

Director disqualification: 12 year disqualification penalty imposed in Guernsey

Insights - 30/03/2021

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When considering the sanctions imposed on directors of Guernsey companies for misconduct or breaches of the Companies (Guernsey) Law, 2008 (the "**Companies Law**") (or indeed other applicable regimes which directors must adhere to) arguably the most serious sanction which can be imposed is a disqualification order. Such an order can, at its highest, be career ending for a director, with the maximum period of disqualification being 15 years. In this article we examine the recent decision of The Guernsey Financial Services Commission –v- Peter Edward Dawson-Ball [2020] GRC084.

In this decision the Guernsey Financial Services Commission ("**GFSC**") applied for a disqualification order pursuant to section 427 of the Companies Law, which is far reaching and in summary prohibits an individual from being a director of a company, but also extends to a prohibition on participating, directly or indirectly in the management, formation or promotion of a company, both domestically and in respect of overseas companies.

A prohibition order was initially made against the individual concerned, in this case, regarding his involvement in a business enterprise. The individual subsequently became involved with a company called Immuno Biotech Limited (the "**Company**"), although he was only the financial controller and not a director of the Company. The business activities of the Company involved the sale and distribution of unlicensed medicinal products and the director of the Company was sentenced to 15 months in custody in England.

Section 428 of the Companies Law sets out the grounds for the exercise of the Court's discretion to make a disqualification order and includes factors which the court must take into account when determining whether a person is unfit to serve as a director. In particular the Court had

regard to the following sections of the Companies Law in the exercise of its discretion: section 428(2) (a) the person's *"probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a director, secretary or officer of a company"*; section 428 (2) (f) *"his knowledge and understanding of the legal and professional obligations of directors, secretaries or officers of a company"* and also section 428 (3) (c) *"any convictions he has for any offence and in particular any offence involving fraud or dishonesty."*

The aggravating circumstances in this particular case was that the individual had already been subject to a Prohibition Order (albeit a considerable number of years earlier) which went towards the length of the disqualification order sought by the GFSC.

In the exercise of the Court's discretion regarding the term of the disqualification order the Court was cognisant of the need to protect the Bailiwick's reputation. The Court noted that *"as a small jurisdiction heavily dependent upon the provision of financial services...the reputation of the Bailiwick is fundamental to the sustainability of the island's economy for the benefit of the population as a whole"*. The Court also noted that one of the purposes of the legislation was to protect the public against future conduct, not only domestically, but also in respect of overseas companies. The Court imposed a disqualification period of 12 years.

It is important to note that a disqualification order for the maximum period of 15 years does not require the case to be the most serious the court has ever seen, it only requires the crossing of the threshold to justify the imposition of the maximum period of disqualification. It is also worth noting that the Court was asked to make an exception in relation to two BVI companies that Mr Dawson-Ball was a director of that were party to long-standing litigation proceedings. However, the Court determined that it would be an *"irresponsible exercise"* of the Court's discretion to allow an individual to be a director of an overseas company when it had determined that he was unfit to be a director of a Guernsey company.

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