



DEALING WITH DEBTS OF A LIMITED COMPANY

i Information

This fact sheet gives a basic understanding of private limited companies, the responsibilities of the company director/s, and how to deal with the debts of a private limited company.

Some issues surrounding limited companies can be extremely complex therefore you may need to consult a solicitor or insolvency practitioner. If you are unsure about whether you will need to do so, phone us for advice. Alternatively, you can visit www.companieshouse.gov.uk for further information and guidance on how to deal with limited companies.

Identifying a limited company

A limited company is a separate legal entity from its directors and shareholders. In a small company the directors are often the shareholders. A company can have one sole director and in some instances will also have a secretary. A limited company must also be registered at Companies House. It must also have been granted a certificate of incorporation and have a memorandum, and articles of association which set out the name of the company, its powers, objectives and other important matters. The limited company must submit audited accounts to Companies House on an annual basis.

Liability for company debts

Generally the director and/or shareholders are not liable for the company's debts. However, the following outlines some of the circumstances where this will be the case.

- **Personal guarantees:** if a limited company applies for credit (often from a bank or supplier) the director may be asked to give a personal guarantee. This is a signed agreement stating that should the company be unable to pay the debt the director can be personally pursued for payment. Personal guarantees can either be unsecured or secured against property or land belonging to the guarantor. If the personal guarantee is secured the property/land will be at risk of repossession should the guarantor find themselves unable to pay.
- The company goes into formal insolvency proceedings (e.g. liquidation) and the director is found guilty of wrongful trading, fraudulent trading or misfeasance (see below for further explanations).
- The company goes into formal insolvency proceedings and the director is found guilty of other offences (see 'Offences' for further explanations).
- **PAYE:** if a company is dissolved, the director is not generally liable for their own PAYE but Her Majesty's Revenues & Customs (HMRC) can ask the director to arrange for repayment. This is because a director is technically an employee of the company and HMRC can recover any income tax unpaid by an employer (e.g. limited company) from an employee.
- **Director's loan account:** if a company is dissolved and the director's loan account is in debit (i.e. the director owes the company money) the director can be asked to repay the funds taken.

Warning

If you are applying for credit or signing an agreement for your limited company, ensure that the creditor knows that you are signing for and on behalf of the limited company. You may need to have the agreement checked by a solicitor to ensure that you are not signing in your own name. If this is not made clear you may be at risk of the creditor trying to pursue you personally for any missed or late payments and some creditors may claim that they were unaware they were dealing with a limited company. If this has happened to you, **phone us for advice**.

Other offences

Other offences can include falsification of company books, false representations and material omissions etc. For further information, **phone us for advice**.

Warning

If a director or officer of the company is found guilty of any of the above offences they can be held personally liable for the debt of a company, fined disqualified from being a director or, in extreme circumstances, imprisoned.

Offences

As a director of a limited company it is your fiduciary duty to recognise when the company is insolvent and to cease trading when there is no reasonable prospect of the company being able to trade out of its current circumstances.

Wrongful trading

Wrongful trading can be defined as: continuing to trade to the detriment of the company's creditors when the company is insolvent e.g. continuing to trade and thus increasing the debt that the company already has.

Fraudulent trading

Fraudulent trading is defined as; deliberately trying to defraud creditors or knowingly being party to the fraud taking place e.g. taking money from the company and falsifying the books.

Misfeasance

Misfeasance is the taking of company funds/property for your own gain at the expense of the company's creditors e.g. taking a salary to pay your personal creditors rather than paying the company's creditors.

Dealing with the debt of a limited company

If your company is struggling to pay its debts you will need to assess whether it can trade out of its financial difficulties and negotiate with creditors. To do this you will need to complete a business budget sheet outlining the income and expenditure for the company. You may need help from your accountant as you will need to assess the average income for the company (normally over a period of 3 to 12 months) against the company's expenditure (including salaries). The company will also need to budget for corporation tax chargeable on the profits.

If there is a net monthly profit then you will assess the likelihood of being able to make offers to all of the company's creditors. Various options have been outlined below.

Information

We have outlined the options available if there is no monthly profit later in this fact sheet.

Options if there is a net monthly profit available

Informal negotiations

Use your business budget to show how much money is available and how much the company can afford to offer in instalments to its creditors.

It is important that you identify which of the company's creditors are priority creditors and which ones are secondary creditors. Our 'Dealing with your Business Debts' pack has information that will help you to identify which creditors are priority and which are secondary. If you are unsure of the type of debt your company has, **phone us for advice**.

Company voluntary arrangement (CVA)

A CVA is a legally binding agreement between your company and its creditors to pay an agreed amount off the debt over a short period of time. Payments can either be paid as a lump sum or in instalments (normally over 3 years).

A CVA has to be set up by an insolvency practitioner (IP) who normally acts as nominee. An IP is usually an accountant or solicitor who is authorised to set up formal insolvency procedures.

- With the help of the nominee the directors put together a proposal to the company's creditors. The nominee can make an application to the court for a 28 day moratorium which stops any court action being taken against the company whilst the proposal is put together. If a moratorium is applied for, formal notice must be given to the Registrar of Companies at Companies House. For further information on this matter, **phone us for advice**.
- The IP sends the CVA proposal to the company's creditors and arranges a formal

meeting called a 'creditors meeting' giving the creditors at least 14 days notice.

- The creditors will vote at the meeting on whether or not they accept the CVA. Some votes may be sent in writing or via email, not all creditors will attend the meeting.
- Each creditor is given a vote based on how much money they are owed. Therefore the company's largest creditor has the largest proportion of the vote (e.g. a creditor who is owed 10% of the company's total debt holds 10% of the vote). In order for the CVA proposal to be accepted 75% of the votes must agree to accept the CVA. Therefore, if your company has a creditor that holds 75% or more of the company's debt then they have the deciding vote.
- The IP will then send a report of the meeting to the Registrar of Companies at Companies House.
- If the CVA is agreed then all of the company's creditors are bound by the terms and conditions of the proposal, even if they voted against the CVA.
- A CVA does not affect the rights of secured creditors or landlords who could still take possession action for any outstanding arrears.



Warning

If the company's creditors vote against the CVA then you will go back to the same position it was in before the application was made. You will need to negotiate payment arrangements with the creditors separately. Your company may also lose money for the costs and fees of the CVA application.



Information

Bear in mind that if you have applied for a moratorium, you will have to wait for 12 months before you can apply for another one. It is not always necessary to apply for a moratorium when applying for a CVA.

Options if there is no monthly profit available

If there is no monthly profit available you may need to consider reducing your director's salary. Director's salaries should be taken based upon what the company can afford to pay and not what is needed for the director to meet their own costs. If you are unable to meet your personal costs from the salary you are drawing, **phone us for advice.**

You will need to assess whether your company is insolvent. An insolvent company cannot meet its debts as they fall due and/or does not have sufficient assets to cover its liabilities. A company can also be considered as insolvent if it has an expired charge for payment or statutory demand. Ask your accountant for help drawing up a balance sheet of the company's assets vs liabilities. If you are unsure whether your company is solvent, **phone us for advice.** If you feel that your company is insolvent you may need to consider the following.

Compulsory liquidation (Scottish winding up by the court)

Compulsory liquidation is where a court order has been made for a company to be wound up. This can be ordered by the Court of Session or by the Sheriff Court (if the company's shares capital is less than £120,000).

A winding up petition can be made by:

- the company;
- the company's director(s) or other member(s);
- a receiver, administrator or supervisor;
- the secretary of state;
- the Financial Services Authority (FSA); or
- a creditor.

The most common reason for making a winding up petition is that the company has an inability to pay its debts. A company is considered as unable to pay its debts if:

- a creditor is owed more than £750;
- the company has been presented with a statutory demand and it has expired

Fact sheet

We have a fact sheet on 'Statutory demands which may be of assistance to you. **Phone us for a copy.**

- the company is unable to pay the debts as they fall due (the company can provide a letter stating that it has an inability to pay its debts)
- the company's assets are valued at less than its total debt (the court will need to see an assets and liabilities statement).

The winding up petition is normally presented to the court by a solicitor. A provisional liquidator may then be appointed by the court. If the company is still trading an IP is normally nominated to act as provisional liquidator.

The winding up order will then either be granted, dismissed or adjourned. Once the order is granted an interim liquidator is appointed. The interim liquidator will then:

- preserve the assets of the company awaiting the appointment of a liquidator;
- ask for a statement of affairs, and further information regarding the company's history;
- call and prepare information for a creditors meeting (the interim liquidator will chair this meeting).

The petition must then be held within 42 days of the winding up order and the creditors must be given 14 days notice of the meeting. At the meeting a liquidator and a liquidation committee

is appointed. The liquidator must then write to the creditors within 28 days to report the outcome of the creditors meeting.

The liquidator will then investigate the conduct of the directors and members of the company and provide a report to the Department for Business Innovation and Skills (BIS). Any assets that the company has will be sold and distributed to cover any fees owed to the liquidator and the monies owed to creditors. The company will then be dissolved by the liquidator after a final creditors meeting is held.

If the company does not have sufficient assets to cover the costs the liquidator can apply to the court for early dissolution (normally 3 months after the winding up petition is lodged).

Company voluntary liquidation (CVL)

A company can go into CVL when it is considered as unable to pay its debts. The director must hold a board meeting and pass a resolution stating that the company is insolvent and cannot pay its debts. The resolution must then be advertised in the Edinburgh Gazette and sent to the Registrar of Companies and the Accountant in Bankruptcy within 14 days.

Within 14 days of the resolution being passed a creditors meeting must be held. The creditors must be given 7 days notice of this meeting and the meeting must be advertised in the Edinburgh Gazette and two local newspapers.

A liquidator is then appointed to wind up the company. The liquidator will be an IP and can be appointed by either the creditors or members of the company. Any assets will be sold and the proceeds distributed between members of the company.

The liquidator will investigate the conduct of the director(s) of the company and a report will be made to the Secretary of State.

Warning

It is important that the directors cooperate fully with the liquidator and hand over all books, records, receipts and statements. They will also need to give all information needed regarding the company's assets.

Receivers

A receiver can be appointed by anyone who holds a valid floating charge against the assets of a company. The receiver can only be appointed if the floating charge was taken before 15 September 2003. A receiver has the power to sell the charged assets of a company.

Information

A floating charge is a security given to a creditor over any assets a debtor (e.g. a company) may hold at any point in time.

The receiver is only obligated to recover the debt of the floating charge holder and if there are any funds left over for unsecured creditors then another insolvency procedure must be used.

The receiver will investigate the conduct of the director of the company and a report will be made to the Secretary of State.

Information

Receiverships are rare. If a receiver has been appointed to your company, phone us for advice.

Administration

This is where an administrator is appointed to take over the running of the company and manage its affairs, business and property for the

benefit of the creditors. The administrator must be an IP.

The aim of the administrator is to:

- make an attempt to rescue the company as a going concern;
- get the best price possible for either the company or its assets, in order to achieve a better return for creditors than if the company were wound up;
- value and sell any property owned by the company so preferential and/or secured creditors are able to be paid.

An administrator can be appointed by the court, the holder of a floating charge or by the director of the company.

Pre-pack administration

A pre-pack administration is an arrangement for the sale of the company assets (normally to the director or shareholders) which is agreed prior to formal insolvency (e.g. CVL or court liquidation). Formal insolvency will normally follow very soon after the assets are sold. Pre-pack administrations can be quite complex, for more information, **phone us for advice**.

Strike off

Strike off is not a formal insolvency procedure and is the method used to dissolve a company if it has no assets and cannot afford to appoint a liquidator or administrator.

A company will be eligible for strike off if in the previous three months it has not:

- traded or advertised its intention to continue trading (e.g. adverts in the local newspaper or online);
- changed its name;

- disposed of any assets in the normal course of its business.

A company cannot apply for strike off if it is subject to any insolvency proceedings (e.g. administration, CVL, court liquidation) or section 425 Companies Act 1985. If you are unsure as to whether your company can apply for strike off, **phone us for advice**.

In order to prepare for strike off the company should cease trading and inform all of its creditors and members in writing that it has done so and that the company does not have sufficient funds to enter into formal insolvency proceedings. The letter can also invite any creditors to formally wind up the company at their own expense.

Once the company has ceased trading for three months, you can apply for strike off on form DS01 which is available from Companies House (www.companieshouse.gov.uk).

The form should be signed and dated by:

- the sole director, if there is only one;
- both directors, if there are two;
- by the majority, if there are more than two.

The form should be sent with the fee of £100 to:

Registrar of Companies
Companies House
Crown Way
Cardiff
CF14 3UZ

All cheques should be made payable to 'Companies House' with the company number written on the back.

Within seven days of returning the form you should send copies to:

- any other company members (e.g. shareholders);
- all existing and likely creditors (e.g. banks, suppliers etc);
- HMRC;
- employees;
- managers or trustees of any employee pension fund; and
- any directors who have not signed the form.

Once the form is accepted the registrar will place a note on the company's record stating that a strike off proposal has been made. The proposal is then advertised in the Edinburgh Gazette for three months and an invitation is made for objections to the strike off. If no objections are received, the company will be dissolved and will be shown as such on the Companies House register.

If any objections are made then the objector has 100 days to take action (e.g. sue the company or use formal insolvency proceedings at their own cost). If your company has received an objection to its strike off proposal, **phone us for advice**.



Warning

It is an offence to;

- Apply for strike off if your company is not eligible;
- Give false information or misleading information on the application;
- Fail to send copies of the application to all relevant parties within 7 days;
- Not to withdraw the strike off application if the company is no longer eligible.

These offences could result in a fine, imprisonment and/or disqualification from being a director.



Advice

For further advice on any of the information given in this fact sheet, **phone Business Debtline on 0800 197 3026**.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.businessdebtline.co.uk

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Sample letter

Using company letterhead, send when you cease trading and are considering strike off

Date _____

To: _____

Dear Sir/Madam

Account No: _____

I am writing to inform you that [My Company Ltd] is technically insolvent and hence has ceased trading as of [date and year]

The company has insufficient funds or assets to formally go in to liquidation and hence invites creditors or members to issue winding up proceedings should you wish to do so.

If it is not subject to any formal winding up proceedings; the intention is to apply for Strike Off under s1003 of the Companies Act after a period of three months from the above date.

Yours faithfully

[Your signature]
for and on behalf of [My Company Ltd]



Remember

To keep a copy of all letters you send to your creditors.

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Budget for limited companies

To assess whether the limited company can trade out of difficulties and negotiate with creditors.

You need to use an average figure over an appropriate period [3, 6 or 12 months].

To find your average monthly amount to input in to the budget use the example below:

- receipts for the last three months = £3,000
- divide £3,000 by 3 = £1,000
- average monthly amount is £1,000

Monthly income	£	
Costs	£	To work out the amount to put aside for Corporation tax do the following Income minus costs = A A x 12 = annual figure B 1 st £300,000 of B x 19% = C C = Then between £300,001 and £1,500,000 x 32.75% = D D = Anything over £1,500,000 x 30% = E E = For estimated annual Corporation tax add C, D, E together = F F = F ÷ 12 = estimated monthly Corporation tax. Insert this in the appropriate box opposite.
Stock purchases	£	
Rent	£	
Business rates	£	
Business loan	£	
Bank charges	£	
Wages including PAYE/NIC	£	
Water rates	£	
Gas	£	
Electricity	£	
Insurance	£	
Transport/motor costs	£	
Stationary	£	
Postage	£	
Cleaning and repairs	£	
Telephone	£	
VAT	£	
Accountant	£	
Professional fees	£	
Other	£	
Other	£	
	£	
TOTAL COSTS	£	
Income Minus Costs	£	
Less estimated monthly Corporation tax	£	
Net monthly profit	£	