AUTUMN 2018

For Business

Improving the running of UK companies

High profile company failures prompt a range of measures to improve the running of UK companies.

Do you value your property?

Account for freehold real estate assets at either fair value or at cost.

Landlords beware

The importance of providing an up to date Energy Performance Certificate (“EPC”) and Gas Safety Certificate.

Are you burning your profits?

Stopping the drain on your resources.

Improving the running of UK companies

Prompted by some high profile company failures, such as BHS and Carillion, earlier this year the government consulted on a range of measures to improve the running of UK companies. In August, it published its response and set out its proposals.

A number of the proposals focus on the running of companies listed on a stock exchange, such as improving their reporting requirements and strengthening shareholder stewardship. Other proposals will apply to companies of all sizes, including a review of the framework relating to dividend payments and extensions to the directors' disqualification regime.

At the moment, when a company goes into insolvent liquidation the actions of the directors can be investigated. If they are guilty of misconduct, they can be disqualified from being a director. Over 1,200 individuals were disqualified from being a director last year.

If, instead of the company going into liquidation, the company is struck off by Companies House (for example, for failing to file accounts or confirmation statements), the directors' disqualification rules don't apply. Directors can therefore avoid liabilities and scrutiny by dissolving companies in this way.

The government has announced that it is going to explore the case for a comprehensive review of the dividend regime.

While dissolved companies can be restored to the register, this can be a costly and lengthy process. The government has therefore announced that it will extend the current investigation regime, to include former directors of dissolved companies.

One of the reasons dividend payments came under scrutiny was because BHS continued to pay large dividends while also having a significant shortfall in its pension scheme. The government has announced that it is going to explore the case for a comprehensive review of the dividend regime.

The concern is that the current system of allowing dividends to be paid out of the distributable profits shown in accounts, is too backwards looking, with insufficient weight placed on current profitability and future prospects, providing only limited protection for creditors. On the deficit point, however, the government has accepted that a ban on paying dividends when a pension scheme has a significant deficit is not appropriate.

One of the more controversial proposals in the original consultation was that directors of holding companies could be made personally liable where they sell a subsidiary and the creditors are worse off if the subsidiary then becomes insolvent. Again, BHS was the trigger for this idea, having been sold for £1 then failing under its new owners, leaving suppliers out of pocket.

How does your business value its property assets in its balance sheet? Accounting guidelines allow a company to account for its freehold real estate assets at either fair value or at cost.

Do you value your property?

Depending on which method you use, there could be a significant discrepancy between what is stated in your accounts and the true achievable value.

Most companies will account properties at cost, either at which they bought or built them, and then depreciate them down to a residual land value over, say, 30 or 50 years. That may work for other corporate assets, but is it right for real estate which has an established market and is used as collateral for financing? As such, property can be valued reflecting what 'the market' would pay for it. Would it be better to assess to

Despite concerns expressed by those responding to the consultation, the government has said it will go ahead and make a director of a holding company who does not give due consideration to the interests of the stakeholders of a financially distressed subsidiary, when it is sold, subject to potential disqualification action, if that subsidiary becomes insolvent within a year after the sale. It will be interesting to see how this plays out: maybe it will mean that directors consider a sale of a distressed subsidiary too risky, leading to fewer rescues and more insolvencies.

We will continue to follow the progress of the proposals as they are implemented. If you are interested in finding out how they might affect your business, please contact a member of the business team.

David Wisbey
01245 453817
david.wisbey@birkettlong.co.uk

Landlords beware

The Assured Shorthold Tenant Notices and Prescribed Requirements (England) Regulations 2015 commenced on 1 October 2015 and, apart from being a mouthful to say, state what information landlord's must provide to their tenants at the outset of an Assured Shorthold Tenancy; for a residential letting namely, an up to date Energy Performance Certificate ("EPC") and Gas Safety Certificate.

If these documents are provided to a tenant at the outset, a landlord can validly issue a Section 21 Notice to evict a tenant and the court will mandatorily issue a Possession Order. The same cannot be said if a landlord fails to provide copies of the same.

The recent case of Caridon Property Limited –v– Monty Shooltz provided a stark reminder to landlords. Here, a Section 21 Notice was deemed invalid as the landlord had not provided the tenant with the information at the start of a tenancy commencing post-1 October 2015.

The rules will be changing again from 1 October 2018, so if you wish to obtain possession of your property, or are concerned that you didn't provide the necessary documentation to your tenant, please feel free to give me a call to discuss the matter further.

Perdeep Grewal
01245 453804
perdeep.grewal@birkettlong.co.uk

'fair value' rather than cost? If so, how regularly, bearing in mind the costs associated with such valuations?

Real estate funds and investment vehicles do account at 'fair value' at least annually, following accounting and RICS guidelines. That means to market value, which estimates what the property would fetch on the open market.

The point to be understood is that cost does not equal value, especially in the volatile property market. If you wish to borrow funds, the lender will, amongst other factors, consider your audited accounts and the reported property values. It will take it for granted that those values are accurate, but are they if the real estate is not being considered in line with the market?

Some businesses are now trying to provide better transparency to their shareholders, lenders and others, by holding their real estate on their balance sheet at cost, but also including the fair value of their assets in their financial statements. It can certainly be argued that cost accounting for real estate is not 'best practice' and hides the true value of a company's balance sheet, misleads investors and over or under values the company. Greater transparency would assist everyone.

David Rayner
01206 453826
david.rayner@birkettlong.co.uk

Are you burning your profits?

Is your business losing thousands of pounds on energy or fuel costs every week? It is surprising how many are.

Expert help and support from Birkett Long's Environment and Energy team, led by myself, recognised by legal directories, such as the Legal 500, as an expert in this field, and various energy or fuel consultants and assessors, could save you tens of thousands of pounds.

The benefits of stopping the drain on your resources are obvious:-

- Savings will go straight to improving your bottom line.
- Give you a head start on your competitors.
- Enable you to comply with the ever-increasing array of statutory and regulatory requirements.
- Make sure you have a proper environmental or sustainability plan in place if you are tendering for government (central and local) or major business contracts. These organisations now require their supply chains to meet their standards.
- Change behaviours within your business.
- Assist with significant fuel savings if you run a vehicle fleet.
- Satisfy the demands of your customers and staff as the 'green agenda' climbs higher.

So whether you believe that climate change is happening or not, there are many compelling reasons to look at your energy and fuel usage, without becoming a 'tree hugger'.

If you have any queries please contact me.

David Rayner
01206 453826
david.rayner@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

1 AMPHORA PLACE
SHEEPEN ROAD
COLCHESTER CO3 3WG
T 01206 217300

FAVIELL HOUSE
1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E BUSINESSNEWS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK
TWITTER: @BIRKETTLONG
INSTAGRAM: @BIRKETT_LONG

Reference: NEWS/FORBUSINESS/AUTUMN2018