

*Company Officers Disqualification Bill 2007*

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A BILL

An Act to amend the law relating to the disqualification of persons from being officers of companies and from being otherwise concerned with a company's affairs; and for connected purposes.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

*Preliminary*

**Disqualification orders: general**

P1986/46/1

1. (1) In the circumstances specified in this Act the court may, and under section 4 shall, make against a person an order (“a disqualification order”) that the person shall not, without leave of the court, be an officer of a company, that is to say –

- (a) a director, secretary or registered agent,
- (b) a liquidator,
- (c) a receiver,
- (d) a person holding an office under foreign law analogous to any of the offices specified in (a), (b) or (c) in respect of a company; or

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- (e) a person who, in any way, whether directly or indirectly, is concerned or takes part in the promotion, formation or management of a company,

for a specified period beginning with the date of the order.

(2) In each section of this Act which gives to the court power or, as the case may be, imposes on it the duty to make a disqualification order there is specified the period of disqualification which may or (as the case may be) must be imposed by means of the order and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order.

(3) Where a disqualification order is made against a person who is already subject to such an order or to a disqualification undertaking, the periods specified in those orders or (as the case may be) in the order and the undertaking may run concurrently or consecutively.

(4) A disqualification order may be made on grounds which are or include matters other than criminal convictions, notwithstanding that the person in respect of whom it is to be made may be criminally liable in respect of those matters.

**Disqualification undertakings**

P1986/46/1A

2. (1) In the circumstances specified in section 6, the Financial Supervision Commission (in this Act referred to as “the Commission”) may accept a disqualification undertaking, that is to say an undertaking by any

person that, for a period specified in the undertaking, the person will not, without leave of the court or the Commission, be an officer of a company.

(2) The maximum period which may be specified in a disqualification undertaking is 15 years and the minimum period which may be specified is two years.

(3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order may run concurrently or consecutively.

(4) In determining whether to accept a disqualification undertaking by any person, the Commission may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters.

***Disqualification for unfitness***

**Power of court to disqualify unfit officers**

1992/4/26

**3.** (1) The court may make a disqualification order against a person in any case where, on an application under this section, it is satisfied –

- (a) that the person is or has been an officer of a company, and
- (b) that the person's conduct renders them unfit to be an officer of a company.

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

**Duty of court to disqualify unfit directors of insolvent companies**

**1982/2/31**

P1986/46/6

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

(a) that the person is or has been an officer of a company which has at any time become insolvent (whether while that person was an officer or subsequently), and

(b) that the person's conduct as an officer of that company (either taken alone or taken together with that person's conduct as an officer of any other company or companies) makes them unfit to be an officer of a company.

(2) For the purposes of this section and the next, a company becomes insolvent if –

(a) 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, or

(b) a receiver of the company is appointed;

and references to a person's conduct as an officer of any company or companies include, where that company or any of those companies has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

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

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(4) Except with the leave of the court, an application for the making under this 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 company of which that person is or has been an officer became insolvent.

**Application for disqualification order**

**P1986/46/16**

5. (1) A person intending to apply to the court for the making of a disqualification order shall give not less than 28 days notice of that intention to the person against whom the order is sought.

(2) An application to the court for the making against any person of a disqualification order may be made –

(a) by the Commission [if it appears to the Commission that it is expedient in the public interest to do so],

(b) by the official receiver,

(c) by the liquidator, or

(d) by any past or present member or creditor of any company in relation to which that person has engaged in conduct rendering him or her unfit to be an officer.

(3) Except with the leave of the court, proceedings for a disqualification order may not be brought more than 2 years after the date on which the applicant could reasonably be expected to have sufficient knowledge of evidence to justify proceedings.

**Acceptance of undertaking**

**P1986/46/7(2A)**

6. If it appears to the Commission that the conditions mentioned in section 3(1) or section 4(1) are satisfied as respects any person who has offered to give it a disqualification undertaking, the Commission may accept the undertaking if it appears to it that it is expedient in the public interest that it should do so (instead of applying, or proceeding with an application, for a disqualification order).

**Reporting provisions**

**P1986/46/7**

7. If it appears to an office-holder responsible under this section, that is to say –

- (a) in the case of a company which is being wound up by the court, the official receiver,
- (b) in the case of a company which is being wound up otherwise, the liquidator, or
- (c) in the case of a company in respect of which a receiver has been appointed, that receiver,

that the conditions mentioned in section 3(1) or section 4(1) are satisfied as respects a person who is or has been an officer of that company, the office-holder must forthwith report the matter to the Commission.

(4) The Commission or the official receiver may require the liquidator, or receiver of a company, or the former liquidator or receiver of a company –

- (a) to furnish it with such information with respect to any person's conduct as an officer of the 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, as the Commission or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this section.

**Matters for determining unfitness of officers**

P1986/46/9

**8.** (1) Where it falls to a court to determine whether a person's conduct as an officer of any particular corporate entity or entities makes them unfit to be an officer of a company, the court shall, as respects that person's conduct as an officer of that corporate entity or, as the case may be, each of those corporate entities, have regard in particular –

- (a) to the matters mentioned in Part I of Schedule 1 to this Act, and
- (b) where the corporate entity has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the corporate entity are to be read accordingly.

(2) In determining whether it may accept a disqualification undertaking from any person, the Commission, must, as respects the person's conduct as an officer of any corporate entity concerned, have regard in particular –

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

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- (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the corporate entity are to be read accordingly.

(3) Section 4(2) applies for the purposes of this section and Schedule 1 as it applies for the purposes of section 4.

(4) The Commission 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 Commission necessary or expedient.

*Other cases of disqualification*

**Participation in fraudulent trading**

P1986/46/10

**9.** (1) Where the court makes a declaration under section 259 of the Companies Act 1931 that a person is liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the court shall consider making a disqualification order against the person to whom the declaration relates.

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

**Undischarged bankrupts**

1931/XIII/141

P1986/46/11

**10.** (1) It is an offence for a person who is an undischarged bankrupt to act as an officer of a company, except with the leave of the court.

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(2) The leave of the court shall not be given unless notice of intention to apply for it has been served on his or her trustee in bankruptcy and the Commission; and it is the latter's duty, if it is of opinion that it is contrary to the public interest that the application should be granted, to attend on the hearing of the application and oppose it.

(3) For the purpose of this section a person is treated as bankrupt if he or she –

(i) has been adjudged bankrupt by any court in the Island, England, Wales or Northern Ireland, or

(ii) sequestration of his or her estate has been awarded by a court in Scotland, or

(iii) a court in the Republic of Ireland or any of the Channel Islands has made an order in respect of that person having the like effect as an adjudication in the High Court.

*Consequences of contravention*

**Criminal penalties**

P1986/46/13

**11.** (1) Subject to subsection (3) if a person acts in contravention of a disqualification order or disqualification undertaking or is guilty of an offence under section 10, that person is liable at the suit of the Attorney General –

(a) on conviction on information, to custody for not more than 2 years or a fine, or both; and

(b) on summary conviction, to custody for not more than 6 months or a fine not exceeding £5,000, or both.

(2) Where a person is convicted of an offence under subsection (1) the court by which they are convicted may make a further disqualification order against that person to run concurrently or consecutively with the disqualification order or disqualification undertaking (as the case may be) which is breached.

(3) Proceedings under this section may not be brought more than 12 months after the date on which evidence, sufficient in the opinion of the Attorney General to justify proceedings, comes to his or her knowledge.

(4) For the purpose of subsection (3) a certificate signed by the Attorney General stating the date upon which such evidence came to his or her knowledge shall be conclusive of that fact, and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

**Personal liability for company's debts where person acts while disqualified**

P1986/46/15

**12.** (1) A person is personally responsible for all the relevant debts of a company if at any time –

(a) in contravention of a disqualification order or disqualification undertaking they act as an officer of the company, or

(b) as a person who is an officer of the company, the person acts or is willing to act on instructions given without the leave of the court by

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a person known to them at that time to be the subject of a disqualification order or disqualification order or to be an undischarged bankrupt.

(2) Where a person is personally responsible under this section for the relevant debts of a company, that person is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section the relevant debts of a company are –

(a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and

(b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this section an officer who has at any time acted on instructions given without the leave of the court by a person whom they knew at that time to be the subject of a disqualification order or disqualification undertaking or 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.

***Supplementary provisions***

**Register of disqualification orders and undertakings**

P1986/46/18

**13.** (1) The Commission may require officers of courts to furnish it with such particulars as it may specify of cases in which –

- (a) a disqualification order is made, or
- (b) any action is taken by a court in consequence of which such an order or disqualification undertaking is varied or ceases to be in force, or
- (c) leave is granted by a court for a person subject to such an order to do any thing which otherwise the order prohibits them from doing;  
or
- (d) leave is granted by a court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits them from doing,

and it may specify the time within which, and the form and manner in which, such particulars are to be furnished.

(2) The Commission shall, from the particulars so furnished, continue to maintain an index of orders, and of cases in which leave has been granted as mentioned in subsection (1)(c), incorporating the index which was set up by it under section 26(5) of the Companies Act 1992 and the index set up by it under section 259(8) of the Companies Act 1931.

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(3) The Commission shall include in the index such particulars as it considers appropriate of disqualification undertakings accepted under section 6 and of cases in which leave has been granted as mentioned in subsection (1)(d).

(4) When an order or undertaking of which entry is made in the index ceases to be in force, the Commission shall delete the entry from the index and all particulars relating to it which have been furnished to it under this section or any previous corresponding provision and, in the case of a disqualification undertaking, any other particulars it has included in the index.

(5) The Commission shall make the index available for inspection –

(i) at the office for the registration of companies; and

(ii) on the Commission website,

or in such other manner as it may deem appropriate.

(6) Without prejudice to the generality of subsection (5), the Commission may from time to time publish and identify changes to the index if it appears to it desirable in the public interest to do so.

*Miscellaneous and general*

**Admissibility in evidence of statements**

P1986/46/20

**14.** (1) In any proceedings (whether or not under this Act), any statement made in pursuance of a requirement imposed by or under sections 3, 4, 7, 8, 9 or 12 of, or Schedules 1 or 2 to, this Act, may be used in evidence against any person making or concurring in making the statement.

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(2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies –

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than –

(a) an offence under section 18 (falsification of documents, etc.) or 19 (false statements); or

(b) an offence under section 5 of the Perjury Act 1952 (false statutory declarations and other false statements made without oath).

### **Power of court to order rectification**

1992/4/26(4)

**15.** Without prejudice to any other powers of the court under this Act, where in connection with a company a person is in default in relation to any of the provisions of the Companies Acts the court may on an application to it by the Commission or by any person affected by the default, by order direct the person in default (whether or not they are in the Island) to rectify the default forthwith.

### **Inspection and investigation**

**16.** Schedule 2 (inspection and investigation) has effect.

### **Restriction on disclosure of information**

17. Schedule 3 (restrictions on disclosure of information) has effect.

**Falsification of documents, etc. relevant to an investigation**

18. If a person –

- (a) knows or suspects that an investigation by the Commission is being or is likely to be carried out; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which that person knows or suspects are or would be relevant to such an investigation,

that person is guilty of an offence unless it is proved that there was no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

**False statements**

19. A person who –

- (a) furnishes or sends to the Commission for any purpose under this Act a document which they know to be false or misleading in a material particular; or
- (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false or misleading in a material particular; or
- (c) in furnishing information to the Commission for the purposes of this Act –

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- (i) makes a statement which they know to be false or misleading in a material particular; or
- (ii) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

**Offences**

**20.** (1) A person guilty of an offence under section 18 is liable at the suit of the Attorney General –

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 5 years, or to both.

(2) A person guilty of an offence under section 19 or paragraph 1(5) or 3(8) of Schedule 2 is liable –

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both.

**Offences by bodies corporate**

**21.** (1) Subsections (2) to (4) apply where an offence under this Act is committed by a corporate entity and it is proved that the offence –

- (a) was committed with the consent or connivance of an officer of the body, or

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- (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer, as well as the body, is guilty of the offence.
- (3) Where an individual is convicted of an offence under this Act by virtue of subsection (2), that individual is liable to the same penalty as the body.
- (4) In this section “officer” includes –
  - (a) a director, manager or secretary or other similar officer of the corporate entity;
  - (b) if the affairs of the entity are managed by its members, a member;
  - (c) in respect of a limited liability company constituted under the Limited Liability Companies Act 1996, a member of the limited liability company, its manager and its registered agent;
  - (d) a registered agent of a company incorporated under the Companies Act 2006; and
  - (e) a person purporting to act in the capacity of an officer specified in paragraphs (a), (b), (c) or (d).

**Interpretation**

P1986/46/22

- 22.** (1) This section has effect with respect to the meaning of expressions used in this Act, and applies unless the context otherwise requires.
- (2) Part V of the Companies Act 1931 applies as regards references to a company’s insolvency and to its going into liquidation.
  - (3) “Commission” means the Financial Supervision Commission.

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(4) “Companies Acts” means the Companies Acts 1931 to 2004, the Limited Liability Companies Act 1996 and the Companies Act 2006.

(5) “Company” includes -

(a) a company formed and registered under the Companies Acts 1931 to 2004;

(b) a company which may be wound up under Part X of the Companies Act 1931;

(c) a company registered under Part XI of the Companies Act 1931;

(d) a company within the meaning of section 219(1) of the Companies Act 2006; and

(e) a limited liability company within the meaning of section 1 of the Limited Liability Companies Act 1996.

(6) “Corporate entity” means a company and includes a body corporate incorporated or formed elsewhere than in the Island.

(7) “Court” means –

(a) in section 11, the court by which a person is convicted;

(b) elsewhere, the Chancery Division of the High Court.

(8) “Director” includes any person occupying the position of director, by whatever name called.

(9) “Financial services legislation” means –

(i) the Financial Services Act 200[8];

(ii) the Insurance Act 1986;

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- (iii) the Insider Dealing Act 1998;
- (iv) the Financial Supervision Act 1988;
- (v) the Insurance Intermediaries (General Business) Act 1986;
- (vi) any legislation applied to the Island under the Pension Schemes Act 1995; and
- (vii) the Retirement Benefits Schemes Act 2000.

(10) “Officer” means -

- (a) in relation to a company, an officer within the meaning of section (1)(1);
- (b) in relation to a corporate entity -
  - (i) a director or secretary;
  - (ii) a liquidator;
  - (iii) a receiver of a corporate entity’s property;
  - (iv) any person holding an office under foreign law analogous to any of the offices specified in (b)(i), (ii) or (iii);
  - (v) a person who in any way, whether directly or indirectly, is concerned or takes part in its promotion, formation or management.

(11) “Official receiver” means a person who, by virtue of section 173 or 174 of the Companies Act 1931 is authorised to act as the official receiver in relation to a winding-up.

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(12) “Registered agent” means a registered agent appointed for the purposes of section 5 of the Limited Liability Companies Act 1996 or section 74 of the Companies Act 2006.

(13) “Registrar” means the person appointed to be the Registrar of Companies under section 205 of the Companies Act 2006.

(14) Any expression for whose interpretation provision is made by the Companies Acts and not by subsections (2) to (13) above, is to be construed in accordance with that provision.

(15) Any reference to acting as receiver of the property of a company, or to a receiver of it includes –

(a) acting as manager or as both receiver and manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it;

(b) acting in any corresponding capacity under the law of a country or territory outside the Island;

and “receivership” is to be read accordingly.

**Transitional provisions, savings, amendments and repeals**

P1986/46/23

**23.** (1) The transitional provisions and savings in Schedule 4 to this Act have effect, and are without prejudice to anything in the Interpretation Act 1976 (c.20) with regard to the effect of repeals.

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(2) The enactments specified in the second column of Schedule 5 to this Act are amended to the extent specified in the third column of that Schedule

(3) The enactments specified in the second column of Schedule 6 to this Act are repealed to the extent specified in the third column of that Schedule.

**Rules of court**

**24.** Rules of court may be made by the Deemsters for the purposes of regulating and prescribing the practices and procedures to be followed in any application for or in connection with a disqualification order or disqualification undertaking.

**Orders, rules and regulations**

**25.** (1) Orders and regulations made under this Act, except an order under section 26(1), shall not have effect unless they are approved by Tynwald.

(2) Rules of court made under section 24 shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

**Short title and commencement**

P1986/46/26

**26.** (1) This Act shall come into operation on such day or days as the Commission may by order appoint and different days may be so appointed for different provisions and different purposes.

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(2) This Act may be cited as the Company Officers Disqualification Act 2007.

**SCHEDULE 1**

Section 8

**MATTERS FOR DETERMINING UNFITNESS OF OFFICERS**

**PART 1**

**MATTERS APPLICABLE IN ALL CASES**

1. Any misfeasance or breach of any fiduciary or other duty by the officer in relation to the corporate entity.
2. Any misapplication or retention by the officer of, or any conduct by the officer giving rise to an obligation to account for, any money or other property of the corporate entity.
3. The extent of the officer's responsibility for the corporate entity entering into any transaction liable to be set aside under section 4 of the Fraudulent Assignments Act 1736, at common law or under any laws having similar effect in any country or territory outside the Island.
4. The extent of the officer's responsibility for any failure by the company to comply with any of the following provisions of the Companies Acts namely –
  - (a) section 1 of the Companies Act 1982, section 80 of the Companies Act 2006 and section 19 of the Limited Liability Companies Act 1996 (companies to keep accounting records);
  - (b) section 143 of the Companies Act 1931 (register of directors and secretaries) and section 78 of the Companies Act 2006 (documents to be kept at office of registered agent);

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- (c) section 96 of the Companies Act 1931 and section 62 of the Companies Act 2006 (obligation to keep and enter up register of members);
- (d) sections 107 and 108 of the Companies Act 1931, section 85 of the Companies Act 2006 and section 10 of the Limited Liability Companies Act 1996 (duty of company to make annual returns);
- (e) sections 80 and 81 of the Companies Act 1931 (company's duty to register charges it creates), section 136 of the Companies Act 2006 and section 20 of the Limited Liability Companies Act 1996 (company to keep register of charges);
- (f) legislation having equivalent effect in any country or territory outside the Island.

**5.** The extent of the officer's responsibility for any failure by the directors of the company to comply with, in the case of a company incorporated under the Companies Acts 1931 to 2004, Part 1 of the Companies Act 1982 (accounts and audit).

**6.** If the person or a corporate entity of which that person is or was an officer –

- (a) has been convicted of an offence (whether in the Island or elsewhere) which involves dishonesty;
- (b) has been convicted (whether in the Island or elsewhere) within the 25 years ending with the date of the application of any combination of 3 or more offences under –
  - (i) the Companies Acts or the financial services legislation;

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(ii) legislation having equivalent effect in any country or territory outside the Island,

whether or not convicted on the same occasion.

7. The extent of the officer's responsibility for his failure to comply with a direction of the court under section 15.

8. (1) If the person or a corporate entity of which that person is or was an officer is subject to foreign restrictions that is to say if under the law of a country or territory outside the Island –

(a) that person is, by reason of misconduct or unfitness, disqualified to any extent from being an officer of a corporate entity,

(b) that person is, by reason of misconduct or unfitness, required –

(i) to obtain permission from a court or other authority, or

(ii) to meet any other condition,

before acting as an officer of a corporate entity, or

(c) that person has, by reason of misconduct or unfitness, given undertakings to a court or other authority of a country or territory outside the Island –

(i) not to act as an officer of a corporate entity, or

(ii) restricting the extent to which, or the way in which, they may do

so.

**PART II**

**MATTERS APPLICABLE WHERE COMPANY HAS BECOME  
INSOLVENT**

**8.** The extent of the officer's responsibility for the causes of the corporate entity becoming insolvent.

**9.** The extent of the officer's responsibility for any failure by the corporate entity to supply any goods or services which have been paid for (in whole or in part).

**10.** The extent of the officer's responsibility for the corporate entity entering into any transaction or giving any preference, being a transaction or preference liable to be set aside under section.167 or 250 of the Companies Act 1931, or under any laws having similar effect in any country or territory outside the Island.

**11.** The extent of the officer's responsibility for any failure by the officers of a company incorporated under the Companies Acts 1931 to 2004 or the Companies Act 2006 to comply with section 226 of the Companies Act 1931 (meeting of creditors in creditors' voluntary winding up).

**12.** (1) Any failure of a director of a corporate entity to comply with any obligation imposed on that person by or under any of the relevant provisions of the Companies Act 1931 as they apply to companies incorporated, formed and registered or capable of being wound up under that Act and as they apply to companies incorporated under the Companies Act 2006 and to limited liability companies formed under the Limited Liability Companies Act 1996.

(2) Any failure by the director of a corporate entity to comply with any obligation imposed on that person by any provision of legislation having

equivalent effect to the relevant provisions of the Companies Act 1931 in any country or territory outside the Island.

(3) For the purposes of this paragraph, the relevant provisions of the Companies Act 1931 are -

- (a) section 175 (statement of affairs in winding up by the Court);
- (b) section 234 (delivery of company property to liquidator); and
- (c) section 255 (duty to co-operate with liquidator, etc).

## **SCHEDULE 2**

Section 16

### **INSPECTION AND INVESTIGATION**

#### **Inspection and investigation**

1. (1) The powers provided by this paragraph may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of –

- (a) being unfit to act as an officer of a company; or
- (b) acting in breach of a disqualification order or a disqualification undertaking.

(2) The Commission may inspect the books, accounts and documents and investigate the transactions of a company.

(3) The Commission shall have every such power of entry and access as may be necessary for the purposes of sub-paragraph (2), and it may take possession of all such books, accounts and documents as, and for so long as, may be necessary for those purposes.

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(4) The Commission may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this paragraph.

(5) Any person who intentionally obstructs the Commission when acting in the execution of its powers under sub-paragraph (2), (3) or (4) shall be guilty of an offence.

(6) In this paragraph every reference to the Commission shall include any person authorised by the Commission in writing for the purposes of this paragraph.

(7) The Commission shall exercise its right of entry and access under sub-paragraph (3) only during reasonable hours, and any person authorised by the Commission under sub-paragraph (6) shall, in the exercise of such right as aforesaid, produce his or her written appointment if required to do so.

(8) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of paragraph 13 of the Police Powers and Procedures Act 1998. Requests for information

2. (1) The powers provided by this paragraph may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of –

(a) being unfit to act as an officer of a company; or

(b) acting in breach of a disqualification order or a disqualification undertaking.

(2) The Commission may request a company to provide the Commission with any information that it may reasonably require for the

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performance of its functions under this Act and may require such information to be verified in such manner as the Commission directs.

(3) Without prejudice to the generality of sub-paragraph (2), the Commission may request information about –

(a) subject to sub-paragraph (5), the affairs of an actual or prospective customer of a company mentioned in sub-paragraph (2);

(b) any corporate entity which is or has at any relevant time been –

(i) a holding company, subsidiary or related company (within the meaning given in section 32 of the Banking Act 1998) of the company;

(ii) a subsidiary of a holding company of the company;

(iii) a holding company of a subsidiary of the company; or

(iv) a corporate entity in the case of which a shareholder controller of the company, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting; and

(c) any partnership of which the company is or has at any relevant time been a member,

if, on reasonable grounds, it appears to the Commission necessary for the performance of its functions under this Act.

(4) The Commission may issue directions to any company mentioned in sub-paragraph (2) to secure that effect is given to a request under sub-

paragraph (2) or (3) and the directions shall include a statement of reasons for their issue.

(5) The Commission shall not make any request under sub-paragraph (2) or (3) with respect to the affairs of any particular actual or prospective customer of a company mentioned in sub-paragraph (2) unless the Commission is satisfied that it is necessary for the purpose of –

(a) securing that a direction issued under sub-paragraph (4) is complied with; or

(b) protecting the interests of that company's other customers.

(6) If a company is in contravention of any direction under sub-paragraph (4), the Commission may apply to the Chancery Court for an order requiring the company to comply with the direction.

(7) A statement by a person in response to a direction issued under this paragraph may not be used in evidence against them in respect of any criminal proceedings except proceedings alleging contravention of section 19.

(8) A person shall not be under an obligation under this paragraph to disclose any information subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

**Power of Commission to require information**

3. (1) Where, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any company so far as is relevant to the performance of the Commission's functions under this Act the justice may by written instrument, authorise the Commission to exercise

the powers under this paragraph and such powers shall not otherwise be exercisable.

(2) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require the person whose affairs are to be investigated ('the person under investigation') or any other person whom it has reason to believe has relevant information to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under sub-paragraph (1), require any person to produce at a specified time and place any specified documents or copies of documents which appear to the Commission to relate to any matter relevant to the investigation or any documents of a specified class which appear to it so to relate.

(4) If documents or copies of documents are not produced as required under sub-paragraph (3), the Commission may require the person who was required to produce them to state, to the best of their knowledge and belief, where they are.

(5) Where any documents are produced as required under sub-paragraph (3), the Commission may –

- (a) take possession of all such documents for so long as may be necessary; or
- (b) take copies or extracts from them; or

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(c) require the person producing them to provide an explanation of any of them.

(6) A statement by a person in response to a requirement imposed under this paragraph may not be used in evidence against them in respect of any criminal proceedings except proceedings alleging contravention of –

(a) sub-paragraph (8) of this paragraph; or

(b) section 19.

(7) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

(8) Any person who without reasonable excuse fails to comply with a requirement imposed on them under this paragraph shall be guilty of an offence.

(9) In this paragraph, ‘documents’ includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

(10) Where a person claims a lien on a document, its production under this paragraph is without prejudice to the lien.

**Deemster’s search warrant**

**4.** (1) Where, on information on oath laid by the Commission, a Deemster is satisfied, in relation to any documents, that there are reasonable grounds for believing –

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- (a) that –
  - (i) a person has failed to comply with an obligation under paragraph 3 to produce them or copies of them; or
  - (ii) it is not practicable to serve a notice under paragraph 3(3) in relation to them; or
  - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
- (b) that they are on premises specified in the information,

he or she may issue such a warrant as is mentioned in sub-paragraph (2).

(2) The warrant referred to in sub-paragraph (1) is a warrant authorising any person named in the warrant –

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
- (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence relating to the discharge of the Commission's functions under this Act or to an offence under this Act, the

financial services legislation or the Companies Acts, the person named in the warrant may –

- (a) take possession of those documents, or
- (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.

(4) A person executing a warrant issued under sub-paragraph (1) shall be accompanied by a constable.

(5) A person shall not be under an obligation under this paragraph to disclose any items subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

#### **Authorised persons**

**5. (1) The Commission may authorise any person to exercise on its behalf all or any of the powers conferred by or under this Schedule.**

(2) But no authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(3) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under sub-paragraph (1) unless he or she has, if required to do so, produced evidence of their authority.

### **SCHEDULE 3**

Section 17

## **RESTRICTIONS ON DISCLOSURE OF INFORMATION**

### **Restrictions on disclosure of information**

1. (1) Subject to paragraph 2, information which is restricted information for the purposes of this Schedule and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in sub-paragraph (3) ('the primary recipient') or any person obtaining the information directly or indirectly from them without the consent of the person to whom it relates.

(2) Subject to sub-paragraph (4), information is restricted information for the purposes of this Schedule if it is obtained by the primary recipient for the purposes of, or in the discharge of its functions under this Act or any regulations made under this Act (whether or not by virtue of any requirement to supply it made under those provisions).

(3) The persons mentioned in sub-paragraph (1) are –

- (a) the Commission and its members;
- (b) the Registrar; and
- (c) any officer or servant of any such person.

(4) Information shall not be treated as restricted information for the purposes of this paragraph if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this section.

(5) Any person who contravenes this paragraph shall be guilty of an offence.

### **Exceptions from restrictions on disclosure**

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2. (1) Paragraph 1 shall not preclude the disclosure of information –
- (a) with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;
  - (b) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions;
  - (c) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act, the Financial Supervision Act 1988, or the Financial Services Act 200[8];
  - (d) for the purpose of enabling or assisting the Treasury to discharge its functions under the Financial Services Act 200[8], the Companies Acts, the enactments relating to insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the High Court under the Companies Acts to discharge their functions;
  - (e) for the purpose of enabling or assisting the body administering a scheme under section 25 of the Financial Services Act 200[8] to discharge its functions under the scheme;
  - (f) for the purpose of enabling or assisting the Commission to discharge its functions under this Act, the financial services legislation, the Companies Acts or any other functions;
  - (g) for the purpose of enabling or assisting the Insurance and Pensions Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor to discharge their functions under the

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Insurance Act 1986, the Insurance Intermediaries (General Business) Act 1996 and the Retirement Benefits Schemes Act 2000;

- (h) for the purpose of enabling or assisting the Assessor of Income Tax to discharge his or her functions under enactments relating to income tax;
- (i) for the purpose of enabling or assisting the Collector of customs and excise to discharge his or her functions under enactments relating to customs and excise or in relation to any assigned matter (as defined in section 184 of the Customs and Excise Management Act 1986);
- (j) for the purpose of enabling or assisting an official receiver (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge his or her functions under the enactments relating to insolvency;
- (k) for the purpose of enabling or assisting a trustee in bankruptcy, a receiver or liquidator (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge his or her functions;
- (l) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an advocate or registered legal practitioner, auditor, accountant, valuer or actuary of his or her professional duties;

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- (m) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under section 19 of the Financial Supervision Act 1988 to discharge his or her functions;
  - (n) for the purpose of enabling or assisting in the discharge of the functions of an auditor of a permitted person (within the meaning of section 35(1) of the Financial Services Act 200[8]);
  - (o) for the purpose of enabling or assisting the Isle of Man Office of Fair Trading and any adjudicator to discharge their functions under Schedule 4 of the Financial Services Act 200[8] or for the purpose of enabling or assisting any person exercising equivalent functions outside the Island;
  - (p) for the purpose of enabling or assisting the Gambling Supervision Commission in the discharge of its functions under enactments relating to all forms of gambling;
  - (q) if the information is or has been available to the public from other sources;
  - (r) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
  - (s) for the purpose of enabling the Civil Service Commission to investigate the conduct of members of the Isle of Man Civil Service.
- (2) Subject to sub-paragraph (3), paragraph 1 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or

other authority in the Island for the time being designated for the purposes of this section by an order made by the Treasury to discharge any functions which are specified in the order.

(3) An order under sub-paragraph (2) designating an authority for the purposes of that subsection may –

- (a) impose conditions subject to which the disclosure of information is permitted by that subsection; and
- (b) otherwise restrict the circumstances in which that subsection permits disclosure.

(4) Paragraph 1 shall not preclude the disclosure –

- (a) of any information contained in any notice or copy of a notice served under this Act, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from them;  
or
- (b) of any information contained in any register required to be kept under this Act.

(4) Paragraph 1 shall not preclude the disclosure of information –

- (a) to a regulatory authority within the meaning of section 47(1) of the Financial Services Act 200[8]; or
- (b) for the purpose of enabling or assisting an authority (whether a governmental or private body) in a country or territory outside the Island –

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- (i) to exercise functions in connection with rules of law corresponding to the provisions of the Insider Dealing Act 1998;
- (ii) to exercise functions corresponding to any of those of the Insurance and Pensions Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor under the Insurance Act 1986, the Insurance Intermediaries (General Business) Act 1996 or the Retirement Benefits Schemes Act 2000; or
- (iii) to exercise functions corresponding to any of those of the Commission under this Act, the Financial Supervision Act 1988 or the Financial Services Act 200[8].

(5) Sub-paragraph (4) shall not permit the disclosure of any information relating to the affairs of an actual or prospective customer unless –

- (a) that customer consents; or
- (b) the Commission has given its written consent to the disclosure in accordance with sub-paragraphs (6) to (8).

(6) The Commission may consent to a disclosure of information to which sub-paragraph (5) applies if the Commission is satisfied that disclosure is appropriate having regard to its functions and having regard to the confidential nature of the information and the purpose for which it is required.

(7) In deciding whether to consent to a disclosure of information to which subsection (5) applies, the Commission shall take the following factors into account –

- (a) the seriousness of the circumstances of the particular case;

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- (b) the disclosure is (either itself or when taken with other material) likely to be of substantial value to the body to which it is made;
  - (c) whether the information could be obtained by other means;
  - (d) the standards of confidentiality and information security which will be applied by the recipient;
  - (e) whether the making of the disclosure is proportionate to what is sought to be achieved by it; and
  - (f) whether reciprocal assistance would be given in the country concerned.
- (8) The factors set out in sub-paragraph (7) are neither exhaustive nor definitive.
- (9) The Commission may by order modify –
- (a) the matters in respect of which the Commission must be satisfied under sub-paragraph (6);
  - (b) the factors to be taken into account under sub-paragraph (7).

**SCHEDULE 4**

Section 23(1)

**TRANSITIONAL PROVISIONS AND SAVINGS**

1. In this Schedule, “the former enactments” means so much of the Companies Act 1931, the Companies Act 1982 and the Companies Act 1992, as is repealed and replaced by this Act; and “the appointed day” means the day on which this Act comes into operation.

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 of 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 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.

7. Where –

- (a) an application is made for a disqualification order under section 4 by virtue of subsection (2)(a) of that section, and

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(b) the company in question went into liquidation before that provision came into operation,

the court shall not make an order under that section unless it could have made a disqualification order under section 31 of the Companies Act 1982 as it had effect immediately before the date specified in sub-paragraph (b).

**SCHEDULE 5**

Section 23(2)

**AMENDMENTS**

Vol VI p.405	Industrial and Building Societies Act 1892	After section 22(4) insert “(5) A copy of a report produced by inspectors under subsection (1)(a) shall be provided to the Commission.”
Vol XIII p.235	Companies Act 1931	In section 134(6) before “the registered office of the company” insert “the Financial Supervision Commission”.
[1998 c.2	Insider Dealing Act 1998	In Schedule 3 (inspection and investigation), paragraph 6, after “The Treasury” in the second sentence insert “shall provide to the Financial Supervision

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		Commission a copy of the final report and”.]
2006 c.	Companies Act 2006	In section 198(3) and (4) after “the Registrar” add “and the Financial Supervision Commission”.

**SCHEDULE 6**

Section 23(3)

**REPEALS**

Vol XIII p.235	Companies Act 1931	section 141 section 208 section 259(4)
1982 c.2	Companies Act 1982	section 31
1992 c.4	Companies Act 1992	sections 26 and 27