This fact sheet tells you what you can do if your limited company has debts that it is struggling to pay. It outlines the options available step-by-step and explains other important things to think about when running a limited company.

Use this fact sheet to:

- find out when you may be personally liable for your limited company's debts;
- understand what kinds of behaviour may be considered offences;
- find out what options are available for dealing with your limited company's debts; and
- what to do if you want to close your limited company.

This fact sheet includes:

- a sample budget for limited companies; and
- some useful contacts and links for you to get further help.

The sample letter mentioned in this fact sheet can be filled in on our website.

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. If you need further specialist help, Business Debtline can help you to find this. You can also visit the Companies House website for more information about how to deal with limited companies. Go to www.gov.uk and search for ‘Companies House’.

### Identifying a limited company

A limited company's name must usually end in either 'Limited' or 'Ltd', or the Welsh equivalents of 'Cyfyngedig' and 'Cyf'.

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. It must also have been granted a ‘certificate of incorporation’, have a ‘memorandum of association’ and ‘articles of association’. These are important documents that include details about how the business should be run.

Each year, a limited company must send Companies House:

- its ‘annual accounts’ (also called ‘statutory accounts’); and
- a ‘confirmation statement’ to confirm that the information Companies House holds about the company is correct.

See www.gov.uk for further guidance.
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. These are listed below.

- **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 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.

- **Insolvency proceedings and director’s offences.** 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 fact sheet for more information.

- **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) or from an employee (you).

- **Director’s loan account.** If a limited company enters into formal insolvency proceedings and the director’s loan account is in debit (that is, the director owes the company money), then the director can be asked to repay the amount owed.

---

Information:

**formal insolvency proceedings**

‘Formal insolvency proceedings’ is the term used to 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’ is an option designed to deal with company debts.
- ‘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 fact sheet.

---

Extra advice:

**taking out credit**

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 of 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 missed or late payments. 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 advice.
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.

In the next four sections 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.

Other offences

Other offences can include:

- deliberately entering incorrect information into limited company records;
- making false statements about the company;
- missing out important information about the company when completing certain forms;
- being convicted of a company related offence abroad;

Warning: director misconduct

If you are the director or officer of a limited company and are found guilty of any of the offences described in the previous four sections, 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 certain length of time. In serious cases, you can be imprisoned.
Dealing with limited company debts

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.

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 3 to 12 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 fact sheet.

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 main sections, we have outlined the options available, depending upon whether or not there is a net monthly profit.

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 are 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 be paid as a lump sum or in instalments (usually over three years).
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. There will be fees involved in setting up a CVA and they can be high. Shop around to find a reputable IP to act as your nominee. Check the terms and conditions of their services, including their fees, before agreeing to anything and contact us for advice. To find a directory of insolvency practitioners, see [www.gov.uk](http://www.gov.uk) and search for ‘Find an insolvency practitioner’.

- With the help of the nominee, the directors put together a proposal to the company’s creditors.
- An application can also be made to court for a 28 day ‘moratorium’. This stops any court action being taken against the company while the proposal is put together.
- If the court allows a moratorium then the nominee will need to advertise details in the London Gazette and advise the Registrar of Companies at Companies House.
- The nominee sends the CVA proposal to the company’s creditors who are asked to vote on whether they agree to the proposal, or not. The creditors are given at least 14 days to consider the proposal.
- Each creditor is given a vote based on how much money they are owed. Therefore, the company’s largest creditors have the largest part of the vote. 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.
- If the CVA is agreed the nominee will send a further report 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.

**Information:**

**moratorium**

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

**Warning:**

if the CVA is rejected

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 lose money for the costs and fees of the CVA application.

**No net 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 own costs. If you are unable to meet your personal costs from the salary you are drawing, contact us for advice.

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 your company is insolvent, consider the options described in the next four sections.

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 winding-up petition can be presented in the High Court, or in some cases the County Court. Contact us for advice.

A winding-up petition can be presented by:

- your limited company itself, its directors or one or more shareholders;
- a receiver, administrator or supervisor;
- the Secretary of State for Business, Energy and Industrial Strategy;
- the Financial Conduct Authority (FCA);
- a creditor;
- the clerk of the magistrates’ court;
- the official receiver; or
- a member state liquidator.

The most common reason for presenting 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 its 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;
- 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; or
- one of its creditors gets a county court judgment against the company and bailiff (enforcement agent) action is unsuccessful.

The winding-up petition is normally presented to the court by a solicitor.
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 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:

- advertise the order in the London 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 then be made to the Secretary of State about the directors’ conduct. 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?

Under the law, there is no clear process that your limited company can use to challenge a statutory demand or winding-up petition. However, your limited company can apply to the court for an ‘injunction’ to stop:

- an advertisement being put in the London Gazette saying that there is an intention to wind up your company; or
- the winding-up petition actually being presented.

An injunction is a court order which stops someone else from doing something. You can apply on form IAA.

If the winding-up order is made, in limited situations you can apply to the court to cancel, review or vary it within seven days of the order being made. This is a complicated area.
It is important that the directors cooperate fully with the liquidator and hand over all books, records, receipts and statements. They will also need to give the liquidator all the information they need about the company’s assets.

Company 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 the total that it owes.

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 and a report will be made to the Secretary of State.

The process will end with the company being dissolved (that is, formally closed).

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. If you have a floating charge taken after the 15 September 2003, contact us for advice.

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. A report will then be sent to the Secretary of State for Business, Energy and Industrial Strategy.

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:
A preferential creditor is one that should be paid before others out of the money raised by the sale of the limited company’s assets and property. Preferential creditors include employees who are owed wages.

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, or very few, 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.
Preparing for strike off

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.

Once the company has ceased trading for three months, you can apply to Companies House to strike off. You can do this in writing or online.

To apply for strike off in writing

You can apply for strike off in writing on form DS01. This is available from the Companies House website. Go to www.gov.uk and search for 'Strike off a company from the register (DS01)'.

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 to: The Registrar of Companies House, Crown Way, Cardiff CF14 3UZ.

All cheques should be made payable to ‘Companies House’, with your company number written on the back.

Within seven days of sending the form to Companies House, you must 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 DWP;
- employees (including former employees if owed money);
- guarantors;
- managers or trustees of any employee pension fund; and
- any directors who have not signed the form.

To apply for strike off online

You can apply to strike off online on the Companies House website. Go to www.gov.uk and search for 'Strike off a company from the register (DS01)' to apply. There is a fee of £8 and you will need:

- the company number;
Information:

**Authentication Code**

If the company does not already have an authentication code, you can phone or email Companies House to ask for one. The code will be sent in the post to the company’s registered address.

---

Warning:

**Strike Off Offences**

It is an offence for you to:

- 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 an unlimited fine, imprisonment or both. You can also be disqualified from being a director for up to 15 years.

---

What happens next?

Once the form or online application 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 the London Gazette and an invitation is given for objections to the strike off. If no objections are received within two 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 objections are made, the strike off will be put on hold. This is usually for six months if HMRC objects and three months for most other creditors. During this period the limited company will not be dissolved. This gives the objector(s) time to take action against the company (for example, by taking county 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.

---

We have over 20 years’ experience of helping people just like you. We are the only small business debt advice charity operating in the UK.

Follow us on Twitter @Biz_Debtline

Freephone 0800 197 6026
www.businessdebtline.org
Budget sheet for limited companies

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

<table>
<thead>
<tr>
<th>MONTHLY INCOME</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>COSTS</td>
<td></td>
</tr>
</tbody>
</table>

**FIXED COSTS**

<table>
<thead>
<tr>
<th>Cost</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent</td>
<td></td>
</tr>
<tr>
<td>Business rates</td>
<td></td>
</tr>
<tr>
<td>Business loan</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
</tr>
</tbody>
</table>

To work out the amount to put aside for corporation tax, do the following.

- Take away the total costs from the monthly income. Call the figure you get A.
- Multiply A by 12 to get the annual figure. Call this B.
- Multiply the first £300,000 of B by 19%. Call the figure you get C.

\[ C = \frac{(B \times 19\%)}{100} \]

**UTILITIES**

<table>
<thead>
<tr>
<th>Utility</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas</td>
<td></td>
</tr>
<tr>
<td>Electricity</td>
<td></td>
</tr>
<tr>
<td>Water rates</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td></td>
</tr>
</tbody>
</table>

Next, multiply the amount of B between £300,001 and £1,500,000 by a variable percentage (%). This is called marginal relief. The % depends on the limited company’s circumstances. See [www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs) and search for 'marginal relief calculator' or contact us for advice.

- Call the figure you get D.

\[ D = \]
## VARIABLE COSTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock purchases</td>
<td>£</td>
<td>Multiply any amount of B over £1,500,000 by 19%.</td>
</tr>
<tr>
<td>Bank charges</td>
<td>£</td>
<td>Call the figure you get E.</td>
</tr>
<tr>
<td>Wages (including PAYE and National Insurance)</td>
<td>£</td>
<td>E =</td>
</tr>
<tr>
<td>Transport and motor costs</td>
<td>£</td>
<td>To get the estimated annual corporation tax, do the following.</td>
</tr>
<tr>
<td>Stationery</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Cleaning and repairs</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>VAT</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Accountant</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Professional fees</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>TOTAL COSTS</td>
<td>£</td>
<td></td>
</tr>
</tbody>
</table>

To get the estimated monthly corporation tax, do the following.

- Add C, D and E together.
- Call the figure that you get F.

F =

Divide F by 12.

- Call the figure that you get G.
- Put G in the appropriate box opposite.

**Net monthly profit = (A) - (G)**

£