



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART I

#### COMPANY VOLUNTARY ARRANGEMENTS

##### *The Proposal*

#### **1 Those who may propose an arrangement.**

- (1) The directors of a company [<sup>F1</sup>(other than one which is in administration or being wound up)] may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (from here on referred to, in either case, as a “voluntary arrangement”).
- (2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner [<sup>F2</sup>or authorised to act as nominee, in relation to the voluntary arrangement].
- (3) Such a proposal may also be made—
  - [<sup>F3</sup>(a) where the company is in administration, by the administrator,]
  - (b) where the company is being wound up, by the liquidator.
- [<sup>F4</sup>(4) In this Part “company” means—
  - [<sup>F5</sup>(a) a company registered under the Companies Act 2006 in England and Wales or Scotland;]
  - (b) a company incorporated in an EEA State other than the United Kingdom; or
  - (c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.
- (5) In subsection (4), in relation to a company, “centre of main interests” has the same meaning as in the EC Regulation and, in the absence of proof to the contrary,

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is presumed to be the place of its registered office (within the meaning of that Regulation).

- (6) If a company incorporated outside the United Kingdom has a principal place of business in Northern Ireland, no proposal under this Part shall be made in relation to it unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales or Scotland).]

#### Textual Amendments

- F1** Words in s. 1(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 10(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F2** Words in s. 1(2) substituted (1.1.2003) by 2000 c. 39, s. 2, Sch. 2 Pt. I para. 2; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F3** S. 1(3)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 10(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F4** S. 1(4)-(6) substituted (13.4.2005) for s. 1(4) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), reg. 2(2) (with reg. 3)
- F5** S. 1(4)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 71(2)} (with art. 10, Sch. 1 para. 84)

#### [<sup>F6</sup>1A Moratorium.

- (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 to this Act have effect with respect to—
- (a) companies eligible for a moratorium under this section,
  - (b) the procedure for obtaining such a moratorium,
  - (c) the effects of such a moratorium, and
  - (d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.]

#### Textual Amendments

- F6** S. 1A inserted (1.1.2003) by 2000 c. 39, s. 1, Sch. 1 para. 2; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

## 2 Procedure where nominee is not the liquidator or administrator.

- (1) This section applies where the nominee under section 1 is not the liquidator or administrator of the company [<sup>F7</sup>and the directors do not propose to take steps to obtain a moratorium under section 1A for the company].
- (2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—

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- (a) [<sup>F8</sup>whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
  - [<sup>F9</sup>(b) whether, in his opinion, the proposal should be considered by a meeting of the company and by the company's creditors, and
  - (c) if in his opinion it should, the date on which, and time and place at which, he proposes a meeting of the company should be held.]
- (3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—
- (a) a document setting out the terms of the proposed voluntary arrangement, and
  - (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.
- [<sup>F10</sup>(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.]

#### Textual Amendments

- F7** Words in s. 2(1) added (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 3**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F8** Words in s. 2(2) inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 3(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F9** S. 2(2)(b)(c) substituted for s. 2(2)(aa)(b) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by **Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 2**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with **reg. 5**) (as amended by S.I. 2017/363, **reg. 3**)
- F10** S. 2(4) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 3(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### 3 [<sup>F11</sup>Summoning of meetings][<sup>F11</sup>Consideration of proposal]].

- (1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court [<sup>F12</sup>that such meetings as are mentioned in section 2(2) should be summoned][<sup>F12</sup>under section 2(2) that the proposal should be considered by a meeting of the company and by the company's creditors], the person making the report shall (unless the court otherwise [<sup>F13</sup>directs) summon those meetings for the time, date and place proposed in the report.][<sup>F13</sup>directs)—
- (a) summon a meeting of the company to consider the proposal for the time, date and place proposed in the report, and
  - (b) seek a decision from the company's creditors as to whether they approve the proposal.]

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- (2) Where the nominee is the liquidator or administrator, he <sup>[F14]</sup>shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit. <sup>[F14]</sup>shall—
- (a) summon a meeting of the company to consider the proposal for such time, date and place as he thinks fit, and
  - (b) seek a decision from the company's creditors as to whether they approve the proposal.]
- <sup>[F15]</sup>(3) A decision of the company's creditors as to whether they approve the proposal is to be made by a qualifying decision procedure.
- (4) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim and address the person seeking the decision is aware.]

#### Textual Amendments

- F11** S. 3 heading substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 3\(5\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F12** Words in s. 3(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 3\(2\)\(a\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F13** Words in s. 3(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 3\(2\)\(b\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F14** Words in s. 3(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 3\(3\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))
- F15** S. 3(3)(4) substituted for s. 3(3) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 3\(4\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

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