

Director's duties and misfeasance

While the financial recovery is in full swing for many, the other side of the coin is an economic landscape with over 100,000 zombie companies that are doing little more than servicing bank interest payments, whilst others risk over trading as the recovery gains momentum. Inevitably, a number of those companies at the direction or, more often than not, lack of direction from their directors, will have been trading whilst insolvent for a period of time prior to entering an insolvency process.

A recent survey concluded that 6% of all companies, which would bring in all of the above, would be seriously affected financially by a 1% increase in the bank interest rate and 16% would certainly feel the impact. It is generally accepted that an increase is certainly on the way, the only question is when.

The Companies Act 2006 sets out the key duties of a director, namely acting in the best interests of the company at all times, promoting the success of the company and exercising reasonable care, skill and diligence. A director must also act in good faith and not put him or herself in a position where the interests of the company conflict with personal interests or that of a third party. As a company moves to an increasingly insolvent state, those duties evolve to also act in the best interests of the company's creditors.

The company acting through its liquidator or administrator can bring a claim against a director for a breach of their director's duties under the Insolvency Act 1986.

In summary, directors cannot simply overlook their duties when a company faces insolvency although there is every chance that a significant number of company directors are doing exactly that, in particular those involved in zombie companies. Should those companies ultimately enter an insolvency process and liquidation in particular, then those directors may well be called to account financially.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.