

## Issue of Disqualification Orders is at Court's Discretion

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Section 26 of the Isle of Man Companies Act 1992, which came into force on December 1 1992, enables the court, where a person's conduct is said to be unfit, to disqualify that person from being:

- ~ a director or secretary of a company;
- ~ a liquidator of a company;
- ~ a receiver or manager of a company's property; or
- ~ in any way, whether directly or indirectly, concerned in the promotion, formation or management of a company.

These are known as disqualification orders.

The statutory power for disqualification orders has existed for some years, but only within the last couple of years have applications seeking disqualification orders come before the courts in the Isle of Man. The applicant for such orders is the Financial Supervision Commission.

While comparisons can be drawn between Section 26 and disqualification under English law (flowing initially from the English Company Directors Disqualification Act 1986 and subsequent consolidations of this legislation with English company law), a number of important distinctions exist between the English and Manx statutes. In particular, the issuing of disqualification orders is entirely within the discretion of the Manx court, even in situations where the conduct complained of is considered by the court to be such as to make that person unfit.

Section 26(3) of the 1992 act sets out certain matters to which a court may have regard in considering whether a person is unfit. The emphasis once more is discretionary, underlining the court's ability to have regard to whether a person has:

- ~ been convicted of an offence which involves dishonesty;
- ~ been convicted in the last 25 years of three more offences under the Isle of Man Companies Legislation or legislation having equivalent effect in a country or territory outside the Isle of Man;

been convicted of any offence under the Prevention of Fraud (Investment) Act 1968 or under a number of other banking and investment/insurance related statutes in the island, or under equivalent statutes having effect in a country or territory outside the Isle of Man; or failed to comply with a court order to rectify a default in relation to the Isle of Man Companies Act.

The court's discretion when considering all relevant conduct was made clear by Deemster Kerruish in the judgment in *In Re Brooks*, delivered on November 11 1999. In interpreting the relevant provisions of the 1992 act the deemster expressed the view that Section 26 is clear: "It entitles the court without limit to consider the complete history of a person's conduct when determining whether or not to grant a disqualification order".

In more recent cases, including an appeal decision earlier this year, this approach has been approved, as has the application of the civil standard of proof to such proceedings (although it has been said that the evidence must be cogent bearing in mind the serious consequences of such proceedings). The impact of disqualification orders has, quite properly, been described as draconian and the penalties as quasi-criminal: the effect upon the reputation and livelihood of a disqualified director will often be severe, not only throughout the period of disqualification but beyond.

It will be interesting to await the impact of human rights legislation on proceedings of this type, both in the Isle of Man and elsewhere

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