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## No more Hiding in the Shadows!!

Change is afoot in the law on director disqualifications. The Small Business, Enterprise and Employment Act which obtained Royal Assent on 26 March 2015 will bring some very significant changes for directors of insolvent limited companies. The New Act will apply in NI with the director disqualifications provisions coming into effect on 1 October 2015.

### Legislation

Currently the main piece of legislation dealing with directors' conduct is The Company Directors Disqualification (Northern Ireland) Order 2002. The new Act will widen the scope of the law and make the consequences of falling foul of it potentially more painful. In addition to extending the time allowed for the DETI to take action against directors, the main changes are summarised below:

The new provisions will mean that a director's conduct in companies registered outside of NI can be taken into account here. This is obviously particularly significant for directors of Republic of Ireland companies who may have had difficulties with the Office of the Director of Corporate Enforcement in Dublin.



### New Provisions

There are new provisions aimed at stopping the appointment of "puppet" directors.

This is the practice of companies appointing "named" directors, for example, spouses, where the original directors are either bankrupt or subject to Disqualification Orders or Undertakings but still effectively in control of the company.

The new provisions will apply to individuals under whose influence, instruction or direction the "named" directors act. Penalties can be imposed on those deemed to be controlling the company and also on the named directors.

### Impact

Finally and perhaps most significantly the new Act gives the DETI the power to hit disqualified persons where it hurts the most, their pockets.

Where a person is subject to a disqualification order or a disqualification undertaking and that

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persons conduct has caused loss to a creditor or a group of creditors the DETI will be able to apply to the High Court for a Compensation Order against that person.



The Compensation Order is potentially a massive weapon in the war on rogue directors for whom a disqualification is seen as nothing more than a rap on the knuckles, now they face the prospect of also having to pay financial compensation to the creditors.

However it will also cause potential difficulty for all directors of insolvent companies. It is envisaged these orders will be provable in bankruptcy and could therefore see directors made bankrupt for the debts of an insolvent company where up to now they have been able to walk away. Effectively the benefits of limited liability will only be available to those deemed to have acted properly.

**For a free initial consultation please contact us.**

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**Do not bury your head in the sand, the problem will not go away on it's own.**

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