

Status: Point in time view as at 15/09/2003.

Changes to legislation: Insolvency Act 1986, Part III is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

Textual Amendments

- F1** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

- C1** Sch. A1 applied (with modifications) (E.W.) (1.1.2003) by S.I. 1994/2421, **art. 4(1)**, **Sch. 1** (as amended (1.1.2003) by S.I. 2002/2708, **arts. 4-6** (with transitional provisions in **art. 11**) and (1.7.2005) by S.I. 2005/1516, **art. 6**)
- C1** Sch. A1 extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), regs. 1, 15, **Sch. 2 para. 7**

^{F2}PART III

EFFECTS OF MORATORIUM

Textual Amendments

- F2** Sch. A1 (Pts. I-VI) inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 para. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Effect on creditors, etc.

- ^{F3}12 (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 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,
 - [^{F4}(d) no administration application may be made in respect of the company,
 - (da) no administrator of the company may be appointed under paragraph 14 or 22 of Schedule B1,]
 - (e) no administrative receiver of the company may be appointed,

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- (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 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 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 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, section 127 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 37(5)(a).
- (3) In the application of sub-paragraph (1)(h) to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied is omitted.
- (4) 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.
- (5) For the purposes of this paragraph, "excepted petition" means a petition under—
- (a) section 124A of this Act,
 - (b) section 72 of the ^{M1}Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, or
 - (c) section 92 of the ^{M2}Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section.
 - [^{F5}(d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.]

Textual Amendments

- F3** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F4** Sch. A1 para. 12(1)(d)(da) substituted (15.9.2003) for Sch. A1 para. 12(1)(d) by 2002 c. 40, ss. 248(3), 279, **Sch. 17 para. 37(3)** (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**))
- F5** Sch. A1 para. 12(5)(d) inserted (3.7.2002) by S.I. 2002/1555, **art. 30**

Modifications etc. (not altering text)

- C1** Sch. A1 para. 12(1)(g) excluded (26.12.2003) by **The Financial Collateral Arrangements (No.2) Regulations 2003** (S.I. 2003/3226), **reg. 8(5)**

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Marginal Citations

- M1** 1986 c. 60.
M2 1987 c. 22.

- 13 (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 12(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.

Modifications etc. (not altering text)

- C2** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- ^{F6}14 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.

Textual Amendments

- F6** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Effect on company

- ^{F7}15 (1) Paragraphs 16 to 23 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 16 to 22 does not—

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

Textual Amendments

F7 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Company invoices, etc.

- ^{F8}16 (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 is liable to a fine.
- (3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Textual Amendments

F8 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Obtaining credit during moratorium

- ^{F9}17 (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 (in Scotland, hired) 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 is liable to a fine, and
 - (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.
- (4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part XV.

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Textual Amendments

- F9** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Disposals and payments

- ^{F10}18 (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 35(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 court—
- (a) the company is liable to a fine, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

Textual Amendments

- F10** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- ^{F11}19 (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 35(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—
- (a) the company is liable to a fine, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

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Textual Amendments

- F11** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Disposal of charged property, etc.

- ^{F12}20 (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 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 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 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 two 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.

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- (8) Where the 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 of companies.
- (9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

Textual Amendments

F12 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C3 Sch. A1 para. 20 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226, **reg. 8(5)**)

- ^{F13}21 (1) Where property is disposed of under paragraph 20 in its application to Scotland, the company shall grant to the donee an appropriate document of transfer or conveyance of the property, and
- (a) that document, or
 - (b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration,
- has the effect of disencumbering the property of, or (as the case may be) freeing the property from, the security.
- (2) Where goods in the possession of the company under a hire-purchase agreement are disposed of under paragraph 20 in its application to Scotland, the disposal has the effect of extinguishing, as against the donee, all rights of the owner of the goods under the agreement.

Textual Amendments

F13 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

- ^{F14}22 (1) If the company—
- (a) without any consent or leave under paragraph 20, 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 20, 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 20 or 21,
- it is liable to a fine.
- (2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

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Textual Amendments

F14 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Market contracts, etc.

- ^{F15}23 (1) If the company enters into any transaction to which this paragraph applies—
- (a) the company is liable to a fine, and
 - (b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he is liable to imprisonment or a fine, or both.
- (2) A company enters into a transaction to which this paragraph applies if it—
- (a) enters into a market contract, ^{F16} . . .
 - (b) gives a transfer order,
 - (c) grants a market charge ^{F16} . . . 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 12(1)(g), 14 or 16 to 22.
- (5) Paragraph 20 does not apply in relation to any property which is subject to a market charge, ^{F16} . . . 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.]

Textual Amendments

F15 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

F16 Words in Sch. A1 para. 23(2)(a)(c)(5) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(4)(a)(b)(c)**

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