INSOLVENCY BULLETIN

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NEW POWERS FOR THE INSOLVENCY SERVICE

Directors of limited companies who engage in corporate misconduct whilst in office can be disqualified from acting as directors, or being involved in the promotion, management, or formation of a limited company. The period of disqualification is from 2 to 15 years, depending on the seriousness of the misconduct.

The Insolvency Service, which has responsibility for implementing the disqualification regime, is currently only able to investigate directors of live companies or those companies currently in a form of insolvency. However, companies that have been dissolved have to date been exempt from such investigation.

That has led to concerns that errant directors are allowing companies to be dissolved and therefore removed from the register at Companies House, without facing the same scrutiny as those directors who have placed their companies into formal insolvency.

One of the mainstays of Government support to business during the pandemic has been support for access to so called “bounce back loans”. Those loans were provided to SMEs by the banking sector but underwritten by the Government. Concerns have been raised that the wide prevalence of such underwritten loans will tempt significant numbers of directors to allow companies to be dissolved following the receipt of such assistance.

In a press release on 12 May 2021 the Government released details of the Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill.

The proposed legislation will allow the Insolvency Service to investigate directors of dissolved companies and the Government has stated: “*The process will no longer be able to be used as a method of fraudulently avoiding repayment of Government backed loans given to businesses to support them during the Coronavirus pandemic”.*

Secretary of State for Business, Energy and Industrial Strategy Kwasi Kwarteng has commented: *“As we build back better from the pandemic, we need to restore business confidence, but also people’s confidence in business - which is why we will not hesitate to disqualify directors who deliberately leave employees and the British taxpayer out of pocket. We are determined that the UK should be the best place in the world to do business. Extending powers to investigate directors of dissolved companies means those who have previously been able to avoid their responsibilities will be held to account”.*

The proposed legislation is retrospective and is also intended to prevent directors from starting a phoenix company after the previous company has been dissolved whilst creditors of the previous company are left unpaid.

Editor’s note

Given the huge debt incurred by the Government during the pandemic the proposed widening of the powers of the Insolvency Service is to be welcomed. It is worth remembering that the disqualification regime applies not just to limited companies but also to LLPs.

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