

# Areas of Danger

An insolvency practitioner's perspective

## STEP

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**Governance**

# Governance

## Concern

### Board

- Board meetings not | improperly held
- Board of directors not really in control
- Email fog

### Documentation

- Lack of documented solvency monitoring

## Mitigation

- Hold real board & trustee meetings – fully minuted
- One board only, minimal delegation of functions
- One place to record key decisions
- Attach evidence of work to understand true asset and liability values and cash flow to board minutes



# Governance

## Concern

### Understanding

- Lack of understanding of changed priorities for directors

### Dangers/Risk

- Ignorance of the dangers of insolvency risk

### Due Consideration

- Decision not given proper deliberation

## Mitigation

- Independent advice; proper director training

- Independent professional advice attending board & trustee meetings

- Ensure that they are given proper deliberation



# Insolvency Twilight Zone

# Insolvency Twilight Zone

## Concern

### Legal Status

- 'Insolvency' defined differently depending on jurisdiction of company

### Creditors

- Directors' fiduciary duties change to creditors not shareholders

### Options Available

- Restructuring options need to be understood together with timescale before they narrow

## Mitigation

- Understand the law for the company's jurisdiction. Take advice

- Minute that this is understood

- Document options. Preserve cash to keep options open





# Accounting Information



# Accounting Information

## Concern

- Asset values uncertain in distressed market
- Debts collectable?
- Currency stability
- Contingent liabilities emerging/ crystallising
- Inter-company/ trust balances become unstable

## Mitigation

- Current re-valuation with note on any difficulty to realise
- Check & document collectability; realistic % to be collected; make provisions
- Hedging or exposure provision
- Check for warranties or guarantees given and exposure
- Check realisable/ collectable or danger to wider structure

# Accounting Information

## Concern

- Trading entities going concern?
- Guarantees reliable?
- Secured lender threatening legal action
- Assets unmatched by liabilities
- Lack of current cash flow/ accounts

## Mitigation

- Understand the underlying business and any future cash requirements to maintain trading/ threaten insolvency
- Check strength of any guarantees from third parties
- Check position and take advice to mitigate losses if required
- Ensure assets are understood
- Produce for board review





# **Directors' Personal Exposure**



# Personal Exposure

## Concern

- JFSC sanction; employment threat; professional sanction
- Antecedent transactions pre-liquidation can give rise to directors personal liability for losses

## Mitigation

- Governance points above
- Governance points above

# About your presenter



## **Ben Rhodes** FCA, FII, FABRP, FIPA, ACFE **Director, Recovery & Reorganisation**

### **Sector experience**

- Solvent liquidations of corporate group structures, GPs, LPs and individual companies, including property and other SPVs
- Forensic investigations and recovery action, locally and internationally, in relation to suspected fraud and antecedent transactions..

### **Ben's experience includes:**

Ben is a Chartered Accountant, UK qualified and licensed Insolvency Practitioner, and Fellow of INSOL International. He has worked in the areas of insolvency, restructuring and forensic investigations since 2003, beginning his career in London before moving to the Channel Islands in 2012. In that time, Ben has helped countless directors, creditors and other stakeholders in insolvency and restructuring related matters. Ben regularly takes contentious and non-contentious appointments as Liquidator or Administrator, in Guernsey, Jersey, Alderney; plus other offshore jurisdictions in conjunction with Grant Thornton International.

Ben's experience includes a 12-month secondment to the London head office of a UK clearing Bank, working within their restructuring department; and a secondment to the States of Guernsey where he advised on the proposed reform of Guernsey's insolvency law. He continues to advise the States on this area.

Ben is an Executive Member of the Association of Restructuring and Insolvency Experts (ARIES), the Channel Islands chapter of INSOL International, and also sits on the ARIES Legal & Regulatory Committee. Ben is a lecturer for the INSOL International Foundation Certificate in international insolvency.

### **Professional qualifications**

- FCA (Fellow of the Institute of Chartered Accountants in England and Wales)
- UK Licensed Insolvency Practitioner
- FII (Fellow of INSOL International)
- FABRP (Fellow of the Association of Business Recovery Professionals)
- FIPA (Fellow of the Insolvency Practitioners Association)
- ACFE (Member of the Association of Certified Fraud Examiners)
- Qualified Member of the Society of Trust and Estate Practitioners (STEP).

# Get in touch

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