

Director disqualification – Jersey Attorney General's guidance for directors

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The Jersey Attorney General has released welcome guidance (the **Guidance**) relating to applications for director disqualifications under Article 78 of the Companies (Jersey) Law 1991 (the **Companies Law**). The Guidance offers assistance in determining what factors may be considered by the court during such an application, and applies to all directors (including non-professional directors of charitable or voluntary organisations) and shadow directors. Shadow directors are people occupying the position of director even if not called directors or formally appointed as such.

Directors of well run companies who act appropriately should not have any concerns arising from the Guidance. Many will view it as "common sense" and simply outlining what the position would be. It emphasises the importance of good record keeping and decision making as well as highlighting that directors should act in the best interests of the company they are acting for at all times.

| Director disqualification orders

Under the Companies Law, if the Jersey Financial Services Commission or the Attorney General determine that it is in the public interest that a person should be disqualified from acting as a director of a body corporate they may apply in Jersey for a court order. If the court is satisfied that the person's conduct makes that person "unfit to be concerned in the management of a body corporate" then the court may make an order restricting or disqualifying that person from acting as a director or manager for a period of up to 15 years. There have been few disqualification orders sought in Jersey although with ever increasing legal, compliance and regulatory burdens being placed on companies and their directors as well as growing international demands for individual directors who act inappropriately to be punished it is likely that more orders will be sought in the future.

What does the Guidance say?

The Guidance sets out that the following factors may trigger an application for disqualification under the Companies Law (though it should be noted that this is not an exhaustive list and other factors may also be considered relevant):

- Criminal convictions related to directorial or corporate management activities, or which impact on a person's suitability to be a director of a company (eg fraud or dishonesty offences)
- Court orders relating to wrongful trading, fraudulent trading or other transactional issues (including transactions at undervalue, giving of preferences or extortionate credit transactions), particularly if the director concerned was directly involved in such a transaction
- Breaches of good corporate governance, whether by the company or by the director personally (eg poor record-keeping by the company, failure to take appropriate professional advice or a director failing to disclose their interests); and
- Company committing an offence under the Companies Law or the Bankruptcy (Désastre) (Jersey) Law 1990

The Guidance also provides that there are certain circumstances which will be treated as aggravating factors, including where:

- The director is a professionally qualified or experienced person
- There is loss to investors or creditors
- There is repeat offending; or
- There are wider public interest considerations

What is the impact for directors?

While the Guidance is beneficial and assists directors by setting out certain factors which may influence a disqualification action under the Companies Law, in practice the position for directors has not changed – the Guidance simply confirms the current approach. As a result, the impact for the majority of companies and directors will be minimal as long as directors are already aware of and adequately discharge their duties and potential issues.

However, due to the current global political landscape with the increasing legal, compliance and regulatory burdens that are being placed on companies and directors, there is a chance that there will be additional emphasis on bringing director disqualification actions where the Attorney General believes there has been "bad behaviour" by a director or group of directors –

even if this does not result in a breach of law. Directors can take simple steps to mitigate the risks of such an application being brought by ensuring that they continue to comply with the relevant laws, whilst also having regard to good corporate governance practices and seeking professional advice where there are any concerns.

For further information view the [Jersey AGs Guidance for Directors](#).

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Meet the Author



[James Fox](#)

Partner

[Jersey](#)

E: james.fox@ogier.com

T: [+44 1534 514276](tel:+441534514276)

Key Contacts



Matthew Shaxson

Group Partner, Ogier Legal L.P.

Jersey

E: matthew.shaxson@ogier.com

T: [+44 1534 514064](tel:+441534514064)

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