



Restructuring and Insolvency

Full service law firm

The increasing number of insolvencies being announced during the current credit crunch has led to an upsurge in demand for specialist corporate restructuring and insolvency advice which is both commercially focused and practical.

At Trowers & Hamblins, our Restructuring and Insolvency group is drawn from a number of different specialised areas within the firm, including in addition to corporate, banking and finance, commercial real estate, construction, employment, pensions and dispute resolution. This enables the corporate members of our team to work closely with our colleagues across specialist sectors delivering a cohesive and unified approach that is focused on delivering commercial solutions both to those entities facing financial difficulties and their directors as well as to lenders and creditors of insolvent entities.

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- **Insolvency proceedings** - Where directors decide to initiate an insolvency proceeding, we are able to advise on the alternatives available and the legal steps, procedures and issues involved in the main types of insolvency proceedings such as administrations, liquidations, company voluntary arrangements and receiverships.
- **Creditors and suppliers** - We are often called upon to give strategic advice to those who are or may become creditors of insolvent companies such as lenders and suppliers. This may involve an analysis of contractual rights and obligations in the event of insolvency and how or if these may be varied or restructured. Likewise where goods have been supplied under retention of title provisions to a company which has become insolvent, suppliers will want advice as to their rights.

How we can help

Examples of how our corporate Restructuring and Insolvency team can help include the following scenarios:

- **Directors' duties** - Faced with a company which is or may be technically insolvent, it is always a difficult decision for the directors of a company to decide if an insolvency procedure should be initiated or if they should continue to trade in the hope that the company can be rescued. We advise directors of companies in financial difficulties as to how this affects their general duties as directors and, in particular, their duties and responsibilities to the company's creditors.
- **Directors' personal liabilities** - It is also imperative for directors to be aware of potential personal liabilities arising from any wrongful or fraudulent trading and any defences to any action for wrongful or fraudulent trading. A finding of wrongful or fraudulent trading against a director can also be used by the court to make an order disqualifying that person from acting as a director under the Company Directors Disqualification Act 1986.



Source: iStockphoto

- **Corporate restructuring / pre-pack administrations** - We can provide the full range of advice necessary in corporate restructurings and are experienced in acting for both borrowers and lenders in restructurings which may involve a mixture of debt refinancing or debt for equity swaps or group reorganisations involving a pre-pack administration.
- **Transactions at undervalue / Preferences** - Continuing to trade can also raise a number of legal issues where specialist advice is needed to help directors safely navigate their way through potential pitfalls. Attempts to generate or improve cash flow may be constrained by

insolvency legislation. For instance, fire sales of the company's assets to raise funds can subsequently be challenged by a liquidator or administrator where these sales are made at an undervalue. Directors need to be very wary of taking on extra credit which the company is unlikely to be able to repay. Likewise, paying off particular creditors may subsequently be challenged by a liquidator or administrator if the creditor has been preferred in this way.

- **Public sector** - Acting for a broad range of public sector clients means we also have unrivalled experience of the application of insolvency regimes to a wide range of corporate entities such as registered social landlords which may be industrial and provident societies and/or charities.
- **Middle East** - Our network of offices in the Middle East has given us experience of insolvency regimes in a number of different jurisdictions and the expertise to deal with cross-border insolvencies of groups of companies in the region.

Seek advice

When a company runs into financial difficulties, it is crucial for the directors to take financial advice as well as legal advice. Our close contacts with a number of insolvency practitioners and accountants mean we are well placed to help our clients obtain proper financial advice. We also have the experience and capability to project manage large teams of professionals as well as advising on specific legal issues.

As soon as the directors become aware that their company is or could be in financial difficulties, independent professional legal and financial advice should always be obtained as to what courses of action are open to the directors and as regards their personal position, especially if they do decide to continue to trade.

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