



Oifig an Stiúrthóra 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 Acts states that if an undischarged bankrupt acts as a director, he or she commits an offence.. Section 183 (1) of the Companies Act 1963 states as follows:

*“...if any person being an undischarged bankrupt acts as officer, auditor, liquidator or examiner of, or directly or indirectly takes part or is concerned in the promotion, formation or management of, any company except with the leave of the court, he shall be guilty of an offence.”*

In this case, an officer includes both a company director and a company secretary.

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

The second issue is that in the Standard Memorandum and Articles of Association (set out in Table A to the Companies Act 1963) for a company, it is stated that

### *Disqualification of Directors*

**91.** *The office of director shall be vacated if the director—*

...

*(b) is adjudged bankrupt in the State or in Northern Ireland or Great Britain or makes any arrangement or composition with his creditors generally*

In this case, if the company has adopted the Standard Memorandum and Articles of Association, 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.