

## SCHEDULES

### SCHEDULE 4

ITMA as an approved regulator: regulatory arrangements

#### Part 3

#### Powers of intervention

##### *Powers of intervention*

**12.**—(1) Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority’s powers of intervention) applies in relation to—

- (a) ITMA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority);
- (b) registered persons; and
- (c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

- (a) a licensing authority or the relevant licensing authority are to be read as references to ITMA;
- (b) a licensed body are to be read as references to a registered person;
- (c) an employee of a licensed body are to be read as references to an employee of a registered person;
- (d) a manager of a licensed body are to be read as references to a manager of a ITMA-registered body;
- (e) the terms of a licensed body’s licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;
- (f) the revocation of a licensed body’s licence are to be read as references to the cancellation of a registered person’s authorisation;
- (g) the suspension of a licensed body’s licence are to be read as references to the suspension of a registered person’s authorisation; and
- (h) a licensed body’s licence expiring without being renewed or replaced are to be read as references to a registered person’s authorisation ceasing to have effect without being renewed.

(3) Paragraph 1 of Schedule 14 has effect as if—

- (a) after sub-paragraph (2)(e) there were inserted—
  - “(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—

*Status: This is the original version (as it was originally made).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

- (i) the individual has been committed to prison in any civil or criminal proceedings;
  - (ii) ITMA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;
  - (iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005<sup>(1)</sup>) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;
  - (iv) ITMA is satisfied that the individual has abandoned the individual's practice as a registered person;
  - (v) the individual has made a composition or arrangement with his creditors;
  - (vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.
- (eb) that the registered person was an individual who has died and who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—
- (i) ITMA is satisfied that there has been undue delay on the part of the individual's personal representatives in connection with the individual's practice or any trust of which the individual acting as a registered person was a trustee;
  - (ii) ITMA has reason to suspect dishonesty on the part of the individual or the individual's personal representatives in connection with the individual's business or any trust of which the individual acting as a registered person was a trustee.”
- (b) for sub-paragraph (3) there were substituted—
- “(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—
- (a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person's creditors in England or Wales; or
  - (b) in the case of a registered person who is a ITMA-registered body in England or Wales—
    - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986<sup>(2)</sup> (statutory declaration of solvency);
    - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act<sup>(3)</sup> (administration);
    - (iii) an administrative receiver within the meaning of section 251 of that Act<sup>(4)</sup> (interpretation) is appointed;

(1) 2005 c.9.

(2) 1986 c.45. To which there are amendments not relevant to this Order.

(3) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.

(4) Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

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

- (iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);
  - (v) an order for the winding up of the body is made; or
  - (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.
- (c) in the case of a registered person who is a ITMA-registered body, established outside the jurisdiction of England and Wales, the body is—
  - (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b) (i) to (v); or
  - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”;
- (c) for sub-paragraphs (5) and (6) there were substituted—
  - “(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—
    - (a) in the case of a registered person who is an individual—
      - (i) after the individual’s death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);
      - (ii) after the individual’s name has been removed from the register or the individual’s registration has otherwise ceased to have effect;
    - (b) in the case of a ITMA-registered body, after the body’s name has been removed from the register or the body’s registration has otherwise ceased to have effect.
  - (6) For the purposes of this Schedule “registered person” includes—
    - (a) a person whose registration is suspended;
    - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
    - (c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.”.
- (4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—
  - “(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual’s partners or former partners;”.