
 STATUTORY INSTRUMENTS

1987 No. 2023

INSOLVENCY

COMPANIES

 The Insolvent Companies (Disqualification of Unfit
Directors) Proceedings Rules 1987

<i>Made</i>	- - - -	<i>25th November 1987</i>
<i>Laid before Parliament</i>		<i>10th December 1987</i>
<i>Coming into force</i>	-	<i>11th January 1988</i>

The Lord Chancellor, in the exercise of his powers under section 411 of the Insolvency Act 1986(a) and section 21 of the Company Directors Disqualification Act 1986(b), with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 413 of the Insolvency Act 1986, hereby makes the following Rules:-

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 and shall come into force on 11th January 1988.

(2) In these Rules-

- (a) "the Companies Act" means the Companies Act 1985(c),
- (b) "The Company Directors Disqualification Act" means the Company Directors Disqualification Act 1986,
- (c) "registrar" has the same meaning as in paragraphs (4) and (5) of Rule 13.2 of the Insolvency Rules 1986(d), and
- (d) "file in court" means deliver to the court for filing.

(3) These Rules apply with respect to an application for a disqualification order against any person ("the respondent"), where made-

- (a) by the Secretary of State or the official receiver under section 7(1) of the Company Directors Disqualification Act (on the grounds of the person's unfitness to be concerned in the management of a company), or
- (b) by the Secretary of State under section 8 of that Act (alleged expedient in the public interest, following report of inspectors under section 437 of the Companies Act, or information or documents obtained under section 447 or 448 of that Act),

on or after the date on which these Rules come into force.

(a) 1986 c.45.
 (b) 1986 c.46.
 (c) 1985 c.6.
 (d) S.I. 1986/1925.

Form of application

2. An application to which these Rules apply shall be made—

(a) in the High Court, by originating summons (Form 10 in Appendix A to the Rules of the Supreme Court(a), with such adaptation as may be appropriate), and

(b) in a county court, by originating application, such an application being nevertheless referred to in these Rules as a summons;

and the Rules of the Supreme Court 1965 or (as the case may be) the County Court Rules 1981(b) apply accordingly, except where these Rules make provision to inconsistent effect.

The case against the respondent

3.—(1) There shall, at the time when the summons is issued, be filed in court evidence in support of the application for a disqualification order; and copies of the evidence shall be served with the summons on the respondent.

(2) The evidence shall be by one or more affidavits, except where the applicant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.

(3) There shall in the affidavit or affidavits or (as the case may be) the official receiver's report be included a statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company.

Endorsement on summons

4. There shall on the summons be endorsed information to the respondent as follows—

(a) that the application is made in accordance with these Rules;

(b) that, in accordance with the relevant enactments, the court has power to impose disqualifications as follows—

(i) where the application is under section 7 of the Company Directors Disqualification Act, for a period of not less than 2, and up to 15, years; and

(ii) where the application is under section 8 of that Act, for a period of up to 15 years;

(c) that the application for a disqualification order may, in accordance with these Rules, be heard and determined summarily, without further or other notice to the respondent, and that, if it is so heard and determined, the court may impose disqualification for a period of up to 5 years;

(d) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the respondent's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified; and

(e) that any evidence which the respondent wishes to be taken into consideration by the court must be filed in court in accordance with the time limits imposed under Rule 6 (the provisions of which shall be set out on the summons).

Service and acknowledgement

5.—(1) The summons shall be served on the respondent by sending it by first class post to his last known address; and the date of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the summons was posted.

(2) Where any process or order of the court or other document is required under proceedings subject to these Rules to be served on any person who is not in England and

(a) S.I. 1965/1776; the relevant amending instruments are S.I. 1979/1716, 1980/2000, 1982/1111, 1986/632, 1187 and 1987/1423.

(b) S.I. 1981/1687; the relevant amending instruments are S.I. 1982/1140, 1983/1716, 1984/878, 1985/566, 1269, 1986/636, 1189 and 1987/493.

Wales, the court may order service on him of that process or order or other document to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) The summons served on the respondent shall be accompanied by a form of acknowledgement of service, to be returned by him to the court within 14 days from the date of service, and for this purpose the practice and procedure of the High Court relating to acknowledgements of service shall apply to an application for an order under these Rules both in the High Court and, with such modifications as are required, in the County Court, save that any reference to Form 15 in Appendix A to the Rules of the Supreme Court 1965 shall relate to the form as modified by these Rules.

(4) The form of acknowledgement of service shall state that the respondent should indicate—

- (a) whether he contests the application on the grounds that, in the case of any particular company—
 - (i) he was not a director or shadow director of the company at a time when conduct of his, or of other persons, in relation to that company is in question, or
 - (ii) his conduct as director or shadow director of that company was not as alleged in support of the application for a disqualification order,
- (b) whether, in the case of any conduct of his, he disputes the allegation that such conduct makes him unfit to be concerned in the management of a company, and
- (c) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

Evidence

6.—(1) The respondent shall, within 28 days from the date of service of the summons, file in court any affidavit evidence in opposition to the application he wishes the court to take into consideration and shall forthwith serve upon the applicant a copy of such evidence.

(2) The applicant shall, within 14 days from receiving the copy of the respondent's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall forthwith serve a copy of that evidence upon the respondent.

The hearing of the application

7.—(1) The date fixed for the hearing of the application shall be not less than 8 weeks from the date of issue of the summons.

- (2) The hearing shall in the first instance be before the registrar in open court.
- (3) The registrar shall either determine the case on the date fixed or adjourn it.
- (4) The registrar shall adjourn the case for further consideration if—
 - (a) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate, or
 - (b) he is of opinion that questions of law or fact arise which are not suitable for summary determination.
- (5) If the registrar adjourns the case for further consideration he shall—
 - (a) direct whether the case is to be heard by a registrar or, if he thinks it appropriate, by the judge, for determination by him;
 - (b) state the reasons for the adjournment; and
 - (c) give directions as to the following matters—
 - (i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the respondent,
 - (ii) the filing in court and the service of further evidence (if any) by the parties,
 - (iii) such other matters as the registrar thinks necessary or expedient with a view to an expeditious disposal of the application, and
 - (iv) the time and place of the adjourned hearing.

(6) Where a case is adjourned other than to the judge, it may be heard by the registrar who originally dealt with the case or by another registrar.

Making and setting aside of disqualification order

8.—(1) The court may make a disqualification order against the respondent, whether or not the latter appears, and whether or not he has completed and returned the acknowledgement of service of the summons, or filed evidence in accordance with Rule 6.

(2) Any disqualification order made in the absence of the respondent may be set aside or varied by the court on such terms as it thinks just.

Commencement of disqualification order

9. Unless the court otherwise orders, a disqualification order takes effect at the beginning of the 21st day after the day on which the order is made.

Right of audience

10. Official receivers and deputy official receivers have right of audience in any proceedings to which these Rules apply, whether the application is made by the Secretary of State or by the official receiver at his direction, and whether made in the High Court or a county court.

Revocation and saving

11.—(1) The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1986(a) (“the former Rules”) are hereby revoked.

(2) Notwithstanding paragraph (1) the former Rules shall continue to apply and have effect in relation to any application described in paragraph 3(a) or (b) of Rule 1 of these Rules made before the date on which these Rules come into force.

Dated 24th November 1987

Mackay of Clashfern, C.

I concur

Dated 25th November 1987

Francis Maude
Parliamentary Under-Secretary of State,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out a special code of procedure for applications by the Secretary of State or the official receiver for the disqualification of directors by the court under sections 7 and 8 of the Company Directors Disqualification Act 1986 in England and Wales.

They provide for the revocation of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1986 and the re-enactment of those Rules with amendments. These Rules provide that the application is to be by way of the originating summons procedure where it is made in the High Court and by way of originating application where made in the County Court. In both cases these procedures are made subject to the particular provisions set out in these Rules for the purpose of section 7 and 8 applications, which will be common to the procedure in both types of court.

The amendments made to the content of the Rules revoked and re-enacted by these Rules provide for:-

- (a) further matters to be endorsed upon the summons;
- (b) the report of the official receiver to be prima facie evidence of the matters contained in it;
- (c) the time limits on the filing of evidence in court to be mandatory;
- (d) further provision in regard to the disposal of applications by the registrar;
- (e) the clarification of the power of the court to make orders where the respondent does not appear, and
- (f) right of audience of official receivers and deputy official receivers in the High Court and the County Court.