



## COMPANY DIRECTOR RESPONSIBILITIES – DON'T GO 'ROGUE' !

### BACKGROUND

Many of our clients often raise concerns about the potential risk or exposure they may have personally, as a result of being a director of a limited company – **and of something unexpected going wrong !**

Our general advice to minimise potential risks and problems include the following:

- complying with Company law requirements
- ensuring the relationship with HMRC is '**in good standing**' at all times
- obtaining the right insurances are in place to protect the business and employees
- aim to obtain the right paperwork and documents for all activities

Ultimately, there is no way to protect yourself completely in **ALL** situations, but the '**veil**' of incorporation generally offers protection to most company directors on a personal basis, however it doesn't mean that involvement in disputes or legal cases as the director of a limited company will not be difficult and challenging in any case !

As we are all aware, there are some company directors who for various reasons act in a '**rogue**' fashion, leaving customers, HMRC, employees and others '**high and dry**' - **and in some cases seem to be able and willing to exploit 'loopholes' that allow them to escape without too many difficulties !**

Given some recent examples of '**bad behaviour**' around COVID-19 loans that were provided to companies over the last 12/18 months, the Government has now taken steps to close some of the existing '**loopholes**' and tackle these '**rogue**' company directors !

### THE NEW LEGISLATION ! KEY POINTS

**The Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill** will come into law in 2021 as a means of dealing with '**rogue**' directors.

At present, the **Insolvency Service** can take action, including disqualification actions, against directors of disqualified companies, however first they need to make an application to Court to have the company restored.

This time-consuming exercise delays any investigation and is costly, with the costs falling on the public

Under the proposed legislation -

1. if the **Insolvency Service** are satisfied that the conduct of a director of a dissolved company demonstrates that ***the director is unfit to be involved in the management of a company***, it can commence its investigations - without first needing to restore the company.

A key element of the new legislation is that it is intended to **have retrospective effect** i.e. the **Insolvency Service** can exercise their powers in respect of companies that have been dissolved **prior to the legislation coming into force !**



2. The legislation is also aimed at tackling 'phoenixism', whereby directors cause or allow a company to be dissolved with a view to **shedding liabilities**, only to then incorporate a new company **continuing the old company's business** - free of those liabilities.
3. Additionally, such directors who have been involved in such processes ahead of the legislation, may find themselves being investigated e.g. fraudulently avoiding repayment of government backed loans to support them during the Coronavirus pandemic etc., and **potentially being disqualified from acting as a director of a UK company for up to 15 years !**

Obviously for most company directors, this legislation will have no impact or relevance to their business activities, however it is useful to know that those who are trying to ensure they are carrying out their responsibilities as a company director seriously, or are diligently repaying their Bounceback loans in 2021 and onwards - **are NOT being undermined by those who have no interest in doing so !**

## NEXT STEPS

Acting appropriately and complying with your legal and other responsibilities are not just a means of avoiding issues with Companies House, HMRC or others - **it is also good business practice and forms a part of any successful growing business !**

If you are concerned about any areas of potential risk in your business or need assistance with resolving any ongoing issues, then feel free to contact us i.e. even if we can not advise you directly, we can introduce you to specialists in our contacts, who will be able to advise and support you with these issues e.g.

- **HR and Employment advice**, Employment contracts or Employee policies and handbooks
- Key issues in the preparation of **Shareholder agreements**
- Review of **Customer contracts** and agreements, payment terms (especially in light of BREXIT)
- **Business insurances** review i.e. adequate cover for professional indemnity, public liability/employee liability, travel/shipping risks, cyber risk, D&O/'keyman' cover, HMRC enquiry protection etc
- Registration and protection of **Trademarks, patents** etc

Dr Roger Barker, director of policy and corporate governance at the Institute of Directors, said:

***'Company directors fulfil a central role in ensuring that their businesses are well governed. Although corporate dissolution may be inevitable in some cases, it should only be used as a last resort – after all other realistic avenues for protecting the interests of stakeholders have been exhausted. Using company dissolution as a mechanism for the evasion of a directors' duties has no place in the governance of a responsible enterprise.'***

Contact us if you have any queries around the risks that may be applicable to your business and/or you need assistance on how to manage them more appropriately. Contact us on 0207 952 1230 or [damian@sakurabusiness.co.uk](mailto:damian@sakurabusiness.co.uk)