

PRACTICE DIRECTION: DIRECTORS DISQUALIFICATION PROCEEDINGS

PART ONE

1. APPLICATION AND INTERPRETATION

1.1 In this practice direction:

- (1) 'the Act' means the Company Directors Disqualification Act 1986 (as amended);
- (2) 'the Disqualification Rules' means the rules for the time being in force made under section 411 of the Insolvency Act 1986 in relation to disqualification proceedings¹;
- (3) 'the Insolvency Rules' means the rules for the time being in force made under sections 411 and 412 of the Insolvency Act 1986 in relation to insolvency proceedings;
- (4) 'CPR' means the Civil Procedure Rules 1998 and 'CPR' followed by 'Part' or 'Rule' and a number means the part or Rule with that number in those Rules;
- (5) 'disqualification proceedings' has the meaning set out in paragraph 1.3 below;
- (6) 'a disqualification application' is an application under the Act for the making of a disqualification order;
- (7) 'registrar' means any judge of the High Court or the county court who is a registrar within the meaning of the Insolvency Rules;
- (8) 'companies court registrar' means any judge of the High Court sitting in the Royal Courts of Justice in London who is a registrar within the meaning of the Insolvency Rules.
- (9) except where the context otherwise requires references to;
 - (a) 'company' or 'companies' shall include references to 'partnership' or 'partnerships' and to 'limited liability partnership' and 'limited liability partnerships'
 - (b) 'director' shall include references to an 'officer' of a partnership and to a 'member' of a limited liability partnership;
 - (c) 'shadow director' shall include references to a 'shadow member' of a limited liability partnershipand, in appropriate cases, the forms annexed to this practice direction shall be varied accordingly;

¹ The current rules are the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987. For convenience relevant references to the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, which apply to disqualification applications under sections 7 and 8 of the Act (see rule 1(3)(a) and (b)), are set out in footnotes to this Practice Direction. This Practice Direction applies certain provisions contained in the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 to disqualification proceedings other than applications under sections 7 and 8 of the Act.

- (10) 'disqualification order' has the meaning set out in section 1 of the Act and 'disqualification undertaking' has the meaning set out in section 1A of the Act;
 - (11) a 'Section 8A application' is an application under section 8A of the Act to reduce the period for which a disqualification undertaking is in force or to provide for it to cease to be in force.
- 1.2 This practice direction shall come into effect on 26 April 1999 and shall replace all previous practice directions relating to disqualification proceedings.
- 1.3 This practice direction applies to the following proceedings ('disqualification proceedings'):
- (1) disqualification applications made:
 - (a) under section 2(2)(a) of the Act (after the person's conviction of an indictable offence in connection with the affairs of a company);
 - (b) under section 3 of the Act (on the ground of persistent breaches of provisions of companies legislation);
 - (c) under section 4 of the Act (on the ground of fraud etc);
 - (d) by the Secretary of State or the official receiver under section 7(1) of the Act (on the ground of the person's unfitness to be concerned in the management of a company); or
 - (e) by the Secretary of State under section 8 of the Act (following a report made by inspectors or in consequence of information or documents obtained);
 - (2) any application made under section 7(2) or 7(4) of the Act; and
 - (3) any application made under sections 12(2) or 17 of the Act and any application for permission to act notwithstanding a disqualification order which was made under any statutory predecessor of the Act;
 - (4) any application for a court order made under CPR Part 23 in the course of any of the proceedings set out in sub-paragraphs (1) to (3) above;
 - (5) any application under the Act to the extent provided for by subordinate legislation²;
 - (6) any section 8A application.

2. MULTI-TRACK

- 2.1 All disqualification proceedings are allocated to the multi-track. The CPR relating to allocation questionnaires and track allocation shall not apply.

² Current subordinate legislation includes the Insolvent Partnerships Order 1994 and the Limited Liability Partnerships Regulations 2001.

3. RIGHTS OF AUDIENCE

- 3.1 Official receivers and deputy official receivers have right of audience in any proceedings to which this Practice Direction applies, including cases where a disqualification 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 court³.

PART TWO DISQUALIFICATION APPLICATIONS

4. COMMENCEMENT

- 4.1 A disqualification application must be commenced by a claim form issued:
- (1) in the High Court out of the office of the companies court registrar or a chancery district registry; and
 - (2) in the county court, out of a county court office.

Sections 2(2)(a), 3(4), 4(2), 6(3) and 8(3) of the Act identify the courts which have jurisdiction to deal with disqualification applications.

- 4.2 Disqualification applications shall be made by the issue of a claim form in the form annexed hereto and the use of the procedure set out in CPR Part 8⁴, as modified by this practice direction and (where the application is made under sections 7 or 8 of the Act) the Disqualification Rules. CPR rule (8.1)(3) (power of the Court to order the application to continue as if the claimant had not used the Part 8 Procedure) shall not apply.
- 4.3 When the claim form is issued, the claimant will be given a date for the first hearing of the disqualification application. This date is to be not less than eight weeks from the date of issue of the claim form⁶. The first hearing will be before a registrar.

5. HEADINGS

- 5.1 Every claim form by which a disqualification application under the Act is begun and all affidavits, notices and other documents in the proceedings must be entitled in the matter of the company or companies in question and in the matter of the Act. In the case of any disqualification application under section 7 of the Act it is not necessary to mention in the heading any company other than that referred to in section 6(1)(a) of the Act.

6. THE CLAIM FORM

- 6.1 CPR Rule (8.2) does not apply. The claim form must state:

³ Rule 10 of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

⁴ Rule 2(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 as amended.

⁶ Rule 7(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

- (1) that CPR Part 8 (as modified by this practice direction) applies, and (if the application is made under sections 7 or 8 of the Act) that the disqualification application is made in accordance with the Disqualification Rules⁷;
- (2) that the claimant seeks a disqualification order, and the section of the Act pursuant to which the disqualification application is made;
- (3) the period for which, in accordance with the Act, the court has power to impose a disqualification period.
The periods are as follows –
 - (a) where the application is under section 2 of the Act, for a period of up to 15 years;
 - (b) where the application is under section 3 of the Act, for a period of up to 5 years;
 - (c) where the application is under section 4 of the Act, for a period of up to 15 years;
 - (d) where the application is under section 5 of the Act, for a period of up to 5 years;
 - (e) where the application is under section 7 of the Act, for a period of not less than 2, and up to 15, years⁸;
 - (f) where the application is under section 8 of the Act, for a period of up to 15 years⁹.
- (4) in cases where the disqualification application is made under sections 7 or 8 of the Act, that on the first hearing of the application, the court may hear and determine it summarily, without further or other notice to the defendant, and that, if the application is so determined, the court may impose a period of disqualification of up to 5 years but that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the case of any defendant, 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 that will be notified to the defendant¹⁰;
- (5) that any evidence which the defendant wishes the court to take into consideration must be filed in court in accordance with the time limits set out in paragraph 9 below (which time limits shall be set out in the notes to the Claim Form)¹¹.

7 Rule 4(a) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

8 Rule 4(b)(i) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

9 Rule 4(b)(ii) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

10 Rule 4(c) and (d) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

11 Rule 4(e) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

7. SERVICE OF THE CLAIM FORM

- 7.1 Service of claim forms in disqualification proceedings will be the responsibility of the claimant and will not be undertaken by the court.
- 7.2 The claim form shall be served by the claimant on the defendant. It may be served 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 following that on which the claim form was posted¹². CPR r. 6.7(1) shall be modified accordingly. Otherwise CPR Part 6 applies¹³.
- 7.3 Where any claim form or order of the court or other document is required under any disqualification proceedings to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit, may require such proof of service as it thinks fit¹⁴, and may give such directions as to acknowledgment of service as it thinks fit.
- 7.4 The claim form served on the defendant shall be accompanied by an acknowledgement of service.

8. ACKNOWLEDGMENT OF SERVICE

- 8.1 The form of acknowledgment of service is annexed to this practice direction. CPR rules 8.3(2) and 8.3(3)(a) do not apply to disqualification applications.
- 8.2 The form of acknowledgement of service shall state that the defendant should indicate¹⁵:
 - (1) whether he contests the application on the grounds that, in the case of any particular company –
 - (a) he was not a director or shadow director of that company at a time when conduct of his, or of other persons, in relation to that company is in question; or
 - (b) his conduct as director or shadow director of that company was not as alleged in support of the application for a disqualification order;
 - (2) 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
 - (3) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to reducing the period of disqualification.
- 8.3 The defendant shall:

12 Rule 5(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

13 Attention is drawn to CPR Rule 6.14(2) regarding a certificate of service of the claim form.

14 Rule 5(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

15 Rule 5(4) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

- (1) (subject to paragraph 7.2 above) file an acknowledgment of service in the prescribed form not more than 14 days after service of the claim form; and
 - (2) serve a copy of the acknowledgment of service on the claimant and any other party.
- 8.4 Where the defendant has failed to file an acknowledgment of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

9. EVIDENCE

- 9.1 Evidence in disqualification applications shall be by affidavit, except where the official receiver is a party, in which case his evidence 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 it¹⁶.
- 9.2 In the affidavits or (as the case may be) the official receiver's report in support of the application, there shall be included a statement of the matters by reference to which it is alleged that a disqualification order should be made against the defendant¹⁷.
- 9.3 When the claim form is issued:
- (1) the affidavit or report in support of the disqualification application must be filed in court;
 - (2) exhibits must be lodged with the court where they shall be retained until the conclusion of the proceedings; and
 - (3) copies of the affidavit/report and exhibits shall be served with the claim form on the defendant¹⁸.
- 9.4 The defendant shall, within 28 days from the date of service of the claim form¹⁹:
- (1) file in court any affidavit evidence in opposition to the disqualification application that he or she wishes the court to take into consideration; and
 - (2) lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and

16 Rule 3(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987. Section 441 of the Companies Act 1985 makes provision for the admissibility in legal proceedings of a certified copy of a report of inspectors appointed under Part XIV of the Companies Act 1985.

17 Rule 3(3) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

18 Rule 3(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

19 Rule 6(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

- (3) at the same time, serve upon the claimant a copy of the affidavits and exhibits.
- 9.5 In cases where there is more than one defendant, each defendant is required to serve his evidence on the other defendants unless the court otherwise orders.
- 9.6 The claimant shall, within 14 days from receiving the copy of the defendant's evidence²⁰:
 - (1) file in court any further affidavit or report in reply he wishes the court to take into consideration; and
 - (2) lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and
 - (3) at the same time serve a copy of the affidavits/reports and exhibits upon the defendant.
- 9.7 Prior to the first hearing of the disqualification application, the time for serving evidence may be extended by written agreement between the parties. After the first hearing, the extension of time for serving evidence is governed by CPR rules 2.11 and 29.5.
- 9.8 So far as is possible all evidence should be filed before the first hearing of the disqualification application.

10. THE FIRST HEARING OF THE DISQUALIFICATION APPLICATION

- 10.1 The date fixed for the first hearing of the disqualification application shall be not less than 8 weeks from the date of issue of the claim form²¹.
- 10.2 The hearing shall in the first instance be before the registrar²².
- 10.3 The registrar shall either determine the case on the date fixed or give directions and adjourn it²³.
- 10.4 All interim directions should insofar as possible be sought at the first hearing of the disqualification application so that the disqualification application can be determined at the earliest possible date. The parties should take all such steps as they respectively can to avoid successive directions hearings.
- 10.5 In the case of disqualification applications made under sections 7 or 8 of the Act, the registrar shall adjourn the case for further consideration if –
 - (1) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate²⁴; or

20 Rule 6(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

21 Rule 7(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

22 Rule 7(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

23 Rule 7(3) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

24 Rule 7(4)(a) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

- (2) he is of opinion that questions of law or fact arise which are not suitable for summary determination²⁵.

10.6 If the registrar adjourns the application for further consideration he shall –

- (1) direct whether the application is to be heard by a registrar or by a judge²⁶. This direction may at any time be varied by the court either on application or of its own initiative. If the court varies the direction in the absence of any of the parties, notice will be given to the parties;
- (2) consider whether or not to adjourn the application to a judge so that the judge can give further directions;
- (3) consider whether or not to make any direction with regard to fixing the trial date or a trial window;
- (4) state the reasons for the adjournment²⁷.

11. CASE MANAGEMENT

11.1 On the first or any subsequent hearing of the disqualification application, the registrar may also give directions as to the following matters:

- (1) the filing in court and the service of further evidence (if any) by the parties²⁸;
- (2) the time-table for the steps to be taken between the giving of directions and the hearing of the application;
- (3) such other matters as the registrar thinks necessary or expedient with a view to an expeditious disposal of the application or the management of it generally²⁹;
- (4) the time and place of the adjourned hearing³⁰; and
- (5) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the parties³¹.

11.2 Where a case is adjourned other than to a judge, it may be heard by the registrar who originally dealt with the case or by another registrar³².

11.3 If the companies court registrar adjourns the application to a judge, all directions having been complied with and the evidence being complete, the application will be referred to the Listing Office and any practice direction relating to listing shall apply accordingly.

25 Rule 7(4)(b) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

26 Rule 7(5)(a) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

27 Rule 7(5)(b) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

28 Rule 7(5)(c)(ii) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

29 Rule 7(5)(c)(iii) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

30 Rule 7(5)(c)(iv) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

31 Rule 7(5)(c)(i) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

32 Rule 7(6) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

- 11.4 In all disqualification applications, the Court may direct a pre-trial review ('PTR'), a case management conference or pre-trial check lists (listing questionnaires) (in the form annexed to this practice direction) and will fix a trial date or trial period in accordance with the provisions of CPR Part 29: the Multi Track as modified by any relevant practice direction made thereunder.
- 11.5 In contested disqualification applications, the registrar may, at a hearing of the claim, direct:
- (1) that a PTR be fixed for a date as soon as practicable after the close of evidence;
 - (2) that each party complete a pre-trial check list and return it to the court not later than two clear working days before the hearing of the PTR.
- 11.6 At the hearing of the PTR, the registrar may give any further directions as appropriate and, where the application is to be heard in the Royal Courts of Justice in London, unless the trial date has already been fixed, may direct the parties (by Counsel's clerks if applicable), to attend the Registrar at a specified time and place in order solely to fix a trial date. The court will give notice of the date fixed for the trial to the parties.
- 11.7 In all cases, the parties must inform the court immediately of any material change to the information provided in a pre-trial check list.

12. THE TRIAL

- 12.1 Trial bundles containing copies of –
- (1) the claim form;
 - (2) the acknowledgment of service;
 - (3) all evidence filed by or on behalf of each of the parties to the proceedings, together with the exhibits thereto;
 - (4) all relevant correspondence; and
 - (5) such other documents as the parties consider necessary;
- shall be lodged with the court.
- 12.2 Skeleton arguments should be prepared by all the parties in all but the simplest cases whether the case is to be heard by a registrar or a judge. They should comply with all relevant guidelines.
- 12.3 The advocate for the claimant should also in all but the simplest cases provide: (a) a chronology; (b) a *dramatis personae*; (c) in respect of each defendant, a list of references to the relevant evidence.
- 12.4 The documents mentioned in paragraph 12.1–12.3 above must be delivered to the court in accordance with any order of the court and/or any relevant practice direction³³.

33 Attention is drawn to the provisions of the Chancery Guide. Chapter 7 of that Guide dated September 2000 provides guidance on the preparation of trial bundles and skeleton arguments. Unless the Court otherwise orders, paragraph 7.16 of the Chancery Guide requires that trial bundles be delivered to the Court 7 days before trial and paragraph 7.21 requires that skeleton arguments be delivered to the Court not less than 2 clear days before trial.

- (1) If the case is to be heard by a judge sitting in the Royal Courts of Justice, London, but the name of the judge is not known, or the judge is a deputy judge, these documents must be delivered to the Clerk of the Lists. If the name of the judge (other than a deputy judge) is known, these documents must be delivered to the judge's clerk;
 - (2) If the case is to be heard by a companies court registrar, these documents must be delivered to Room 409, Thomas More Building, Royal Courts of Justice. Copies must be provided to the other party so far as possible when they are delivered to the court;
 - (3) If the case is to be heard in the Chancery district registries in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle, or Preston, the addresses for delivery are set out in Annex 1;
 - (4) If the case is to be heard in a county court, the documents should be delivered to the relevant county court office.
- 12.5 Copies of documents delivered to the court must, so far as possible, be provided to each of the other parties to the disqualification application.
- 12.6 The provisions in paragraphs 12.1 to 12.5 above are subject to any order of the court making different provision.

13. SUMMARY PROCEDURE

- 13.1 If the parties decide to invite the court to deal with the disqualification application under the procedure adopted in *Re Carecraft Construction Co. Ltd.* [1994] 1 WLR 172, they should inform the court immediately and obtain a date for the hearing of the application.
- 13.2 Whenever the *Carecraft* procedure is adopted, the claimant must:
- (1) except where the court otherwise directs, submit a written statement containing in respect of each defendant any material facts which (for the purposes of the application) are either agreed or not opposed (by either party); and
 - (2) specify in writing the period of disqualification which the parties accept that the agreed or unopposed facts justify or the band of years (e.g. 4 to 6 years) or bracket (i.e. 2 to 5 years; 6 to 10 years; 11 to 15 years) into which they will submit the case falls.
- 13.3 Paragraph 12.4 of the above applies to the documents mentioned in paragraph 13.2 above unless the court otherwise directs.
- 13.4 Unless the Court otherwise orders, a hearing under the *Carecraft* procedure will be held in private.
- 13.5 If the Court is minded to make a disqualification order having heard the parties' representations, it will usually give judgment and make the disqualification order in public. Unless the Court otherwise orders, the written statement referred to in paragraph 13.2 shall be annexed to the disqualification order.

- 13.6 If the Court refuses to make the disqualification order under the Carecraft procedure, the Court shall give further directions for the hearing of the application.

14. MAKING AND SETTING ASIDE OF DISQUALIFICATION ORDER

- 14.1 The court may make a disqualification order against the defendant, whether or not the latter appears, and whether or not he has completed and returned the acknowledgment of service of the claim form, or filed evidence³⁴.
- 14.2 Any disqualification order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just³⁵.

15. SERVICE OF DISQUALIFICATION ORDERS

- 15.1 Service of disqualification orders will be the responsibility of the claimant.

16. COMMENCEMENT OF DISQUALIFICATION ORDER

- 16.1 Unless the court otherwise orders, the period of disqualification imposed by a disqualification order shall begin at the end of the period of 21 days beginning with the date of the order³⁶.

PART THREE APPLICATIONS UNDER SECTIONS 7(2) AND 7(4) OF THE ACT

17. APPLICATIONS FOR PERMISSION TO MAKE A DISQUALIFICATION APPLICATION AFTER THE END OF THE PERIOD OF 2 YEARS SPECIFIED IN SECTION 7(2) OF THE ACT

- 17.1 Such applications shall be made by Application Notice under CPR Part 23, and the Part 23 Practice Direction shall apply save as modified below.

18. APPLICATIONS FOR EXTRA INFORMATION MADE UNDER SECTION 7(4) OF THE ACT

- 18.1 Such applications may be made:
- (1) by Practice Form N.208 under CPR Part 8; or
 - (2) by Application Notice in existing disqualification claim proceedings.

34 Rule 8(1) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

35 Rule 8(2) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987.

36 Section 1(2) of the Act (as amended).

19. PROVISIONS APPLICABLE TO APPLICATIONS UNDER SECTIONS 7(2) AND 7(4) OF THE ACT

- 19.1 **Headings:** Every claim form and notice by which such an application is begun and all witness statements affidavits, notices and other documents in relation thereto must be entitled in the matter of the company or companies in question and in the matter of the Act.
- 19.2 **Service:**
- (1) Service of application notices seeking orders under section 7(2) or 7(4) of the Act will be the responsibility of the applicant and will not be undertaken by the court.
 - (2) Where any application notice or order of the court or other document is required in any application under section 7(2) or section 7(4) of the Act to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit, may require such proof of service as it thinks fit, and may make such directions as to acknowledgment of service as it thinks fit.

PART FOUR APPLICATIONS FOR PERMISSION TO ACT

20. COMMENCING AN APPLICATION FOR PERMISSION TO ACT

- 20.1 This practice direction governs applications for permission made under:
- (1) sections 1(1), 1A(1) and section 17 of the Act;
 - (2) section 12 of the Act; and
 - (3) any application for permission made under any disqualification order which was made under any statutory predecessor of the Act.
- 20.2 Sections 12 and 17 of the Act identify the courts which have jurisdiction to deal with applications for permission to act. Subject to these sections, such applications may be made:
- (1) by Practice Form N.208 under CPR Part 8; or
 - (2) by application notice in an existing disqualification application.

21. HEADINGS

- 21.1 Every claim form by which an application for permission to act is begun, and all affidavits, notices and other documents in the application must be entitled in the matter of the company or companies in question and in the matter of the Act.

- 21.2 Every application notice by which an application for permission to act is made and all affidavits, notices and other documents in the application shall be entitled in the same manner as the heading of the claim form in the existing disqualification application.

22. EVIDENCE

- 22.1 Evidence in support of an application for permission to act shall be by affidavit.

23. SERVICE

- 23.1 In all cases, the claim form or application notice (as appropriate), together with the evidence in support thereof, must be served on the Secretary of State.

PART FIVE APPLICATIONS

24. FORM OF APPLICATION

- 24.1 CPR Part 23 and the Part 23 practice direction (General Rules about Applications for Court Orders) shall apply in relation to applications governed by this practice direction (see paragraph 1.3(4) above) save as modified below.

25. HEADINGS

- 25.1 Every notice and all witness statements and affidavits in relation thereto must be entitled in the same manner as the Claim Form in the proceedings in which the application is made.

26. SERVICE

- 26.1 Service of application notices in disqualification proceedings will be the responsibility of the parties and will not be undertaken by the court.
- 26.2 Where any application notice or order of the court or other document is required in any application to be served on any person who is not in England and Wales, the court may order service on him 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.

PART SIX DISQUALIFICATION PROCEEDINGS OTHER THAN IN THE ROYAL COURTS OF JUSTICE

- 27.1 Where a disqualification application or a section 8A application is made by a claim form issued other than in the Royal Courts of Justice this practice direction shall apply with the following modifications
- (1) Upon the issue of the claim form the court shall endorse it with the date and time for the first hearing before a district judge. The powers exercisable by a registrar under this practice direction shall be exercised by a district judge.
 - (2) If the district judge (either at the first hearing or at any adjourned hearing before him) directs that the disqualification claim or section 8A application is to be heard by a High Court judge or by an authorised circuit judge he will direct that the case be entered forthwith in the list for hearing by that judge and the court will allocate (i) a date for the hearing of the trial by that judge and (ii) unless the district judge directs otherwise a date for the hearing of a P.T.R. by the trial judge.

PART SEVEN DISQUALIFICATION UNDERTAKINGS

28. COSTS

- 28.1 The general rule is that the court will order the defendant to pay the costs of the Secretary of State (and, in the case of a disqualification application made under section 7(1)(b) of the Act, the costs of the official receiver) if:
- (1) a disqualification application under section 7 or section 8 of the Act has been commenced; and
 - (2) that application is discontinued because the Secretary of State has accepted a disqualification undertaking under section 1A of that Act.
- 28.2 The general rule will not apply where the court considers that the circumstances are such that it should make another order.

APPLICATIONS UNDER SECTION 8A OF THE ACT TO REDUCE THE PERIOD FOR WHICH A DISQUALIFICATION UNDERTAKING IS IN FORCE OR TO PROVIDE FOR IT TO CEASE TO BE IN FORCE

29. HEADINGS

- 29.1 Every claim form by which a section 8A application is begun and all affidavits, notices and other documents in the proceedings must be entitled in the matter of a disqualification undertaking and its date and in the matter of the Act.

30. COMMENCEMENT: THE CLAIM FORM

- 30.1 A section 8A application must be commenced by a claim form issued:
- (1) in the High Court out of the office of the companies court registrar or a chancery district registry; and
 - (2) in the county court, out of a county court office.
- Section 8A(3) identifies the courts which have jurisdiction to deal with section 8A applications.
- 30.2 A section 8A application shall be made by the issue of a Part 8 claim form in the form annexed hereto and the use of the procedure set out in CPR Part 8, as modified by this practice direction. CPR rule 8.1 (3) (power of the Court to order the application to continue as if the claimant had not used the Part 8 procedure) shall not apply.
- 30.3 When the claim form is issued, the claimant will be given a date for the first hearing of the section 8A application. This date is to be not less than eight weeks from the date of issue of the claim form. The first hearing will be before registrar.
- 30.4 CPR Rule 8.2 does not apply. The claim form must state:
- (1) that CPR Part 8 (as modified by this practice direction) applies;
 - (2) the form of order the claimant seeks.
- 30.5 The Secretary of State shall be made the defendant to the section 8A application.
- 30.6 Service of claim forms in disqualification proceedings will be the responsibility of the claimant and will not be undertaken by the court. The claim form shall be served by the claimant on The Treasury Solicitor, Queen Anne's Chambers, 28 Broadway, London, SW1H 9JS. It may be served by sending it by first class post and the date of service shall, unless the contrary is shown, be deemed to be the 7th day following that on which the claim form was posted. CPR r. 6.7(1) shall be modified accordingly. Otherwise CPR Part 6 applies³⁷.
- 30.7 Where any order of the court or other document is required to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit and may require such proof of service as it thinks fit.
- 30.8 The claim form served on the defendant shall be accompanied by an acknowledgement of service in the form annexed hereto.

31. ACKNOWLEDGEMENT OF SERVICE

- 31.1 The defendant shall:

³⁷ Attention is drawn to CPR r 6.14(2) regarding a certificate of service of the claim form.

- (1) (subject to paragraph 7.2 above) file an acknowledgement of service in the relevant practice form not more than 14 days after service of the claim form; and
 - (2) serve a copy of the acknowledgement of service on the claimant and any other party.
- 31.2 Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may nevertheless attend the hearing of the application and take part in the hearing as provided for by section 8A(2) of the Act. However, this is without prejudice to the Court's case management powers and its powers to make costs orders.

32. EVIDENCE

- 32.1 Evidence in section 8A applications shall be by affidavit.
- 32.2 When the claim form is issued:
- (1) the affidavit in support of the section 8A application must be filed in court;
 - (2) exhibits must be lodged with the court where they shall be retained until the conclusion of the proceedings; and
 - (3) copies of the affidavit and exhibits shall be served with the claim form on the defendant.
- 32.3 The defendant shall, within 28 days from the date of service of the claim form:
- (1) file in court any affidavit evidence that he wishes the court to take into consideration on the application; and
 - (2) lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and
 - (3) at the same time, serve upon the claimant a copy of the affidavits and exhibits.
- 32.4 The claimant shall, within 14 days from receiving the copy of the defendant's evidence:
- (1) file in court any further affidavit evidence in reply he wishes the court to take into consideration; and
 - (2) lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and
 - (3) at the same time serve a copy of the affidavits and exhibits upon the defendant.
- 32.5 Prior to the first hearing of the section 8A application, the time for serving evidence may be extended by written agreement between the parties. After the first hearing, the extension of time for serving evidence is governed by CPR rules 2.11 and 29.5.
- 32.6 So far as is possible all evidence should be filed before the first hearing of the section 8A application.

33. HEARINGS AND CASE MANAGEMENT

- 33.1 The date fixed for the first hearing of the section 8A application shall be not less than 8 weeks from the date of issue of the claim form.
- 33.2 The hearing shall in the first instance be before the registrar.
- 33.3 The registrar shall either determine the case on the date fixed or give directions and adjourn it.
- 33.4 All interim directions should insofar as possible be sought at the first hearing of the section 8A application so that the section 8A application can be determined at the earliest possible date. The parties should take all such steps as they respectively can to avoid successive directions hearings.
- 33.5 If the registrar adjourns the application for further consideration he shall:
 - (1) direct whether the application is to be heard by a registrar or by a judge. This direction may at any time be varied by the court either on application or of its own initiative. If the court varies the direction in the absence of any of the parties, notice will be given to the parties;
 - (2) consider whether or not to adjourn the application to a judge so that the judge can give further directions;
 - (3) consider whether or not to make any direction with regard to fixing the trial date or a trial window.
- 33.6 On the first or any subsequent hearing of the section 8A application, the registrar may also give directions as to the following matters:
 - (1) the filing in court and the service of further evidence (if any) by the parties;
 - (2) the time-table for the steps to be taken between the giving of directions and the hearing of the section 8A application;
 - (3) such other matters as the registrar thinks necessary or expedient with a view to an expeditious disposal of the section 8A application or the management of it generally;
 - (4) the time and place of the adjourned hearing.
- 33.7 Where a case is adjourned other than to a judge, it may be heard by the registrar who originally dealt with the case or by another registrar.
- 33.8 If the companies court registrar adjourns the application to a judge, all directions having been complied with and the evidence being complete, the application will be referred to the Listing Office and any practice direction relating to listing shall apply accordingly.
- 33.9 In all disqualification applications, the Court may direct a pre-trial review ('PTR'), a case management conference or pre-trial check lists (listing questionnaires) (in the form annexed to this practice direction) and will fix a trial date or trial period in accordance with the provisions of CPR Part 29: The Multi-Track, as modified by any relevant practice direction made thereunder.
- 33.10 The registrar may, at a hearing of the section 8A application, direct:

- (1) that a PTR be fixed for a date as soon as practicable after the close of evidence;
 - (2) that each party complete a pre-trial check list and return it to the court not later than two clear working days before the hearing of the PTR.
- 33.11 At the hearing of the PTR, the registrar may give any further directions as appropriate and, where the application is to be heard in the Royal Courts of Justice in London, unless the trial date has already been fixed, may direct the parties (by Counsel's clerks, if applicable) to attend the Registrar at a specified time and place in order solely to fix a trial date. The court will give notice of the date fixed for the trial to the parties.
- 33.12 In all cases, the parties must inform the court immediately of any material change to the information provided in a pre-trial check list.

34. THE TRIAL

- 34.1 Trial bundles containing copies of –
- (1) the claim form;
 - (2) the acknowledgment of service;
 - (3) all evidence filed by or on behalf of each of the parties to the proceedings, together with the exhibits thereto;
 - (4) all relevant correspondence; and
 - (5) such other documents as the parties consider necessary,
- shall be lodged with the court.
- 34.2 Skeleton arguments should be prepared by all the parties in all but the simplest cases whether the case is to be heard by a registrar or a judge. They should comply with all relevant guidelines.
- 34.3 The advocate for the claimant should also in all but the simplest cases provide: (a) a chronology; (b) a *dramatis personae*.
- 34.4 The documents mentioned in paragraph 34.1-34.3 above must be delivered to the court in accordance with any order of the court and/or and relevant practice direction³⁸.
- (1) If the case is to be heard by a judge sitting in the Royal Courts of Justice, London, but the name of the judge is not known, or the judge is a deputy judge, these documents must be delivered to the Clerk of the Lists. If the name of the judge (other than a deputy judge) is known, these documents must be delivered to the judge's clerk;
 - (2) If the case is to be heard by a companies court registrar, these documents must be delivered to Room 409, Thomas More Building, Royal Courts of Justice. Copies must be provided to the other party so far as possible when they are delivered to the court;

- (3) If the case is to be heard in the Chancery district registries in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle, or Preston, the addresses for delivery are set out in Annex 1;
 - (4) If the case is to be heard in a county court, the documents should be delivered to the relevant county court office.
- 34.5 Copies of documents delivered to the court must, so far as possible, be provided to each of the other parties to the claim.
- 34.6 The provisions in paragraphs 34.1 to 34.5 above are subject to any order of the court making different provision.

ANNEX 1

Birmingham: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, 33 Bull Street, Birmingham B4 6DS.

Bristol: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, 3rd Floor, Greyfriars, Lewins Mead, Bristol BS1 2NR.

Cardiff: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, 1st Floor, 2 Park Street, Cardiff CF10 1ET.

Leeds: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, Leeds Combined Court Centre, The Court House, 1 Oxford Row, Leeds LS1 3BG.

Liverpool and Manchester: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, Manchester Courts of Justice, Crown Square, Manchester M60 9DJ.

Newcastle: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, The Law Courts, Quayside, Newcastle upon Tyne NE1 3LA.

Preston: The Chancery Listing Officer, The District Registry of the Chancery Division of the High Court, The Combined Court Centre, Ringway, Preston PR1 2LL.