

# Disqualified Company Officers – Post 18 June 2009

For disqualifications pre 18 June 2009 please see: [Disqualified Directors pre 18 June 2009](#)

The Financial Supervision Commission expects the highest standards of conduct from those involved in the corporate governance of companies. Where a person's conduct indicates that they are potentially unfit to perform such a role the Commission may petition the High Court of Justice of the Isle of Man under Section 3 (1) (a) of the [Company Officers \(Disqualification\) Act 2009](#) seeking disqualification of that person from acting as:

- (a) a director, secretary or registered agent;
- (b) a liquidator;
- (c) a receiver;
- (d) a person holding an office under any relevant foreign law analogous to any of the offices specified in paragraph (a), (b) or (c) in respect of a company; or
- (e) a person who, in any way, whether directly or indirectly, is concerned or takes part in the promotion, formation or management of a company.

The period of disqualification can range from a minimum of 2 years to a maximum of 15 years.

## Disqualification Undertakings

Section 6 of the [Company Officers \(Disqualification\) Act 2009](#) permits the Commission where it appears to the Commission that:

- (a) a person is or has been an officer of a company; and
- (b) that the person's conduct renders that person unfit to be an officer of a company; and
- (c) the person has offered a disqualification undertaking

to accept the undertaking if satisfied that it is expedient in the public interest that it should do so (instead of applying, or proceeding with an application, for a disqualification order).

A disqualification undertaking has exactly the same effect as a disqualification order in terms of publicity and criminal sanctions for breach.

An undertaking may be for a minimum period of 2 years and a maximum period of 15 years.

## Disqualification of persons for fraudulent trading.

In terms of Section 9 of the [Company Officers \(Disqualification\) Act 2009](#), in cases where the High Court of Justice of the Isle of Man makes a declaration under

[Section 259 of the Companies Act 1931](#) (responsibility of directors for fraudulent trading) that a person is liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, it shall consider making a disqualification order against the person. The maximum period of disqualification under Section 9 of the Company Officers (Disqualification) Act 2009 is 15 years.

## **Disqualification of directors of insolvent companies.**

In terms of Section 5 of the Company Officers (Disqualification) Act 2009, in cases where the High Court of Justice of the Isle of Man is satisfied that a person is or has been an officer of a company which has at any time become insolvent (whether while the person was an officer or subsequently), and that person's conduct as an officer of that company (either taken alone or together with their conduct as an officer of any other company or companies) makes them unfit it **must** make a disqualification order against them. The maximum period of disqualification under this section is 15 years and the minimum is 2 years.

## **Contravention of a Disqualification Order or Undertaking**

Section 11 of the [Company Officers \(Disqualification\) Act 2009](#) sets out the consequences for a person who contravenes a disqualification order or a disqualification undertaking. If a person is convicted of such a breach then they are liable:

- (a) on conviction on information, to custody for not more than 2 years or a fine, or both; and
- (b) on summary conviction, to custody for not more than 6 months or a fine not exceeding £5,000, or both.

Section 12 of the [Company Officers \(Disqualification\) Act 2009](#) imposes personal liability for certain debts of a company upon a person who contravenes a disqualification order by acting as an officer of that company and upon any person who, as an officer of a company, acts or is willing to act on the instructions of the disqualified person, without the leave of the court.

### **Information Leaflet – Effect of a disqualification**

The Commission has prepared a leaflet for the information of those who have had a disqualification order made against them by a court or who have accepted a disqualification undertaking. A copy of the leaflet is available here [Effect of a disqualification](#).

To find details of currently disqualified company officers please click [here](#).