Companies House Civil Penalties in Force from 2 May 2024: A Welcome Development for Creditors

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On 2 May 2024, Companies House gained authority to impose civil financial penalties as an alternative to commencing criminal proceedings for most offences under the Companies Act 2006, following the Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024.

Failure to adhere to statutory obligations regarding filing deadlines, accurate reporting and transparency can now result in stricter financial penalties in lieu of the historically light approach taken by Companies House when an offence has otherwise been committed.

For those in the corporate insolvency sphere, the enhancement of Companies House's powers comes as a welcome development.

Presently, it is possible for a company director to voluntarily strike off a company in financial distress without having to formally discharge its liabilities so long as the company notifies creditors before striking off. It is an offence not to notify creditors where the company directors are aware of any liabilities. This offence is punishable by a fine and/or a prison term (or both)[1]. Further, by striking off an insolvent company, the directors put themselves at risk of disqualification[2].

The Real-World Impact on Creditors

For creditors who are owed debts, their interests are theoretically protected by these deterrents. Creditors can object to the strike off or, if the company has already been dissolved, they can apply to restore the company to the Register through the courts and then take enforcement action to recover any liabilities.

In practice, however, it is commonplace for companies to be struck off without the directors properly notifying creditors and it is rare for Companies House or the Insolvency Service to take action against a director in this regard – a fact widely acknowledged by insolvency professionals.

Creditors are therefore left with a difficult cost-benefit decision to make – either engage in the lengthy and costly restoration process or lose out on recovering liabilities completely.

[1] Section 1006 Companies Act 2006

[2] Through the amendments to the Company Directors Disqualification Act 1986 effected by the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021

Many creditors, particularly those whose liabilities are lowest, choose to forgo what is owed to them. Consequently, many directors are able to abscond themselves of wrongful conduct, exposing a loophole to misuse UK company registrations.

The enhancement of powers afforded to Companies House is indicative of a tougher approach. Under the new powers, Companies House may impose a financial penalty (up to £10,000) on a company director if satisfied that the director has engaged in conduct amounting to a relevant offence.

Future Considerations and Legislative Impact

Time will tell whether these new powers will completely close the loophole created by voluntary strike-off and reduce the occurrence of fraud. There is no doubt that many more individuals will face financial penalties as a result.

Nevertheless, to enact real change, further legislative overhaul may be required that would see companies that have missed filing deadlines (such as filing accounts) and have failed to rectify the issue, placed in compulsory liquidation overseen by the Official Receiver. This would cost significantly more; however, it would allow for director misconduct to be properly investigated by the Official Receiver, send a clear message, and ultimately reduce fraud which costs the UK billions of pounds each year.

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If you have any questions, please get in touch with our restructuring and insolvency team by emailing online.enquiries@LA-law.com.

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