

General questions regarding disqualification

1. What is a disqualification?

Under the Companies Act, if an individual is a disqualified director, he is prohibited from acting as a director and also from being involved directly or indirectly in the management of a company.

2. What are the different types of disqualifications?

An individual can be disqualified to act as a director or to directly/indirectly manage a company if he:

- a. is an undischarged bankrupt (section 148 of the Companies Act);
- b. has been convicted for an offence involving fraud or dishonesty that carries an imprisonment term of 3 months or more (section 154 of the Companies Act);
- c. has been convicted by the court of 3 or more ACRA filing offences (section 155 of the Companies Act);
- d. has three or more companies that were struck off by ACRA within a 5-year period (section 155A of the Companies Act).

3. When would ACRA strike off a company that would lead to the disqualification of a director?

If the Registrar is of the view that a company is not carrying on business or is not in operation, the Registrar may strike off the company (section 344 Companies Act).

When a director has had 3 or more of this companies struck off by ACRA within 5 years, section 155A of the Companies Act automatically disqualifies an individual with no previous disqualification under this section for a period of 3 years after the date on which the third company is struck off. Where the individual has previously been disqualified under this section, he will be disqualified for a period of 5 years after the date on which the third company is struck off.

Disqualification Period

4. What is the period of disqualification?

Type of Disqualification	Disqualification Period
Bankruptcy (section 148 of the Companies Act)	Disqualified unless discharged from bankruptcy
Director convicted by the court of 3 or more ACRA filing offences (section 155 of the Companies Act)	Disqualification period of 5 years from the date of the last conviction
Director has had three or more companies that were struck off by ACRA within a 5-year period (section 155A of the Companies Act)	<u>First-time disqualified directors:</u> Disqualification period of 3 years after the date on which the third company is struck off. <u>Repeat disqualified directors:</u> Disqualification period of 5 years after the date on which the third company is struck off.
Individual convicted for an offence involving fraud or dishonesty that carries an imprisonment term of 3 months or more, he will be disqualified for a period of 5 years (section 154 of the Companies Act)	The computation of the 5-year disqualification period takes effect from the date the individual was convicted unless the individual was also sentenced to imprisonment in which case the computation will take effect from the date the individual is released from prison

5. What happens to a director with more than one type of disqualification?

If an individual is subjected to multiple disqualifications, the disqualification periods will run concurrently. The disqualification will be lifted when all the relevant disqualification periods have ended.

Publication of Disqualified Status

6. Where is the status of a disqualified director publicly shown?

The individual's disqualified status is recorded on ACRA's register and will be shown in the Business Profile of the company and the People's Profile of the disqualified individual. These are publicly available to the public for a small fee.

Notification on disqualification

7. Will ACRA notify the disqualified individual's company of his disqualification?

There is no legal requirement for ACRA to notify companies of the disqualification of their directors. Individuals ought to know whether they have been disqualified by operation of law e.g. when they are adjudged bankrupt, been convicted of offence involving fraud or dishonesty etc and notify their companies accordingly.

Follow up action when an individual has been disqualified from acting as a director

8. What should an individual do if he is disqualified?

The disqualified individual should inform the company of his disqualification so that the company can remove him as the director of the company, and to find a replacement for him if it wishes to.

9. What should a company do after being notified by the director of his disqualification?

The company can consider appointing another director to replace the disqualified individual and to also notify ACRA of the date the disqualified individual has ceased to be a director by lodging a Change in Particulars.

10. What happens if the disqualified individual's company does not remove him as the director of the company, after being notified of the disqualification?

The disqualified individual will remain on the ACRA register as the company director.

The individual's disqualified status will be displayed in the Business Profile of the company and the People's Profile of the disqualified individual.

The disqualified individual will only be removed from the Business Profile when the company notifies ACRA by lodging a Change in Particulars of the date the disqualified individual has ceased to be a director of the company.

The disqualified status in the People's Profile will remain until the end of the disqualification.

11. Can a disqualified individual continue to be a director of his existing companies?

Once disqualified, an individual will not be allowed to be a company director or take part in the management of any local or foreign company for five years, effective from the date of the disqualification. The disqualified individual cannot take on any new appointment as a director, or be in any way directly or indirectly concerned or take part in the management of a company. The disqualified individual can only act as a director of his existing companies if he has obtained the permission from the High Court. If he is disqualified as a result of bankruptcy, he can, seek the permission of the Official Assignee (or the private trustee in bankruptcy). Once the disqualified individual has obtained permission, he

must notify ACRA through a lodgement with the necessary proof of approval.

12. What happens if a disqualified individual continues to be a director of a company despite his disqualification, without obtaining permission from the High Court?

The disqualified individual may be prosecuted in Court. Upon conviction, he will be liable to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

13. If a disqualified individual is the sole local director, what will happen to the company in view of the disqualification?

The shareholder(s) must replace him with another local director. If the company has no intention to carry on business, it can apply to ACRA to strike off the company from ACRA's register.

14. If a company has only one director who has been disqualified by ACRA, and is unable to appoint a replacement director, what is the next course of action?

If the company wishes to carry on business, it must appoint a local resident director. The company should apply to strike off the company from ACRA's register if the company is no longer in operation or does not wish to carry on business.

15. Can a disqualified individual appeal to the Registrar or the Minister against his 5-year disqualification for having been convicted of 3 or more ACRA filing offences or having had 3 or more of his companies struck off by the Registrar?

The disqualification is by operation of law. A disqualified individual can only apply to the High Court for permission to continue to act as a director or to directly/indirectly manage a company. Once the disqualified individual has obtained permission, he must notify ACRA through a lodgement with the necessary proof of approval.

An individual who is disqualified under section 155A may apply to the Registrar or the Court for permission to act as director or take part in or manage a company. Only for permission granted by the Courts, the disqualified individual must notify ACRA through a lodgement with the necessary proof of approval.

End of disqualification

16. Will ACRA notify the disqualified director of the end of the disqualification period?

The start and end date of the individual's disqualification will be displayed in ACRA's register, except for disqualification as a result of bankruptcy. The disqualification of a bankrupt will be lifted when he is discharged from bankruptcy by the Official Assignee. Disqualified individuals have to monitor their own disqualification period.

17. How does a disqualified director find out if his disqualification has been lifted?

ACRA will send a notification letter to the disqualified individual informing him of the disqualification, as well as the start date and end date of the disqualification period. For individuals who are disqualified as a result of bankruptcy, they will be informed by the Official Assignee when they are being discharged from bankruptcy.

18. Can the company reinstate the disqualified director after the disqualification period is over?

Yes. The company would need to re-appoint the director as if it is appointing a new director.

19. If an individual has been disqualified by ACRA as he has been convicted of 3 or more ACRA filing offences or has had 3 or more companies struck off by ACRA, why is ACRA only informing the individual after the disqualification has taken place?

There is no legal requirement for ACRA to notify disqualified individuals or their companies of the disqualification. Individuals ought to know whether they have been disqualified by operation of law.