



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement

Bankruptcy and Company Directors

The recent change in insolvency legislation, and the subsequent surge in bankruptcy applications, has company law implications for directors. These come in two forms.

Firstly, the Companies Act states that if an undischarged bankrupt acts as a director, he or she commits an offence. Section 132 of the Companies Act 2014 states as follows:

If any person being an undischarged bankrupt—

(a) acts as a director or secretary of a company; or

(b) directly or indirectly takes part or is concerned in the promotion, formation or management of a company,

the person shall (unless he or she does so with the leave of the court) be guilty of a category 2 offence.

It should be noted that this includes acting as a director of a company incorporated outside Ireland which has a branch within Ireland and also not just to individuals adjudicated bankrupt in Ireland, but also where they were made bankrupt in any other State.

In addition, under section 148 of the Companies Act 2014, it is stated that

Vacation of office

...the office of director shall be vacated if the director—

(a) is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction;

In this case, if you are declared bankrupt then you are deemed no longer to hold the position of director of the company. If you continue to act as a director in these circumstances, you run the risk of exposing yourself to significant financial consequences, including potential personal liability.

The ODCE urges individuals who are either already bankrupt or who are entering the bankruptcy process to regularise their company law position, and to resign from any company directorships they may hold, in order to avoid these legal consequences.