

RECKLESS TRADING IN BOTSWANA

Part 1 - The Basics

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Reckless trading is a serious offence in Botswana that can have major and financial consequences for companies and their directors. Join us as we will examine the legal requirements and consequences of reckless trading.

What is reckless trading?

Reckless trading occurs when a **company continues to trade despite being insolvent or being on the brink of insolvency** *i.e.* that the company cannot pay its debts as and when they fall due, alternatively that its liabilities exceed its assets, further alternatively that it is unable to meet both contingent and prospective liability as and when due.

The legal requirements for reckless trading:

- Under the Companies Act, directors **have a duty to act in good faith and in the best interests of the company** and in so doing **to exercise due care, skill and diligence**. Amongst other obligations, directors have a duty to ensure that a company remains solvent and is able to pay its debts as they fall due.
- It stands to reason that if a company is insolvent, the directors must take immediate steps **to either restructure the company, its finances, or initiate a liquidation process**. Failure to do so can result in charges of reckless trading.

The consequences of reckless trading:

- **Liquidation:** a company is found to have engaged in trading whilst unable to pay its debts, may be placed into compulsory liquidation and its assets may be disposed of to settle its debts;
- **Disqualification as director:** directors can be disqualified from serving as such in any company

for a period of up to five (05) years;

- **Personal liability:** directors can be held personally liable for damages suffered by the company or its creditors;
- **Criminal liability:** directors may face criminal charges and imprisonment.

Conclusion:

By understanding your legal obligations, you can now help to ensure the long-term success and sustainability of the companies that you have charge of managing. Please join us next week as we provide a guideline for how to avoid liability.

Thanks for reading. I am [Msiya Kindiano](#), a partner at Messrs [Bookbinder Business Law](#) and the head of the Dispute Resolution Department. I have assisted a broad range of clients in various aspects of corporate and commercial dispute resolution, including Company Law. I have acted in some of the leading cases in Botswana in this area.

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