DISQUALIFICATION OF COMPANY DIRECTORS IN KENYA

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INTRODUCTION

Disqualification of directors protects the public by placing a prohibition on a miscreant director being involved, for a specific period, in the management of companies.[2] In addition, disqualification orders serve as a deterrent to those who might be tempted to engage in fraudulent activities.[3] Therefore, where a director breaches his obligations and, as a result, occasions loss to creditors, the public interest requires that the misconduct be punished by disqualification.[4]

Given that the State has the responsibility of providing an unbiased commercial environment, which ensures that the formation of companies takes place smoothly and that the public is protected from miscreant directors, there is a need to balance these conflicting interests for the sake of a healthy economy. Although strict regulations in relation to the disqualification of directors may ensure that unfit directors do not serve on boards, it is undoubtedly the case that over-regulation or stringent disqualification proceedings may result in fewer people being interested in serving as directors. This would in turn adversely affect the economy, as few companies would be able to attract appropriate and competent directors.

Although shareholders generally decide who sits on a board of a company, some exceptions regarding the people they can choose are imposed by Parliament. The Companies Act[5] (the "Act") contains some provisions that prescribe those who are able to act as directors.[6] As shareholders are not always able to prosecute errant directors, disqualification provisions supplement other provisions that seek to protect creditors and other stakeholders.[7]

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[2] S. Griffin, *Personal Liability and Disqualification of Company Directors*, (Hart, 1999) p 131.

[3] *R* v *Kazmi* (1984) 7 Cr App Rep 115, at 116.

[4] *Per* Vinelott J *in Re Stanford Services* [1987] BCLC 607, at 620.

[5] Cap 486, Laws of Kenya.

[6] The Act makes provisions for share qualifications of directors (s 183), minimum age of appointment (21 years, s 186), disqualification of undischarged bankrupts (s 188), restraint on fraudulent persons from managing companies (s 189), and disqualification of persons of unsound mind and absence from meetings of directors for six months (Table A, art 88).

[7] In view of the difficulties encountered by minority shareholders in pursuit of errant directors, directors are unlikely to be accountable for their defaults unless the board changes hands or the company goes into liquidation. See Hicks, "Disqualification of Directors-Forty Years On" [1988] JBL 27, at 28.