



# Company Directors Disqualification Act 1986

## 1986 CHAPTER 46

### *Disqualification for unfitness*

#### **6 Duty of court to disqualify unfit directors of insolvent companies**

- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied—
  - (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
  - (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) For the purposes of this section and the next, a company becomes insolvent if—
  - (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,
  - (b) an administration order is made in relation to the company, or
  - (c) an administrative receiver of the company is appointed ;and references to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.
- (3) In this section and the next " the court " means—
  - (a) in the case of a person who is or has been a director of a company which is being wound up by the court, the court by which the company is being wound up,
  - (b) in the case of a person who is or has been a director of a company which is being wound up voluntarily, any court having jurisdiction to wind up the company,

- (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, the court by which that order was made, and
  - (d) in any other case, the High Court or, in Scotland, the Court of Session;
- and in both sections "director" includes a shadow director.
- (4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

## 7 Applications to court under s. 6; reporting provisions

- (1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made—
- (a) by the Secretary of State, or
  - (b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, by the official receiver.
- (2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of 2 years beginning with the day on which the company of which that person is or has been a director became insolvent.
- (3) If it appears to the office-holder responsible under this section, that is to say—
- (a) in the case of a company which is being wound up by the court in England and Wales, the official receiver,
  - (b) in the case of a company which is being wound up otherwise, the liquidator,
  - (c) in the case of a company in relation to which an administration order is in force, the administrator, or
  - (d) in the case of a company of which there is an administrative receiver, that receiver,
- that the conditions mentioned in section 6(1) are satisfied as respects a person who is or has been a director of that company, the office-holder shall forthwith report the matter to the Secretary of State.
- (4) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company—
- (a) to furnish him with such information with respect to any person's conduct as a director of the company, and
  - (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,
- as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

## 8 Disqualification after investigation of company

- (1) If it appears to the Secretary of State from a report made by inspectors under section 437 of the Companies Act, or from information or documents obtained under

section 447 or 448 of that Act, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director or shadow director of any company, he may apply to the court for such an order to be made against that person.

- (2) The court may make a disqualification order against a person where, on an application under this section, it is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.
- (3) In this section " the court" means the High Court or, in Scotland, the Court of Session.
- (4) The maximum period of disqualification under this section is 15 years.

## **9 Matters for determining unfitness of directors**

- (1) Where it falls to a court to determine whether a person's conduct as a director or shadow director of any particular company or companies makes him unfit to be concerned in the management of a company, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—
  - (a) to the matters mentioned in Part I of Schedule 1 to this Act, and
  - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule ;and references in that Schedule to the director and the company are to be read accordingly.
- (2) Section 6(2) applies for the purposes of this section and Schedule 1 as it applies for the purposes of sections 6 and 7.
- (3) Subject to the next subsection, any reference in Schedule 1 to an enactment contained in the Companies Act or the Insolvency Act includes, in relation to any time before the coming into force of that enactment, the corresponding enactment in force at that time.
- (4) The Secretary of State may by order modify any of the provisions of Schedule 1; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (5) The power to make orders under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.