

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

Newsletters - 13/12/2015

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:

- 
- 
- 
- 

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:

- 
- 
- 
-

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.

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

## Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

## Meet the Author



[Rachael Reynolds KC](#)

Global Senior Partner

[Cayman Islands](#)

E: [rachael.reynolds@ogier.com](mailto:rachael.reynolds@ogier.com)

T: [+1 345 815 1865](tel:+13458151865)

## Related Services

[Private Wealth](#)

[Legal](#)

[Dispute Resolution](#)

## Related Sectors

Restructuring and Insolvency

Trusts Advisory Group