

CLAIMS AGAINST DIRECTORS – PART 2

Last month we updated you on the Small Business Enterprise and Employment Act 2015 (SBEEA 2015) impact on director disqualification proceedings. The news does not get any better for directors as the introduction of the SBEEA 2015 now provides Administrators with the ability to bring actions against directors and more interestingly, the ability for office holders to sell/assign such actions to third parties.

The legislation has been introduced to protect creditor interests and hold directors more accountable for their actions. Therefore from 1 October 2015, where a company is in administration or liquidation, the office holder may assign a right of action (including the proceeds of an action) arising under any of the following:

- Section 213 or 246ZA (fraudulent trading);
- Section 214 or 246ZB (wrongful trading);
- Section 238 (transactions at an undervalue);
- Section 239 (preferences);
- Section 242 (gratuitous alienations);
- Section 244 (extortionate credit transactions).

Where creditors have suffered losses due to the actions and/or decisions taken by directors they have often been left frustrated by an apparent lack of recovery action taken by the office holder. This perceived lack of action is often due to lack of funds, the uncertain costs of bringing a case against the director and the level of proof required to be successful.

The new legislation will allow the office holder to sell such actions, making a realisation for the benefit of creditors whilst removing the risks involved in pursuing such claims. It is easy to see how an aggrieved creditor will be more motivated to pursue such claims, particularly where they may have access to in house legal services that will help keep costs to a minimum.

Of more concern to directors could be the creation of claims purchasing firms, forming an industry much like those seen in the PPI and IRHP mis-selling worlds. Such claim firms may implement systems that would enable them to aggressively pursue a high volume of low value claims that previously have been deemed uneconomic to pursue by the office holder. The government hopes that the legislation will result in a greater number of claims being brought against directors and the formation of such businesses would deliver such an increase.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact Ian, John or Robert. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.