

Status: Point in time view as at 06/04/2017.

Changes to legislation: Insolvency Act 1986, Cross Heading: Challenge of directors' actions is up to date with all changes known to be in force on or before 09 June 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

[^{F1}SCHEDULE A1

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 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**
- C1** Sch. A1 applied (with modifications) (E.W.) (1.1.2003) by **The Insolvent Partnerships Order 1994** (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); (1.7.2005) by S.I. 2005/1516, **art. 6**); (6.4.2017) by S.I. 2017/540, reg. 1, **Sch. 2 para. 5** (with reg. 4))

PART VI

MISCELLANEOUS

Challenge of directors' actions

- 40 (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.
- (2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
 - (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.
- (3) An application for an order under this paragraph may be made during or after the moratorium.
- (4) On an application for an order under this paragraph the court may—
- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
 - (b) adjourn the hearing conditionally or unconditionally, or
 - (c) make an interim order or any other order that it thinks fit.

Status: Point in time view as at 06/04/2017.

Changes to legislation: Insolvency Act 1986, Cross Heading: Challenge of directors' actions is up to date with all changes known to be in force on or before 09 June 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)

- (5) An order under this paragraph may in particular—
- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
 - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,
 - (c) require the summoning of a meeting of ^{F2}... members for the purpose of considering such matters as the court may direct,
 - [require a decision of the company's creditors to be sought (using a qualifying ^{F3}(ca) decision procedure) on such matters as the court may direct,]
 - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- [Sub-paragraph (8) applies where—
- ^{F4}(7) [^{F5}(a) the appointment of an administrator has effect in relation to the company and that appointment was in pursuance of—
- (i) an administration application made, or
 - (ii) a notice of intention to appoint filed,
- before the moratorium came into force, or]
- (b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.
- (8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.]]

Textual Amendments

- F2** Words in Sch. A1 para. 40(5)(c) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 9\(44\)\(a\)](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F3** Sch. A1 para. 40(5)(ca) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 9\(44\)\(b\)](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F4** Sch. A1 para. 40(7)(8) substituted (15.9.2003) for Sch. A1 para. 40(7) by [2002 c. 40, ss. 248\(3\), 279, Sch. 17 para. 37\(4\) \(with s. 249\(1\)-\(3\)\(6\)\)](#); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F5** Sch. A1 para. 40(7)(a) substituted (15.10.2004) by [The Enterprise Act 2002 \(Insolvency\) Order 2004 \(S.I. 2004/2312\), art. 2](#)

Status:

Point in time view as at 06/04/2017.

Changes to legislation:

Insolvency Act 1986, Cross Heading: Challenge of directors' actions is up to date with all changes known to be in force on or before 09 June 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.