
STATUTORY INSTRUMENTS

2009 No. 2469

**INSOLVENCY
COMPANIES**

**The Companies (Unfair Prejudice
Applications) Proceedings Rules 2009**

Made - - - - 8th September 2009
Laid before Parliament 9th September 2009
Coming into force - - 1st October 2009

The Lord Chancellor has consulted the Committee existing for the purposes of section 413 of the Insolvency Act 1986⁽¹⁾.

The Lord Chancellor, in the exercise of his powers under section 411 of the Insolvency Act 1986⁽²⁾, with the concurrence of the Secretary of State, and of the Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the Insolvency Act 1986) in relation to those rules that affect court procedure, makes the following Rules.

Citation, commencement, interpretation and revocation

1.—(1) These Rules may be cited as the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 and come into force on 1st October 2009.

(2) In these Rules “the Act” means the Companies Act 2006.

(3) The Companies (Unfair Prejudice Applications) Proceedings Rules 1986⁽³⁾ (“the 1986 Rules”) are hereby revoked.

Preliminary

2.—(1) These Rules apply in relation to petitions presented to the court under Part 30 of the Act (protection of company’s members against unfair prejudice) by a member of a company under section 994(1), by a person treated as a member under section 994(2) or by the Secretary of State under section 995.

(1) 1986 c.45. Sections 411 and 413 were amended by the Constitutional Reform Act 2005 (c.4), section 15 and Schedule 4, paragraphs 185, 188 and 190.
(2) Section 997 of the Companies Act 2006 applies section 411 of the Insolvency Act 1986 for the purposes of a petition under Part 30 of the former Act.
(3) S.I. 1986/2000.

(2) Except so far as inconsistent with the Act and these Rules, the Civil Procedure Rules 1998 (4) apply to proceedings under Part 30 of the Act with any necessary modifications.

Presentation of petition

3.—(1) The petition shall be in the form set out in the Schedule to these Rules, with such variations, if any, as the circumstances may require.

(2) The petition shall specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and shall be delivered to the court for filing with sufficient copies for service under Rule 4.

(3) The court shall 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.

(4) On fixing the return day, the court shall return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing.

Service of petition

4.—(1) The petitioner shall, at least 14 days before the return day, serve a sealed copy of the petition on the company.

(2) In the case of a petition based upon section 994 of the Act, the petitioner shall also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

Return of petition

5. 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.

Advertisement of the order

6. If the court considers that the order should be advertised, it shall give directions as to the manner and time of advertisement.

Transitional provision

7. These Rules shall not apply, and the provisions of the 1986 Rules shall continue to apply, to any petition presented to the court under Part XVII of the Companies Act 1985(5) before 1st October 2009.

Signed by the authority of the Lord Chancellor

3rd September 2009

Bach
Parliamentary Under Secretary of State
Ministry of Justice

I concur

7th September 2009

The Rt Hon Sir Andrew Morritt
The Chancellor of the High Court

I concur, on behalf of the Secretary of State

8th September 2009

Davies of Abersoch
Minister for Trade, Investment and Business
Department for Business, Innovation and Skills

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Rule 3

Petition on Ground that Members Unfairly Prejudiced

(a) Insert title of court To (a).....

(b) Insert full name(s) and address(es) of petitioner(s) The petition of (b).....

(c) Insert full name and registered no. of company subject to petition 1. (c).....
 ("the company") was incorporated on

(d) Insert date of incorporation (d).....
 under the Companies Act

(e) Insert address of registered office 2. The registered office of the company is at (e).....

(f) Insert amount of nominal capital and how it is divided 3. The nominal capital of the company is (f) £.....
 divided into..... shares of £..... each. The amount of the capital paid up or credited as paid up is (g) £.....

(g) Insert amount of capital paid up or credited as paid up The petitioner is the holder of shares of £..... each

4. The principal business which is carried on by the company is:

(h) Set out the grounds on which the petition is presented 5. (h).....

Delete as applicable In these circumstances your petitioner submits that the affairs of the company are being conducted in a manner which is unfairly prejudicial to the interests of [some part of the members (including your petitioner)]/[your petitioner].

or

Delete as applicable [The act or omission]/[the proposed act or omission] referred to in part 5 above [is]/[would be] unfairly prejudicial to the interests of [some part of the members (including your petitioner)]/[your petitioner].

(i) Set out the nature of the relief sought The petitioner therefore prays as follows:
 (i).....

or

that such other order may be made as the court thinks fit.

Insert the name or names of the intended respondents It is intended to serve this petition on.....

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Endorsement to be completed by the court
This petition having been presented to the court on..... all parties should attend before [The Registrar]/[District Judge] on
(Date)..... at
(Time).....hours
(Place).....
for directions to be given.
The solicitor(s) for the petitioner is/are:-
Name.....
Address.....
.....
Telephone No:
Reference.....
[Whose Agents are:-
Name.....
Address.....
.....]

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for the form, procedure for presentation, service and return of the petition to be used in connection with an application to court in England and Wales under section 994 or 995 of the Companies Act 2006 (c.46) (application for order on grounds of unfair prejudice). They revoke the Companies (Unfair Prejudice Applications) Proceedings Rules 1986 (S.I. 1986/2000), subject to a transitional provision for petitions commenced before 1st October 2009.

The form of petition is set out in the Schedule.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.