



# Don't be afraid to ASK FOR HELP

**There can be no doubt that the current economic climate is pushing many businesses to the brink of collapse. For every business that gets wound up there are many more struggling to pay the bills and keep the doors open, writes John Corias.**

Often small business owners trade on with blind optimism hoping that 'things will get better'. In reality it normally doesn't (although there are exceptions) and the consequences of trading on through difficult circumstances can mean the difference between keeping and losing the family home.

Even more concerning are the potential legal consequences of deliberately keeping an insolvent business open and incurring further debts.

To highlight the extent of this issue in our economy at this time, a recent survey conducted by a debt collection agency uncovered more than 50,000 proprietary limited companies that were trading as insolvent businesses.

So what is insolvent trading and what are the signs to look out for?

Section 588G of the Corporations Act allows the imposition of director penalties on any director that allows a company to incur a debt, knowing that there are reasonable grounds for suspecting that the company will not be able to pay all of its current debts. The actual act of the director or directors need not be a deliberate or negligent one; it can be a mere matter of burying your head in the sand. Pleading ignorance is not a defence.

## WARNING SIGNS

If your business is struggling and you suspect that it may actually be trading insolvent, then analysing the following aspects of your business will assist in shedding light.

- Poor cash flow.
- Increasing debt levels.
- Receiving constant payment of demand letters.
- Struggling to collect debts from late paying customers.
- Escalating taxation and superannuation liabilities.

If your business is struggling to get a handle on any of the above list of items, then seek immediate assistance from your accounting and legal advisors. It does not necessarily mean the end. Some small businesses, especially those that seek help early, are able to trade their way out of their current predicament. This may be as simple as a business turnaround due to good fortune, or good decisive management to reconstruct better business structure and practices.

## DEFENCE AGAINST PROSECUTION

For directors who feel that circumstances leading to insolvent trading were beyond their reach, the below list of defences have been successfully used in past court cases.

- The director relied on information provided by another person/party. The director must prove that the person being relied upon was a competent and reliable person.
- The director did not participate in the management of the company at the time the crippling debts were incurred because of illness or another good reason.
- The director took reasonable steps to avoid the debt by taking steps such as voluntary appointing an administrator.

## THE BAD NEWS

If convicted under the Corporations Act of insolvent trading, the penalties can be severe. Penalties can be civil, criminal and also involve debt recovery orders.

## ACT NOW

For any company directors out there who suspect that their company may be trading insolvent, the need to take immediate action cannot be stressed enough. Consult with your suppliers and see if arrangements can be made to pay off debts over longer terms to alleviate cash flow restraints. Contact debtors, especially long overdue debtors, and make arrangements to receive payment. Even if you don't end up receiving full payment, something is better than nothing when times are tight. Conduct a thorough review of all business operations and take decisive steps to eliminate wasted expenditure. Perhaps the most effective answer is to get an honest and trusted opinion from your accountant and solicitor. They are the ones who will know your circumstances the best and give you the honest answers you need to hear.

The old adage of 'she'll be right mate' is definitely not the way to go when it comes to you and your business finances in times of trouble. **TGR**



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