

**2002 No. 3152 (N.I. 6)**

**NORTHERN IRELAND**

**The Insolvency (Northern Ireland) Order 2002**

Made - - - - 17<sup>th</sup> December 2002

Coming into operation in accordance with Article  
1(2) and (3)

**ARRANGEMENT OF ORDER**

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At the Court at Buckingham Palace, the 17th day of December 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

#### *Introductory*

#### **Title and commencement**

1.—(1) This Order may be cited as the Insolvency (Northern Ireland) Order 2002.

(2) This Article and Articles 2(1) and (2), 11 and 12 shall come into operation on the expiration of one month from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

#### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department of Enterprise, Trade and Investment;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989 (NI 19); and

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) For the purposes of the Financial Services and Markets Act 2000 (c. 8), the functions conferred on the Financial Services Authority by virtue of Schedules 1 and 2 are to be treated as conferred by that Act.

## *Voluntary arrangements*

### **Moratorium where directors propose voluntary arrangement**

#### **3. Schedule 1 (which—**

- (a) enables the directors of a company to obtain an initial moratorium for the company where they propose a voluntary arrangement under Part II of the Insolvency Order,
- (b) makes provision about the approval and implementation of such a voluntary arrangement where a moratorium is obtained, and
- (c) makes consequential amendments),

shall have effect.

### **Company voluntary arrangements**

#### **4. Schedule 2 (which—**

- (a) amends the provisions about company voluntary arrangements under Part II of the Insolvency Order, and
- (b) in consequence of Schedule 1 and those amendments, makes amendments to the Building Societies Act 1986 (c. 53)),

shall have effect.

### **Individual voluntary arrangements**

5. Schedule 3 (which enables the procedure for the approval of individual voluntary arrangements under Chapter II of Part VIII of the Insolvency Order to be started without an initial moratorium for the insolvent debtor and makes other amendments of the provisions about individual voluntary arrangements) shall have effect.

### **Qualification or authorisation of nominees and supervisors**

6.—(1) In Article 3 of the Insolvency Order (meaning of “act as insolvency practitioner”)—

- (a) for paragraph (1)(b) there shall be substituted—

“(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.”;

- (b) for paragraph (2)(c) there shall be substituted—

“(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor;”; and

- (c) after paragraph (3) there shall be inserted—

“(3A) In relation to a voluntary arrangement proposed under Part II or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.”.

(2) In Article 348 of the Insolvency Order (acting as insolvency practitioner without qualification), after paragraph (1) there shall be inserted—

“(1A) This Article is subject to Article 348A.”.

(3) After that Article there shall be inserted—

**“Authorisation of nominees and supervisors**

348A.—(1) Article 348 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part II or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of paragraph (1) and those Parts, an individual to whom paragraph (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

- (a) he is a member of a body recognised for the purpose by the Department, and
- (b) there is in force security for the proper performance of his functions and that security meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This paragraph applies to a person if—

- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
- (b) he is subject to—
  - (i) a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 (NI 18), or
  - (ii) a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002 or the Company Directors Disqualification Act 1986 (c. 46), or
- (c) he is a patient within the meaning of Part VIII of the Mental Health (Northern Ireland) Order 1986 (NI 4), Part VII of the Mental Health Act 1983 (c. 20) or section 125(1) of the Mental Health (Scotland) Act 1984 (c. 36).

(4) The Department may by order declare a body which appears to it to fall within paragraph (5) to be a recognised body for the purposes of paragraph (2)(a).

(5) A body may be recognised if it maintains and enforces rules for securing that its members—

- (a) are fit and proper persons to act as nominees or supervisors, and
- (b) meet acceptable requirements as to education and practical training and experience.

(6) For the purposes of this Article, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under paragraph (4) in relation to a body may be revoked by a further order if it appears to the Department that the body no longer falls within paragraph (5).

(8) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous

order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.”.

*Miscellaneous*

**Administration orders**

7.—(1) Part III of the Insolvency Order (administration orders) shall be amended as follows.

(2) In Article 23 (effect of application), after sub-paragraph (a) of paragraph (1) there shall be inserted—

“(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose”.

(3) In Article 24 (effect of order), after sub-paragraph (b) of paragraph (3) there shall be inserted—

“(ba) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose;”.

**Investigation and prosecution of malpractice**

8.—(1) Article 182 of the Insolvency Order (prosecution of delinquent officers and members of company) shall be amended as follows.

(2) In paragraph (1), for the words from “the Director” to the end there shall be substituted “the Department”.

(3) In paragraph (3), for sub-paragraphs (a) and (b) there shall be substituted—

- “(a) forthwith report the matter to the Department, and
- (b) furnish to the Department such information and give to it 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 liquidator and relating to the matter in question) as the Department requires.”.

(4) For paragraph (4) there shall be substituted—

“(4) Where a report is made to the Department under paragraph (3), 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.”.

- (5) In paragraph (5)(b), “to the prosecuting authority” shall be omitted.
- (6) In Article 183 of that Order (obligations arising under Article 182)—
- (a) in paragraph (1), for “under Article 182(4)” there shall be substituted “in consequence of a report made to it under Article 182(3)” and for “that paragraph” there shall be substituted “Article 182(4)”;
  - (b) in paragraph (3), for “the prosecuting authority” and “that authority” there shall be substituted “the Director of Public Prosecutions for Northern Ireland”;
  - (c) in paragraph (5), for “prosecuting authority” there shall be substituted “Director of Public Prosecutions for Northern Ireland”.

### **Restriction on use of answers obtained under compulsion**

9. In Article 183 of the Insolvency Order, after paragraph (2) (answers given by a person pursuant to powers conferred by Article 182 may be used in evidence against him) there shall be inserted—

“(2A) 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.

(2B) Paragraph (2A) 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).”.

### **Insolvent estates of deceased persons**

10.—(1) After Article 365 of the Insolvency Order (insolvent estates of deceased persons) there shall be inserted—

#### **“Insolvent estates: joint tenancies**

365A.—(1) This Article applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,
- (b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and
- (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the High Court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.

(6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.

(7) In this Article "survivor" means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

(a) an order under this Article may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this Article—

"insolvency administration order" has the same meaning as in any order under Article 365 having effect for the time being,

"value lost to the estate" means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death."

(2) In paragraph (1) of Article 365 of the Insolvency Order, after "apply" there shall be inserted "in relation".

### **Model law on cross-border insolvency**

**11.—**(1) The Department may by regulations make any provision which it considers necessary or expedient for the purpose of giving effect, with or without modifications, to the model law on cross-border insolvency.

(2) In particular, the regulations may—

(a) apply any provision of insolvency law in relation to foreign proceedings (whether begun before or after the regulations come into force),

(b) modify the application of insolvency law (whether in relation to foreign proceedings or otherwise),

and may apply or, as the case may be, modify the application of insolvency law in relation to the Crown.

(3) The regulations may make different provision for different purposes and may make—

- (a) any supplementary, incidental or consequential provision, or
- (b) any transitory, transitional or saving provision,

which the Department considers necessary or expedient.

(4) In this Article—

“foreign proceedings” has the same meaning as in the model law on cross-border insolvency,

“insolvency law” means provision made by or under the Insolvency Order or Articles 9 to 14, 16, 19 and 23 (with Schedule 1) of the Company Directors Disqualification (Northern Ireland) Order 2002,

“the model law on cross-border insolvency” means the model law contained in Annex I of the report of the 30<sup>th</sup> session of UNCITRAL.

(5) Regulations under this Article may only be made if a draft has been laid before, and approved by a resolution of, the Assembly.

(6) Making regulations under this Article requires the agreement of the Lord Chancellor.

#### *General*

#### **Orders**

**12.**—(1) The Department may by order make—

- (a) any supplementary, incidental or consequential provision, and
- (b) any transitory, transitional or saving provision,

which it considers necessary or expedient for the purposes of this Order.

(2) An order under this Article may—

- (a) modify, exclude or apply (with or without modifications) any statutory provision;
- (b) make consequential amendments, repeals and revocations of any such provision.

(3) An order made under this Article shall be subject to negative resolution.

#### **Repeals**

**13.** Subject to any transitory, transitional or saving provision made under Article 12, the statutory provisions mentioned in Schedule 4 are repealed to the extent specified.

*A. K. Galloway*  
Clerk of the Privy Council

## SCHEDULES

Article 3.

### SCHEDULE 1

#### MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

##### AMENDMENTS OF THE INSOLVENCY ORDER

1. The Insolvency Order shall be amended as follows.
2. In Article 2(2) (general interpretation), in the definition of “regulations”, after “and 375(3)(b)(ii)” insert “and paragraph 16 of Schedule A1”.
3. After Article 14 insert—

##### **“Moratorium**

14A.—(1) Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 have effect with respect to—

- (a) companies eligible for a moratorium under this Article,
- (b) the procedure for obtaining such a moratorium,
- (c) the effects of such a moratorium, and
- (d) the procedure applicable (in place of Articles 15 to 19 and 20) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.”.

4. In Article 15(1) (procedure where nominee is not the liquidator or administrator), at the end add “and the directors do not propose to take steps to obtain a moratorium under Article 14A for the company”.
5. Before Schedule 1 insert—

##### “SCHEDULE A1

#### MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

##### PART I

##### INTRODUCTORY

##### *Interpretation*

1. In this Schedule—  
“the beginning of the moratorium” has the meaning given by paragraph 19(1),

“the date of filing” means the date on which the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court,

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

“market contract” and “market charge” have the meanings given by Part V of the Companies (No. 2) (Northern Ireland) Order 1990,

“moratorium” means a moratorium under Article 14A,

“the nominee” includes any person for the time being carrying out the functions of a nominee under this Schedule,

“the settlement finality regulations” means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996.

*Eligible companies*

2.—(1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

- (a) it is excluded from being eligible by virtue of paragraph 4, or
- (b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

- (a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,
- (b) it has permission under Part IV of that Act to accept deposits,
- (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987,
- (d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge,
- (e) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).

(3) Paragraphs (a), (b) and (c) of sub-paragraph (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

3.—(1) A company meets the requirements of this paragraph if the qualifying conditions are met—

- (a) in the year ending with the date of filing, or
- (b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies 2 or more of the requirements for being a small company specified for the time being in Article 255(3) of the Companies (Northern Ireland) Order 1986, and
- (b) a company's financial year is to be determined in accordance with that Order.

(3) Paragraphs (4), (5) and (6) of Article 255 of that Order apply for the purposes of this paragraph as they apply for the purposes of that Article.

(4) A company does not meet the requirements of this paragraph if it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group in respect of the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4) "group" has the meaning given by Article 270 of the Companies (Northern Ireland) Order 1986 (definitions for Part VIII) and a group qualifies as small or medium-sized if it qualifies as such under Article 257 of the Companies (Northern Ireland) Order 1986 (qualification of group as small or medium-sized).

4.—(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

- (a) an administration order is in force in relation to the company,
- (b) the company is being wound up,
- (c) there is an administrative receiver of the company,
- (d) a voluntary arrangement has effect in relation to the company,
- (e) there is a provisional liquidator of the company,
- (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
  - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
  - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely, or
- (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under Article 14(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under Article 18(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

#### *Capital market arrangement*

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—

- (a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
- (b) the arrangement involves the issue of a capital market investment.

*Public private partnership*

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

*Liability under an arrangement*

7.—(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this paragraph—

- (a) the reference to “liability” includes a present or future liability whether, in either case, it is certain or contingent,
- (b) the reference to “liability” includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

*Interpretation of capital market arrangement*

8.—(1) For the purposes of paragraph 5 an arrangement is a capital market arrangement if—

- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
- (b) at least one party guarantees the performance of obligations of another party, or
- (c) at least one party provides security in respect of the performance of obligations of another party, or
- (d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

- (a) a reference to a holding as trustee includes a reference to holding as nominee or agent,

- (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
  - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.
- (3) In paragraph 5, 7, 14 and this paragraph—
- “agreement” includes an agreement or undertaking effected by—
    - (a) contract,
    - (b) deed, or
    - (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction, and
  - “party” to an arrangement includes a party to an agreement which—
    - (a) forms part of the arrangement,
    - (b) provides for the raising of finance as part of the arrangement, or
    - (c) is necessary for the purposes of implementing the arrangement.

*Capital market investment*

- 9.—(1) For the purposes of paragraphs 5 and 8, an investment is a capital market investment if—
- (a) it is within Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (debt instruments), and
  - (b) it is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation),
  - “rated” means rated for the purposes of investment by an internationally recognised rating agency,
  - “traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (3) In sub-paragraph (2)—
- “foreign market” has the same meaning as “relevant market” in Article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (foreign markets),
  - “recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

- 10.—(1) For the purposes of paragraphs 5 and 8 an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
  - (b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual in relation to a communication within the meaning of Article 48(2) of that Order,
  - (c) a person to whom Article 49(2) of that Order applies (high net worth company, &c.),
  - (d) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified sophisticated investor in relation to a communication within the meaning of Article 50(1) of that Order, and
  - (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.
- (2) For the purposes of sub-paragraph (1)—
- (a) in applying Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—
    - (i) in Article 19(5)(b), ignore the words after “exempt person”,
    - (ii) in Article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
    - (iii) in Article 19(5)(e) ignore the words from “where the communication” to the end, and
  - (b) in applying Article 49(2) of that Order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).
- (3) In sub-paragraph (1)—
- “bond” shall be construed in accordance with Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
- “commercial paper” has the meaning given by Article 9(3) of that Order.

#### *Debt*

11. The debt of at least £10 million referred to in paragraph 5—
- (a) may be incurred at any time during the life of the capital market arrangement, and
  - (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

#### *Interpretation of project company*

- 12.—(1) For the purposes of paragraph 6 a company is a “project company” of a project if—

- (a) it holds property for the purpose of the project,
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
  - (c) it is one of a number of companies which together carry out the project,
  - (d) it has the purpose of supplying finance to enable the project to be carried out, or
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a “project company” of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
  - (b) it also performs a function which is not—
    - (i) within sub-paragraph (1)(a) to (d),
    - (ii) related to a function within sub-paragraph (1)(a) to (d), or
    - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

*Public-private partnership project*

- 13.—(1) In paragraph 6 “public-private partnership project” means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) “resources” includes—
- (a) funds (including payment for the provision of services or facilities),
  - (b) assets,
  - (c) professional skill,
  - (d) the grant of a concession or franchise, and
  - (e) any other commercial resource.
- (3) In sub-paragraph (1) “public body” means—
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Department, and
  - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (4) A specification under sub-paragraph (3) may be—
- (a) general, or

- (b) for the purpose of the application of paragraph 6 to a specified case.

*Step-in rights*

14.—(1) For the purposes of paragraph 6 a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or  
 (b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

*“Person”*

15. For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

16.—(1) The Department may by regulations modify the qualifications for eligibility of a company for a moratorium.

(2) Regulations under this paragraph shall only be made if a draft containing the regulations has been laid before, and approved by a resolution of, the Assembly.

PART II

OBTAINING A MORATORIUM

*Nominee’s statement*

17.—(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 sub-paragraph (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.

(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.

*Documents to be submitted to High Court*

18.—(1) To obtain a moratorium the directors of a company must file with the High 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 Department may by regulations modify the requirements of this paragraph as to the documents required to be filed with the High Court in order to obtain a moratorium.

*Duration of moratorium*

19.—(1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High 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 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.

(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 42.

(4) If the nominee fails to summon either meeting within the period required by paragraph 39(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 42, 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 35(4) (effect of withdrawal by nominee of consent to act),
- (b) an order under paragraph 36(3), 37(3) or 50 (challenge of actions of nominee or directors), or
- (c) a decision of one or both of the meetings summoned under paragraph 39.

(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 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (3).

*Notification of beginning of moratorium*

20.—(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 shall be guilty of an offence.

21.—(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, 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 subparagraph (1)(a) or (b), he shall be guilty of an offence.

*Notification of end of moratorium*

22.—(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 High Court, the registrar, 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 subparagraph (1)(a) or (b), he shall be guilty of an offence.

PART III

EFFECTS OF MORATORIUM

*Effect on creditors, etc.*

23.—(1) During the period for which a moratorium is in force for a company—

- (a) no petition may be presented for the winding up of the company,
- (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose,
- (c) no resolution may be passed or order made for the winding up of the company,
- (d) no petition for an administration order in relation to the company may be presented,
- (e) no administrative receiver of the company may be appointed,
- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,
- (g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose, and
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the High Court and subject to such terms as the Court may impose.

(2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the

moratorium, Article 107 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, “excepted petition” means a petition under—

- (a) Article 104A,
- (b) section 72 of the Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section,
- (c) section 92 of the Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section, or
- (d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

24.—(1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

- (a) the event shall not have the effect in question at that time, but
- (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

(4) The effect referred to in sub-paragraphs (2) and (3) is—

- (a) causing the crystallisation of the floating charge, or
- (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

(5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining—

- (a) the crystallisation of the floating charge, or
- (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

25. Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time,

there were reasonable grounds for believing that it would benefit the company.

*Effect on company*

26.—(1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.

(2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not—

- (a) make the transaction void, or
- (b) make it to any extent unenforceable against the company.

*Company invoices, etc.*

27.—(1) Every invoice, order for goods or business letter which—

- (a) is issued by or on behalf of the company, and
- (b) on or in which the company's name appears,

shall also contain the nominee's name and a statement that the moratorium is in force for the company.

(2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company shall be guilty of an offence.

(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

*Obtaining credit during moratorium*

28.—(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes the following cases—

- (a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and
- (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1)—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he shall be guilty of an offence.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under Article 362.

*Disposals and payments*

29.—(1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—

- (a) there are reasonable grounds for believing that the disposal will benefit the company, and
- (b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.

(3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

30.—(1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—

- (a) there are reasonable grounds for believing that the payment will benefit the company, and
- (b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).

(3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

*Disposal of charged property, etc.*

31.—(1) This paragraph applies where—

- (a) any property of the company is subject to a security, or
- (b) any goods are in the possession of the company under a hire-purchase agreement.

(2) If the holder of the security consents, or the High Court gives leave, the company may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the High Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the High Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to 2 or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the High Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar.

(9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they shall be guilty of an offence.

32.—(1) If the company—

- (a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,
- (b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or
- (c) fails to comply with any requirement imposed by paragraph 31,

it shall be guilty of an offence.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he shall be guilty of an offence.

*Market contracts, etc.*

33.—(1) If the company enters into any transaction to which this paragraph applies—

- (a) the company shall be guilty of an offence, and
- (b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he shall be guilty of an offence.

(2) A company enters into a transaction to which this paragraph applies if it—

- (a) enters into a market contract,
- (b) gives a transfer order,
- (c) grants a market charge or a system-charge, or
- (d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

- (a) make the transaction void, or
- (b) make it to any extent unenforceable by or against the company.

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.

(5) Paragraph 31 does not apply in relation to any property which is subject to a market charge, a system-charge or a collateral security charge.

(6) In this paragraph, “transfer order”, “collateral security” and “collateral security charge” have the same meanings as in the settlement finality regulations.

## PART IV

### NOMINEES

*Monitoring of company's activities*

34.—(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

*Withdrawal of consent to act*

35.—(1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or

(c) the directors fail to comply with their duty under paragraph 34(2).

(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he shall be guilty of an offence.

*Challenge of nominee's actions, etc.*

36.—(1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission

or decision of the nominee during the moratorium, he may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

- (a) confirm, reverse or modify any act or decision of the nominee,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

37.—(1) Where there are reasonable grounds for believing that—

- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but
- (b) the company does not intend to pursue any claim it may have against the nominee,

any creditor of the company may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

- (a) order the company to pursue any claim against the nominee,
- (b) (authorise any creditor to pursue such a claim in the name of the company, or
- (c) make such other order with respect to such a claim as it thinks fit,

unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

- (a) impose conditions on any authority given to pursue a claim,
- (b) direct the company to assist in the pursuit of a claim,
- (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
- (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(5) On an application under sub-paragraph (1) the High Court shall have regard to the interests of the members and creditors of the company generally.

#### *Replacement of nominee by High Court*

38.—(1) The High Court may—

- (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the directors 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.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the High Court a statement indicating his consent to act.

## PART V

### CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

#### *Summoning of meetings*

39.—(1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

#### *Conduct of meetings*

40.—(1) Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) 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 High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

#### *Approval of voluntary arrangement*

41.—(1) The meetings summoned under paragraph 39 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, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

- (a) any preferential debt of the company 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 company 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.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or either of them) summoned under paragraph 39 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with Article 346.

#### *Extension of moratorium*

42.—(1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of 2 months which begins—

- (a) where both meetings summoned under paragraph 39 are first held on the same day, with that day,
- (b) in any other case, with the day on which the later of those meetings is first held.

(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

- (a) of what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company, and
- (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (2).

43.—(1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement 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.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the High Court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

(a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and

(b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

44.—(1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the registrar and the High Court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he shall be guilty of an offence.

#### *Moratorium committee*

45.—(1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

*Effectiveness of decisions*

46.—(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 39, or
- (b) subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) If a decision taken by the creditors' meeting under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the High Court.

(4) An application under sub-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) On an application under sub-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.

*Effect of approval of voluntary arrangement*

47.—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and
- (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.

(3) If—

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

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23, was presented before the beginning of the moratorium, the High Court shall dismiss the petition.

(5) The High Court shall not dismiss a petition under sub-paragraph (4)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the High Court, or
- (b) at any time when an application under paragraph 48 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*

48.—(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the High Court on one or both of the following grounds—

- (a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
- (b) that there has been some material irregularity at or in relation to either of those meetings.

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

- (a) a person entitled, in accordance with the rules, to vote at either of the meetings,
- (b) 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, and
- (c) the nominee.

(3) An application under this paragraph shall not be made—

- (a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the High Court, 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, but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the High Court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

- (a) revoke or suspend—
  - (i) any decision approving the voluntary arrangement which has effect under paragraph 46, or
  - (ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
- (b) give a direction to any person—
  - (i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
  - (ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the High Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 46.

(6) Where the High Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the High Court, on an application under this paragraph—

- (a) gives a direction under sub-paragraph (4)(b), or
- (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the High Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done under the voluntary arrangement since it took effect, and
- (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

*Implementation of voluntary arrangement*

49.—(1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 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 of the arrangement, on the nominee, or

(b) by virtue of paragraph 41(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court.

(4) On an application under sub-paragraph (3) the High 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.

(5) The supervisor—

(a) may apply to the High 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 company or for an administration order to be made in relation to it.

(6) The High 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, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) 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.

## PART VI

## MISCELLANEOUS

*Challenge of directors' actions*

50.—(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 High 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 High 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.

(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 creditors or members for the purpose of considering such matters as the High Court may direct,
- (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(6) In making an order under this paragraph the High 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.

(7) In relation to any time when an administration order is in force in relation to the company, or the company is being wound up, in pursuance of a petition presented before the moratorium came into force, 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) liquidator.

*Offences*

51.—(1) This paragraph applies where a moratorium has been obtained for a company.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—

- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
- (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he is to be treated as having committed an offence at that time.

(3) If, at any time during the moratorium, a person who is an officer of the company—

- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
- (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he shall be guilty of an offence.

(4) Those things are—

- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
- (b) fraudulently removing any part of the company's property to the value of £500 or more, or
- (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
- (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(5) For the purposes of this paragraph, "officer" includes a shadow director.

(6) It is a defence—

- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4)

to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—

(a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or

(b) amount to an offence under sub-paragraph (3),

shall be guilty of an offence.

(8) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under Article 362.

52.—(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, 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) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) For the purposes of this paragraph, “officer” includes a shadow director.

#### *Void provisions in floating charge documents*

53.—(1) A provision in an instrument creating a floating charge is void if it provides for—

(a) obtaining a moratorium, or

(b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

#### *Functions of the Financial Services Authority*

54.—(1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the High Court for leave under paragraph 31(2) or 31(3) (disposal of charged property, etc.).

(4) Where paragraph 36(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(5) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 37(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(7) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 39 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

(a) any creditors' meeting summoned under that paragraph,

(b) any meeting of a committee established under paragraph 45 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 46(3) (effectiveness of decisions).

(11) Where paragraph 48(1) (challenge of decisions) applies, the persons who may apply to the High Court include the Authority.

(12) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 49(3) (implementation of voluntary arrangement) applies, the persons who may apply to the High Court include the Authority.

(14) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 50(2) (challenge of directors' actions) applies, the persons who may apply to the High Court include the Authority.

(16) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

“the Authority” means the Financial Services Authority, and

“regulated company” means a company which—

- (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

*Subordinate legislation*

55.—(1) Regulations made by the Department under this Schedule may make such consequential, incidental, supplemental and transitional provision as appears to the Department necessary or expedient.

(2) Any power of the Department to make regulations under this Schedule may be exercised by amending or repealing any provision contained in this Order (including one contained in this Schedule) or contained in the Company Directors Disqualification (Northern Ireland) Order 2002.

(3) An order made by the Department under this Schedule shall be subject to negative resolution.”.

6. In Article 39(3)(a) (protection of interests of creditors and members when administration order in force), for “Article 17” substitute “Part II”.

7. In Article 102 (grounds on which company may be wound up by the High Court), after sub-paragraph (f) insert—

“(fa) at the time at which a moratorium for the company under Article 14A comes to an end, no voluntary arrangement approved under Part II has effect in relation to the company”.

8. In Article 104 (application for winding up of company), after paragraph (4) insert—

“(4A) A winding-up petition on the ground set out in Article 102(fa) may only be presented by one or more creditors”.

9.—(1) Article 197 (conditions which may be imposed on supply of water, electricity, etc.) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (b) insert—

“(ba) a moratorium under Article 14A is in force, or”,

(b) in sub-paragraph (c), for the words from “under Part II” to “Article 16” substitute “approved under Part II”, and

(c) after “receiver” (in the second place) insert “the nominee.”.

(3) In paragraph (4)—

(a) after sub-paragraph (b) insert—

“(ba) the date on which the moratorium came into force”, and

(b) in sub-paragraph (c), for the words following “arrangement” substitute “took effect”.

10. In Article 347 (date which determines existence and amount of preferential debt), after paragraph (2) insert—

“(2A) For the purposes of paragraph 41 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under Article 14A is in force), the relevant date in relation to a company is the date of filing.”.

11. In Article 362(1) (monetary limits) after sub-paragraph (b) insert—

“or

(c) increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1—

paragraph 28(1) (maximum amount of credit which company may obtain without disclosure of moratorium);

paragraph 51(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company’s officer).”.

12. In Schedule 7 (punishment of offences), at the end insert the following entries which relate to offences under Schedule A1—

Provision of Order creating offence	General nature of offence	Mode of prosecution	Punishment
Sch. A1, para. 20(2).	Directors failing to notify nominee of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 21(3).	Nominee failing to advertise or notify beginning of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 22(2).	Nominee failing to advertise or notify end of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 27(2).	Company and officers failing to state in correspondence etc. that moratorium in force.	Summary.	One-fifth of the statutory maximum.

Provision of Order creating offence	General nature of offence	Mode of prosecution	Punishment
Sch. A1, para. 28(3)(a).	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 28(3)(b).	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 29(3)(a).	Company disposing of property otherwise than in ordinary way of business.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 29(3)(b).	Authorising or permitting disposal of company property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 30(3)(a).	Company making payments in respect of liabilities existing before beginning of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 30(3)(b).	Authorising or permitting such a payment.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 31(9).	Directors failing to send to registrar office copy of court order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 32(1).	Company disposing of charged property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para.	Authorising or	1. On indictment.	2 years or a fine,

Provision of Order creating offence	General nature of offence	Mode of prosecution	Punishment
32(2).	permitting such a disposal.	2. Summary.	or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 33(1)(a).	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 33(1)(b).	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 35(6).	Nominee failing to give notice of withdrawal of consent to act.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 44(3).	Nominee failing to give notice of extension of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 51(2).	Fraud or privity to fraud in anticipation of moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 51(3).	Fraud or privity to fraud during moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 51(7).	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

Provision of Order creating offence	General nature of offence	Mode of prosecution	Punishment
Sch. A1, para. 52(1).	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

SCH. 1

## 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

(b) 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
- (b) (subject to any order made under paragraph (4)) it has been taken by the creditors’ meeting summoned under that Article.

(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,

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
- (b) 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.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

## 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”.

## SCHEDULE 3

## INDIVIDUAL VOLUNTARY ARRANGEMENTS

1. The Insolvency Order shall be amended as follows.

2. In Article 226 (interim order of High Court)—
  - (a) in paragraph (2)(a), after “with,” insert—
    - “(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court.”;
  - (b) in paragraph (2)(b), after “continued” insert “and no distress may be levied”.
3. In Article 227 (application for interim order)—
  - (a) in paragraph (1), after “proposal” insert “under this Part, that is, a proposal”,
  - (b) at the end of paragraph (2) insert “and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement”,
  - (c) in paragraph (4), for the words from “his proposal” to “arrangement” substitute “the proposal”.
4. In Article 228 (effect of application)—
  - (a) in paragraph (1), after “pending” insert—
    - “(a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court, and
    - (b) ”;
  - (b) after “may” insert—
    - “forbid the levying of any distress on the debtor’s property or its subsequent sale, or both, and”.
5. In Article 229 (cases in which interim order can be made), in paragraph (1)—
  - (a) in sub-paragraph (a), for “such a proposal as is mentioned in that Article” substitute “a proposal under this Part”,
  - (b) in sub-paragraph (d), omit the words from “to his creditors” to “to the debtor, and”.
6. In Article 230 (nominee’s report on debtor’s proposal)—
  - (a) in paragraph (1)(a), at the beginning insert—
    - “whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, (aa)”;
  - (b) for paragraph (3) substitute—
    - “(3) The High Court may—

- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or
- (b) on an application made by the debtor 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 shall 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.

(3A) The High Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the Court may specify in the direction.”.

7. After Article 230 insert—

*“Procedure where no interim order made*

**Debtor’s proposal and nominee’s report**

230A.—(1) This Article applies where a debtor (being an individual)—

- (a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and
- (b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor’s affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the High Court, the debtor shall submit to the nominee—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing—
  - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the High Court may allow) after receiving the document and statement mentioned in paragraph (2), submit a report to the Court stating—

- (a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

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

(4) The High Court may—

- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or
- (b) on an application made by the debtor 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 shall 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.

(5) The High Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

*Creditors' meeting*".

8. In Article 231 (summoning of creditor's meeting). in paragraph (1)—

- (a) after "230" insert "or 230A", and
- (b) for "230(3)(a)" substitute "230(3) or 230A(4)".

9. In Article 232 (decisions of creditors' meeting)—

- (a) in paragraph (3), for "in relation to the debtor" substitute "or authorised to act as nominee, in relation to the voluntary arrangement", and
- (b) in paragraph (4), for "such as is mentioned in Article 227" substitute "under this Part".

10. In Article 234 (effect of approval), for paragraph (2)(b) substitute—

- "(b) binds every person who in accordance with the rules—
  - (i) was entitled to vote at the 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 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 debtor shall at that time become liable to pay to that person the amount payable under the arrangement."

11.—(1) In Article 236 (challenge of meeting's decision), in paragraph (2)—

- (a) for sub-paragraph (b) substitute—
  - "(b) a person who—

- (i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or
  - (ii) would have been so entitled if he had had notice of it,”
  - (b) in sub-paragraph (c), for “230(3)(a)” substitute “230(3), 230A(4)”.
- (2) In paragraph (3) of that Article—
- (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 creditor’s 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, but (subject to that) an application made by a person within paragraph (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.”.

12. After that Article insert—

**“False representations etc.**

236A.—(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

- (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.

**Prosecution of delinquent debtors**

236B.—(1) This Article applies where a voluntary arrangement approved by a creditors’ meeting summoned under Article 231 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

- (a) report the matter to the Department, and
- (b) 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 his possession or under his control and relating to the matter in question) as the Department requires.

(3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or, as the case may be, supervisor shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

(4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a nominee or supervisor to comply with paragraph (3) if he has failed to do so.

#### **Arrangements coming to an end prematurely**

236C. For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under Article 231 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 234(2)(b)(i)."

13. In Article 237 (implementation and supervision of approved voluntary arrangement)—

- (a) in paragraph (2), for "230(3)(a)" substitute "230(3), 230A(4)", and
- (b) in paragraph (5), for "in relation to the debtor" substitute "or authorised to act as supervisor, in relation to the voluntary arrangement".

14. In Article 347 (date which determines existence and amount of preferential debt), in paragraph (5), for the words following "undischarged bankrupt" substitute—

- "(a) where an interim order has been made under Article 226 with respect to his proposal, the date of that order, and
- (b) in any other case, the date on which the voluntary arrangement takes effect."

15. In Schedule 7 (punishment of offences), after the entry relating to Article 223 insert the following entry—

Article of Order creating offence	General nature of offence	Mode of prosecution	Punishment
236A(1).	False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

### SCHEDULE 4

#### REPEALS

Short Title	Extent of repeal
The Insolvency (Northern Ireland) Order 1989 (NI 19).	In paragraphs (2) and (3) of Article 18, the word "approved". In Article 182, in paragraph (5)(b) the words

Short Title	Extent of repeal
The Companies (No. 2) (Northern Ireland) Order 1990 (NI 10).	<p>“to the prosecuting authority”.</p> <p>In Article 229(1)(d), the words from “to his creditors” to “to the debtor, and”.</p> <p>Article 27.</p>

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the law about insolvency in Northern Ireland. Its purpose is to enable directors proposing to enter into a voluntary arrangement with creditors of an eligible company, to obtain an initial moratorium during which the company will be protected from legal proceedings, including a petition to wind up the company.

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