

“ Plain speaking legal advice ”

**Maintaining business success
and protection in difficult times**

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This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

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Five top tips from Herrington & Carmichael LLP to protect you and your business during difficult trading conditions.

The current economic climate heightens the risk to any business. It could be from customers not paying, from overstaffing, or from trading while insolvent. But there are still steps businesses can take to ensure they are well placed to deal with the credit crunch.

1. Examine your terms and conditions

First, take a close look at your standard terms and conditions of business: do they work in your favour? Ensuring that they are incorporated into your customers' and suppliers' contracts is essential to gaining fast and effective recovery of what is owed to you. Take, for example, where a customer has goods supplied but then becomes insolvent or fails to pay. It is critical to have a 'retention of title' clause which stipulates that ownership of the goods remains with you until payment is received in full.

2. Talk to your bank

If you have a good relationship with your bank, it is worth seeing if you can renegotiate your loan facilities with a view to reducing costs. Ultimately the bank wants you to stay in business too, and so deals can be done on debt finance despite the present economic problems.

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3. Cost-saving measures

You should review your business to ensure that you are cutting your cloth accordingly. Do you need such large premises? Do you need so many staff? But take care and consult your advisers – redundancy is a highly regulated procedure and getting it wrong can lead to a claim of unfair dismissal.

But, before acting, you need to think longer term too and about what state the business should be in when the credit crunch comes to an end. Cutting staff, training budgets and marketing activity, for example, can look attractive but end up being short-sighted if you want to be ready to take advantage of the opportunities that will arise when the good times return.

4. Reassess your debtors list

If you are taking on new clients or customers, it is sensible to be cautious and commission a due diligence report on their ability to pay. It saves a lot of grief later.

You should look at your debtors and work out the average time it takes for you to be paid. There are various methods of collecting debts more quickly and effectively, often starting at the point of actually having a formal credit policy and documented procedures to manage debtors.

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5. When times are really tough

If the business is in financial difficulties, there are still options. Directors may properly take the view that it is in the interests of the company and its creditors that, although insolvent, the company should trade out of its difficulties. This is not unlawful but you need good guidance to do so. If the business cannot pay its debts as they fall due, administration may be necessary, which offers the company the opportunity to continue and trade its way out of difficult circumstances.

As a director, you need to take care: you can be personally liable for wrongful or fraudulent trading, while you can also face an unlimited fine and can be disqualified as a director for up to 15 years. Directors need to keep a close eye on the company's finances and act quickly if problems surface. You should also ensure there are accurate minutes of any board meeting in which the financial position of the company is discussed.

Fail to prepare and you prepare to fail, so the saying goes. Taking steps now in consultation with your professional advisers could ensure that you not only survive the current slump, but are well positioned to come out of it.

If you would like to discuss any aspect of our corporate recovery service then please contact Rhianne Vaughan at rhianne.vaughan@herrington-carmichael.com or 0118 977 4045

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