



Disqualification

Can I still be a director when my company goes into liquidation?

There is no automatic restriction on being a director of a company after or at the same time as you are director of a company in liquidation.

When a company goes into liquidation, the liquidator* has to undertake enquiries into the affairs of the company and the conduct of the directors. The purposes of this are twofold:

1. the Company Director Disqualification Act 1986 puts an obligation on liquidators to submit a report to the Insolvency Service, as a division of the Department for Business, Enterprise and Industrial Strategy (BEIS) which will be considered as part of a review process to determine whether disqualification proceedings are appropriate.
2. The liquidator will be interested in understanding the reasons for the insolvency and whether there is any evidence of wrongful trading, fraudulent trading, any preferences, etc, as such matters can result in claims that a liquidator can take for the benefit of creditors.

Disqualification means that a person is prohibited from being

“... a director of a company... or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court...”

For a period of between 2 and 15 years.

This is quite a wide definition and means that a disqualified person needs to be very careful about being in any senior or management position, even if the phrase ‘director’ does not feature in their job title.

Disqualification does not happen immediately upon liquidation and is not something the liquidator can control, influence, prevent or assist with, nor can we give any assurances as to what the Insolvency Service’s view might be, though we may flag certain risk areas if we identify any whilst we are preparing documentation.

If it does come up, we recommend that you seek independent advice immediately.