

SCHEDULES

[^{F1}SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT^{F1}

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

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

39.—(1 ^{F2} 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.

F2 mod. by SR 2004/307

Conduct of meetings

40.—(1 ^{F3} 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).

^{F3}(3 ^{F3} 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.

F3 mod. by SR 2004/307

Approval of voluntary arrangement

41.—(1)^{F4} The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

Status: Point in time view as at 19/12/2018.

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(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^{F5}... 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,^{F6}...

[any ordinary preferential debt of the company is to be paid otherwise than in priority to
^{F7}(aa) any secondary preferential debts that it may have,]

(b) a preferential creditor of the company is to be paid an amount in respect of [^{F8}an ordinary preferential debt] that bears to that debt a smaller proportion than is borne to [^{F9}another ordinary] preferential debt by the amount that is to be paid in respect of that other debt,
^{F10}...

(c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt,]^{F12}or

(d) if the company is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).]

(6) The meeting may approve such a proposal or modification with the concurrence of the ^{F13}... creditor concerned.

(7)^{F4} 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 [^{F14}, ordinary preferential debts, secondary preferential debts] and preferential creditors are to be read in accordance with Article 346.

F4 mod. by SR 2004/307

F5 Words in Sch. A1 para. 41(2) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), Sch. 3 para. 17(b), Sch. 4; S.R. 2016/203, art. 2

F6 Word in Sch. A1 para. 41(5)(a) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **21(2)(a)** (with art. 3)

F7 Sch. A1 para. 41(5)(aa) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **21(2)(b)** (with art. 3)

F8 Words in Sch. A1 para. 41(5)(b) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **21(2)(c)(i)** (with art. 3)

F9 Words in Sch. A1 para. 41(5)(b) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **21(2)(c)(ii)** (with art. 3)

F10 Sch. A1 para. 41(5)(c) and word inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **21(2)(d)** (with art. 3)

F11 Word in Sch. A1 para. 41(5)(b) omitted (19.12.2018) by virtue of The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **30(2)** (with art. 3)

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- F12** Sch. A1 para. 41(5)(d) and word inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **30(3)** (with art. 3)
- F13** Word in Sch. A1 para. 41(6) omitted (19.12.2018) by virtue of [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **30(4)** (with art. 3)
- F14** Words in Sch. A1 para. 41(8) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **21(3)** (with art. 3)

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) ^{F15} where both meetings summoned under paragraph 39 are first held on the same day, with that day,
- (b) ^{F15} 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).

F15 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^{F16}... 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.

(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.

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F16 Words in Sch. A1 para. 43(1) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(c. 2\)](#), s. 28(2), Sch. 3 para. 17(c), [Sch. 4](#); S.R. 2016/203, art. 2

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 [^{F17}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.

F17 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) ^{F18} 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) ^{F18} 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.

(4) ^{F18} 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

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- (b) where the decision of the company meeting was taken on a later day, that day.
- (5 ^{F18} 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.

F18 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 ^{F19} 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.

F19 mod. by SR 2004/307

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—

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- (a)^{F20} 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)^{F20} 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)^{F20} a person entitled, in accordance with the rules, to vote at either of the meetings,
 - ^{F20}(b) a person who would have been entitled, in accordance with the rules, to vote at the ^{F20}creditors' meeting if he had had notice of it, and
 - (c) the nominee.
- (3) An application under this paragraph shall not be made—
- (a)^{F20} 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)^{F20} 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)^{F20} 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)^{F20} for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
 - (ii)^{F20} 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
- (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

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(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.

F20 mod. by SR 2004/307

Implementation of voluntary arrangement

49.—(1)^{F21} 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^{F22} ... 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.]

F21 mod. by SR 2004/307

F22 Words in [Sch. A1 para. 49\(6\)](#) repealed (1.4.2016) by [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(c. 2\)](#), s. 28(2), [Sch. 3 para. 17\(d\)](#), [Sch. 4](#); S.R. 2016/203, art. 2

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