

Status: Point in time view as at 03/05/2002. This version of this part contains provisions that are not valid for this point in time.

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SCHEDULES

[^{F1}SCHEDULE A1 E+W+S

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT]

Textual Amendments

- F1** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

PART VI E+W+S

MISCELLANEOUS

VALID FROM 01/01/2003

[^{F1} Challenge of directors' actions

Textual Amendments

- F1** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

- ^{F2}40 (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.
- (2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
 - (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.
- (3) An application for an order under this paragraph may be made during or after the moratorium.
- (4) On an application for an order under this paragraph the court may—

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- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
 - (b) adjourn the hearing conditionally or unconditionally, or
 - (c) make an interim order or any other order that it thinks fit.
- (5) An order under this paragraph may in particular—
- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
 - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct,
 - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (7) In relation to any time when an administration order is in force in relation to the company, or the company is being wound up, in pursuance of a petition presented before the moratorium came into force, no application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) liquidator.

Textual Amendments

- F2** [Sch. A1](#) inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by [2000 c. 39, s. 1, Sch. 1 para. 4](#); [S.I. 2001/1751, art. 2](#); [S.I. 2002/2711, art. 2](#) (subject to transitional provisions in [arts. 3-5](#))

VALID FROM 01/01/2003

Offences

- ^{F3}41 (1) This paragraph applies where a moratorium has been obtained for a company.
- (2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—
- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he is to be treated as having committed an offence at that time.
- (3) If, at any time during the moratorium, a person who is an officer of the company—
- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

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(b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph, he commits an offence.

(4) Those things are—

- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
- (b) fraudulently removing any part of the company's property to the value of £500 or more, or
- (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
- (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(5) For the purposes of this paragraph, "officer" includes a shadow director.

(6) It is a defence—

- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—

- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
- (b) amount to an offence under sub-paragraph (3),

commits an offence.

(8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part XV.

Textual Amendments

- F3** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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- ^{F4}42 (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—
- (a) makes any false representation, or
 - (b) fraudulently does, or omits to do, anything,
- he commits an offence.
- (2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.
- (3) For the purposes of this paragraph, “officer” includes a shadow director.
- (4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

Textual Amendments

- F4** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

VALID FROM 01/01/2003

Void provisions in floating charge documents

- ^{F5}43 (1) A provision in an instrument creating a floating charge is void if it provides for—
- (a) obtaining a moratorium, or
 - (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),
- to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.
- (2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

Textual Amendments

- F5** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

VALID FROM 01/01/2003

Functions of the Financial Services Authority

- ^{F6}44 (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16) below.

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- (2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.
- (3) The Authority is entitled to be heard on any application to the court for leave under paragraph 20(2) or 20(3) (disposal of charged property, etc.).
- (4) Where paragraph 26(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.
- (5) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (6) Where paragraph 27(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.
- (7) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (8) The persons to be summoned to a creditors' meeting under paragraph 29 include the Authority.
- (9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—
 - (a) any creditors' meeting summoned under that paragraph,
 - (b) any meeting of a committee established under paragraph 35 (moratorium committee).
- (10) The Authority is entitled to be heard on any application under paragraph 36(3) (effectiveness of decisions).
- (11) Where paragraph 38(1) (challenge of decisions) applies, the persons who may apply to the court include the Authority.
- (12) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (13) Where paragraph 39(3) (implementation of voluntary arrangement) applies, the persons who may apply to the court include the Authority.
- (14) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (15) Where paragraph 40(2) (challenge of directors' actions) applies, the persons who may apply to the court include the Authority.
- (16) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.
- (18) In this paragraph—
 - “the Authority” means the Financial Services Authority, and
 - “regulated company” means a company which—
 - (a) is, or has been, an authorised person within the meaning given by section 31 of the ^{M1}Financial Services and Markets Act 2000,

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- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Textual Amendments

F6 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M1 2000 c. 8.

Subordinate legislation

- ^{F7}45 (1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.
- (2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.
- (3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the ^{M2}Company Directors Disqualification Act 1986.
- (4) Regulations (except regulations under paragraph 5) or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under paragraph 5 of this Schedule are to be made by statutory instrument and shall only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament.]

Textual Amendments

F7 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M2 1986 c. 46.

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