

Minister Heather Humphreys
Minister for Business, Enterprise and Innovation
Kildare Street
Dublin 2

6 April 2020

Dear Minister

Threat of Reckless Trading under Companies Act 2014

Firstly, I would like to acknowledge once again the extraordinary efforts of you and your Department in seeking. There have been and will be, both inevitably and understandably, some anomalies to be ironed out and we greatly appreciate the engagement to identify and address such matters as rapidly as possible after they are identified

Once such anomaly refers to the risk to Directors of reckless trading under s610 and the consequences set out in Part 14, Chapter 3 of the Companies Act 2014. As we have discussed in the past, we are aware that the Revenue Commissioners have very helpfully stated that they will not consider any company availing of, for example, the Covid 19 Wage Subsidy Scheme to be insolvent.

However, our concern is that in the event of a company being forced to wind up, it is within the power of a Liquidator, Examiner, Receiver or Creditor to apply to The Courts for the offence of fraudulent or reckless trading, independent of any view of the Revenue Commissioners. We believe this is an unnecessary risk for Directors of companies seeking to survive through this crisis and indeed may act as an inhibitor to some companies availing of the scheme.

We believe a set of minor amendments to the Companies Act 2014, proposed by the Company Law Review Group and as set out in the attached schedule, would address this risk and we request that you expedite these or similar amendments urgently.

Please do not hesitate to contact me with any queries on 087 2344 829 or at ian.talbot@chambers.ie.

Yours sincerely,



Ian Talbot
Chief Executive

Cc Dr Orlaigh Quinn, DBEI

Schedule – Recommendations of Company Law Review Group

1. Insert a new section 610A – continuing to trade during the Covid-19 outbreak

“Where a director of a company is party or privy to a decision of a company:

(a) to continue to trade for any time during the interim period in anticipation of the termination or abatement of the adverse effects of the Covid-19 outbreak and the related social and economic restrictions; or

(b) to apply for support under Part 7 of the Emergency Measures in the Public Interest (Covid-19)

Bill 2020;

neither such continuance nor such application shall of itself be construed as implying that the director has been knowingly a party to the carrying on of any business of the company in a reckless manner.”

2. Insert a new section 820A – applications for restriction orders in respect of trading during the Covid-19 outbreak

“(1) No application shall be made under section 820 by reason only of the director being party or privy to a decision of a company:

(a) to continue to trade for any time during the interim period in anticipation of the termination or abatement of the adverse effects of the Covid-19 outbreak and the related social and economic restrictions; or

(b) to apply for support under Part 7 of the Emergency Measures in the Public Interest (Covid-19)

Bill 2020.”

