DIRECTOR'S DUTIES

WRONGFUL TRADING & FINANCIAL DIFFICULTIES

Whilst wrongful trading may seem easy to define, the reality is often very different. There are many reasons why a company may find themselves facing charges of wrongful trading.

Wrongful trading and fraudulent trading are often confused, but there is a key difference and this is the presence of dishonesty.

- Wrongful trading is defined as when a business is facing financial difficulties but continues to trade, amassing debts hoping that matters will improve.
- Whereas fraudulent trading is where a company trades knowing that they will not be able to pay creditors, but continues to do so anyway.

Fraudulent trading is far more difficult to prove, as the prosecution will be required to reflect dishonesty, meaning it is potentially easier to explore wrongful trading instead.

It can be difficult for Directors of companies to face up to financial struggles, in some cases they may not be fully aware of their company position.

The recession saw a great many allegations of wrongful trading, brought about not through incompetence or deliberate risk taking, but a lack of awareness and naivety.

Courts will usually look at a great many factors when presented with a case of wrongful trading, including the various circumstances that led to the financial difficulties, which is why there is no 'set' way to deal with wrongful trading, each case is different.

Directors also need to consider that if they are part of a Limited company their personal assets can become at risk and be used as a stop gap to fund any shortfall to pay creditors.

If you are facing charges of wrongful trading your best first option is to take legal advice, but there are also preventatives which should assist in avoiding future allegations.

- Being fully aware of your company's financial position is essential to managing a financial crisis. Regular board meetings is key to ensuring communication and making sure everyone is on the same page as well as allowing time for business decisions that will assist on getting a company back on track.
- ICommunication with the company accounts team is also very important, with regular meetings that will keep all Directors in the loop with the most up to date information.
- Regular and accurate reporting from all company departments on progress ad problems will also assist in creating a more transparent picture of the company position and future prospects.

Please note that this is a basic guide, for more information please contact corporatelaw@taylor-rose.co.uk

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01733 333 333 | info@taylor-rose.co.uk | www.taylor-rose.co.uk

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