

WHEN IS A COMPANY INSOLVENT?

www.owndriver.com.au

David Lalic is a partner in Jackson Lalic Layers and specializes in providing legal advice to the transport industry.

One of the defences for a director is if there were reasonable grounds to expect the company was solvent and would remain solvent even if it incurred the debt or incurred a range of debt including that particular debt.

Another defence is if the director had reasonable grounds to believe, and did believe, that competent and reliable person who was responsible for providing adequate information about the company's solvency was fulfilling that responsibility.

Directors can also defend themselves on the basis that because of illness or other good reason they did not take part in the management of the company at that time.

Finally, a director can show they took all reasonable steps to prevent the company incurring the debt. Matters that may be considered when determining this defence is any action the director took to appoint an administrator to the company, when that action was taken and the results of that action.

Generally, a company is classed as insolvent if it is unable to pay all its debts when they fall due.

The company's ability to pay its debts should be determined by reference to the facts of each case.

A number of issues must be taken into consideration, such as the company's assets and liabilities as a whole. This includes the company's ability to collect debts owed to it and whether arrangements have been negotiated with creditors to defer payment of outstanding fees.

The company must also consider whether additional money can realistically be raised in a timely manner from the introduction of additional share capital or from future borrowings.

Companies should also look at whether there are surplus assets that can be sold in a relatively short period of time to help pay debts without damaging the company's ability to trade.

Anyone wishing to have more detailed information about the regulations should contact David Lalic at Jackson Lalic Lawyers.

***David Lalic can be contacted on 02 9262 1770 or
dlalic@jacksonlalic.com.au***