

Business Bounceback Loans and Directors' Liability

Following 18 months of stagnation, the wheels of insolvency are once again starting to turn following the government's recent lifting of the ban on winding up petitions (albeit with new conditions).

It is apparent from the legal press that the insolvency process is starting to wake up from its prolonged period of slumber and this that officeholders and the Insolvency Service are starting to investigate the affairs and management of a large number of insolvent companies.

It is also apparent (albeit from uncorroborated anecdotal evidence) that a significant proportion – perhaps something in the region of 60% - of applications for BBLs, CBILS and other forms of government support have been improperly made. The level of impropriety varies but below are some examples of the sorts of abuse of the system of which we are aware:

- Insolvent companies advised to go into liquidation, held off from doing so with the sole intention of furloughing their employees but with no intention of trading in the future;
- Companies have taken loans with no intention of repaying them. The monies were immediately paid to the directors who used them to fund personal purchases, notably of luxury cars or buy-to-let properties;
- BBLs or CBILS loans were used to pay down the company's overdraft which had been guaranteed by the directors;
- Perfectly solvent companies with substantially leveraged property portfolios, refinanced their bank loans with CBILS in order to bring the exposure under the government guarantee. This approach has been encouraged by many institutional lenders looking to take advantage of the government guarantee whilst charging their customers an additional arrangement fee.

Directors of companies that have abused the bail out schemes in any way ought to be concerned. Any of the above abuses would be grounds for a misfeasance claim against the directors involved and that could lead to both a disqualification and an order making them personally liable for some of the company's debts.

Any directors who think that their actions might be vulnerable to the unwanted scrutiny of the Insolvency Service or an insolvency officeholder would be well advised to seek early advice. We at AMB Law would be pleased confidentially to discuss any issues with anyone who may be concerned.



AMB Law Limited
46 New Broad Street
London
EC2M 1JH

T: +44 (0)20 3651 5646
office@amblaw.co.uk

AMB Law Limited
Epsilon House
West Road
Ipswich
IP3 9FJ

T: +44 (0)1473 276103

Alistair Bacon
Principal

T : 020 3651 5647
M: 07881 554062
abacon@amblaw.co.uk

Matthew Rice
Paralegal

T : 020 3651 5704
01473 276181
mrice@amblaw.co.uk

Stephen Carter
Consultant

T : 020 7329 4242
scarter@amblaw.co.uk

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