



## **New legislation is being brought in to put directors under the spotlight where companies have been dissolved using the striking off procedure.**

Dissolving a company by having it struck off the register at Companies House is a simple process involving minimal cost. The Registrar will even do it for you if you ignore your filings for long enough and no one objects. For that reason and because it avoids an investigation by the Insolvency Service or an insolvency practitioner, striking off is commonly misused by unscrupulous directors to avoid debt and to even dupe customers by starting up multiple successor companies with the same or similar names.

It is also used more innocently where a Company does not have the resources to pay for it to be placed into liquidation and the directors are unable or unwilling to meet the cost themselves, even though the company might not meet the criteria.

New legislation is being brought in to broaden the scope of the Insolvency Service's powers to investigate the affairs of dissolved companies and take proceedings that can result in a person being disqualified from acting as a director for a period of up to 15 years.

Currently the Company Directors' Disqualification Act 1986 (CDDA) only applies to live companies and those going through an insolvency process. To deal with a dissolved company, an application to Court has to be made to restore the company and wind it up. This can be cumbersome and costly and usually only happens as a result of specific concerns or targeted enquiries.

As far as we are aware, the proposed legislation does not widen the scope for clawback antecedent claims under the Insolvency Act 1986 to be used, however, the CDDA contains little used provisions for compensatory awards to be made against directors which seem well suited to this new approach and which we suspect will become more popular. We might also see companies being wound up if the new investigatory powers reveal more complex and valuable claims.

The legislation is being brought in with a focus on users of government support measures, such as furlough, bounce back loans and CBILS. Issues arising from the use of support measures are becoming increasingly relevant in cases that we are seeing on a daily basis and quite often directors do not understand the implications of what they have done... or what they are thinking of doing.

The advice we have given has sometimes not been welcome. There is no panacea or "one size fits all" answer and whilst we understand it may be hard and seem unfair to have to face up to some of the unfortunate consequences of the pandemic after what has been a tough year, it is essential that directors understand their position and its implications for them. Being proactive and tackling issues head on is likely to present an easier path to resolving them in the short term than having to do so years later.