

ALLEN & OVERY

Directors' duties and liabilities in financial distress during Covid-19

July 2020

Directors' duties and liabilities in financial distress during Covid-19

A global perspective

Uncertain times give rise to many questions

The Covid-19 pandemic and the ensuing economic crisis has a significant impact, both financial and otherwise, on companies around the world. Boards are struggling to ensure survival in the short term and preserve cash, whilst planning for the future, in a world full of uncertainties.

Many directors are uncertain about their responsibilities and the liability risks in these circumstances. They are facing questions such as:

- If the company has limited financial means, is it allowed to pay critical suppliers and leave other creditors as yet unpaid? Are there personal liability risks for 'creditor stretching'?
- Can you enter into new contracts if it is increasingly uncertain that the company will be able to meet its obligations?
- Can directors be held liable as 'shadow directors' by influencing the policy of subsidiaries in other jurisdictions?
- What is the 'tipping point' where the board must let creditor interest take precedence over creating and preserving shareholder value?
- What happens to intragroup receivables subordinated in the face of financial difficulties?
- At what stage must the board consult its shareholders in case of financial distress and does it have a duty to file for insolvency protection?
- Do special laws apply in the face of Covid-19 that suspend, mitigate or, to the contrary, aggravate directors' duties and liability risks?



There are more jurisdictions involved than you think

Most directors are generally aware of their duties under the governing laws of the country from which the company is run. However, individuals may also be directors of subsidiaries in other jurisdictions, either personally or indirectly through holding or management entities of which they are directors. And even if they are not, the laws that govern the subsidiaries may classify them as shadow directors of the subsidiary. All this may expose directors to duties and liability risks at local levels.

To complicate matters, liability may not only arise under local company law, but also under tort laws of countries where contracts are entered into that later cannot be performed, causing damages to the company's counterparties. Insolvency proceedings may be opened in yet more jurisdictions where the company or its subsidiaries do business and local insolvency laws may contain specific directors' duties and liability regimes.

Guidance to navigating these risks

We have put together an overview of the main issues facing directors in financially uncertain times in a number of key jurisdictions across the globe. This includes a brief general description of directors' duties and key areas of potential directors' liability in each country, as well as some answers to the questions listed above.

Obviously, the duties and liabilities that may arise will always be dependent on the circumstances. Therefore, this publication should not be used as legal advice when faced with a specific dilemma. However, we hope it may help to alert directors and their in-house advisors to the duties, pitfalls and liability risks that exist in major jurisdictions across the globe.



England and Wales

No.	Question	Answer
Directors' Duties		
1.	Do directors have to act primarily in the interest of their shareholders or do they have to take in account other stakeholders' interests as well? Does that regime change in case of financial distress?	<p>When a company is solvent and trading normally, the directors' primary consideration remains to think of the interests of its shareholders. This duty is expressed as a duty to act in the way the director considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.</p> <p>When a company finds itself in financial difficulties (either insolvent¹ or likely to become insolvent – which in this context means insolvency is probable), there is a shift in focus to the interests of the company's creditors. Where a company is actually insolvent, the creditors' interests are 'paramount'. Short of actual insolvency, the extent to which creditors' interests are paramount or are merely to be considered (without being decisive) is a point on which clarification from the courts is awaited. That said, where a company is likely to become insolvent, the creditors' interests must, at the very least, be considered and taken into account. The directors' knowledge as to whether the company is insolvent or of doubtful solvency is a subjective matter but claims of 'blissful ignorance' can expect rigorous examination.</p>

¹There is no one definition of insolvency under English law. The term (or similar terms such as 'insolvent administration', 'insolvent liquidation', 'becomes insolvent' or 'is insolvent') means different things depending on the legal context – see the four areas of risk for directors described below in question 2. A key 'insolvency' test may also be found in the context of whether a company may be wound up by the court (is the company 'unable to pay its debts'?) and as a prerequisite for the company to go into administration (is the company unable to pay its debts or likely to become so?). Inability to pay debts is analysed in two ways. The first way is whether the company can pay its debts now or in the short term: this is usually referred to as the 'cashflow test'. An unpaid creditor may issue a 'statutory demand' and if the debtor fails to pay that operates as evidence of the debtor's inability to pay its debts. Beyond the short term, while the question is still 'is the company unable to pay its debts' albeit over a longer timescale, the emphasis shifts to looking at the balance sheet and whether the company's liabilities exceed its assets. This is often referred to as the 'balance sheet test'.



No.	Question	Answer
2.	<p>What are the key areas of potential liability for directors when a company is in financial difficulties?</p>	<p>There are four main areas of risk: (i) wrongful trading; (ii) fraudulent trading; (iii) misfeasance (or breach of duty); and (iv) disqualification and compensation orders. We discuss these four main areas of risk below.</p> <p>(i) Wrongful trading</p> <p><i>Please note: in response to the Covid-19 pandemic, the UK Parliament has enacted the Corporate Insolvency and Governance Act, 2020 (CIGA) which entered into force on 26 June 2020. The CIGA contains a ‘suspension’ of the wrongful trading law described below in respect of acts or omissions by directors or shadow directors in the period from 1 March 2020 to 30 September 2020. The Secretary of State may by Regulation extend the expiry date. The ‘suspension’ provides that the court is to assume that the company’s directors are not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period. The ‘suspension’ does not apply to a number of different types of company, including banks/investment banks, insurance companies, securitisation companies, and companies who have issued certain types of capital market instruments.</i></p> <p>The wrongful trading provisions provide that, in certain circumstances, a director (or shadow director) will be liable for the debts and liabilities of the relevant company. It applies when a company has gone into insolvent administration or insolvent liquidation. ‘Insolvent’ for these purposes means that, at the time the company goes into administration or liquidation, its assets are insufficient to pay all creditors in full together with the costs and expenses of the procedure.</p> <p>The Wrongful Trading regime has two aspects. First, it focuses on a point in time. It asks of each director when they knew, or ought to have concluded, that there was no reasonable prospect of the company avoiding an insolvent administration or liquidation (the Critical Moment). The second aspect comprises a statutory defence. No wrongful trading order may be made against a director or shadow director where, from the Critical Moment, that person took every step with a view to minimising the potential loss to the company’s creditors as they ought to have taken.</p> <p>In assessing what a director should know and conclude as regards the Critical Moment having been reached and what steps ought to be taken to minimise losses to creditors from that point on, the law looks at the knowledge, conclusions and steps as would be known or ascertained, reached, or taken by a reasonably diligent person who has: (i) the general knowledge, skill and experience of a person carrying out the same functions as are carried out by that director in relation to the company; and (ii) the general knowledge, skill and experience of that director, where this is superior. The standard is thus composed of combined objective and subjective elements.</p> <p>A claim for Wrongful Trading can be brought by a liquidator or administrator or an assignee of such right or action.</p> <p>Liability for Wrongful Trading is civil and, although the court has wide discretion in determining the extent of personal liability, the essence of the law is to compensate creditors for the loss caused by the director’s conduct. Therefore, the court will typically order the director to contribute to the company’s assets in an amount equal to the amount by which the company’s assets can be said to have been depleted by the director’s conduct that gave rise to the Wrongful Trading. Some cases have imposed liability equal to all of the credit incurred but not paid from the Critical Moment. The facts in those cases have been that the accounting records of the company were so poor that the usual ‘asset depletion’ calculation was not possible.</p>



No.	Question	Answer
		<p>(ii) Fraudulent Trading</p> <p>Fraudulent Trading becomes relevant where a company has gone into insolvent administration or insolvent liquidation. ‘Insolvent’ bears the same meaning as in Wrongful Trading (above)². Fraudulent Trading applies if, in the course of a liquidation/administration of a company, it appears that any business of the company has been carried on with the intent to defraud creditors of the company (or creditors of any other person) or for any fraudulent purpose. The court may declare that any person who was knowingly party to the carrying-on of the business in this manner (including, for example, the directors if they were party to the activities) is liable to make such contribution (if any) to the company’s assets as the court thinks proper. This will require the court to consider whether the person concerned: (i) participated in the carrying on of the fraudulent business; and (ii) did so knowingly ie where they were participating with knowledge that the conduct was intended to defraud. Knowledge will extend to deliberately shutting one’s eyes to the obvious. The person concerned must have been ‘dishonest’. This is tested by reference to the standards of ‘ordinary decent people’.</p> <p>A claim for Fraudulent Trading can be brought by a liquidator or administrator or an assignee of such right or action.</p> <p>Fraudulent trading may take many forms. A company running a Ponzi scheme is an example. But it may also apply where the directors of an insolvent company with no prospects of recovery carry on the loss-making business, incurring credit knowing it can never be repaid.</p> <p>(iii) Misfeasance</p> <p>There are two aspects to the law of misfeasance in the zone of insolvency. First, as mentioned above, when a company is insolvent or likely to become insolvent the directors’ duty to the company requires that they consider the interests of creditors in addition to, or to the exclusion of, the interests of shareholders – depending on whether the company is actually insolvent or how close it is to that position. A director will be liable where a breach of this duty causes loss to the company.</p> <p>Secondly, where a company is in liquidation, there is a provision in the insolvency legislation which, while not creating any new duties for directors, provides a summary <i>remedy</i> for breach of duty. Under the summary misfeasance remedy, any past or present officer of the company who has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty including negligence causing loss to the company will incur liability.</p> <p>Those who may bring this misfeasance action include a liquidator of the company and a creditor of the company. Upon such an application, the court will examine the defendant’s conduct and if thought appropriate, compel them to: (i) repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just; or (ii) contribute such sum to the company’s assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty (again, as the court thinks just). So, even where an individual creditor brings a successful action, the remedy will be in favour of <i>the company</i> rather than the individual creditor. In that sense it is a class remedy.</p> <p>The court has a wide discretion with respect to the orders it may make under this provision. It is able to apportion the order made against individual directors in proportion to their involvement and culpability.</p>



No.	Question	Answer
		<p>(iv) Disqualification and compensation orders</p> <p>The court will make a disqualification order (of between two and 15 years) against a particular person where it is satisfied that: (i) the person is or was a director or shadow director of the company which has become insolvent during or after the time the person was a director (or shadow director); and (ii) the conduct of the person as a director is such that the person is unfit to be concerned in the management of a company. Disqualification means that the relevant person is barred from being a director of a company or otherwise being concerned in the management of a company without the leave of the court for the relevant period. A director who might otherwise face a court action for disqualification may give a statutory undertaking not to be a director or concerned in company management which has a similar effect to that of a court order.</p> <p>A company can become 'insolvent' in this context in one of three ways: (i) if it goes into liquidation at a time when its assets are insufficient for payment of its debts and liabilities, and the expenses of the winding-up; (ii) if it enters administration; or (iii) if it has an administrative receiver appointed to its assets and property.</p> <p>In deciding whether a person is unfit to be concerned in the management of a company, the court will consider the full range of the director's conduct, including the extent of the director's responsibility for: (i) the causes of the company (or any overseas company) becoming insolvent; (ii) having caused the company to breach the law; and (iii) breach of fiduciary duty or breach of the law by the individual. Mere commercial misjudgement is unlikely, on its own, to lead to disqualification. When finding a director or shadow director liable for wrongful or fraudulent trading, the court may also make a finding of unfitness and disqualify the director or shadow director.</p> <p>The court can also make a compensation order against a director being disqualified. Where a disqualification order has been made or a disqualification undertaking accepted, if the underlying conduct has caused loss to one or more creditors of the insolvent company, then the relevant person who is subject to the disqualification order or undertaking may be ordered to pay an amount as a contribution to the assets of the relevant company or for the benefit of a particular creditor or class of creditors. As with disqualification itself, the director may give an undertaking to make a compensation payment to avoid the need for a court case.</p> <p>Disqualification proceedings are initiated by the Secretary of State for Business, Energy and Industrial Strategy (Secretary of State).</p>



No.	Question	Answer
3.	Does liability rest only with formally appointed directors, or also with (other) officers or de facto directors? If so, what are the standards to qualify as such?	<p>The Companies Act, 2006 (Companies Act) defines a director as any person who occupies the position of director, by whatever name called. This covers more than just formally appointed (<i>de jure</i>) directors and extends to a person who acts as a director (a de facto director) or a person in accordance with whose directions or instructions the directors of a company are accustomed to act (a shadow director). As regards the main liability risks discussed above, the persons who can be held liable are, in summary, as follows:</p> <ul style="list-style-type: none"> (i) Wrongful Trading: past and present <i>de jure</i>, <i>de facto</i> and shadow directors who held those positions during the period in which the wrongful trading occurred; (ii) Fraudulent Trading: any person who was knowingly a party to the carrying on of the business for a fraudulent purpose (this will include persons dealing with the company who receive property with knowledge of the fraud); (iii) the duty to consider the interests of creditors applies to <i>de facto and de jure</i> directors. The misfeasance remedy is available against any past or present officer; liquidator; administrator; administrative receiver; and any person involved in the formation, promotion or management of the company. Shadow directors are not caught by the remedy; (iv) disqualification and compensation orders: any person occupying the position of director, by whatever name called (including <i>de facto</i> directors and shadow directors).
4.	What are the standards for directors' liability for the company having entered into contracts that the company can later not perform ('wrongful trading')?	<p>The answer to this across the four main areas of liability risk discussed above in question 2 is as follows:</p> <ul style="list-style-type: none"> (i) Where Wrongful Trading has occurred, the focus of a court order will be on imposing liability for losses incurred generally by the company after the Critical Time. But if a director wishes to rely on the statutory defence of having taken every step to minimise losses to creditors, they must show that no single creditor is worse off and that involves looking at whether the company incurred further credit from any creditor after the Critical Time which remains unpaid. (ii) Fraudulent Trading: to be liable a party has to be shown to be dishonest by the standards of a reasonable person with knowledge of the facts. There is a serious risk of being liable where credit is incurred at a time when the party knows or strongly suspects it will not be paid for/repaid. Distinct from Fraudulent Trading, a person who misrepresents the company's position to a creditor who then acts on the falsely optimistic picture painted for them and suffers loss as a result, may be personally liable for fraudulent or negligent misstatement. (iii) Misfeasance: directors who are by the relevant time required to think of the interest of creditors, generally, should not be increasing losses by continuing to trade including incurring further credit without a solution (light at the end of the tunnel) being reasonably likely. (iv) Disqualification and compensation order: causing the company to enter into contracts it cannot meet/comply with/satisfy may be a part of a picture showing the director is unfit to be concerned in the management of a company and should be disqualified. Where the conduct which has led to the disqualification has caused loss to a creditor or creditors, the court may order that the director or shadow director makes a compensation payment to the company or a particular creditor. Incurring credit when it ought not to have been incurred could lead to a compensation order being made against a director or shadow director.



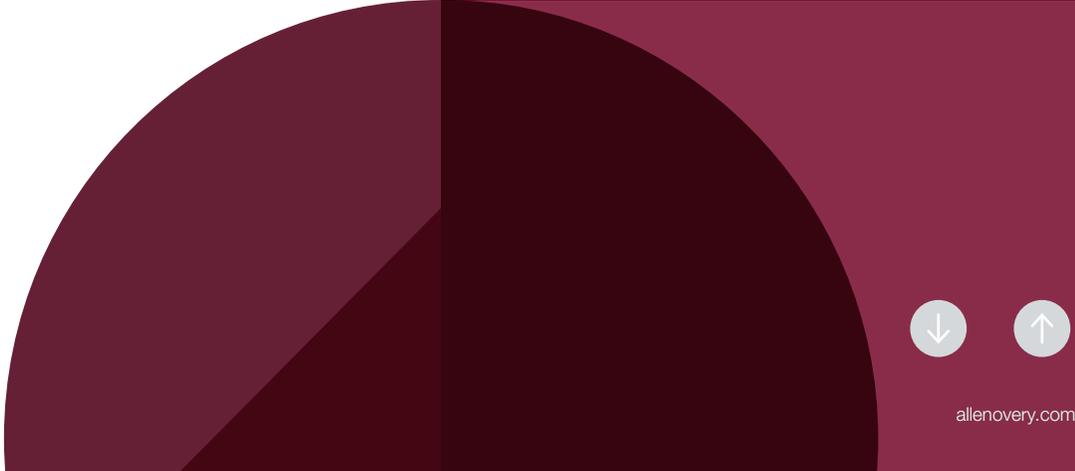
No.	Question	Answer
5.	What are the liability risks in the case of 'creditor stretching'?	Absent particular facts (for example, where a director fraudulently or negligently misstates the company's financial position), managing a company's cashflow ('creditor stretching') in times of financial distress is a relatively normal way for a company to seek to find the time to restructure. The critical issue is whether it is reasonable to believe a restructuring can be achieved. Deliberately paying some creditors (particularly connected creditors) ahead of others may render the directors vulnerable to attack.
6.	What are the liability risks in case of selective payments to some but not all creditors in case of liquidity issues? Is there a stage at which directors must treat all creditors equally?	As explained above, the key question here is whether there is a reasonable prospect of restructuring without a formal insolvency process. If there is such a reasonable prospect, and keeping in mind what is in the interests of creditors generally, directors have some flexibility in managing the company's cash. 'Ransom' payments to key creditors may be justifiable in such a scenario although equal treatment of the creditors of the same rank is usually the appropriate approach.
7.	Is there a distinction in this regard between preferential treatment of related entities and the treatment of other creditors?	As a general point, many legal rules make it inadvisable to pay connected persons in priority to others.
8.	Is there an obligation in case of financial difficulties to convene a shareholders' meeting and, if so, at what stage of financial difficulties?	Section 656 of the Companies Act requires that if a public company's net assets drop to half (or less) of its called-up share capital, the directors must call a general meeting to consider whether steps need to be taken and how the situation should be dealt with. The meeting must be called no later than 28 days from the earliest date on which the fact is known to a director of the company, and convened not later than 56 days from that date. Directors who knowingly authorise or permit the failure to convene the meeting are liable to a fine.
9.	Is there an obligation at some stage to file for bankruptcy or other statutory insolvency protection regimes?	English insolvency law does not have an express requirement to file at a particular time. The law operates by exposing directors to potential liability where filing is in the best interests of creditors and they do not file. It is therefore prudent for directors to file to avoid personal liability where that is the best outcome for creditors. Directors who are worried about Wrongful Trading risks might be inclined to file early, but there are risks for directors in so doing where it causes avoidable losses to creditors.



No.	Question	Answer
10.	Are there special liability risks in respect of certain debts, such as tax debts, social security payments, and pension contributions?	<p>In some disqualification cases the courts have noted that HMRC (the UK’s revenue authority) is an involuntary creditor and should not be ignored in favour of trade creditors.</p> <p>UK law requires that, as part of their payroll process, employers deduct tax at source in respect of income tax and national insurance contributions (the equivalent of social security payments). If directors are paid remuneration in their capacity as employees, it is important for them to ensure that the relevant tax payable is duly paid by the company as employees are personally liable to an assessment for unpaid tax if they receive payments from their employer knowing that the employer had wilfully failed to deduct and pay the relevant tax due on those payments. As directors are responsible for the management of the company and privy to the relevant information, in practice it will be easier for the tax authorities to prove to the satisfaction of the court that the directors had such knowledge and wilfulness.</p> <p>The Pensions Regulator, <i>acting reasonably</i>, may issue a contribution notice against an employer with a defined benefit pension scheme or someone connected or associated with the employer such as a director. The basis for issuing a contribution notice is that the person was party to or knowingly assisted activity whose main purpose was to avoid a pension liability or which caused material detriment to the likelihood of accrued scheme benefits being received by scheme members. The Regulator may also make a financial support direction. The grounds for making a financial support direction are that the employing company is ‘insufficiently resourced’. Such a direction cannot usually be made against an individual director. These powers of the Regulator are called the ‘Moral Hazard’ powers. Before using them the Regulator must consider it <i>reasonable</i> to do so.</p> <p>There have been a number of recent high profile corporate collapses in the UK where there were found to be large pension fund deficits despite directors having received large salaries and the company having paid substantial dividends to shareholders. The UK has been trying to ‘solve’ this issue since the early 1990s when it transpired that Mr Robert Maxwell had been funding his empire (which went insolvent) by raiding the group pension fund. In January 2020, the UK government introduced a new Pensions Bill with draconian measures intended to address the problem of insolvencies with pension fund deficits. The Pensions Bill is designed to put pressure on directors and if it became law would create two new criminal offences of ‘risking accrued scheme benefits’ (RASB) of employees and ‘avoidance of employer debt’ (AED) to the pension fund. The elements of RASB are that a person engages in an act or course of conduct (or fails to act): in a way that has a materially detrimental effect on a defined benefit pension scheme; the person knew (or ought to have known) that the act or omission would have such an effect; and the person had ‘no reasonable excuse’. ‘Person’ is of course a wide term and includes directors but also potentially advisers. The new criminal offence of ‘avoidance of employer debt’ would impose criminal liability where a person commits an act or course of conduct (or fails to act): in a way that prevents the recovery of the whole or any part of the scheme’s employer debt (or otherwise compromises or settles such a debt); the person intended the act or course of conduct or omission to have such an effect; and the person had ‘no reasonable excuse’. Rescue procedures such as schemes of arrangement and company voluntary arrangements (CVA) are compromises of debt and widely used. There is a concern that even a scheme or CVA that was duly approved by the statutory majorities of creditors could fall foul of the proposed new law. Even if pre-clearance of an action could be obtained from the Pensions Regulator, it might not be a defence to a criminal prosecution. The Regulator’s Moral Hazard powers would also be strengthened. Further, there are to be increased obligations to notify the Regulator in certain circumstances and civil penalties of up to £1 million for failing to notify or giving false information. The view of insolvency professionals is that these new measures would, if passed into law, have a detrimental effect on corporate restructurings by making the risks too great for directors primarily. It remains to be seen what will happen to the draft Pensions Bill when we emerge from the Covid-19 pandemic (assuming the UK government has more important things on its mind currently than defined pension fund deficits and does not intend to press ahead with the legislation at this time).</p> <p>The UK government has regularly expressed concern about serial insolvencies where the tax authorities are left unpaid and has indicated an intention to legislate in this area in a way that will put pressure on directors to avoid such outcomes or face personal liability. However, the Covid-19 law reforms (see answers to question 14) have overtaken the tax-related reforms on the government’s agenda.</p>



No.	Question	Answer
11.	Are the liability risks of the directors collective (i.e. the whole board is responsible/liable) or individual? On what grounds can a director exculpate themselves from other directors' acts or omissions?	<p>Directors owe their duties individually as opposed to the board being collectively responsible. This means that each director has to form their own views independently as they consider appropriate. Directors may be allocated specific responsibilities – Finance Director or Sales Director, for example – and they will have primary responsibility in that area. But that does not absolve the other directors from responsibility for ensuring these duties are being discharged appropriately by the director concerned. This may involve challenging their actions and views in certain circumstances.</p> <p>As stated above, the minimum standard required of a director (both in terms of general statutory duties and in the context of the law of wrongful trading) is that of a reasonably diligent person having the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as that director. However, the actual standard by which a particular director is judged will be higher if that director's general knowledge, skill and experience is, in fact, greater.</p> <p>In practice, boards will try to reach a unanimous decision on major issues such as whether to file for insolvency. Where, say, one director feels strongly that the company should file and the rest of the board consider it is reasonable to continue trading, that director may feel compelled to resign as director. However, just resigning when matters become difficult is rarely appropriate: the judge in one case described it as 'the coward's way out'.</p> <p>There is a general defence under section 1157, Companies Act to a breach of duty claim where a director has acted honestly and reasonably and, in the circumstances, the court concludes that they ought fairly to be excused.</p>
12.	Are there specific actions against directors under bankruptcy law?	Please see risks discussed above. It is worth noting in passing that in English law 'bankruptcy' is a term applied to the insolvency of individuals. 'Insolvency' is the term used for corporates.



No.	Question	Answer
13.	Are there specific duties of (or consequences for) shareholders or other group companies at some stage of the financial difficulties, such as an automatic subordination or conversion into equity of debt to parent companies?	<p>English law does not have a general law of shareholder duties nor do we have thin capitalisation rules or a law of equitable subordination of shareholder loans. In an insolvency, for example, intercompany loans are not subordinated or converted into equity. There is a law of ‘piercing the corporate veil’ such that a parent company, say, may be made liable for the debts of its subsidiary but its scope is narrow and often involves other concepts such as fraud, agency, or sham transactions.</p> <p>A few specific points to note in the context of group companies:</p> <ul style="list-style-type: none"> (i) If a director is on the board of a number of companies in a group, they must wear their hat as director of each company in turn, individually, and consider the financial position of that company alone when making decisions for each company. (ii) There is also a positive obligation for directors to avoid potential conflicts of interest. For example, a director should ensure that the financial difficulties have not caused a potential conflict of interest with their position as director of other companies within a group. Where there is a potential conflict of interest, consideration should be given to whether the relevant director might resign from one or more of their positions or recuse themselves and take no part in the board discussions or decision-making at one company or the other. (iii) A common director of two companies (for example, a director of a parent and its subsidiary) with confidential information at parent level which concerns the financial position of the subsidiary may be placed in an awkward position. First, there is the issue of conflict of interest and, secondly, for Wrongful Trading purposes at the subsidiary level the director will be judged by reference to personal actual knowledge which may be greater than that of other fellow directors. There are various measures that can be taken to address these concerns but those are beyond the scope of this survey. (iv) Where a parent company or the directors of such a parent operate a “hands on” approach to running the group and interfere persistently in the management of the subsidiary companies, the parent company (or, exceptionally, its directors) may be a shadow or <i>de facto</i> director of the subsidiary and accordingly the attendant duties and potential liabilities set out in the sections above will attach to them.
14.	Is there special legislation mitigating the liability risks of directors specifically in view of the Covid-19 crisis?	<p>Yes. As explained above in question 2(i), the CIGA entered into force on 26 June 2020. Among other measures, it temporarily relaxes the Wrongful Trading regime applicable to directors. The court, in assessing whether a director should make a contribution to the assets of the company under the Wrongful Trading provisions, is to assume that the director is not responsible for any worsening of the financial position of the company or its creditors between 1 March 2020 and 30 September 2020. The expiry date may be extended by Regulation.</p> <p>The other laws described above remain in full force and effect.</p> <p>The CIGA has a number of temporary measures to help debtors survive the effects of Covid-19. These include making statutory demands void and providing that a court hearing a winding up petition based on grounds other than failure to meet a statutory demand is only to make a winding up order if the grounds for the presentation of the petition would have existed despite any negative financial effect on the company of Covid-19. For fuller coverage of the CIGA, please refer to this note – https://www.allenoverly.com/en-gb/global/news-and-insights/publications/the-corporate-insolvency-and-governance-bill-the-most-significant-insolvency-reforms-in-the-uk-for-a-generation.</p>



Contacts



Katrina Buckley
Partner
Tel +44 20 3088 2704
katrina.buckley@allenovery.com



Jennifer Marshall
Partner
Tel +44 20 3088 4743
jennifer.marshall@allenovery.com



Harini Viswanathan
Associate
Tel +44 20 3088 3992
harini.viswanathan@allenovery.com



Gordon Stewart
Consultant
Tel +44 20 3088 2701
gordon.stewart@allenovery.com



For more information, please contact:

London

Allen & Overy LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

GLOBAL PRESENCE

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in over 40 offices worldwide.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term **partner** is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings.

A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.