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**New Disqualification
Regime Has Desired
Effect**

  
back home forward

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Introduction

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back home forward

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Advocate John T Ayccock reviews

How new legislation has affected the disqualification of directors in the Isle of Man

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New Disqualification Regime Has Desired Effect

It is more than twelve months now since the Isle of Man's new statutory disqualification regime came into force; it has had an immediate impact on the way delinquent directors are dealt with in the Island.

The Company Officers (Disqualification) Act 2009 ("CODA") became law in the Isle of Man on 18 June 2009. This replaced sections 26 and 27 of the Companies Act 1992 which had previously been the main enabling provision under which the Manx court disqualified company officers whom it deemed unfit to hold such office. CODA updated the disqualification provisions and introduced some new procedures. One of the most significant changes introduced by CODA was to grant the Financial Supervision Commission ("the Commission") the ability to accept disqualification undertakings in lieu of having to issue court proceedings. The idea was that uncontested cases could be dealt with between the individual and the Commission which would save time and costs (similar to the process in place in the UK).

It is interesting now, more than one year on, to assess how the disqualification undertaking has transformed the way these cases are handled. Immediately prior to CODA coming on stream

there had been some thirty seven disqualification orders made in court. Those orders were all made in the ten year period from 1999 to 2009 since no disqualification orders were applied for in the period 1992 to 1999.

It was always likely to be the case that after a flurry of high profile disqualification orders there would be a quieter spell given that one of the principles underpinning the court making disqualification orders is the deterrent value. Thus the courts wanted to send out messages to the corporate community that certain directorial standards had to be observed in the Isle of Man.

We can now see that since CODA was introduced, there have been five cases dealt with by way of disqualification undertaking and just the one which has been heard in court. Enforcement activity, therefore, has certainly continued but in the vast majority of cases the Commission has not needed to trouble the court. Under CODA the Commission keeps a register of disqualification orders and undertakings.

It is to be expected that the regulator will continue to take action where necessary. A glance at the Commission's annual report 2009/2010 shows that

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the Commission remains vigilant. The Commission's chief executive John Aspden stated in the annual report that the worldwide climate was such that regulation was always an ongoing issue. He stated: "At a time when smaller jurisdictions continue to attract international scrutiny and the public is demanding effective oversight, it is essential for our future that we measure up to the demanding standards expected of us".

CODA also placed more onus on insolvency practitioners to consider questions of possible unfitness of those who have been holding corporate office. This has meant liquidators have had to consider these points in liquidations and, if appropriate, report to the Commission.

On the whole, therefore, the first year report on CODA can be that it has had a positive effect on the disqualification regime in the Isle of Man and has resulted in savings of time and cost.

Advocate John T Aycok is joint managing director of M&P Legal and has been counsel in a large number of disqualification cases in the Isle of Man.

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