

SCHEDULE 8

Article 16

MODIFIED PROVISIONS OF COMPANY DIRECTORS  
DISQUALIFICATION ACT 1986 FOR THE PURPOSES OF ARTICLE 16

The following provisions of the Company Directors Disqualification Act 1986<sup>(1)</sup> are modified so as to read as follows—

**“Section 6: Duty of court to disqualify unfit officers of insolvent partnerships**

6.—(1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied—

- (a) that he is or has been an officer of a partnership which has at any time become insolvent (whether while he was an officer or subsequently), and
- (b) that his conduct as an officer of that partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships, or as a director of any company or companies) makes him unfit to be concerned in the management of company.

(2) For the purposes of this section and the next—

- (a) a partnership becomes insolvent if—
  - (i) the court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or
  - (ii) an administration order is made in relation to the partnership; and
- (b) a company becomes insolvent if—
  - (i) 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,
  - (ii) an administration order is made in relation to the company, or
  - (iii) an administrative receiver of the company is appointed.

(3) For the purposes of this section and the next, references to a person’s conduct as an officer of any partnership or partnerships, or as a director of any company or companies, include, where the partnership or company concerned or any of the partnerships or companies concerned has become insolvent, that person’s conduct in relation to any matter connected with or arising out of the insolvency of that partnership or company.

(4) In this section and the next “the court” means—

- (a) in the case of a person who is or has been an officer of a partnership which is being wound up as an unregistered company by the court, the court by which the partnership is being wound up,
- (b) in the case of a person who is or has been an officer of a partnership in relation to which an administration order is in force, the court by which that order was made, and
- (c) in any other case, the High Court;

and in both sections “director” includes a shadow director.

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

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(1) 1986 c. 46.

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

## **Section 7: Applications to court under s.6; reporting provisions**

7.—(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made—

- (a) by the Secretary of State, or
- (b) if the Secretary of State so directs in the case of a person who is or has been an officer of a partnership which is being wound up by the court as an unregistered company, by the official receiver.

(2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of 2 years beginning with the day on which the partnership of which that person is or has been an officer became insolvent.

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

- (a) in the case of a partnership which is being wound up by the court as an unregistered company, the official receiver, or
- (b) in the case of a partnership in relation to which an administration order is in force, the administrator,

that the conditions mentioned in section 6(1) are satisfied as respects a person who is or has been an officer of that partnership, the office-holder shall forthwith report the matter to the Secretary of State.

(4) The Secretary of State or the official receiver may require any of the persons mentioned in subsection (5) below—

- (a) to furnish him with such information with respect to any person's conduct as an officer of a partnership or as a director of a company, and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such an officer or director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(5) The persons referred to in subsection (4) are—

- (a) the liquidator or administrator, or former liquidator or administrator of the partnership,
- (b) the liquidator, administrator or administrative receiver, or former liquidator, administrator or administrative receiver, of the company.

## **Section 8: Disqualification after investigation**

8.—(1) If it appears to the Secretary of State from a report made by inspectors under section 437 of the Companies Act or section 94 or 177 of the Financial Services Act 1986(2), or from information or documents obtained under—

- (a) section 447 or 448 of the Companies Act,
- (b) section 105 of the Financial Services Act 1986(3),
- (c) section 2 of the Criminal Justice Act 1987(4),

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(2) 1986 c. 60; section 177 was amended by section 74 of the Companies Act 1989 (c. 40 and by section 79(13) of, and Part I of Schedule 5 to, the Criminal Justice Act 1993 c. 36.).

(3) Section 105 of 1986 c. 60 was amended by sections 73 and 212 of, and Schedule 24 to, the Companies Act 1989.

(4) 1987 c. 38.

(d) section 52 of the Criminal Justice (Scotland) Act 1987<sup>(5)</sup>, or

(e) section 83 of the Companies Act 1989,

that it is expedient in the public interest that a disqualification order should be made against any person who is or has been an officer of any insolvent partnership, he may apply to the court for such an order to be made against that person.

(2) The court may make a disqualification order against a person where, on an application under this section, it is satisfied that his conduct in relation to the partnership makes him unfit to be concerned in the management of a company.

(3) In this section “the court” means the High Court.

(4) The maximum period of disqualification under this section is 15 years.

### **Section 9: Matters for determining unfitness of officers of partnerships**

9.—(1) This section applies where it falls to a court to determine whether a person’s conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships or as a director or shadow director of any company or companies) makes him unfit to be concerned in the management of a company.

(2) The court shall, as respects that person’s conduct as an officer of that partnership or each of those partnerships or as a director of that company or each of those companies, have regard in particular—

(a) to the matters mentioned in Part I of Schedule 1 to this Act, and

(b) where the partnership or company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company, are to be read accordingly.

(3) Subsections (2) and (3) of section 6 apply for the purposes of this section and Schedule 1 as they apply for the purposes of sections 6 and 7.

(4) Subject to the next subsection, any reference in Schedule 1 to an enactment contained in the Companies Act or the Insolvency Act includes, in relation to any time before the coming into force of that enactment, the corresponding enactment in force at that time.

(5) The Secretary of State may by order modify any of the provisions of Schedule 1; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(6) The power to make orders under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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(5) 1987 c. 81.

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## SCHEDULE 1

Section 9

### MATTERS FOR DETERMINING UNFITNESS OF OFFICERS OF PARTNERSHIPS

#### PART I

##### MATTERS APPLICABLE IN ALL CASES

1. Any misfeasance or breach of any fiduciary or other duty by the officer in relation to the partnership or, as the case may be, by the director in relation to the company
2. Any misapplication or retention by the officer or the director of, or any conduct by the officer or the director giving rise to an obligation to account for, any money or other property of the partnership or, as the case may be, of the company.
3. The extent of the officer's or the director's responsibility for the partnership or, as the case may be, the company entering into any transaction liable to be set aside under Part XVI of the Insolvency Act (provisions against debt avoidance).
4. The extent of the director's responsibility for any failure by the company to comply with any of the following provisions of the Companies Act, namely—
  - (a) section 221 (companies to keep accounting records);
  - (b) section 222 (where and for how long records to be kept);
  - (c) section 288 (register of directors and secretaries);
  - (d) section 352 (obligation to keep and enter up register of members);
  - (e) section 353 (location of register of members);
  - (f) section 363 (duty of company to make annual returns); and
  - (g) sections 399 and 415 (company's duty to register charges it creates).
5. The extent of the director's responsibility for any failure by the directors of the company to comply with—
  - (a) section 226 or 227 of the Companies Act (duty to prepare annual accounts), or
  - (b) section 233 of that Act (approval and signature of accounts).
6. Any failure by the officer to comply with any obligation imposed on him by or under any of the following provisions of the Limited Partnerships Act 1907<sup>(6)</sup>—
  - (a) section 8 (registration of particulars of limited partnership);
  - (b) section 9 (registration of changes in particulars);
  - (c) section 10 (advertisement of general partner becoming limited partner and of assignment of share of limited partner).

#### PART II

##### MATTERS APPLICABLE WHERE PARTNERSHIP OR COMPANY HAS BECOME INSOLVENT

7. The extent of the officer's or the director's responsibility for the causes of the partnership or (as the case may be) the company becoming insolvent.

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<sup>(6)</sup> 1907 c. 24.

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**8.** The extent of the officer's or the director's responsibility for any failure by the partnership or (as the case may be) the company to supply any goods or services which have been paid for (in whole or in part).

**9.** The extent of the officer's or the director's responsibility for the partnership or (as the case may be) the company entering into any transaction or giving any preference, being a transaction or preference—

- (a) liable to be set aside under section 127 or sections 238 to 240 of the Insolvency Act, or
- (b) challengeable under section 242 or 243 of that Act or under any rule of law in Scotland.

**10.** The extent of the director's responsibility for any failure by the directors of the company to comply with section 98 of the Insolvency Act (duty to call creditors' meeting in creditors' voluntary winding up).

**11.** Any failure by the director to comply with any obligation imposed on him by or under any of the following provisions of the Insolvency Act—

- (a) section 47 (statement of affairs to administrative receiver);
- (b) section 66 (statement of affairs in Scottish receivership);
- (c) section 99 (directors' duty to attend meeting; statement of affairs in creditors' voluntary winding up).

**12.** Any failure by the officer or the director to comply with any obligation impose on him by or under any of the following provisions of the Insolvency Act (both as they apply in relation to companies and as they apply in relation to insolvent partnerships by virtue of the provisions of the Insolvent Partnerships Order 1994)—

- (a) section 22 (statement of affairs in administration);
- (b) section 131 (statement of affairs in winding up by the court);
- (c) section 234 (duty of any one with property to deliver it up);
- (d) section 235 (duty to co-operate with liquidator, etc.).”.