

Cayman Directors Blog Series: What directors should do in the zone of insolvency

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It is well established that where a company is insolvent or nearing insolvency, the directors must have regard to the interests of the company's creditors. This is because it is the creditors' assets (and not the shareholders' assets) that are under the management of the directors pending the liquidation or the return to solvency.

The company enters the zone of insolvency when it becomes apparent that the company will not be able to discharge all of its liabilities. From that point on, actions of the directors will be heavily scrutinised. So, directors should take advice at each step either collectively as a board or individually if there is a lack of agreement. The priority for directors is to take steps to preserve the assets of the company and to not incur further liabilities. Directors should also keep a record of having considered the options at each stage:

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There are a number of offences in the Companies Law in the context of an insolvent company so directors should have these in mind when conducting the business of the company in the twilight zone. These offences include:

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Directors should also have regard to the requirements of the Companies Law not to wilfully authorise or permit distribution of dividends and not to make payment out of capital for a redemption or purchase of its own shares.

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