

# White Book 2016

## Volume 2

### Section 2 - Specialist Proceedings

#### Section 2G - Companies Act Proceedings

##### Practice Directions

#### Practice Direction 49A—Applications under the Companies Acts and Related Legislation

*This Practice Direction supplements [CPR Part 49](#)*

### Section I. General

#### Definitions

##### 2G-7

1.

In this practice direction—

*the 1985 Act* means the [Companies Act 1985](#);

*the 2006 Act* means the [Companies Act 2006](#);

*the CJPA* means the [Criminal Justice and Police Act 2001](#);

*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 2000](#);

*the Cross-Border Mergers Regulations* means the [Companies \(Cross-Border Mergers\) Regulations 2007](#).

#### Application of this practice direction

##### 2G-8

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 CJPA](#);
- (d) [Articles 22, 25](#) and [26 of the EC Regulation](#);
- (e) [Part VII FSMA](#); and
- (f) the [Cross-Border Mergers Regulations](#).

([Part 19](#) and Practice Direction 19C 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**

### **2G-9**

#### **3.**

This practice direction applies to proceedings under the [1985 Act](#) and [2006 Act](#) as applied to limited liability partnerships by regulations made under the [Limited Liability Partnerships Act 2000](#).

### **Title of documents**

#### **4.**

### **2G-10**

(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.

### **2G-11**

(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 hearing centre, be issued out of the 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 2006 Act**

### **References to provisions of the 2006 Act in this Section**

#### **2G-12**

6.

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**

7.

#### **2G-13**

(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)**

8.

#### **2G-14**

(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 244 (Disclosure under court order of protected information)**

9.

#### **2G-15**

(1) This paragraph applies to an application for an order under [section 244](#).

(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)**

10.

## 2G-16

- (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)**

## 2G-17

11.

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)**

12.

## 2G-18

- (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 or 518 (Representations or statements made by the auditor)**

13.

## 2G-19

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

### **Proceedings under section 527 (Members' powers to require website**

**publication of audit concerns)**

14.

**2G-20**

- (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)**

15.

**2G-21**

- (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)**

**2G-22**

16.

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)****2G-23**

17.

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)**

18.

**2G-24**

- (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 III. Other applications****Applications under the EC Regulation—Article 25**

19.

**2G-25**

- (1) In this paragraph and paragraphs 20 and 21—
  - (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 [section 908 of the 2006 Act](#);

*expert's report* in relation to a company means a report to the members of the company drawn up in accordance with—

- (a) [section 909 of the 2006 Act](#); 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)

20.

### 2G-26

- (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

21.

### 2G-27

- (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](#), start such proceedings by way of 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

22.

### 2G-28

(1) In this paragraph and paragraphs 23 to 25 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

23.

### 2G-29

(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**

**24.**

**2G-30**

(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

25.

### 2G-31

- (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 CJPJA

26.

### 2G-32

- (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 [CJPJA](#); and
  - (b) references to a relevant interest in property have the same meaning as in [section 59 of the CJPJA](#).
- (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 IV. Conduct of proceedings**

### **Reduction of capital—evidence**

27.

#### **2G-33**

(1) 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 V. Miscellaneous

### Service of documents

#### 2G-34

28.

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

### Transitional provisions

#### 2G-35

29.

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.

## Commentary

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## Introduction

### 2G-38

Although not expressly stated to be the case (see para.2) it would appear that the Practice Direction supersedes all previous directions relating to applications under the Companies Acts and related legislation, the related legislation being that referred to in paras 1 and 2. Note, however, that para.5 explicitly refers to other practice directions and the transitional provisions made by para.29.

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## Companies Court

### 2G-39

Applications under the legislation covered by the Practice Direction should generally be made to the Companies Court where they are issued in the High Court. Note, however, that [s.1156 of the Companies Act 2006](#) contains a wider definition of “the court” than that contained in the [Companies Act 1985](#) and gives the county court an apparently unlimited jurisdiction in respect of proceedings brought under the Act.

As a result of the County Court at Central London acquiring both Companies Act jurisdiction (as aforesaid) and limited insolvency jurisdiction (as a result of a change to [r.7.11 of the Insolvency Rules 1986](#) effected by the [Insolvency \(Amendment\) Rules 2015 \(SI 2015/443\)](#)), after consultation with the registrars, the County Court and users, the following note has been agreed by the Chancellor as to the basis on which work previously done in the High Court may be transferred to the County Court at Central London:

*Note on listing and criteria for the transfer of work from the registrars to The County Court sitting in Central London*

The [Insolvency \(Amendment\) Rules 2015 \(SI 2015/443\)](#) have amended, with effect from April 6, 2015, [r.7.11 Insolvency Rules 1986](#) so as to allow the High Court in London to transfer certain cases to the County Court sitting at Central London. Following consultation with users and others, the Chancellor has agreed the following criteria which the registrars will apply when considering whether to retain a case in the High Court or transfer it to Central London.

- (1) All winding up petitions must be issued and listed for initial hearing in the Royal Courts of Justice sitting in the Rolls Building.
- (2) All bankruptcy petitions must be listed and allocated in accordance with [rule 6.9A Insolvency Rules 1986](#).
- (3) Save as provided above, all High Court proceedings which are to be listed before a registrar in accordance with the Practice Direction—Insolvency Proceedings will continue to be issued and listed in the Royal Courts of Justice sitting in the Rolls Building. In each case consideration will be given by a registrar at an appropriate stage to whether the proceedings should remain in the High Court or be transferred to the County Court sitting in Central London.
- (4) When deciding whether proceedings which have been issued in the High Court should be transferred to the County Court sitting in Central London, the registrar should have regard to the following factors:
  - (a) the complexity of the proceedings;

- (b) whether the proceedings raise new or controversial points of law;
- (c) the likely date and length of the hearing;
- (d) public interest in the proceedings;
- (e) (where it is ascertainable) the amount in issue in the proceedings.

(5) As a general rule, and subject to 4 (a)–(d) above, where the amount in issue in the proceedings is £100,000 or less, the proceedings should be transferred to the County Court sitting in Central London.

(6) Subject to paragraph 4 (a)–(e), the following will be transferred to be heard in the County Court sitting in Central London:

- (a) private examinations ordered to take place under [ss.236](#) or [366 Insolvency Act 1986](#) (but not necessarily the application for the private examination);
- (b) applications to extend the term of office of an administrator (para.76 [Sch.B1 Insolvency Act 1986](#));
- (c) applications for permission to distribute the prescribed part (para.65(3) [Sch.B1 Insolvency Act 1986](#));
- (d) applications to disqualify a director and applications for a bankruptcy restrictions order where it appears likely that an order will be made for a period not exceeding five years.

(7) With effect from 6 April 2015 the following proceedings will be issued and heard in the County Court sitting in Central London:

- (a) applications for the restoration of a company to the register ([s.1029ff. Companies Act 2006](#));
- (b) applications to extend the period allowed for the delivery of particulars relating to a charge ([s.859F Companies Act 2006](#));
- (c) applications to rectify the register by reason of omission or mis-statement in any statement or notice delivered to the registrar of companies ([s.859M Companies Act 2006](#)) or to replace an instrument or debenture delivered to the registrar of companies ([s.859N Companies Act 2006](#)).

Companies Court is not a separate and distinct part of the High Court but is a descriptive term given to the part of the Chancery Division of the High Court which deals with cases which are generally commenced before the bankruptcy registrar sitting in Companies Court from time to time, or in the



case of a District registry the district judge sitting in the equivalent capacity ([Re Shilena Hosiery Co Ltd \[1980\] Ch. 219](#)).

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## Commencing proceedings

### 2G-40

Proceedings should be commenced by [Pt.8](#) claim form unless provision is made to the contrary (para.5). However, the use of petitions is still envisaged, e.g. in the case of proceedings under [s.994 Companies Act 2006](#). Practitioners should note that Practice Direction 51O—The Electronic Working Pilot Scheme applies to companies proceedings issued in the Companies Court at the Rolls Building.

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## Issuing proceedings

### 2G-41

All applications and proceedings under the legislation covered by the Practice Direction are listed for directions or determination before the registrar (or district judge in a District Registry or the County Court) save for applications for injunctions. The majority of cases are heard and finally determined by the registrar. The following are always heard and tried by the judge: final hearings of applications to sanction a scheme of arrangement under the [Companies Act 2006](#) or the [Financial Services and Markets Act 2000](#); petitions under [s.994 Companies Act 2006](#); applications for injunctions.

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## Urgent applications

### 2G-42

Urgent applications to the registrar in Companies Court are now dealt with in the same way as urgent insolvency applications (see para.[3E-9](#), Practice Direction (Insolvency Proceedings), para.9).

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## Schemes, reductions and similar proceedings

### 2G-43

Arrangements for hearings of schemes and reductions (as well as those under the [Financial Services and Markets Act 2000](#) and the [Cross-Border Mergers Regulations 2007](#)) in the Royal Courts of Justice should be made with the Companies Court case manager, Rolls Building, Fetter Lane, London EC4A 1NL, to whom inquiries may also be made by telephone (020 7947 6727). Papers should be lodged *at least* five working days before the hearing.

The claim form should contain the information which would previously have been set out in the petition including the date of incorporation of the company, the company number, the name of the company and any change, the situation of the registered office, the objects, capital history, relevant provisions in the articles of association, relevant share rights, details of the necessary special resolution, the purpose of the reduction and the form of the minute. The relief sought should include an order dealing with any enquiry as to creditors and directions for the first advertisement (which is most conveniently put in the first paragraph of the relief sought).

On issue of the claim form the court will endorse it with the time and date of the first hearing before the registrar. At the first hearing the court will deal with any enquiry as to creditors and advertisement and adjourn the matter to be heard by the registrar in open court at a subsequent date which should have been agreed in advance with the court case manager.

No application notice is required. The claim will be adjourned after each hearing until the final order is made.

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## **Schemes of arrangement**

### **2G-44**

A claim form must be used. As not all the information required by the court for the final hearing will be available at the time of issue of the claim form a short form of claim will be accepted seeking an order convening the necessary meeting(s), directions in relation thereto, an order requiring the chairman to report the result of the meeting(s) to the court and sanction of the scheme at the final hearing before the judge. The claim form should also set out the directions sought as regards creditors where the scheme involves a reduction. A copy of the latest print of the scheme should be annexed to the claim form. The directions hearing is listed before the registrar.

As the claim form will no longer contain all the matters which would otherwise have been contained in a petition (details of the company and its capital history and so on), those matters should be set out in the evidence. The evidence filed for the final hearing before the judge should explain any differences between the scheme annexed to the claim form and that in respect of which the final order is sought. The evidence must also include the chairman's report of the result of the meeting(s).

As in the case of reductions no application notice is required. The claim will be adjourned after each hearing until the final order is made.

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## **Applications to extend time for registering a charge or to rectify an omission or mis-statement**

### **2G-45**

Note that with effect from 6 April 2015 the High Court in London no longer deals with these applications which should be issued and heard in the County Court in Central London (see the Note on listing and criteria for the transfer of work from the registrars to the County Court sitting in Central London (para.2G-39)).

The relevant provisions are to be found in [s.873 of the Companies Act 2006](#).

[Section 873](#) enables a party to apply for relief from the consequences of failing to register on time and omissions or misstatements of any particular with respect to a charge or in a memorandum of satisfaction to be rectified.

The claim form should identify the charge in relation to which relief is sought. The company will generally be the claimant in which case no other party need be joined in the proceedings or given notice. If the claimant is a party other than the company the company should be made a defendant and served with the proceedings.

The claim should be supported by evidence as to the circumstances under which the documents in question were not registered, setting out in detail the sequence of events surrounding the default. It must show that the omission to register (or mis-statement of any particulars) was (a) accidental or (b)

due to inadvertence (the nature of the inadvertence being set out) or (c) some other sufficient cause or (d) is not of a nature to prejudice the position of creditors or shareholders or (e) that there are other grounds on which it is just and equitable to grant relief. It should exhibit a copy of the document to be registered. Up-to-date evidence of solvency should be filed confirming that no winding-up order has been made or resolution for winding-up passed, and that no winding up petition is pending, that no notice of a resolution to wind up has been given, that the company is continuing to carry on business, and that no judgment has been given against the company which remains unsatisfied (*Boote Cold Storage, Re* [1901] WN 54; [Telomatic, Re](#) [1993] B.C.C. 404). Such evidence must be given by an officer of the company.

The original charge to be registered should be produced at the hearing.

In extending time the court will generally add to the order a provision that it is made without prejudice to the rights of any person acquired between the date of the creation of the charge and the date of its actual registration ([Re Joplin Brewery](#) [1902] 1 Ch 79; [Watson v Duff Morgan & Vermont \(Holdings\) Ltd](#) [1974] 1 All E.R. 794; [Re I. C. Johnson & Co](#) [1902] 2 Ch 101). For an exceptional case where the rights of intervening mortgagees were not preserved, see [Re Fablehill Ltd](#) [1991] B.C.L.C. 830.

The words in the order referred to above have been held not to put an unsecured creditor on the same footing as a debenture holder applying for an extension unless he has taken steps to enforce his debt or unless a winding up has intervened ([Re Ehrmann Bros.](#) [1906] 2 Ch 697) before actual registration ([Re Anglo Oriental Co](#) [1903] 1 Ch 914); but the court will not insert further words to protect unsecured creditors ([Re M. I. G. Trust Ltd](#) [1933] Ch 542, CA, affirmed in [Peat v Gresham Trust Ltd](#) [1934] A.C. 252).

As to the limits of the court's jurisdiction (e.g. to order the removal of unnecessary information) see [Re Calmex Ltd](#) [1989] 1 All E.R. 485; [1989] B.C.L.C. 299; [Igroup Ltd v Ocwen](#) [2003] EWHC 2431 (Ch); [2003] 4 All E.R. 1063 and in [Re Company \(No.7466 of 2003\)](#) [2004] EWHC 60. The court may, however, grant declaratory relief.

Where an order is sought for a declaration that a document wrongly filed on the register is of no effect the registrar of companies should be joined to and given notice of the proceedings.

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## Re Charles orders

### 2G-46

Where at the date of the making of the order a winding up is likely the order may reserve the right of the liquidator to apply to discharge the order within 21 days of commencement of the winding up if it occurred within a month of the making of the order ([Re L. H. Charles & Co](#) [1935] WN 15; [Exeter Trust Ltd v Screenways Ltd](#) [1991] B.C.L.C. 888). The order, if made, will extend time for registration (or rectification) but subject to a proviso "that the company, acting by any liquidator or administrator, or any unsecured creditor of the company shall be at liberty to apply to discharge or vary this order within [a period of time] after the commencement of any voluntary winding up of the company or any order for the winding up of the company" (or as the case may be). Such an order may be made where, exceptionally, there is no evidence of solvency ([Re Kris Cruisers Ltd](#) [1949] Ch 138). However, [Kris Cruisers Ltd](#) was not followed in [Re Ashpurton Estates Ltd](#) [1983] Ch 110; [1982] 3 All E.R. 665 in which it was held that imminent liquidation was a factor to be taken into account and that an order extending time should not be made after a company has gone into liquidation (see [Re Resinoid and Mica Products Ltd \(Note\)](#) [1983] Ch 132; [1982] 3 All ER 677, but cf. [R. M. Arnold & Co Ltd](#) [1984] B.C.L.C. 505 where the circumstances were exceptional; see also [Re Braemar Investments Ltd](#) [1988] 3 W.L.R. 596; [1988] B.C.L.C. 556, where the court ordered a motion by the liquidator to discharge the registrar's order extending time). In [Re Chantry House Developments plc](#) [1990] B.C.L.C. 813 the court made an order extending time, notwithstanding the company being in administrative receivership, but on an undertaking that the mortgagee would notify substantial unsecured creditors of the company within seven days of the making of the order and on terms that

they could apply within 14 days to discharge the order and that the mortgagee would abide by any order made in such circumstances. Generally, however, where insolvent liquidation seems inevitable the court should decline to extend time ([Re Barrow Borough Transport Ltd \[1989\] 3 W.L.R. 858](#) and [Re Telomatic Ltd \[1993\] B.C.C. 404](#)).

The court will only extend time; it will not decide whether or not documents require registration ([Re Cunard Steamship Co \[1908\] WN 160](#)).

In [Exeter Trust Ltd v Screenways Ltd \[1991\] B.C.L.C. 888](#) it was held that even if an order extending time was set aside the registrar of companies' certificate as to registration was conclusive evidence of the valid registration of the charge.

Following the decision in [Re Top Marques Car Rental Ltd \[2006\] EWHC 109 \(Ch\)](#), when making a *Re Charles* order the court will generally include the following provision:

“AND IT IS DIRECTED THAT the Registrar of Companies shall not issue a conclusive certificate of registration in respect of the [charge] until such time as the Registrar of Companies is satisfied that (1) no winding up or administration has commenced at the expiry of [28] days from the date of this order or (2) if a winding up or administration has commenced within [28] days from the date of this order no application has been made to vary or discharge this order by a liquidator or administrator within [56] days from the date of this order.”

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## Unfair Prejudice Applications (2006 Act Pt 30)

### 2G-46.1

Under provisions in [Pt 30 of the Companies Act 2006](#), a member of a company can bring proceedings on the grounds that the company is being run in a way that is unfairly prejudicial to the members as a whole or some part of them. Rule-making powers in the [Insolvency Act 1986 s.411](#) enable rules of court to be made for such proceedings.

The [Companies \(Unfair Prejudice Applications\) Proceedings Rules 2009 \(SI 2009/2469\)](#) were made in exercise of this power and apply to proceedings brought on or after October 1, 2009. [Rule 2\(1\)](#) states that “except so far as inconsistent with the [\[2006\] Act](#) and these Rules” the [CPR](#) apply to proceedings under [Pt 30](#) “with any necessary modifications”.

The proceedings are brought, not by claim form or by application notice, but by petition to the court. [Rule 3\(1\)](#) states that the petition shall be in the form set out in the Schedule to the Rules, “with such variations, if any, as the circumstances may require” (for text of Rules and the Schedule containing the form, see paras 2G-46.2 et seq. below).

Both the High Court and a county court have jurisdiction to hear an unfair prejudice petition (as to which see, generally, [ss.994– 999 Companies Act 2006](#)). Note, however, that the jurisdiction of the county court is limited to petitions concerning companies where the paid up share capital (or the share capital credited as paid up) does not exceed £120,000 (cf. [s.117 of the Insolvency Act 1986](#)). In practice it will rarely be appropriate to present a petition to a county court as it is unlikely that the court will have the necessary Chancery expertise.

The petition must specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and must be delivered to the court for filing with sufficient copies for service ([r.3\(2\)](#)). (The petitioner is not required to state the object of the company in the petition.)

The petitioner must, at least 14 days before the return day, serve a sealed copy of the petition on the

company ([r.4\(1\)](#)). In the case of a petition based upon [s.994 of the Act](#), the petitioner must also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition ([r.4\(2\)](#)).

Upon receipt of the petition, the court will fix a hearing for a day (“the return day”) on which, unless the court otherwise directs, the petitioner and any respondent (including the company) shall attend before the registrar or district judge for directions to be given in relation to the procedure on the petition ([r.3\(3\)](#)). And on fixing the return day, the court will return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing ([r.3\(4\)](#)).

[Rule 5](#) (Return of petition) states as follows:

“On the return day, or at any time after it, the court shall give such directions as it thinks appropriate with respect to the following matters—

- (a) service of the petition on any person, whether in connection with the time, date and place of a further hearing, or for any other purpose;
- (b) whether points of claim and defence are to be delivered;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge and in particular (but without prejudice to the generality of the above) as to—
  - (i) the taking of evidence wholly or in part by witness statement or orally;
  - (ii) the cross-examination of any persons making a witness statement;
  - (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition; and
- (f) such orders, if any, including a stay for any period, as the court thinks fit, with a view to mediation or other alternative dispute resolution.”

If the court considers that the order should be advertised, it shall give directions as to the manner and time of advertisement ([r.6](#)).

Following consultation with the Chancery Modernisation Review Implementation Committee and users, with effect from 1 May 2015 until further notice, in respect of any unfair prejudice petition issued in the High Court (Rolls Building) for initial hearing before a registrar, the court will give automatic directions in the form attached.

The rationale for doing so is as follows:

(a) in a significant number of cases the directions given on the first return date of the petition are in standard form and are often agreed; automatic directions may therefore save costs as well as court time;

(b) there can be no meaningful costs management until the issues between the parties have been defined, which requires, at least, an exchange of pleadings;

(c) the court cannot engage in meaningful costs management without having some regard to what the parties believe the value in issue in the proceedings might be; for that reason the directions require the parties to provide a nonbinding estimate of the value of the shares in issue.

The effectiveness of automatic directions will be reviewed from time to time, and any decision to continue to give automatic directions or revert to the previous practice of giving an initial return date before the court will be taken in the light of experience and any representations made by parties to unfair prejudice petitions or their advisers. Any comments or suggestions (whether positive or negative) should be sent to the chief registrar at [rcjcompanies.orders@hmcts.gsi.gov.uk](mailto:rcjcompanies.orders@hmcts.gsi.gov.uk).

No \_\_\_\_\_ of 2015

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

**IN THE MATTER OF [NAME OF COMPANY]**  
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

**BETWEEN**

[ ]

**Petitioner(s)**

**-and-**

[ ]

**Respondents**

**UPON THE PETITION** of the above named Petitioner(s) presented to the court on  
[insert date of presentation]

**OF ITS OWN MOTION THE COURT ORDERS:**

1. The Petitioner(s) serve the petition by 4.00 pm [insert date 14 days after date of issue];
2. the petition stand as points of claim;
3. the Respondent(s) (save for the company) file and serve points of defence by 4.00 pm [insert date 28 days after date in 1. above];
4. the Petitioner(s) file and serve points of reply (if so advised) by 4.00 pm [insert date 14 days after date in 3. above];
5. the petition be adjourned to [insert date 28 days after date in 4. above – 1 hour appointment]<sup>1</sup> for case management and (where appropriate) costs management<sup>1</sup>;
6. where there is to be costs management:
  - (a) the parties file and exchange costs budgets by 4.00 pm [21 days before hearing fixed by para 5 above];

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<sup>1</sup> The parties should presume that the court will engage in costs budgeting unless one of the exceptions provided for by the CPR applies. They should notify the court as soon as possible if the 1 hour time estimate is too long or too short.

- (b) the parties consider each other's costs budget(s) and by 4.00 pm [insert date 14 days before date in 5 above] identify to each other which phases in the other party's/parties' budget(s) are agreed and which are not agreed, in the latter case giving brief reasons and suggested alternative figures;
  - (c) by 4.00 pm [7 days before hearing fixed by para 5 above] the Petitioner's solicitors file and serve:
    - (i) confirmation that all phases in the budgets are agreed; or
    - (ii) a one page summary in tabular form setting out the figures for the phases in the budgets indicating which phases have been agreed and which have not been agreed together with a summary of the reasons for disagreement and suggested alternative figures;
  - (d) the parties file and serve in the form below a non-binding indication of what they believe to be the approximate value of the shares in issue in the petition by 4.00 pm [insert date 7 days before the date in 5];
7. the parties be permitted to vary the above orders by consent so as to extend any period provided for by no more than 28 days (the court to be notified so that the hearing fixed by paragraph 5 can be vacated and re-fixed) or to apply to the court to vary the foregoing;
8. costs be in the petition.

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**Estimate of value**

For the purpose of the hearing mentioned in paragraph 6 of the order dated [ ] I/we put the following non-binding estimate on the value of the shares in issue in this petition on [insert date(s) ]: £

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Petitioner/petitioner's solicitors/Respondent/respondent's solicitors

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Commentary last updated December 1, 2015

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