

## The Importance of the Books & Records

Sections 386 to 389 of the Companies Act 2006 impose a statutory obligation upon Directors to ensure that the company keeps, preserves and delivers up adequate books and records to the Liquidator. This ensures that the Liquidator can carry out a full investigation into the company's affairs and, where necessary, take action against Directors for a variety of reasons such as misfeasance, recovery of illegal dividends and the repayment of overdrawn loan accounts.

Some Directors mistakenly believe that if there are little or no records, then the Liquidator will be unable to establish what transactions have taken place and hence uncover any wrongdoings. Over the years there have been an number of reasons given for failing to deliver up the books and records such as fire, flood, car theft and computer malfunction. On one occasion, the Director's wife allegedly thought that the bags in the garage containing the company's records were rubbish and disposed of them accordingly!

The notion that a lack of records results in no action being taken is a false one. A Director will be unable to defend a financial claim from a Liquidator alleging misfeasance under section 212 of the Insolvency Act 1986 which clearly could have severe financial consequences if a claim is established.

Of more concern is the fact that a failure to deliver up the books and records will result in a Director incurring an adverse conduct report which, in turn, could result in disqualification proceedings being brought by the Insolvency Service. A Director who believes that a period of disqualification is a mere inconvenience which can be circumvented by appointing someone else as a Director should think again.

The Insolvency Service take a dim view of a lack of records as they believe that it hampers a full investigation into the company's affairs. It is a criminal offence under section 387 not to preserve the records which is punishable by imprisonment and/or a heavy fine. The Insolvency Service is more than willing to bring such prosecutions and Directors have previously been jailed for this offence.

It is therefore imperative that Directors take every step necessary to keep, preserve and deliver up the company's records as failure to do so could have serious consequences.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.