

PRACTICE DIRECTION

APPLICATIONS UNDER THE COMPANIES ACTS AND RELATED LEGISLATION

This Practice Direction supplements CPR Part 49

SECTION I

GENERAL

Definitions

1. In this practice direction –
 - ‘the 1985 Act’ means the Companies Act 1985¹;
 - ‘the 2006 Act’ means the Companies Act 2006²;
 - ‘the CJP A’ means the Criminal Justice and Police Act 2001³;
 - ‘the EC Regulation’ means Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE);
 - ‘Part VII FSMA’ means Part VII of the Financial Services and Markets Act 2000⁴.

Application of this practice direction

2. This practice direction applies to proceedings under –
 - (a) the 1985 Act;
 - (b) the 2006 Act (except proceedings under Chapter 1 of Part 11 or Part 30);
 - (c) section 59 of the CJP A;
 - (d) Articles 25 and 26 of the EC Regulation; and
 - (e) Part VII FSMA.

(Part 19 and the practice direction supplementing Part 19 contain provisions about proceedings under Chapter 1 of Part 11 of the 2006 Act (derivative claims).)

Application of this practice direction to certain proceedings in relation to limited liability partnerships

3. This practice direction applies to proceedings under the 1985 Act in relation to a limited liability partnership as if it were a company.

Title of documents

4.
 - (1) The claim form in proceedings under the 1985 Act, the 2006 Act, Part VII FSMA or the EC Regulation, and any application, affidavit, witness statement, notice or other document in such

1 1985 c. 6
 2 2006 c. 46
 3 2001 c. 16
 4 2000 c. 8

proceedings, must be entitled 'In the matter of [the name of the company in question] and in the matter of [the relevant law]', where '[the relevant law]' means 'the Companies Act 1985', 'the Companies Act 2006', 'Part VII of the Financial Services and Markets Act 2000' or 'Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)', as the case may be.

- (2) Where a company changes its name in the course of proceedings, the title must be altered by –
 - (a) substituting the new name for the old; and
 - (b) inserting the old name in brackets at the end of the title.

Starting proceedings

5.

- (1) Proceedings to which this practice direction applies must be started by a Part 8 claim form –
 - (a) unless a provision of this or another practice direction provides otherwise, but
 - (b) subject to any modification of that procedure by this or any other practice direction.
- (2) The claim form –
 - (a) will, where issued in the High Court, be issued out of the Companies Court or a Chancery district registry; or
 - (b) will, where issued in a county court, be issued out of a county court office.

SECTION II

PARTICULAR APPLICATIONS UNDER THE 1985 ACT

Applications under section 721 of the 1985 Act (Production and inspection of books where offence suspected)

6.

- (1) This paragraph applies to an application for an order under section 721 of the 1985 Act.
- (2) No notice need be given to, and the claim form need not be served on, any person against whom the order is sought.

Applications to sanction compromise or arrangement

7.

- (1) This paragraph applies to an application for an order, under Part XIII of the 1985 Act, to sanction a compromise or arrangement.
- (2) Where the application is made by the company concerned, or by a liquidator or administrator of the company, there need be no defendant to the claim unless the court so orders.
- (3) The claim form must be supported by written evidence including –
 - (a) statutory information about the company; and
 - (b) the terms of the proposed compromise or arrangement.
- (4) The claim form must seek –
 - (a) directions for convening a meeting of creditors or members or both, as the case requires;
 - (b) the sanction of the court to the compromise or arrangement, if it is approved at the meeting or meetings, and a direction for a further hearing for that purpose; and
 - (c) a direction that the claimant files a copy of a report to the court by the chairman of the meeting or of each meeting.

SECTION III

PARTICULAR APPLICATIONS UNDER THE 2006 ACT

References to provisions of the 2006 Act in this section

- 8.** In this Section, a reference to a section by number, not otherwise identified, is to the section so numbered in the 2006 Act.

Company generally to be made a party to a claim under the 2006 Act

- 9.**
- (1) Where in a claim under the 2006 Act the company concerned is not the claimant, the company is to be made a defendant to the claim unless –
- (a) any other enactment, the CPR or this or another practice direction makes a different provision; or
- (b) the court orders otherwise.
- (2) Where an application is made in the course of proceedings to which the company is or is required to be a defendant, the company must be made a respondent to the application unless –
- (a) any other enactment, the CPR or this or another practice direction makes a different provision; or
- (b) the court orders otherwise.

Applications under section 169 (Director's right to protest against removal)

- 10.**
- (1) This paragraph applies to an application for an order under section 169(5).
- (2) The claimant –
- (a) must serve a copy of the claim form on the company (if it is not the claimant) and on the director concerned; or
- (b) if service is not reasonably practicable in the circumstances, must provide evidence that it has otherwise notified the company and that director of the application.

Applications under section 295 (Application not to circulate members' statement) or section 317 (Application not to circulate members' statement)

- 11.**
- (1) This paragraph applies to an application for an order under section 295 or 317.
- (2) The claimant –
- (a) must serve a copy of the claim form on the company (if it is not the claimant) and on each member who requested the circulation of the relevant statement; or
- (b) if service is not reasonably practicable in the circumstances, must provide evidence that it has otherwise notified the company and each such member of the application.

Proceedings under section 370 (Unauthorised donations – enforcement of directors’ liabilities by shareholder action)

12. Proceedings to enforce a director’s liability under section 370 must be begun by a Part 7 claim form.

Proceedings under section 955 (Takeovers – enforcement by the court)

13. Proceedings for an order under section 955 must be begun by a Part 7 claim form.

Proceedings under section 968 (Takeovers – effect on contractual restrictions)

14. Proceedings to recover compensation under section 968(6) must be begun by a Part 7 claim form.

Applications under section 1132 (Production and inspection of documents where offence suspected)

15.

- (1) This paragraph applies to an application for an order under section 1132.
(2) No notice need be given to, and the claim form need not be served on, any person against whom the order is sought.

SECTION IV

OTHER APPLICATIONS

Applications under the EC Regulation – Article 25

16.

- (1) In this paragraph and paragraph 17 –
(a) a reference to an Article by number is a reference to the Article so numbered in the EC Regulation; and
(b) ‘SE’ means a European public limited-liability company (Societas Europaea) within the meaning of the EC Regulation.
(2) An application for a certificate under Article 25(2) –
(a) must set out the pre-merger acts and formalities applicable to the applicant company;
(b) must be accompanied by evidence that those acts and formalities have been completed; and
(c) must be accompanied by copies of:
(i) the draft terms of merger, as provided for in Article 20;
(ii) the entry in the Gazette containing the particulars specified in Article 21;
(iii) a directors’ report;
(iv) an expert’s report; and
(v) the resolution of the applicant company approving the draft terms of merger in accordance with Article 23.
(3) In paragraph (2)(c) –
‘directors’ report’ in relation to a company means a report by the directors of the company containing the information required by paragraph 4 of Schedule 15B to the 1985 Act;

‘expert’s report’ in relation to a company means a report to the members of the company drawn up in accordance with –

- (a) paragraph 5 of Schedule 15B to the 1985 Act; or
 - (b) Article 22.
- (4) There need be no defendant to the claim.

Applications under the EC Regulation – Article 26

17.

- (1) Where under Article 26(2) a merging company is required to submit a certificate to the High Court, that company must, if no other merging company has begun proceedings under Article 26, begin such proceedings by issuing a claim form.
- (2) There need be no defendant to the claim.
- (3) The claim form –
 - (a) must name the SE and all of the merging companies;
 - (b) must be accompanied by the documents referred to in sub-paragraph (5); and
 - (c) must be served on each of the other merging companies.
- (4) Where under Article 26(2) a merging company is required to submit a certificate to the High Court, and proceedings under Article 26 have already been begun, the company –
 - (a) must, not more than 14 days after service on it of the claim form, file an acknowledgment of service and serve it on each of the other merging companies; and
 - (b) must file the documents, in relation to each merging company, referred to in sub-paragraph (5) within the time limit specified in Article 26(2), and serve copies of them on each of the other merging companies.
- (5) The documents in relation to each merging company are –
 - (a) the certificate issued under Article 25(2) in respect of the company;
 - (b) a copy of the draft terms of merger approved by the company;
 - (c) evidence that arrangements for employee involvement have been determined by the company pursuant to Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees; and
 - (d) evidence that the SE has been formed in accordance with Article 26(4).

Applications under section 59 of the CIPA

18.

- (1) In sub-paragraphs (2) to (8) –
 - (a) a reference by number, not otherwise identified, is a reference to the provision so numbered in the CIPA; and
 - (b) references to a relevant interest in property have the same meaning as in section 59 of the CIPA.
- (2) This paragraph applies to applications under section 59 in respect of property seized in exercise of the power conferred by section 448(3) of the 1985 Act (including any additional powers of seizure conferred by section 50 that are exercisable by reference to that power).
- (3) The application must be supported by evidence –
 - (a) that the claimant has a relevant interest in the property to which the application relates; and
 - (b) in the case of an application under section 59(2), that one or more of the grounds set out in section 59(3) is satisfied in relation to the property.
- (4) Where the claimant has a relevant interest in the property, the defendants to the claim are to be –
 - (a) the person in possession of the property; and

- (b) any other person who appears to have a relevant interest in the property.
- (5) Where the claimant is in possession of the property, the defendants are to be –
 - (a) the person from whom the property was seized; and
 - (b) any other person who appears to have a relevant interest in the property.
- (6) In the case of an application for the return of seized property, the claimant must serve a copy of the claim form and the claimant's evidence in support of it on the person specified, by the notice given under section 52 when the property was seized, as the person to whom notice of such an application should be given.
- (7) If the claimant knows the identity of the person who seized the property, the claimant must also notify that person of the application.
- (8) When the court issues the claim form it will fix a date for the hearing.

SECTION V

CONDUCT OF PROCEEDINGS

Reduction of capital – evidence

- 19. In the case of an application to confirm a reduction in capital, if any shares were issued otherwise than for cash –
 - (a) for any shares so issued on or after 1st January 1901, it is sufficient to set out in the application the extent to which the shares are, or are treated as being, paid up; and
 - (b) for any shares so issued between 1st September 1867 and 31st December 1900, the application must also show that the requirement as to the filing of the relevant contract with the Registrar of Joint Stock Companies in section 25 of the Companies Act 1867 was complied with.

SECTION VI

MISCELLANEOUS

Service of documents

- 20. The parties are responsible for service of documents in proceedings to which this practice direction applies.

Transitional provisions

- 21.
 - (1) A claim started, or an application made, before 1st October 2007 may be continued in accordance with the practice direction in force on 30th September 2007 as if it had not been revoked.
 - (2) In particular, proceedings for the court to sanction a compromise or arrangement for which the relevant claim form was issued before 1st October 2007 may be continued in accordance with the practice direction in force on 30th September 2007 as if it had not been revoked.