

# SCHEDULES

## [<sup>F1</sup>SCHEDULE A1

### MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT<sup>F2</sup>

**F1** 2002 NI 6

**F2** mod. by SR 2004/307

## PART I

### INTRODUCTORY

#### *Interpretation*

**1.** In this Schedule—

the beginning of the moratorium has the meaning given by paragraph 19(1),

the date of filing means the date on which the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court,

hire-purchase agreement includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

market contract and market charge have the meanings given by Part V of the Companies (No. 2) (Northern Ireland) Order 1990,

moratorium means a moratorium under Article 14A,

the nominee includes any person for the time being carrying out the functions of a nominee under this Schedule,

the settlement finality regulations means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

system-charge has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996.

#### *Eligible companies*

**2.—(1)** A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

(a) it is excluded from being eligible by virtue of [<sup>F3</sup>paragraphs 4 to 7], or

(b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

(a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,

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- (b) it has permission under Part IV of that Act to accept deposits,
  - (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987,
  - (d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge,
  - (e) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).
- (3) Paragraphs (a), (b) and (c) of sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.

**F3** Words in Sch. A1 para. 2(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 11(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**3.—(1)** A company meets the requirements of this paragraph if the qualifying conditions are met—

- (a) in the year ending with the date of filing, or
- (b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies 2 or more of the requirements for being a small company specified for the time being in [F4 section 382(3) of the Companies Act 2006], and
- (b) a company's financial year is to be determined in accordance with [F5][F6 that Act]].

(3) [F7 Section 382(4), (5) and (6) of that Act] apply for the purposes of this paragraph as they apply for the purposes of [F8 that section].

(4) A company does not meet the requirements of this paragraph if it is a [F9 parent company] of a group of companies which does not qualify as a small group or a medium-sized group [F10 in relation to] the financial year of the company which ended last before the date of filing.

[F11(5) For the purposes of sub-paragraph (4)—

- (a) “group” has the same meaning as in Part 15 of the Companies Act 2006 (see section 474(1) of that Act); and
- (b) a group qualifies as small in relation to a financial year if it so qualifies under section 383(2) to (7) of that Act, and qualifies as medium-sized in relation to a financial year if it so qualifies under section 466(2) to (7) of that Act.]

[  
F12(6) Expressions used in this paragraph that are defined expressions in Part 15 of the Companies Act 2006 (accounts and reports) have the same meaning in this paragraph as in that Part.]

**F4** Words in Sch. A1 para. 3(2)(a) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 165(2)(a)(6) (with arts. 6, 11, 12)

**F5** Words in Sch. A1 para. 3(2)(b) substituted (6.4.2008) by virtue of Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 165(2)(b)(6) (with arts. 6, 11, 12)

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- F6** Words in Sch. A1 para. 3(2)(b) substituted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 107(4)(a)(i)** (with art. 10)
- F7** Words in Sch. A1 para. 3(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 165(3)(a)(6)** (with arts. 6, 11, 12)
- F8** Words in Sch. A1 para. 3(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 165(3)(b)(6)** (with arts. 6, 11, 12)
- F9** Words in Sch. A1 para. 3(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 165(4)(a)(6)** (with arts. 6, 11, 12)
- F10** Words in Sch. A1 para. 3(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 165(4)(b)(6)** (with arts. 6, 11, 12)
- F11** Sch. A1 para. 3(5) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 165(5)(6)** (with arts. 6, 11, 12)
- F12** Sch. A1 para. 3(6) inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 107(4)(a)(ii)** (with art. 10)

- 4.—(1) A company is excluded from being eligible for a moratorium if, on the date of filing—
- <sup>F13</sup>(a) the company is in administration,
  - (b) the company is being wound up,
  - (c) there is an administrative receiver of the company,
  - (d) a voluntary arrangement has effect in relation to the company,
  - (e) there is a provisional liquidator of the company,
  - (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
    - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
    - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,
  - [ an administrator appointed under paragraph 23 of Schedule B1 has held office in the period <sup>F14</sup>(fa) of 12 months ending with the date of filing,] or
  - (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under Article 14(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under Article 18(3)(a) has been made.
- (2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

- F13** Sch. A1 para. 4(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F14** Sch. A1 para. 4(1)(fa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(2)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

#### *Capital market arrangement*

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—

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- (a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
- (b) the arrangement involves the issue of a capital market investment.

*Public private partnership*

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

*Liability under an arrangement*

7.—(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this paragraph—

- (a) the reference to liability includes a present or future liability whether, in either case, it is certain or contingent,
- (b) the reference to liability includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

*Interpretation of capital market arrangement*

8.—(1) For the purposes of paragraph 5 an arrangement is a capital market arrangement if—

- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
- (b) at least one party guarantees the performance of obligations of another party, or
- (c) at least one party provides security in respect of the performance of obligations of another party, or
- (d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

- (a) a reference to a holding as trustee includes a reference to holding as nominee or agent,
- (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
- (c) a person holds a capital market investment if he has a legal or beneficial interest in it.

(3) In paragraph 5, 7, 14 and this paragraph—

agreement includes an agreement or undertaking effected by—

- (a) contract,

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- (b) deed, or
  - (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction, and
- party to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
  - (b) provides for the raising of finance as part of the arrangement, or
  - (c) is necessary for the purposes of implementing the arrangement.

#### *Capital market investment*

**9.—(1)** For the purposes of paragraphs 5 and 8, an investment is a capital market investment if—

- (a) it is within Article 77 [<sup>F15</sup>or 77A] of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (debt instruments), and
- (b) it is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

listed means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation),

rated means rated for the purposes of investment by an internationally recognised rating agency,

traded means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

foreign market has the same meaning as relevant market in Article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (foreign markets),

recognised investment exchange has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

**F15** Words in Sch. A1 para. 9(1)(a) inserted (24.2.2010) by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), art. 4, Sch. para. 3(a)

**10.—(1)** For the purposes of paragraphs 5 and 8 an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual in relation to a communication within the meaning of Article 48(2) of that Order,
- (c) a person to whom Article 49(2) of that Order applies (high net worth company, &c.),
- (d) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified sophisticated investor in relation to a communication within the meaning of Article 50(1) of that Order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

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- (a) in applying Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—
    - (i) in Article 19(5)(b), ignore the words after exempt person,
    - (ii) in Article 19(5)(c)(i), for the words from the controlled activity to the end substitute a controlled activity, and
    - (iii) in Article 19(5)(e) ignore the words from where the communication to the end, and
  - (b) in applying Article 49(2) of that Order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).
- (3) In sub-paragraph (1)—
- bond shall be construed in accordance with Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [<sup>F16</sup>, and includes any instrument falling within article 77A of that Order], and
- commercial paper has the meaning given by Article 9(3) of that Order.

**F16** Sch. A1 para. 10(3): words in definition of "bond" inserted (24.2.2010) by [Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), art. 4, [Sch. para. 3\(b\)](#)

#### *Debt*

- 11.** The debt of at least £10 million referred to in paragraph 5—
- (a) may be incurred at any time during the life of the capital market arrangement, and
  - (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

#### *Interpretation of project company*

- 12.—**(1) For the purposes of paragraph 6 a company is a project company of a project if—
- (a) it holds property for the purpose of the project,
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
  - (c) it is one of a number of companies which together carry out the project,
  - (d) it has the purpose of supplying finance to enable the project to be carried out, or
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a project company of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
  - (b) it also performs a function which is not—
    - (i) within sub-paragraph (1)(a) to (d),
    - (ii) related to a function within sub-paragraph (1)(a) to (d), or
    - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

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### *Public-private partnership project*

- 13.**—(1) In paragraph 6 public-private partnership project means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) resources includes—
- (a) funds (including payment for the provision of services or facilities),
  - (b) assets,
  - (c) professional skill,
  - (d) the grant of a concession or franchise, and
  - (e) any other commercial resource.
- (3) In sub-paragraph (1) public body means—
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Department, and
  - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (4) A specification under sub-paragraph (3) may be—
- (a) general, or
  - (b) for the purpose of the application of paragraph 6 to a specified case.

### *Step-in rights*

- 14.**—(1) For the purposes of paragraph 6 a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

### *“Person”*

**15.** For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

**16.**—(1) The Department may by regulations modify the qualifications for eligibility of a company for a moratorium.

(2) Regulations under this paragraph shall only be made if a draft containing the regulations has been laid before, and approved by a resolution of, the Assembly.

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## PART II

### OBTAINING A MORATORIUM

#### *Nominee's statement*

**17.**—(1 <sup>F17</sup> 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 <sup>F17</sup> 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.

**F17** mod. by SR 2004/307

#### *Documents to be submitted to High Court*

**18.**—(1 <sup>F18</sup> 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,



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(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) <sup>F18</sup> 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.

**F18** 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) <sup>F19</sup> 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) <sup>F19</sup> 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) <sup>F19</sup> 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),

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

(c) <sup>F19</sup> 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).

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### *Notification of beginning of moratorium*

**20.**—(1 <sup>F20</sup> When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2 <sup>F20</sup> If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them shall be guilty of an offence.

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| <b>F20</b> mod. by SR 2004/307 |
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**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.

## PART III

### EFFECTS OF MORATORIUM

#### *Effect on creditors, etc.*

**23.**—(1) During the period for which a moratorium is in force for a company—

- (a) no petition may be presented for the winding up of the company,
- (b) <sup>F21</sup> no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose,
- (c) <sup>F21</sup> no resolution may be passed or order made for the winding up of the company,
- [<sup>F22</sup>(d) no administration application may be made in respect of the company,
- (da) no administrator of the company may be appointed under paragraph 15 or 23 of Schedule B1,]
- (e) no administrative receiver of the company may be appointed,

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- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,
- (g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose, and
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the High Court and subject to such terms as the Court may impose.

(2) <sup>F21</sup> Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, Article 107 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, excepted petition means a petition under—

- (a) Article 104A<sup>F23</sup> or 104B],
- (b) <sup>F24</sup> .....
- (c) <sup>F24</sup> .....
- (d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

**F21** mod. by SR 2004/307

**F22** Sch. A1 para. 23(1)(d)(da) substituted (27.3.2006) for Sch. A1 para. 23(1)(d) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 45(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**F23** SR 2004/417

**F24** Sch. A1 para. 23(4)(b)(c) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 11(3), 31, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

**Modifications etc. (not altering text)**

**C1** Sch. A1 para. 23(1)(g) excluded by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 19(4) (as inserted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), reg. 7(c))

**24.**—(1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

- (a) the event shall not have the effect in question at that time, but

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- (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.
  - (4) The effect referred to in sub-paragraphs (2) and (3) is—
    - (a) causing the crystallisation of the floating charge, or
    - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
  - (5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining—
    - (a) the crystallisation of the floating charge, or
    - (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
- 25.** Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

#### *Effect on company*

- 26.—**(1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.
- (2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not—
  - (a) make the transaction void, or
  - (b) make it to any extent unenforceable against the company.

#### *Company invoices, etc.*

- 27.—**[<sup>F25</sup>(1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, must also contain the nominee's name and a statement that the moratorium is in force for the company.]
- (2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company shall be guilty of an offence.
- (3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

**F25** Sch. A1 para. 27(1) substituted (1.10.2008) by [Companies \(Trading Disclosures\) \(Insolvency\) Regulations 2008 \(S.I. 2008/1897\)](#), **reg. 3(2)**

#### *Obtaining credit during moratorium*

- 28.—**(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes the following cases—
  - (a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and

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- (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) Where the company obtains credit in contravention of sub-paragraph (1)—
  - (a) the company shall be guilty of an offence, and
  - (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he shall be guilty of an offence.
- (4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under Article 362.

#### *Disposals and payments*

- 29.**—(1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—
- (a) there are reasonable grounds for believing that the disposal will benefit the company, and
  - (b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.
- (3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
- (a) the company shall be guilty of an offence, and
  - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

- 30.**—(1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—
- (a) there are reasonable grounds for believing that the payment will benefit the company, and
  - (b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
- (a) the company shall be guilty of an offence, and
  - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

#### *Disposal of charged property, etc.*

- 31.**—(1) This paragraph applies where—
- (a) any property of the company is subject to a security, or
  - (b) any goods are in the possession of the company under a hire-purchase agreement.
- (2) If the holder of the security consents, or the High Court gives leave, the company may dispose of the property as if it were not subject to the security.
- (3) If the owner of the goods consents, or the High Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

**Status:** Point in time view as at 12/05/2011.

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(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the High Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to 2 or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8)<sup>F26</sup> Where the High Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send [<sup>F27</sup>a copy] of the order giving leave to the registrar.

(9)<sup>F26</sup> If the directors without reasonable excuse fail to comply with sub-paragraph (8), they shall be guilty of an offence.

**F26** mod. by SR 2004/307

**F27** Words in [Sch. A1 para. 31\(8\)](#) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, [Sch. 1 para. 107\(4\)\(b\)](#) (with art. 10)

**Modifications etc. (not altering text)**

**C2** [Sch. A1 para. 31](#) excluded by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), [reg. 19\(4\)](#) (as inserted (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), [reg. 7\(c\)](#))

**32.**—(1) If the company—

- (a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,
- (b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or
- (c) fails to comply with any requirement imposed by paragraph 31,

it shall be guilty of an offence.

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(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he shall be guilty of an offence.

*Market contracts, etc.*

**33.**—(1) If the company enters into any transaction to which this paragraph applies—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he shall be guilty of an offence.

(2) A company enters into a transaction to which this paragraph applies if it—

- (a) enters into a market contract,
- (b) gives a transfer order,
- (c) grants a market charge or a system-charge, or
- (d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

- (a) make the transaction void, or
- (b) make it to any extent unenforceable by or against the company.

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.

(5) Paragraph 31 does not apply in relation to any property which is subject to a market charge, a system-charge or a collateral security charge.

(6) In this paragraph, transfer order, collateral security and collateral security charge have the same meanings as in the settlement finality regulations.

## PART IV

### NOMINEES

*Monitoring of company's activities*

**34.**—(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and
- (b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) <sup>F28</sup> The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

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

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

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**F28** mod. by SR 2004/307

*Withdrawal of consent to act*

**35.**—(1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

- (2) The nominee must withdraw his consent to act if, at any time during a moratorium—
- (a) he forms the opinion that—
    - (i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or
    - (ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,
  - (b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or
  - (c) <sup>F29</sup> the directors fail to comply with their duty under paragraph 34(2).
- (3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.
- (4) If the nominee withdraws his consent to act, the moratorium comes to an end.
- (5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.
- (6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he shall be guilty of an offence.

**F29** mod. by SR 2004/307

*Challenge of nominee's actions, etc.*

**36.**—(1) <sup>F30</sup> If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the High Court.

- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the High Court may—
- (a) confirm, reverse or modify any act or decision of the nominee,
  - (b) give him directions, or
  - (c) make such other order as it thinks fit.
- (4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

**F30** mod. by SR 2004/307



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- 37.—**(1) Where there are reasonable grounds for believing that—
- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but
  - (b) the company does not intend to pursue any claim it may have against the nominee, any creditor of the company may apply to the High Court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the High Court may—
- (a) order the company to pursue any claim against the nominee,
  - (b) (authorise any creditor to pursue such a claim in the name of the company, or
  - (c) make such other order with respect to such a claim as it thinks fit,
- unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.
- (4) An order under sub-paragraph (3) may (among other things)—
- (a) impose conditions on any authority given to pursue a claim,
  - (b) direct the company to assist in the pursuit of a claim,
  - (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
  - (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.
- (5) On an application under sub-paragraph (1) the High Court shall have regard to the interests of the members and creditors of the company generally.

#### *Replacement of nominee by High Court*

- 38.—**(1) The High Court may—
- (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or
  - (b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,
- direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the High Court a statement indicating his consent to act.

**Status:** Point in time view as at 12/05/2011.

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## PART V

### CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

#### *Summoning of meetings*

**39.**—(1 <sup>F31</sup> Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

**F31** mod. by SR 2004/307

#### *Conduct of meetings*

**40.**—(1 <sup>F32</sup> Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

<sup>F32</sup>(3 <sup>F32</sup> After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

**F32** mod. by SR 2004/307

#### *Approval of voluntary arrangement*

**41.**—(1 <sup>F33</sup> The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

- (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
- (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

**Status:** Point in time view as at 12/05/2011.

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(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7)<sup>F33</sup> The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or either of them) summoned under paragraph 39 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with Article 346.

**F33** mod. by SR 2004/307

#### *Extension of moratorium*

**42.**—(1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of 2 months which begins—

- (a)<sup>F34</sup> where both meetings summoned under paragraph 39 are first held on the same day, with that day,
- (b)<sup>F34</sup> in any other case, with the day on which the later of those meetings is first held.

(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

- (a) of what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company, and
- (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (2).

**F34** mod. by SR 2004/307

**43.**—(1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the High Court a statement indicating his consent to act.

**Status:** Point in time view as at 12/05/2011.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, SCHEDULE A1 is up to date with all changes known to be in force on or before 12 July 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)

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

- (a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and
- (b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

**44.**—(1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the registrar and the High Court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send [<sup>F35</sup>a copy] of the order to the registrar.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he shall be guilty of an offence.

**F35** Words in Sch. A1 para. 44(2) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, Sch. 1 para. 107(4)(b) (with art. 10)

#### *Moratorium committee*

**45.**—(1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

#### *Effectiveness of decisions*

**46.**—(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) <sup>F36</sup> The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 39, or
- (b) subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) <sup>F36</sup> If a decision taken by the creditors' meeting under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the High Court.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, SCHEDULE A1 is up to date with all changes known to be in force on or before 12 July 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)

(4)<sup>F36</sup> An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5)<sup>F36</sup> On an application under sub-paragraph (3), the High Court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

**F36** mod. by SR 2004/307

#### *Effect of approval of voluntary arrangement*

**47.**—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
  - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
  - (ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23, was presented before the beginning of the moratorium, the High Court shall dismiss the petition.

(5) The High Court shall not dismiss a petition under sub-paragraph (4)—

- (a)<sup>F37</sup> at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the High Court, or
- (b) at any time when an application under paragraph 48 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

**F37** mod. by SR 2004/307

**Status:** Point in time view as at 12/05/2011.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, SCHEDULE A1 is up to date with all changes known to be in force on or before 12 July 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)

### Challenge of decisions

**48.**—(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the High Court on one or both of the following grounds—

- (a) <sup>F38</sup> that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
- (b) <sup>F38</sup> that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

- (a) <sup>F38</sup> a person entitled, in accordance with the rules, to vote at either of the meetings,
- <sup>F38</sup>(b) a person who would have been entitled, in accordance with the rules, to vote at the <sup>F38</sup> creditors' meeting if he had had notice of it, and
- (c) the nominee.

(3) An application under this paragraph shall not be made—

- (a) <sup>F38</sup> after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the High Court, or
- (b) <sup>F38</sup> in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the High Court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

- (a) revoke or suspend—
  - (i) any decision approving the voluntary arrangement which has effect under paragraph 46, or
  - (ii) <sup>F38</sup> in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
- (b) give a direction to any person—
  - (i) <sup>F38</sup> for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
  - (ii) <sup>F38</sup> in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the High Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 46.

(6) Where the High Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the High Court, on an application under this paragraph—

- (a) gives a direction under sub-paragraph (4)(b), or

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- (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).
- (8) In such a case, the High Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
  - (a) things done under the voluntary arrangement since it took effect, and
  - (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.
- (9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

**F38** mod. by SR 2004/307

#### *Implementation of voluntary arrangement*

**49.**—(1 <sup>F39</sup> This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

- (a) by virtue of the approval of the arrangement, on the nominee, or
- (b) by virtue of paragraph 41(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court.

(4) On an application under sub-paragraph (3) the High Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(5) The supervisor—

- (a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the Court for the winding up of the company or for an administration order to be made in relation to it.

(6) The High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

**F39** mod. by SR 2004/307

**Status:** Point in time view as at 12/05/2011.

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## PART VI

### MISCELLANEOUS

#### *Challenge of directors' actions*

**50.**—(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 High 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 High Court may—

(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 High Court may direct,

(d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(6) In making an order under this paragraph the High 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.

[<sup>F40</sup>(7) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the company and that appointment was made in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) 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) the liquidator.]



**F40** Sch. A1 para. 50(7)(8) substituted (27.3.2006) for Sch. A1 para. 50(7) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 45(4) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### Offences

**51.**—(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
- (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 shall be guilty of 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—

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- (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),

shall be guilty of an offence.

(8) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under Article 362.

**52.**—(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 shall be guilty of 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.

#### *Void provisions in floating charge documents*

**53.**—(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.

#### *Functions of the Financial Services Authority*

**54.**—(1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(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 High Court for leave under paragraph 31(2) or 31(3) (disposal of charged property, etc.).

(4) Where paragraph 36(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(5) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 37(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(7) If a person other than the Authority applies to the High 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 39 include the Authority.

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(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 45 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 46(3) (effectiveness of decisions).

(11) Where paragraph 48(1) (challenge of decisions) applies, the persons who may apply to the High Court include the Authority.

(12) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 49(3) (implementation of voluntary arrangement) applies, the persons who may apply to the High Court include the Authority.

(14) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 50(2) (challenge of directors' actions) applies, the persons who may apply to the High Court include the Authority.

(16) If a person other than the Authority applies to the High 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 Financial Services and Markets Act 2000,
- (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.

#### *Subordinate legislation*

**55.—**(1) Regulations made by the Department under this Schedule may make such consequential, incidental, supplemental and transitional provision as appears to the Department necessary or expedient.

(2) Any power of the Department to make regulations under this Schedule may be exercised by amending or repealing any provision contained in this Order (including one contained in this Schedule) or contained in the Company Directors Disqualification (Northern Ireland) Order 2002.

(3) An order made by the Department under this Schedule shall be subject to negative resolution.]

**Status:**

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**Changes to legislation:**

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