

DISQUALIFIED DIRECTORS BEWARE!

The provisions of the Company Directors Disqualification Act 1986 are well known having been introduced nearly 30 years ago.

We are all familiar with fact that following a liquidation or administration, Directors can be disqualified for a period of between 2 and 15 years. Those Directors who choose to accept an undertaking not to act usually receive a shorter period of disqualification than those who are prepared to challenge the proceedings but ultimately lose.

Previously, the Secretary of State had two years within which to bring proceedings and once disqualified, there were no further sanctions against a Director, providing the terms of the ban were adhered to, namely not acting as a Director or being involved in the management of a company.

However, the Small Business, Enterprise and Employment Act 2015 which came into force on 1st October 2015 contains some interesting sections which impact upon disqualification.

Firstly, the Secretary of State now has three years to apply to court for a disqualification order against a Director of an insolvent company.

Secondly, disqualification proceedings can now be brought against a person who influences or instructs an unfit Director.

Thirdly, the Secretary of State and the court will now have the power to disqualify a person convicted of a company related offence abroad.

Finally and of most interest, is the creation of 'Compensation and Undertakings' meaning that a disqualified Director can be required to pay the amount of money creditors lost through his/her misconduct. Compensation can be sought for conduct that occurs on or after 1st October 2015.

There is currently very little detail as such as to how this new compensation scheme will work and it is unlikely that the first applications will be made before October 2016.

Clearly though, Directors will need to be aware that whilst previously a disqualification order was unwelcome and restrictive from a business point of view, they could now face financial penalties as well in respect of their previous conduct.

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.