BUSINESS RECOVERY OPTIONS FOR CONCERNED COMPANY DIRECTORS

A TRUSOLV GUIDE

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WHO'S THIS GUIDE FOR?

This guide is for company directors who may be concerned about the financial stability of their business and possibly its future survival.

This is to help explain the early warning signs of financial strain and what action could be taken to rescue the business. It also outlines the options available when the business must be closed – commonly known as insolvency.

Our aim is to offer an overview of the insolvency process so you can understand the options available to you. We understand that when your business is struggling and it seems like there's no reprieve from creditors, you can feel isolated and uncertain where to access the right advice.

What's important to remember is that problems with cash flow or increasing arrears won't rectify themselves without taking action. The sooner you address them, the more likely you'll have options to rescue the business and get back on track.

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WHO ARE
TRUSOLV?

We're a leading independent insolvency practice with local offices across the UK. We've helped businesses in your circumstances for over 30 years. We know the situation you're in isn't easy and that increasing pressure to turn things around makes it difficult to make rational decisions.

The term 'insolvency' comes with a lot of stigma attached and many directors believe speaking to an insolvency practitioner only leads to closing the business. This isn't true.

At TruSolv we'll look at all the options available to your business and your situation. If the business is solvent and just experiencing a short-term issue with cash flow, we can help with finance options, restructuring debt and work with creditors to pay them back as quickly as possible.

For some directors the right outcome will be to wind up the business. If that's the case, we'll guide you through the whole process to minimise the stress and handle the insolvency efficiently.

HOW DO I KNOW IF MY COMPANY'S INSOLVENT?

A company is classed as insolvent if it's unable to pay its debts and financial liabilities on time. This isn't just supplier invoices – it could be rent or staff wages. To determine if your company is facing insolvency or already insolvent, there are three tests you should take. It's common practice to apply all three tests – if any result in a fail then we strongly advise you speak with an insolvency practitioner straight away.

TEST 1: CASH FLOW

Consider any debts that are due immediately or in the near future – does your business have sufficient funds available to pay them? It may be tempting to consider making late payments but in this scenario, it's not an option. If the cash isn't there to pay who's owed, then the result's a fail.

TEST 2: BALANCE SHEET

This test assesses if the company has enough assets to cover its liabilities. The balance sheet should reflect a 'fair and accurate' view of the company's financial position. This means things such as levels of stock held, or work-in-progress, shouldn't be exaggerated. If you know any debts aren't likely to be collected (bad debt) these shouldn't be included either. If the assets total less than the total liabilities, then the result's a fail.

TEST 3: LEGAL ACTION

If your company fails the legal action test, then you should seek immediate advice. You may be in breach of your legal duties as a company director which could have significant consequences for you in the future. If your company has any outstanding statutory demands or county court judgements (CCJs), then the result's a fail. It's highly likely one of your creditors will take legal action against you to collect their outstanding debt, and your company could be forcibly wound up to do so.

WHAT IF I FAIL THE TESTS?

If you fail any of these tests, we highly recommend you speak to a licenced insolvency practitioner for advice. You need to place priority on paying back your creditors. There are ways to do this and prompt action, once you know the company's insolvent, is essential to keeping your options open.

WHAT ARE THE OPTIONS IF MY COMPANY'S INSOLVENT?

There are many options out there but there are various factors which will determine just how many options are available to your situation. Things like:

- How long the company's been insolvent for.
- The amount of debt and number of creditors owed.
- If there's a genuine interest to continue the company.

We can't emphasise enough just how important it is to talk to an insolvency practitioner when alarm bells are starting to ring. You'll give your company the best chance to get back to solvency if you address financial problems in their infancy. Allowing problems to grow will certainly narrow down the options for you.

WHY IT'S IMPORTANT TO USE A LICENSED INSOLVENCY PRACTITIONER

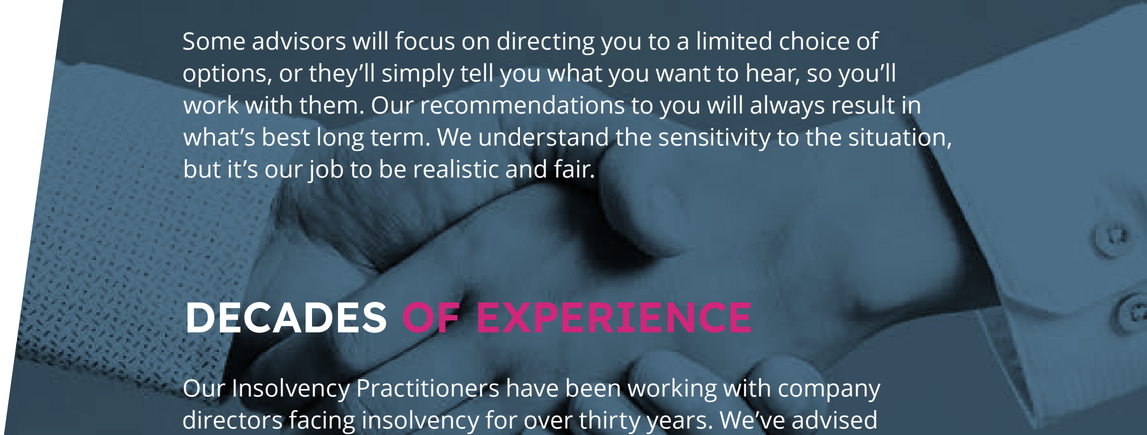
WHEN YOUR COMPANY IS INSOLVENT

As with any professional service, there will be unqualified advisors circulating to take advantage when you're in a vulnerable position. These types of advisors could leave you exposed to further legal action and significantly more stress.

You need to seek advice from qualified professionals. Here's why we believe you should contact TruSolv if your company is insolvent:

WE'RE LICENSED, QUALIFIED AND REGULATED

Our team of Insolvency Practitioners are licensed and regulated in the UK by the Institute of Chartered Accounts in England and Wales (ICAEW). This means they've been externally qualified to provide such advice and their competences are regularly reviewed.



REALISTIC AND FAIR

Some advisors will focus on directing you to a limited choice of options, or they'll simply tell you what you want to hear, so you'll work with them. Our recommendations to you will always result in what's best long term. We understand the sensitivity to the situation, but it's our job to be realistic and fair.

DECADES OF EXPERIENCE

Our Insolvency Practitioners have been working with company directors facing insolvency for over thirty years. We've advised businesses of all shapes and sizes, from a variety of sectors. Many of our team also have practical experience of running businesses themselves – we can sympathise with what's happened. We're trusted time and time again by other professionals to help their clients who are facing insolvency and manage the situation to the best possible outcome.

WHEN SHORT-TERM ISSUES CAN BE ADDRESSED

As soon as your company is unable to pay creditors on time, you need to act. Nipping cash flow problems in the bud will stop them escalating to a point where you'll struggle to get back to a stable financial position. Prevention's better than cure.

At this stage we may recommend these options to you:

TIME TO PAY AGREEMENT (TTP)

If your business is struggling, you may be in arrears with some of your creditors, including HMRC. Being in arrears with HMRC can cause a great deal of stress and worry.

At TruSolv, we're highly experienced in negotiating with HMRC. For some businesses, a Time to Pay (TTP) arrangement can be set up to give you additional time to pay back the outstanding amount.

NB: If you are in debt to a number of other creditors as well as HMRC, then a TTP may not be the best option.

TURNAROUND FINANCE

Disruptions to cash flow often can't be predicted but if it's clear your financial issues are temporary, then turnaround finance could be a possible solution. This will allow you to free up capital, pay debts and return to better financial health in a relatively short timeframe. However, you must have evidence of a viable business model and a history of stable, profitable performance in order to qualify for such options.

INFORMAL RESTRUCTURING

This is an opportunity to work with your creditors to get on top of your arrears. As the name suggests, it's outside of any formal procedure to remedy the cash flow problems of the company. Creditors may be open this option if they believe their outstanding debts will be repaid quicker as a result.

WHEN SIGNIFICANT CHANGES MUST BE MADE

If your company is in significant arrears with creditors and under the threat of legal action being taken against you, then you will need to make some serious changes to the company. Failing to take any action at this point in time will likely lead you to formal insolvency procedures to close the company.

Some options available at this stage are:

COMPANY VOLUNTARY ARRANGEMENT (CVA)

A CVA is a legally binding agreement between you and your creditors where debt payments will be restructured to provide you some relief over a specified period of time. With the pressure from your creditors eased, the aim's for you to continue trading and get the business back on track. Once in place, it will give you protection from creditors taking any legal action against you. Your creditors receive a guarantee and peace of mind that the debt owed will be paid.

For a CVA to be an option, there needs to be confidence on your business returning to profitability. This will be evaluated by an Insolvency Practitioner and the company directors; if the outlook is negative and the company will still likely struggle then unfortunately a CVA cannot be used.

PRE-PACK ADMINISTRATION

If your company still has a robust cash flow, active client base, valuable assets and the potential for future growth, but creditors are threatening insolvency to get paid, then a pre-pack administration could be an option for you. It allows for your company and its assets to be sold to either a third party or even existing directors. This way the business can keep trading with little disruption as a new company.

This may sound like a straight forward option but there are complex rules governing the use of pre-pack administration. You'll need to discuss it with an Insolvency Practitioner to ensure everything's managed correctly.

WHEN YOUR COMPANY MUST BE CLOSED

Sadly, for some, the right option will be to cease trading and close down. Rescue and recovery options may just be unachievable to make the difference needed to get the business back to a solid place of solvency. There are several ways for winding up a company and our team of Insolvency Practitioners will help you to evaluate which option is best.

CREDITORS' VOLUNTARY LIQUIDATION (CVL)

Probably the most common form of liquidation in the UK, an Insolvency Practitioner's appointed to wind up the company, selling its assets to pay back the creditors. As Insolvency Practitioners, our role will be to manage the winding up process and advise you on your legal responsibilities as a director to an insolvent company.

COMPULSORY LIQUIDATION

As the name suggests, this is when creditors take legal action to reclaim the debts outstanding. The court will forcibly close the business, seize assets and liquidate them to repay creditors. It's seen as the least desirable liquidation option, as directors are viewed as having failed to take action at the appropriate time. The actions of the directors are investigated by the Insolvency Service.

MEMBERS VOLUNTARY LIQUIDATION (MVL)

In some circumstances you may choose to liquidate a solvent company, typically because it's often the most tax-effective way to close the business and extract the profits. Take caution with this option because you'll face serious consequences if you opt for MVL and the company's found to be insolvent.

COMMON MISTAKES MADE BY DIRECTORS WHEN UNDER FINANCIAL PRESSURE

We understand you'll want to do whatever you can to protect your business and your interests. As a company director knowing things aren't going as planned and increasing pressure being applied by creditors, banks, other investors – we know some quick fixes may appeal at the time. We advise you to be aware of these common mistakes made by directors as they could make the situation much worse.

IGNORING THE PROBLEMS

Don't bury your head in the sand and think that with just a bit more time everything will fix itself. You'll be helping yourself and your company in the long term if you address a small or temporary problem before it escalates.

PREFERENCE PAYMENTS

If you're found to be prioritising the repayment of one creditor over another then you could be at risk of being disqualified as a company director. You have a duty to act in the best interests of all your creditors, treating them fairly.

ANTECEDENT TRANSACTIONS

Once you're aware your company's insolvent, you must not take part in any transaction which would be deemed unfair or inappropriate. Some company directors may for example sell on company assets at a reduced rate to raise some finance or distance the asset from the company. This might be fraud as the asset isn't realising its true value, potentially leaving creditors out of pocket.

Other directors may fraudulently raise funds or take out finance against the company. Do not be tempted to continue to pay shareholder dividends or withdraw cash from the business under the impression of it being business related.

USING PERSONAL GUARANTEES (PG)

Think very carefully before entering into agreement as a personal guarantor and using your personal finances to repay company debt. Seek legal and financial advice if this is something you truly wish to consider. You'll be personally liable for paying back creditors, and should you fall into further difficulties, assets like your home will be at risk.

OVERDRAWN DIRECTORS LOAN ACCOUNT (DLA)

If you've taken money out of the business which is not a dividend, salary or any other money you've previously loaned to the business then you'll have an overdrawn DLA. You'll be personally liable for repaying the money to creditors. If you can't pay back the money relatively quickly then you could be at risk of a personal insolvency procedure such as bankruptcy.

HOW CAN TRUSOLV HELP?

We provide essential advice and guidance for UK businesses facing the multiple challenges of creditor pressure, actual or potential insolvency and the threat of liquidation. We're here to help your company tackle these challenges so you can restructure, refocus and recover.

Whether you need short term finance to pay creditors or staff or you're facing significant financial issues that may affect company structure and solvency, we have the experience and expertise necessary to help you make the right decision for your business.

WANT TO KNOW MORE?

Why not **contact us** to find out how we can help struggling businesses to refocus, restructure and recover. We want to show you how our team can make a real difference.

BUSINESS RECOVERY SERVICES

COMPANY ADMINISTRATION

COMPANY LIQUIDATION

COMPANY VOLUNTARY ARRANGEMENT

OUR SPECIALIST TEAM

Our team's among the most qualified and experienced in the UK, having helped hundreds of companies with restructuring, refocusing and recovering. We understand each situation's unique and so our solutions are tailor-made to match the specific requirements of each client.

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