

Ten recommendations for directors when insolvency looms

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Please note this briefing does not take into account the new insolvency legislation changes from January 2020 and is in the process of being re-written.

Alex Horsbrugh-Porter is Counsel in Ogier's dispute resolution group in Guernsey, specialising in insolvency. Alex is qualified in England and Wales, Cayman and Guernsey, and has experience of working in a corporate insolvency firm and taking appointments as a liquidator. In this piece, Alex runs through a checklist of ten things for directors to consider when insolvency looms...

- Consider carefully with your fellow directors whether the business can be saved. This will mean:- a) a plan to reduce costs, increase income, ensure an adequate cash flow and make the company profitable again, this may involve selling parts of the business and making staff redundant; b) in Guernsey this may mean selling unprofitable assets overseas as there is often no trading or employees in Guernsey.
- Insist on frequent board meetings and that every director has their own area of responsibility within the company and a plan on what needs to be done.
- The board must have an up-to-date picture of the company's trading, financial and cash flow position as well as financial forecasts. If necessary this should be checked daily.
- Up to date accounts are essential and, if necessary, outside help should be brought in to prepare these accounts.
- Get the company to take outside professional advice i.e insolvency practitioners and specialist lawyers to advise on the law and the insolvency of the company.
- Consider the advisability of putting the company into administration in order to give it breathing space and prevent action by individual creditors although in Guernsey this will not prevent the secured creditors taking enforcement action.
- Ceasing to trade is not necessarily the best option-you may be found liable if the company

entered into an insolvency process when there was a good chance of trading through the difficulties. Obtaining proper advice is essential.

- Keep major secured and unsecured creditors regularly informed and let them know what is going on i.e whether you are going to continue to trade and if possible obtain their agreement.
- Insist that all recommendations made by the directors are placed on record (minutes). This will include a record of dissent by some directors from the decisions taken that they did not approve of. Such minutes are a vital record of what has transpired.
- If your recommendations are constantly ignored and you are concerned that the directors are not acting in the best interests of the company resign. The decision to resign should not be undertaken lightly as under the law a director must take every step he should have done to minimise loss to creditors. Don't resign unless you have no other option.

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