

BHS case and Directors' Liability

A recent UK case which found two former directors of the high street retailer British Home Stores (“BHS”) personally liable as a result of being guilty of wrongful trading, misfeasance trading and misfeasance has highlighted the responsibilities of company directors – and their potential liabilities when things go wrong. The pair face massive multi-million-pound fines as a result of the findings which set a record for the UK.

Background

BHS was a well-known high street retailer that had been founded in the 1920’s and had grown to consist of over 160 stores employing in excess of 10,000 people prior to its closure. The chain was sold in 2015 for the nominal sum of £1 by Sir Philip Green’s Arcadia Group to Retail Acquisitions Ltd. but 13 months later, in April 2016, it went into administration and closed.

Court Findings

A legal action was brought by the liquidator of the BHS group on behalf of its creditors. At the time of closure, creditors were owed approximately £1.3bn with the pension funds having a shortfall of £571m. In June 2024, the UK’s High Court ordered two former directors of the company, Lennart Hennington and Dominic Chandler, to pay £18m, comprised of £13m for wrongful trading and £5m for breach of corporate duties. Further damages for misfeasance are also likely. This is in addition to criminal sanctions including a ten-year disqualification order against another former director and owner of Retail Acquisitions Ltd., Dominic Chappell, which has also been issued.

Implications for Irish Directors

The findings of the UK High Court were based on the specific facts of this case and the relevant provisions of the Companies Act 2006 in the UK. However, the judgement is also of general relevance for directors of Irish companies as, although not binding on Irish courts, the findings of the higher courts in the UK have persuasive authority for the Irish courts and reflect the ongoing development of common law principles. In addition, the Companies Act 2014 (as amended) of Ireland contains provisions penalising reckless trading as well as fraudulent trading. Reckless trading is significantly easier to prove than fraudulent trading and carries the potential for civil liability for relevant directors.

How Clerkin Lynch Can Help

Clerkin Lynch advises on directors’ duties under Irish law in stressed circumstances. We also advise on the rights of other relevant parties to corporate insolvencies including shareholders and creditors. Reach out to us for more information or with related queries.



Mark Browne
Partner
email:
markbrowne@clerkinlynch.com
Phone: 01 611 4400

