

SCHEDULE 1

Article 4

MODIFIED PROVISIONS OF PART I OF THE ACT (COMPANY VOLUNTARY ARRANGEMENTS) AS APPLIED BY ARTICLE 4

For Part I of the Act there shall be substituted:—

“PART I

PARTNERSHIP VOLUNTARY ARRANGEMENTS

*The proposal*

**Those who may propose an arrangement**

1.—(1) The members of an insolvent partnership (other than one for which an administration order is in force, or which is being wound up as an unregistered company, or in respect of which an order has been made by virtue of article 11 of the Insolvent Partnerships Order 1994) may make a proposal under this Part to the partnership’s creditors for a composition in satisfaction of the debts of the partnership or a scheme of arrangement of its affairs (from here on referred to, in either case, as a “voluntary arrangement”).

(2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the insolvent partnership.

(3) Such a proposal may also be made—

- (a) where an administration order is in force in relation to the partnership, by the administrator,
- (b) where the partnership is being wound up as an unregistered company, by the liquidator, and
- (c) where an order has been made by virtue of article 11 of the Insolvent Partnerships Order 1994, by the trustee of the partnership.

**Procedure where nominee is not the liquidator, administrator or trustee**

2.—(1) This section applies where the nominee under section 1 is not the liquidator, administrator or trustee of the insolvent partnership.

(2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—

- (a) whether, in his opinion, meetings of the members of the partnership and of the partnership’s creditors should be summoned to consider the proposal, and
- (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3) The nominee shall also state in his report whether there are in existence any insolvency proceedings in respect of the insolvent partnership or any of its members.

(4) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement, and

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- (b) a statement of the partnership's affairs containing—
  - (i) such particulars of the partnership's creditors and of the partnership's debts and other liabilities and of the partnership property as may be prescribed, and
  - (ii) such other information as may be prescribed.

(5) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner in relation to the insolvent partnership.

### **Summoning of meetings**

**3.—**(1) Where the nominee under section 1 is not the liquidator, administrator or trustee of the insolvent partnership, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2) Where the nominee is the liquidator, administrator or trustee of the insolvent partnership, he shall summon meetings of the members of the partnership and of the partnership's creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the partnership of whose claim and address the person summoning the meeting is aware.

### *Consideration and implementation of proposal*

### **Decisions of meetings**

**4.—**(1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(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 in relation to the insolvent partnership.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the partnership to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which—

- (a) any preferential debt of the partnership is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
- (b) a preferential creditor of the partnership is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) 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 court, and, immediately after reporting to

the court, shall give notice of the result of the meeting to all those who were sent notice of the meeting in accordance with the rules.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

### **Effect of approval**

5.—(1) This section has effect where each of the meetings summoned under section 3 approves the proposed voluntary arrangement either with the same modifications or without modifications.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the members of the partnership at the creditors' meeting, and
- (b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting (whether or not he was present or represented at the meeting) as if he were a party to the voluntary arrangement.

(3) Subject as follows, if the partnership is being wound up as an unregistered company, or an administration order or an order by virtue of article 11 of the Insolvent Partnerships Order 1994 is in force, the court may do one or both of the following, namely—

(a) by order—

- (i) stay all proceedings in the winding up or in the proceedings under the order made by virtue of the said article 11 (as the case may be), including any related insolvency proceedings of a member of the partnership in his capacity as such, or
- (ii) discharge the administration order;

(b) give such directions as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement with respect to—

- (i) the conduct of the winding up, of the proceedings by virtue of the said article 11 or of the administration (as the case may be), and
- (ii) the conduct of any related insolvency proceedings as referred to in paragraph (a)(i) above.

(4) The court shall not make an order under subsection (3)(a)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or
- (b) at any time when an application under the next section 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.

### **Challenge of decisions**

6.—(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

- (a) that a voluntary arrangement approved at the meetings summoned under section 3 unfairly prejudices the interests of a creditor, member or contributory of the partnership;
- (b) that there has been some material irregularity at or in relation to either of the meetings.

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(2) The persons who may apply under this section are—

- (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
- (b) the nominee or any person who has replaced him under section 2(5) or 4(2); and
- (c) if the partnership is being wound up as an unregistered company or an administration order or order by virtue of article 11 of the Insolvent Partnerships Order 1994 is in force, the liquidator, administrator or trustee of the partnership.

(3) An application under this section shall not be made after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court.

(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

- (a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b), any approval given by the meeting in question;
- (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further meeting of the members of the partnership or (as the case may be) of the partnership's creditors to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.

(6) In a case where the court, on an application under this section with respect to any meeting—

- (a) gives a direction under subsection (4)(b), or
- (b) revokes or suspends an approval under subsection (4)(a) or (5),

the court may give such supplemental directions as it thinks fit, and, in particular, directions with respect to things done since the meeting under any voluntary arrangement approved by the meeting.

(7) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

### **Implementation of proposal**

7.—(1) This section applies where a voluntary arrangement approved by the meetings summoned under section 3 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 on the nominee, or
- (b) by virtue of section 2(5) or 4(2) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the partnership's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application the 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.

(4) The supervisor—

- (a) may apply to the 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 partnership as an unregistered company or for an administration order to be made in relation to it.

(5) The 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 in relation to the partnership, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) 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.”.