



# Company Directors Disqualification Act 1986

## 1986 CHAPTER 46

*Disqualification for general misconduct in connection with companies*

### **2 Disqualification on conviction of indictable offence**

- (1) The court may make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management or liquidation of a company, or with the receivership or management of a company's property.
- (2) " The court" for this purpose means—
  - (a) any court having jurisdiction to wind up the company in relation to which the offence was committed, or
  - (b) the court by or before which the person is convicted of the offence, or
  - (c) in the case of a summary conviction in England and Wales, any other magistrates' court acting for the same petty sessions area;and for the purposes of this section the definition of " indictable offence" in Schedule 1 to the Interpretation Act 1978 applies for Scotland as it does for England and Wales.
- (3) The maximum period of disqualification under this section is—
  - (a) where the disqualification order is made by a court of summary jurisdiction, 5 years, and
  - (b) in any other case, 15 years.

### **3 Disqualification for persistent breaches of companies legislation**

- (1) The court may make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the companies legislation requiring any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies.

- (2) On an application to the court for an order to be made under this section, the fact that a person has been persistently in default in relation to such provisions as are mentioned above may (without prejudice to its proof in any other manner) be conclusively proved by showing that in the 5 years ending with the date of the application he has been adjudged guilty (whether or not on the same occasion) of three or more defaults in relation to those provisions.
- (3) A person is to be treated under subsection (2) as being adjudged guilty of a default in relation to any provision of that legislation if—
- (a) he is convicted (whether on indictment or summarily) of an offence consisting in a contravention of or failure to comply with that provision (whether on his own part or on the part of any company), or
  - (b) a default order is made against him, that is to say an order under any of the following provisions—
    - (i) section 244 of the Companies Act (order requiring delivery of company accounts),
    - (ii) section 713 of that Act (enforcement of company's duty to make returns),
    - (iii) section 41 of the Insolvency Act (enforcement of receiver's or manager's duty to make returns), or
    - (iv) section 170 of that Act (corresponding provision for liquidator in winding up), in respect of any such contravention of or failure to comply with that provision (whether on his own part or on the part of any company).
- (4) In this section "the court" means any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed.
- (5) The maximum period of disqualification under this section is 5 years.

#### **4 Disqualification for fraud, etc., in winding up**

- (1) The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he—
- (a) has been guilty of an offence for which he is liable (whether he has been convicted or not) under section 458 of the Companies Act (fraudulent trading), or
  - (b) has otherwise been guilty, while an officer or liquidator of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, liquidator, receiver or manager.
- (2) In this section "the court" means any court having jurisdiction to wind up any of the companies in relation to which the offence or other default has been or is alleged to have been committed ; and " officer " includes a shadow director.
- (3) The maximum period of disqualification under this section is 15 years.

#### **5 Disqualification on summary conviction**

- (1) An offence counting for the purposes of this section is one of which a person is convicted (either on indictment or summarily) in consequence of a contravention of, or

failure to comply with, any provision of the companies legislation requiring a return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the registrar of companies (whether the contravention or failure is on the person's own part or on the part of any company).

- (2) Where a person is convicted of a summary offence counting for those purposes, the court by which he is convicted (or, in England and Wales, any other magistrates' court acting for the same petty sessions area) may make a disqualification order against him if the circumstances specified in the next subsection are present.
- (3) Those circumstances are that, during the 5 years ending with the date of the conviction, the person has had made against him, or has been convicted of, in total not less than 3 default orders and offences counting for the purposes of this section; and those offences may include that of which he is convicted as mentioned in subsection (2) and any other offence of which he is convicted on the same occasion.
- (4) For the purposes of this section—
  - (a) the definition of " summary offence " in Schedule 1 to the Interpretation Act 1978 applies for Scotland as for England and Wales, and
  - (b) " default order " means the same as in section 3(3)(b).
- (5) The maximum period of disqualification under this section is 5 years.