

SCHEDULES

SCHEDULE 14

Section 220.

PPP ADMINISTRATION ORDERS

PART I

MODIFICATIONS OF THE 1986 ACT

General application of provisions of 1986 Act

- 1 Where a PPP administration order has been made, sections 11 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—
- (a) as if references in those sections to an administration order were references to a PPP administration order and references to an administrator were references to a special PPP administrator; and
 - (b) where the company in relation to which the order has been made is a PPP company which is an unregistered company, as if references in those sections to a company included references to such a company.

Effect of order

- 2 In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule, the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the PPP administration order in a case where the order is made by virtue of section 222 of this Act.

Appointment of special PPP administrator

- 3 In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—
- “(3) An application for an order under subsection (2) may be made—
- (a) by the Mayor of London;
 - (b) by any continuing special PPP administrator of the company or, where there is no such special PPP administrator, by the company, the directors or any creditor or creditors of the company.”

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General powers of special PPP administrator

- 4 In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule,—
- (a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be taken to include a reference to a power to act on behalf of the company for the purposes of Chapter VII of Part IV of this Act or any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and
 - (b) in subsection (4), the reference to a power conferred by the company's memorandum or articles of association—
 - (i) shall be taken to include a reference to any power conferred by any provision of a local or private Act which confers any power, or imposes any duty or obligation, on the company; and
 - (ii) in the case of a company which is an unregistered company, shall be taken also to include a reference to any power conferred by the company's constitution.

Power to deal with charged property

- 5 (1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.
- (2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words “in the open market by a willing vendor” there shall be substituted the words “for the best price which is reasonably available on a sale which is consistent with the purposes of the PPP administration order”.

Duties of special PPP administrator

- 6 (1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect in accordance with the following provisions of this paragraph.
- (2) For subsection (2) there shall be substituted the following subsection—
- “(2) Subject to any directions of the court, it shall be the duty of the special PPP administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his.”
- (3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors' meeting) shall be omitted.

Discharge of order

- 7 (1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.
- (2) For subsections (1) and (2) there shall be substituted the following subsection—
- “(1) An application for a PPP administration order to be discharged may be made—

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- (a) by the special PPP administrator, on the ground that the purposes of the order have been achieved; or
 - (b) by the Mayor of London, on the ground that it is no longer necessary that the purposes of the order are achieved.”
- (3) In subsection (3), the words “or vary” shall be omitted.
- (4) In subsection (4), the words “or varied” and “or variation” shall be omitted and for the words “to the registrar of companies” there shall be substituted—
- (a) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, the words “to the Mayor of London and the registrar of companies”; and
 - (b) where the company is an unregistered company which is not subject to such a requirement as is mentioned in paragraph (a) above, the words “to the Mayor of London”.

Notice of making of order

- 8 In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of this Schedule, for the words “to the registrar of companies” there shall be substituted—
- (a) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, the words “to the Mayor of London and the registrar of companies”; and
 - (b) where the company is an unregistered company which is not subject to such a requirement as is mentioned in paragraph (a) above, the words “to the Mayor of London”.

Statement of proposals

- 9 In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—
- “(1) Where a PPP administration order has been made, the special PPP administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—
- (a) to the Mayor of London;
 - (b) so far as he is aware of their addresses, to all creditors of the company; and
 - (c) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;
- and may from time to time revise those proposals.
- (2) If at any time—

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- (a) the special PPP administrator proposes to make revisions of the proposals for achieving the purposes of the PPP administration order, and
 - (b) those revisions appear to him to be substantial,
- the special PPP administrator shall, before making those revisions, send a statement of the proposed revisions to the persons specified in subsection (2A).

(2A) The persons mentioned in subsection (2) are—

- (a) the Mayor of London;
- (b) all creditors of the company, so far as the special PPP administrator is aware of their addresses; and
- (c) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, the registrar of companies.

(2B) Where the special PPP administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or
- (b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

Applications to court

10 (1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.

(2) After subsection (1) there shall be inserted the following subsections—

“(1A) At any time when a PPP administration order is in force the Mayor of London may apply to the High Court by petition for an order under this section on the ground specified in subsection (1B).

(1B) The ground mentioned in subsection (1A) is that the special PPP administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which will not best ensure the achievement of the purposes of the order.

(1C) Where an application is made under subsection (1) in respect of a company in relation to which a PPP administration order is in force—

- (a) notice of the application shall be given to the Mayor of London; and
- (b) he shall be entitled to be heard by the court in connection with that application.”

(3) Subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator’s proposals) shall be omitted.

(4) In subsection (4) (provision that may be made in an order), the words “Subject as above” shall be omitted and for paragraph (d) there shall be substituted—

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“(d) without prejudice to the powers exercisable by the court in making a PPP administration order—

(i) provide that the PPP administration order is to be discharged as from such date as may be specified in the order unless, before that date, such measures are taken as the court thinks fit for the purpose of protecting the interests of creditors; and

(ii) make such consequential provision as the court thinks fit.”

(5) For subsection (6) there shall be substituted—

“(6) Where a PPP administration order is discharged in consequence of such provision in an order under this section as is mentioned in subsection (4) (d)(i), the special PPP administrator shall, within 14 days after the date on which the discharge takes effect, send an office copy of the order under this section—

(a) to the Mayor of London; and

(b) except where the company is an unregistered company which is not subject to a requirement imposed under or by virtue of section 691(1) or 718 of the Companies Act 1985 to deliver any documents to the registrar of companies, to the registrar of companies;

and if, without reasonable excuse, the special PPP administrator fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.”

Particular powers of special PPP administrator

- 11 In the application of Schedule 1 to the 1986 Act (which sets out certain powers of the administrator) by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a company which is an unregistered company, paragraph 22 shall be omitted.

PART II

FURTHER MODIFICATIONS OF THE 1986 ACT: APPLICATION IN RELATION TO FOREIGN COMPANIES

Introductory

- 12 (1) Where a PPP administration order has been made in relation to a company which is a foreign company, sections 11 to 23 and 27 of the 1986 Act (as applied by Part I of this Schedule) shall apply in relation to that foreign company with the further modifications set out in the following provisions of this Part of this Schedule.
- (2) In this Part of this Schedule, “foreign company” means a company incorporated outside Great Britain.

Effect of order

- 13 (1) Section 11 of the 1986 Act (effect of administration order), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.

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- (2) In subsection (1), paragraph (b) shall be omitted.
- (3) Subsection (2) shall be omitted.
- (4) In subsection (3)—
- (a) paragraphs (a) and (b) shall be omitted; and
 - (b) in paragraph (d)—
 - (i) the reference to the commencement or continuation of proceedings shall be taken as a reference to the commencement or continuation of proceedings in Great Britain; and
 - (ii) the reference to the levying of distress against the company shall be taken as a reference to the levying of distress against the foreign company to the extent of its property in England and Wales;
 and any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.
- (5) Subsections (4) and (5) shall be omitted.
- (6) At the end of that section there shall be added—
- “(6) Where a PPP administration order is in force in relation to a company which is a foreign company within the meaning of section 224 of the Greater London Authority Act 1999—
- (a) any person appointed to perform functions equivalent to those of an administrative receiver, and
 - (b) if the special PPP administrator so requires, any person appointed to perform functions equivalent to those of a receiver,
- shall refrain from performing those functions in Great Britain in relation to the foreign company and any of the company’s property for the time being situated in Great Britain, during the period for which that order is in force or, in the case of such a person as is mentioned in paragraph (b) above, during so much of that period as falls after the date on which he is required to do so.”

Notification of order

- 14 In section 12 of the 1986 Act (notification of order), as applied by this Part of this Schedule in relation to a foreign company, the reference to a statement that the affairs, business and property of the company are being managed by the administrator shall be taken as a reference to a statement that—
- (a) the affairs and business of the foreign company so far as carried on in Great Britain, and
 - (b) the property of the foreign company so far as that property is for the time being situated within Great Britain,
- are being managed by the special PPP administrator.

General powers of special PPP administrator

- 15 (1) Section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule in relation to a foreign company, shall have effect as follows.

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- (2) In subsection (1)(a), the reference to the affairs, business and property of the company shall be taken as a reference to—
- (a) the affairs and business of the foreign company so far as carried on in Great Britain, and
 - (b) the property of that company so far as that property is for the time being situated within Great Britain.
- (3) Subsection (2)(a) shall be omitted.
- (4) In subsection (4)—
- (a) the reference to any power conferred on the company or its officers shall be taken to include any power conferred on the foreign company or its officers under the law under which the foreign company is incorporated; and
 - (b) any reference (however expressed) to the exercise of any power conferred on the company or its officers shall be taken as a reference to the exercise of that power so far as it relates to—
 - (i) the affairs and business of the foreign company so far as carried on in Great Britain, or
 - (ii) the property of that company so far as that property is for the time being situated within Great Britain.

Power to deal with charged property

- 16 In section 15 of the 1986 Act (power of administrator to deal with charged property etc), as applied by this Part of this Schedule in relation to a foreign company, any reference to property or goods shall be taken as a reference to property or (as the case may be) goods for the time being situated within Great Britain.

Duties of special PPP administrator

- 17 In section 17 of the 1986 Act (general duties of administrator), as applied by this Part of this Schedule in relation to a foreign company,—
- (a) in subsection (1), the reference to property shall be taken as a reference to property for the time being situated within Great Britain; and
 - (b) in subsection (2), the reference to the affairs, business and property of the company shall be taken as a reference to—
 - (i) the affairs and business of the foreign company so far as carried on in Great Britain, and
 - (ii) the property of that company so far as that property is for the time being situated within Great Britain.

Statement as to company's affairs

- 18 In section 22(1) of the 1986 Act (power of administrator to require certain persons to provide him with a statement as to company's affairs), as applied by this Part of this Schedule in relation to a foreign company, the reference to the affairs of the company shall be taken as a reference to the affairs of the foreign company so far as they are carried on in Great Britain, or relate to property of that company for the time being situated within Great Britain.

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Particular powers of special PPP administrator

- 19 (1) The powers conferred on a special PPP administrator by virtue of Schedule 1 to the 1986 Act (which sets out certain powers of an administrator), as that Schedule applies by virtue of section 14 of that Act, as applied by this Part of this Schedule in relation to a foreign company, shall be exercisable only in relation to—
- (a) the affairs and business of that company, so far as carried on in Great Britain; and
 - (b) the property of that company, so far as that property is for the time being situated within Great Britain.
- (2) In that Schedule, as it so applies,—
- (a) without prejudice to sub-paragraph (1) above, references to the property of that company shall be taken as references to that property, so far as that property is for the time being situated within Great Britain; and
 - (b) paragraph 19 shall be omitted.

PART III

SUPPLEMENTAL

General adaptations and saving

- 20 (1) Subject to the preceding provisions of this Schedule, references in the 1986 Act (except in sections 8 to 10 and 24 to 26), or in any other enactment passed before this Act, to an administration order under Part II of that Act, to an application for such an order and to an administrator shall include references, respectively, to a PPP administration order, to an application for a PPP administration order and to a special PPP administrator.
- (2) Subject as aforesaid and to sub-paragraph (3) below, references in the 1986 Act, or in any other enactment passed before this Act, to an enactment contained in Part II of that Act shall include references to that enactment as applied by section 221, 222, 223 or 224 of this Act or Part I or II of this Schedule.
- (3) Sub-paragraphs (1) and (2) above shall apply in relation to a reference in an enactment contained in Part II of the 1986 Act only so far as necessary for the purposes of the operation of the provisions of that Part as so applied.
- (4) The provisions of this Schedule shall be without prejudice to the power conferred by section 411 of the 1986 Act (company insolvency rules), as modified by sub-paragraphs (1) and (2) above.

Interpretation

- 21 (1) In this Schedule “the 1986 Act” means the Insolvency Act 1986.
- (2) In this Schedule, and in any modification of the 1986 Act made by this Schedule, “special PPP administrator”, in relation to a PPP administration order, means any person appointed in relation to that order for the purposes of section 220(1) of this Act; and in any such modification “PPP administration order” has the same meaning as in Chapter VII of Part IV of this Act.