
Changes to legislation: There are currently no known outstanding effects for the Corporate Insolvency and Governance Act 2020, Cross Heading: Companies Act 2006. (See end of Document for details)

SCHEDULES

SCHEDULE 9

ARRANGEMENTS AND RECONSTRUCTIONS FOR COMPANIES IN FINANCIAL DIFFICULTY

PART 2

CONSEQUENTIAL AMENDMENTS

Companies Act 2006

- 30 The Companies Act 2006 is amended as follows.
- 31 In section 32(1) (constitutional documents to be provided to members), after paragraph (d) insert—
- “(da) a copy of any court order under section 901F (order sanctioning compromise or arrangement for company in financial difficulty) or section 901J (order facilitating reconstruction or amalgamation);”.
- 32 In section 93 (recent allotment of shares for non-cash consideration), in subsection (7)(b)(i), after “Part 26” insert “ or 26A ”.
- 33 (1) Part 17 (a company's share capital) is amended as follows.
- (2) In section 549 (exercise by directors of powers to allot shares etc), after subsection (3) insert—
- “(3A) Subsection (1) does not apply to anything done for the purposes of a compromise or arrangement sanctioned in accordance with Part 26A (arrangements and reconstructions: companies in financial difficulty).”
- (3) In Chapter 3 (allotment of equity securities: existing shareholders' right of pre-emption)—
- (a) in section 561 (existing shareholders' right of pre-emption), in subsection (5) (a), for “566” substitute “ 566A ”;
- (b) after section 566 insert—
- “566A Exception to pre-emption right: companies in financial difficulty**
- Section 561(1) (existing shareholders' right of pre-emption) does not apply to an allotment of equity securities that is carried out as part of a compromise or arrangement sanctioned in accordance with Part 26A (arrangements and reconstructions: companies in financial difficulty).”
- (4) In section 594 (exception to valuation requirement: arrangement with another company), in subsection (6)(a)(i), after “Part 26” insert “ or 26A ”.

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- (5) In section 616(1) (interpretation of Chapter 7), in paragraph (a) of the definition of “arrangement”, after “Part 26” insert “ or 26A ”.
- (6) In section 617 (alteration of share capital of limited company), in subsection (5)(e) (i), after “Part 26” insert “ or 26A ”.
- (7) In section 632 (variation of class rights: saving for court's powers under other provisions)—
- (a) in the entry for Part 26, after “reconstructions” insert “ : general ”;
 - (b) after that entry (but before the “or”) insert— “ Part 26A (arrangements and reconstructions: companies in financial difficulty), ”.
- (8) In section 641 (circumstances in which a company may reduce its share capital)—
- (a) in subsection (2C), in the definition of “scheme”, after “Part 26” insert “ or 26A ”;
 - (b) in subsection (7), for the words from “the phrase” to “Part 26” substitute “the phrases “sanctioned by the court under Part 26” and “sanctioned by the court under Part 26A””.
- (9) In section 649 (registration of order and statement of capital), in subsection (3)—
- (a) in paragraph (a), after “reconstructions” insert “ : general ”;
 - (b) after that paragraph insert—
 - (aa) in the case of a reduction of share capital that forms part of a compromise or arrangement sanctioned by the court under Part 26A (arrangements and reconstructions: companies in financial difficulty)—
 - (i) in the case of any company other than one to which sub-paragraph (ii) applies, on delivery of the order and statement of capital to the registrar;
 - (ii) in the case of an overseas company that is not required to register particulars under section 1046, on publication of the order and statement of capital in the Gazette;
 - (iii) in either case, if the court so orders, on the registration of the order and statement of capital;”;
 - (c) in paragraph (b), for “any other case” substitute “ any case not falling within paragraph (a) or (aa) ”.
- 34 In section 681 (unconditional exceptions to prohibition against financial assistance), in subsection (2)(e), after “Part 26” insert “ or 26A ”.
- 35 (1) Part 26 (arrangements and reconstructions) is amended as follows.
- (2) The heading becomes “ ARRANGEMENTS AND RECONSTRUCTIONS: GENERAL ”.
 - (3) In section 896, at the end insert—

“(4) This section is subject to section 899A (moratorium debts, etc).”
 - (4) In section 899 (court sanction for compromise or arrangement)—
 - (a) after subsection (1) insert—

“(1A) Subsection (1) is subject to section 899A (moratorium debts, etc).”;
 - (b) omit subsection (5).

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(5) After section 899 insert—

“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”—
 - (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.”

- 36 (1) Part 27 (mergers and divisions of public companies) is amended as follows.
- (2) In section 903 (relationship of Part 27 to Part 26)—

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- (a) in the heading, for “**Part 26**” substitute “ **Parts 26 and 26A** ”;
 - (b) in subsection (1), for “Part 26 (arrangements and reconstructions)” substitute “ Part 26 (arrangements and reconstructions: general) or Part 26A (arrangements and reconstructions: companies in financial difficulty) ”;
 - (c) in subsections (2) and (3), for “Part 26” substitute “ Parts 26 and 26A ”.
- (3) In section 907 (approval of members of merging companies), in subsection (2), after “917” insert “ , 917A ”.
- (4) In section 908 (directors' explanatory report (merger))—
- (a) in subsection (2), for paragraph (a) (but not the “and” following it) substitute—
 - “(a) the required statement explaining the effect of the compromise or arrangement,”;
 - (b) after that subsection insert—
 - “(2A) In subsection (2) “the required statement explaining the effect of the compromise or arrangement” means—
 - (a) in a case where a meeting is summoned under section 896 in relation to the compromise or arrangement, the statement required by section 897;
 - (b) in a case where a meeting is summoned under section 901C in relation to the compromise or arrangement, the statement required by section 901D.”
- (5) In section 912 (approval of articles of new transferee company (merger))—
- (a) the wording of the section becomes subsection (1) of that section;
 - (b) at the end of that subsection insert—
 - “This is subject to subsection (2).”;
 - (c) after that subsection insert—
 - “(2) In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the articles of the transferee company (or a draft of them) to be approved by ordinary resolution of the company in respect of which the compromise or arrangement is proposed.”
- (6) In section 915 (circumstances in which certain particulars and reports not required (merger))—
- (a) in subsection (3), for “Section 897” substitute “ In a case where a meeting has been summoned under section 896 in relation to the compromise or arrangement, section 897 ”;
 - (b) after that subsection insert—
 - “(3A) In a case where a meeting has been summoned under section 901C in relation to the compromise or arrangement, section 901D (explanatory statement to be circulated or made available) does not apply.”
- (7) In section 915A (other circumstances in which reports and inspection not required (merger)), in subsection (5), after “section 900(2)” insert “ or, as the case may be, section 901J(2) ”.

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(8) Before section 918 (but after the heading “*Other exceptions*”) insert—

Other circumstances in which meeting of members of transferor company not required (merger)

“917A In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the scheme to be approved by the members of the company in respect of which the compromise or arrangement is proposed.”

(9) In section 918A (agreement to dispense with reports etc (merger))—

- (a) in subsection (2), for “the application to the court under section 896” substitute “the relevant application”;
- (b) after that subsection insert—

“(3) In subsection (2) “the relevant application” means—

- (a) in the case of a compromise or arrangement to be sanctioned under Part 26, the application to the court under section 896;
- (b) in the case of a compromise or arrangement to be sanctioned under Part 26A, the application to the court under section 901C(1).”

(10) In section 922 (approval of members of companies involved in the division)—

- (a) in subsection (1), for “compromise or arrangement” substitute “scheme”;
- (b) in subsection (2), after “931” insert “, 931A”.

(11) In section 923 (directors' explanatory report (division))—

- (a) in subsection (2), for paragraph (a) (but not the “and” following it) substitute—

“(a) the required statement explaining the effect of the compromise or arrangement,”;

- (b) after that subsection insert—

“(2A) In subsection (2) “the required statement explaining the effect of the compromise or arrangement” means—

- (a) in a case where a meeting is summoned under section 896 in relation to the compromise or arrangement, the statement required by section 897;
- (b) in a case where a meeting is summoned under section 901C in relation to the compromise or arrangement, the statement required by section 901D.”

(12) In section 925 (supplementary accounting statement (division)), in subsection (1)(b), after “931” insert “, 931A”.

(13) In section 928 (approval of articles of new transferee company (division))—

- (a) the wording of the section becomes subsection (1) of that section;
- (b) after that subsection insert—

“(2) Subsection (1) does not apply in the case of a compromise or arrangement to be sanctioned under Part 26A.”

(14) Before section 932 (but after the heading “*Other exceptions*”) insert—

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Other circumstances in which meeting of members of transferor company not required (division)

“931A In the case of a compromise or arrangement to be sanctioned under Part 26A, it is not necessary for the scheme to be approved by the members of the transferor company.”

(15) In section 933 (agreement to dispense with reports etc (division))—

- (a) in subsection (3), for “the application to the court under section 896” substitute “ the relevant application ”;
- (b) after that subsection insert—

“(4) In subsection (3) “the relevant application” means—

- (a) in the case of a compromise or arrangement to be sanctioned under Part 26, the application to the court under section 896;
- (b) in the case of a compromise or arrangement to be sanctioned under Part 26A, the application to the court under section 901C(1).”

(16) In section 939 (court to fix date for transfer of undertaking etc of transferor company), in subsection (1)(b), after “section 900” insert “ or, as the case may be, section 901J ”.

(17) In section 940 (liability of transferee companies for each other's defaults)—

- (a) in subsection (2), after “If” insert “ , in the case of a compromise or arrangement to be sanctioned under Part 26, ”;
- (b) after that subsection insert—

“(2A) If, in the case of a compromise or arrangement to be sanctioned under Part 26A, a number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.”

37 (1) In Part 31 (dissolution and restoration to the register), Chapter 1 (striking off) is amended as follows.

(2) In section 1005 (circumstances in which application for voluntary striking off may not be made: other proceedings not concluded), in subsection (1)(a), after “Part 26” insert “ or 26A ”.

(3) In section 1009 (circumstances in which application for voluntary striking off to be withdrawn), in subsection (1)(b), after “Part 26” insert “ or 26A ”.

38 In section 1078 (documents subject to disclosure requirements), in subsection (3), for “section 899 or 900” substitute “ section 899, 900, 901F or 901J ”.

39 (1) Schedule 8 (index of defined expressions) is amended as follows.

(2) In the entry for “arrangement”, after the entry for Part 26 insert—

“—in Part 26A section 901A(4)”.
—

(3) In the entry for “company”, after the entry for Part 26 insert—

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“—in Part 26A

section 901A(4)”.

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