

CLIENT UPDATE

■■ CORPORATE INSOLVENCY

■■ RESTRUCTURING

■■ FORENSIC ACCOUNTING

Indicators of Insolvency

The Corporation Act 2001 provides that Directors of companies have a positive duty to avoid trading whilst insolvent.

Insolvency is determined by an assessment of whether the company can pay its debts when they fall due.

Insolvency is not always easy to determine, however there are clear signs that may indicate your company is in financial difficulty.

If a Director suspects their company is insolvent or likely to become insolvent it is highly advisable to obtain specialist accounting and/or legal advice as early as possible, as this will increase the likelihood of the company surviving.

Indicators of insolvency

The following list of indicators may determine whether or not a company is in financial difficulty:

- ongoing losses
- poor cash flow
- absence of a business plan
- incomplete financial records or disorganised internal accounting procedures
- lack of cash-flow forecasts and other budgets
- increasing debt (liabilities greater than assets)
- problems selling stock or collecting debts
- unrecoverable loans to associated parties
- creditors unpaid outside usual terms
- solicitors' letters, demands, summonses, judgements or warrants issued against your company
- suppliers placing your company on cash-on-delivery (COD) terms

- issuing post-dated cheques or dishonouring cheques
- special arrangements with selected creditors
- payments to creditors of rounded sums that are not reconcilable to specific invoices
- overdraft limit reached or defaults on loan or interest payments
- problems obtaining finance
- change of bank, lender or increased monitoring/involvement by financier
- inability to raise funds from shareholders
- overdue taxes and superannuation liabilities
- board disputes and director resignations, or loss of management personnel
- increased level of complaints or queries raised with suppliers
- an expectation that the 'next' big job/sale/contract will save the company

The presence of multiple indicators of insolvency must prompt company directors to closely consider the solvency of the company.

What if insolvent?

If a company is insolvent, a director must not allow it to incur further debt. Unless it is possible to promptly restructure, refinance or obtain equity funding to recapitalise the company, generally the only other options are to move to appoint a voluntary administrator or a liquidator.

About us

Heard Phillips aims to be the first choice for critical SME insolvency, restructuring and forensic accounting matters in South Australia.

Our firm seeks to deliver superior quality outcomes for clients through our credible and reliable practitioners, who take pride in displaying the highest level of respect to all stakeholders.