

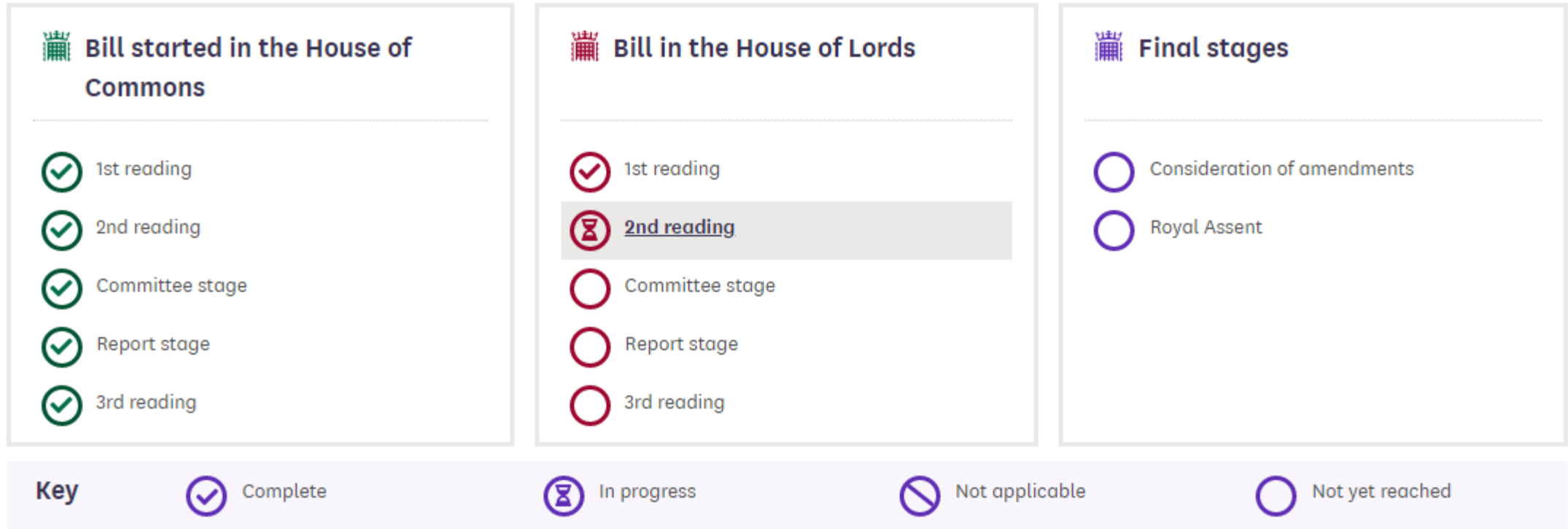
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Corporate Recovery and Insolvency

The Rating (Coronavirus) and Director Disqualification (Dissolved Companies) Bill

Martin Armstrong – Senior Partner

Bill passage



Dissolution Procedure

Company dissolution is an easier, cheaper and quicker way of removing a company from the Companies House register than a liquidation process. To dissolve a company, directors have to arrange for:

- The majority of directors to sign Form DS01**
- Send a £10 fee (but not from an account in the name of the company)**
- Companies House will publish a notice of proposed striking off in the London Gazette**
- If nobody objects for 2 months, the company is dissolved upon the publication of a further notice**

Abuse of dissolution (1)

-Dissolution is only available in specific circumstances, notably the company must not have traded within the last three months or changed its name in that period

-There is potential for the process to be misused whether intentionally or not

-The Insolvency Service receives numerous complaints that former directors have misused the dissolution process by certain practices

-The most common complaint is “Phoenixism” whereby a company is dissolved to escape its liabilities with the director then setting up a company in its place, often from the same location and with the same assets, to avoid the time and expense of liquidation, which would be more appropriate

Abuse of dissolution (2)

-HMG has raised concerns that the dissolution process was being misused as a means of fraudulently avoiding repayment of Government backed loans given to support businesses during the Covid pandemic

-Directors may choose to dissolve a company rather than liquidate it to avoid an investigation into their conduct under Company Directors Disqualification Act 1986 (“CDDA”)

- “CDDA” provides powers of investigation and permits the Government to apply for a Court Order disqualifying a person from serving as a director for between 2 and 15 years

Shortcomings of existing powers to investigate and disqualify Directors

Currently “CDDA” powers of disqualification do not apply to companies which have been dissolved

Three stage process:

- Apply to Court to restore the company to the register
- Appoint a liquidator under s108 IA1986, or use CA 1985 to obtain information and documents from the company, in order to investigate the directors conduct
- Seek Disqualification Order under CDDA

But:

-cumbersome, expensive and time-consuming process

New Bill

- Seeks to close the loophole by expanding the Governments powers of investigation and disqualification pursuant to “CDDA” to include former directors of dissolved companies**
- Will be retrospective**
- Provides that a Court Order for compensation can be made against a disqualified director whose conduct has caused loss to creditors of a dissolved company**
- Likely to become law as it has passed through Commons without amendment and with no MP’s speaking in opposition**
- Will be of interest to providers of Directors & Officers Liability Insurance**

How effective is the Act going to be?

- Currently and in recent years the Insolvency Service issues disqualification orders against circa 1,200 directors per annum**
- In the quarter ended 30th June 2021 there are 371,705 companies in the course of removal or liquidation**
- There were over 2,000 companies that applied for strike off the day after obtaining a BBL**
- We strongly recommend directors seek professional advice before applying to strike a company off**