

CORPORATE MERGERS AND ACQUISITIONS >>UPDATE

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Phoenix company provisions enforced

The first conviction under the phoenix company provisions in the Companies Act 1993 ('Act') demonstrates that the Ministry of Economic Development (MED) is willing and able to exercise its enforcement powers.

In the past, phoenix companies were commonplace. Directors of failed companies simply set up a new company and continued in business, often leaving creditors of the failed company with no real recourse. These new companies earned the name 'phoenix company' because they rose through the ashes of the failed company and were reborn in virtually identical form.

In 2006 the Government took action against this practice, amending the Act to restrict directors of failed companies from participating in the running of a company with the same or a similar name to the pre-liquidation name of the failed company. These amendments came into force on 1 July 2007.

Nearly three years later, the National Enforcement Unit of the MED has had its first successful conviction.

According to the Companies Office website, Michael Donovan was a shareholder and director of Site IT Limited from its incorporation. Patricia Donovan held a minority interest in the company. Site IT Limited was put into liquidation on 1 December 2008. The following day, Site IT Engineering 2008 Limited (now Unlimited Electronics Limited) was incorporated. Patricia Donovan was the sole shareholder and director of the company.

MED alleged that Michael Donovan had engaged in managing a phoenix company in breach of s386A of the Act.

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On 20 April 2010, Michael Donovan pleaded guilty to this charge and was convicted and discharged in the Napier District Court. As a result, Michael Donovan is prevented from acting as a director of a company for five years. Although not the case here, breaches of the phoenix company provisions can have serious consequences with imprisonment for up to five years or a maximum fine of \$200,000.00

Start a conversation

If you would like to know more about phoenix companies contact one of our experts.

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