“Directors must act swiftly should insolvency loom”

As business failures continue to rise, there are potential personal liabilities that can be attributed to directors in the event of the insolvency of a business. All directors have, amongst other obligations, a duty to promote the success of a business and act in the best interests of creditors.

Once the directors conclude there is no reasonable prospect of a business avoiding failure, they have a duty to take every step to minimise potential loss to creditors. If, after the business has gone into insolvent liquidation and it is perceived by the Courts that the directors have failed to comply with this duty, then they may be liable for wrongful trading. The Courts can order the directors to make personal contributions to the liabilities of the business. The same applies to those directors intent on defrauding creditors when a business is being wound up. This is known as fraudulent trading. Not only is a civil liability imposed, fraudulent trading is also a criminal offence. A finding of either wrongful trading or fraudulent trading is almost certain to lead to a disqualification of a guilty party from acting as a director of any company.

If it appears during a liquidation that a director has misapplied or retained, or become accountable, for any money or other property of the company, or been guilty of any misfeasance the Liquidator can apply for such an Order to repay, restore or account for monies or property with interest or contribute to the business assets by way of compensation.

Said Phil Wood, managing director of chartered accountants and licensed insolvency practitioners, Barringtons, “At a time when so many businesses are failing, it is absolutely essential that all directors are aware of their obligations. If a director perceives that a business could be facing insolvency, it is imperative that professional advice is taken to ensure that the risk of a successful personal claim being made is significantly minimised.”