

Government to crack down on ‘phoenixing’

The government has announced plans to introduce fines and disqualifications for directors who allow their companies to go bust to avoid debts. The changes come after several high-profile company failures in 2018.

One aim of the new rules is to stop ‘phoenixing’ - the practice of dissolving a company to escape debts and liabilities before starting a new, often similar business under a new name.

Following a consultation earlier this year, the government proposes measures to strengthen the insolvency framework so it will:

- Ensure greater accountability of directors in group companies when selling subsidiaries in distress.
- Enhance existing recovery powers of insolvency practitioners where arrangements are in place to extract value from a business in distress at the expense of its creditors.
- Give the Insolvency Service powers to investigate directors of dissolved companies who may have acted in breach of their legal obligations, in particular by phoenixing, for the purpose of avoiding debts.

The proposals will also give directors of potentially viable distressed companies more time to set up a rescue by giving them a grace period when creditors cannot take action against the company. The company would then have time to restructure or seek new investment, while continuing to trade, so that small suppliers and workers still get paid.

To create more transparency in the boardroom the government also intends to legislate to:

- Make group structures more transparent and require groups to provide explanations of their corporate and subsidiary structures.
- Strengthen shareholder stewardship, especially by institutional shareholders.
- Prevent companies paying dividends when in financial distress and ensure shareholders have an annual vote on dividends.
- Strengthen directors’ training and guidance.

Business minister Kelly Tolhurst commented: “While the vast majority of UK companies are run responsibly, some recent large-scale business failures have shown that a minority of directors are recklessly profiting from dissolved companies. This can’t continue.

“That is why we are upgrading our corporate governance to give new powers to authorities to investigate and hold responsible directors who attempt to shy away from their responsibilities, help protect workers and small suppliers and ensure the UK remains a great place to work, invest and do business.”

As always, good financial planning and monitoring are essential for your business to avoid distress. If you require any further information please seek professional advice.

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