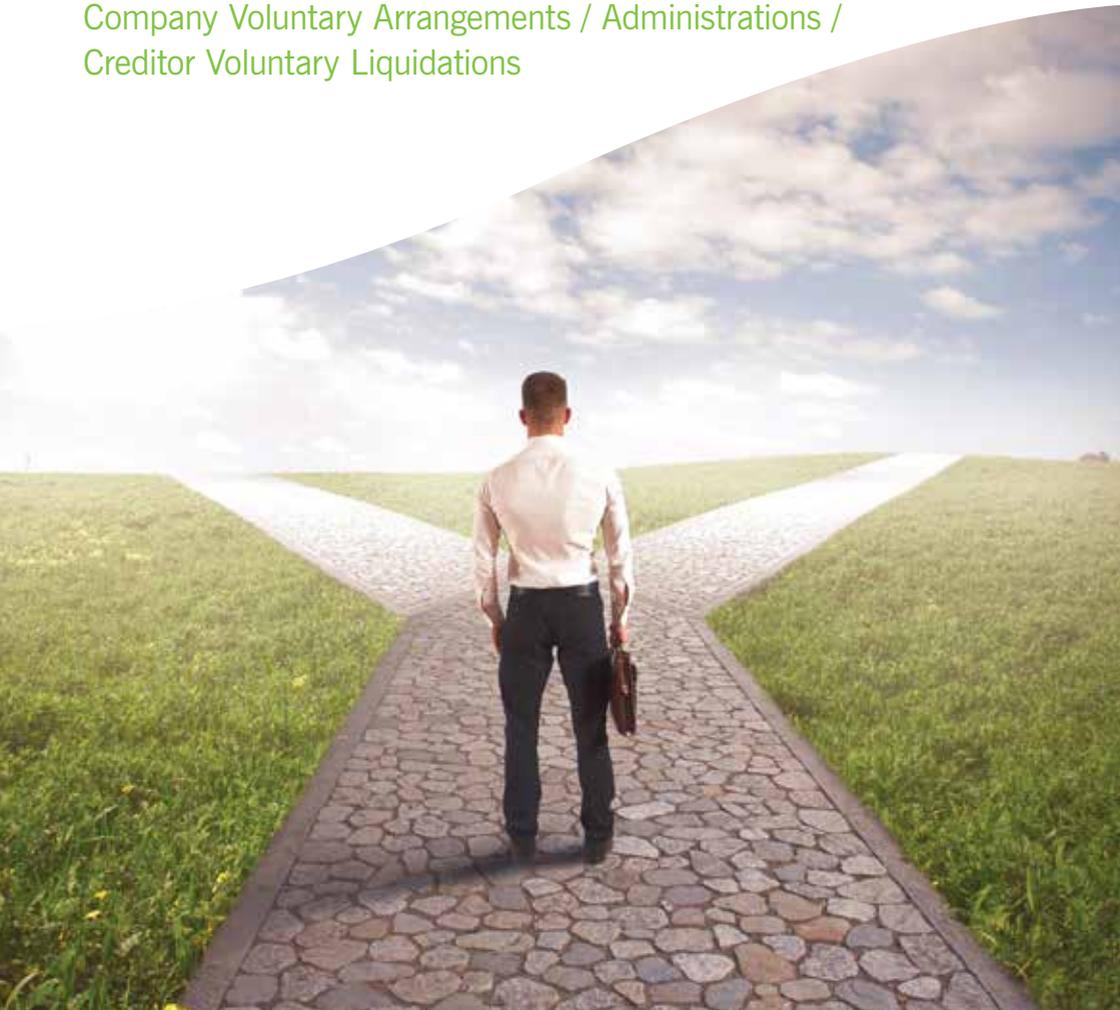


# Directors' Responsibilities in the Twilight Zone

Company Voluntary Arrangements / Administrations /  
Creditor Voluntary Liquidations



# That point in time when a Company's survival is in doubt is subsequently judged with the benefit of hind-sight and is often referred to as **The Twilight Zone**

## **Typical definitions of company insolvency**

### **Cash Flow Test**

Can the company pay its debts when they fall due?

### **Balance Sheet Test**

Are the company's assets exceeded by its liabilities?

## **Typical warning signs (experienced by company directors)**

- Overdraft is always at the limit or breached
- Bank has returned cheques as unpaid
- Bank refuses to provide a loan or requires facilities to be reduced
- Cash flow difficulties
- Red demand letters / legal letters / CCJs / Statutory Demand
- Always firefighting and deferring creditors on a daily basis
- HMRC liabilities not paid when due and penalties incurred
- Debtors not paying on time
- Debtors concentrated in just a few major customers
- Overdrawn directors' accounts / Directors not able to pay themselves a living wage

## **Directors' responsibilities if failing the insolvency tests**

If the company is insolvent, directors must act to minimise the loss to creditors

## **Article 178 of the Insolvency (Northern Ireland) Order 1989 (concluded as a Wrongful Trading claim)**

- Wrongful Trading is where a director of a company in insolvent liquidation, knew, or ought to have concluded, that there was no reasonable prospect of avoiding insolvent liquidation and he/she did not take every step to minimise loss to creditors
- If Wrongful Trading is found the Court can make an order that the director contributes to the company's assets, as it thinks proper.

When a company is clearly solvent, the primary duty for directors is to make profit for the company shareholders by using their skills, knowledge and experience (the basic statutory requirements for all directors are outlined at [www.gov.uk/running-a-limited-company](http://www.gov.uk/running-a-limited-company)).

**However**, when a company nears insolvency (the Twilight Zone), directors *must* have regard to the interests of creditors as a whole.

Whilst the major advantage of a limited company is the protection of directors from personal liability, this limited liability protection can be put at risk where the company becomes insolvent and trading continues with a worsening position for creditors.

Directors should consult with their accountant, solicitor and/or an insolvency practitioner immediately. Such prompt action will enable them to establish whether their company could benefit from using appropriate restructuring, rescue and turnaround techniques such as a **Company Voluntary Arrangement, Administration, Trading Out or Refinance**.

Unfortunately, some companies in the twilight zone are incapable of rescue and have to be wound up or placed into **Liquidation**.

Directors who fail to take advice leave themselves exposed to not only the potential of **personal liability but also disqualification as a director**.

As Insolvency Practitioners we provide a **free initial consultation** and the earlier that advice is sought the better the chance of maximising recovery potential and reducing the risk to the limited liability status.

David McClean and Lisa Lappin of Baker Tilly Mooney Moore are licensed Insolvency Practitioners and offer a clear, practical and professional service to assist you in respect of any of your clients at the time they first realise that their company may be at risk of failing any of the insolvency tests.

David and Lisa are the first choice for referrals by a number of professional advisers in Northern Ireland and would welcome the opportunity to provide further information on CVAs, CVLs and Administrations to you.

**For a free consultation without obligation or commitment, please contact:**

**Insolvency Practitioners:**

David McClean and Lisa Lappin

**T:** 028 9032 3466

**Business Recovery & Insolvency team:**

**T:** 028 9032 3466

**E:** [bri@bakertillymm.co.uk](mailto:bri@bakertillymm.co.uk)

**Baker Tilly Mooney Moore**

17 Clarendon Road, Clarendon Dock, Belfast BT1 3BG

---

An independent member of Baker Tilly International

17 Clarendon Road, Clarendon Dock, Belfast, Northern Ireland BT1 3BG

**T:** +44 (0) 28 9032 3466 **F:** +44 (0) 28 9043 8827 **E:** [bri@bakertillymm.co.uk](mailto:bri@bakertillymm.co.uk) **W:** [www.bakertillymooneymoore.co.uk](http://www.bakertillymooneymoore.co.uk)

Whilst every effort has been made to ensure accuracy, it has been necessary to summarise the facts and circumstances at issue in this leaflet. Recipients should not act on the information contained without seeking professional advice.