

Corporate

Involuntary Strike Off and Disqualification of Directors

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Where a company is in financial difficulties, directors run a risk in allowing the company to be struck off of the Companies Registration Office Register – including the potential for disqualification orders.

Annual returns

A limited company is obliged to file an annual return and accounts in the Companies Registration Office every year or risk being struck off by the Register of Companies. The Companies Acts contain a specific provision entitling the Court to make a disqualification order, or alternatively a restriction order, against a director whose company is struck off for failure to file returns. The Director of Corporate Enforcement has secured a number of disqualification orders against directors on this ground.

Acting Reasonably

- Two recent High Court judgements may provide comfort to directors in such circumstances who have otherwise acted reasonably: *Chercrest Ltd, in re: Director of Corporate Enforcement v Michael Slattery and Val Slattery* [2014] IEHC 363 and *Walfab Engineering Ltd, in re, Director of Corporate Enforcement v Brendan Walsh, Catherine Walsh and Patrick Walsh* [2014] IEHC 365. In both cases the Court held that, in exercising its discretion as to whether to make a disqualification order, the Court should not act lightly given the penal consequences of such an order.
- Barrett J considered factors such as the scale of the enterprise and qualifications of directors concerned; the context in which the failure arose; and the past behaviour of the directors concerned.

He recognised that in each case, apart from the failure to file the annual return and accounts, there was no evidence of previous bad behaviour. He also recognised, with some sympathy, the real economic and financial pressure under which the individuals concerned were acting. In one case, he noted that it was *“not one of 'Nero fiddled while Rome burned'; it is more a case of Nero leaving the fiddle unattended while he dashed into the burning city in a desperate bid to save what he could.”* In each case, the directors were non-professionals, and the Judge suggested that *“enterprising but professionally unqualified individuals who doubtless are competent in their own field of endeavour but who are not expert in matters of law, tax or accounting”* could be judged by a less exacting standards than *“a director who is professionally qualified or who directs a large or quoted enterprise”*.

He concluded that although the failure to file could be held to be *“foolish, unwise or reproachable”*, when put in context it was also to some extent understandable and not of such a nature as to require that the Court must exercise its discretion so make a disqualification order.

Strike off or Liquidation

Strike-off is not an alternative to liquidation and these judgments should not be construed or relied upon by directors to allow their companies be struck off instead of undergoing a liquidation process. The current cases concerned non-professional directors with a track record of compliance, until severe economic circumstances caused them to cease trading. Directors with legal or accounting qualifications might well be held to have a greater responsibility to ensure compliance. Unless directors are satisfied that the company facing strike off has no actual, contingent or prospective liabilities, the prudent course of action is to ensure the company is put into the appropriate form of liquidation.

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