



DIRECTOR MISBEHAVIOR – DISQUALIFICATION OF DIRECTORS

Whilst there are many factors involved in the disqualification of a Director, each case is different. The title of Director comes with certain responsibilities deemed by the courts and failure to carry these out can result in disqualification.

➤ This guide will take you through responsibilities the courts attribute to a Director and the penalties for failing to comply with these:

1. **Inactivity:** If a Director has been inactive for an extensive period of time and failed to contribute to the business, this can lead to their disqualification. Inactivity can also be defined as when a Director has failed to act when traditionally required such as in a merger or transaction.
2. **Incompetence:** This is often open to interpretation and will be judged by a court sensitively, but if the Director has acted incompetently then this is grounds for disqualification. The court will take into account a variety of factors with a claim of incompetence such as the type and size of business, the Directors responsibilities as well as overall governance of company responsibilities.
3. **Knowledge:** Directors have a responsibility to ensure that their level of knowledge is enough so that they can effectively fulfil their duties. They also have a duty to keep informed and advised of business affairs and act accordingly within their remit. Lack of knowledge is not considered an appropriate defence by the court.
4. **Board Meetings:** Each Director has a responsibility to attend board meetings and have an input into the company in terms of decisions and overall management, consistent failure to attend board meetings can be grounds for disqualification.
5. **Management:** If a Director should fail to issue employees with appropriate instructions, fail to supervise employees or fail to set up appropriate reporting processes this is also grounds for disqualification. Directors must be seen to be in control of their business and fulfilling their management responsibilities.
6. **Overuse of External Bodies:** A Director has a duty to keep a hand in all aspects of their business and not leave important business matters or tasks to external bodies. For example a Director must have some level of involvement with accounting and compliance, ensuring that they are fully aware of the company's financial position and also ensuring that the company is working within anti-money laundering laws etc.
7. **Statutory Duties:** Every Director has statutory duties that come with their role and failure to carry these out adequately will result in disqualification. This includes involvement or at least regular monitoring of tax returns, PAYE/VAT, adhering to Companies House requirements etc.
8. **Creditors:** A Director has an obligation to ensure that all creditors are dealt with equally and their accounts settled in a timely manner. Directors must ensure that they act responsibly with regards to their creditors, as ordering items with no intention of making payment falls under fraudulent trading, a criminal offence.
9. **Continuation of Failed Business Model:** If a Director has continued working with a business model that has failed and consistently fails, then this is ground for disqualification. Directors must be willing to adjust their business models as required and learn what works and doesn't, Directors who are also involved in continuously failing companies can face consequences, depending upon the circumstances of which each business failed.

Essentially, with misbehaviour of Directors, the courts look at two factors, lack of control and incompetence.

