on crown creditors while paying trade creditors just to keep the business going – it is one of the problems which often results in a Disqualification Order being made.

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