

## STATUTORY INSTRUMENTS

# 2002 No. 3150

## The Company Directors Disqualification (Northern Ireland) Order 2002

### *Disqualification for unfitness*

#### **Duty of High Court to disqualify unfit directors of insolvent companies**

9.—(1) The High Court shall make a disqualification order against a person in any case where, on an application under this Article, it is satisfied—

- (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
- (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of [<sup>F1</sup>one or more other companies or overseas companies] ) makes him unfit to be concerned in the management of a company.

[<sup>F2</sup>(1A) In this Article references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.]

(2) For the purposes of this Article <sup>F3</sup>..., a company becomes insolvent if—

- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

[<sup>F4</sup>(b) the company enters administration, or]

- (c) an administrative receiver of the company is appointed;

<sup>F5</sup>...

[<sup>F6</sup>(2A) For the purposes of this Article, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction.

(2B) In this Article and Article 10, “director” includes a shadow director.]

(3) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

**F1** Words in art. 9(1)(b) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 3\(2\)\(a\)](#); S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

**F2** Art. 9(1A) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 3\(2\)\(b\)](#); S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

**F3** Words in art. 9(2) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 9\(8\)](#); S.I. 2015/1689, reg. 2(h)

**F4** Art. 9(2)(b) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005](#) (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 63; S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2-7)

**F5** Words in art. 9(2) omitted (1.10.2015) by virtue of [Small Business, Enterprise and Employment Act 2015](#) (c. 26), s. 164(1), [Sch. 8 para. 3\(2\)\(c\)](#); S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

**Status:** Point in time view as at 01/10/2015.

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**F6** Art. 9(2A)(2B) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(2)(d)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

**Modifications etc. (not altering text)**

**C1** Art. 9 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2))

**C2** Art. 9(2) applied (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 4(3)**; S.I. 2015/1689, reg. 2(h)

**Disqualification order or undertaking; and reporting provisions**

**10.—(1)** If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made—

- (a) by the Department, or
- (b) if the Department so directs in the case of a person who is or has been a director of a company which is being, or has been, wound up by the High Court, by the official receiver.

(2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person shall not be made after the expiration of [<sup>F7</sup>3 years] from the day on which the company of which that person is or has been a director became insolvent.

(3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).

(4) If it appears to the office-holder responsible under this Article, that is to say—

- (a) in the case of a company which is being wound up by the High Court, the official receiver,
- (b) in the case of a company which is being wound up otherwise, the liquidator,
- [<sup>F8</sup>(c) in the case of a company which is in administration, the administrator, or]
- (d) in the case of a company of which there is an administrative receiver, that receiver,

that the conditions mentioned in Article 9(1) are satisfied as respects a person who is or has been a director of that company, the office-holder shall forthwith report the matter to the Department.

(5) The Department or the official receiver may require the liquidator, administrator or administrative receiver of a company, or the former liquidator, administrator or administrative receiver of a company—

- (a) to furnish the Department or, as the case may be, the official receiver with such information with respect to any person's conduct as a director of the company, and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

[<sup>F9</sup>(6) Paragraphs (1A) and (2) of Article 9 apply for the purposes of this Article as they apply for the purposes of that Article.]

**F7** Words in art. 10(2) substituted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 4(1)** (with Sch. 8 para. 4(2)); S.I. 2015/1689, reg. 2(h)

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- F8** Art. 10(4)(c) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 64; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F9** Art. 10(6) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 9(9)**; S.I. 2015/1689, reg. 2(h)

**Modifications etc. (not altering text)**

- C3** Art. 10 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399)), {reg. 21(4)} (with reg. 2))

**[<sup>F10</sup>Disqualification of director on finding of unfitness]**

**11.—(1)** If it appears to the Department <sup>F11</sup>... that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, the Department may apply to the High Court for such an order.

<sup>F12</sup>(2) .....

(3) Where it appears to the Department <sup>F13</sup>... that, in the case of a person who has offered to give the Department a disqualification undertaking—

- (a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director [<sup>F14</sup>(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies),] makes him unfit to be concerned in the management of a company, and
- (b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

the Department may accept the undertaking.

(4) The High Court may make a disqualification order against a person where, on an application under this Article, it is satisfied that his conduct in relation to the company [<sup>F15</sup>(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies)] makes him unfit to be concerned in the management of a company.

[<sup>F16</sup>(4A) Paragraph (1A) of Article 9 applies for the purposes of this Article as it applies for the purposes of that Article.]

(5) The maximum period of disqualification under this Article is 15 years.

- F10** Art. 11 heading substituted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(3)**; S.I. 2015/1689, reg. 2(h)
- F11** Words in art. 11(1) omitted (1.10.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(2)(a)**; S.I. 2015/1689, reg. 2(h)
- F12** Art. 11(2) omitted (1.10.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(2)(b)**; S.I. 2015/1689, reg. 2(h)
- F13** Words in art. 11(3) omitted (1.10.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 6(2)(c)**; S.I. 2015/1689, reg. 2(h)
- F14** Words in art. 11(3)(a) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(a)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)
- F15** Words in art. 11(4) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(b)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)
- F16** Art. 11(4A) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 8 para. 3(3)(c)**; S.I. 2015/1689, reg. 2(h) (with Sch. paras. 5-8)

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- C4** Art. 11 applied by S.I. 1989/638, **reg. 20(2)** (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#)), {reg. 21(4)} (with reg. 2))

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