

令和3年度産業経済研究委託事業  
(事業再生の円滑化に関する調査等)

## 参考資料

(条文集 英国)

Scheme of Arrangement 関連条文

**Companies Act 2006**  
**(latest amendment brought into force as of July 8, 2021)**  
**PART 26**  
**Arrangements and reconstructions: general**

*Application of this Part*

895 Application of this Part

- (1) The provisions of this Part apply where a compromise or arrangement is proposed between a company and—
  - (a) its creditors, or any class of them, or
  - (b) its members, or any class of them.
- (2) In this Part—

“arrangement” includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods; and

“company”—

  - (a) in section 900 (powers of court to facilitate reconstruction or amalgamation) means a company within the meaning of this Act, and
  - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (see sections 902 and 903).

*Meeting of creditors or members*

896 Court order for holding of meeting

- (1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) An application under this section may be made by—
  - (a) the company,
  - (b) any creditor or member of the company,
  - (c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.
- (3) Section 323 (representation of corporations at meetings) applies to a meeting of creditors under this section as to a meeting of the company (references to a member of the company being read as references to a creditor).

(4) This section is subject to section 899A (moratorium debts, etc).

897 Statement to be circulated or made available

(1) Where a meeting is summoned under section 896—

- (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
  - (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 directors of the company (whether as directors or as members or as creditors of the company 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 company, 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 company's directors.

(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 company with a copy of the statement free of charge.

(5) If a company makes default in complying with any requirement of this section, an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default. This is subject to subsection (7) below.

(6) For this purpose the following are treated as officers of the company—

- (a) a liquidator or administrator of the company, and
- (b) a trustee of a deed for securing the issue of debentures of the company.

- (7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his 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, to a fine not exceeding the statutory maximum.

898 Duty of directors and trustees to provide information

- (1) It is the duty of—
  - (a) any director of the company, and
  - (b) any trustee for its debenture holders, to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).
- (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*

899 Court sanction for compromise or arrangement

- (1) If a majority in 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 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
- (1A) Subsection (1) is subject to section 899A (moratorium debts, etc).
- (2) An application under this section may be made by—
  - (a) the company,
  - (b) any creditor or member of the company,
  - (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator.
  - (d) if the company is being wound up, the liquidator, or
  - (e) if the company is in administration, the administrator.
- (3) A compromise or arrangement sanctioned by the court is binding on—
  - (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
  - (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

(5) .....

*Special cases*

899A Moratorium debts, etc

(1) This section applies where—

- (a) an application under section 896 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 company 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 896.

(4) For the purposes of section 897 (statement to be circulated or made available)—

- (a) the requirement in section 897(1)(a) is to be read as including a requirement to send each relevant creditor a statement complying with section 897;
- (b) any reference to creditors entitled to attend the meeting summoned under section 896 includes a reference to relevant creditors.

(5) The court may not sanction the compromise or arrangement under section 899 if it includes provision in respect of any relevant creditor who has not agreed to it.

(6) In this section—

“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;

“priority pre-moratorium debt”—

- (c) 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;
- (d) 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.

*Reconstructions and amalgamations*

900 Powers of court to facilitate reconstruction or amalgamation

- (1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that—
  - (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
  - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).
- (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 company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
  - (d) the dissolution, without winding up, of any transferor company;
  - (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 company, and
  - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.
- (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—

“property” includes property, rights and powers of every description; and  
“liabilities” includes duties.
- (6) Every company 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 company, and
  - (b) 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.

*Obligations of company with respect to articles etc*

901 Obligations of company with respect to articles etc

- (1) This section applies—
- (a) to any order under section 899 (order sanctioning compromise or arrangement), and
  - (b) to any order under section 900 (order facilitating reconstruction or amalgamation) that alters the company's constitution.
- (2) If the order amends—
- (a) the company's articles, or
  - (b) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company's constitution), the copy of the order delivered to the registrar by the company under section 899(4) or section 900(6) must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.
- (3) Every copy of the company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) In this section—
- (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates; and
  - (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.
- (5) If a company makes default in complying with this section an offence is committed by—
- (a) the company, and
  - (b) every officer of the company who is in default.
- (6) 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.

Restructuring Plan 関連条文

**Companies Act 2006**  
**(latest amendment brought into force as of July 8, 2021)**

**PART 26A**

**Arrangements and reconstructions: companies in financial difficulty**

*Application of this Part*

901A Application of this Part

- (1) The provisions of this Part apply where conditions A and B are met in relation to a company.
- (2) Condition A is that the company 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 company 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).
- (4) In this Part—

“arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;

“company”—

  - (a) in section 901J (powers of court to facilitate reconstruction or amalgamation) means a company within the meaning of this Act, and
  - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (5) The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (see sections 902 and 903).

901B Power to exclude companies providing financial services, etc

- (1) The Secretary of State may by regulations provide that this Part does not apply—
  - (a) where the company 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 a company, or a company of a specified description, and any creditors of the company, 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.

### *Meeting of creditors or members*

#### 901C Court order for holding of meeting

- (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 company 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 company,
  - (b) any creditor or member of the company,
  - (c) if the company is being wound up, the liquidator, or
  - (d) if the company is in administration, the administrator.
- (3) Every creditor or member of the company 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 company 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 company.
- (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) Section 323 (representation of corporations at meetings) applies to a meeting of creditors under this section as to a meeting of the company (references to a member of the company being read as references to a creditor).
- (7) This section is subject to section 901H (moratorium debts, etc).

#### 901D Statement to be circulated or made available

- (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
  - (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 directors of the company (whether as directors or as members or as creditors of the company 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 company, 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 company's directors.
- (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 company with a copy of the statement free of charge.
- (5) If a company makes default in complying with any requirement of this section, an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.This is subject to subsection (7).
- (6) For this purpose the following are treated as officers of the company—
  - (a) a liquidator or administrator of the company, and
  - (b) a trustee of a deed for securing the issue of debentures of the company.
- (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 director or trustee for debenture holders to supply the necessary particulars of the director'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.

901E Duty of directors and trustees to provide information

(1) It is the duty of—

- (a) any director of the company, and
- (b) any trustee for its debenture holders,

to give notice to the company of such matters relating to that director or trustee as may be necessary for the purposes of section 901D (explanatory statement to be circulated or made available).

- (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 Court sanction for compromise or arrangement

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

(4) Where the court makes an order under this section in relation to a company 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 company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (6) The court’s order has no effect until a copy of it has been—
- (a) in the case of an overseas company that is not required to register particulars under section 1046, published in the Gazette, or
  - (b) in any other case, delivered to the registrar.

901G Sanction for compromise or arrangement where one or more classes dissent

- (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 company (“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.
- (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 company 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 company, 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.

*Special cases*

## 901H Moratorium debts, etc

- (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 company 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”—

  - (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.

## 901I Pension schemes

- (1) In a case where the company 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 company must also be sent to the Pensions Regulator.

- (2) In a case where the company 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 company 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 company 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 company,
- 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 company.
- (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).
- (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.

#### *Reconstructions and amalgamations*

901J Powers of court to facilitate reconstruction or amalgamation

- (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 company or companies, or the amalgamation of any two or more companies, and
  - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (a “transferor company”) is to be transferred to another company (“the transferee company”).
- (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 company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
  - (d) the dissolution, without winding up, of any transferor company;
  - (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 company, and
  - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.
- (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—
  - “property” includes property, rights and powers of every description; and
  - “liabilities” includes duties.
- (6) Every company 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 company, and
  - (b) 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.

*Obligations of company with respect to articles etc*

901K Obligations of company with respect to articles etc

- (1) This section applies—
  - (a) to any order under section 901F (order sanctioning compromise or arrangement), and
  - (b) to any order under section 901J (order facilitating reconstruction or amalgamation) that alters the company’s constitution.
- (2) If—
  - (a) the order amends—
    - (i) the company’s articles, or
    - (ii) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company’s constitution), and
  - (b) a copy of the order is required to be delivered to the registrar by the company under section 901F(6)(b) or section 901J(6),



the copy of the order delivered to the registrar must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.

- (3) Every copy of the company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) In this section—
  - (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates, and
  - (b) in the case of a company not having articles, references to its articles are to be read as references to the instrument constituting the company or defining its constitution.
- (5) If a company makes default in complying with this section an offence is committed by—
  - (a) the company, and
  - (b) every officer of the company who is in default.
- (6) 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.

#### *Power to amend Act*

#### 901L Power to amend Act

- (1) The Secretary of State may by regulations make any amendment of this Act which the Secretary of State considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to this Part.
- (2) Regulations under this section are subject to affirmative resolution procedure.

CVA 関連条文

**Insolvency Act 1986**  
**(latest amendment brought into force as of November 12, 2021)**  
**PART I Company Voluntary Arrangements**

*The Proposal*

- 1 Those who may propose an arrangement.
- (1) The directors of a company (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... in relation to the voluntary arrangement.
  - (3) Such a proposal may also be made—
    - (a) where the company is in administration, by the administrator,
    - (b) where the company is being wound up, by the liquidator.
  - (4) In this Part “company” means—
    - (a) a company registered under the Companies Act 2006 in England and Wales or Scotland;
    - (b) a company incorporated in an EEA State F7...; or
    - (c) a company not incorporated in an EEA State but having its centre of main interests in a member State (other than Denmark) or in the United Kingdom.
  - (5) In subsection (4), in relation to a company, “centre of main interests” has the same meaning as in the Article 3 of the EU 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).

1A Moratorium

- 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....
  - (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—

- (a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
  - (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.
- (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... in relation to the voluntary arrangement.

### 3 Consideration of proposal.

- (1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court 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 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.
- (2) Where the nominee is the liquidator or administrator, he 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.

- (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.

*Consideration and implementation of proposal*

4 Decisions of the company and its creditors.

- (1) This section applies where, under section 3—
  - (a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and
  - (b) the company's creditors are asked to decide whether to approve the proposed voluntary arrangement.
- (1A) The company and its creditors may 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 in relation to the voluntary arrangement. But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.
- (3) Neither the company nor its creditors may 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.
- (4) Subject as follows, neither the company nor its creditors may 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,...
  - (aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,
  - (b) a preferential creditor of the company is to be paid an amount in respect of an ordinary preferential debt that bears to that debt a smaller proportion than is borne to another ordinary preferential debt by the amount that is to be paid in respect of that other debt...
  - (c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt. or
  - (d) in the case of a company which is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3). However, ... such a proposal or modification may be approved with the concurrence of the... creditor concerned.

- (4A) Subject to subsection (4B), where the nominee's report under section 2(2) is submitted to the court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1, neither the company nor its creditors may approve any proposal or modification under which the following are to be paid otherwise than in full—
- (a) moratorium debts (within the meaning given by section 174A);
  - (b) priority pre-moratorium debts (within the meaning given by section 174A).
- (4B) Subsection (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.
- (5) Subject as above, the meeting of the company and the qualifying decision procedure shall be conducted in accordance with the rules.
- (6) After the conclusion of the company meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.
- (6A) After the company's creditors have decided whether to approve the proposed voluntary arrangement the person who sought the decision must—
- (a) report the creditors' decision to the court, and
  - (b) immediately after reporting to the court, give notice of the creditors' decision to such persons as may be prescribed.
- (7) References in this section to preferential debts, ordinary preferential debts, secondary preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

#### 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 the meeting of the company summoned under section 3 and by the company's creditors pursuant to that section, or
  - (b) (subject to any order made under subsection (6)) it has been taken by the company's creditors pursuant to that section.
- (3) If the decision taken by the company's creditors 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 company's creditors, 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, as defined by section A49(13), applies to the court under subsection (3), the appropriate regulator is entitled to be heard on the application.

(5A)The appropriate regulator” means—

- (a) where the regulated company is a PRA-regulated company as defined by section A49(13), the Financial Conduct Authority and the Prudential Regulation Authority, and
- (b) in any other case, the Financial Conduct Authority.

(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 company's creditors, or
- (b) make such other order as it thinks fit.

## 5 Effect of approval.

(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.

(2) The F54... voluntary arrangement—

- (a) takes effect as if made by the company at the time the creditors decided to approve the voluntary arrangement, and
- (b) binds every person who in accordance with the rules—
  - (i) was entitled to vote in the qualifying decision procedure by which the creditors' decision to approve the voluntary arrangement was made, 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.

(3) Subject as follows, if the company is being wound up or is in administration, the court may do one or both of the following, namely—

- (a) by order stay or sist all proceedings in the winding up or provide for the appointment of the administrator to cease to have effect;
- (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the... voluntary arrangement.

- (3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part A1 and a petition for the winding up of the company, other than an excepted petition within the meaning of section A20, was presented before the beginning of the moratorium, the court must dismiss the petition.
- (4) The court shall not make an order under subsection (3)(a) or dismiss a petition under subsection (3A)—
- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) and (6A) has been made to the court, or
  - (b) at any time when an application under the next section 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.
- (5) Where the company is in energy administration, the court shall not make an order or give a direction under subsection (3) unless—
- (a) the court has given the Secretary of State or the Gas and Electricity Markets Authority a reasonable opportunity of making representations to it about the proposed order or direction; and
  - (b) the order or direction is consistent with the objective of the energy administration.
- (6) In subsection (5) “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.

## 6 Challenge of decisions.

- (1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—
- (a) that a voluntary arrangement which has effect under section 4A 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 the meeting of the company, or in relation to the relevant qualifying decision procedure.
- (1A) In this section—
- (a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the company's creditors decide whether to approve a voluntary arrangement;
  - (b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.
- (2) The persons who may apply under subsection (1) are—
- (a) a person entitled, in accordance with the rules, to vote at the meeting of the company or in the relevant qualifying decision procedure;

- (aa) a person who would have been entitled, in accordance with the rules, to vote in the relevant qualifying decision procedure if he had had notice of it;
  - (b) the nominee or any person who has replaced him under section 2(4) or 4(2); and
  - (c) if the company is being wound up or is in administration, the liquidator or administrator.
- (2A) Subject to this section, where a voluntary arrangement in relation to a company in energy administration is approved at the meetings summoned under section 3, an application to the court may be made—
- (a) by the Secretary of State, or
  - (b) with the consent of the Secretary of State, by the Gas and Electricity Markets Authority, on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the energy administration.
- (3) An application under this section 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 section 4(6) and (6A) has been made to the court or
  - (b) in the case of a person who was not given notice of the relevant qualifying decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that the relevant qualifying decision procedure 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.
- (4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1) or, in the case of an application under subsection (2A), as to the ground mentioned in that subsection, it may do any of the following, namely—
- (a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A or, in a case falling within subsection (1)(b), any decision taken by the meeting of the company, or in the relevant qualifying decision procedure, which has effect under that section;
  - (b) give a direction to any person for the summoning of a further company meeting to consider any revised proposal the person who made the original proposal may make or, in the case falling within subsection (1)(b), and relating to the company meeting, a further company meeting to reconsider the original proposal;
  - (c) direct any person—
    - (i) to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve any revised proposal the person who made the original proposal may make, or
    - (ii) in a case falling within subsection (1)(b) and relating to the relevant



qualifying decision procedure, to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve the original proposal.

- (5) Where at any time after giving a direction under subsection (4)(b) or (c) in relation to a revised proposal the court is satisfied that the person who made the original proposal does 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 section 4A.
- (6) In a case where the court, on an application under this section with respect to any meeting or relevant qualifying decision procedure —
  - (a) gives a direction under subsection (4)(b) or (c), or
  - (b) revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.
- (7) Except in pursuance of the preceding provisions of this section,
  - (a) a decision taken at a company meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting, and
  - (b) a decision of the company's creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.
- (8) In this section “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.

#### 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.

#### 7 Implementation of proposal.

- (1) This section applies where a voluntary arrangement has effect under section 4A.
- (2) The person who is for the time being carrying out in relation to the voluntary

arrangement the functions conferred—

- (a) on the nominee by virtue of the approval of the voluntary arrangement by the company or its creditors (or both) pursuant to section 3,
  - (b) by virtue of section 2(4) or 4(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 court; and on the application the 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.
- (4) The supervisor—
- (a) may apply to the 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.
- (5) The 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... in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) 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.

#### 7A Prosecution of delinquent officers of company.

- (1) This section applies where the approval of a voluntary arrangement in relation to a company has taken effect under section 4A.
- (2) If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must 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... 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 1985 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 Acts 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
  - (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... 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... 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)

## CVA 関連条文

### **The Insolvency (England and Wales) Rules 2016 (brought into force as of April 6, 2017) PART 2 Company Voluntary Arrangements (CVA)**

#### *CHAPTER 1 Preliminary*

##### *Interpretation*

2.1. In this Part—

“nominee” and “supervisor” include the proposed nominee or supervisor in relation to a proposal for a CVA; and

“proposal” means a proposal for a CVA.

#### *CHAPTER 2 The proposal for a CVA (section 1)*

[Note: (1) section 1 of the Act sets out who may propose a CVA;

(2) a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

##### *Proposal for a CVA: general principles and amendment*

2.2.—(1) A proposal must—

- (a) contain identification details for the company;
- (b) explain why the proposer thinks a CVA is desirable;
- (c) explain why the creditors are expected to agree to a CVA; and
- (d) be authenticated and dated by the proposer.

(2) The proposal may be amended with the nominee’s agreement in writing in the following cases.

(3) The first case is where—

- (a) no steps have been taken to obtain a moratorium;
- (b) the nominee is not the liquidator or administrator of the company; and
- (c) the nominee’s report has not been filed with the court under section 2(2).

(4) The second case is where—

- (a) the proposal is made with a view to obtaining a moratorium; and
- (b) the nominee’s statement under paragraph 6(2) of Schedule A1 (nominee’s opinion on prospects of CVA being approved etc.) has not yet been submitted to the directors.

*Proposal: contents*

2.3.—(1) The proposal must set out the following so far as known to the proposer—

Assets	(a)the company’s assets, with an estimate of their respective values; (b)which assets are charged and the extent of the charge; (c)which assets are to be excluded from the CVA; and (d)particulars of any property to be included in the CVA which is not owned by the company, including details of who owns such property, and the terms on which it will be available for inclusion;
Liabilities	(e)the nature and amount of the company’s liabilities; (f)how the company’s liabilities will be met, modified, postponed or otherwise dealt with by means of the CVA and in particular— (i)how preferential creditors and creditors who are, or claim to be, secured will be dealt with, (ii)how creditors who are connected with the company will be dealt with, (iii)if the company is not in administration or liquidation whether, if the company did go into administration or liquidation, there are circumstances which might give rise to claims under section 238 (transactions at an undervalue), section 239 (preferences), section 244 (extortionate credit transactions), or section 245 (floating charges invalid), and (iv)where there are circumstances that might give rise to such claims, whether, and if so what, provision will be made to indemnify the company in respect of them;
Nominee’s fees and expenses	(g)the amount proposed to be paid to the nominee by way of fees and expenses;
Supervisor	(h)identification and contact details for the supervisor; (i)confirmation that the supervisor is qualified to act as an insolvency practitioner in relation to the company and the name of the relevant recognised professional body which is the source of the supervisor’s authorisation; (j)how the fees and expenses of the supervisor will be determined and paid; (k)the functions to be performed by the supervisor; (l)where it is proposed that two or more supervisors be appointed a

	statement whether acts done in connection with the CVA may be done by any one or more of them or must be done by all of them;
Guarantees and proposed guarantees	(m)whether any, and if so what, guarantees have been given in respect of the company's debts, specifying which of the guarantors are persons connected with the company; (n)whether any, and if so what, guarantees are proposed to be offered for the purposes of the CVA and, if so, by whom and whether security is to be given or sought;
Timing	(o)the proposed duration of the CVA; (p)the proposed dates of distributions to creditors, with estimates of their amounts;
Type of proceedings	(q)whether the proceedings will be main, territorial or non-EC proceedings with reasons;
Conduct of the business	(r)how the business of the company will be conducted during the CVA;
Further credit facilities	(s)details of any further proposed credit facilities for the company, and how the debts so arising are to be paid;
Handling of funds arising	(t)the manner in which funds held for the purposes of the CVA are to be banked, invested or otherwise dealt with pending distribution to creditors; (u)how funds held for the purpose of payment to creditors, and not so paid on the termination of the CVA, will be dealt with; (v)how the claim of any person bound by the CVA by virtue of section 5(2)(b)(ii) or paragraph 37(2)(b)(ii) of Schedule A1 will be dealt with;
Address (where moratorium proposed)	(w)where the proposal is made in relation to a company that is eligible for a moratorium (in accordance with paragraphs 2 and 3 of Schedule A1) with a view to obtaining a moratorium under Schedule A1, the address to which the documents referred to in paragraph 6(1) of that Schedule must be delivered; and
Other matters	(x)any other matters that the proposer considers appropriate to enable members and creditors to reach an informed decision on the proposal.

- (2) Where the proposal is made by the directors, an estimate so far as known to them of—
  - (a) the value of the prescribed part if the proposal for the CVA is not accepted and the company goes into liquidation (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
  - (b) the value of the company’s net property (as defined by section 176A(6)) on the date that the estimate is made.
- (3) Where the proposal is made by the administrator or liquidator the following so far as known to the office-holder—
  - (a) an estimate of—
    - (i) the value of the prescribed part (whether or not the administrator or liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts), and
    - (ii) the value of the company’s net property (as defined by section 176A(6)); and
  - (b) a statement as to whether the administrator or liquidator proposes to make an application to the court under section 176A(5) and if so the reasons for the application; and
  - (c) details of the nature and amount of the company’s preferential creditors.
- (4) Information may be excluded from an estimate under paragraph (2) or (3)(a) if the inclusion of the information could seriously prejudice the commercial interests of the company.
- (5) If the exclusion of such information affects the calculation of the estimate, the proposal must include a statement to that effect.

### *CHAPTER 3 Procedure for a CVA without a moratorium*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### *Procedure for proposal where the nominee is not the liquidator or the administrator (section 2)*

- 2.4.—(1) This rule applies where the nominee is not the same person as the liquidator or the administrator.
- (2) A nominee who consents to act must deliver a notice of that consent to the proposer as soon as reasonably practicable after the proposal has been submitted to the nominee under section 2(3).
- (3) The notice must state the date the nominee received the proposal.



- (4) The period of 28 days in which the nominee must submit a report to the court under section 2(2) begins on the date the nominee received the proposal as stated in the notice.

Information for the official receiver

2.5. Where the company is being wound up by the court, the liquidator must deliver to the official receiver—

- (a) a copy of the proposal; and
- (b) the name and address of the nominee (if the nominee is not the liquidator).

*Statement of affairs (section 2(3))*

2.6.—(1) The statement of the company's affairs required by section 2(3) must contain the following—

- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, and with each category given an estimated value;
  - (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim, and of how and when the security was created;
  - (c) the names and addresses of the preferential creditors, with the amounts of their respective claims;
  - (d) the names and addresses of the unsecured creditors with the amounts of their respective claims;
  - (e) particulars of any debts owed by the company to persons connected with it;
  - (f) particulars of any debts owed to the company by persons connected with it;
  - (g) the names and addresses of the company's members, with details of their respective shareholdings; and
  - (h) any other particulars that the nominee in writing requires to be provided for the purposes of making the nominee's report on the proposal to the court.
- (2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.
  - (3) However the nominee may allow the statement to be made up to an earlier date (but not more than two months before the date of the proposal) where that is more practicable.
  - (4) Where the statement is made up to an earlier date, the nominee's report to the court on the proposal must explain why.
  - (5) The statement of affairs must be verified by a statement of truth made by the proposer.
  - (6) Where the proposal is made by the directors, only one director need make the statement of truth.

*Application to omit information from statement of affairs delivered to creditors*

2.7. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs as delivered to the creditors where disclosure of that information would be likely to prejudice the conduct of the CVA or might reasonably be expected to lead to violence against any person.

*Additional disclosure for assistance of nominee where the nominee is not the liquidator or administrator*

2.8.—(1) This rule applies where the nominee is not the administrator or the liquidator of the company.

(2) If it appears to the nominee that the nominee's report to the court cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the proposer to provide—

- (a) more information about the circumstances in which, and the reasons why, a CVA is being proposed;
- (b) particulars of any previous proposals which have been made in relation to the company under Part 1 of the Act; and
- (c) any further information relating to the company's affairs which the nominee thinks necessary for the purposes of the report.

(3) The nominee may require the proposer to inform the nominee whether, and if so in what circumstances, any person who is, or has been at any time in the two years before the date the nominee received the proposal, a director or officer of the company has—

- (a) been concerned in the affairs of any other company (whether or not incorporated in England and Wales) or limited liability partnership which has been the subject of insolvency proceedings;
- (b) been made bankrupt;
- (c) been the subject of a debt relief order; or
- (d) entered into an arrangement with creditors.

(4) The proposer must give the nominee such access to the company's accounts and records as the nominee may require to enable the nominee to consider the proposal and prepare the nominee's report.

*Nominee's report on proposal where the nominee is not the liquidator or administrator (section 2(2))*

2.9.—(1) The nominee's report must be filed with the court under section 2(2) accompanied by—

- (a) a copy of the report;

- (b) a copy of the proposal (as amended under rule 2.2(2), if that is the case); and
  - (c) a copy of the statement of the company's affairs or a summary of it.
- (2) The report must state—
- (a) why the nominee considers the proposal does or does not have a reasonable prospect of being approved and implemented; and
  - (b) why the members and the creditors should or should not be invited to consider the proposal.
- (3) The court must endorse the nominee's report and the copy of it with the date of filing and deliver the copy to the nominee.
- (4) The nominee must deliver a copy of the report to the company.

*Replacement of nominee (section 2(4))*

- 2.10.—(1) A person (other than the nominee) who intends to apply to the court under section 2(4) for the nominee to be replaced must deliver a notice that such an application is intended to be made to the nominee at least five business days before filing the application with the court.
- (2) A nominee who intends to apply under that section to be replaced must deliver a notice that such an application is intended to be made to the person intending to make the proposal, or the proposer, at least five business days before filing the application with the court.
- (3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been filed with the court confirming that person—
- (a) consents to act; and
  - (b) is qualified to act as an insolvency practitioner, in relation to the company.

*CHAPTER 4 Procedure for a CVA with a moratorium*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

*Statement of affairs (paragraph 6(1)(b) of Schedule A1)*

- 2.11.—(1) The statement of affairs required by paragraph 6(1)(b) of Schedule A1 must contain the same information as is required by rule 2.6.
- (2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.
- (3) However the nominee may allow the statement to be made up to an earlier date (but not more than two months before the proposal) where that is more practicable.
- (4) Where the statement is made up to an earlier date, the nominee's statement to the directors on the proposal must explain why.

- (5) The statement of affairs must be verified by a statement of truth made by at least one director.

*Application to omit information from a statement of affairs*

- 2.12. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs as delivered to the creditors where disclosure of that information would be likely to prejudice the conduct of the CVA or might reasonably be expected to lead to violence against any person.

*The nominee's statement (paragraph 6(2) of Schedule A1)*

- 2.13.—(1) The nominee must submit to the directors the statement required by paragraph 6(2)(1) of Schedule A1 within 28 days of the submission to the nominee of the proposal.
- (2) The statement must—
- (a) include the name and address of the nominee; and
  - (b) be authenticated and dated by the nominee.
- (3) A statement which contains an opinion on all the matters referred to in paragraph 6(2) must—
- (a) explain why the nominee has formed that opinion; and
  - (b) if the nominee is willing to act, be accompanied by a statement of the nominee's consent to act in relation to the proposed CVA.
- (4) The statement of the nominee's consent must—
- (a) include the name and address of the nominee;
  - (b) state that the nominee is qualified to act as an insolvency practitioner in relation to the company; and
  - (c) be authenticated and dated by the nominee.

*Documents filed with court to obtain a moratorium (paragraph 7(1) of Schedule A1)*

- 2.14.—(1) The statement of the company's affairs which the directors file with the court under paragraph 7(1)(b) of Schedule A1 must be the same as the statement they submit to the nominee under paragraph 6(1)(b) of that Schedule.
- (2) The statement required by paragraph 7(1)(c) of that Schedule that the company is eligible for a moratorium must—
- (a) be made by the directors;
  - (b) state that the company meets the requirements of paragraph 3 of Schedule A1 and is not a company which falls within paragraph 2(2) of that Schedule;
  - (c) confirm that the company is not ineligible for a moratorium under paragraph 4 of that Schedule; and
  - (d) be authenticated and dated by the directors.

- (3) The statement required by paragraph 7(1)(d) of that Schedule that the nominee has consented to act must be in the same terms as the statement referred to in rule 2.13(3)(b) and (4).
- (4) The statement of the nominee's opinion required by paragraph 7(1)(e)(2) of that Schedule—
  - (a) must be the same as the statement of opinion required by paragraph 6(2) of that Schedule; and
  - (b) must be filed with the court not later than ten business days after it was submitted to the directors.
- (5) The documents filed with the court under paragraph 7(1) of that Schedule must be accompanied by four copies of a schedule, authenticated and dated by the directors, identifying the company and listing all the documents filed.
- (6) The court must endorse the copies of the schedule with the date on which the documents were filed and deliver three copies of the endorsed schedule to the directors.

*Notice and advertisement of beginning of a moratorium*

- 2.15.—(1) The directors must as soon as reasonably practicable after delivery to them of the endorsed copies of the schedule deliver two copies of the schedule to the nominee and one to the company.
- (2) After delivery of the copies of the schedule, the nominee—
    - (a) must as soon as reasonably practicable gazette a notice of the coming into force of the moratorium; and
    - (b) may advertise the notice in such other manner as the nominee thinks fit.
  - (3) The notice must specify—
    - (a) the nature of the business of the company;
    - (b) that a moratorium under section 1A has come into force; and
    - (c) the date on which it came into force.
  - (4) The nominee must as soon as reasonably practicable deliver a notice of the coming into force of the moratorium to—
    - (a) the registrar of companies;
    - (b) the company; and
    - (c) any petitioning creditor of whose address the nominee is aware.
  - (5) The notice must specify—
    - (a) the date on which the moratorium came into force; and
    - (b) the court with which the documents to obtain the moratorium were filed.
  - (6) The nominee must deliver a notice of the coming into force of the moratorium and the date on which it came into force to—

- (a) any enforcement agent or other officer who to the knowledge of the nominee is charged with distress or other legal process, against the company or its property; and
- (b) any person who to the nominee's knowledge has distrained against the company or its property.

*Notice of continuation of a moratorium where physical meeting of creditors is summoned (paragraph 8(3B) of Schedule A1)*

- 2.16.—(1) This rule applies where under paragraph 8(3B)(b) and (3C) of Schedule A1(3) the moratorium continues after the initial period of 28 days referred to in paragraph 8(3) of that Schedule because a physical meeting of the company's creditors is first summoned to take place after the end of that period.
- (2) The nominee must file with the court and deliver to the registrar of companies a notice of the continuation as soon as reasonably practicable after summoning such a meeting of the company's creditors.
  - (3) The notice must—
    - (a) identify the company;
    - (b) give the name and address of the nominee;
    - (c) state the date on which the notice of the meeting was sent to the creditors under rule 15.6;
    - (d) state the date for which the meeting is summoned;
    - (e) state that under paragraph 8(3B)(b) and (3C) of Schedule A1 the moratorium will be continued to that date; and
    - (f) be authenticated and dated by the nominee.

*Notice of decision extending or further extending a moratorium (paragraph 36 of Schedule A1)*

- 2.17.—(1) This rule applies where the moratorium is extended, or further extended by a decision which takes effect under paragraph 36(4) of Schedule A1.
- (2) The nominee must, as soon as reasonably practicable, file with the court and deliver to the registrar of companies a notice of the decision.
  - (3) The notice must—
    - (a) identify the company;
    - (b) give the name and address of the nominee;
    - (c) state the date on which the moratorium was extended or further extended;
    - (d) state the new expiry date of the moratorium; and
    - (e) be authenticated and dated by the nominee.

*Notice of court order extending or further extending or continuing or renewing a moratorium (paragraph 34(2) of Schedule A1)*

2.18. Where the court makes an order extending, further extending, renewing or continuing a moratorium, the nominee must, as soon as reasonably practicable, deliver to the registrar of companies a notice stating the new expiry date of the moratorium.

*Advertisement of end of a moratorium (paragraph 11(1) of Schedule A1)*

2.19.—(1) After the moratorium ends, the nominee—

- (a) must, as soon as reasonably practicable, gazette a notice of its coming to an end; and
  - (b) may advertise the notice in such other manner as the nominee thinks fit.
- (2) The notice must state—
- (a) the nature of the company's business;
  - (b) that a moratorium under section 1A has ended; and
  - (c) the date on which it came to an end.
- (3) The nominee must, as soon as reasonably practicable—
- (a) file with the court a notice specifying the date on which the moratorium ended; and
  - (b) deliver such a notice to—
    - (i) the registrar of companies,
    - (ii) the company, and
    - (iii) the creditors.
- (4) The notice to the court must—
- (a) identify the company;
  - (b) give the name and address of the nominee; and
  - (c) be authenticated and dated by the nominee.

*Disposal of charged property etc. during a moratorium*

2.20.—(1) This rule applies where the company applies to the court under paragraph 20 of Schedule A1 for permission to dispose of—

- (a) property subject to a security; or
  - (b) goods under a hire-purchase agreement.
- (2) The court must fix a venue for hearing the application.
- (3) The company must as soon as reasonably practicable deliver a notice of the venue to the holder of the security or the owner of the goods under the agreement.
- (4) If an order is made, the court must deliver two sealed copies of the order to the company and the company must deliver one of them to the holder or owner as soon as reasonably practicable.

*Withdrawal of nominee's consent to act (paragraph 25(5) of Schedule A1)*

- 2.21.—(1) A nominee who withdraws consent to act, must file with the court and otherwise deliver a notice under paragraph 25(5) of Schedule A1 as soon as reasonably practicable.
- (2) The notice filed with the court must—
- (a) identify the company;
  - (b) give the name and address of the nominee;
  - (c) specify the date on which the nominee withdrew consent;
  - (d) state, with reference to the reasons at paragraph 25(2) of that Schedule, why the nominee withdrew consent; and
  - (e) be authenticated and dated by the nominee.

*Application to the court to replace the nominee (paragraph 28 of Schedule A1)*

- 2.22.—(1) Directors who intend to make an application under paragraph 28(5) of Schedule A1 for the nominee to be replaced must deliver a notice of the intention to make the application to the nominee at least five business days before filing the application with the court.
- (2) A nominee who intends to make an application under that paragraph to be replaced must deliver notice of the intention to make the application to the directors at least five business days before filing the application with the court.
- (3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been filed with the court confirming that person—
- (a) consents to act; and
  - (b) is qualified to act as an insolvency practitioner in relation to the company.

*Notice of appointment of replacement nominee*

- 2.23.—(1) A person appointed as a replacement nominee must as soon as reasonably practicable deliver a notice of the appointment to the registrar of companies and the former nominee and, where the appointment is not by the court, file a notice of the appointment with the court.
- (2) The notice filed with the court must—
- (a) identify the company;
  - (b) give the name and address of the replacement nominee;
  - (c) specify the date on which the replacement nominee was appointed to act; and
  - (d) be authenticated and dated by the replacement nominee.

*Applications to court to challenge nominee's actions etc. (paragraphs 26 and 27 of Schedule A1)*



2.24. A person intending to make an application to the court under paragraph 26 or 27 of Schedule A1 must deliver a notice of the intention to make the application to the nominee at least five business days before filing the application with the court.

*CHAPTER 5 Consideration of the proposal by the company members and creditors*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

*Consideration of proposal: common requirements (section 3)*

2.25.—(1) The nominee must invite the members of the company to consider a proposal by summoning a meeting of the company as required by section 3.

- (2) The nominee must invite the creditors to consider the proposal by way of a decision procedure.
- (3) In the case of the members, the nominee must deliver to every person whom the nominee believes to be a member a notice which must—
  - (a) identify the proceedings;
  - (b) state the venue for the meeting;
  - (c) state the effect of the following—
    - (i) rule 2.35 about members' voting rights,
    - (ii) rule 2.36 about the requisite majority of members for passing resolutions, and
    - (iii) rule 15.35 about rights of appeal; and
  - (d) be accompanied by—
    - (i) a copy of the proposal,
    - (ii) a copy of the statement of affairs, or if the nominee thinks fit a summary including a list of creditors with the amounts of their debts,
    - (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator, and
    - (iv) details of each resolution to be voted on.
- (4) In the case of the creditors, the nominee must deliver to each creditor a notice in respect of the decision procedure which complies with rule 15.8 so far as is relevant.
- (5) The notice must also—
  - (a) be accompanied by—
    - (i) a copy of the proposal,
    - (ii) a copy of the statement of affairs, or if the nominee thinks fit a summary including a list of creditors with the amounts of their debts, and

- (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator; and
- (b) state how a creditor may propose a modification to the proposal, and how the nominee will deal with such a proposal for a modification.
- (6) The notice may also state that the results of the consideration of the proposal will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors or members (as the case may be).
- (7) Where the results of the consideration of the proposal are to be made available for viewing and downloading on a website the nominee must comply with the requirements for use of a website to deliver a document set out in rule 1.49(2)(a) to (c), (3) and (4) with any necessary adaptations and rule 1.49(5)(a) applies to determine the time of delivery of the document.

*Members' consideration at a meeting*

- 2.26.—(1) Where the nominee invites the members to consider the proposal at a meeting the notice to members under rule 2.25(3) must also—
- (a) specify the purpose of and venue for the meeting; and
  - (b) be accompanied by a blank proxy.
- (2) The nominee must have regard to the convenience of those invited to attend when fixing the venue for a meeting (including the resumption of an adjourned meeting).
- (3) The date of the meeting (except where the nominee is the administrator or liquidator of the company) must not be more than 28 days from the date on which—
- (a) the nominee's report is filed with the court under rule 2.9; or
  - (b) the moratorium came into force.

*Creditors' consideration by a decision procedure*

- 2.27. Where the nominee is inviting the creditors to consider the proposal by a decision procedure, the decision date must be not less than 14 days from the date of delivery of the notice and not more than 28 days from the date—
- (a) the nominee's report is filed with the court under rule 2.9; or
  - (b) the moratorium came into force.

*Timing of decisions on proposal*

- 2.28.—(1) The decision date for the creditors' decision procedure may be on the same day as, or on a different day to, the meeting of the company.
- (2) But the creditors' decision on the proposal must be made before the members' decision.
- (3) The members' decision must be made not later than five business days after the creditors' decision.

- (4) For the purpose of this rule, the timing of the members' decision is either the date and time of the meeting of the company or, where the nominee invites members to consider the proposal by correspondence, the deadline for receipt of members' votes.

*Creditors' approval of modified proposal*

2.29.—(1) This rule applies where a decision is sought from the creditors following notice to the nominee of proposed modifications to the proposal from the company's directors under paragraph 31(7)(6) of Schedule A1.

- (2) The decision must be sought by a decision procedure with a decision date within 14 days of the date on which the directors gave notice to the nominee of the modifications.
- (3) The creditors must be given at least seven days' notice of the decision date.

*Notice of members' meeting and attendance of officers*

2.30.—(1) A notice under rule 2.25(2) summoning a meeting of the company must be delivered at least 14 days before the day fixed for the meeting to all the members and to—

- (a) every officer or former officer of the company whose presence the nominee thinks is required; and
- (b) all other directors of the company.
- (2) Every officer or former officer who receives such a notice stating that the nominee thinks that person's attendance is required is required to attend the meeting.

*Requisition of physical meeting by creditors*

2.31.—(1) This rule applies where the creditors requisition a physical meeting to consider a proposal (with or without modifications) in accordance with section 246ZE(7) and rule 15.6.

- (2) The meeting must take place within 14 days of the date on which the prescribed proportion of creditors have required the meeting to take place.
- (3) Notice of at least seven days is required for a physical meeting under this rule.

*Non-receipt of notice by members*

2.32. Where in accordance with the Act or these Rules the members are invited to consider a proposal, the consideration is presumed to have duly taken place even if not everyone to whom the notice is to be delivered receives it.

*Proposal for alternative supervisor*

2.33.—(1) If in response to a notice inviting—

- (a) members to consider the proposal by correspondence; or
- (b) creditors to consider the proposal other than at a meeting,

a member or creditor proposes that a person other than the nominee be appointed as supervisor, that person's consent to act and confirmation of being qualified to act as an insolvency practitioner in relation to the company must be delivered to the nominee by the deadline in the notice of the decision by correspondence or by the decision date (as the case may be).

- (2) If, at either a meeting of the company or the creditors to consider the proposal, a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person moving the resolution must produce to the chair at or before the meeting—
  - (a) confirmation that the person proposed as supervisor is qualified to act as an insolvency practitioner in relation to the company; and
  - (b) that person's written consent to act (unless that person is present at the meeting and there signifies consent to act).

#### *Chair at meetings*

2.34. The chair of a meeting under this Part must be the nominee or an appointed person.

#### *Members' voting rights*

- 2.35.—(1) A member is entitled to vote according to the rights attaching to the member's shares in accordance with the articles of the company.
- (2) A member's shares include any other interest that person may have as a member of the company.
  - (3) The value of a member for the purposes of voting is determined by reference to the number of votes conferred on that member by the company's articles.

#### *Requisite majorities of members*

- 2.36.—(1) A resolution is passed by members by correspondence or at a meeting of the company when a majority (in value) of those voting have voted in favour of it.
- (2) This is subject to any express provision to the contrary in the articles.
  - (3) A resolution is not passed by correspondence unless at least one member has voted in favour of it.

#### *Notice of order made under section 4A(6) or paragraph 36(5) of Schedule A1*

- 2.37.—(1) This rule applies where the court makes an order under section 4A(6) or paragraph 36(5)(8) of Schedule A1.
- (2) The member who applied for the order must deliver a sealed copy of it to—
    - (a) the proposer; and
    - (b) the supervisor (if there is one different to the proposer).
  - (3) If the directors are the proposer a single copy may be delivered to the company at its registered office.

- (4) The supervisor, or the proposer where there is no supervisor, must as soon as reasonably practicable deliver a notice that the order has been made to every person who had received a notice to vote on the matter or who is affected by the order.
- (5) The member who applied for the order must, within five business days of the order, deliver a copy to the registrar of companies.

*Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1*

- 2.38.—(1) A report must be prepared of the consideration of a proposal under section 4(6) and (6A)(9) or paragraph 30(3)(10) and (4) of Schedule A1 by the convener or, in the case of a meeting, the chair.
- (2) The report must—
    - (a) state whether the proposal was approved or rejected and whether by the creditors alone or by both the creditors and members and, in either case, whether any approval was with any modifications;
    - (b) list the creditors and members who voted or attended or who were represented at the meeting or decision procedure (as applicable) used to consider the proposal, setting out (with their respective values) how they voted on each resolution;
    - (c) identify which of those creditors were considered to be connected with the company;
    - (d) if the proposal was approved, state with reasons whether the proceedings are main, territorial or non-EC proceedings; and
    - (e) include such further information as the nominee or the chair thinks it appropriate to make known to the court.
  - (3) A copy of the report must be filed with the court, within four business days of the deadline (if the proposal was considered by the company by correspondence) or the date of the company meeting.
  - (4) The court must endorse the copy of the report with the date of filing.
  - (5) The chair (in the case of a company meeting) or otherwise the convener must give notice of the result of the consideration of the proposal to everyone who was invited to consider the proposal or to whom notice of a decision procedure or meeting was delivered as soon as reasonably practicable after a copy of the report is filed with the court.
  - (6) Where the decision approving the CVA has effect under section 4A or paragraph 36 of Schedule A1 with or without modifications, the supervisor must as soon as reasonably practicable deliver a copy of the convener's report or, in the case of a meeting, the chair's report to the registrar of companies.

*CHAPTER 6 Additional matters concerning and following approval of CVA*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

*Hand-over of property etc. to supervisor*

- 2.39.—(1) Where the decision approving a CVA has effect under section 4A or paragraph 36 of Schedule A1, and the supervisor is not the same person as the proposer, the proposer must, as soon as reasonably practicable, do all that is required to put the supervisor in possession of the assets included in the CVA.
- (2) Where the company is in administration or liquidation and the supervisor is not the same person as the administrator or liquidator, the supervisor must—
- (a) before taking possession of the assets included in the CVA, deliver to the administrator or liquidator an undertaking to discharge the balance referred to in paragraph (3) out of the first realisation of assets; or
  - (b) upon taking possession of the assets included in the CVA, discharge such balance.
- (3) The balance is any balance due to the administrator or liquidator, or to the official receiver not acting as liquidator—
- (a) by way of fees or expenses properly incurred and payable under the Act or these Rules; and
  - (b) on account of any advances made in respect of the company together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838(11) at the date on which the company entered administration or went into liquidation.
- (4) The administrator or liquidator, or the official receiver not acting as liquidator, has a charge on the assets included in the CVA in respect of any sums comprising such balance, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations.
- (5) The supervisor must from time to time out of the realisation of assets—
- (a) discharge all guarantees properly given by the administrator or liquidator for the benefit of the company; and
  - (b) pay all the expenses of the administrator or liquidator or of the official receiver not acting as liquidator.
- (6) Sums due to the official receiver take priority over those due to any other person under this rule.

*Revocation or suspension of CVA*

- 2.40.—(1) This rule applies where the court makes an order of revocation or suspension under section 6 or paragraph 38 of Schedule A1(12).
- (2) The applicant for the order must deliver a sealed copy of it to—
- (a) the proposer; and

- (b) the supervisor (if different).
- (3) If the directors are the proposer a single copy of the order may be delivered to the company at its registered office.
- (4) If the order includes a direction by the court under section 6(4)(b) or (c) or under paragraph 38(4)(b) or (c) of Schedule A1 for a matter to be considered further, the applicant for the order must deliver a notice that the order has been made to the person who is directed to take such action.
- (5) The proposer must—
  - (a) as soon as reasonably practicable deliver a notice that the order has been made to all of those persons to whom a notice to consider the matter was delivered or who appear to be affected by the order;
  - (b) within five business days of delivery of a copy of the order (or within such longer period as the court may allow), deliver (if applicable) a notice to the court advising that it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.
- (6) The applicant for the order must deliver a copy of the order to the registrar of companies within five business days of the making of the order with a notice which must contain the date on which the voluntary arrangement took effect.

*Supervisor's accounts and reports*

- 2.41.—(1) The supervisor must keep accounts and records where the CVA authorises or requires the supervisor—
- (a) to carry on the business of the company;
  - (b) to realise assets of the company; or
  - (c) otherwise to administer or dispose of any of its funds.
- (2) The accounts and records which must be kept are of the supervisor's acts and dealings in, and in connection with, the CVA, including in particular records of all receipts and payments of money.
  - (3) The supervisor must preserve any such accounts and records which were kept by any other person who has acted as supervisor of the CVA and are in the supervisor's possession.
  - (4) The supervisor must deliver reports on the progress and prospects for the full implementation of the CVA to—
    - (a) the registrar of companies;
    - (b) the company;
    - (c) the creditors bound by the CVA;
    - (d) subject to paragraph (10) below, the members; and
    - (e) if the company is not in liquidation, the company's auditors (if any) for the time being.

- (5) The notice which accompanies the report when delivered to the registrar of companies must contain the date on which the voluntary arrangement took effect.
- (6) The first report must cover the period of 12 months commencing on the date on which the CVA was approved and a further report must be made for each subsequent period of 12 months.
- (7) Each report must be delivered within the period of two months after the end of the 12 month period.
- (8) Such a report is not required if the obligation to deliver a final report under rule 2.44(2) arises in the two month period.
- (9) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1), the report must—
  - (a) include or be accompanied by a summary of receipts and payments required to be recorded by virtue of paragraph (2); or
  - (b) state that there have been no such receipts and payments.
- (10) The court may, on application by the supervisor, dispense with the delivery of such reports or summaries to members, either altogether or on the basis that the availability of the report to members is to be advertised by the supervisor in a specified manner.

*Production of accounts and records to the Secretary of State*

- 2.42.—(1) The Secretary of State may during the CVA, or after its full implementation or termination, require the supervisor to produce for inspection (either at the premises of the supervisor or elsewhere)—
- (a) the supervisor’s accounts and records in relation to the CVA; and
  - (b) copies of reports and summaries prepared in compliance with rule 2.41.
- (2) The Secretary of State may require the supervisor’s accounts and records to be audited and, if so, the supervisor must provide such further information and assistance as the Secretary of State requires for the purposes of audit.

*Fees and expenses*

- 2.43. The fees and expenses that may be incurred for the purposes of the CVA are—
- (a) fees for the nominee’s services agreed with the company (or, as the case may be, the administrator or liquidator) and disbursements made by the nominee before the decision approving the CVA takes effect under section 4A or paragraph 36 of Schedule A1;
  - (b) fees or expenses which—
    - (i) are sanctioned by the terms of the CVA, or
    - (ii) where they are not sanctioned by the terms of the CVA would be payable, or correspond to those which would be payable, in an administration or winding up.



*Termination or full implementation of CVA*

- 2.44.—(1) Not more than 28 days after the full implementation or termination of the CVA the supervisor must deliver a notice that the CVA has been fully implemented or terminated to all the members and those creditors who are bound by the arrangement.
- (2) The notice must state the date the CVA took effect and must be accompanied by a copy of a report by the supervisor which—
- (a) summarises all receipts and payments in relation to the CVA;
  - (b) explains any departure from the terms of the CVA as it originally had effect;
  - (c) if the CVA has terminated, sets out the reasons why; and
  - (d) includes (if applicable) a statement as to the amount paid to any unsecured creditors by virtue of section 176A.
- (3) The supervisor must within the 28 days mentioned above send to the registrar of companies and file with the court a copy of the notice to creditors and of the supervisor's report.
- (4) The supervisor must not vacate office until after the copies of the notice and report have been delivered to the registrar of companies and filed with the court.

*CHAPTER 7 Time recording information*

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

*Provision of information*

- 2.45.—(1) This rule applies where the remuneration of the nominee or the supervisor has been fixed on the basis of the time spent.
- (2) A person who is acting, or has acted within the previous two years, as—
- (a) a nominee in relation to a proposal; or
  - (b) the supervisor in relation to a CVA;
- must, within 28 days of receipt of a request from a person mentioned in paragraph (3), deliver free of charge to that person a statement complying with paragraphs (4) and (5).
- (3) The persons are—
- (a) any director of the company; and
  - (b) where the proposal has been approved, any creditor or member.
- (4) The statement must cover the period which—
- (a) in the case of a person who has ceased to act as nominee or supervisor in relation to a company, begins with the date of appointment as nominee or supervisor and ends with the date of ceasing to act; and

- (b) in any other case, consists of one or more complete periods of six months beginning with the date of appointment and ending most nearly before the date of receiving the request.
- (5) The statement must set out—
- (a) the total number of hours spent on the matter during that period by the nominee or supervisor, and any staff;
  - (b) for each grade of staff engaged on the matter, the average hourly rate at which work carried out by staff in that grade is charged; and
  - (c) the number of hours spent on the matter by each grade of staff during that period.

## A1 Moratorium 關連條文

### **Insolvency Act 1986 (latest amendment brought into force as of November 12, 2021) PART AI Moratorium**

#### *Introductory*

#### A1 Overview

- (1) This Part contains provision that enables an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors set out in this Part.
- (2) In this Chapter section A2 introduces Schedule ZA1 (which defines what is meant by an “eligible” company).
- (3) Chapter 2 sets out how an eligible company may obtain a moratorium.
- (4) Chapter 3 sets out for how long a moratorium has effect.
- (5) Chapter 4 sets out the effects of a moratorium on the company and its creditors.
- (6) Chapter 5 contains provision about the monitor.
- (7) Chapter 6 contains provision about challenges.
- (8) Chapter 7 contains provision about certain offences.
- (9) Chapter 8 contains miscellaneous and general provision, including—
  - (a) special provision for certain kinds of company;
  - (b) definitions for the purposes of this Part;
  - (c) provision about regulations under this Part.

#### A2 Eligible companies

Schedule ZA1 contains provision for determining whether a company is an eligible company for the purposes of this Part.

#### *Obtaining a moratorium*

#### A3 Obtaining a moratorium by filing or lodging documents at court

- (1) This section applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is not an overseas company.
- (2) The directors of the company may obtain a moratorium for the company by filing the relevant documents with the court (for the relevant documents, see section A6).
- (3) For the purposes of this Chapter a company is “subject to an outstanding winding-up

petition” if—

- (a) a petition for the winding up of the company has been presented, and
- (b) the petition has not been withdrawn or determined.

#### A4 Obtaining a moratorium for company subject to winding-up petition

- (1) This section applies to an eligible company that is subject to an outstanding winding-up petition.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section A6).
- (4) On hearing the application the court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.
- (5) The court may make an order under subsection (4)(a) only if it is satisfied that a moratorium for the company would achieve a better result for the company’s creditors as a whole than would be likely if the company were wound up (without first being subject to a moratorium).

#### A5 Obtaining a moratorium for other overseas companies

- (1) This section applies to an eligible company that—
  - (a) is not subject to an outstanding winding-up petition, and
  - (b) is an overseas company.
- (2) The directors of the company may apply to the court for a moratorium for the company.
- (3) The application must be accompanied by the relevant documents (for the relevant documents, see section A6).
- (4) On hearing the application the court may—
  - (a) make an order that the company should be subject to a moratorium, or
  - (b) make any other order which the court thinks appropriate.

#### A6 The relevant documents

- (1) For the purposes of this Chapter, “the relevant documents” are—
  - (a) a notice that the directors wish to obtain a moratorium,
  - (b) a statement from a qualified person (“the proposed monitor”) that the person—
    - (i) is a qualified person, and

- (ii) consents to act as the monitor in relation to the proposed moratorium,
  - (c) a statement from the proposed monitor that the company is an eligible company,
  - (d) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its debts, and
  - (e) a statement from the proposed monitor that, in the proposed monitor's view, it is likely that a moratorium for the company would result in the rescue of the company as a going concern.
- (2) Where it is proposed that more than one person should act as the monitor in relation to the proposed moratorium—
  - (a) each of them must make a statement under subsection (1)(b), (c) and (e), and
  - (b) the statement under subsection (1)(b) must specify—
    - (i) which functions (if any) are to be exercised by the persons acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons.
- (3) The rules may make provision about the date on which a statement comprised in the relevant documents must be made.
- (4) The Secretary of State may by regulations amend this section for the purposes of adding to the list of documents in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

#### A7 Beginning of moratorium and appointment of monitor

- (1) A moratorium for a company comes into force at the time at which—
  - (a) in the case of a company to which section A3 applies, the relevant documents are filed with the court under subsection (2) of that section;
  - (b) in the case of a company to which section A4 applies, an order is made under section A4(4)(a);
  - (c) in the case of a company to which section A5 applies, an order is made under section A5(4)(a).
- (2) On the coming into force of a moratorium, the person or persons who made the statement mentioned in section A6(1)(b) become the monitor in relation to the moratorium.

#### A8 Obligations to notify where moratorium comes into force

- (1) As soon as reasonably practicable after a moratorium for a company comes into force, the directors must notify the monitor of that fact.
- (2) As soon as reasonably practicable after receiving a notice under subsection (1), the monitor must notify the following that a moratorium for the company has come into

force—

- (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (3) A notice under subsection (2) must specify—
- (a) when the moratorium came into force, and
  - (b) when, subject to any alteration under or by virtue of any of the provisions mentioned in section A9(3) or (4), the moratorium will come to an end.
- (4) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (5) If the monitor without reasonable excuse fails to comply with subsection (2), the monitor commits an offence.

### *Length of moratorium*

#### *Initial period*

#### A9 End of the moratorium

- (1) A moratorium ends at the end of the initial period unless it is extended, or comes to an end sooner, under or by virtue of a provision mentioned in subsection (3) or (4).
- (2) In this Chapter “the initial period”, in relation to a moratorium, means the period of 20 business days beginning with the business day after the day on which the moratorium comes into force.
- (3) For provision under or by virtue of which a moratorium is or may be extended, see—
- section A10 (extension by directors without creditor consent);
  - section A11 (extension by directors with creditor consent);
  - section A13 (extension by court on application of directors);
  - section A14 (extension while proposal for CVA pending);
  - section A15 (extension by court in course of other proceedings).
- (4) For provision under or by virtue of which the moratorium is or may be terminated, see—
- section A16 (termination on entry into insolvency procedure etc);

section A38 (termination by monitor);

section A42 or A44 (termination by court).

- (5) A moratorium may not be extended under a provision mentioned in subsection (3) once it has come to an end.
- (6) Where the application of two or more of the provisions mentioned in subsections (3) and (4) would produce a different length of moratorium, the provision that applies last is to prevail (irrespective of whether that results in a shorter or longer moratorium).

### *Extension of moratorium*

#### A10 Extension by directors without creditor consent

- (1) During the initial period, but after the first 15 business days of that period, the directors may extend the moratorium by filing with the court—
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts, and
  - (d) a statement from the monitor that, in the monitor's view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends at the end of the period—
  - (a) beginning immediately after the initial period ends, and
  - (b) ending with the 20th business day after the initial period ends.

#### A11 Extension by directors with creditor consent

- (1) At any time after the first 15 business days of the initial period the directors may, if they have obtained creditor consent, extend the moratorium by filing with the court—
  - (a) a notice that the directors wish to extend the moratorium,
  - (b) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—

- (i) moratorium debts, and
  - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (c) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern, and
  - (e) a statement from the directors that creditor consent has been obtained, and of the revised end date for which that consent was obtained.
- (2) The rules may make provision about the date on which a statement mentioned in subsection (1) must be made.
- (3) On the filing with the court of the documents mentioned in subsection (1), the moratorium is extended so that it ends with the revised end date mentioned in the statement under subsection (1)(e).
- (4) A moratorium may be extended under this section more than once.

#### A12 Creditor consent for the purposes of section A11

- (1) References in section A11 to creditor consent are to the consent of pre-moratorium creditors to a revised end date for the moratorium.
- (2) The decision as to consent is to be made using a qualifying decision procedure.
- (3) The revised end date must be a date before the end of the period of one year beginning with the first day of the initial period.
- (4) In this section “pre-moratorium creditor” means a creditor in respect of a pre-moratorium debt—
- (a) for which the company has a payment holiday during the moratorium (see section A18), and
  - (b) which has not been paid or otherwise discharged.
- (5) In determining for the purposes of subsection (4) what counts as a pre-moratorium debt for which the company has a payment holiday during the moratorium, sections A18(3) and A53(1)(b) apply as if the references to the moratorium were to the moratorium as proposed to be extended.
- (6) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium creditor”.
- (7) Regulations under subsection (6) are subject to the affirmative resolution procedure.

#### A13 Extension by court on application of directors

- (1) At any time after the first 15 business days of the initial period, the directors may apply to the court for an order that the moratorium be extended.



- (2) The application must be accompanied by—
  - (a) a statement from the directors that all of the following that have fallen due have been paid or otherwise discharged—
    - (i) moratorium debts, and
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18),
  - (b) a statement from the directors that, in their view, the company is, or is likely to become, unable to pay its pre-moratorium debts,
  - (c) a statement from the directors as to whether pre-moratorium creditors (as defined by section A12(4) and (5)) have been consulted about the application and if not why not, and
  - (d) a statement from the monitor that, in the monitor’s view, it is likely that the moratorium will result in the rescue of the company as a going concern.
- (3) The rules may make provision about the date on which a statement mentioned in subsection (2) must be made.
- (4) On hearing the application the court may—
  - (a) make an order that the moratorium be extended to such date as is specified in the order, or
  - (b) make any other order which the court thinks appropriate.
- (5) In deciding whether to make an order under subsection (4)(a) the court must, in particular, consider the following—
  - (a) the interests of pre-moratorium creditors, as defined by section A12(4) and (5), and
  - (b) the likelihood that the extension of the moratorium will result in the rescue of the company as a going concern.
- (6) Subsection (7) applies where—
  - (a) an application under this section is made, and
  - (b) apart from that subsection, the moratorium would end at a time before the application has been disposed of.
- (7) The moratorium—
  - (a) does not end at the time mentioned in subsection (6)(b), and
  - (b) instead, ends—
    - (i) in a case in which the court makes an order under subsection (4)(a), in accordance with the order;
    - (ii) otherwise, when the application is withdrawn or disposed of.
- (8) A moratorium may be extended under this section more than once.

A14 Extension while proposal for CVA pending

- (1) Subsection (2) applies where—
  - (a) at any time, the directors make a proposal under Part 1 (company voluntary arrangements), and
  - (b) apart from that subsection, the moratorium would end at a time before the proposal is disposed of.
- (2) The moratorium—
  - (a) does not end at the time mentioned in subsection (1)(b), and
  - (b) instead, ends when the proposal is disposed of.
- (3) For the purposes of this section a proposal under Part 1 is “disposed of” when any of the following takes place—
  - (a) the company and its creditors both decide under section 4 not to approve the voluntary arrangement contained in the proposal;
  - (b) the decisions taken by the company and its creditors under section 4 differ, and—
    - (i) the period for making an application under section 4A(3) expires and either no application has been made within that period or any application made within that period has been withdrawn, or
    - (ii) an application is made under section 4A(3) and that application is disposed of, or it is withdrawn after the expiry of the period for making an application under section 4A(3);
  - (c) the voluntary arrangement contained in the proposal takes effect under section 5;
  - (d) the proposal is withdrawn.

A15 Extension by court in the course of other proceedings

- (1) Subsection (2) applies where—
  - (a) an application is made under section 896 or 901C(1) of the Companies Act 2006 (arrangements and reconstructions: court order for holding of meeting) in respect of a company, and
  - (b) during proceedings before a court in connection with the application, a moratorium for the company is in force.
- (2) The court may make an order that the moratorium be extended to such date as is specified in the order.

*Early termination on certain grounds*

A16 Company enters into insolvency procedure etc

- (1) A moratorium comes to an end at any time at which the company—
  - (a) enters into a compromise or arrangement (see subsection (2)), or
  - (b) enters into a relevant insolvency procedure (see subsection (3)).
- (2) For the purposes of this section a company enters into a compromise or arrangement if an order under section 899 or 901F of the Companies Act 2006 (court sanction for compromise or arrangement) comes into effect in relation to the company.
- (3) For the purposes of this section a company enters into a relevant insolvency procedure if—
  - (a) a voluntary arrangement takes effect under section 5 in relation to the company,
  - (b) the company enters administration (within the meaning of Schedule B1 (see paragraph 1(2)(b) of that Schedule)),
  - (c) paragraph 44 of Schedule B1 (administration: interim moratorium) begins to apply in relation to the company, or
  - (d) the company goes into liquidation (see section 247).

*Obligations to notify change in end of moratorium*

A17 Obligations to notify change in end of moratorium

- (1) The table imposes obligations on the directors of a company to notify the monitor where a moratorium for the company is extended or comes to an end.

	<i>Where a moratorium is extended or comes to an end under or by virtue of the following provision</i>	<i>the directors must</i>
1	Section A10	Notify the monitor of the extension.
2	Section A11	Notify the monitor of the extension and of the revised end date.
3	Section A13(4)	Notify the monitor of the extension and provide the monitor with the court order under section A13(4).
4	Section A13(7)(a)	Notify the monitor of the extension.
5	Section A13(7)(b)(ii)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
6	Section A14(2)(a)	Notify the monitor of the extension.
7	Section A14(2)(b)	Notify the monitor that the moratorium has come to an end and of the date that it ended.
8	Section A15	Notify the monitor of the extension and provide the monitor with any court order under section A15.
9	Section A16	Notify the monitor that the moratorium has come to an end.

10	Section A42	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section A42.
11	Section A44	Notify the monitor that the moratorium has come to an end and provide the monitor with the court order under section A44.

- (2) After receiving a notice under subsection (1), other than a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons of when the moratorium ended or, subject to any alteration under or by virtue of any of the provisions mentioned in section A9(3) or (4), the moratorium will come to an end.
- (3) After receiving a notice under entry 4 or 6 of the table, the monitor must notify the relevant persons.
- (4) If a moratorium comes to an end under section A38 (termination by monitor), the monitor must notify the company and the relevant persons of when the moratorium ended.
- (5) The rules may—
- (a) make further provision about the timing of a notice required to be given under this section;
  - (b) require a notice to be accompanied by other documents.
- (6) If the directors fail to comply with subsection (1), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) If the monitor without reasonable excuse fails to comply with any of subsections (2) to (4), the monitor commits an offence.
- (8) In this section “the relevant persons” means—
- (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.

### *Effects of moratorium*

#### *Introductory*

A18 Overview and construction of references to payment holidays

- (1) This Chapter makes provision about the main effects of a moratorium for a

company.

- (2) The provision made by this Chapter includes restrictions on the enforcement or payment of the debts that are defined by subsection (3) as pre-moratorium debts for which a company has a payment holiday during a moratorium.
- (3) In this Part a reference to pre-moratorium debts for which a company has a payment holiday during a moratorium is to its pre-moratorium debts that have fallen due before the moratorium, or that fall due during the moratorium, except in so far as they consist of amounts payable in respect of—
  - (a) the monitor’s remuneration or expenses,
  - (b) goods or services supplied during the moratorium,
  - (c) rent in respect of a period during the moratorium,
  - (d) wages or salary arising under a contract of employment,
  - (e) redundancy payments, or
  - (f) debts or other liabilities arising under a contract or other instrument involving financial services.
- (4) The rules may make provision as to what is, or is not, to count as the supply of goods or services for the purposes of subsection (3)(b).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the list in subsection (3).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) In this section—

“contract or other instrument involving financial services” has the meaning given by Schedule ZA2;

“monitor’s remuneration or expenses” does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins;

“redundancy payment” means—

  - (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996, or
  - (b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

“wages or salary” includes—

  - (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,

- (c) a sum payable in lieu of holiday, and
- (d) a contribution to an occupational pension scheme.

*Publicity about moratorium*

A19 Publicity about moratorium

- (1) During a moratorium, the company must, in any premises—
  - (a) where business of the company is carried on, and
  - (b) to which customers of the company or suppliers of goods or services to the company have access,display, in a prominent position so that it may easily be read by such customers or suppliers, a notice containing the required information.
- (2) During a moratorium, any websites of the company must state the required information.
- (3) During a moratorium, every business document issued by or on behalf of the company must state the required information.
- (4) For the purposes of subsections (1), (2) and (3), “the required information” is—
  - (a) that a moratorium is in force in relation to the company, and
  - (b) the name of the monitor.
- (5) If subsection (1), (2) or (3) is contravened—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the contravention commits an offence.
- (6) In this section “business document” means—
  - (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,whether in hard copy, electronic or any other form.

*Effect on creditors etc*

A20 Restrictions on insolvency proceedings etc

- (1) During a moratorium—
  - (a) no petition may be presented for the winding up of the company, except by the directors,

- (b) no resolution may be passed for the voluntary winding up of the company under section 84(1)(a),
  - (c) a resolution for the voluntary winding up of the company under section 84(1)(b) may be passed only if the resolution is recommended by the directors,
  - (d) no order may be made for the winding up of the company, except on a petition by the directors,
  - (e) no administration application may be made in respect of the company, except by the directors,
  - (f) no notice of intention to appoint an administrator of the company under paragraph 14 or 22(1) of Schedule B1 may be filed with the court,
  - (g) no administrator of the company may be appointed under paragraph 14 or 22(1) of Schedule B1, and
  - (h) no administrative receiver of the company may be appointed.
- (2) Subsection (1)(a) does not apply to an excepted petition; and subsection (1)(d) does not apply to an order on an excepted petition.
- (3) For these purposes, “excepted petition” means a petition under—
- (a) section 124A, 124B or 124C, or
  - (b) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

## A21 Restrictions on enforcement and legal proceedings

- (1) During a moratorium—
- (a) a landlord or other person to whom rent is payable may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company, except with the permission of the court,
  - (b) in Scotland, a landlord or other person to whom rent is payable may not exercise a right of irritancy in relation to premises let to the company, except with the permission of the court,
  - (c) no steps may be taken to enforce any security over the company’s property except—
    - (i) steps to enforce a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979)),
    - (ii) steps to enforce security created or otherwise arising under a financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226)), or
    - (iii) steps taken with the permission of the court,

- (d) no steps may be taken to repossess goods in the company’s possession under any hire-purchase agreement, except with the permission of the court, and
  - (e) no legal process (including legal proceedings, execution, distress or diligence) may be instituted, carried out or continued against the company or its property except—
    - (i) employment tribunal proceedings or any legal process arising out of such proceedings,
    - (ii) proceedings, not within sub-paragraph (i), involving a claim between an employer and a worker, or
    - (iii) a legal process instituted, carried out or continued with the permission of the court.
- (2) An application may not be made for permission under subsection (1) for the purposes of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium.
- (3) An application may not be made for permission under subsection (1)(c), (d) or (e) with a view to obtaining—
- (a) the crystallisation of a floating charge, or
  - (b) the imposition, by virtue of provision in an instrument creating a floating charge, of any restriction on the disposal of any property of the company.
- (4) Permission of the court under subsection (1) may be given subject to conditions.
- (5) Subsection (1)(c)(iii) is subject to section A23(1).
- (6) In this section—
- “agency worker” has the meaning given by section 13(2) of the Employment Relations Act 1999;
- “employer”—
- (a) in relation to an agency worker, has the meaning given by section 13(2) of the Employment Relations Act 1999;
  - (b) otherwise, has the meaning given by section 230(4) of the Employment Rights Act 1996;
- “worker” means an individual who is—
- (a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996, or
  - (b) an agency worker.

## A22 Floating charges

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



- (2) During the moratorium, the holder of the floating charge may not give any notice which would have the effect of—
  - (a) causing the floating charge to crystallise, or
  - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of property of the company.
- (3) No other event occurring during the moratorium is to have the effect mentioned in subsection (2)(a) or (b).
- (4) Subsection (5) applies where—
  - (a) the holder of a floating charge (“the chargee”) is prevented by subsection (2) from giving a notice mentioned there during the moratorium, and
  - (b) under the terms of the floating charge, the time for giving such a notice ends during the moratorium or before the chargee is given notice of the end of the moratorium under section A17.
- (5) The chargee may give notice later than is required under the terms of the floating charge, but only if the chargee does so as soon as is practicable after—
  - (a) the end of the moratorium, or
  - (b) if later, the day on which the chargee is notified of the end of the moratorium.
- (6) Where—
  - (a) subsection (3) prevents an event which occurs during the moratorium from having the effect mentioned there, and
  - (b) the holder of the floating charge gives notice of the event to the company as soon as is practicable after—
    - (i) the end of the moratorium, or
    - (ii) if later, the day on which the chargee is notified of the end of the moratorium,

the event is to be treated as if it had occurred when the notice was given.
- (7) This section does not apply in relation to a floating charge that is—
  - (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

#### A23 Enforcement of security granted during moratorium

- (1) Security granted by a company during a moratorium in relation to the company may be enforced only if the monitor consented to the grant of security under section A26.

- (2) See also section A21(1)(c), which restricts enforcement during a moratorium.

#### *Notification of insolvency proceedings*

##### A24 Duty of directors to notify monitor of insolvency proceedings etc

- (1) The directors of a company must notify the monitor before taking any of the following steps during a moratorium—
- (a) presenting a petition for the winding up of the company;
  - (b) making an administration application in respect of the company;
  - (c) appointing an administrator under paragraph 22(2) of Schedule B1.
- (2) The directors of a company must notify the monitor if, during a moratorium for the company, they recommend that the company passes a resolution for voluntary winding up under section 84(1)(b).
- (3) The rules may make provision about the timing of a notice required to be given under subsection (1) or (2).
- (4) If the directors fail to comply with subsection (1) or (2), any director who did not have a reasonable excuse for the failure commits an offence.

#### *Restrictions on transactions*

##### A25 Restrictions on obtaining credit

- (1) During a moratorium, the company may not obtain credit to the extent of £500 or more from a person unless the person has been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes—
- (a) the company entering into a conditional sale agreement in accordance with which goods are to be sold to the company,
  - (b) the company entering into any other form of hire-purchase agreement under which goods are to be bailed (in Scotland, hired) to the company, and
  - (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) If a company contravenes subsection (1)—
- (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the obtaining of the credit commits an offence.

##### A26 Restrictions on grant of security etc

- (1) During a moratorium, the company may grant security over its property only if the

monitor consents.

- (2) The monitor may give consent under subsection (1) only if the monitor thinks that the grant of security will support the rescue of the company as a going concern.
- (3) In deciding whether to give consent under subsection (1), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (4) If the company grants security over its property during the moratorium otherwise than as authorised by subsection (1)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the grant of the security commits an offence.
- (5) For the consequences of a company granting security over its property in contravention of subsection (1), see also section A23.
- (6) The monitor may not give consent under this section if the granting of security is an offence under section A27.

#### A27 Prohibition on entering into market contracts etc

- (1) If a company enters into a transaction to which this section applies during a moratorium for the company—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence.
- (2) A company enters into a transaction to which this section applies if it—
  - (a) enters into a market contract,
  - (b) enters into a financial collateral arrangement,
  - (c) gives a transfer order,
  - (d) grants a market charge or a system-charge, or
  - (e) provides any collateral security.
- (3) Where during the moratorium a company enters into a transaction to which this section applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of any of sections A19, A21, A25, A26 and A28 to A32.
- (4) In this section—

“collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);

“financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);

“market charge” has the same meaning as in Part 7 of the Companies Act 1989;

“market contract” has the same meaning as in Part 7 of the Companies Act 1989;

“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);

“transfer order” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

### *Restrictions on payments and disposal of property*

#### A28 Restrictions on payment of certain pre-moratorium debts

- (1) During a moratorium, the company may make one or more relevant payments to a person that (in total) exceed the specified maximum amount only if—
  - (a) the monitor consents,
  - (b) the payment is in pursuance of a court order, or
  - (c) the payment is required by section A31(3) or A32(3).
- (2) In subsection (1)—

“relevant payments” means payments in respect of pre-moratorium debts for which the company has a payment holiday during the moratorium (see section A18);

“specified maximum amount” means an amount equal to the greater of—

  - (a) £5000, and
  - (b) 1% of the value of the debts and other liabilities owed by the company to its unsecured creditors when the moratorium began, to the extent that the amount of such debts and liabilities can be ascertained at that time.
- (3) The monitor may give consent under subsection (1)(a) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under subsection (1)(a), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) If the company makes a payment to which subsection (1) applies otherwise than as authorised by that subsection—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the payment commits an offence.

#### A29 Restrictions on disposal of property

- (1) During a moratorium, the company may dispose of its property only if authorised by subsection (2) or (5).
- (2) In the case of property that is not subject to a security interest, the company may dispose of the property if—

- (a) the disposal is made in the ordinary way of the company's business,
  - (b) the monitor consents, or
  - (c) the disposal is in pursuance of a court order.
- (3) The monitor may give consent under subsection (2)(b) only if the monitor thinks that it will support the rescue of the company as a going concern.
- (4) In deciding whether to give consent under subsection (2)(b), the monitor is entitled to rely on information provided by the company unless the monitor has reason to doubt its accuracy.
- (5) In the case of property that is subject to a security interest, the company may dispose of the property if the disposal is in accordance with—
- (a) section A31(1), or
  - (b) the terms of the security.
- (6) If the company disposes of its property during the moratorium otherwise than as authorised by this section—
- (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

#### A30 Restrictions on disposal of hire-purchase property

- (1) During a moratorium, the company may dispose of any goods in the possession of the company under a hire-purchase agreement only if the disposal is in accordance with —
- (a) section A32(1), or
  - (b) the terms of the agreement.
- (2) If the company disposes of goods in the possession of the company under a hire-purchase agreement otherwise than as authorised by subsection (1)—
- (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the disposal commits an offence.

#### *Disposals of property free from charges etc*

#### A31 Disposal of charged property free from charge

- (1) During a moratorium, the company may, with the permission of the court, dispose of property which is subject to a security interest as if it were not subject to the security interest.
- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.

- (3) Where the court gives permission under subsection (1) other than in relation to a floating charge, the company must apply the following towards discharging the sums secured—
  - (a) the net proceeds of disposal of the property, and
  - (b) any money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property in the open market by a willing vendor.
- (4) Where the permission relates to two or more security interests, the condition in subsection (3) requires the application of money in the order of the priorities of the security interests.
- (5) Where property subject to a floating charge is disposed of under subsection (1), the holder of the floating charge has the same priority in respect of acquired property as they had in respect of the property disposed of.
- (6) In subsection (5) “acquired property” means property of the company which directly or indirectly represents the property disposed of.
- (7) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (8) If the directors fail to comply with subsection (7), any director who did not have a reasonable excuse for the failure commits an offence.
- (9) Where property in Scotland is disposed of under subsection (1), the company must grant to the donee an appropriate document of transfer or conveyance of the property, and—
  - (a) that document, or
  - (b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property), has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security interest.
- (10) If a company fails to comply with subsection (3) or (9)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (11) Subsection (1) does not apply in relation to any property which is subject to a financial collateral arrangement, a market charge, a system-charge or a collateral security (as defined by section A27).

#### A32 Disposal of hire-purchase property

- (1) During a moratorium, the company may, with the permission of the court, dispose of goods which are in the possession of the company under a hire-purchase agreement as if all of the rights of the owner under the agreement were vested in the company.

- (2) The court may give permission under subsection (1) only if the court thinks that it will support the rescue of the company as a going concern.
- (3) Where the court gives permission under subsection (1), the company must apply the following towards discharging the sums payable under the hire-purchase agreement—
  - (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods in the open market by a willing vendor.
- (4) If a company fails to comply with subsection (3)—
  - (a) the company commits an offence, and
  - (b) any officer of the company who without reasonable excuse authorised or permitted the failure commits an offence.
- (5) Where the court makes an order giving permission under subsection (1), the directors must, within the period of 14 days beginning with the date of the order, send a copy of it to the registrar of companies.
- (6) If the directors fail to comply with subsection (5), any director who did not have a reasonable excuse for the failure commits an offence.
- (7) In Scotland, where goods in the possession of the company under a hire-purchase agreement are disposed of under subsection (1), the disposal has the effect of extinguishing, as against the disponent, all rights of the owner of the goods under the agreement.

*Effect of contravention of certain provisions of Chapter*

A33     Contravention of certain requirements imposed under this Chapter

The fact that a company contravenes section A19 or any of sections A25 to A32 does not—

- (a) make any transaction void or unenforceable, or
- (b) affect the validity of any other thing.

*The monitor*

A34     Status of monitor

The monitor in relation to a moratorium is an officer of the court.

A35     Monitoring

- (1) During a moratorium, the monitor must monitor the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern.

- (2) In forming the view mentioned in subsection (1), the monitor is entitled to rely on information provided by the company, unless the monitor has reason to doubt its accuracy.

#### A36 Provision of information to monitor

- (1) The monitor may require the directors of the company to provide any information required by the monitor for the purpose of carrying out the monitor's functions.
- (2) The directors must comply with a requirement to provide information as soon as practicable.
- (3) For the potential consequences of failing to comply with a requirement to provide information, see section A38.

#### A37 Application by monitor for directions

The monitor in relation to a moratorium may apply to the court for directions about the carrying out of the monitor's functions.

#### A38 Termination of moratorium by monitor

- (1) The monitor must bring a moratorium to an end by filing a notice with the court if—
  - (a) the monitor thinks that the moratorium is no longer likely to result in the rescue of the company as a going concern,
  - (b) the monitor thinks that the objective of rescuing the company as a going concern has been achieved,
  - (c) the monitor thinks that, by reason of a failure by the directors to comply with a requirement under section A36, the monitor is unable properly to carry out the monitor's functions, or
  - (d) the monitor thinks that the company is unable to pay any of the following that have fallen due—
    - (i) moratorium debts;
    - (ii) pre-moratorium debts for which the company does not have a payment holiday during the moratorium (see section A18).
- (2) The rules may provide for debts that are to be disregarded for the purposes of subsection (1)(d).
- (3) On the filing with the court of a notice under subsection (1), the moratorium comes to an end.
- (4) The rules may make provision about the timing of a notice required to be given under subsection (1).
- (5) The Secretary of State may by regulations amend this section for the purposes of changing the circumstances in which the monitor must bring a moratorium to an end under subsection (1).



- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.
- (7) See also section A17 (obligations to notify change in end of moratorium).

#### A39 Replacement of monitor or appointment of additional monitor

- (1) The court may make an order authorising the appointment of a qualified person to act as the monitor in relation to a moratorium instead of, or in addition to, a person who already acts as the monitor.
- (2) The court may make an order providing that a person ceases to act as the monitor in relation to a moratorium.
- (3) An order under subsection (1) or (2) may be made only on an application by the directors or the monitor.
- (4) The court may make an order authorising the appointment of a monitor under subsection (1) only if the person has provided the court with a statement that the person—
  - (a) is a qualified person, and
  - (b) consents to act as the monitor in relation to the moratorium.
- (5) Where it is proposed that more than one person should act as the monitor in relation to the moratorium, the statement under subsection (4) must specify—
  - (a) which functions (if any) are to be exercised by the persons acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons.
- (6) The rules may make provision about the date on which the statement under subsection (4) must be made.
- (7) Where the court makes an order under subsection (1) or (2) the person begins to act as the monitor, or ceases to act as the monitor, in relation to the moratorium at the time specified in, or determined in accordance with, the order (“the relevant time”).
- (8) As soon as reasonably practicable after the relevant time, the monitor must notify the following of the effect of the order—
  - (a) the registrar of companies,
  - (b) every creditor of the company of whose claim the monitor is aware,
  - (c) in a case where the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme, the Pensions Regulator, and
  - (d) in a case where the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by section 126 of the Pensions Act 2004, the Board of the Pension Protection Fund.
- (9) If the monitor without reasonable excuse fails to comply with subsection (8), the monitor commits an offence.

A40 Application of Part where two or more persons act as monitor

- (1) Where two or more persons act jointly as the monitor—
  - (a) a reference in this Act to the monitor is a reference to those persons acting jointly;
  - (b) where an offence of omission is committed by the monitor, each of the persons appointed to act jointly—
    - (i) commits the offence, and
    - (ii) may be proceeded against and punished individually.
- (2) Where persons act jointly in respect of only some of the functions of the monitor, subsection (1) applies only in relation to those functions.
- (3) Where two or more persons act concurrently as the monitor a reference in this Act to the monitor is a reference to any of the persons appointed (or any combination of them).

A41 Presumption of validity

An act of the monitor is valid in spite of a defect in the monitor's appointment or qualification.

*Challenges*

A42 Challenge to monitor's actions

- (1) Any of the persons specified below may apply to the court on the ground that an act, omission or decision of the monitor during a moratorium has unfairly harmed the interests of the applicant.
- (2) The persons who may apply are—
  - (a) a creditor, director or member of the company, or
  - (b) any other person affected by the moratorium.
- (3) An application under subsection (1) may be made during the moratorium or after it has ended.
- (4) On an application under subsection (1) the court may—
  - (a) confirm, reverse or modify any act or decision of the monitor,
  - (b) give the monitor directions, or
  - (c) make such other order as it thinks fit (but may not, under this paragraph, order the monitor to pay any compensation).
- (5) Where an application under subsection (1) relates to a failure by the monitor to bring the moratorium to an end under section A38(1), an order under subsection (4) may, in particular, bring the moratorium to an end and make such consequential provision as the court thinks fit.

- (6) Where an application under subsection (1) relates to the monitor bringing a moratorium to an end under section A38(1), an order under subsection (4) may, in particular, provide that the moratorium is not to be taken into account for the purposes of paragraph 2(1)(b) of Schedule ZA1 (company not eligible for moratorium if moratorium in force within previous 12 months).
- (7) In making an order under subsection (4) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (8) See also section A17 (obligations to notify change in end of moratorium).

#### A43 Challenges to monitor remuneration in insolvency proceedings

- (1) The rules may confer on an administrator or liquidator of a company the right to apply to the court on the ground that remuneration charged by the monitor in relation to a prior moratorium for the company was excessive.
- (2) Rules under subsection (1) may (among other things) make provision as to—
  - (a) time limits;
  - (b) disposals available to the court;
  - (c) the treatment of costs (or, in Scotland, the expenses) of the application in the administration or winding up.

#### A44 Challenge to directors' actions

- (1) A creditor or member of a company may apply to the court for an order under this section on the ground that—
  - (a) during a moratorium, the company's affairs, business and property are being or have been managed by the directors in a manner which has unfairly harmed the interests of its creditors or members generally or of some part of its creditors or members (including at least the applicant), or
  - (b) any actual or proposed act or omission of the directors during a moratorium causes or would cause such harm.
- (2) An application under subsection (1) may be made during the moratorium or after it has ended.
- (3) On an application under subsection (1) the court may make such order as it thinks fit.
- (4) An order under subsection (3) 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 applicant or to do an act which the applicant has complained they have omitted to do,

- (c) require a decision of the company’s creditors to be sought (using a qualifying decision procedure) on such matters as the court may direct, or
  - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (5) In making an order under subsection (3) the court must have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- (6) See also section A17 (obligations to notify change in end of moratorium).

A45 Challenge brought by Board of the Pension Protection Fund

- (1) This section applies where—
- (a) a moratorium—
    - (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
    - (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and
  - (b) the trustees or managers of the scheme are a creditor of the company.
- (2) The Board of the Pension Protection Fund may make any application under section A42(1) or A44(1) that could be made by the trustees or managers as a creditor.
- (3) For the purposes of such an application, any reference in section A42(1) or A44(1) to the interests of the applicant is to be read as a reference to the interests of the trustees or managers as a creditor.
- (4) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

*Offences: general*

A46 Offence of fraud etc during or in anticipation of moratorium

- (1) An officer of a company commits an offence if, during a moratorium for the company or at any time within the period of 12 months ending with the day on which a moratorium for the company comes into force, the officer—
- (a) does any of the things mentioned in subsection (2), or
  - (b) was privy to the doing by others of any of the things mentioned in subsection (2)(c), (d) and (e).
- (2) 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,

- (b) fraudulently removing any part of the company's property to the value of £500 or more,
  - (c) concealing, destroying, mutilating or falsifying any document affecting or relating to the company's property or affairs,
  - (d) making any false entry in any document affecting or relating to the company's property or affairs,
  - (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).
- (3) It is a defence—
- (a) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(a) or (f) to prove that the person had no intent to defraud, and
  - (b) for a person charged with an offence under subsection (1) in respect of any of the things mentioned in subsection (2)(c) or (d) to prove that the person had no intent to conceal the state of affairs of the company or to defeat the law.
- (4) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under subsection (1), every person who takes in pawn or pledge, or otherwise receives, the property commits an offence if the person knows it to be pawned, pledged or disposed of in circumstances which—
- (a) amount to an offence under subsection (1), or
  - (b) 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 subsection (1).
- (5) In this section, "officer" includes a shadow director.

#### A47 Offence of false representation etc to obtain a moratorium

- (1) An officer of a company commits an offence if, for the purpose of obtaining a moratorium for the company or an extension of a moratorium for the company, the officer—
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything.
- (2) Subsection (1) applies even if no moratorium or extension is obtained.
- (3) In this section, "officer" includes a shadow director.

#### A48 Prosecution of delinquent officers of company

- (1) This section applies where a moratorium has been obtained for a company.
- (2) If it appears to the monitor that any past or present officer of the company has committed an offence in connection with the moratorium, the monitor must 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 monitor and relating to the matter in question) as the authority requires.
- (3) In subsection (2), “the appropriate authority”—
  - (a) in the case of a company registered in England and Wales, means the Secretary of State,
  - (b) in the case of a company registered in Scotland, means the Lord Advocate, and
  - (c) in the case of an unregistered company means—
    - (i) if it has a principal place of business in England and Wales but not Scotland, the Secretary of State,
    - (ii) if it has a principal place of business in Scotland but not England and Wales, the Lord Advocate,
    - (iii) if it has a principal place of business in both England and Wales and Scotland, the Secretary of State and the Lord Advocate, and
    - (iv) if it does not have a principal place of business in England and Wales or Scotland, the Secretary of State.
- (4) Where a matter is reported to the Secretary of State under subsection (2), the Secretary of State may, for the purpose of investigating the matter and such other matters relating to the affairs of the company as appear to the Secretary of State to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985.
- (5) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts 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 the Secretary of State’s investigation.
- (6) Where a question is put to a person in exercise of the powers conferred by subsection (4), the person’s answer may be used in evidence against them.
- (7) However, in criminal proceedings in which the person is charged with an offence other than a false statement offence—
  - (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 the person.

- (8) In subsection (7) “false statement offence” means—
- (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
  - (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).
- (9) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the monitor, and every officer and agent of the company past and present (other than the defendant or defender), must give the authority all assistance in connection with the prosecution which they are reasonably able to give.
- (10) 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.
- (11) The court may, on the application of the prosecuting authority, direct a person who has failed to comply with subsection (9) to comply with it.

*Miscellaneous and general*

*Special rules for certain kinds of company etc*

A49 Regulated companies: modifications to this Part

- (1) For the purposes of sections A3 and A4 as they apply in relation to a regulated company, section A6(1) has effect as if the documents listed there included a reference to the written consent of the appropriate regulator to the appointment of the proposed monitor.
- (2) The remaining provisions of this section apply in relation to a moratorium for a regulated company.
- (3) Any notice under section A8(2), A17(2) to (4) or A39(8) must also be sent by the monitor to the appropriate regulator.
- (4) The directors must give the appropriate regulator notice of any qualifying decision procedure by which a decision of the company’s creditors is sought for the purposes of section A12(2) or A44(4)(c).
- (5) If the directors fail to comply with subsection (4), any director who did not have a reasonable excuse for the failure commits an offence.
- (6) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules, participate (but not vote) in any qualifying

decision procedure by which a decision of the company's creditors is sought for the purposes of this Part.

- (7) The appropriate regulator is entitled to be heard on any application to the court for permission under section A31(1) or A32(1) (disposal of charged property, etc).
- (8) The court may make an order under section A39(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.
- (9) The persons who may apply to the court under section A39(3), A42(1) or A44(1) include the appropriate regulator.
- (10) If a person other than a regulator applies to the court under section A39(3), A42(1) or A44(1) the appropriate regulator is entitled to be heard on the application.
- (11) If either regulator makes an application to the court under section A39(3), A42(1) or A44(1) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.
- (12) This section does not affect any right that the appropriate regulator has (apart from this section) as a creditor of a regulated company.
- (13) In this section—

“the appropriate regulator” means—

- (a) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
- (b) where the regulated company is not a PRA-regulated company, the Financial Conduct Authority;

“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

“PRA-regulated company” means a regulated company which—

- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or
- (c) is carrying on, or has carried on, a PRA-regulated activity (within the meaning of section 22A of that Act) in contravention of the general prohibition;

“regulated activity” has the meaning given by section 22 of the Financial Services and Markets Act 2000, taken with Schedule 2 to that Act and any order under that section;

“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 in contravention of the general prohibition within the meaning given by section 19 of that Act;

“regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.

- (14) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “regulated company” in subsection (13).
- (15) Regulations under subsection (14) are subject to the affirmative resolution procedure.

#### A50 Power to modify this Part etc in relation to certain companies

- (1) The Secretary of State may by regulations make provision under the law of England and Wales or Scotland—
- (a) to modify this Part as it applies in relation to a company for which there is a special administration regime, or
  - (b) in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (2) The Welsh Ministers may by regulations make provision under the law of England and Wales—
- (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 1 of the Housing Act 1996, or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (3) The Scottish Ministers may by regulations make provision under the law of Scotland—
- (a) to modify this Part as it applies in relation to a company that is a social landlord registered under Part 2 of the Housing (Scotland) Act 2010 (asp 17), or
  - (b) make provision in connection with the interaction between this Part and any other insolvency procedure in relation to such a company.
- (4) The Secretary of State may, by regulations, make any provision under the law of England and Wales, Scotland or Northern Ireland that appears to the Secretary of State to be appropriate in view of provision made under subsection (1), (2) or (3).
- (5) The power in subsection (1), (2), (3) or (4) may, in particular, be used to amend, repeal, revoke or otherwise modify any provision made by an enactment.
- (6) Regulations under subsection (1) or (4) are subject to the affirmative resolution procedure.
- (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of Senedd Cymru.
- (8) Regulations made by the Scottish Ministers under subsection (3) are subject to the

affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

(9) In this section—

“insolvency procedure” includes—

- (a) in relation to subsection (1)(b), the provision made by sections 143A to 159 of the Housing and Regeneration Act 2008;
- (b) in relation to subsection (2)(b), the provision made by sections 39 to 50 of the Housing Act 1996;
- (c) in relation to subsection (3)(b), the provision made by Part 7 of the Housing (Scotland) Act 2010;

“ordinary administration” means the insolvency procedure provided for by Schedule B1;

“special administration regime” means provision made by an enactment for an insolvency procedure that—

- (a) is similar or corresponds to ordinary administration, and
- (b) provides for the administrator to have one or more special objectives instead of or in addition to the objectives of ordinary administration.

A51 Power to make provision in connection with pension schemes

(1) The Secretary of State may by regulations provide that, in a case where—

(a) a moratorium—

- (i) is in force in relation to a company that is an employer in respect of an eligible scheme, or
- (ii) is or has been in force in relation to a company that has been an employer in respect of an eligible scheme at any time during the moratorium, and

(b) the trustees or managers of the scheme are a creditor of the company,

the Board of the Pension Protection Fund may exercise any of the following rights.

(2) The rights are those which are exercisable by the trustees or managers as a creditor of the company under or by virtue of—

(a) section A12, or

(b) a court order under section A44(4)(c).

(3) Regulations under subsection (1) 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.

- (4) Regulations under subsection (1)—
- (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.
- (5) Regulations under subsection (1) are subject to the affirmative resolution procedure.
- (6) In this section “eligible scheme” has the meaning given by section 126 of the Pensions Act 2004.

### *Floating charges*

#### A52 Void provisions in floating charge documents

- (1) A provision in an instrument creating a floating charge is void if it provides for the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, to be—
- (a) an event causing the floating charge to crystallise,
  - (b) an event causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company, or
  - (c) a ground for the appointment of a receiver.
- (2) The reference in subsection (1) to anything done with a view to obtaining a moratorium includes any preliminary decision or investigation.
- (3) In subsection (1) “receiver” includes a manager and a person who is appointed both receiver and manager.
- (4) Subsection (1) does not apply to a provision in an instrument creating a floating charge that is—
- (a) a collateral security (as defined by section A27);
  - (b) a market charge (as defined by section A27);
  - (c) a security financial collateral arrangement (within the meaning of regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226));
  - (d) a system-charge (as defined by section A27).

### *Interpretation of this Part*

#### A53 Meaning of “pre-moratorium debt” and “moratorium debt”

- (1) In this Part “pre-moratorium debt”, in relation to a company for which a moratorium

is or has been in force, means—

- (a) any debt or other liability to which the company becomes subject before the moratorium comes into force, or
- (b) any debt or other liability to which the company has become or may become subject during the moratorium by reason of any obligation incurred before the moratorium comes into force,

but this is subject to subsection (3).

(2) In this Part “moratorium debt”, in relation to a company for which a moratorium is or has been in force, means—

- (a) any debt or other liability to which the company becomes subject during the moratorium, other than by reason of an obligation incurred before the moratorium came into force, or
- (b) any debt or other liability to which the company has become or may become subject after the end of the moratorium by reason of an obligation incurred during the moratorium,

but this is subject to subsection (3).

(3) For the purposes of this Part—

- (a) a liability in tort or delict is a “pre-moratorium debt” if either—
  - (i) the cause of action has accrued before the moratorium comes into force, or
  - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes into force except for actionable damage;
- (b) a liability in tort or delict is a “moratorium debt” if it does not fall within paragraph (a) and either—
  - (i) the cause of action has accrued during the moratorium, or
  - (ii) all the elements necessary to establish the cause of action exist before the moratorium comes to an end except for actionable damage.

(4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “pre-moratorium debt” or “moratorium debt” in this Part.

(5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

#### A54 Interpretation of this Part: general

(1) In this Part—

“company” means—

- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
- (b) an unregistered company that may be wound up under Part 5 of this Act;

- “the court” means such court as is prescribed;
- “eligible”, in relation to a company, has the meaning given by Schedule ZA1;
- “employer”, in relation to a pension scheme—
- (a) in sections A8(2)(c), A17(8)(c) and A39(8)(c), means an employer within the meaning of section 318(1) of the Pensions Act 2004;
  - (b) elsewhere in this Part, has the same meaning that it has for the purposes of Part 2 of the Pensions Act 2004 (see section 318(1) and (4) of that Act);
- “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act;
- “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- “liability” means (subject to subsection (2)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort, delict or bailment, and any liability arising out of an obligation to make restitution;
- “money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;
- “the monitor”, in relation to a moratorium, means the person who has the functions of the monitor in relation to the moratorium (see also section A40 for cases where two or more persons act as the monitor);
- “moratorium” means a moratorium under this Part;
- “moratorium debt” has the meaning given by section A53;
- “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;
- “pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;
- “pre-moratorium debt” has the meaning given by section A53;
- “qualified person” means a person qualified to act as an insolvency practitioner;
- “unable to pay its debts”—
- (a) in relation to a registered company, has the same meaning as in Part 4 (see section 123);
  - (b) in relation to an unregistered company, has the same meaning as in Part 5 (see sections 222 to 224).
- (2) For the purposes of references in any provision of this Part to a debt or liability it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
  - (3) In this Part references to filing a document with the court are, in relation to a court

in Scotland, references to lodging it in court.

- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definition of “qualified person” in subsection (1).
- (5) Regulations under subsection (4) are subject to the affirmative resolution procedure.

### *Regulations*

#### A55 Regulations

- (1) Regulations under this Part may make—
  - (a) different provision for different purposes;
  - (b) consequential, supplementary, incidental or transitional provision or savings.
- (2) Regulations under this Part are to be made by statutory instrument, unless they are made by the Scottish Ministers.
- (3) Where regulations of the Secretary of State under this Part are subject to “the affirmative resolution procedure”, they may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.