

The courts have long been able to impose orders disqualifying company directors. In 1986 the Company Directors Disqualification Act (CDDA):

- brought together all the previous disqualification legislation; and
- introduced new, tougher rules against those involved in the failure of a company and whose conduct called into question their fitness to be a director.

From April 2001, the Insolvency Act 2000 has also enabled the Secretary of State to accept disqualification undertakings from directors. These have the same effect as disqualification orders, but do not need a court to be involved.

What is the purpose of the CDDA?

It aims to maintain the integrity of the business environment. Those who become directors of limited companies should:

- carry out their duties with responsibility; and
- exercise adequate skill and care with proper regard to the interests of the company's creditors and employees.

The majority of directors do this effectively, but the CDDA is a powerful tool against those who abuse the privilege of limited liability. The CDDA applies not just to persons who are formally appointed as directors but to those who carry out the functions of directors.

When can the courts make disqualification orders under the CDDA?

The court can do this for example, for:

- certain criminal offences connected with the Companies Acts legislation;
- wrongful trading (such as trading while insolvent);
- failure to comply with filing requirements under the Companies Act legislation;
- unfit conduct in insolvent companies.

What is meant by 'insolvent'?

An insolvent company is defined in the CDDA as one that:

- goes into administrative receivership;
- enters administration; or
- goes into liquidation at a time when its liabilities exceed its assets.

How do disqualification proceedings begin?

If there is any unfit conduct, then the liquidator, administrative receiver, administrator or Official Receiver has a duty to send the Secretary of State for Business, Enterprise & Regulatory Reform a report on the conduct of all directors who were in office in the last 3 years of the company's trading.

The Secretary of State has to decide whether it is in the public interest to seek a disqualification order against a director.

What type of conduct is reported to the Secretary of State?

Examples of the most commonly reported conduct are:

- allowing the company to continue to trade when it was unable to pay its debts;
- failure to keep proper accounting records;
- failure to prepare and file accounts or make returns to Companies House; and
- failure to submit returns or pay the Crown any tax due.

Who brings the proceedings in relation to a failed company?

The proceedings are brought by the Secretary of State for Business, Enterprise and Regulatory Reform or, usually in compulsory winding-up cases, by the Official Receiver at the direction of the Secretary of State. The matter is heard, and decided by the court, unless the Secretary of State accepts a disqualification undertaking from a director.

What is the likely period of disqualification?

The minimum period of disqualification is 2 years and the maximum 15 years.

A disqualification order usually carries with it an order to pay the costs and expenses of the Secretary of State or the Official Receiver or both.

What is the effect of a disqualification order or disqualification undertaking?

Unless he or she has court permission, the person is disqualified for the period stated in the order or undertaking from:

- being a director of a company;
- acting as receiver of a company's property;
- directly or indirectly being concerned or taking part in the promotion, formation or management of a company; or
- being a member of or being concerned or taking part in the promotion, formation or management of a limited liability partnership.

He or she is also absolutely disqualified during the disqualification period from acting as an insolvency practitioner.

For more information on the effect of a disqualification order or undertaking, see our leaflet 'Company Directors Disqualification Act 1986 and Disqualified Directors - effect of disqualification orders and disqualification undertakings'.

What happens if someone contravenes a disqualification order or disqualification undertaking?

The disqualified person and any person who assists them will be committing a criminal offence and is liable to be prosecuted. He or she may also be held personally liable for all the debts of the company concerned that were incurred after they were involved in any role from which the person was disqualified.

Is it possible to be a director or be involved in the management of a company during the disqualification period without breaking the law?

A disqualified person can apply to the court for permission to act while disqualified. The court may grant permission but will need to be satisfied that there are adequate safeguards to protect the public interest and may impose conditions.

Is a record kept of directors who are disqualified?

Yes. The courts in England and Wales, Scotland and Northern Ireland inform the Registrar of Companies of every disqualification order and undertaking. This information goes onto a Register of Disqualified Directors, which is open to the public for inspection. A person's name is removed from the register at the end of the disqualification period. In addition, the disqualification may be reported in the press.

How can a director avoid disqualification proceedings?

By ensuring that:

- the company is under proper control, including compliance with the Companies Acts and other legislation (for example, by ensuring that accounting records are properly kept and that annual accounts are prepared and filed);
- there is an effective system of financial control and that customers, suppliers, Crown departments and other creditors are properly dealt with;

- early corrective action is taken (including, when necessary, taking professional advice) if the company shows signs of getting into financial difficulties.

These are only a few examples.

Where can I get more information?

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Company Directors Disqualification Act 1986 and Failed Companies

**Information on Disqualification
Procedures**