''(2)(A) there is pending a foreign proceeding; and

''(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.''

1991—Subsec. (c). Pub. L. 102–198 substituted ''title 28'' for ''this title'' in two places.

1990—Subsec. (c). Pub. L. 101–650 inserted before period at end ''by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303 or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303 or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2561; Pub. L. 109–8, title VIII, § 802(d)(5), Apr. 20, 2005, 119 Stat. 146.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

Section 306 permits a foreign representative that is seeking dismissal or suspension under section 305 of an ancillary case or that is appearing in connection with a petition under section 303 or 304 to appear without subjecting himself to the jurisdiction of any other court in the United States, including State courts. The protection is necessary to allow the foreign representative to present his case and the case of the foreign estate, without waiving the normal jurisdictional rules of the foreign country. That is, creditors in this country will still have to seek redress against the foreign estate according to the host country's jurisdictional rules. Any other result would permit local creditors to obtain unfair advantage by filing an involuntary case, thus requiring the foreign representative to appear, and then obtaining local jurisdiction over the representative in connection with his appearance in this country. That kind of bankruptcy law would legalize an ambush technique that has frequently been rejected by the common law in other contexts.

However, the bankruptcy court is permitted under section 306 to condition any relief under section 303, 304, or 305 on the compliance by the foreign representative with the orders of the bankruptcy court. The last provision is not carte blanche to the bankruptcy court to require the foreign representative to submit to jurisdiction in other courts contrary to the general policy of the section. It is designed to enable the bankruptcy court to enforce its own orders that are necessary to the appropriate relief granted under section 303, 304, or 305.

AMENDMENTS

2005—Pub. L. 109–8 struck out '', 304,'' after ''section 303'' in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

§ 307. United States trustee

The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.

(Added Pub. L. 99–554, title II, § 205(a), Oct. 27, 1986, 100 Stat. 3098.)

EFFECTIVE DATE

Effective date and applicability of section dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

STANDING AND AUTHORITY OF BANKRUPTCY ADMINISTRATOR

Pub. L. 101–650, title III, § 317(b), Dec. 1, 1990, 104 Stat. 5115, provided that: ''A bankruptcy administrator may raise and may appear and be heard on any issue in any case under title 11, United States Code, but may not file a plan pursuant to section 1121(c) of such title.''

§ 308. Debtor reporting requirements

(a) For purposes of this section, the term ''profitability'' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

(b) A small business debtor shall file periodic financial and other reports containing information including—

(1) the debtor's profitability;

(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

(4)(A) whether the debtor is—

(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.

(Added Pub. L. 109–8, title IV, § 434(a)(1), Apr. 20, 2005, 119 Stat. 111.)

REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b)(4)(A)(i), are set out in the Appendix to this title.

EFFECTIVE DATE

Pub. L. 109–8, title IV, § 434(b), Apr. 20, 2005, 119 Stat. 111, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish

forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a) [See Bankruptcy Form No. 25C, eff. Dec. 1, 2008, set out in the Appendix to this title].''

SUBCHAPTER II—OFFICERS

§ 321. Eligibility to serve as trustee

(a) A person may serve as trustee in a case under this title only if such person is—

(1) an individual that is competent to perform the duties of trustee and, in a case under chapter 7, 12, or 13 of this title, resides or has an office in the judicial district within which the case is pending, or in any judicial district adjacent to such district; or

(2) a corporation authorized by such corporation's charter or bylaws to act as trustee, and, in a case under chapter 7, 12, or 13 of this title, having an office in at least one of such districts.

(b) A person that has served as an examiner in the case may not serve as trustee in the case.

(c) The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case if necessary.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2561; Pub. L. 98–353, title III, § 428, July 10, 1984, 98 Stat. 369; Pub. L. 99–554, title II, §§ 206, 257(c), Oct. 27, 1986, 100 Stat. 3098, 3114.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 321 indicates that an examiner may not serve as a trustee in the case.

SENATE REPORT NO. 95–989

Section 321 is adapted from current Bankruptcy Act § 45 [section 73 of former title 11] and Bankruptcy Rule 209. Subsection (a) specifies that an individual may serve as trustee in a bankruptcy case only if he is competent to perform the duties of trustee and resides or has an office in the judicial district within which the case is pending, or in an adjacent judicial district. A corporation must be authorized by its charter or bylaws to act as trustee, and, for chapter 7 or 13 cases, must have an office in any of the above mentioned judicial districts.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–554, § 257(c), inserted reference to chapter 12 in two places.

Subsec. (c). Pub. L. 99–554, § 206, added subsec. (c).

1984—Subsec. (b). Pub. L. 98–353 substituted ''the case'' for ''a case'' after ''an examiner in''.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by section 206 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 257 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

§ 322. Qualification of trustee

(a) Except as provided in subsection (b)(1), a person selected under section 701, 702, 703, 1104, 1163, 1202, or 1302 of this title to serve as trustee in a case under this title qualifies if before seven days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(b)(1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

(2) The United States trustee shall determine—

(A) the amount of a bond required to be filed under subsection (a) of this section; and

(B) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2562; Pub. L. 98–353, title III, § 429, July 10, 1984, 98 Stat. 369; Pub. L. 99–554, title II, §§ 207, 257(d), Oct. 27, 1986, 100 Stat. 3098, 3114; Pub. L. 103–394, title V, § 501(d)(3), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 111–16, § 2(2), May 7, 2009, 123 Stat. 1607.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 322(a) is modified to include a trustee serving in a railroad reorganization under subchapter IV of chapter 11.

SENATE REPORT NO. 95–989

A trustee qualifies in a case by filing, within five days after selection, a bond in favor of the United States, conditioned on the faithful performance of his official duties. This section is derived from the Bankruptcy Act section 50b [section 78(b) of former title 11]. The court is required to determine the amount of the bond and the sufficiency of the surety on the bond. Subsection (c), derived from Bankruptcy Act section 50i [section 78(i) of former title 11], relieves the trustee from personal liability and from liability on his bond for any penalty or forfeiture incurred by the debtor. Subsection (d), derived from section 50m [section 78(m) of former title 11], fixes a two-year statute of limitations on any action on a trustee's bond. Finally, subsection (e) dispenses with the bonding requirement for the United States trustee.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–16 substituted ''seven days'' for ''five days''.

1994—Subsec. (a). Pub. L. 103–394 substituted ''1202, or 1302'' for ''1302, or 1202''.

1986—Subsec. (a). Pub. L. 99–554, § 257(d), inserted reference to section 1202 of this title.

Pub. L. 99–554, § 207(1), substituted ''Except as provided in subsection (b)(1), a person'' for ''A person''.

Subsec. (b). Pub. L. 99–554, § 207(2), amended subsec. (b) generally, adding par. (1), designating existing provisions as par. (2), substituting ''The United States trustee'' for ''The court'', ''(A) the amount'' for ''(1) the amount'', and ''(B) the sufficiency'' for ''(2) the sufficiency''.

1984—Subsec. (b)(1). Pub. L. 98–353 inserted ''required to be''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of this title.