DIRECTOR AND OFFICER LIABILITY IN THE ZONE OF INSOLVENCY: A COMPARATIVE ANALYSIS

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Summary

It is the duty of the directors of a company to run the business of the company in the best interests of the company and its shareholders. In principle, the company, alone, is responsible for the debts incurred in the running of the company and the creditors are, in principle, precluded from looking to the directors or shareholders for payment of any shortfall arising as a result of the company's insolvency. This principle has, in a number of jurisdictions undergone statutory change such that in certain circumstances, the directors and others who were concerned with the management of the company may be made liable to contribute, personally, to meet the payment – in part or entirely – of the company's debts. This paper aims to explore this statutory jurisdiction. It also seeks to describe succinctly the process by which the shift from unlimited to limited liability trading was achieved. It will end by examining briefly a comparatively new phenomenon, namely that of a shift in the focus of the directors' duties from company and shareholders to the creditors as the company becomes insolvent and nears the stage of a formal declaration of its insolvent status – the so-called 'zone of insolvency'.

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