

## SCHEDULE 1

### CONSEQUENTIAL AMENDMENTS

#### **Company Directors Disqualification Act 1986 (c. 46)**

- 85.**—(1) The Company Directors Disqualification Act 1986 is amended as follows.
- (2) In section 3 (disqualification for persistent breaches of companies legislation)—
- (a) in subsection (3)(b) (default orders)—
- (i) in sub-paragraph (ii) <sup>M1</sup> for “section 713 of the Companies Act 1985 (enforcement of company's duty to make returns)” substitute “ section 1113 of that Act (enforcement of company's filing obligations) ”;
- (ii) in sub-paragraph (iii) after “the Insolvency Act” insert “ 1986 ”;
- (b) after subsection (4) insert—
- “(4A) In this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).”.
- (3) In section 5 (disqualification on summary conviction), after subsection (4) insert—
- “(4A) In this section “the companies legislation” means the Companies Acts and Parts 1 to 7 of the Insolvency Act 1986 (company insolvency and winding up).”.
- (4) In section 8(1A) (disqualification after investigation: meaning of “investigative material”), for paragraph (a) substitute—
- “(a) a report made by inspectors under—
- (i) section 437 of the Companies Act 1985, or
- (ii) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000; and”;
- (but see section 22D(2)).
- (5) In section 9 (matters for determining unfitness of directors), omit subsection (3).
- (6) In the following provisions after “the Insolvency Act” insert “ 1986 ”
- (a) sections 10(1), 12(2) <sup>M2</sup>, 20(1) <sup>M3</sup> and (3)(a)(i), 21(1) and (2) <sup>M4</sup> (and the section heading) and 22(3);
- (b) paragraphs 3, 8(a), 9 and 10 of Schedule 1.
- (7) In section 11 (undischarged bankrupts), after subsection (3) add—
- “(4) In this section “company” includes a company incorporated outside Great Britain that has an established place of business in Great Britain.”.
- (8) In section 12A <sup>M5</sup> (Northern Ireland disqualification orders), for “Part II of the Companies (Northern Ireland) Order 1989” substitute “ the Company Directors Disqualification (Northern Ireland) Order 2002 ”.
- (9) In section 15 (personal liability for company's debts where person acts while disqualified)—
- (a) in subsection (1), for paragraph (b) substitute—
- “(b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time—
- (i) to be the subject of a disqualification order made or disqualification undertaking accepted under this Act or under the Company Directors Disqualification (Northern Ireland) Order 2002, or
- (ii) to be an undischarged bankrupt.”;

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- (b) for subsection (5) substitute—
- “(5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time—
- (a) to be the subject of a disqualification order made or disqualification undertaking accepted under this Act or under the Company Directors Disqualification (Northern Ireland) Order 2002, or
  - (b) to be an undischarged bankrupt,
- is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.”.
- (10) In section 18 (register of disqualification orders and undertakings)—
- (a) in subsection (2), omit the words from “which was set up” to the end;
  - (b) in subsection (4A)<sup>M6</sup>, omit “made under Part II of the Companies (Northern Ireland) Order 1989”.
- (11) In section 22 (interpretation)—
- (a) for subsection (2) substitute—

“(2) “Company” means—

    - (a) a company registered under the Companies Act 2006 in Great Britain, or
    - (b) a company that may be wound up under Part 5 of the Insolvency Act 1986 (unregistered companies).”;
  - (b) for subsection (6) substitute—

“(6) “Body corporate” and “officer” have the same meaning as in the Companies Acts (see section 1173(1) of the Companies Act 2006).”;
  - (c) for subsection (7) substitute—

“(7) “The Companies Acts” has the meaning given by section 2(1) of the Companies Act 2006.”;
  - (d) for subsection (8) substitute—

“(8) Any reference to provisions, or a particular provision, of the Companies Acts or the Insolvency Act 1986 includes the corresponding provisions or provision of corresponding earlier legislation.”;
  - (e) in subsection (9)<sup>M7</sup> after “the Companies Acts” insert “ (see section 1174 of, and Schedule 8 to, the Companies Act 2006) ”.
- (12) In sections 22A(4)<sup>M8</sup>, 22B(4)<sup>M9</sup> and 22C(3)<sup>M10</sup> for “the Insolvency Act, the Companies Act 1985 or the Companies Act 2006” substitute “the Companies Act 2006 or the Insolvency Act 1986”.
- (13) After section 22C insert—

#### **“22D Application of Act to open-ended investment companies**

- (1) This Act applies to open-ended investment companies with the following modifications.
- (2) In section 8(1) (disqualification after investigation), the reference to investigative material shall be read as including a report made by inspectors under regulations made by virtue of section 262(2)(k) of the Financial Services and Markets Act 2000.
- (3) In the application of Part 1 of Schedule 1 (matters for determining unfitness of directors: matters applicable in all cases) in relation to a director of an open-ended investment company, a reference to a provision of the Companies Act 2006 is to be taken to be a reference to the

corresponding provision of the Open-Ended Investment Companies Regulations 2001 or of rules made under regulation 6 of those Regulations.

(4) In this section “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000.”

(14) Schedule 1 (matters for determining unfitness of directors) is amended as follows—

(a) in paragraph 1 (breach of duty), at the end insert “, including in particular any breach by the director of a duty under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors) owed to the company”;

(b) for paragraphs 4 and 4A<sup>M11</sup> of that Schedule (extent of responsibility for failure by company to comply with certain provisions) substitute—

“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 2006—

(a) section 113 (register of members);

(b) section 114 (register to be kept available for inspection);

(c) section 162 (register of directors);

(d) section 165 (register of directors' residential addresses);

(e) section 167 (duty to notify registrar of changes: directors);

(f) section 275 (register of secretaries);

(g) section 276 (duty to notify registrar of changes: secretaries);

(h) section 386 (duty to keep accounting records);

(i) section 388 (where and for how long accounting records to be kept);

(j) section 854 (duty to make annual returns);

(k) section 860 (duty to register charges);

(l) section 878 (duty to register charges: companies registered in Scotland).”;

(c) omit paragraph 5A<sup>M12</sup> (application of Part 1 of Schedule to directors of open-ended investment companies) (but see section 22D(3)).

(15) In paragraph 7 of Schedule 2 (savings for earlier transitional provisions), for “the Companies Act” substitute “ the Companies Act 1985 ”.

(16) In paragraph 1 of Schedule 3 (transitional provisions and savings)—

(a) for “the Companies Act” substitute “ the Companies Act 1985 ”, and

(b) for “the Insolvency Act” substitute “ the Insolvency Act 1986 ”.

#### Marginal Citations

**M1** Section 3(3)(b)(ii) was amended by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (2)(c).

**M2** Section 12(2) was amended by the Tribunals, Courts and Enforcement Act 2007 (c.15), **Schedule 16**, paragraph 5(1) and (4).

**M3** Section 20(1) was numbered as such by the Youth Justice and Criminal Evidence Act 1999 (c.23), **Schedule 3**, paragraph 8(1) and (2).

**M4** Section 21(2) was amended by the Insolvency Act 2000 (c.39), **Schedule 4**, paragraphs 1 and 14(1) and (2)(a) to (c) and the Companies Act 1989 (c.40), **Schedule 24**.

**M5** Section 12A was inserted by the Insolvency Act 2000 (c.27), **section 7(1)**.

**M6** Section 18(4A) was inserted by the Insolvency Act 2000 (c.27), **Schedule 4**, paragraphs 1 and 13(1) and (5) and was amended by S.I. 2004/1941, **article 2(1)** and (6).

**M7** Section 22(9) was amended by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (4)(c).

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- M8** Section 22A was inserted by the Companies Act 1989 (c.40), **section 211(3)**, and subsection (4) of section 22A was amended by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (5).
- M9** Section 22B was inserted by the Friendly Societies Act 1992 (c.40), **Schedule 21**, paragraph 8, and subsection (4) of section 22B was amended by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (6).
- M10** Section 22C was inserted by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), **Schedule 4**, paragraphs 67 and 68, and subsection (3) of section 22C was amended by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (7) and the National Health Service (Consequential Provisions) Act 2006 (c.43), **Schedule 1**, paragraphs 91 and 92.
- M11** Paragraph 4 was substituted and paragraph 4A was inserted by S.I. 2008/948, **Schedule 1**, paragraph 106(1) and (8)(a).
- M12** Paragraph 5A was inserted by S.I. 1996/2827, **Schedule 8**, paragraph 10 and was subsequently substituted by S.I. 2001/1228, **Schedule 7**, paragraph 9.

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