

Compensation Orders against Disqualified Directors (S15A Company Directors Disqualification Act 1986)



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Fact Sheet

Introduction

As from 1st October 2016 it will be possible for the Secretary of State, in addition to seeking a disqualification order, to apply to the court for an order that the director should pay compensation for the losses which he has caused to the creditors of the insolvent company or in the alternative seek an undertaking to pay a corresponding amount to the Secretary of State.

Causation

Causation will be limited to the conduct for which disqualification is ordered or an undertaking is given.

Time Limits

If The Secretary of State must make such an application before the expiry of 2 years from the date of the disqualification order/ acceptance of an undertaking

Amount of Compensation

In arriving at a figure the court or The Secretary of State, in the case of an undertaking, must have regard to:

- the amount of the loss
- the directors conduct
- the contributions made by the director as recompense for his conduct

Beneficiaries of a compensation order

The order may specify:

- particular creditor(s)
- a class of creditor or
- require a contribution to assets

Variation or revocation of compensation undertakings

The court has power to reduce the amount payable or order it to be revoked

Procedure

This is set out in S. 1. 2016/890 which amongst other things provides :

- Proceedings must be made by claim form and use the CPR8 procedure.
- The claim must be supported by affidavits or witness statements specifying specific details particularly in relation to the loss alleged to have been caused by the conduct.

Summary:

This new extension to orders and undertakings relating to the disqualification of directors is likely to be the subject of heavily contested litigation particularly in the areas of the cause of the loss being attributed to the director, the amount of the loss and the amount of compensation that a director should be ordered to pay.

One may take the cynical view that this has been primarily designed as a fast track route to help HMRC recover tax arrears, to the exclusion of the general body of creditors, particularly in cases where there has been a disqualification for retention of crown monies. If this is correct then one can see many battles over the calculation of the arrears and penalties.

Interestingly in the case of Liquidation, the Liquidator appears to have no standing to support or object to the order sought or the amount claimed. It also raises the question of what happens if he has already commenced proceedings against a director for an order that he or she contributes to the assets of the company for e.g. wrongful trading or misfeasance. Does the Liquidator have to stand aside or abandon his claim?

From a costs standpoint the disqualification and compensation claims should be made at the same time. A subsequent compensation claim by the Secretary of State resulting in two hearings and a great deal of duplication, may well result in him being unable to recover his costs.



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