



COMPANY DIRECTOR RESPONSIBILITIES – DON'T GO 'ROGUE' ! [PART 2]

BACKGROUND

Following our Blog in last month's 'Insights' Newsletter, where we highlighted upcoming changes to company law which make it easier to prosecute 'rogue' company directors (and to go back to prior years to find this 'bad behaviour') - this month, we can now share a 'case study' of how the 'veil' of a limited company will not always protect company directors from action by the authorities, especially where

1. they 'knowingly' or 'deliberately' ignore an issue, or alternatively,
2. take a course of action that is quite reckless or just dishonest.

With the new legislation i.e. **The Ratings (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill** on it's way into law in 2021, providing the **Insolvency Service** with more options to deal with 'rogue' company directors, we can expect more such actions to be taken !

Although most company directors will have **NO** cause for concern in respect of how they are managing their business(es), it does once again highlight the importance of being aware of the **duties and responsibilities of the role**, and ensuring that the limited liability protection offered by a company is maintained through '**good governance**' i.e.

- complying with Company law requirements (keeping '**proper books and records**')
- ensuring the relationship with HMRC is '**in good standing**' at all times
- obtaining the right insurances to protect the business and employees
- minimising potential risks and problems to avoid disputes and legal issues

CASE STUDY

A used car salesman has been given a community sentence after failing to keep accounting records and an unpaid six-figure tax bill

A Shipley based car dealer was sentenced after falsely claiming ill health had prevented him from keeping company records - **when he had deliberately disposed of them !**

He was sentenced to an 18-month community order, including 250 hours of unpaid work, after failing to **provide books and accounting records**, when his company was wound up due to alleged tax liabilities of more than £654,000.

Ikonic Solutions Limited was incorporated in November 2011 and initially the company operated without any issues or problems. However in February 2016, the company was '**wound up**' in the High Court - **owing hundreds of thousands of pounds to the tax authorities !**

The **Official Receiver** was appointed as the liquidator and started an investigation, and having been requested to provide books and records to the **Official Receiver** to establish the company's full assets, liabilities, creditors etc., the company director stated that he had no books or records due to issues with his health.

He confirmed that he had lost a laptop with records and any paper receipts had been thrown away !!

However, the **Official Receiver** discovered that all business transactions were paid into his personal bank account and in November 2017- the company director **received an eight-year director disqualification**.



At that point, the **Insolvency Service** then started criminal investigations into the company director, before he admitted he deliberately disposed of records whilst suffering ill health.

- **In April** - he pleaded guilty to failing to deliver up books and records and failing to preserve the company's accounting records at Bradford Magistrates' Court
- **In May** - he was sentenced to an 18-month community order at Bradford Magistrates' Court. He was ordered to do 250 hours of unpaid work, with a six-month alcohol treatment requirement and a 30-day rehabilitation activity requirement.

Julie Barnes, chief investigator at the **Insolvency Service**, said: '***As a company director. ensure any records were up to date. Instead, the defendant ignored his tax liabilities, and then failed to provide any information as to where the money was spent and who was owed.***

NEXT STEPS

What this case shows is that (although an '**extreme**' example), company directors who **deliberately / recklessly** don't take their duties and responsibilities (as a director) seriously, can find that the '**protection**' that a limited company generally provides to them personally - **may no longer apply !**

And our '**takeaway**' is that a key element of that it is ensuring that your '**personal**' and '**company**' activities are kept separate **AND** that good recordkeeping is in place to be able to show that you have acted responsibly at all times – **even if the business is not successful !**

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