

# Company Directors: Responsibilities and Liabilities

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Ware Priory

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# Introduction

- Why do people become company directors?
- Who is qualified to be a director?
- Is there a minimum qualification to be a director?
- What does it mean to be a director?





Michael Budd

Partner and Head of Company Commercial

# Structure and relationships

Who are directors?

What are the general duties?

Interpreting and applying the general duties

Who can enforce a breach of the general duties?

What are the consequences of a breach of the general duties?

Protecting directors from liability for a breach of the general duties



John Wiblin

Partner and Head of Dispute Resolution



# Companies Act 2006

- Act within powers
- Promote the success of the company
- Exercise independent judgement
- Exercise reasonable care, skill, and diligence
- Avoid conflicts of interest
- Not accept benefits from third parties
- Declare an interest in a proposed transaction or arrangement with the company



# Risks and disqualification

Risks of:

- Disqualification from being a director
- Personal liability
- Criminal liability

To disqualify a director, must show:

- Dishonesty
- High degree of incompetence
- Not necessary to show unfitness



# Directors' duties

- Not liable for errors of judgment
- Not expected to give continuous attention to company affairs
- Need not attend every board meeting
- Are entitled to trust officers to perform their duties honestly
- Not required to examine entries in the company's books
- Not neglectful not to enquire about matters dealt with by a co-director

Some directors may have culpability and others not based on their actual knowledge





# Directors' duties

- Cannot abrogate responsibility
- Duty to inform themselves of the affairs of the company
- Duty (with co-directors) to manage those affairs
- The higher the level of reward, the greater the director's duty

# Directors' duties

- Liquidator may pursue directors who have breached their duties to the company
- May seek a contribution from the director by way of compensation in a sum the court thinks fit.
- Claim by members that company affairs are conducted against the interests of members generally or a class of members (s.994 Companies Act 2006)





Nat Young

Partner specialising in Insolvency  
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# A duty to creditors?

- Limited liability is intended to encourage creative risk-taking
- Faced with insolvency, do you take risks, or do you play it safe?
- Shareholders and creditors have different interests when it comes to risk-taking
- Do directors owe a separate duty to creditors?

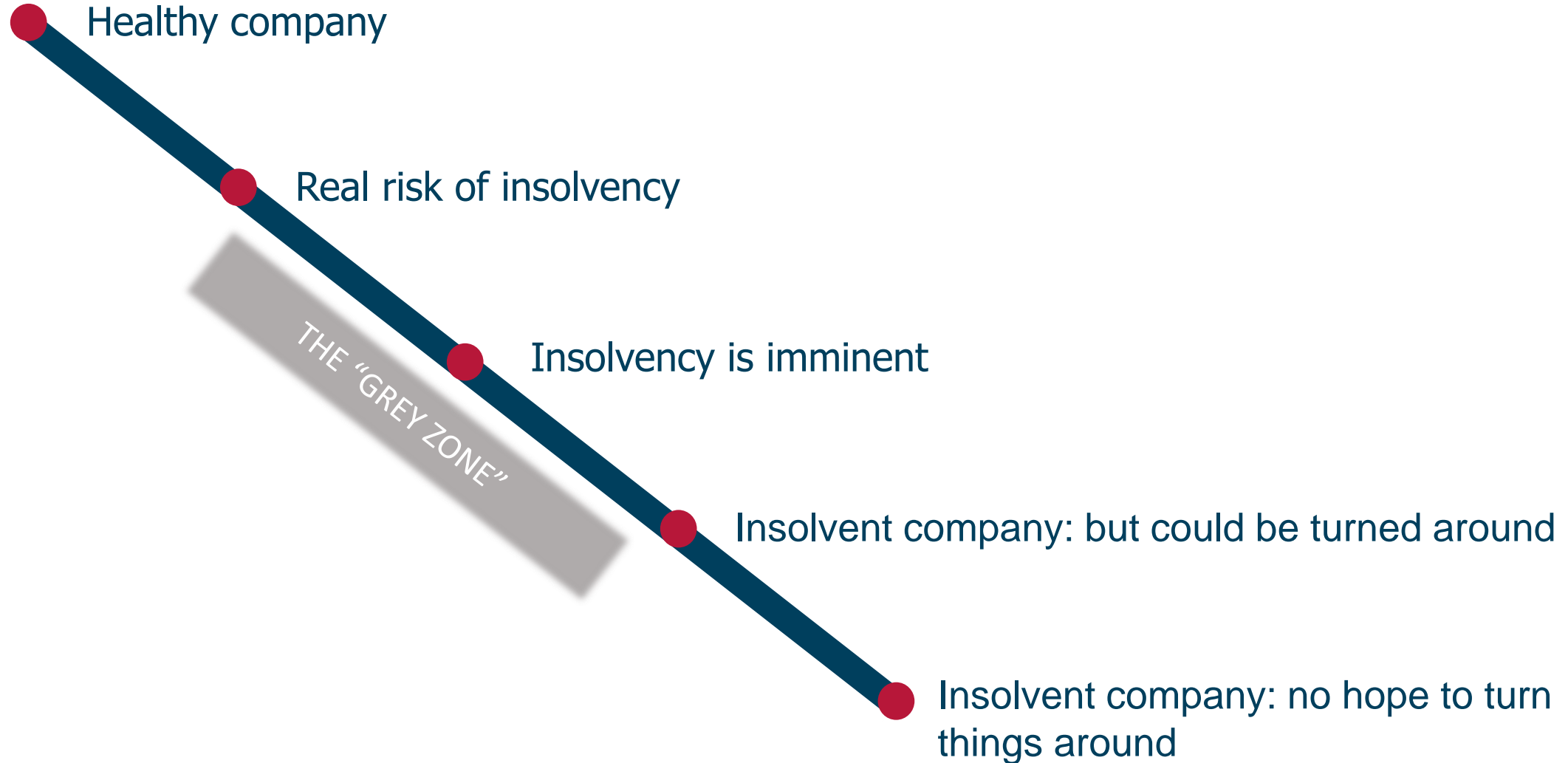
# Case Study: BTI v Sequana

There were two big questions:

1. When exactly does a creditor duty arise?
2. What does the duty actually require?

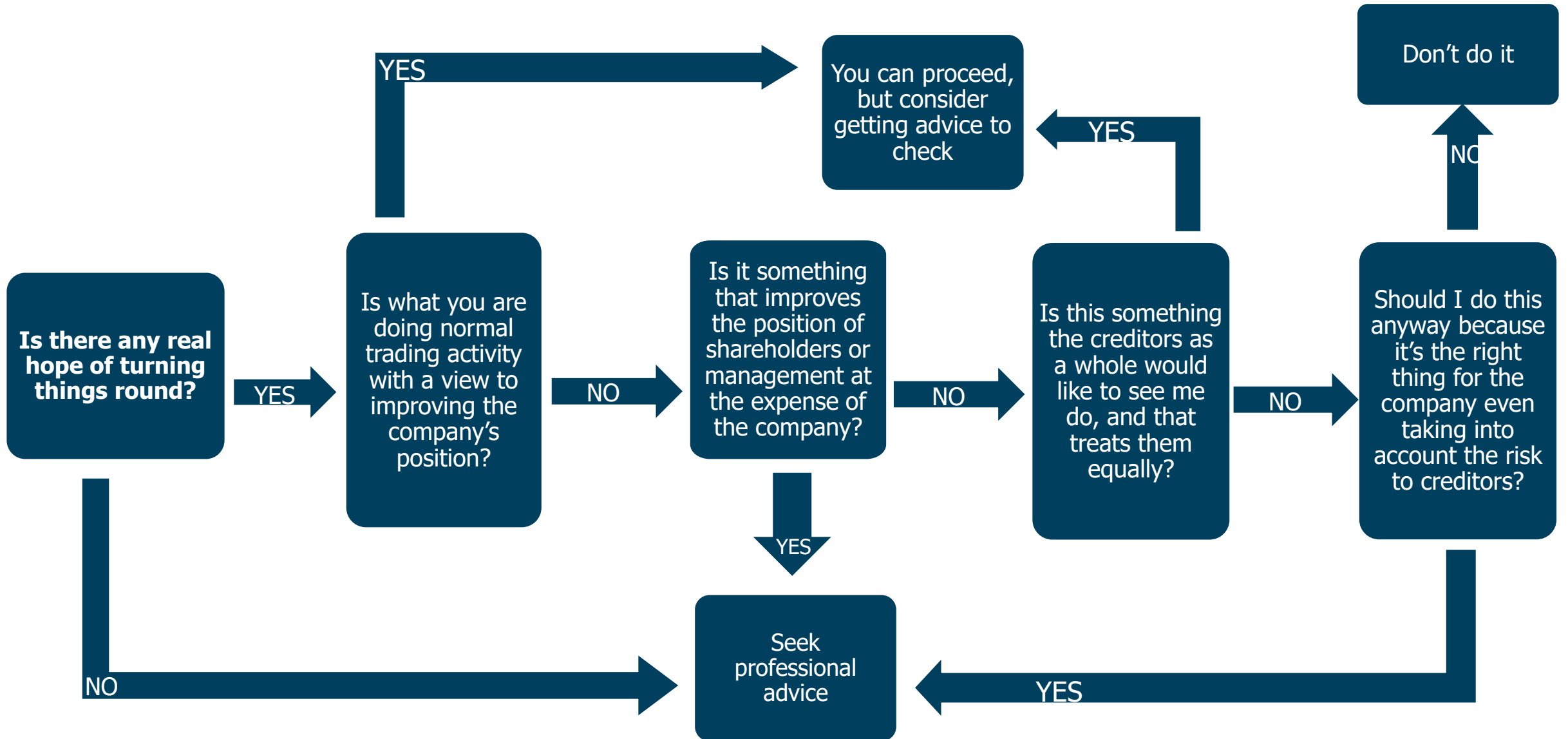


# When is there a creditor duty?





# What to do if the creditor duty arises



# Top tips

- Make sure you know what is going on in your company
- Get a directors and officers insurance policy
- Keep a record of decisions
- Acknowledge if insolvency is becoming a risk
- Seek professional advice





Any questions?

# Meet the Speakers

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