

## SCHEDULE 3

### AMENDMENTS TO THE 2009 REGULATIONS

#### 3. After regulation 45 insert—

##### **“Arrangements and reconstructions: LLPs in financial difficulty**

**45A.** Sections 901A to 901J(1) apply to LLPs, modified so that they read as follows—

##### **“Application of this Part**

**901A.**—(1) The provisions of this Part apply where conditions A and B are met in relation to an LLP.

(2) Condition A is that the LLP has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.

(3) Condition B is that—

(a) a compromise or arrangement is proposed between the LLP and—

(i) its creditors, or any class of them, or

(ii) its members, or any class of them, and

(b) the purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the financial difficulties mentioned in subsection (2).

##### **Power to exclude LLPs providing financial services, etc**

**901B.**—(1) The Secretary of State may by regulations provide that this Part does not apply—

(a) where the LLP in respect of which a compromise or arrangement is proposed is an authorised person, or an authorised person of a specified description;

(b) where—

(i) a compromise or arrangement is proposed between an LLP, or an LLP of a specified description, and any creditors of the LLP, and

(ii) those creditors consist of or include creditors of a specified description.

(2) In this section—

“authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31 of that Act);

“specified” means specified in the regulations.

(3) Regulations under this section are subject to affirmative resolution procedure.

---

(1) Sections 901A to 901J were inserted into the Companies Act 2006 (c. 46) by section 7 of, and paragraph 1 of Schedule 9 to, the 2020 Act.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Court order for holding of meeting**

**901C.**—(1) The court may, on an application under this subsection, order a meeting of the creditors or class of creditors, or of the members of the LLP or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) An application under subsection (1) may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

(3) Every creditor or member of the LLP whose rights are affected by the compromise or arrangement must be permitted to participate in a meeting ordered to be summoned under subsection (1).

(4) But subsection (3) does not apply in relation to a class of creditors or members of the LLP if, on an application under this subsection, the court is satisfied that none of the members of that class has a genuine economic interest in the LLP.

(5) An application under subsection (4) is to be made by the person who made the application under subsection (1) in respect of the compromise or arrangement.

(6) If a corporation (whether or not a company under the meaning of this Act) is a creditor, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives at any meeting ordered to be summoned under subsection (1).

(7) A person authorised by a corporation is entitled to exercise (on behalf of the corporation) the same powers as the corporation could exercise if it were an individual creditor.

(8) Where a corporation authorises more than one person, subsection (7) is subject to subsections (9) and (10).

(9) On a vote on a resolution on a show of hands at a meeting ordered to be summoned under subsection (1), each authorised person has the same voting rights as the corporation would be entitled to.

(10) Where subsection (9) does not apply and more than one authorised person purport to exercise a power under subsection (7) in respect of the same shares—

- (a) if they purport to exercise the power in the same way as each other, the power is treated as exercised in that way;
- (b) if they do not purport to exercise the power in the same way as each other, the power is treated as not exercised.

(11) This section is subject to section 901H (moratorium debts, etc).

### **Statement to be circulated or made available**

**901D.**—(1) Where a meeting is summoned under section 901C—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
- (b) every notice summoning the meeting that is given by advertisement must either—
  - (i) include such a statement, or

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
  - (2) The statement must—
    - (a) explain the effect of the compromise or arrangement, and
    - (b) in particular, state—
      - (i) any material interests of the members of the LLP (whether as members or as creditors of the LLP or otherwise), and
      - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
  - (3) Where the compromise or arrangement affects the rights of debenture holders of the LLP, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the LLP's members.
  - (4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the LLP with a copy of the statement free of charge.
  - (5) If an LLP makes default in complying with any requirement of this section, an offence is committed by—
    - (a) the LLP, and
    - (b) every member of the LLP who is in default.
- This is subject to subsection (7).
- (6) For this purpose the following are treated as members of the LLP—
    - (a) a liquidator or administrator of the LLP, and
    - (b) a trustee of a deed for securing the issue of debentures of the LLP.
  - (7) A person is not guilty of an offence under this section if the person shows that the default was due to the refusal of a member or trustee for debenture holders to supply the necessary particulars of the member's or (as the case may be) the trustee's interests.
  - (8) A person guilty of an offence under this section is liable—
    - (a) on conviction on indictment, to a fine;
    - (b) on summary conviction in England and Wales, to a fine;
    - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

### **Duty of members and trustees to provide information**

- 901E.**—(1) It is the duty of—
- (a) any member of the LLP, and
  - (b) any trustee for its debenture holders,
- to give notice to the LLP of such matters relating to that member or trustee as may be necessary for the purposes of section 901D (explanatory statement to be circulated or made available).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(2) Any person who makes default in complying with this section commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Court sanction for compromise or arrangement**

**901F.**—(1) If a number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 901C, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

(2) Subsection (1) is subject to—

- (a) section 901G (sanction for compromise or arrangement where one or more classes dissent), and
- (b) section 901H (moratorium debts, etc).

(3) An application under this section may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

(4) Where the court makes an order under this section in relation to an LLP that is in administration or is being wound up, the court may by the order—

- (a) provide for the appointment of the administrator or liquidator to cease to have effect;
- (b) stay or sist all proceedings in the administration or the winding up;
- (c) impose any requirements with respect to the conduct of the administration or the winding up which the court thinks appropriate for facilitating the compromise or arrangement.

(5) A compromise or arrangement sanctioned by the court is binding—

- (a) on all creditors or the class of creditors or on the members or class of members (as the case may be), and
- (b) on the LLP or, in the case of an LLP in the course of being wound up, the liquidator and contributories of the LLP.

(6) The court's order has no effect until a copy of it has been delivered to the registrar.

### **Sanction for compromise or arrangement where one or more classes dissent**

**901G.**—(1) This section applies if the compromise or arrangement is not agreed by a number representing at least 75% in value of a class of creditors or (as the case may be) of members of the LLP ("the dissenting class"), present and voting either in person or by proxy at the meeting summoned under section 901C.

(2) If conditions A and B are met, the fact that the dissenting class has not agreed the compromise or arrangement does not prevent the court from sanctioning it under section 901F.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under section 901F, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative (see subsection (4)).

(4) For the purposes of this section “the relevant alternative” is whatever the court considers would be most likely to occur in relation to the LLP if the compromise or arrangement were not sanctioned under section 901F.

(5) Condition B is that the compromise or arrangement has been agreed by a number representing 75% in value of a class of creditors or (as the case may be) of members, present and voting either in person or by proxy at the meeting summoned under section 901C, who would receive a payment, or have a genuine economic interest in the LLP, in the event of the relevant alternative.

(6) The Secretary of State may by regulations amend this section for the purpose of—

- (a) adding to the conditions that must be met for the purposes of this section;
- (b) removing or varying any of those conditions.

(7) Regulations under subsection (6) are subject to affirmative resolution procedure.

#### **Moratorium debts, etc**

**901H.**—(1) This section applies where—

- (a) an application under section 901C(1) in respect of a compromise or arrangement is made before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the LLP under Part A1 of the Insolvency Act 1986 or Part 1A of the Insolvency (Northern Ireland) Order 1989 ([S.I. 1989/2405 \(N.I.19\)](#)), and
- (b) the creditors with whom the compromise or arrangement is proposed include any relevant creditors (see subsection (2)).

(2) In this section “relevant creditor” means—

- (a) a creditor in respect of a moratorium debt, or
- (b) a creditor in respect of a priority pre-moratorium debt.

(3) The relevant creditors may not participate in the meeting summoned under section 901C.

(4) For the purposes of section 901D (statement to be circulated or made available)—

- (a) the requirement in section 901D(1)(a) is to be read as including a requirement to send each relevant creditor a statement complying with section 901D;
- (b) any reference to creditors entitled to attend the meeting summoned under section 901C includes a reference to relevant creditors.

(5) The court may not sanction the compromise or arrangement under section 901F if it includes provision in respect of any relevant creditor who has not agreed to it.

(6) In this section—  
“moratorium debt”—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
  - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- “priority pre-moratorium debt”—
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
  - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.

### **Pension schemes**

**901I.**—(1) In a case where the LLP in respect of which a compromise or arrangement is proposed is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, any notice or other document required to be sent to a creditor of the LLP must also be sent to the Pensions Regulator.

(2) In a case where the LLP in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, any notice or other document required to be sent to a creditor of the LLP must also be sent to the Board of the Pension Protection Fund (“the Board”).

- (3) The Secretary of State may by regulations provide that, in a case where—
- (a) the LLP in respect of which a compromise or arrangement is proposed is an employer in respect of an eligible scheme, and
  - (b) the trustees or managers of the scheme are a creditor of the LLP,

the Board may exercise any rights, or any rights of a specified description, that are exercisable under this Part by the trustees or managers as a creditor of the LLP.

(4) Regulations under this section may provide that the Board may exercise any such rights—

- (a) to the exclusion of the trustees or managers of the scheme, or
- (b) in addition to the exercise of those rights by the trustees or managers of the scheme.

(5) Regulations under this section—

- (a) may specify conditions that must be met before the Board may exercise any such rights;
- (b) may provide for any such rights to be exercisable by the Board for a specified period;
- (c) may make provision in connection with any such rights ceasing to be so exercisable at the end of such a period.

(6) Regulations under this section are subject to affirmative resolution procedure (but see subsection (7)).

(7) During the period of six months beginning with the day on which this section comes into force, regulations under this section are subject to approval after being made (and subsection (6) does not apply).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(8) For the purposes of subsection (7), section 1291 has effect as if any reference in that section to a period of 28 days were to a period of 40 days.

(9) In this section—

“eligible scheme” means any pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004 or Article 110 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1));

“employer”—

(a) in subsection (1), means an employer within the meaning of section 318(1) of the Pensions Act 2004 or Article 2(2) of the Pensions (Northern Ireland) Order 2005;

(b) in subsections (2) and (3)—

(i) in the case of a pension scheme that is an eligible scheme for the purposes of section 126 of the Pensions Act 2004, has the same meaning as it has for the purposes of Part 2 of that Act (see section 318(1) and (4) of that Act);

(ii) in the case of a pension scheme that is an eligible scheme for the purposes of Article 110 of the Pensions (Northern Ireland) Order 2005, has the same meaning as it has for the purposes of Part 3 of that Order (see Article 2(2) and (5) of that Order);

“money purchase scheme” means a pension scheme that is a money purchase scheme for the purposes of the Pension Schemes Act 1993 (see section 181(1) of that Act) or the Pension Schemes (Northern Ireland) Act 1993 (see section 176(1) of that Act);

“occupational pension scheme” and “pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993;

“specified” means specified in regulations under this section.

### **Powers of court to facilitate reconstruction or amalgamation**

**901J.**—(1) This section applies where application is made to the court under section 901F to sanction a compromise or arrangement and it is shown that—

(a) the compromise or arrangement is proposed in connection with a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more relevant bodies corporate (where one or more of them is an LLP), and

(b) under the scheme the whole or any part of the undertaking or the property of any LLP concerned in the scheme (a “transferor LLP”) is to be transferred to another relevant body corporate (“the transferee body corporate”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—

(a) the transfer to the transferee body corporate of the whole or any part of the undertaking and of the property or liabilities of any transferor LLP;

(b) the allotting or appropriation by the transferee body corporate of any shares, debentures, policies or other like interests in that body corporate which under the compromise or arrangement are to be allotted or appropriated by that body corporate to or for any person;

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (c) the continuation by or against the transferee body corporate of any legal proceedings pending by or against any transferor LLP;
  - (d) the dissolution, without winding up, of any transferor LLP;
  - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
  - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order under this section provides for the transfer of property or liabilities—
- (a) the property is by virtue of the order transferred to, and vests in, the transferee body corporate, and
  - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that body corporate.
- (4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section—
- “relevant body corporate” means an LLP or a company;
  - “property” includes property, rights and powers of every description; and
  - “liabilities” includes duties.
- (6) Every body corporate in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.
- (7) If default is made in complying with subsection (6) an offence is committed by—
- (a) the LLP, and every member of the LLP who is in default, and
  - (b) the company, and every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.””