

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989, PART II is up to date with all changes known to be in force on or before 16 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT^{F1}

F1 2002 NI 6
F1 mod. by SR 2004/307

PART II

OBTAINING A MORATORIUM

Nominee's statement

17.—(1 ^{F2} Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement,
- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed, and
- (c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
- (c ^{F2} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

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Documents to be submitted to High Court

- 18.—(1 ^{F3} To obtain a moratorium the directors of a company must file with the High Court—
- (a) a document setting out the terms of the proposed voluntary arrangement,
 - (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed,
 - (c) a statement that the company is eligible for a moratorium,
 - (d) a statement from the nominee that he has given his consent to act, and
 - (e) a statement from the nominee that, in his opinion—
 - (i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
 - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
 - (iii ^{F3} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.
- (2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.
- (3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.
- (4) The Department may by regulations modify the requirements of this paragraph as to the documents required to be filed with the High Court in order to obtain a moratorium.

F3 mod. by SR 2004/307

Duration of moratorium

- 19.—(1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court and references in this Schedule to the beginning of the moratorium shall be construed accordingly.
- (2 ^{F4} A moratorium ends at the end of the day on which the meetings summoned under paragraph 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.
- (3 ^{F4} If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 42.
- (4 ^{F4} If the nominee fails to summon either meeting within the period required by paragraph 39(1), the moratorium ends at the end of the last day of that period.
- (5) If the moratorium is extended (or further extended) under paragraph 42, it ends at the end of the day to which it is extended (or further extended).
- (6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—
- (a) paragraph 35(4) (effect of withdrawal by nominee of consent to act),

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(b) an order under paragraph 36(3), 37(3) or 50 (challenge of actions of nominee or directors),
or

(c ^{F4} a decision of one or both of the meetings summoned under paragraph 39.

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (3).

F4 mod. by SR 2004/307

Notification of beginning of moratorium

20.—(1 ^{F5} When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2 ^{F5} If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them shall be guilty of an offence.

F5 mod. by SR 2004/307

21.—(1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the registrar, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), petitioning creditor means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

Notification of end of moratorium

22.—(1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.]

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