

# Law Watch



## Sustainable Business

**Sorry, but I have to mention the CC words. Unavoidably we are all aware of the quake across the pond and must brace ourselves for the shock waves.**

It is reported many economists believe that it is an opportunity for rebalancing the economy, which has become overly dependent on consumer spending financed by cheap credit and government spending. My view is, as with the environment, we live richly and now have no choice but to consider how to sustain it.

There are many different reasons for business failure apart from poor economic conditions: poor management, loss of market, supplier or customer insolvency, lack of financial control and overtrading. The identifiable issue between all distressed businesses is that they have run out of cash. The stresses and strains of financial problems may cause undue panic or a 'head in the sand' mentality (pride perhaps?).

If directors consider that their company may become insolvent they are obliged to take reasonable steps to minimise the potential loss to creditors. This places great responsibility on directors and has important implications. It may well cause the directors to consider that the company should cease trading immediately. This is not always in the best interest of the creditors. The directors may chose to continue trading, possibly to trade through difficulties, where it's a cash flow problem, or to secure refinancing, if it's a balance sheet problem. If the trading is unsuccessful or further funding not obtained, it will not automatically lead to criticism of their actions.

What is crucial is that the directors are fully informed of the situation, take professional advice, keep good accounts, regularly monitor the position and meet regularly to discuss and make well informed decisions as to whether to continue to trade (taking accurate minutes of such decisions). They should also keep creditors informed, consider taking restructuring measures and cost cutting. Caution though, as directors may find themselves personally having to make contributions to their company's assets if they have not taken every reasonable step to minimise potential loss to the company's creditors.

If it comes to it, businesses can survive a recession; the challenge is there for the taking.



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