

Restructuring & Insolvency

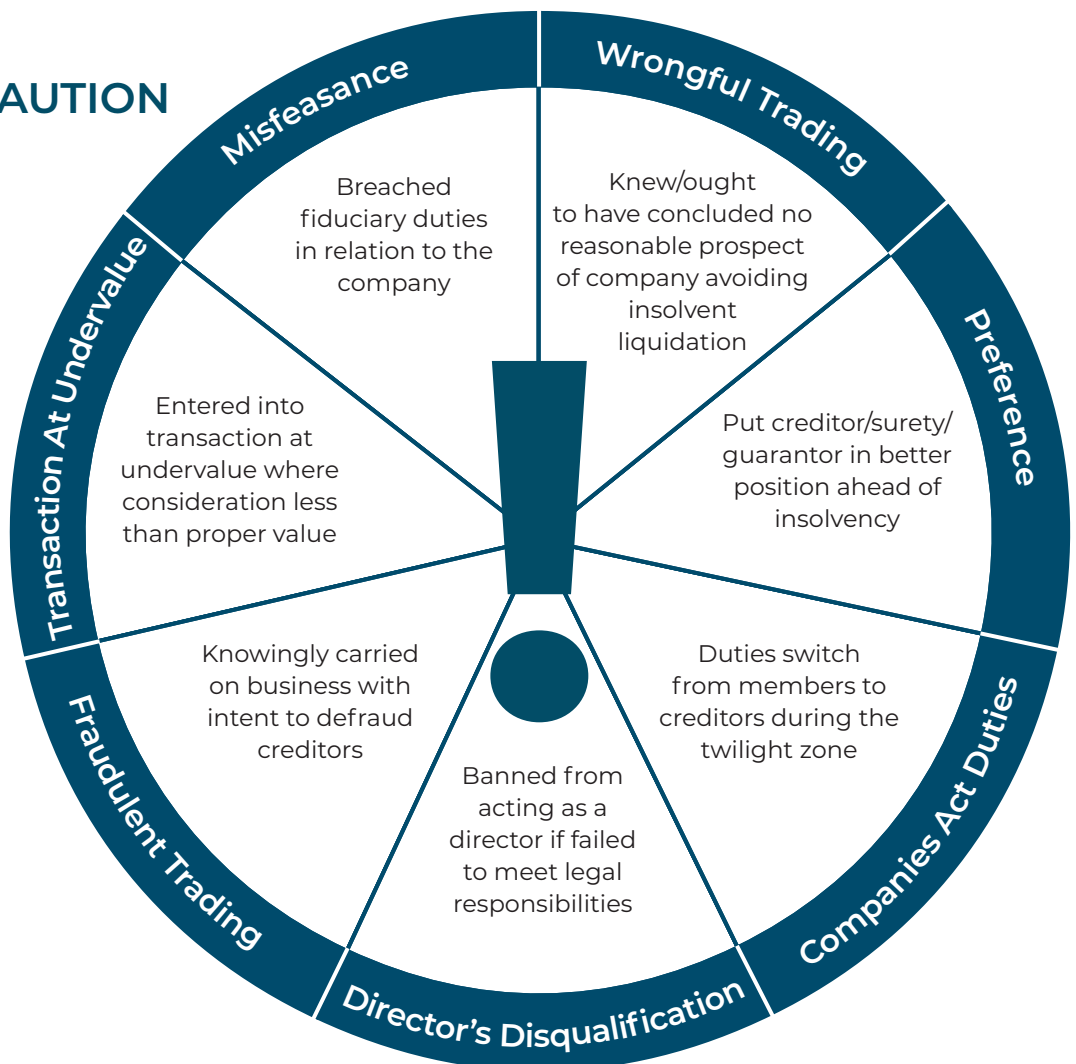
# IS ONE OF YOUR CLIENTS IN THE TWILIGHT ZONE?



The 'twilight zone' is commonly used to describe a period of trading when a company has, or is predicted to have, insufficient cash to pay its debts as and when they fall due.

This period continues until a business is put back on an even keel, potentially as a result of a restructuring or turnaround process.

## AREAS OF CAUTION



During the twilight period, directors must act with great care as failure to do so could result in a claim for wrongful trading or misfeasance, putting personal assets at risk.

## WHAT HAPPENS NEXT?

If the company appears to be insolvent, must it stop trading? Not necessarily. The fact that a company's debts exceed its assets does not mean it may go into insolvent liquidation. Case law suggests that liability for wrongful trading will only arise if, on a net basis, it is shown that the company is worse off as a result of the continuation of trading. The directors may consider that the company can trade back to solvency, and the decision to continue trading may in certain circumstances be justified.

Unfortunately some businesses are incapable of being rescued and have to be put into liquidation or administration. The date of the commencement of the formal insolvency procedure then triggers

the period from which liquidators and administrators can look back and scrutinise prior transactions such as preferences and transactions at undervalue.

## PRACTICAL POINTS

If you are a director of a company that may be getting into financial difficulty, you should:

- Immediately seek specialist advice from insolvency practitioners, accountants and lawyers.
- Hold and minute regular board meetings to discuss business performance.
- Analyse the company's financial position in detail, monitoring cashflows and KPIs on a daily/weekly basis.

- Keep comprehensive notes of key decisions taken including reasons for the continuation of trade and payment of key suppliers.
- Maintain communication with key stakeholders and monitor compliance with banking covenants.
- Maintain and preserve the company's accounting records.
- Avoid preferences and transactions at undervalue, particularly when repaying guaranteed debts or disposing of assets.
- In the case of public listed companies or those regulated by another party (e.g. FCA), be aware of regulatory issues such as the duty to notify certain persons of the company's financial difficulties.
- Take every step reasonably necessary to minimise losses to creditors generally if insolvent liquidation is deemed inevitable.

For further help & guidance on effective cash management, please contact us. We have excellent relationships with UK lenders, HMRC and blue chip suppliers and are able to help with negotiations or to source additional / alternative funding.

### For more information please contact:

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