

## Jersey Royal Court provides further guidance on its approach to director disqualifications

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In the recent decision of the Royal Court in *The representation of the Viscount in the matter of SPARC Group Limited* [2022] JRC 194, the Court confirmed that the factors considered in the Company Directors Disqualification Act 1986 will be a useful reference point in applications for local disqualification orders, following the increase in the maximum disqualification period under Article 78 of the Companies (Jersey) Law 1991 from five to 15 years.

As with the position under the Company Directors Disqualification Act 1986 (the **UK Law**), the Court will consider, as required, any purported breaches of the director's duties (both statutory and fiduciary) and the extent to which the director was responsible for either the company's insolvency and/or the company's breach of any relevant statute. When considering the latter, the Court will also take note of the frequency of any breaches caused by the director's actions, together with the nature and extent of any harm or loss (potential and actual) that was caused. In *Sevenoaks Stationers (Retail) Limited* [1991] Ch 164 (**Sevenoaks**), which the Royal Court took as guidance for its approach, the English Court of Appeal suggested that the 15 year maximum period should be divided into three separate five year brackets depending on the nature of the director's offences. The Court must then consider all the evidence it has been provided in determining the length of any potential disqualification order.

The principles of *Sevenoaks* have already been partially adopted by the Royal Court, as *Dimsey* [2000] JLR 401 confirmed that a disqualification order is made when the individual's conduct makes them unfit to be involved with company management, and is therefore a way of protecting the public and not punishing the individual.

Furthermore, the *SPARC* case confirms that, in relation to the potential disqualification of individuals associated with insolvent companies, the Court will need evidence of constant engagement with the Viscount (and, more generally, the *désastre* procedure) in accordance with Article 18 of the Bankruptcy (Désastre) Law 1990 (the **1990 Law**). Proper engagement will minimise the risk of both a disqualification application being made in accordance with Article

24(7) of the 1990 Law and the individual being deemed guilty of an offence under Article 18(2A) of the 1990 Law for failing to cooperate with the Viscount.

Consequently, any reluctance (or total failure) to cooperate with the Viscount by not providing the required information is likely to be negatively viewed by the Court when considering the length of any disqualification order. This is on the basis that the public should be protected from individuals who, as directors, fail to comply with their statutory obligations.

In *SPARC*, the director was subject to a 10 year disqualification order due to the frequency of his attempts to mislead the Viscount, and his repeated breaches of his obligations under Article 18 of the 1990 Law.

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