

SCHEDULES

SCHEDULE 2

COMPANY VOLUNTARY ARRANGEMENTS

PART I

AMENDMENTS OF THE INSOLVENCY ORDER

1. The Insolvency Order shall be amended as follows.
2. In Article 14(2) (proposal for a voluntary arrangement), for “in relation to the company” substitute “or authorised to act as nominee, in relation to the voluntary arrangement”.
3. In Article 15 (procedure where nominee is not the liquidator or administrator)—
 - (a) in paragraph (2)(a), at the beginning insert—

“whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(aa)”.
 - (b) for paragraph (4) substitute—

“(4) The High Court may—

 - (a) 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 Article or has died, or
 - (a) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.”.
4. In Article 17(2) (decisions of meetings), for “in relation to the company” substitute “or authorised to act as nominee, in relation to the voluntary arrangement”.
5. After Article 17 insert—

“Approval of arrangement

- 17A.—**(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.
- (2) The decision has effect if, in accordance with the rules—
 - (a) it has been taken by both meetings summoned under Article 16, or
 - (a) (subject to any order made under paragraph (4)) it has been taken by the creditors' meeting summoned under that Article.

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(3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the High Court.

(4) An application under 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
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) Where a member of a regulated company, within the meaning given by paragraph 54 of Schedule A1, applies to the High Court under paragraph (3), the Financial Services Authority is entitled to be heard on the application.

(6) On an application under 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.”.

6. In Article 18 (effect of approval of voluntary arrangement)—

(a) for paragraph (1) substitute—

“(1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.”,

(b) in paragraphs (2) and (3) omit “approved”,

(c) in paragraph (2), for sub-paragraph (b) substitute—

- “(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.

(2A) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of 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.”.

7.—(1) Article 19 (challenge of decisions) shall be amended as follows.

(2) In paragraph (1)(a), for “approved at the meetings summoned under Article 16” substitute “which has effect under Article 17A”.

(3) In paragraph (2), after sub-paragraph (a) insert—

“(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;”.

(4) In paragraph (3)—

- (a) after “be made” insert “(a)”,
- (b) at the end insert “or
 - (b) 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,

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but (subject to that) an application made by a person within paragraph (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.”.

(5) In paragraph (4)(a)—

- (a) for “the approvals given by the meetings” substitute “any decision approving the voluntary arrangement which has effect under Article 17A”,
- (b) for “approval given by the meeting in question” substitute “decision taken by the meeting in question which has effect under that Article”.

(6) In paragraph (5), for “approval given at the previous meetings” substitute “decision approving the voluntary arrangement which has effect under Article 17A”.

(7) In paragraph (6), for the words from “since” to the end substitute “under the voluntary arrangement since it took effect”.

(8) In paragraph (7), for “an approval given” substitute “a decision taken”.

8. After that Article insert—

“False representations, etc.

19A.—(1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.

(3) For purposes of this Article “officer” includes a shadow director.”.

9. In Article 20 (implementation of proposal)—

- (a) in paragraph (1), for the words following “voluntary arrangement” substitute “has effect under Article 17A”,
- (b) in paragraph (2), for sub-paragraph (a) substitute—
 - “(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under Article 16”,
- (c) in paragraph (5), for “in relation to the company” substitute “or authorised to act as supervisor, in relation to the voluntary arrangement”.

10. After that Article insert—

“Prosecution of delinquent officers of company

20A.—(1) This Article applies where a moratorium under Article 14A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A or paragraph 46 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

- (a) report the matter to the Department, and

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- (a) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the Department requires.

(3) Where a report is made to the Department under paragraph (2), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Paragraph (6) applies to any offence other than an offence under Article 7 or 10 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant), shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(9) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (8) to comply with that paragraph if he has failed to do so.

Arrangements coming to an end prematurely

20B. For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17A or paragraph 46 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i) or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1."

11. In Article 347(2)(b) (date which determines existence and amount of preferential debt), for the words following "date" substitute "on which the voluntary arrangement takes effect".

12. In Schedule 7 (punishment of offences), before the entry relating to Article 25(2) insert the following entry—

Article of Order creating offence	General nature of offence	Mode of prosecution	Punishment
19A(1).	False representation or fraud for purpose of obtaining members' or creditors' approval of proposed voluntary arrangement.	<ol style="list-style-type: none"> 1. On indictment. 2. Summary. 	<p>7 years or a fine, or both.</p> <p>6 months or the statutory maximum, or both.</p>

PART II

AMENDMENTS OF THE BUILDING SOCIETIES ACT 1986

13.—(1) The Financial Services Authority may appoint one or more competent persons to investigate and report on any matter reported to the Authority under Article 20A(2) of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#); and section 55 of the Building Societies Act 1986 (c. 53) (investigations) applies to such a person and the investigations as it applies to a person appointed under section 55(1) and an investigation under that section.

(2) Section 57(5) to (5B) of that Act (use in evidence of answers given to questions) applies to answers given under section 55(3) as extended by sub-paragraph (1) as it applies to answers given under section 57.

14.—(1) Schedule 15A to the Building Societies Act 1986 (application of companies insolvency legislation to building societies) shall be amended as follows.

(2) In paragraph 1(2)(b), for “Parts I to” substitute “Part I, Part II (except Article 14A), Parts III,”.

(3) At the end of paragraph 30 insert—

“and paragraph (1) of Article 15 shall have effect with the omission of the words from “and the directors” to the end.

30A. In paragraph (2) of Article 17A of the Order (approval of arrangement) as applied to a building society, sub-paragraph (b) and the word “or” immediately preceding that sub-paragraph are omitted.”.

(4) After paragraph 31 insert—

31A. In Article 20A of the Order (prosecution of delinquent officers) as applied to a building society—

(a) in paragraph (2) for the words “the Department”, in each place where they occur, there are substituted the words “the Financial Services Authority”,

(b) paragraphs (3) to (7) are omitted,

(c) in paragraph (8)—

(i) after the words “Northern Ireland” there are inserted the words “or the Financial Services Authority”, and

(ii) after the words “Northern Ireland” and the words “the Director”, in the second place where they occur, there are inserted the words “or the Financial Services Authority”,

(d) in paragraph (9) after the words “for Northern Ireland” there are inserted the words “or the Financial Services Authority”.