

Directors under the microscope

Vince Cable has published proposals to target 'rogue' directors in a discussion paper published by The Department of Business, Innovation and Skills [BIS]. This comes in response to a string of high profile corporate failures that included the taxpayer bailouts of RBS and Lloyds. Such failures undermined public confidence in the current system with significant media coverage focussing on the directors' actions.

The proposals look to widen the scope for bringing action against directors, with the ultimate aim of increasing the number of disqualifications. At present only the Insolvency Service, as an executive Agency of BIS, has the power to disqualify individuals from acting as directors, with disqualification lasting for up to 15 years. Such powers can be used against directors, shadow directors and de-facto directors of companies that enter Liquidation, Administration or Receivership. Such action has to be brought against the individual within 2 years of the date of the Insolvency.

There are two key proposed changes that will help hold directors accountable for their actions. The first of these is to increase the time limit for bringing action against individuals from 2 to 5 years. This will provide further time to consider and investigate the conduct of a director. Additionally it is proposed that the powers to disqualify directors are not just limited to the Insolvency Service, but shared with specific industry regulators (for example The Financial Conduct Authority). This will not only share the workload but also allow the decision to be taken by those more au fait with the industry.

Not only do the proposals aim to make taking action against a director easier, they also look to provide the court with more power when considering sentence. In particular, they include provisions that allow the courts to not only consider the current company failure, but also the number and nature of any previous failures the director has been involved with. The consequences of such a change are all too clear.

The discussion paper also looks at other ways in which to hold directors accountable beyond disqualification. It includes provisions that could ultimately see directors facing personal financial sanctions where there is evidence of reckless or negligent behaviour. Furthermore, the proposals promote the introduction of the criminal offence 'Reckless Misconduct'.

As the review aims to restore public confidence, it does not just focus on those directors of failed companies; it considers the public perception of all companies. To promote transparency, it suggests a public register of all company directorships in the UK and The Law could be changed to prevent disqualified overseas directors obtaining UK appointments.

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