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SCHEDULES

[^{F1}SCHEDULE A1 E+W+S

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

Textual Amendments

- F1** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

- C1** Sch. A1 applied (with modifications) (E.W.) (1.1.2003) by S.I. 1994/2421, **art. 4(1)**, **Sch. 1** (as amended (1.1.2003) by S.I. 2002/2708, **arts. 4-6** (with transitional provisions in **art. 11**) and (1.7.2005) by S.I. 2005/1516, **art. 6**)
- C1** Sch. A1 extended (24.6.2003) by *The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003* (S.I. 2003/1633), regs. 1, 15, **Sch. 2 para. 7**

PART II E+W+S

OBTAINING A MORATORIUM

Nominee's statement

- ^{F26} (1) 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 subparagraph (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) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

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- (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.

Textual Amendments

F2 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Documents to be submitted to court

- ^{F37} (1) To obtain a moratorium the directors of a company must file (in Scotland, lodge) with the 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,
 - (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) 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 Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed (in Scotland, lodged) with the court in order to obtain a moratorium.

Textual Amendments

F3 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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Duration of moratorium

- ^{F48} (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to “the beginning of the moratorium” shall be construed accordingly.
- (2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.
- (3) 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 32.
- (4) If the nominee fails to summon either meeting within the period required by paragraph 29(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 32, 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 25(4) (effect of withdrawal by nominee of consent to act),
 - (b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or directors), or
 - (c) a decision of one or both of the meetings summoned under paragraph 29.
- (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 31 to approve a voluntary arrangement takes effect under paragraph 36.
- (8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

Textual Amendments

- F4** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Notification of beginning of moratorium

- ^{F59} (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.
- (2) If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

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Textual Amendments

F5 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- ^{F6}10 (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 of companies, 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 is liable to a fine.

Textual Amendments

F6 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Notification of end of moratorium

- ^{F7}11 (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 court, the registrar of companies, 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 is liable to a fine.]

Textual Amendments

F7 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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