

**Status:** Point in time view as at 01/04/2016.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, PART IV is up to date with all changes known to be in force on or before 07 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)

## SCHEDULES

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

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

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

### 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>F2</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.

**F2** 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

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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>F3</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.

**F3** mod. by SR 2004/307

#### *Challenge of nominee's actions, etc.*

**36.**—(1) <sup>F4</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.

**F4** mod. by SR 2004/307

**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

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(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<sup>F5</sup>... 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.]

**F5** Words in [Sch. A1 para. 38\(1\)](#) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(c. 2\)](#), s. 28(2), [Sch. 3 para. 17\(a\)](#), [Sch. 4](#); S.R. 2016/203, art. 2

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