

SCHEDULES

SCHEDULE 2

COMPANY VOLUNTARY ARRANGEMENTS

PART I

AMENDMENTS OF THE INSOLVENCY ACT 1986

- 1 The Insolvency Act 1986 is amended as follows.
- 2 In section 1(2) (proposal for a voluntary arrangement), for “in relation to the company” there is substituted “or authorised to act as nominee, in relation to the voluntary arrangement”.
- 3 In section 2 (procedure where nominee is not the liquidator or administrator)—
- (a) in subsection (2)(a), at the beginning there is inserted—
- “whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (aa)”.
- (b) for subsection (4) there is substituted—
- “(4) The 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 section 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 section 4(2) (decisions of meetings), for “in relation to the company” there is substituted “or authorised to act as nominee, in relation to the voluntary arrangement”.
- 5 After section 4 there is inserted—

“4A Approval of arrangement

- (1) This section applies to a decision, under section 4, 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 section 3, or

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- (b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.
 - (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 court.
 - (4) An application under subsection (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 44 of Schedule A1, applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.
 - (6) On an application under subsection (3), the 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 section 5 (effect of approval of voluntary arrangement)—
- (a) for subsection (1) there is substituted—
 - “(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.”,
 - (b) in subsections (2) and (3), “approved” is omitted,
 - (c) in subsection (2), for paragraph (b) there is substituted—
 - “(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 subsection (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) Section 6 (challenge of decisions) is amended as follows.
- (2) In subsection (1)(a), for “approved at the meetings summoned under section 3” there is substituted “which has effect under section 4A”.
 - (3) In subsection (2), after paragraph (a) there is inserted—
 - “(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 subsection (3)—
 - (a) after “be made” there is inserted “(a)”,

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- (b) at the end there is inserted “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 subsection (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 subsection (4)(a)—
- (a) for “the approvals given by the meetings” there is substituted “any decision approving the voluntary arrangement which has effect under section 4A”,
- (b) for “approval given by the meeting in question” there is substituted “decision taken by the meeting in question which has effect under that section”.
- (6) In subsection (5), for “approval given at the previous meetings” there is substituted “decision approving the voluntary arrangement which has effect under section 4A”.
- (7) In subsection (6), for the words from “since” to the end there is substituted “under the voluntary arrangement since it took effect”.
- (8) In subsection (7), for “an approval given” there is substituted “a decision taken”.

8 After that section there is inserted—

“6A False representations, etc

- (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 commits an offence.
- (2) Subsection (1) applies even if the proposal is not approved.
- (3) For purposes of this section “officer” includes a shadow director.
- (4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.”

9 In section 7 (implementation of proposal)—

- (a) in subsection (1), for the words following “voluntary arrangement” there is substituted “has effect under section 4A”,
- (b) in subsection (2), for paragraph (a) there is substituted—
- “(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3”,
- (c) in subsection (5), for “in relation to the company” there is substituted “or authorised to act as supervisor, in relation to the voluntary arrangement”.

10 After that section there is inserted—

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“7A Prosecution of delinquent officers of company

- (1) This section applies where a moratorium under section 1A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 4A or paragraph 36 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 appropriate authority, and
 - (b) provide the appropriate authority with such information and give the authority 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 authority requires.

In this subsection, “the appropriate authority” means—

 - (i) in the case of a company registered in England and Wales, the Secretary of State, and
 - (ii) in the case of a company registered in Scotland, the Lord Advocate.
- (3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 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 Act 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 Secretary of State in his investigation.
- (5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (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 subsection 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) Subsection (6) applies to any offence other than—
 - (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

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- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the authority 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,
- “prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.
- (9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.

7B Arrangements coming to an end prematurely

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 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 section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.”

- 11 In section 387(2)(b) (date which determines existence and amount of preferential debt), for the words following “date” there is substituted “on which the voluntary arrangement takes effect”.
- 12 In Schedule 10 (punishment of offences), before the entry relating to section 12(2) there is inserted the following entry—

“6A(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.”
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