

Briefing Note

Guidance for Company Directors CDDA investigations and proceedings



It is commonly thought that only directors of failed companies face disqualification. In reality, many face investigation and disqualification proceedings when the company remains solvent and when they are blameless of any wrong-doing.

Grounds of Disqualification Proceedings

Under the Company Directors Disqualification Act 1986 (CDDA), the grounds on which disqualification proceedings can be instituted are numerous and varied. They include where:

- (a) a director has been convicted of an offence (either summarily or on indictment) in connection with a company (ss.2 and 5 CDDA)
- (b) a director has been persistently in default in relation to the filing of returns, accounts or other documents with the registrar of companies (s.3 CDDA)
- (c) a director has been guilty of fraudulent trading or of a fraud or breach of any duty, in relation to a company which has been wound up (s.4 CDDA)
- (d) a person is or has been a director of a company which has become insolvent and where his conduct as a director of that company makes him unfit to be concerned in the management of a company (s.6 CDDA)
- (e) it appears to the Secretary of State from 'investigative material' that it is expedient in the public interest that a disqualification order should be made against a person who is or has been a director or shadow director of a company and where his conduct in relation to the company makes him unfit to be involved in the management of a company (s.8 CDDA)

The aim of disqualification proceedings is laudable - to protect consumers, creditors and employees from directors who have abused the protection given to them by way of limited liability. However, for a director who is subjected to an investigation or to proceedings that do not result in disqualification, the impact can be disastrous.

The most common grounds of disqualification are those at (d) and (e) above, covered by sections 6 and 8 of CDDA respectively.

Section 6 CDDA – Unfit Conduct and Insolvent Company

As might appear obvious, proceedings under s.6 requires that the company is insolvent. However, a director can face proceedings under s.6 where the company becomes insolvent after he has left office. In either case it will be necessary for the Secretary of State to show that the director's conduct as a director of the insolvent company (taken alone or together with his conduct as a director of any other company) makes him unfit to be concerned in the management of a company.

In determining unfitness the court can take into account a wide-range of matters (Schedule 1, Parts I and II of CDDA). These include not only to the director's own conduct but also the director's responsibility for failings of the company, which may result from the conduct of his co-directors.

The court's permission is required before proceedings under s.6 can be brought, if more than 2 years has elapsed beginning with the day on which the company became insolvent.

If the court makes a finding of unfitness on the part of the director in s. 6 proceedings, it must make a disqualification order – the period of disqualification will be for a minimum of 2 years and a maximum of 15 years.

Section 8 CDDA – Expedient in the Public Interest and Unfit Conduct

As with an s.6 proceedings, it is a prerequisite of an application to disqualify under s.8 that there has been unfit conduct on the part of the director, but in this case the test is whether the director has been guilty of unfit conduct – not 'as a director', but 'in relation to the company'. As with s.6 however, the unfitness must make the director unfit to be concerned in the management of a company.

Discretion whether or not to commence proceedings under this section rests with the Secretary of State for Business, Innovation and Skills.

Under s.8 there is no minimum period of disqualification, and the maximum is 15 years,

Effect of a Disqualification Order

If the Secretary of State succeeds in his application, the director concerned will be prohibited, for whatever period is considered appropriate by the court, from acting as a director of a company; acting as a receiver of a company's property; or being concerned or taking part in the promotion, formation or management of a company, in any way, whether directly or indirectly, unless permission to do so is granted by the court. The detrimental effect of such an order on an individual's livelihood can be brutal and enduring.

The only sure-fire way for a director to avoid being the subject of an investigation or directors disqualification proceedings is to comply fully with the common law and statutory duties set out in the Companies Act 2006.

We can help

If you are a director and you are subject to an investigation by the Companies Investigation Branch of the Insolvency Service or given notice by the Secretary of State (under s.16 of the CDDA) of his intention to bring disqualification proceedings against you, our solicitors can provide legal advice to you and guide and represent you through the process. We will work side-by-side with you to try to avoid proceedings being commenced or, if proceedings are unavoidable, to avoid a disqualification order or to seek to negotiate the minimum period of disqualification.



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This note does not constitute legal advice but is intended as general guidance only.

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