

SCHEDULE 1

PART I

Amendments to Part I of the Principal Rules

Insertion of Chapter 9

23. After Rule 1.34 there shall be inserted the following provisions –

“CHAPTER 9

Obtaining a Moratorium

Proceedings during a Moratorium

Nominees

Consideration of Proposals Where Moratorium Obtained

SECTION A:

OBTAINING A MORATORIUM

Preparation of proposal by directors and submission to nominee

1.35.—(1) The document containing the proposal referred to in paragraph 17(1)(a) of Schedule A1 to the Order shall –

- (a) be prepared by the directors;
- (d) comply with the requirements of paragraphs (1) and (2) of Rule 1.03 (save that the reference to preferential creditors shall be to preferential creditors within the meaning of paragraph 41(8) of Schedule A1 to the Order); and
- (e) state the address to which notice of the consent of the nominee to act and the documents referred to in Rule 1.38 shall be sent.

(2) With the agreement in writing of the nominee, the directors may amend the proposal at any time before submission to them by the nominee of the statement required by paragraph 17(2) of Schedule A1 to the Order.

[E.R. 1.35]

Delivery of documents to the intended nominee, etc.

1.36.—(1) The documents required to be delivered to the nominee pursuant to paragraph 17(1) of Schedule A1 to the Order shall be delivered to the nominee himself or to a person authorised to take delivery of documents on his behalf.

(2) On receipt of the documents, the nominee shall forthwith issue an acknowledgement of receipt of the documents to the directors which shall indicate the date on which the documents were received.

[E.R. 1.36]

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Statement of affairs

1.37.—(1) The statement of the company's affairs required to be delivered to the nominee pursuant to paragraph 17(1)(b) of Schedule A1 to the Order shall be delivered to the nominee no later than 7 days after the delivery to him of the document setting out the terms of the proposed voluntary arrangement or such longer time as he may allow. [Form 1.06]

(2) The statement of affairs shall comprise the same particulars as required by Rule 1.05(2) (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal).

(3) Subject to paragraph (4) the statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the delivery of the document containing the proposal for the voluntary arrangement to the nominee under Rule 1.36(1).

(4) The nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of delivery of the documents referred to in Rule 1.36(1)) and if he does so, he shall give a statement of his reasons in writing to the directors.

(5) The statement of affairs shall be certified as correct, to the best of their knowledge and belief, by two or more directors of the company, or by the company secretary and at least one director (other than the secretary himself) .

[E.R. 1.37]

The nominee's statement

1.38.—(1) The nominee shall submit to the directors the statement required by paragraph 17(2) of Schedule A1 to the Order within 28 days of the submission to him of the document setting out the terms of the proposed voluntary arrangement

[Form 1.05]

(2) The statement shall have annexed to it –

(a) the nominee's comments on the proposal, unless the statement contains an opinion in the negative on any of the matters referred to in paragraph 17(2)(a) and (b) of Schedule A1 to the Order, in which case he shall instead give his reasons for that opinion; and

(b) where he is willing to act in relation to the proposed arrangement, a statement of his consent to act.

[Form 1.08]

[E.R. 1.38]

Documents submitted to the court to obtain moratorium

1.39.—(1) Where pursuant to paragraph 18 of Schedule A1 to the Order the directors file the document and statements referred to in that paragraph in court, those documents shall be delivered together with 4 copies of a schedule listing them within 3 working days of the date of the submission to them of the nominee's statement under paragraph 17(2) of Schedule A1 to the Order.

[Forms 1.05 1.06, 1.07, 1.08 and 1.09]

(2) When the directors file the document and statements referred to in paragraph (1), they shall also file –

(a) a copy of any statement of reasons made by the nominee pursuant to Rule 1.37(4); and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(b) a copy of the nominee's comments on the proposal submitted to them pursuant to Rule 1.38 (2).

(3) The copies of the Schedule shall be endorsed by the court with the date on which the documents were filed in court and 3 copies of the schedule sealed by the court shall be returned by the court to the person who filed the documents in court.

(4) The statement of affairs required to be filed under paragraph 18(1) (b) of Schedule A1 to the Order shall comprise the same particulars as required by Rule 1.05(2).

[Form 1.06]

[E.R. 1.39]

Notice and advertisement of beginning of a moratorium

1.40.—(1) After receiving the copies of the Schedule endorsed by the court under Rule 1.39(3), the directors shall forthwith serve 2 of them on the nominee and one on the company.

(2) Forthwith after receiving the copies of the Schedule pursuant to paragraph (1) the nominee shall advertise the coming into force of the moratorium once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that its coming into force comes to the notice of the company's creditors.

[Form 1.10]

(3) The nominee shall forthwith notify the registrar, the company and any petitioning creditor of the company of whose claim he is aware of the coming into force of the moratorium and such notification shall specify the date on which the moratorium came into force.

[Form 1.11]

(4) The nominee shall give notice of the coming into force of the moratorium specifying the date on which it came into force to –

(a) the Enforcement of Judgments Office; and

(b) any person who, to his knowledge, has distrained against the company or its property.

[E.R. 1.40]

Notice of extension of moratorium

1.41.—(1) The nominee shall forthwith notify the registrar and the court of a decision taking effect pursuant to paragraph 46 of Schedule A1 to the Order to extend or further extend the moratorium and such notice shall specify the new expiry date of the moratorium.

[Form 1.12] [Form 1.13]

(2) Where an order is made by the court extending or further extending or renewing or continuing a moratorium, the nominee shall forthwith after receiving a copy of the same give notice to the registrar and, with the notice, shall send an office copy of the order.

[Form 1.12]

[E.R. 1.41]

Notice and advertisement of end of moratorium

1.42.—(1) After the moratorium comes to an end, the nominee shall forthwith advertise its coming to an end once in the Gazette, and once in such newspaper as he thinks most

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

appropriate for ensuring that its coming to an end comes to the notice of the company’s creditors, and such notice shall specify the date on which the moratorium came to an end

[Form 1.10]

(2) The nominee shall forthwith give notice of the ending of the moratorium to the registrar, the court, the company and any creditor of the company of whose claim he is aware and such notice shall specify the date on which the moratorium came to an end.

[Form 1.14] [Form 1.15]

[E.R. 1.42]

SECTION B:

PROCEEDINGS DURING A MORATORIUM

Disposal of charged property etc. during a moratorium

1.43.—(1) This Rule applies in any case where the company makes an application to the court under paragraph 31 of Schedule A1 to the Order for leave to dispose of property of the company which is subject to a security, or goods in possession of the company under an agreement to which that paragraph relates.

(2) The court shall fix a venue for the hearing of the application and the company shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made, the company shall forthwith, give notice of it to that person or owner.

(4) The court shall send 2 sealed copies of the order to the company, who shall send one of them to that person or owner.

[E.R. 1.43]

SECTION C:

NOMINEES

Withdrawal of nominee’s consent to act

1.44. Where the nominee withdraws his consent to act he shall, pursuant to paragraph 35(5) of Schedule A1 to the Order, forthwith give notice of, and the reason for, his withdrawal to –

-
- (a) the registrar; [Form 1.16]
 - (b) the court; [Form 1.17]
 - (c) the company; and
 - (d) any creditor of the company
of whose claim he is aware.
-

[E.R. 1.44]

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Replacement of nominee by the court

1.45.—(1) Where the directors intend to make an application to the court under paragraph 38 of Schedule A1 to the Order for the nominee to be replaced, they shall give to the nominee and the proposed new nominee at least 7 days' notice of their application, together with a copy of the supporting affidavit.

(2) Where the nominee intends to make an application to the court under paragraph 38 of Schedule A1 to the Order to be replaced, he shall give to the directors at least 7 days' notice of his application.

(3) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee indicating his consent to act.

[Form 1.08]

[E.R. 1.45]

Notification of appointment of a replacement nominee

1.46. Where a person is appointed as a replacement nominee, he shall forthwith give notice of his appointment to –

-
- (a) the registrar; [Form 1.18]
 - (b) the court (in any case where he was not appointed by the court); [Form 1.19]
and
 - (c) the person whom he has replaced as nominee.
-

[E.R. 1.46]

Applications to court under paragraphs 36 or 37 of Schedule A1 to the Order

1.47. Where any person intends to make an application to the court pursuant to paragraph 36 or 37 of Schedule A1 to the Order, he shall give to the nominee at least 7 days' notice of his application.

[E.R. 1.47]

SECTION D:

CONSIDERATION OF PROPOSALS WHERE MORATORIUM OBTAINED

Summoning of meetings; procedure at meetings etc.

1.48.—(1) Where the nominee summons meetings of creditors and the company pursuant to paragraph 39(1) of Schedule A1 to the Order, each of those meetings shall be summoned for a date that is not more than 28 days from the date on which the moratorium came into force.

(2) Notices calling the creditors' meetings shall be sent by the nominee to all creditors specified in the statement of affairs and any other creditors of the company of whose address he is aware at least 14 days before the day fixed for the meeting.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Notices calling the company meeting shall be sent by the nominee to all persons who are, to the best of the nominee's belief, members of the company at least 14 days before the day fixed for the meeting.

(4) Each notice sent under this Rule shall state that the documents relating to the obtaining of the moratorium have been filed in court and state the effect of paragraphs (1), (3) and (4) of Rule 1.52 (requisite majorities (creditors)) and with each notice there shall be sent –

- (a) a copy of the directors' proposal;
- (b) a copy of the statement of the company's affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
- (c) the nominee's comments on the proposal.

(5) The provisions of Rules 1.13 to 1.16 shall apply.

[E.R. 1.48]

Entitlement to vote (creditors)

1.49.—(1) Subject to paragraph (3) and Rule 1.50, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the beginning of the moratorium, after deducting any amounts paid in respect of that debt after that date.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

[E.R. 1.49]

Procedure for admission of creditors' claims for voting purposes

1.50.—(1) Subject to paragraphs (2) to (8), at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.49 is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) Subject to paragraph (6), if on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

(6) The court's power to make an order under paragraph (5) is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(7) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by paragraph 40(3) of Schedule A1 to the Order has been made to the court.

(8) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

[E.R. 1.50]

Voting rights (members)

1.51. Rule 1.18 shall apply.

[E.R. 1.51]

Requisite majorities (creditors)

1.52.—(1) Subject to paragraphs (3) to (8), at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) At a meeting of the creditors for any resolution to pass extending (or further extending) a moratorium, or to bring a moratorium to an end before the end of the period of any extension, there must be a majority in excess of three quarters in value of the creditors present in person or by proxy and voting on the resolution. For this purpose paragraph (4) (b) shall not apply and a secured creditor is entitled to vote in respect of the amount of his claim without deducting the value of his security.

(4) Subject to paragraph (3), in the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim –

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or convenor of the meeting;
- (b) where the claim or part of the claim is secured;
- (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing –
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(5) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those –

- (a) who have notice of the meeting;
 - (b) whose votes are not to be left out of account under paragraph (4); and
 - (c) who are not, to the best of the chairman's belief, persons connected with the company.
- (6) It is for the chairman of the meeting to decide whether under this Rule –
- (a) a vote is to be left out of account in accordance with paragraph (4), or
 - (b) a person is a connected person for the purposes of paragraph (5)(c);

and, in relation to the second of these 2 cases, the chairman is entitled to rely on the information provided by the statement of the company's affairs or otherwise in accordance with this Part.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) If the chairman uses a proxy contrary to Rule 1.15 as it applies by virtue of Rule 1.48(5), his vote with that proxy does not count towards any majority under this Rule.

(8) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or member and paragraphs (5) to (8) of Rule 1.50 apply as regards such an appeal.

[E.R. 1.52]

Requisite majorities (members) and proceedings to obtain agreement on the proposal

1.53.—(1) Rule 1.20 shall apply.

(2) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(3) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting, but any adjournment shall not be to a day which is more than 14 days after the date on which the moratorium (including any extension) ends.

(4) If the meetings are adjourned under paragraph (3), notice of the fact shall be given by the nominee forthwith to the court.

(5) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors, it is deemed rejected.

[E.R. 1.53]

Implementation or the arrangement

1.54.—(1) Where a decision approving the arrangement has effect under paragraph 46 of Schedule A1 to the Order, the directors shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) Subject to paragraph (3), Rules 1.22, 1.22A and 1.24 to 1.29 apply.

[Forms 1.01, 1.02, 1.03 and 1.04]

(3) The provisions referred to in paragraph (2) are modified as follows –

(a) in paragraph (1) of Rule 1.22A the reference to Article 17A(6) is to be read as a reference to paragraph 46(5) of Schedule A1 to the Order;

(b) in paragraph (4) of Rule 1.24 the reference to Article 17(6) is to be read as a reference to paragraph 40(3) of Schedule A1 to the Order;

(c) in paragraph (6) of Rule 1.24 and paragraph (a) of Rule 1.28 the reference to Article 17A is to be read as a reference to paragraph 46 of Schedule A1 to the Order;

(d) in paragraph (1) of Rule 1.25 the reference to Article 19 is to be read as a reference to paragraph 48 of Schedule A1 to the Order and the references in paragraphs (2) and (5) to the administrator or liquidator shall be ignored; and

(e) in paragraph (4) of Rule 1.25 the reference to Article 19(4)(b) is to be read as a reference to paragraph 48(4)(b) of Schedule A1 to the Order.

[E.R. 1.54]”.