

**《公司 (董事資格的取消) 法律程序規則》**  
**(第 32 章，附屬法例 K)**  
**Companies (Disqualification of Directors) Proceedings Rules**  
**(Cap. 32 sub. leg. K)**

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### 制定史

本為 1994 年第 427 號法律公告 —— 1995 年第 (C)52 號法律公告 (中文真確本)，1998 年第 25 號，2005 年第 10 號，2012 年第 28 號，2019 年第 1 號編輯修訂紀錄

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## 《公司 (董事資格的取消) 法律程序規則》

## (第 32 章，附屬法例 K)

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## Companies (Disqualification of Directors) Proceedings Rules

## (Cap. 32 sub. leg. K)

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## 《公司 (董事資格的取消) 法律程序規則》

(第 32 章第 168S(1) 條)

(略去制定語式條文——2019 年第號 1 編輯修訂紀錄)

[1994 年 7 月 15 日]

(格式變更——2019 年第號 1 編輯修訂紀錄)

### 1. 釋義

在本規則中——

**司法常務官** (Registrar) 指高等法院的司法常務官，並包括高等法院任何高級副司法常務官、副司法常務官或助理司法常務官。(2005 年第 10 號第 174 條)

### 2. 適用範圍

本規則適用於本條例第 168P(1) 條所適用的取消資格令的申請，但該項申請須屬在本規則生效 \* 之日或之後提出者。

編輯附註：

\* 生效日期：1994 年 7 月 15 日。

### 3. 申請表格

本規則所適用的申請，須藉原訴傳票 (即《高等法院規則》(第 4 章，附屬法例 A) 附錄 A 內第 10 號表格，並加以適當的改動) 向法院提出，而《高等法院規則》(第 4 章，附屬法例 A) 即據此適用，但本規則訂立具抵觸效果的條文則除外。

(1998 年第 25 號第 2 條)

## Companies (Disqualification of Directors) Proceedings Rules

(Cap. 32, section 168S(1))

(Enacting provision omitted—E.R. 1 of 2019)

[15 July 1994]

(Format changes—E.R. 1 of 2019)

### 1. Interpretation

In these Rules—

**Registrar** (司法常務官) means the Registrar of the High Court and includes a senior deputy registrar, deputy registrar or assistant registrar of the High Court. (10 of 2005 s. 174)

### 2. Application

These Rules apply with respect to an application for a disqualification order to which section 168P(1) of the Ordinance applies, where made on or after the date on which these Rules come into force\*.

Editorial Note:

\* Commencement date: 15 July 1994.

### 3. Form of application

An application to which these Rules apply shall be made to the court by originating summons (Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A), with such adaptation as may be appropriate), and the Rules of the High Court (Cap. 4 sub. leg. A) apply accordingly, except where these Rules make provision to inconsistent effect.

**4. 針對答辯人的證據**

- (1) 當傳票發出時，須向法院提交支持申請取消資格令的證據；而證據的文本須連同傳票送達答辯人。
- (2) 證據須為 1 份或多於 1 份誓章，但如申請人為破產管理署署長，則證據可採用 1 份或多於 1 份書面報告的形式(可附連或不附連其他人所作的誓章)，而該等書面報告須視為猶如已由破產管理署署長藉誓章核實一樣，並為其內所載的任何事項的表面證據。
- (3) 在一項根據本條例第 168I(1) 條或《公司條例》(第 622 章)第 879(6) 條提出的申請中，誓章內或(視屬何情況而定)破產管理署署長的報告內，須就答辯人被指稱不適宜關涉任何公司的管理所參照的事宜作出陳述。(2012 年第 28 號第 912 及 920 條)

**5. 傳票上的批註**

傳票上須註明提供予答辯人的下述資料——

- (a) 述明此項申請是按照本規則提出的；
- (b) 提出此項申請所根據的條文所訂的最長取消資格期及最短取消資格期(如適用的話)；
- (c) 述明此項取消資格令的申請可按照本規則循簡易程序聆訊及裁定，而無須進一步通知或另行通知答辯人，並且述明假如此項申請如此聆訊及裁定，則法院可判處最長達 5 年的取消資格期；
- (d) 述明法院在聆訊此項申請時，如憑着當時在庭上所提出的證據，擬在答辯人的案件中判處長於 5 年的

(25 of 1998 s. 2)

**4. The case against the respondent**

- (1) There shall, at the time when the summons is issued, be filed in court evidence in support of the application for a disqualification order; and copies of the evidence shall be served with the summons on the respondent.
- (2) The evidence shall be by one or more affidavits, except where the applicant is the Official Receiver, in which case it may be in the form of one or more written reports (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.
- (3) In an application made under section 168I(1) of the Ordinance or section 879(6) of the Companies Ordinance (Cap. 622), there shall in the affidavit or affidavits or (as the case may be) the Official Receiver's report or reports (as the case may be) be included a statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company. (28 of 2012 ss. 912 & 920)

**5. Endorsement on summons**

There shall on the summons be endorsed information to the respondent as follows—

- (a) that the application is made in accordance with these Rules;
- (b) the maximum, and minimum if applicable, period of disqualification under the section under which the application is made;
- (c) that the application for a disqualification order may, in accordance with these Rules, be heard and determined summarily, without further or other notice to the

取消資格期，則不會在該次聆訊中作出取消資格令，但會將該項申請押後，在另行通知的較後日期進行聆訊(連同任何其他證據)；及

- (e) 述明答辯人如有任何證據，意欲法院加以考慮，必須按照根據第 7 條訂明的期限提交法院(第 7 條的條文須載於傳票上)。

## 6. 送達與確認

- (1) 傳票須藉郵遞方式送往答辯人最後所知的地址而送達答辯人；除非相反證明成立，否則送達日期須當作為傳票投寄後的第 7 日。
- (2) 凡法院所發出的任何法律程序文件、命令或其他文件根據在本規則規限下的法律程序須送達任何不在香港的人，法院可命令將該法律程序文件、命令或其他文件，在其認為合適的時間內，以其認為合適的方式送達該人，並可要求提供其認為合適的送達證明。
- (3) 送達答辯人的傳票，須附有確認送達的表格，該表格須由答辯人在送達日期起計 14 天內交回法院，而就此而言，有關確認送達的法院慣例和程序，乃適用於根據本規則在法院申請一項命令的情況，例外的是凡提述《高等法院規則》(第 4 章，附屬法例 A) 附錄 A 第 15 號表格之處，乃指藉本規則修改後的表格。(1998 年第 25 號第 2 條)
- (4) 確認送達的表格須因應情況述明答辯人應表明——

respondent, and that, if it is so heard and determined, the court may impose disqualification for a period of up to 5 years;

- (d) that if at the hearing of the application the court, on the evidence then before it, is minded to impose, in the respondent's case, disqualification for any period longer than 5 years, it will not make a disqualification order on that occasion but will adjourn the application to be heard (with further evidence, if any) at a later date to be notified; and
- (e) that any evidence which the respondent wishes to be taken into consideration by the court must be filed in court in accordance with the time limits imposed under rule 7 (the provisions of which shall be set out on the summons).

## 6. Service and acknowledgment

- (1) The summons shall be served on the respondent by sending it by post to his last known address; and the date of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the summons was posted.
- (2) Where any process or order of the court or other document is required under proceedings subject to these Rules to be served on any person who is not in Hong Kong, the court may order service on him of that process or order or other document to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.
- (3) The summons served on the respondent shall be accompanied by a form of acknowledgment of service, to be returned by him to the court within 14 days from the date of service, and for this purpose the practice and procedure of the court relating to acknowledgments of service shall apply to an

- (a) 其本人是否以下述理由對此項申請提出爭議——
- (i) 當其本人或其他人在公司方面的行為操守受到質疑時，其本人既非該公司的董事、幕後董事、高級人員或清盤人，亦非公司財產的接管人或經理人；或
  - (ii) 其作為上述董事、幕後董事、高級人員、清盤人、接管人或經理人的行為操守，並非如所指稱般支持一項取消資格令的申請；(2012 年第 28 號第 912 及 920 條)
- (b) (如屬其本人的行為操守)，其本人對上述行為操守使其不適宜關涉公司的管理的指控，是否提出爭辯；及
- (c) 其本人雖然並不對取消資格令的申請作出抗辯，但是否意圖提出減輕刑罰的因素藉以說明只判短的取消資格期是有根據的。

## 7. 證據

- (1) 答辯人須在傳票送達日期起計 28 天內，將意欲法院加以考慮的反對申請的誓章證據提交法院，並須立即將該份證據的文本送達申請人。
- (2) 申請人須在接獲答辯人的證據的文本後 21 天內，將意欲法院加以考慮的其他答覆證據提交法院，並須立即將該份證據的文本送達答辯人。

- application for an order under these Rules in the court, save that any reference to Form No. 15 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A) shall relate to the form as modified by these Rules. (25 of 1998 s. 2)
- (4) The form of acknowledgment of service shall, where appropriate, state that the respondent should indicate—
- (a) whether he contests the application on the grounds that, in the case of any particular company—
    - (i) he was not a director, shadow director, officer or liquidator of the company, and neither was he a receiver or manager of its property, at a time when conduct of his, or of other persons, in relation to that company is in question; or
    - (ii) his conduct as such director, shadow director, officer, liquidator, receiver or manager was not as alleged in support of the application for a disqualification order;
  - (b) whether, in the case of any conduct of his, he disputes the allegation that such conduct makes him unfit to be concerned in the management of a company; and
  - (c) whether he, while not resisting the application for a disqualification order, intends to adduce mitigating factors with a view to justifying only a short period of disqualification.

## 7. Evidence

- (1) The respondent shall, within 28 days from the date of service of the summons, file in court any affidavit evidence in opposition to the application he wishes the court to take into consideration and shall forthwith serve upon the applicant a copy of such evidence.



**8. 申請的聆訊**

- (1) 為聆訊申請而編定的日期，由傳票發出日期起計，不得少於 8 個星期。
- (2) 有關聆訊須先行於公開法庭在司法常務官席前進行。
- (3) 司法常務官須於編定的日期裁定該案件或將案件押後。
- (4) 在下述情況，司法常務官須將案件押後以作進一步考慮——
  - (a) 如司法常務官得出初步結論，認為應當作出一項取消資格令，而且認為長於 5 年的取消資格期是適當的；或
  - (b) 司法常務官認為有不適宜循簡易程序裁定的法律問題或事實問題產生。
- (5) 司法常務官如將案件押後以作進一步考慮，則須——
  - (a) 指示案件是否由司法常務官聆訊，或(如司法常務官認為適當)由法官聆訊，以便由其本人作出裁定；*(1998 年第 25 號第 2 條)*
  - (b) 述明押後的原因；及
  - (c) 就下述事項作出指示——
    - (i) 向答辯人發出押後通知並述明押後原因的方式及時限；
    - (ii) 由有關各方向法院提交其他證據(如有的話)，以及送達其他證據(如有的話)；
    - (iii) 司法常務官認為對迅速處置申請乃屬必需或合宜的事項；及
    - (iv) 經押後聆訊的時間和地點。

- (2) The applicant shall, within 21 days from receiving the copy of the respondent's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall forthwith serve a copy of that evidence upon the respondent.

**8. The hearing of the application**

- (1) The date fixed for the hearing of the application shall be not less than 8 weeks from the date of issue of the summons.
- (2) The hearing shall in the first instance be before the Registrar in open court.
- (3) The Registrar shall either determine the case on the date fixed or adjourn it.
- (4) The Registrar shall adjourn the case for further consideration if—
  - (a) he forms the provisional opinion that a disqualification order ought to be made, and that a period of disqualification longer than 5 years is appropriate; or
  - (b) he is of opinion that questions of law or fact arise which are not suitable for summary determination.
- (5) If the Registrar adjourns the case for further consideration he shall—
  - (a) direct whether the case is to be heard by a Registrar or, if he thinks it appropriate, by a judge, for determination by him;
  - (b) state the reasons for the adjournment; and
  - (c) give directions as to the following matters—
    - (i) the manner in which and the time within which notice of the adjournment and the reasons for it are to be given to the respondent;



- (6) 凡案件押後交由法官以外的人審理，該案件可由最初處理該案件的司法常務官聆訊，或由另一名司法常務官聆訊。（1998 年第 25 號第 2 條）

## 9. 取消資格令的作出及作廢

- (1) 法院可作出一項針對答辯人的取消資格令，不論該人可否出庭，亦不論該人有否填寫及交回傳票送達認收書，或按照第 7 條將證據提交。
- (2) 在答辯人缺席的情況下作出的取消資格令，可被法院按其認為公正的條款予以作廢或更改。

## 10. 取消資格令的生效日期

除非法院另作命令，否則一項取消資格令乃於該項命令作出之日起計第 21 天開始生效。

- (ii) the filing in court and the service of further evidence (if any) by the parties;
  - (iii) such other matters as the Registrar thinks necessary or expedient with a view to an expeditious disposal of the application; and
  - (iv) the time and place of the adjourned hearing.
- (6) Where a case is adjourned other than to a judge, it may be heard by the Registrar who originally dealt with the case or by another Registrar.

## 9. Making and setting aside of disqualification order

- (1) The court may make a disqualification order against the respondent, whether or not the latter appears, and whether or not he had completed and returned the acknowledgment of service of the summons, or filed evidence in accordance with rule 7.
- (2) Any disqualification order made in the absence of the respondent may be set aside or varied by the court on such terms as it thinks just.

## 10. Commencement of disqualification order

Unless the court otherwise orders, a disqualification order takes effect at the beginning of the 21st day after the day on which the order is made.