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SCHEDULES

SCHEDULE 1 **E+W+S**

Section 9.

MATTERS FOR DETERMINING UNFITNESS OF DIRECTORS

Modifications etc. (not altering text)

- C1** Sch. 1 extended (with modifications) by S.I. 1986/2142, art. 6
C2 Sch. 1 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 16, Sch. 8

PART I **E+W+S**

MATTERS APPLICABLE IN ALL CASES

- 1 Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company.
- 2 Any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company.
- 3 The extent of the director's responsibility for 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);
 - [^{F1}(f) section 363 (duty of company to make annual returns);]
 - [^{F2}(h) sections 398 and 703D (duty of company to deliver particulars of charges on its property).]

Textual Amendments

- F1** Sch. 1 para. 4(f) substituted for sub-paras. (f) and (g) by Companies Act 1989 (c. 40, SIF 27), ss. 139(4), 213(2)

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- F2** Sch. 1 para. 4(h) substituted by Companies Act 1989 (c. 40, SIF 27), ss. 107, 213(2), 215(2) Sch. 16 para. 4

VALID FROM 06/04/2008

- [^{F3}4A 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, namely—
- (a) section 386 (companies to keep accounting records); and
 - (b) section 388 (where and for how long records to be kept).]

Textual Amendments

- F3** Sch. 1 paras. 4, 4A substituted (6.4.2008) for Sch. 1 para. 4 by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 106(8)(a)** (with arts. 6, 11, 12)

Modifications etc. (not altering text)

- C3** Sch. 1 para. 4 substituted (1.10.2009) for Sch. 1 paras. 4, 4A by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 85(14)(b)** (with art. 10)

- [^{F4}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).]

Textual Amendments

- F4** Sch. 1 para. 5 substituted (subject to the transitional and saving provisions mentioned in S.I. 1990/355, arts. 6–9) by Companies Act 1989 (c. 40, SIF 27), ss. 23, 213(2), **Sch. 10 para. 35(3)**

VALID FROM 06/01/1997

- [^{F5}5A In the application of this Part of this Schedule in relation to any person who is a director of an investment company with variable capital, any reference to a provision of the Companies Act shall be taken to be a reference to the corresponding provision of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 or of any regulations made under regulation 6 of those Regulations (SIB regulations).]

Textual Amendments

- F5** Sch. 1 para. 5A inserted (6.1.1997) by S.I. 1996/2827, reg. 75, **Sch. 8 Pt. I para. 10**

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PART II E+W+S

MATTERS APPLICABLE WHERE COMPANY HAS BECOME INSOLVENT

Modifications etc. (not altering text)

C4 Sch. 1 Pt. II applied (with modifications) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. II

- 6 The extent of the director's responsibility for the causes of the company becoming insolvent.
- 7 The extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part).
- 8 The extent of the director's responsibility for 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.
- 9 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).
- 10 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 22 (company's statement of affairs in administration);
 - (b) section 47 (statement of affairs to administrative receiver);
 - (c) section 66 (statement of affairs in Scottish receivership);
 - (d) section 99 (directors' duty to attend meeting; statement of affairs in creditors' voluntary winding up);
 - (e) section 131 (statement of affairs in winding up by the court);
 - (f) section 234 (duty of any one with company property to deliver it up);
 - (g) section 235 (duty to co-operate with liquidator, etc.).

SCHEDULE 2 E+W+S

Section 19.

SAVINGS FROM COMPANIES ACT 1981 SS. 93, 94, AND INSOLVENCY ACT 1985 SCHEDULE 9

- 1 Sections 2 and 4(1)(b) do not apply in relation to anything done before 15th June 1982 by a person in his capacity as liquidator of a company or as receiver or manager of a company's property.
- 2 Subject to paragraph 1—
 - (a) section 2 applies in a case where a person is convicted on indictment of an offence which he committed (and, in the case of a continuing

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offence, has ceased to commit) before 15th June 1982; but in such a case a disqualification order under that section shall not be made for a period in excess of 5 years;

- (b) that section does not apply in a case where a person is convicted summarily—
- (i) in England and Wales, if he had consented so to be tried before that date, or
 - (ii) in Scotland, if the summary proceedings commenced before that date.

3 Subject to paragraph 1, section 4 applies in relation to an offence committed or other thing done before 15th June 1982; but a disqualification order made on the grounds of such an offence or other thing done shall not be made for a period in excess of 5 years.

4 The powers of a court under section 5 are not exercisable in a case where a person is convicted of an offence which he committed (and, in the case of a continuing offence, had ceased to commit) before 15th June 1982.

5 For purposes of section 3(1) and section 5, no account is to be taken of any offence which was committed, or any default order which was made, before 1st June 1977.

6 An order made under section 28 of the ^{M1}Companies Act 1976 has effect as if made under section 3 of this Act; and an application made before 15th June 1982 for such an order is to be treated as an application for an order under the section last mentioned.

Marginal Citations

M1 1976 c. 69.

- 7 Where—
- (a) an application is made for a disqualification order under section 6 of this Act by virtue of paragraph (a) of subsection (2) of that section, and
 - (b) the company in question went into liquidation before 28th April 1986 (the coming into force of the provision replaced by section 6),

the court shall not make an order under that section unless it could have made a disqualification order under section 300 of the Companies Act as it had effect immediately before the date specified in sub-paragraph (b) above.

8 An application shall not be made under section 8 of this Act in relation to a report made or information or documents obtained before 28th April 1986.

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SCHEDULE 3 **E+W+S**

Section 23(1).

TRANSITIONAL PROVISIONS AND SAVINGS

- 1 In this Schedule, “the former enactments” means so much of the Companies Act, and so much of the Insolvency Act, as is repealed and replaced by this Act; and “the appointed day” means the day on which this Act comes into force.
- 2 So far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of this Act, it is not invalidated by the repeal of that provision but has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments shall, insofar as its effect is preserved by this paragraph, be treated for all purposes as made and having effect under the corresponding provision.
- 3 Where any period of time specified in a provision of the former enactments is current immediately before the appointed day, this Act has effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Act—
 - (a) to run from the date or event from which it was running immediately before the appointed day, and
 - (b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been passed;and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as above mentioned shall be under this Act as they were or would have been under the former enactments.
- 4 Where in any provision of this Act there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences) the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments.
- 5 Offences committed before the appointed day under any provision of the former enactments may, notwithstanding any repeal by this Act, be prosecuted and punished after that day as if this Act had not passed.
- 6 A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former enactments (including the corresponding provision of any yet earlier enactment) is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the passing of this Act, as, or as including, a reference to the corresponding provision by which it is replaced in this Act.

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SCHEDULE 4 **E+W+S**

Section 23(2).

REPEALS

Chapter	Short title	Extent of repeal
1985 c. 6.	The Companies Act 1985.	Sections 295 to 299. Section 301. Section 302. Schedule 12. In Schedule 24, the entries relating to sections 295(7) and 302(1).
1985 c. 65.	The Insolvency Act 1985.	Sections 12 to 14. Section 16. Section 18. Section 108(2). Schedule 2. In Schedule 6, paragraphs 1, 2, 7 and 14. In Schedule 9, paragraphs 2 and 3.

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