



BANKING

Satisfaction of Charges

by **Andrew Power**

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The Companies Act 2014 (the "Act") proposes to introduce criminal penalties for company directors and the company secretary if they sign a statement that is received by the Companies Registration Office ("CRO") that confirms that debt secured by a charge has been satisfied in whole or in part or that property has been released from that charge ("a statement of satisfaction or release") when they know that that statement is false.

In addition, if a director or secretary signs a statement of satisfaction or release without honestly believing on reasonable grounds that that statement is true, the court may make an order that results in the relevant director or secretary being personally liable for all or part of the debts and liabilities of the company.

Current Position

Currently, in order to register the satisfaction of a charge, two directors or one director and the company secretary must file a sworn statutory declaration (in the form of a CRO Form C6) in the CRO declaring that the charge has been satisfied. Upon receipt of the sworn Form C6, the CRO notifies the secured creditor and, unless the secured creditor contacts the CRO to object to the CRO registering the satisfaction within 21 days, the CRO will proceed to register it. This process was criticised by the company law review group as being highly susceptible to abuse by dishonest directors who are intent on giving a false impression of the company's ability to raise debt by creating security. While there are criminal penalties for swearing statutory declarations known to be false, neither the Director of Corporate Enforcement nor the Director of Public Prosecutions has relied on the offence of swearing a false statutory declaration to any significant extent in practice.

New Regime

Section 416 largely re-enacts the existing procedure whereby two directors or one director and the company secretary are required to sign a statement in the prescribed form that a charge has been satisfied and submit that statement to the CRO by way of request that the satisfaction should be registered by the CRO. A significant amendment under Section 416, however, is that the statement need no longer be made as a statutory declaration (as is currently the case).

Section 416 of the Bill aims to reform, and eradicate abuse of, the registration of the satisfaction of charges through the imposition of the following criminal and civil penalties:

If a person signs a statement of satisfaction or release, knowing it to be false, and that statement is submitted to the CRO, that person can be convicted of a category 2 offence under the Act, which on summary conviction will result in the person being liable for Class A fine and/or 12 months imprisonment or on conviction on indictment will result in the person being liable for a fine of up to €50,000 and/or imprisonment for up to 5 years; or

If a person signs a statement of satisfaction or release without honestly believing on reasonable grounds that the statement is true, and the court considers that the making of that statement either:

- contributed to the company being unable to pay its debts;

- prevented or impeded the orderly winding up of the company; or
- facilitated the defrauding of the creditors of the company,

The court can then declare that the person who signed the statement of satisfaction or release without an honest belief on reasonable grounds that it was true should be personally liable for all or part of the debts of the company on an application made to the court for such a declaration by a liquidator, examiner, or any creditor or contributor, of the company or a receiver of company property.

Conclusion

The introduction of civil and criminal penalties for company officers in breach of the provisions of the Act will be welcomed by secured lenders in that it provides an additional safeguard against abuse of CRO process by dishonest or careless company officers. However, it should be relatively easy for company directors and the company secretary to eliminate the risk of civil or criminal consequences for them as a result of signing a statement of satisfaction or release if they only do so where they have received an executed deed of release from the charge holder.

The removal of the necessity for the form of statement to be a statutory declaration will be welcomed by directors as its will become less cumbersome and time consuming to complete the form of statement.

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