

## SCHEDULES

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

#### MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT<sup>F1</sup>

**F1** [2002 NI 6](#)

**F1** 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>F2</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.

**F2** 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 [F3 section 382(3) of the Companies Act 2006], and
- (b) a company's financial year is to be determined in accordance with [F4[F5 that Act]].

(3) [F6 Section 382(4), (5) and (6) of that Act] apply for the purposes of this paragraph as they apply for the purposes of [F7 that section].

(4) A company does not meet the requirements of this paragraph if it is a [F8 parent company] of a group of companies which does not qualify as a small group or a medium-sized group [F9 in relation to] the financial year of the company which ended last before the date of filing.

[F10 (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.]

[  
**F11 (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.]

**F3** 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)

**F4** 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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- F5** 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)
- F6** 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)
- 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)(b)(6)** (with arts. 6, 11, 12)
- F8** 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)
- 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)(b)(6)** (with arts. 6, 11, 12)
- F10** 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)
- F11** 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>F12</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>F13</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.

- F12** 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**)
- F13** 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>F14</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).

**F14** 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>F15</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.

**F15** 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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