

LIMITED COMPANY DEBTS

FACTSHEET 5 (2019)

This fact sheet gives information about private limited companies. We will use the terms 'limited company' and 'company' for the rest of this fact sheet. We explain the responsibilities of limited company directors and how to deal with any debts of the limited company.

Some things about limited companies are complicated. You may need to speak to a solicitor or insolvency practitioner about certain issues. If you are unsure about whether you need to do this, **contact us for advice**. You can also visit the Companies House website, www.gov.uk/government/organisations/companies-house, for more information about how to deal with limited companies.

Identifying a Limited Company

Under the law, a limited company is a separate entity from its directors and shareholders. In a small company, the directors are often the shareholders. A company may have one sole director and, in some cases, it will also have a secretary. A limited company must be registered at Companies House. Also, it must have been granted a certificate of incorporation and have a 'memorandum of association' and 'articles of association'. These are important documents that each limited company must have. The limited company must send audited accounts to Companies House each year.

Liability for Limited Company Debts

In most situations, the director and shareholders are not liable for the limited company's debts. However, there are some circumstances where they may be liable:

- **Personal Guarantees:** If a limited company applies for credit (often from a bank or supplier), the director may be asked to give a personal guarantee. In this situation, the director is known as the 'guarantor'. The personal guarantee is a signed agreement stating that if the company becomes unable to pay the debt, the director can be held personally liable. Personal guarantees can be unsecured, or secured against property or land personally belonging to the guarantor. If the personal guarantee is secured, the property or land will be at risk of repossession if the guarantor is unable to pay.
- The company goes into formal insolvency proceedings and the director is found guilty of wrongful trading, fraudulent trading, misfeasance or other offences. See 'Offences' later in the factsheet for more information.

'Formal insolvency proceedings' is the term used to

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describe certain legal options that the limited company can take to deal with its debts or to bring the company to an end.

A 'company voluntary arrangement' (CVA) is an option to deal with company debts and you can continue to trade.

'Administration', 'creditors' voluntary liquidation' and 'compulsory liquidation' are options designed to bring the company to an end. We describe each of these options later in the factsheet.

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- **Pay as you earn income tax (PAYE):** Her Majesty's Revenue and Customs (HMRC) use this system to collect income tax from someone's wages at source if they work for an employer. As a director, if your limited company is dissolved (that is, formally closed), you are not generally liable for your own PAYE. However, HMRC can ask you to make an arrangement to repay it. This is because a director is technically an employee of the limited company and HMRC can recover any income tax unpaid by an employer (that is, the limited company) from an employee (you).
- **Director's Loan Account:** If a limited company is dissolved and the director's loan account is in debit (that is, the director owes the company money), the director can be asked to repay the amount owed.

Offences

As a director of a limited company, it is your 'fiduciary duty' to act in the best interests of the company at all times. Fiduciary duty means your legal and moral duty to do the right thing for the limited company. If you do not do this, it may be viewed as an offence if your company later enters into a formal insolvency option.

Below we outline some of the main offences you need to know about.

Wrongful Trading: If you are the director of a limited company, it is your fiduciary duty to recognise when the company is insolvent. 'Insolvent' means that:

- the company cannot meet its debts as they fall due; **or**
- the value of its assets is less than the total debt that it owes; **or**
- the company cannot meet its debts as they fall due and has assets worth less than the total that it owes.

You should stop trading when there is no reasonable prospect of the company being able to get out of its current difficulties by continuing to trade. 'Wrongful trading' means continuing to trade when the company is insolvent, resulting in the company's debts increasing.

Fraudulent Trading: Fraudulent trading means deliberately trying to defraud creditors, or intentionally being part of a fraud taking place. For example, this would include taking money from the company and then deliberately entering incorrect information into company accounts.

Misfeasance: Misfeasance means taking company funds or property for your own gain at the disadvantage of the company's creditors. An example of this offence is taking a salary from the company to pay your personal debts rather than paying the company's debts.

If you are applying for credit, or signing an agreement for your limited company, make sure that the creditor knows that you are signing for, and on behalf of, the limited company. You may need to have the agreement checked by a solicitor to ensure that you are not signing in your own name. If you do not make this clear, you may be at risk of the creditor trying to pursue you personally for any unpaid debts. Also, some creditors may claim that they were unaware that they were dealing with a limited company. If this has happened to you, **Contact us for further advice.**

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Other Offences: These can include:

- deliberately entering incorrect information into limited company records;
- making false statements about the company; **and**
- missing out important information about the company when completing certain forms.

If you are unsure whether a particular action is likely to be viewed as an offence we may be able to offer guidance.

Contact us for advice.

If you are the director or officer of a limited company and are found guilty of any of the offences described in the offences section, you can be held personally liable for the debts of the company. You could also be fined or disqualified from being a director for a period of time. In serious cases, you can be imprisoned.

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Dealing with the debts of a Limited Company

If your limited company is struggling to pay its debts, think carefully about whether it can trade through its financial difficulties. To help you do this, complete a business budget sheet showing the company's income and outgoings. You may need help from your accountant to do this. If you require guidance on completing a budget sheet, **contact us for advice.**

When completing the budget, work out the average income for the limited company compared to the outgoings (including salaries). This should usually be done over a period of three to twelve months. Your company will also need to budget for corporation tax, PAYE for employees and value added tax (VAT). See the example of a limited company budget at the end of this factsheet.

If there is a monthly profit after all outgoings have been taken into account (that is, a 'net profit'), think about whether it is possible to make offers to all of the company's creditors. In the next two sections, we outline the options available, depending upon whether or not there is a net monthly profit.

Options if there is a net monthly profit available

Informal Negotiation: Use your business budget to show how much money is available and how much the company can afford to offer to its creditors in instalments.

It is important that you identify which of the company's creditors are considered priority and which is non-priority. If you are unsure of the type of debt your company has, **contact us for advice.**

Company Voluntary Arrangement (CVA): A CVA is a legally-binding agreement between your company and its creditors to pay an agreed amount off its debts over a short period of time. Payments can either be paid as a lump sum or in instalments for a set number of years, or a combination of both.

A CVA has to be set up by an insolvency practitioner (IP), who is referred to as the 'nominee'. An IP is usually an accountant or solicitor who is authorised to set up formal insolvency procedures. If you need assistance finding an IP **contact us for advice.**

To find a directory of insolvency practitioners search on:

www.r3.org.uk/get-advice/find-a-practitioner.

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A CVA usually then proceeds as follows:

- With the help of the nominee, the directors put together a proposal to the company's creditors. The nominee can make an application to the court for a **28 day** 'moratorium'. This stops any court action being taken against the company whilst the proposal is put together. However this involves a fee that you usually have to pay to the nominee upfront. If the nominee applies for a moratorium, formal notice must be given to the Registrar of Companies at Companies House.
- The nominee sends the CVA proposal to the company's creditors and arranges a formal meeting called a 'creditors' meeting. The nominee must give the creditors at least **14 days** notice of this meeting.
- At the meeting, the creditors will vote on whether or not they accept the CVA. It is possible that not all the creditors will attend the meeting, so some votes may be sent in writing or by email.
- Each creditor is given a vote based on how much money they are owed. For example, a creditor who is owed **10%** of the company's total debt holds **10%** of the vote. In order for the CVA proposal to be accepted, at least **75%** of the votes must agree to its terms. Therefore if your company has a creditor that holds **75%** or more of the company's debt, they have the deciding vote.
- The nominee will then send a report of the meeting to the Registrar of Companies at Companies House.
- If the CVA is agreed, all of the company's creditors are bound by the terms and conditions of the proposal, even if they voted against the CVA.
- A CVA does not affect the rights of secured creditors or landlords. They could still take possession action for any outstanding arrears.

If you have applied for a moratorium, you will have to wait for **12 months** before you can apply for another one. However, it is not always necessary to apply for a moratorium when applying for a CVA.

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If the company's creditors vote against the CVA, then things will go back to the same position as they were before the application was made. You will need to negotiate payment arrangements with the creditors separately. Your company may also incur costs and lose any fees paid for the CVA application.

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Options if there is no monthly profit available

If there is no money available you may need to consider reducing your director's salary. Director's salaries should be taken based upon what the company can afford to pay and not on what is needed for the director to meet their personal costs. If you are unable to meet your personal costs from the salary you are drawing, **contact us for advice**.

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You will need to consider whether the company is insolvent. 'Insolvent' means that :

- your company cannot meet its debts as they fall due; **or**
- the value of the company's assets is less than the total debt that it owes; **or**
- your company cannot meet its debts as they fall due **and** has assets worth less than the total that it owes.

A company can also be considered as insolvent if it has received a 'statutory demand' and the time limit on it for replying has run out. A statutory demand is a legal document from a creditor demanding that the company pays what it owes them. It has to be sent to your company before the creditor applies to court to wind your business up. See the next section 'Compulsory liquidation (winding up)' for more information.

Ask your accountant for help drawing up a budget sheet of the company's assets and what it owes (that is, its liabilities). If you need assistance, **phone us for advice**.

If your company is insolvent, then you should consider the following options:

Compulsory Liquidation (Winding Up): Compulsory liquidation is where a court order has been made for your company to be made bankrupt (that is, wound up). A creditor asks the High Court, with the right jurisdiction, to wind up the affairs of an insolvent limited company. This legal process ends with the company's removal from Companies House register, effectively ceasing to exist.

A winding-up petition can be presented by:

- your limited company itself, its directors or one or more shareholders;
- a receiver, administrator or supervisor;
- Department of Enterprise, Trade and Investment (DETI);
- the Financial Services Authority (FSA);
- a creditor;
- the clerk of the High Court;
- the official receiver; **or**
- a member state liquidator.

The winding-up petition is normally presented to the court by a solicitor. The petition is also usually published in a trade papers like 'The Belfast Gazette' or 'Stubbs Gazette'. It may also be advertised in the Belfast Telegraph or local newspapers.

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The most common reason for a winding up petition is that your company is unable to pay its debts.

Your company is classed as being unable to pay its debts if:

- one of your creditors is owed more than **£750**, your limited company has received a statutory demand from them and the time limit stated on it has run out; **or**
- it is proved to the court that either your company is unable to pay its debts as they fall due, or your company's assets are valued at less than its total debt, or both.

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The court can then either:

- grant the winding up order;
- dismiss the winding up order; **or**
- adjourn the case (that is, give further time for certain actions to be completed).

The court can also make an 'interim order' or any other order as it sees fit. An interim order may allow your company to continue to trade for a while. For example, this may be done to allow your company to go ahead with planned work or work in progress so that more money can be raised to pay creditors.

If the order is granted, the court usually appoints an official receiver as 'liquidator' of your company. The liquidator's main duties are to collect and sell your limited company's assets to raise money to pay its creditors. After the winding-up order is made, the official receiver will then:

- make sure that notice of the order is published in a trade paper like 'The Belfast Gazette' or 'Stubbs Gazette';
- ask for a statement of affairs, and further information regarding your limited company's history;
- sell any assets and distribute the funds amongst your company's creditors; **and**
- investigate the affairs of your company and the conduct of its directors and members. A report will be made about the directors' conduct and sent to the Insolvency Service.

If your company has a lot of assets, the official receiver may call a meeting of creditors to appoint a separate insolvency practitioner as liquidator. If this happens, the official receiver will still investigate your limited company's affairs.

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Once the process is completed, your company will be dissolved. This means that it will be formally closed.

Is it possible to stop the winding-up order being made?

There are three ways that winding-up proceedings can be stopped:

- The court can rescind (cancel) a winding-up order. The company (or anyone else) can apply for it to be rescinded if the court did not have all the relevant facts when making the winding-up order. Application should be made **within 7 days** of the order being made.
- The company can appeal against a winding-up order. As a result of an appeal, the court can rescind the winding-up order or otherwise vary its decision. An appeal should be made **within 4 weeks** of the order being made.
- Liquidation proceedings can be 'stayed' (stopped), permanently or temporarily, on the application of the liquidator, the official receiver, a creditor or a shareholder. If liquidation proceedings are stayed permanently, the directors usually regain control of the company. An application to stay the liquidation proceedings can be made at any time after a winding-up order has been made.

Seek legal advice from before you make any of the applications described above. You may be charged fees for any work carried out.

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Compulsory voluntary Liquidation (CVL): Your limited company can go into CVL when:

- the company cannot meet its debts as they fall due; **or**
- the value of its assets is less than the total debt that it owes; **or**
- the company cannot meet its debts as they fall due **and** has assets worth less than its total debt.

The directors must hold a board meeting and make a formal decision that this is the case.

A liquidator is then appointed to wind up your company. The liquidator will be an insolvency practitioner (IP) and can be appointed by either the creditors or members of your company. Your company's assets will be sold and the money raised will be used to pay its debts and the liquidator's costs. If any money is left, it will be shared between members of the company.

The liquidator will investigate the conduct of the company's directors. The process will end with the company being dissolved (that is, formally closed) and a final creditors meeting being held by the IP.

Receivers: A receiver can be appointed by anyone who holds a valid 'floating charge' against the assets of your company. A floating charge is a security given to a creditor over any assets that your limited company may hold at any point in time. The receiver can only be appointed if the floating charge was taken before **15 September 2003**. A receiver has the power to sell the assets that are secured against the floating charge.

The receiver only needs to recover the debt owed to the floating charge holder. If there is any money left over, the company would also have to be liquidated for unsecured creditors to be paid.

The receiver will investigate the conduct of the directors of your company.

Administration: This is where an administrator is appointed to take over the running of your company. They must be an insolvency practitioner and can be appointed by the court or by the company's directors. The administrator will manage its affairs, business and property for the benefit of the creditors.

The aim of administration is to:

- make an attempt to rescue your company as a going concern. 'Going concern' means that a limited company is trading and intends to continue trading;
- get the best possible price for either your company or its assets, so that creditors get a better return than if the company were wound up; **and**
- value and sell any property owned by your company so that preferential creditors can be paid.

It is important that the directors co-operate fully with the liquidator and hand over all books, records, receipts and statements. They will also need to give the liquidator all the information about the company's assets.

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The appointment of receivers is rare. If a receiver has been appointed to your company, you may need to seek legal advice. You may be charged fees for any work carried out. If you need guidance on finding legal assistance **contact us for advice.**

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Pre-pack Administration: A 'pre-pack administration' is an arrangement for the sale of your company's assets, normally to the directors or shareholders, which is agreed before formal insolvency. Formal insolvency will normally follow very soon after the assets are sold. Pre-pack administrations are complicated. **Contact us for advice.**

Strike Off

Strike off is not a formal insolvency procedure. It is the method used to dissolve (that is, formally close) your company if it has no assets and cannot afford to appoint a liquidator or administrator.

Am I eligible for strike off?

Your company will be eligible for strike off if, in the previous **three months**, it has not:

- traded or advertised its intention to continue trading (for example, by placing adverts in the local newspaper or online);
- changed its name; **and**
- got rid of any assets in the normal course of its business.

Your company cannot apply for strike off if it is going through:

- any insolvency proceedings such as liquidation; **or**
- a 'section 895 scheme' under the **Companies Act 2006** (that is, a compromise or arrangement between your company and its creditors or members).

If you are unsure whether your company can apply for strike off, **contact us for advice.**

In order to prepare for strike off, your limited company should stop trading and tell all of its creditors and members in writing that it has done this. The creditors and members should also be told that your limited company does not have enough money to enter into formal insolvency proceedings. The letter can also invite creditors to wind up the company at their own expense. See the sample letter 'Considering strike-off' near the end of this fact sheet.

Once the company has ceased trading for **three months**, you can apply for strike off on **form DS01**. This is available from Companies House by calling them or downloading from the website:

www.gov.uk/strike-off-your-company-from-companies-register .

The form should be signed and dated by: the sole director if there is only one; both directors if there are two; **and** by all, or the majority, of the directors if there are more than two.

The form should be sent with the fee of **£10** by cheque made payable to 'Companies House' to:

Registrar of Companies
Companies House
2nd Floor, 32-38 Linenhall Street
Belfast
BT2 8BG

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Within **seven days** of returning the forms, you should send copies to:

- any other company members (for example, shareholders);
- all existing and likely creditors (for example, banks, suppliers and so on);
- the appropriate offices of HMRC and the Department of Work and Pensions;
- employees;
- managers or trustees of any employee pension fund; **and**
- any directors who have not signed the form.

Once the form is accepted, the registrar will place a notice on the company's record stating that a strike-off proposal has been made. The proposal is then advertised in a trade paper, for example 'The Belfast Gazette' or 'Stubbs Gazette' and an invitation is given for objections to the strike off. If no objections are received within **three months** of the date of the notice, the company will be dissolved (that is, formally closed). This will then be shown on the Companies House register.

If any objections are made, the limited company will not be dissolved for approximately **12 to 15 weeks**. This gives the objector time to take action against the company (for example, by taking court action or using formal insolvency proceedings at their own cost). If your Company has received an objection to its strike-off proposal, **contact us for advice**.

It is an offence for you to:

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- apply for strike off if your company is not eligible;
- give false or misleading information on the application;
- fail to send copies of the application to all relevant parties within **seven days**; **or**
- fail to withdraw the strike off application if the company is no longer eligible.

These offences can lead to a fine, or imprisonment, or both.

You can also be disqualified from being a director for up to **15 years**.

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Considering Strike Off - Sample Letter

Use this letter to tell your creditors and members of your limited company that you are considering strike off

(Your company address)

To: _____

Date: _____

Dear Sir/Madam

Account No: _____

I am/we are writing to inform you that **[insert company name]** is technically insolvent and therefore ceased trading on **[insert date]**.

The company does not have enough money or assets to go into liquidation and therefore invites creditors or members to issue winding-up proceedings, should you wish to do so.

If creditors or members do not take formal winding up proceedings, **I/we** intend to apply for strike off under **s1003 Companies Act 2006** after a period of three months from the above date.

Yours faithfully

(Your signature)

for and on behalf of **[enter the name of your limited company]**

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Budget For Limited Companies

Use this budget to assess whether your limited company can continue to trade and get out of difficulties and negotiate with creditors

You need to use an average figure over an appropriate period (for example 3, 6 or 12 months).

To find your average 'monthly income' to input into the budget, use the example below.

- Receipts for the last three months = £3,000
- Divide £3,000 by 3 = £1,000
- Average monthly amount is £1,000

Monthly income	£	
Costs		To work out the amount to put aside for corporation tax, do the following: Take away the total costs from the monthly income and call this figure A . Multiply A by 12 to get the annual figure. Call this B .
Stock purchases	£	
Rent	£	
Business rates	£	
Business loan	£	
Bank charges	£	
Wages (including PAYE and National Insurance)	£	
Water rates	£	Multiply the first £300,000 of B by 20%. Call the figure you get C .
Gas	£	
Electricity	£	This is your corporation tax due on your annual profits.
Insurance	£	
Transport and motor costs	£	
Stationery	£	
Postage	£	
Cleaning and repairs	£	
Telephone	£	
VAT	£	
Accountant	£	
Professional fees	£	
Other	£	
Other	£	
	£	
TOTAL COSTS	£	
Monthly income minus total costs (A)	£	
Estimated monthly corporation tax (D)	£	To get the estimated corporation tax, divide C by 12. Call that figure D . Put D in the appropriate box opposite.
Net monthly profit = (A) – (D)	£	

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