



Companies Act 2006

2006 CHAPTER 46

PART 40

COMPANY DIRECTORS: FOREIGN DISQUALIFICATION ETC

Introductory

1182 Persons subject to foreign restrictions

- (1) This section defines what is meant by references in this Part to a person being subject to foreign restrictions.
- (2) A person is subject to foreign restrictions if under the law of a country or territory outside the United Kingdom—
 - (a) he is, by reason of misconduct or unfitness, disqualified to any extent from acting in connection with the affairs of a company,
 - (b) he is, by reason of misconduct or unfitness, required—
 - (i) to obtain permission from a court or other authority, or
 - (ii) to meet any other condition,before acting in connection with the affairs of a company, or
 - (c) he has, by reason of misconduct or unfitness, given undertakings to a court or other authority of a country or territory outside the United Kingdom—
 - (i) not to act in connection with the affairs of a company, or
 - (ii) restricting the extent to which, or the way in which, he may do so.
- (3) The references in subsection (2) to acting in connection with the affairs of a company are to doing any of the following—
 - (a) being a director of a company,
 - (b) acting as receiver of a company's property, or
 - (c) being concerned or taking part in the promotion, formation or management of a company.
- (4) In this section—

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- (a) “company” means a company incorporated or formed under the law of the country or territory in question, and
- (b) in relation to such a company—
 - “director” means the holder of an office corresponding to that of director of a UK company; and
 - “receiver” includes any corresponding officer under the law of that country or territory.

1183 Meaning of “the court” and “UK company”

In this Part—

“the court” means—

- (a) in England and Wales, the High Court or a county court;
- (b) in Scotland, the Court of Session or the sheriff court;
- (c) in Northern Ireland, the High Court;

“UK company” means a company registered under this Act.

Power to disqualify

1184 Disqualification of persons subject to foreign restrictions

- (1) The Secretary of State may make provision by regulations disqualifying a person subject to foreign restrictions from—
 - (a) being a director of a UK company,
 - (b) acting as receiver of a UK company’s property, or
 - (c) in any way, whether directly or indirectly, being concerned or taking part in the promotion, formation or management of a UK company.
- (2) The regulations may provide that a person subject to foreign restrictions—
 - (a) is disqualified automatically by virtue of the regulations, or
 - (b) may be disqualified by order of the court on the application of the Secretary of State.
- (3) The regulations may provide that the Secretary of State may accept an undertaking (a “disqualification undertaking”) from a person subject to foreign restrictions that he will not do anything which would be in breach of a disqualification under subsection (1).
- (4) In this Part—
 - (a) a “person disqualified under this Part” is a person—
 - (i) disqualified as mentioned in subsection (2)(a) or (b), or
 - (ii) who has given and is subject to a disqualification undertaking;
 - (b) references to a breach of a disqualification include a breach of a disqualification undertaking.
- (5) The regulations may provide for applications to the court by persons disqualified under this Part for permission to act in a way which would otherwise be in breach of the disqualification.
- (6) The regulations must provide that a person ceases to be disqualified under this Part on his ceasing to be subject to foreign restrictions.

(7) Regulations under this section are subject to affirmative resolution procedure.

1185 Disqualification regulations: supplementary

- (1) Regulations under section 1184 may make different provision for different cases and may in particular distinguish between cases by reference to—
 - (a) the conduct on the basis of which the person became subject to foreign restrictions;
 - (b) the nature of the foreign restrictions;
 - (c) the country or territory under whose law the foreign restrictions were imposed.
- (2) Regulations under section 1184(2)(b) or (5) (provision for applications to the court)—
 - (a) must specify the grounds on which an application may be made;
 - (b) may specify factors to which the court shall have regard in determining an application.
- (3) The regulations may, in particular, require the court to have regard to the following factors—
 - (a) whether the conduct on the basis of which the person became subject to foreign restrictions would, if done in relation to a UK company, have led a court to make a disqualification order on an application under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));
 - (b) in a case in which the conduct on the basis of which the person became subject to foreign restrictions would not be unlawful if done in relation to a UK company, the fact that the person acted unlawfully under foreign law;
 - (c) whether the person's activities in relation to UK companies began after he became subject to foreign restrictions;
 - (d) whether the person's activities (or proposed activities) in relation to UK companies are undertaken (or are proposed to be undertaken) outside the United Kingdom.
- (4) Regulations under section 1184(3) (provision as to undertakings given to the Secretary of State) may include provision allowing the Secretary of State, in determining whether to accept an undertaking, to take into account matters other than criminal convictions notwithstanding that the person may be criminally liable in respect of those matters.
- (5) Regulations under section 1184(5) (provision for application to court for permission to act) may include provision—
 - (a) entitling the Secretary of State to be represented at the hearing of the application, and
 - (b) as to the giving of evidence or the calling of witnesses by the Secretary of State at the hearing of the application.

1186 Offence of breach of disqualification

- (1) Regulations under section 1184 may provide that a person disqualified under this Part who acts in breach of the disqualification commits an offence.
- (2) The regulations may provide that a person guilty of such an offence is liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in subsection (2)(b)(i) substitute “six months”.

Power to make persons liable for company’s debts

1187 Personal liability for debts of company

- (1) The Secretary of State may provide by regulations that a person who, at a time when he is subject to foreign restrictions—
- (a) is a director of a UK company, or
 - (b) is involved in the management of a UK company,
- is personally responsible for all debts and other liabilities of the company incurred during that time.
- (2) A person who is personally responsible by virtue of this section for debts and other liabilities of a company is jointly and severally liable in respect of those debts and liabilities with—
- (a) the company, and
 - (b) any other person who (whether by virtue of this section or otherwise) is so liable.
- (3) For the purposes of this section a person is involved in the management of a company if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
- (a) the conduct on the basis of which the person became subject to foreign restrictions;
 - (b) the nature of the foreign restrictions;
 - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

Power to require statements to be sent to the registrar of companies

1188 Statements from persons subject to foreign restrictions

- (1) The Secretary of State may make provision by regulations requiring a person who—
- (a) is subject to foreign restrictions, and

- (b) is not disqualified under this Part,
to send a statement to the registrar if he does anything that, if done by a person disqualified under this Part, would be in breach of the disqualification.
- (2) The statement must include such information as may be specified in the regulations relating to—
 - (a) the person’s activities in relation to UK companies, and
 - (b) the foreign restrictions to which the person is subject.
- (3) The statement must be sent to the registrar within such period as may be specified in the regulations.
- (4) The regulations may make different provision for different cases and may in particular distinguish between cases by reference to—
 - (a) the conduct on the basis of which the person became subject to foreign restrictions;
 - (b) the nature of the foreign restrictions;
 - (c) the country or territory under whose law the foreign restrictions were imposed.
- (5) Regulations under this section are subject to affirmative resolution procedure.

1189 Statements from persons disqualified

- (1) The Secretary of State may make provision by regulations requiring a statement or notice sent to the registrar of companies under any of the provisions listed below that relates (wholly or partly) to a person who—
 - (a) is a person disqualified under this Part, or
 - (b) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),to be accompanied by an additional statement.
- (2) The provisions referred to above are—
 - (a) section 12 (statement of a company’s proposed officers),
 - (b) section 167(2) (notice of person having become director), and
 - (c) section 276 (notice of a person having become secretary or one of joint secretaries).
- (3) The additional statement is a statement that the person has obtained permission from a court, on an application under section 1184(5) or (as the case may be) for the purposes of section 1(1)(a) of the Company Directors Disqualification Act 1986 (c. 46) or Article 3(1) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)), to act in the capacity in question.
- (4) Regulations under this section are subject to affirmative resolution procedure.

1190 Statements: whether to be made public

- (1) Regulations under section 1188 or 1189 (statements required to be sent to registrar) may provide that a statement sent to the registrar of companies under the regulations

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is to be treated as a record relating to a company for the purposes of section 1080 (the companies register).

- (2) The regulations may make provision as to the circumstances in which such a statement is to be, or may be—
 - (a) withheld from public inspection, or
 - (b) removed from the register.
- (3) The regulations may, in particular, provide that a statement is not to be withheld from public inspection or removed from the register unless the person to whom it relates provides such information, and satisfies such other conditions, as may be specified.
- (4) The regulations may provide that section 1081 (note of removal of material from the register) does not apply, or applies with such modifications as may be specified, in the case of material removed from the register under the regulations.
- (5) In this section “specified” means specified in the regulations.

1191 Offences

- (1) Regulations under section 1188 or 1189 may provide that it is an offence for a person—
 - (a) to fail to comply with a requirement under the regulations to send a statement to the registrar;
 - (b) knowingly or recklessly to send a statement under the regulations to the registrar that is misleading, false or deceptive in a material particular.
- (2) The regulations may provide that a person guilty of such an offence is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);
 - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum (or both).
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), for “twelve months” in subsection (2)(b)(i) substitute “six months”.