

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 CIPA’ 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;
 - ‘the Cross-Border Mergers Regulations’ means the Companies (Cross-Border Mergers) Regulations 2007.

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 of that Act);
 - (c) section 59 of the CIPA;
 - (d) Articles 22, 25 and 26 of the EC Regulation;
 - (e) Part VII FSMA; and
 - (f) the Cross-Border Mergers Regulations.

(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.

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

Title of documents

4.

- (1) The claim form in proceedings under the 1985 Act, the 2006 Act, Part VII FSMA, the EC Regulation or the Cross-Border Mergers Regulations, and any application, affidavit, witness statement, notice or other document in such 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', 'Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE)' or 'the Companies (Cross-Border Merger) Regulations 2007', 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 and notification of application made

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.
- (3) Where this practice direction requires a party to proceedings to notify another person of an application, such notification must, unless the court orders otherwise, be given by sending to that other person a copy of the claim form as soon as reasonably practicable after the claim form has been issued.

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 any person against whom the order is sought.

Applications to sanction a 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 must notify the director concerned 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 must notify each member who requested the circulation of the relevant statement 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 started by a Part 7 claim form.

Proceedings under section 456 (Application in respect of defective accounts or directors' report)

12A.

- (1) This paragraph applies to an application for a declaration under section 456(1).
- (2) The claimant must notify any former director who was a director at the time of the approval of the annual accounts or directors' report of the application

Proceedings under section 511, 514, 515, 518 or 520 (Representations or statements made by the auditor)

12B.

- (1) This paragraph applies to an application for an order under section 511(6), 514(7), 515(7), 518(9) or 520(2).
- (2) The claimant must notify the auditor of the application.

Proceedings under section 527 (Members' powers to require website publication of audit concerns)

12C.

- (1) This paragraph applies to an application for an order under section 527(5).
- (2) The claimant must, unless the court orders otherwise, notify each member who requested a statement to be placed on the website of the application.

Proceedings under Parts 26 and 27 of the 2006 Act (Applications to sanction a compromise or arrangement)

12D.

- (1) This paragraph applies to an application for an order under Parts 26 and 27 of the 2006 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.

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

- 13.** Proceedings for an order under section 955 must be started 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 started 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 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 paragraphs 16A and 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.
- (1A)** Any document that is filed with the court must, if not in English, be accompanied by a translation of that document into English –
(a) certified by a notary public or other qualified person; or
(b) accompanied by written evidence confirming that the translation is accurate.
- (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 London 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 or section 908 of the 2006 Act, as appropriate;
‘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 section 909 of the 2006 Act, as appropriate; or

- (b) Article 22.
- (4) There need be no defendant to the application.

Applications under the EC Regulation – Article 22 (Appointment of an independent expert)

16A.

- (1) An application under Article 22 for the appointment of an independent expert must be made –
 - (a) where the application is made at the same time as or after the application under Article 25(2) for the approval of the pre-merger acts and formalities has been filed with the court, by application notice pursuant to Part 23; or
 - (b) where no application under Article 25(2) has been made, by a Part 8 claim form.
- (2) The application (whether by a claim form or application notice, as the case may be) must be accompanied by evidence in support of the application.

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 Part 8 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 the Cross-Border Mergers Regulations

17A.

- (1) In this paragraph and paragraphs 17B to 17D a reference to a regulation by number is a reference to the regulation so numbered in the Cross-Border Mergers Regulations.
- (2) Any document that is filed with the court must, if not in English, be accompanied by a translation of that document into English –
 - (a) certified by a notary public or other qualified person; or
 - (b) accompanied by written evidence confirming that the translation is accurate.

Application for approval of pre-merger requirements

17B.

- (1) This paragraph applies to an application under regulation 6.
- (2) There need be no defendant to the application.
- (3) The application must –
 - (a) set out the pre-merger acts and formalities required by regulations 7 to 10 and 12 to 15 applicable to the applicant company; and
 - (b) be accompanied by evidence that those acts and formalities have been completed properly.
- (4) Where an application under regulation 11 to summon a meeting of creditors has been made, the court will not determine the application under regulation 6 to approve the pre-merger requirements until the result of the meeting is known.
- (5) Where the court makes an order certifying that all pre-merger acts and formalities have been completed properly, the applicant must draw up the order and file it no later than 7 days after the date on which the order was made so that it can be sealed^{GL} by the court. The court will seal^{GL} and return the order to the applicant within 15 days of receipt.

Application for appointment of independent expert or to summon a meeting of members or creditors

17C.

- (1) This paragraph applies to –
 - (a) an application for the appointment of an independent expert under regulation 9;
 - (b) an application under regulation 11 for an order to summon a meeting of members or creditors or both.
- (2) The application must be made –
 - (a) where the application is made at the same time as or after the application for approval of the pre-merger acts and formalities under regulation 6 has been filed with the court, by application notice pursuant to Part 23; or
 - (b) where no application under regulation 6 has been made, by a Part 8 claim form.
- (3) The application (whether by claim form or application notice, as the case may be) must be accompanied by evidence in support of the application.

Application for the approval of the completion of the merger

17D.

- (1) This paragraph applies to an application under regulation 16.
- (2) The application must be made by a Part 8 claim form.
- (3) There need be no defendant to the application.
- (4) The claim form must be accompanied by –
 - (a) the documents referred to in regulation 16(1)(b), (c) and (e);
 - (b) where appropriate, evidence that regulation 16(1)(f) has been complied with; and
 - (c) such other evidence as may be required to enable the court to decide the application.
- (5) Where the court makes an order under regulation 16 approving the merger, it will fix a date on which the consequences of the merger are to take effect.

Applications under section 59 of the CIPA

18.

- (1) In sub-paragraphs (2) to (8) –

- (a) a reference to a section by number, not otherwise identified, is a reference to the section 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.

