

Transparency and Trust - Directors' Disqualification

In April 2014 the Department for Business, Innovation and Skills (DBIS) published its response to the consultation on enhancing the transparency of UK company ownership and improving trust in UK business. The result was the introduction of the Small Business, Enterprise and Employment Bill to the House of Commons in July 2014. The Bill has its final reading in the House of Commons this month following which it will be introduced to the House of Lords.

The Bill proposes broadening the scope of the Company Directors Disqualification Act and giving the court power to make a compensation order against directors if creditors have suffered losses as a result of their conduct.

Particular proposals to note are:

- A more generic set of factors will be considered when determining unfitness of a director. These will cover misfeasance, breaches of law, culpability, materiality and the impact on those who have suffered.
- Previous positions as a director of an insolvent company and their track record in running those companies, including previous disqualifications, will be taken into account.
- Overseas misconduct will also be taken into account when considering disqualification.
- The Insolvency Service will be allowed to share investigatory information with other regulatory or enforcement bodies.
- The time limit for instituting disqualification proceedings will be increased from 2 to 3 years.
- The court will be given power to make a compensation order against a disqualified director whose actions have caused identifiable loss to specific creditors or creditors as a whole.
- Actions that arise on an insolvency and which can only be pursued by an insolvency office holder, such as fraudulent/wrongful trading, transactions at an undervalue, preferences, will be capable of being sold or assigned to another party to pursue.

As the Bill is now quickly passing its way through Parliament directors should take note now and seek early advice if they have any concerns.

The Restructuring & Insolvency team at Mercer & Hole have extensive experience in advising directors on their responsibilities and duties, particularly if there are concerns as regards the financial viability of the business. For further advice or assistance please contact myself or Caroline Stark on 01727 869141.

Steve Smith

Partner

Mobile: 07912 125093

Mercer & Hole Chartered Accountants

St. Albans +44 (0) 1727 869141 | London +44 (0) 20 7236 2601 | Milton Keynes +44 (0) 1908 605552

stevesmith@mercerhole.co.uk

Stay in touch with us.



London

Fleet Place House
2 Fleet Place
London EC4M 7RF

Tel: +44 (0)20 7236 2601
Fax: +44 (0)20 7236 2629
london@mercerhole.co.uk

Milton Keynes

Silbury Court
420 Silbury Boulevard
Central Milton Keynes MK9 2AF

Tel: +44 (0)1908 605552
Fax: +44 (0)1908 677433
miltonkeynes@mercerhole.co.uk

St. Albans

Gloucester House
72 London Road St Albans
Hertfordshire AL1 1NS

Tel: +44 (0)1727 869141
Fax: +44 (0)1727 869149
stalbens@mercerhole.co.uk

www.mercerhole.co.uk



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