RK Corporate Consulting (Pty) Ltd

RK Corporate Consulting (Pty) Ltd
Registration Number: 2025/117006/07

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

Financial Informality & Director Exposure Readiness Guide (2026)

Prepared by RK Corporate Consulting (RKCC)

February 2026

Financial mismanagement within small and medium enterprises rarely begins as deliberate misconduct. In practice, it begins as operational convenience.

Directors draw funds to manage short-term liquidity.

Dividends are declared informally.

Loan accounts remain unreconciled.

Creditors are paid late while shareholder withdrawals continue.

Over time, these decisions accumulate.

When a dispute arises, liquidity pressure develops, or insolvency proceedings begin, those informal practices are no longer viewed as convenience. They are evaluated through the statutory lens of the Companies Act 71 of 2008.

At that stage, the question is no longer commercial.

It becomes personal.

This guide assists directors in assessing whether financial conduct is defensible — or whether exposure under Sections 76 and 77 is already developing.

Purpose of This Guide

Financial informality is one of the most common pathways to director liability.

This guide is designed to:

• help directors assess whether financial withdrawals are properly structured;

• determine whether distributions comply with the Solvency and Liquidity Test;

• evaluate whether fiduciary duties under Section 76 are being met;

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

• identify potential exposure under Section 77; and

• determine when professional remediation is required.

This guide does not replace legal advice. It helps you determine whether your financial governance is defensible.

Legal Framework: Financial Conduct Under the Companies Act 71 of 2008

Financial governance intersects directly with the following provisions:

Section 19 – Separate Legal Personality

Section 20(9) – Disregard of Juristic Personality

Section 4 read with Section 46 – Solvency and Liquidity Test and Distributions

Section 76 – Standards of Directors' Conduct

Section 77 – Personal Liability

These provisions operate collectively. Non-compliance with one often triggers exposure under another.

Separate Legal Personality and Financial Separation

Sections 19 and 20(9) of the Companies Act 71 of 2008

A company owns its funds. Directors do not.

Where company funds are used interchangeably with personal funds, the structural basis of limited liability weakens.

☐ Financial Separation Readiness Check

Before reviewing director withdrawals, confirm that:

☐ The company maintains a separate bank account at all times

☐ Personal expenses are not paid directly from the company account

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

☐ Director withdrawals are formally classified (salary, dividend, loan, reimbursement)

☐ Director loan accounts are reconciled monthly

☐ Advances to directors are supported by written agreements

☐ Shareholder distributions are authorised by formal board resolution

✖ **Risk if overlooked:**

Blurring financial separation may support arguments under Section 20(9) that the company has been used for unconscionable abuse, potentially exposing directors to veil-piercing claims.

The Solvency and Liquidity Test

Section 4 read with Section 46 of the Companies Act 71 of 2008

Before declaring dividends or making distributions, directors must reasonably conclude that:

• Assets exceed liabilities; and

• The company will be able to pay its debts for 12 months following the decision.

Profitability is not sufficient. Liquidity must be demonstrable.

☐ Distribution Compliance Check

For each dividend or distribution in the last three financial years, confirm that:

☐ A written board resolution exists

☐ The resolution records application of the Solvency and Liquidity Test

☐ Updated financial statements were reviewed

☐ Cash flow projections were evaluated

☐ Contingent liabilities were considered

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

☐ A signed solvency statement is retained

✖ **Risk if overlooked:**

Directors who authorise unlawful distributions may incur personal liability under Section 77 of the Act.

Fiduciary Financial Conduct

Section 76 of the Companies Act 71 of 2008

Directors must act in good faith, for proper purpose, and in the best interests of the company.

Financial decisions are fiduciary decisions.

☐ Fiduciary Financial Readiness Check

Confirm that:

☐ Major withdrawals are supported by updated financial data

☐ Distributions are paused during liquidity strain

☐ Creditors are prioritised appropriately

☐ Related-party transactions are disclosed and minted

☐ Financial risk assessments are documented

✖ **Risk if overlooked:**

Courts apply an objective standard of reasonableness. Informal financial decision-making may be characterised as breach of fiduciary duty.

Reckless Trading and Personal Liability

Section 77 of the Companies Act 71 of 2008

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

Directors may be personally liable where they permit reckless trading or act contrary to the Act.

In Philotex (Pty) Ltd v Snyman 1998 (2) SA 138 (SCA), the court confirmed that directors who allow a company to continue trading in circumstances where there is no reasonable prospect of meeting obligations may face personal consequences.

Trading Exposure Review

Assess whether:

☐ The company continues trading despite persistent unpaid creditors

☐ Director withdrawals increase during financial pressure

☐ Financial statements are outdated at decision points

☐ No restructuring plan exists during liquidity distress

✖ **Risk if present:**

Exposure may crystallise in insolvency proceedings or shareholder litigation.

LEGAL CONSEQUENCES OF NON-COMPLIANCE (EXPLICIT)

Where financial governance fails, consequences may include:

• Personal liability under Section 77

• Recovery of unlawful distributions

• Insolvency contribution claims

• Derivative shareholder actions

• Disregard of separate personality

• Reputational and funding damage

Notably, liability may arise even where the company was previously profitable.

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

🧾 Practical Case Study: Financial Informality Under Scrutiny

A founder-managed SME regularly permits informal withdrawals treated as "temporary advances." No formal loan agreement exists. Dividends are declared verbally during profitable years.

When liquidity declines and creditors remain unpaid, insolvency proceedings commence.

During review, the absence of solvency documentation, reconciled loan accounts, and formal board authority becomes central.

The downturn becomes secondary.

Director conduct becomes primary.

Clear financial records often determine outcome.

⚠️ Why This Guide Matters

Most director liability arising from financial conduct does not begin with fraud.

It begins with informality.

When financial discipline is not documented, personal protection weakens.

Limited liability is preserved through structured governance.

How RKCC Supports You

RK Corporate Consulting supports directors with:

• Financial governance audits

• Solvency and Liquidity implementation frameworks

• Director withdrawal classification reviews

• Exposure risk assessments under Sections 76 and 77

• Governance remediation during financial strain

Address: 1221 Embankment Road
Zwartkop x7
Centurion
0157
Phone: 0725975690 | 0746906874
Email: rozanne@rkcc.co.za | will@rkcc.co.za

Early intervention materially reduces personal and commercial exposure.

Navigating Financial Governance with Confidence

Company funds are not personal liquidity instruments.

Withdrawals require lawful classification.

Distributions require documented solvency assessment.

Trading decisions require objective financial evaluation.

If your company were subjected to insolvency review, creditor litigation, or shareholder scrutiny tomorrow, could you demonstrate compliance through documentation rather than explanation?

Financial informality accumulates quietly.

Exposure crystallises suddenly.

Structured governance preserves limited liability.

📧 rozanne@rkcc.co.za | 📧 will@rkcc.co.za

📞 +27 72 597 5690 | +27 74 690 6874

🌐 rkcc.co.za

Navigating compliance with confidence, we handle the red tape so you can focus on growth.