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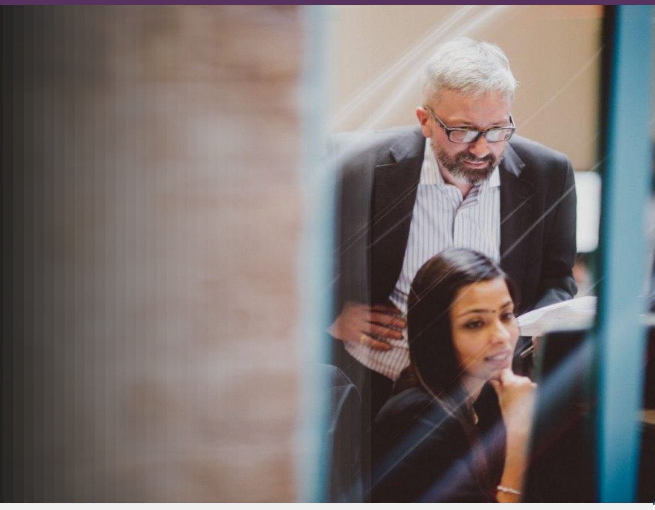
Delayed, but not cancelled: Company director's responsibilities



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Company directors will be focused on the bottom line and corporate governance as they continue to navigate their way through the pandemic lockdown and the Government's route map towards business as usual. Many will be worried at the risk of straying into territory where they cannot pay their bills, or in meeting reporting requirements, but Government concessions should relieve some of the stresses in the short term.

Compliance with the Companies Act 2006 requires directors to exercise reasonable care, which includes ensuring that the company does not trade while insolvent. This will arise where a company is unable to pay its debts as they fall due, or in situations where liabilities are greater than assets, and directors are under a duty to minimise potential losses to creditors. If no action is taken, a director may be wrongfully trading, which carries unlimited personal liability.

The UK Business Secretary, Alok Sharma, announced a temporary three-month suspension of wrongful trading provisions early in the lockdown, so company directors could continue to trade and pay staff without the threat of personal liability.

On 20 May 2020, the Government introduced the Corporate Insolvency and Governance Bill to parliament, with its second reading due on 3 June 2020. The bill:

- introduces a new moratorium to give companies breathing space from their creditors while they seek a rescue;
- prohibits termination clauses that engage on insolvency, preventing suppliers from ceasing their supply or asking for additional payments while a company is going through a rescue process;
- introduces a new restructuring plan that will bind creditors to it;
- enables the insolvency regime to flex to meet the demands of the emergency;
- temporarily removes the threat of personal liability for wrongful trading from directors who try to keep their companies afloat through the emergency;
- temporarily prohibits creditors from filing statutory demands and winding up petitions for coronavirus related debts;
- temporarily eases the burden on businesses by enabling them to hold closed Annual General Meetings, conduct business and communicate with members electronically, and by extending filing deadlines; and
- allows for the temporary measures to be retrospective for efficacy.

Corporate insolvency partner and head of dispute resolution, Qaiser Khanzada, said:

"The challenge of balancing the books during the current crisis is stretching even the most robust companies. Alongside, directors are justifiably concerned about fulfilling their responsibilities, acting diligently and in the best interests of the company. It's important to note that these concessions are not about reframing corporate responsibility; they're more about breathing space, which for some companies and sectors is desperately needed."

Other responsibilities which can be deferred during the pandemic:

Companies House filings

- A three-month extension for filing year-end accounts. This extension must be applied for before the filing deadline but is automatic and immediate on request.
- Where late filing has already occurred due to the pandemic, there will be a sympathetic response and there may be a break or payment plans agreed before penalties must be paid.
- Temporary changes to strike-off policy:
  - Where an application has been made for voluntary strike-off this will be published in the Gazette, but further action delayed, protecting those who may have objections.
  - Where strike-off is due to a failure to file, Companies House will continue to write to companies but will not publish a Gazette notice. Note: this does not apply to those who are being dissolved through insolvency or where the filing delay is reported as being due to the pandemic.
- Emergency filing service. This will enable some paper registrar's powers forms to be uploaded for submission. This will cover a small selection of forms which do not currently have an online option to allow requests for rectification and removal of information on the register. This will be extended to include more documents and payments in future.

These policy changes are temporary and will be reviewed as the pandemic develops.

Should you have any queries, contact corporate partner and head of corporate and commercial, Victoria Holland:

"The proposals will go some way towards (temporarily at least) easing the compliance duties of directors at a time when it may be difficult for them practically to comply with the Companies Act."

Gender Pay Gap

The Government Equalities Office and the Equality and Human Rights Commission has suspended gender pay gap reporting for 12 months. The rules apply to businesses and organisations with over 250 employees and while no data will be required until 2020/21, businesses can voluntarily complete the reporting once the pressures of the lockdown are over.

Modern Slavery

Under the Modern Slavery Act 2015, larger companies with a turnover in excess of £36m and other criteria are required to publish an annual modern slavery statement. This sets out what steps are being taken to identify and address potential risks around modern slavery. During the pandemic, the Government has announced that businesses which need to delay the publication of their modern slavery statement by up to six months, due to coronavirus-related pressures, will not be penalised. When the statement is published, businesses should set out the reason for any such delay.

Where a business needs to delay publication, the Government has emphasised that organisations must continue to tackle the risk of modern slavery in their operations and supply chains and recognise the increased potential for labour exploitation during the pandemic.

Employment partner, Karen Cole, said:

"This is another example of the UK Government temporarily easing corporate reporting during the pandemic, but there is no scope to let things slide. Businesses will need to use their next modern slavery statement to demonstrate how they monitored risk during any period of delay and how they have adapted their activities and priorities in response to it.

And, even though gender pay gap reporting has been fully suspended for the year, with no catch-up requirement for 2019/20, most companies will have compiled the data during the year and so will submit it voluntarily in any event, as it is recognised as an important measure of their approach to gender equality."

For further advice and information on the contents of this article, contact a member of our team today.

Qaiser Khanzada
Commercial Litigation
07979 802 717
qaiser.khanzada@riaabg.com
www.riaabarkergillette.com

Click here to make an online appointment

RIAA Barker Gillette

Always Available

Victoria Holland
Corporate and Commercial
07734 537 775
victoria.holland@riaabg.com
www.riaabarkergillette.com

Click here to make an online appointment

Karen Cole
Employment
07903 619 001
karen.cole@riaabg.com
www.riaabarkergillette.com

Click here to make an online appointment