

INSOLVENCY (ORDER
(NORTHERN IRELAND) 1989:
PART 1A: MORATORIUM:
GUIDE FOR MONITORS

INSOLVENCY SERVICE FOR NORTHERN IRELAND

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1. Introduction

The Corporate Insolvency and Governance Act 2020 makes various amendments to corporate insolvency and companies legislation applying both in GB and in Northern Ireland.

These guidance notes deals specifically with the provisions in the Act which relate to a new, free standing moratorium not linked to a particular insolvency procedure.

These are,

- Section 4 – Moratoriums in Northern Ireland,
- Section 5 - Moratoriums in Northern Ireland: further amendments and transition
- Section 6 – Moratoriums in Northern Ireland: temporary modifications
- Schedule 5 – Moratoriums in Northern Ireland: Eligible Companies
- Schedule 6 – Moratoriums in Northern Ireland: contracts involving financial services
- Schedule 7 – Moratoriums in Northern Ireland: further amendments
- Schedule 8 – Moratoriums in Northern Ireland : temporary provision

The ultimate aim of the moratorium is to facilitate a rescue of the company and a return to profitable trading, which could be via a CVA, a new restructuring plan or simply an injection of new funds.

Section 4 of the Corporate Insolvency and Governance Act 2020 (CIGA 2020) has inserted a new Part 1A into the Insolvency (Northern Ireland) Order 1989 which came into force on 26 June 2020. Part 1A makes provision for the moratorium which will allow businesses in financial distress a breathing space in which to explore rescue and restructuring options, free from creditor action. By being placed upstream of formal insolvency, the moratorium will encourage companies to act earlier to restructure debt and improve a company's chances of success.

The legislation includes some time-limited temporary changes to the moratorium measure in order to address certain specific issues concerning the Covid-19 emergency. These are explained on page 36-38 of the guidance. In order to have the moratorium operational immediately upon the Corporate Insolvency and Governance Act 2020 coming into force there are also temporary rules pending amendments being made to the Insolvency (Northern Ireland) Rules 1991 (SR 1991/364). These temporary rules will cease to have effect on 30th September, unless that rules are made before then which provide for them to cease to have effect on an earlier date.

Entry into the moratorium requires an insolvency practitioner to consent to act as monitor in relation to the moratorium. This guide sets out what statutory tasks the monitor must undertake under the Insolvency (Northern Ireland) Order 1989 and the temporary rules put in place by Schedule 8 to the CIGA 2020 and provides information for those insolvency practitioners acting in the capacity of monitor. References to Articles in this document are to Articles in Part 1A of the Insolvency (Northern Ireland) Order 1989 unless otherwise stated. This guidance is not exhaustive and is not intended to be a manual for insolvency practitioners undertaking an appointment as monitor. Rather it attempts to set out the scheme of the moratorium process and highlights the principal duties and actions of the principal participants in the process.

SUMMARY OF THE MORATORIUM PROCEDURE

- *Directors file for/apply to High Court for a moratorium*

- *Moratorium lasts for Initial period of 20 business days*

- *Effect of moratorium – Restrictions apply to:*
 - i. Insolvency procedures
 - ii. Enforcement and legal proceedings
 - iii. Granting a security
 - iv. Disposing of property
 - v. Obtaining credit
 - vi. Payment of certain pre-moratorium debts
 - vii. Disposal of hire purchase property
 - viii. Disposal of property

- *Monitor's role:*
 - i. Supervise whether the company meets eligibility requirements and;
 - ii. Monitor on commencement and throughout the moratorium whether it is likely that the moratorium will result in the rescue of the company as a going concern

- *Routes to Extension*
 - i. Article 13CA (extension for 20 days by directors without creditor consent);
 - ii. Article 13CB (extension for up to a total of one year with creditor consent);
 - iii. Article 13CD (extension by High Court on application of directors);
 - iv. Article 13CE (extension while proposal for CVA pending);
 - v. Article 13CF (extension by High Court in course of other proceedings)

- *Possible outcomes:*
 - i. Recovery of the company
 - ii. CVA under Part 2 of the 1989 Order
 - iii. Restructuring Plan
 - iv. Scheme of Arrangement
 - v. Re-financing
 - vi. Insolvency procedure

Early Termination routes

- i. Article 13CG (termination on entry into insolvency procedure etc);
- ii. Article 13ED (termination by monitor);
- iii. Article 13F or 13FB (termination by High Court)

During a moratorium there are restrictions on a company paying pre-moratorium debts subject to some exceptions such as goods or services supplied during the moratorium, wages and salary and rent in respect of a period during the moratorium, or where the monitor consents. There are a number of restrictions placed on creditors taking action during a moratorium such as initiating insolvency proceedings or other legal process, exercising a right of forfeiture in respect of premises and enforcing security, though in some instances permission to do so may be given by the High Court. An exception is made where the legal process is an employment tribunal (or process arising out of such proceedings) which may be instituted or continued without the Court's permission.

There are also restrictions placed on a company in a moratorium concerning granting of security, obtaining credit and disposing of property.

Schedule 8 - Temporary Rules

The moratorium is currently being implemented under a temporary regime established by Schedule 8 to the Act. Schedule 8 applies specified provisions in the Insolvency Rules (Northern Ireland) 1991 for the purposes of the moratorium and also contains stand-alone provision. This guidance has been drafted with reference to the moratorium as it stands under the temporary provision. Accordingly, references to specific rules in the Insolvency Rules (Northern Ireland) 1991 are to those rules as they are applied to the moratorium by virtue of Schedule 8.

Our intention is that Schedule 8 will in due course be superseded by permanent provision that will sit within the Insolvency Rules (Northern Ireland) 1991.

2. Role and Functions of Monitor

The new moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989 is a debtor in possession process and will be overseen by a licensed insolvency practitioner acting as a monitor although the directors will remain in charge of running the business. Article 3(1) of the Insolvency (Northern Ireland) Order 1989 has accordingly been amended to bring monitors within the regulatory framework that applies to insolvency practitioners acting as insolvency office-holders. The monitor also acts as an officer of the court and has a duty to act with integrity and good faith.

Prior to the moratorium the prospective monitor will need to engage with the directors and seek information about the company's assets, liabilities and business so that they are able to assess the company's financial position, prospects and eligibility for a moratorium. This will be a good opportunity for the prospective monitor to obtain a list of the company's creditors, the amounts owing to them, details of any security held together with their contact details (postal and email addresses) which the monitor will need when appointed. The extent of this pre-appointment work will be for the insolvency practitioner using their professional experience and judgement to decide on and should be proportionate to the size and complexity of the company.

The Government does not wish the moratorium to be accessed by companies that have no chance of avoiding failure and/or are simply using the procedure to postpone entry into a formal insolvency procedure. The moratorium will impact significantly on the entitlements of creditors to enforce their claims against the company. To ensure the moratorium is used appropriately, there are safeguards attached to the use of the procedure in the form of eligibility criteria in addition to conditions that the company must satisfy in order to qualify for entry. After consent to the appointment (*see section 4 of the guidance*) the monitor's role is to supervise that the company's eligibility remains met at the commencement and throughout the course of the moratorium and to monitor that it is likely that the company can be rescued as a going concern.

The monitor must support the integrity of the moratorium process and ensure creditor interests are protected. To fulfill this role the legislation therefore enables the monitor to require the directors to provide any information the monitor requires for the purpose of carrying out their functions under the moratorium (Article 13EB). This is necessary in order that the monitor can assess the company's affairs in the short timescales available. The monitor should exercise their professional judgement to satisfy themselves of the accuracy of the information provided, and, is able to require the directors provide further information.

Director's failure to comply with a request for information

If following a request for information the directors do not comply as soon as practicable, the monitor can file a notice at the High Court to bring about the end of the moratorium under Article 13ED(1)(c) (*see section 6 for details about notice requirements*). It is recommended that the monitor documents the steps taken to obtain information from the directors in all cases including where directors fails to cooperate with the monitor.

Communication with creditors

The legislation requires that creditors are to be notified of the start of a moratorium as well as changes to the end date, and the replacement of the monitor. Apart from those cases, there is no statutory requirement for the monitor to provide creditors with information in relation to the moratorium. However, Article 13F enables a creditor to challenge a monitor's action by way of an application to the High Court and monitors may find it helpful on occasions to provide additional information to some creditors to forestall such action being taken.

Reporting offences to the Department

Where a moratorium has been obtained, Article 13GB places the monitor under a duty to report to the Department any knowledge that an officer of a company (past or present) has committed an offence in connection with the moratorium. The offences are detailed in full in Chapter 7 of Part 1A.

The monitor may be called upon to assist the Department in any subsequent investigation of the company under s.431 or s.432 Companies Act 1986 or where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings.

Application to the High Court for Directions

If at any point during the moratorium, the monitor is unclear about his functions and needs to seek clarification, an application can be made to the High Court for directions. The monitor should provide a copy of that application to the company.

Ethical considerations

To ensure that the monitor can carry out the role with objectivity and independence, it is vital that any conflicts of interests are avoided or managed appropriately to safeguard the interests of all stakeholders. The monitor will need to have regard to any ethical and regulatory guidelines laid down by their Recognised Professional Body and to the Code of Ethics effective in Northern Ireland from 8 June 2020.

An insolvency practitioner will also need to have regard to the Code of Ethics in relation to accepting an appointment as monitor following any pre appointment engagements or prior insolvency appointments when assessing whether the

circumstances give rise to a *significant professional relationship* with the company that wishes to obtain a moratorium.

The monitor is not prevented from taking up a subsequent appointment subject to the insolvency practitioner making an assessment of any threats to compliance with the fundamental principles. Practitioners may find it helpful to refer to section 2520 of the Code of Ethics that deals with “Examples relating to previous or existing insolvency appointments” in terms of how any subsequent insolvency appointments following appointment as monitor (as administrator or liquidator for example) may be treated. The monitor should satisfy themselves that they have identified any threats to compliance with the fundamental principles and have been able to put in place appropriate safeguards to reduce any threats to an acceptable level.

Where two or more persons act jointly as the monitor (Article 13EF)

Where the monitor is referenced in the legislation that includes persons acting jointly. Where an offence of omission is committed by the monitor, each of the persons appointed to act jointly commits the offence and may be proceeded against and punished individually. Where persons act jointly in respect of only *some of the functions* of the monitor, the above applies only in relation to those functions.

Where more than one person is appointed to act as the monitor, each of them must make the necessary statements and their statement of consent to act must include details of which functions are to be carried out by which monitor; or whether they are to be carried out jointly.

Bonding requirements

The existence of a general bond is a prerequisite to being qualified to hold insolvency appointments and as previously noted the monitor has been added to Article 3 of the Insolvency (Northern Ireland) Order 1989 which gives rise to the requirement for a bond in that role. An insolvency practitioner acting as monitor will also need to ensure they are bonded for a specific penalty sum for each appointment in that capacity. The CIGA includes an amendment to regulation 2 of the Insolvency Practitioners Regulations (Northern Ireland) 2006 to include where an insolvency practitioner acts a monitor under Part 1A.

Bonding requirements will be based on the total value of the assets of the company in accordance with Part II of Schedule 2 to the Insolvency Practitioner Regulations (Northern Ireland) 2006. Where the monitor takes up a subsequent appointment as office-holder for the same company, the practitioner may be required to pay two premiums – one for the monitor role, and one for the subsequent capacity.

It is anticipated that only a small proportion of monitor appointments will result in a sequential insolvency procedure and making provision in the Insolvency Practitioner Regulations (Northern Ireland) 2006 to require the specific penalty sum bon for the monitor to carry over to the sequential insolvency procedure could adversely impact premiums for the majority of monitor appointments where the company does not enter another insolvency procedure at the end of the moratorium.

If practitioners have any queries in relation to bonding requirements for the role of monitor, they are advised to contact their bond provider.

Record Keeping

The requirements of Regulation 13 (records to be maintained by insolvency practitioners) of the Insolvency Practitioners Regulations (Northern Ireland) 2006 apply to the office of monitor. It is therefore important that the monitor maintains records sufficient to show and explain the administration of the moratorium and decisions made by the monitor which materially affect the company. These are likely to include:

- Dates notices were received and sent;
- Explanations as to why:
 - Statements made by the monitor that it is likely a moratorium would result in the rescue of the company as a going concern, were made (see section 4).
 - Consent was given by the monitor for certain actions (e.g. grant of a security, payment of a pre-moratorium debt, disposal of the company's property) (see section 10);
 - The monitor brings a moratorium to an end (see section 7).

3. Schedule 8 - Part 3: Temporary Provisions Pending the Making of the Rules

Paragraph 50 of Schedule 8 to the CIGA provides that the Insolvency Rules (Northern Ireland) 1991 are to apply for the purposes of proceedings under Part 1A of the Insolvency (Northern Ireland) Order 1989, or Part 3 of Schedule 8 to the CIGA, subject to:-

- the modifications that are made to some of those Rules by sub-paragraphs (3) to (13) of paragraph 50
- any other necessary modifications, including those set out in paragraphs 23 to 30 and 46 of Schedule 8 and any modifications set out in a Court order as referred to in paragraph 43.

Temporary rules have, In addition, been included in Part 3 of Schedule 8 to the CIGA pending amendments being made to the Insolvency Rules (Northern Ireland) 1991. This was done so that the moratorium could be operational immediately upon the CIGA coming into force. These temporary rules will cease to have effect on 30 September 2020, or earlier if it is possible to bring amending Rules into operation before then. The provisions (which are abridged here - for full details of the requirements under each Article see Part 3 of Schedule 8 to the CIGA) set out what is required in terms of notices and statements when a moratorium is applied for or is extended or ended as well as other more general matters. For ease of use notice requirements and timings are referenced in the relevant sections of the guidance. Where the rules refer to “days” it does not mean business days.

Prescribed format of documents

Paragraph 46 of Schedule 8 to the CIGA applies Rule 12.04 IR 1991(Notice) to applications and statements referred to in Part A1.

Paragraphs 47 and 48 of Schedule 8 apply where a provision in Part 3 of Schedule 8 stipulates what has to be in a document.

Paragraph 47 provides that where a document is required to have a title it must appear at the beginning of the document. Where a provision stipulates what is to be in a document the contents of that document must either be in the same order as listed in the provision or else in an order which is considered convenient for the intended recipient,

Paragraph 48 makes it possible for the contents of a document to diverge from what is required by a provision in Part 3 of Schedule 8 if the circumstances require it or the departure, whether intentional or otherwise, is immaterial.

Delivery of documents

Electronic Delivery

We acknowledge that owing to the COVID-19 pandemic, delivery by post may not be the best option and therefore encourage the use of email as a primary method of contact. If postal delivery is used, we recommend that it is via first class delivery to ensure that documents can be received in a timely manner so that the monitor can fulfil his notification obligations without delay.

Paragraph 46(1) in Part 3 of Schedule 8 to the CIGA provides that Rule 12.04 of the Insolvency Rules (Northern Ireland) 1991 applies to applications and statements referred to in Part 1A of the Insolvency (Northern Ireland) Order 1989. Rule 12.04 already applies to any notices given under the Order or Rules, Paragraph 46(2)

provides that the requirement under Rule 1.04 for notices, applications or statements to be in writing is satisfied if the document is in electronic form. This is subject to the proviso that a document in electronic form must be capable of being read by the recipient in electronic form and reproduced by the recipient in hard-copy form.

Notices, applications or statements which are to be filed in the High Court must be in hard-copy (paragraph 46, sub-paragraph (3)).

Obtaining Creditor Consent to a moratorium being extended

This is dealt with in paragraphs 22 to 30 of Schedule 8 to the CIGA.

Paragraph 22 applies where a meeting of pre-moratorium creditors is held during what is termed the relevant period for the purpose of deciding whether to consent to a revised end date for a moratorium. Paragraph 3 of Schedule 14 then applies to that meeting as if it were a meeting under sub-paragraph (2) of that paragraph. The effects of this include that the meeting can be held and votes cast by electronic or other means.

The Insolvency Rules (Northern Ireland) 1991 apply for the purposes of the decision by the pre-moratorium creditors. Any references to creditors in those Rules are to be read as references to pre-moratorium creditors and seven of the Rules are to apply in the modified form set out in paragraphs 24 to 30 of Schedule 8,

- (a) Rule 4.061 – modified by paragraph 24
- (b) Rule 4.062 - modified by paragraph 25
- (c) Rule 4.065 - modified by paragraph 26
- (d) Rule 4.068- modified by paragraph 27
- (e) Rule 4.070- modified by paragraph 28
- (f) Rule 4.073- modified by paragraph 29
- (g) Rule 4.077- modified by paragraph 30

The modifications to Rule 4.061 include that for the purposes of those seven Rules the directors summoning a meeting of pre-moratorium creditors under Article 13CC of the Insolvency (Northern Ireland) Order 1989 are to be referred to collectively as “the convener”. Modified Rule 4.061 also provides that,

- The convener has to give notice of the meeting to all the pre-moratorium creditors
- The notice has to be given at least five days before the meeting is due to take place and must state the purpose for which the meeting is being held
- The notice has to inform the creditors that for them to be entitled to vote at the meeting proofs and proxies are to be lodged at a specified place no later than mid-day on the day before the meeting

A modification to Rule 4.065 provides that the convener also has to give at least five days' notice of the meeting to any of the company's personnel he thinks should be told about the meeting or be present at it.

Rule 4.073 (Entitlement to vote (creditors)) is modified to that it has effect as if-

- (a) after paragraph (3) there were inserted-“(3A) Votes are calculated according to the amount of each pre-moratorium creditor’s claim at the date of the “meeting”;
- (b) for paragraph (4) there were substituted-“(4) A debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or the chairman decides to put a higher value on it”;
- (c) for paragraph (5) there were substituted-“(5) If a debt is partly or wholly secured the value of the debt for voting purposes is its full value without deduction of the value of the security”;
- (d) for paragraph (6) there were substituted-“(6) A pre-moratorium creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company at the date of the meeting. (6A) in calculating the amount of any debt for the purpose of paragraph (6), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so as the right has become exercisable solely by virtue of a moratorium for the company coming into force.”

Rule 4.062 is modified to provide that the convener has to nominate a chairman.

Rule 4.068 is modified to provide that the expenses of summoning and holding the meeting are to be paid by the company. Rule 4.070 is modified to makes provision about how the majority vote is to be determined. Rule 4.077 is modified so that it refers to a moratorium instead of to a liquidation and the requirement under that rule for particulars of resolutions passed to be filed in court does not apply.

Applications and filings in the High Court

Certain provisions of the Part 7 of the Insolvency Rules (Northern Ireland) 1991 are modified by paragraph 50 of Part 3 of Schedule 8 to the CICA for the purposes of proceedings under Part 1A of the Insolvency (Northern Ireland) Order 1989 or Part 3 of Schedule 8 to the CIGA:

- Rule 7.08 Filing and service of *application* has effect in relation to a regulated company (within the meaning of Article 13H of the Insolvency (Northern Ireland) Order 1980) as if it also required the application to be served on the appropriate regulator (within the meaning of that Article)
- Rule 7.12(1)(b) has effect as if it listed a monitor in relation to a moratorium
- Rule 7.13B has effect as if the references to an office-holder included a monitor in relation to a moratorium and the list of office-holders in paragraph (2) included a monitor in relation to a moratorium
- Rule 7.13C(2) and (3) have effect as if the list of provisions included Article 13EE

- Rule 7.36(2) has effect as if it required the applicant to serve a sealed copy of the application on the monitor and the company to which the moratorium relates
- Rules 7.07A and 7.08A are omitted.

Identification details for a company

Where a provision in Part 3 of Schedule 8 requires a document to contain identification details for a company that is registered under the Companies Act 2006 in Northern Ireland, the following information must be given—

- (a) its registered name;
- (b) its registered number.

Where a provision requires a document to contain identification details for a company that has registered particulars under section 1046(1) of the Companies Act 2006 (registered overseas companies), the following information must be given—

- (a) the name registered by the company under section 1047 of that Act,
- (b) the number under which it is registered, and
- (c) the country or territory in which it is incorporated.

Where a provision of Part 3 of Schedule 8 requires a document to contain identification details for an unregistered company that does not come within subparagraph (2) the following information must be given—

- (a) the company's name, and
- (b) the postal address of any principal place of business.

Contacts details for a monitor

Where a provision of Part 3 of Schedule 8 requires a document to contain contact details for a monitor, the following information must be given—

- (a) a postal address for the monitor; and
- (b) either an email address, or a telephone number, through which the monitor may be contacted.

4. Entry into a Moratorium: Monitor's Consent to act and appointment

Entry into a moratorium is by directors of an eligible company filing (or lodging) documents at the High Court, or where the company is subject to a winding up petition or an overseas company by application to the Court. Detailed requirements as to a company's eligibility are set out in Schedule ZA1 in Schedule 5 to the Insolvency (Northern Ireland) Order 1989.

The moratorium is a process which has immediate effect upon the directors of the company filing (or lodging) the relevant documents at the High Court.

Director's Notice

The notice under Article 13BC(1)(a) that the directors wish to obtain a moratorium must state the company's address for service

The notice must be authenticated by or on behalf of the directors in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA.

Statement by directors of insolvency

The statement by the directors under Article 13BC(1)(d) must state that the company is, or is likely to become, unable to pay its debts.

Statements by the Monitor

Article 13BC stipulates that the documents filed include statements from the proposed monitor that —

- (i) the monitor is a qualified person;
- (ii) the monitor consents to act as the monitor in relation to the proposed moratorium and;
- (iii) the company is an eligible company
- (iv) The monitor holds the view that it is likely that a moratorium for the company would result in the rescue of the company as a going concern.

The statement by a proposed monitor under Article 13BC(1)(b) should be headed "*Proposed monitor's statement and consent to act*" and contain the following—

- (a) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company,
- (b) the proposed monitor's IP number (the identifying number or reference issued to the insolvency practitioner by a professional body recognised under Article 350 of the Insolvency (Northern Ireland) Order 1989).
- (c) the name of the relevant recognised professional body which is the source of the proposed monitor's authorisation to act in relation to the company, and
- (d) a statement that the proposed monitor consents to act as monitor in relation to the company.

The statement and consent to act must be authenticated by the proposed monitor in accordance with paragraph 49 in Part 3 of Schedule 8 to the CIGA. Any statement under 13BC(1) must state—

- (a) the provision under which it is given or made,
- (b) the nature of the notice or statement,
- (c) the date of the notice or statement, and
- (d) the identification details for the company to which it relates

Timing

Each statement under Article 13BC(1)(b) to (e) must be made within the period of 5 days ending with the day on which the documents under 13BC(1)(a) to (e) are filed with the High Court (or, if the documents are filed on different days, the last of those days). Where documents are filed on different days the moratorium comes into force on the last of those days.

Eligibility

In assessing whether the company is eligible for a moratorium, the monitor must consider whether any exclusions apply, that is whether the company falls under any of the categories below or is otherwise excluded;

- subject to a current or recent insolvency procedure (as defined by schedule ZA1(2))
- Insurers, banks or other entities listed in ZA1(1)

The statement of the proposed monitor should confirm eligibility of the company to enter a moratorium and confirm that the company meets the eligibility requirements of schedule ZA1. The monitor should consider in accordance with their own ethical and professional standards the extent to which any information provided to them by the directors can be relied upon when making the statement.

The statement must also explain that they have come to the view that it is likely that a moratorium would result in the rescue of the company as a going concern (this is analogous to the primary objective of insolvency in paragraph 4(1)(a) Schedule B1 to the Insolvency (Northern Ireland) Order 1989).

5. Effects of Moratorium

Restrictions on insolvency proceedings etc. (Articles 13DB-13DE)

Except in certain circumstances, (e.g. a director presenting a winding-up petition, or a public interest winding-up petition presented by the Department), no insolvency proceedings can be commenced against the company during the moratorium period. If the directors intend to commence insolvency proceedings, they must notify the monitor. 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 Article 70(1)(a),
- (c) a resolution for the voluntary winding up of the company under Article 70(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 15 or 23(1) of Schedule B1 may be filed with the High Court,
- (g) no administrator of the company may be appointed under paragraph 15 or 23(1) of Schedule B1, and
- (h) no administrative receiver of the company may be appointed.

Except with the leave of the High Court:

- No steps may be taken to enforce any security over the company's property (unless it is security created under a financial collateral arrangement) or to repossess any goods in the company's possession under any hire-purchase agreement.
- No other proceedings or other legal process can be commenced or continued during the moratorium, except proceedings before an employment tribunal, relating to claims between an employer and a worker, or with the High Court's permission.
- A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company.

Where a petition (other than an excepted petition) for the winding up of the company has been presented before the moratorium begins, Article 107 ("avoidance of property dispositions etc") of the Insolvency (Northern Ireland) Order 1989 does not

apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium.

While in force the moratorium prevents a floating charge from crystallising and prevents restrictions being imposed by the charge holder on the disposal of any of the company's property.

Security may only be given over a company's assets during the moratorium and will only be enforceable if the monitor consented to the security being given. A monitor can only give consent where they believe that the grant of security would support the rescue of the company as a going concern.

Pre-moratorium debts

The wording used in the definition of "pre-moratorium debt" in Part 1A is intended to bring in the distinction made in *Re Nortel GmbH (in administration) and related companies* [2013] UKSC 52, between provable debts and expenses in administration. Following the Supreme Court's reasoning, it is thought that liabilities such as contribution notices and financial support directions under the Pensions (Northern Ireland) Order 2005 should be considered pre-moratorium debts (and, therefore, not payable during the moratorium) even if the request to pay them arises after the start of the moratorium.

Construction of references to payment holidays (Article 13D)

A reference to pre-moratorium debts for which a company has a payment holiday during a moratorium are 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 (which does not include remuneration in respect of anything done by a proposed monitor before the moratorium begins),
- (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, (includes (a) a sum payable in respect of a period of holiday (for which purpose the sum is to be treated as relating to 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;
- (e) redundancy payments, (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)

Or

- (f) debts or other liabilities arising under a contract involving financial services (within the meaning set out in Schedule ZA2 of Part 1A)

Publicity (Article 13DA)

Where a business of a company is carried on and to which customers or suppliers of goods or services have access, any premises must display in a prominent position so that it may easily be read by such customers or suppliers a notice containing:

- (a) the name of the monitor, and
- (b) that a moratorium is in force for the company

The above information is also required to be displayed on any websites of the company and every business document issued by or on behalf of the company must state the required information. “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.

If a company contravenes the requirements set out in Article 13DA the company commits an offence, and any officer of the company who without reasonable excuse authorises or permits the contravention commits an offence.

6. Obligation to notify moratorium coming into force

Notification by directors

Directors are under a duty to notify the monitor when the moratorium comes into force. Failure to do so without a reasonable excuse is an offence under Article 13BE(4). The moratorium takes effect when the relevant documents are filed with the High Court.

Directors must notify the monitor as soon as reasonably practicable of the date upon which the moratorium comes into force. Delivery may be by the means stipulated in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is sending by post or personal delivery, or may be done electronically under Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA.

Notification to employees of the company

It is important that directors have regard to the interests of employees and Government believes that all good employers will inform their employees of entry into a moratorium. To safeguard employees, when in receipt of notification from the directors that a moratorium has come into force, the monitor should ensure that the directors have informed employees of the effect of the moratorium, its initial length, its effect on their wages, salary and employment rights.

Notification by Monitor

Where directors have notified the monitor that the moratorium has come into force, the monitor is under an obligation to notify the following under Article 13BE;

- (a) The registrar of companies
- (b) all creditors 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 Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

As soon as reasonably practicable the monitor is to notify the registrar of companies, (and where appropriate the Pensions Regulator and the Pension Protection Fund) that a moratorium has come into force in accordance with Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 or Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA. The notice 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 Article 13C(3) or (4), the moratorium will come to an end.

The notice under Article 13BE(2)(a) of the Insolvency (Northern Ireland) Order 1989 to the registrar of companies must be authenticated by the monitor in accordance with paragraph 49 of Schedule 8 to the CIGA.

The monitor is to notify creditors of the coming into force of the moratorium (as soon as reasonably practicable) and the date it will (unless extended) end. The monitor may use either of the two methods of delivery set out in in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is postal or personal delivery, or may send the notification electronically under Rule 12.04 as modified by paragraph 46(2) of Schedule 8 to the CIGA.

The notice to creditors must also explain that the moratorium may be extended with or without the consent of creditors. It would be helpful if the notice explained the effect of the moratorium on claims for pre-moratorium debts, and, also the limits of the extensions that are permitted.

Notices to both creditors and the registrar of companies must contain the monitor's name and address, and the capacity in which they act.

Monitors should note that failure to notify without reasonable excuse constitutes an offence under Article 13BE(5).

Other required notifications

Where the company is a regulated company within the meaning of Article 13H(13) (for example an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000), the monitor must send notice of the coming into force of the moratorium to the appropriate regulator (this will either be the Financial Conduct Authority or the Prudential Regulation Authority).

7. Termination of moratorium

Unless the moratorium is extended (see next section of the guidance) the initial period for the moratorium is 20 business days which begins the business day after the date the moratorium comes into force. The monitor must bring the moratorium to an end under Article 13ED at any point by filing a notice with the High Court under the following circumstances;

- (a) The monitor no longer thinks that the moratorium will 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 directors have failed to comply with a requirement under Article 13EB; (see section on Role and functions of Monitor)
- (d) The monitor thinks that the company is unable to pay moratorium debts of the company that have fallen due (moratorium debts and pre-moratorium debts that the company does not have a payment holiday for under Article 13D).

For the purposes of deciding whether to bring the moratorium to an end under Article 13ED(1)(d) the monitor must disregard—

- (a) any debts that the monitor has reasonable grounds for thinking are likely to be paid within 5 days of the decision, and

- (b) any debts in respect of which the creditor has agreed to defer payment until a time that is later than the decision.

Notice to court under Article 13ED

A notice under Article 13ED(1) of the Insolvency (Northern Ireland) Order 1989 must be filed with the High Court as soon as practicable after the duty in that paragraph arises.

The notice under Article 13ED(1) of the Insolvency (Northern Ireland) Order 1989 must state—

- (a) the provision under which it is given,
- (b) the nature of the notice,
- (c) the date of the notice,
- (d) the name and contact details of the monitor,
- (e) the identification details for the company to which it relates.
- (f) the grounds on which the moratorium is being terminated,
- (g) the monitor's reasons for concluding that those grounds are made out, and
- (h) the date on which the monitor concluded that those grounds were made out.

The notice must be authenticated by or on behalf of the monitor in accordance with paragraph 49 in Part 3 of Schedule 8 to the CIGA.

Timing

In addition, Article 13CH(4) requires that a copy of the notice filed at the High Court must be delivered to the company within 3 business days of the date upon which the notice to the court was filed under Article 13ED(1) and must be accompanied by that notice. Article 13CH(4) also requires that notification be given to the registrar of companies, creditors, (where appropriate the Pensions Regulator and the Pension Protection Fund) where a moratorium is terminated under Article 13ED.

Early termination

The moratorium will

come to an end under Article 13CG if at any time the company enters into a scheme of arrangement under section 899 Companies Act 2006 or an insolvency procedure (a CVA, administration, interim moratorium or liquidation).

Notification under Article 13CG (Company enters into insolvency procedure etc)

The notices under Articles 13CH(1) (notification by directors) and CH(2) (notification by monitor) must state—

- (a) the date on which the company entered into the relevant insolvency procedure, and
- (b) the name and contact details of the supervisor of the voluntary arrangement, the administrator or the liquidator.

The notice under Article 13CH(1) must also state—

- (a) the name of the company to which it relates, and
- (b) the provision by virtue of which the moratorium was extended or came to an end.

Timing

The directors' notice must be delivered to the monitor within five days beginning with the day on which the duty to give the notice arises. Delivery may be by the methods stipulated in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is sending by post or personal delivery, or may be done electronically under Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA.

Monitor's notice

A notice under Article 13CH(2) or (3) of the Insolvency (Northern Ireland) Order 1989 must be given within the period of 5 days beginning with the day on which the duty to give the notice arises. The notice must state—

- (a) the provision under which it is given,
- (b) the nature of the notice,
- (c) the date of the notice,
- (d) that it is given by the monitor acting in that capacity,
- (e) the name and contact details of the monitor, and
- (f) the identification details for the company to which it relates

A notice under Article 13CH(2) or (3) that is given to the registrar of companies must be authenticated by or on behalf of the monitor in accordance with paragraph 49 in part 3 of Schedule 8 to the CIGA.

A notice under 13CH(2) should where it is appropriate (the company is or has been an employer in respect of an occupational pension scheme that is not a money purchase scheme or the company is an employer in respect of such a pension scheme that is an eligible scheme within the meaning given by Article 110 of the

Pensions (Northern Ireland) Order 2005) be sent to the Pensions Regulator and the Pension Protection Fund.

Article 13H(3) requires that, in cases where the company is regulated company, the monitor must also notify the appropriate regulator (the Financial Conduct Authority or the Prudential Regulation Authority) of a moratorium.

Monitors should note that failure to notify relevant persons without reasonable excuse constitutes an offence under 13CH(7).

Duty of directors to notify monitor of insolvency proceedings etc (Article 13DF)

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 23(2) of Schedule B1.

Timing

The directors are to notify the monitor under 13DF(1) before the period of 3 days ending with the day on which the step mentioned there is taken.

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 Article 70(1)(b) of the Insolvency (Northern Ireland) Order 1989 within the period of 3 days beginning with the day on which the duty to give the notice arises.

8. Extension of end of moratorium

A moratorium cannot be extended once it has come to an end. A moratorium under Part 1A can be extended from the initial period of 20 business days under the following provisions:

- Article 13CA – Extension (for a further 20 business days) without creditor consent
- Article 13CB – Extension (beyond 40 business days) with creditor consent. A moratorium may be extended more than once, subject to not being greater than one year from commencement.
- Article 13CD– Extension by the High Court on application of the directors. A moratorium may be extended under this Article more than once.

- Article 13CE – Extension while proposal for CVA pending
- Article 13CF – Extension by High Court in the course of other proceedings.
The High Court may extend the moratorium to a date specified in the order or may make such order as it thinks appropriate

There is no requirement for the monitor to notify creditors or the registrar of companies that the moratorium has ended on expiry of the initial period of 20 business days.

Notification by Directors

A notice under Article 13CA(1)(a) or 13CB(1)(a) of the Insolvency (Northern Ireland) Order 1989 must state the company's address for service,

A notice or statement under Article 13CA(1), 13CB(1) or 13CD(2) of the Insolvency (Northern Ireland) Order 1989 must state -

- (a) the provision under which it is given or made,
- (b) the nature of the notice or statement,
- (c) the date of the notice or statement, and
- (d) the identification details for the company to which it relates

Notices under these Articles must be authenticated by or on behalf of the person giving the notice or making the statement in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA.

Where the moratorium has come to an end by virtue of the company entering into a relevant insolvency procedure (see section 7 of the guidance) then the notice must identify the office-holder for that procedure and provide their contact details. It must also indicate the proposed date of entry to the insolvency procedure.

Delivery of the order may be by the means stipulated in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is sending by post or personal delivery, or may be done electronically under Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA.

Monitor's statement

A statement by the monitor under Article 13CA(1)(d) or 13CB(1)(d) must contain contact details for the monitor. The following information must be given—

- (a) a postal address for the monitor; and
- (b) either an email address, or a telephone number, through which the monitor may be contacted.

The statement must be authenticated by the monitor in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA.

Notification by the Monitor

The monitor must notify the registrar of companies and all creditors of the company of whose claim the monitor is aware (i.e. pre-moratorium and moratorium creditors) of an extension or end of the moratorium.

The notice to the registrar of companies must be given within 5 days of the date upon which it was received and be authenticated.

The monitor may use any of the means of delivery stipulated in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is sending by post or personal delivery, or may use electronic delivery under Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA.

The notice to creditors must—

- (a) identify the provision under which it is given,
- (b) state the nature of the notice,
- (c) state the date of the notice,
- (d) state that it is given by the monitor acting in that capacity,
- (e) state the name and contact details of the monitor, and
- (c) contain the identification details for the company to which it relates.

Other required notifications

Where the company is a regulated company within the meaning of Article 13H(13) the monitor must send notice of the extension or end of the moratorium to the appropriate regulator.

Monitors should note that failure to notify without reasonable excuse constitutes an offence under Article 13CH(7).

Extension by directors without creditor consent (Article 13CA)

On filing of the relevant documents in this Article, the period of extension begins immediately after the initial period ends and the extension ends on the 20th business day after the initial period ends.

Directors' Statements

The statement under Article 13CA(1)(b) by the directors that all moratorium debts that have fallen due have been paid or otherwise discharged must be authenticated and dated by the person(s) making them. The statement under 13CA(1)(c) by the

directors must state the company is, or is likely to become, unable to pay its debts and be authenticated and dated by the persons making them.

Monitor's Statement

The statement by the monitor under Article 13CA(1)(d) must state that they have come to the view that an extension to the moratorium is likely to result in the rescue of the company as a going concern.

The statement must also be authenticated and dated by the person making it.

Extension by directors with creditor consent (Article 13CB)

Where directors intend to hold a meeting of pre-moratorium creditors for the purpose of 13CB they must give notice of the meeting and the venue, to the pre-moratorium creditors. The notice must be given not less than 5 days before the date fixed for the meeting. It must specify the purpose for which the meeting is being held and must inform the pre-moratorium creditors that they will only be entitled to vote at the meeting if they have lodged proofs and (if applicable) proxies at a specified place no later than 12.00 hours on the business day preceding the date fixed for the meeting.

Directors' notice to monitor of extension of moratorium

The directors must notify the monitor within 5 days beginning with the day on which the moratorium was extended, and the notice must state:

- (a) the name of the company to which it relates, and
- (b) the provision by virtue of which the moratorium was extended or came to an end.

Directors' Statements

The statement under Article 13CB(1)(b) by the directors that all moratorium debts that have fallen due have been paid or otherwise discharged must be authenticated and dated by the person(s) making them. The statement under Article 13CB(1)(c) by the directors must state that the company is, or is likely to become, unable to pay its pre-moratorium debts and be authenticated and dated by the persons making them.

The statement under Article 13CB(1)(e) by the directors must state that creditors' consent was obtained, the revised end date of the moratorium and be authenticated and dated by the persons making them.

Timings

Each statement under Article 13CA(1)(b) to (d) or 13CB(1)(b) to (e) must be made within the period of 3 days ending with the day on which the documents under Article

13CA(1)(a) to (d) or 13CB(1)(a) to (e) are filed with the High Court (or, if the documents are filed on different days, the last of those days).

Creditor Consent for the purposes of Article 13CB (Article 13CC)

For the purposes of the moratorium the consent of creditors is obtained by the directors rather than the monitor. The decision as to consent is to be made at a meeting of pre-moratorium creditors.

Paragraph 3 of Schedule 14 then applies to that meeting as if it were a meeting under sub-paragraph (2) of that paragraph. The effects of this include that the meeting can be held and votes cast by electronic or other means.

The Insolvency Rules (Northern Ireland) 1991 apply, subject to the modifications to those Rules made by paragraphs 23 to 30 in Part 3 of Schedule 8 to the CIGA.

Directors may not be familiar with the rules surrounding meetings in insolvency procedures and whilst it is not part of a monitor's statutory duty to assist directors in obtaining the consent of creditors they may choose to do so in an advisory capacity.

Only pre-moratorium creditors can consent to an extension of the moratorium period for the purpose of Article 13.CB. When calculating creditors' voting power any debts that have been paid during the course of the moratorium should be excluded.

Voting requirements

Eligibility to vote is dealt with in,

- paragraph (1) of Rule 4.061 (General power to call meetings) of the Insolvency Rules (Northern Ireland) 1991, as modified by paragraph 24 in Part 3 of Schedule 8 to the CIGA, and
- paragraph (1) of Rule 4.073(1) of the Insolvency Rules (Northern Ireland) 1991.

To be entitled to vote at a meeting a creditor must have lodged, at the place specified in the notice of the meeting, proof of the debt due to them and (if applicable) a proxy, no later than 12.00 hours on the business day preceding the date fixed for the meeting.

Calculation of voting rights

This is dealt with in the modified provisions of Rule 4.073 in paragraph 29 in Part 3 of Schedule 8 to the CIGA.

- Votes are to be calculated according to the amount of each pre-moratorium creditor's claim at the date of the meeting

- Any debt which has not been liquidated or ascertained is to be valued at £1 unless the convenor or chairman decides to put a higher value on it
- The value of a wholly or partly secured debt is, for voting purposes, its full value without deducting the value of the security
- A pre-moratorium creditor under a hire –purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company at the date of the meeting. No account is to be taken of any amount attributable to the exercise of any right under the agreement so far as that right has become exercisable solely by virtue of the moratorium coming into force.

Requisite majorities

Rule 4.070 has effect as if for it (and its heading) there were substituted—
 “4.070. Requisite majorities

(1) A decision to consent to a revised end date for a moratorium under Article 13CC of the Order is made if, of those voting—

- (a) a majority (in value) of the pre-moratorium creditors who are secured creditors vote in favour of the proposed decision, and
- (b) a majority (in value) of the pre-moratorium creditors who are unsecured creditors vote in favour of the proposed decision.

(2) But a decision to consent to a revised end date for a moratorium under Article 13CC of the Order is not made if, of those voting, either—

- (a) a majority of the pre-moratorium creditors who are unconnected secured creditors vote against the proposed end date, or
- (b) a majority of the pre-moratorium creditors who are unconnected unsecured creditors vote against the proposed end date.

(3) For the purposes of paragraph (2)—

- (a) a creditor is unconnected unless the convenor or chair decides that the creditor is connected, and
- (b) the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.”

Where the monitor provides assistance to the directors it would be helpful that the monitor recommended that the directors kept a record of the decision.

Extension of moratorium by High Court on application of directors (Article 13CD)

An application for an extension by the directors in relation to a company must state—

- (a) that it is made under that Article,
- (b) the length of the extension sought,

- (c) identification details for the company to which the application relates, and
- (d) the company's address for service.

The application must be authenticated by or on behalf of the directors in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA.

Statements by directors

The statement under Article 13CD(2)(a) by the directors that all moratorium debts of the company that have fallen due have been paid or otherwise discharged must be authenticated and dated by the persons making them. The statement under Article 13CD(2)(b) by the directors must state that the company is, or is likely to become, unable to pay its pre-moratorium debts and be authenticated and dated by the persons making them

A statement from the directors must also be made as to whether pre-moratorium creditors (as defined by Article 13CC(5)) and (6) have been consulted about the application and if not why not.

Statement by monitor

The statement by the monitor under Article 13CD(2)(d) must state they have come to the view that it is likely that an extension of the moratorium would result in the rescue of the company as a going concern.

Timing

A statement under Article 13CD(2) must be made within the period of 3 days ending with the day on which the application under that Article is made.

Extension while proposal for CVA pending (Article 13CE)

Where the moratorium is extended under this Article (13CE(2)(a)) or ended under Article 13CE (2)(b) the directors must notify the monitor within the period of 5 days beginning with the day on which the moratorium was extended or came to an end. The notice must state the name of the company to which it relates and the provision by virtue of which the moratorium was extended or came to an end.

9. Priority of moratorium debts

A moratorium debt and pre-moratorium debt are defined in Article 13HD. In the following paragraphs "wages or salary" have the same meaning as in Article 13D of the Insolvency (Northern Ireland) Order 1989.

Schedule 7 to CIGA introduces new Article 148A in the Insolvency (Northern Ireland) Order 1989 and a new paragraph 65A in Schedule B1 to that Order which sets the priority of payment of moratorium debts in a subsequent winding-up or administration respectively. Pre-moratorium debts include priority pre-moratorium debts as defined by 148A(3).

Priority of moratorium debts etc in subsequent winding up and in subsequent administration

Where Article 148A of the Insolvency (Northern Ireland) Order 1989 applies (*proceedings for the winding up of a company are begun within the period of 12 weeks beginning with the day after the end of a moratorium under Part 1A*) the following are payable out of the company's assets in preference to all other claims in the following order of priority-

- (a) Any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
- (b) Moratorium debts and priority pre-moratorium debts.

Rules then specify that moratorium and pre-moratorium debts are payable in the following order of priority-

- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for Article 197B(3) or (4) of that Order, the supplier would not have had to make that supply;
- (b) wages or salary arising under a contract of employment;
- (c) other debts or other liabilities apart from the monitor's remuneration or expenses;
- (d) the monitor's remuneration or expenses.

Where paragraph 65A(1) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 applies (a company enters administration within the period of 12 weeks beginning with the day after the end of a moratorium under Part 1A) the administrator must make a distribution to the creditors of the company in respect of moratorium debts and priority pre-moratorium debts. That distribution is in priority to any security to which paragraph 71 of Schedule B1 applies and any sums payable under paragraph 100 of that Schedule. Rules specify that the moratorium and pre-moratorium and debts rank among themselves in the same order of priority as that set out above in respect of winding-up.

10. Restrictions (payments and disposals of property and others)

Restrictions on payment of certain pre-moratorium debts (Article 13DJ)

The company may make some payments in respect of pre-moratorium debts for which the company has a payment holiday, subject to certain limits. Total payments should not exceed the maximum limit set out in Article 13DJ; the greater of £5,000 or 1% of the value of the unsecured debts owed by the company at the start of the moratorium.

The monitor may give consent to the company to make payments of pre-moratorium debts for which the company has a payment holiday under Article 13D above these limits but only if the monitor thinks that it will support the rescue of the company as a going concern. Where consent is given it is recommended that the monitor document the reasons for coming to that decision in line with regulation 13 of IPR(NI) 2006.

Restrictions on disposals of property (Article 13DK)

The company may dispose of property that is not subject to a security, in the ordinary way of its business, if the monitor consents, or if the disposal is in pursuance of a court order. In addition, the monitor may give consent to the disposal only if the monitor thinks that it will support the rescue of the company as a going concern. It is recommended that the monitor document their reasons for coming to that decision in keeping with regulation 13 of IPR(NI) 2006.

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 either Article 13DM(1) (with the permission of the High Court) or the terms of the security.

Restrictions on disposal of hire-purchase property (Article 13DL)

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 either Article 13DN(1) (with the permission of the High Court) or the terms of the agreement.

Enforcement and legal proceedings (Article 13DC)

During a moratorium 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 High Court.

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 High Court.

No steps may be taken to repossess goods in the company's possession under any hire-purchase agreement, except with the permission of the High Court.

No legal process (including legal proceedings, enforcement or distress) 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 High Court.

The court may not grant permission for the purpose of enforcing a pre-moratorium debt for which the company has a payment holiday during the moratorium or for the purpose of crystalizing a floating charge.

Restrictions on obtaining credit (Article 13DG)

It is an offence for the company to obtain credit to the extent of £500 or more from a person unless that person has been informed that a moratorium is in force in relation to the company. It is also an offence for any officer of the company who without reasonable excuse, authorises or permitted) the company to obtain of credit beyond this amount in these circumstances.

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 to the company, and
- (c) the company being paid in advance (whether in money or otherwise) for the supply of goods or services.

Restrictions on grant of securities etc (Article 13DH)

The company may grant a security during the moratorium only if the monitor consents. It is recommended that the monitor document their reasons for coming to that decision in accordance with regulation 13 of IPR(NI) 2006. The monitor can only consent if they think the granting of the security will support the rescue of the company as a going concern.

Security granted by a company during a moratorium may only be enforced if the monitor consented to the granting of the security.

If the company grants security in contravention of Article 13DH it commits an offence and, any officer of the company who authorised or permitted the granting of security without reasonable excuse also commits an offence.

Restrictions on transactions (Article 13DI)

If the company enters into any of the following transactions it commits an offence, and any officer of the company who without reasonable excuse authorised or permitted the company to enter into the transaction commits an offence:

- enters into a market contract (has the same meaning as in Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990)
- enters into a financial collateral arrangement (has the same meaning as in the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I.2003/3226))
- gives a transfer order, (same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) (S.I. 1999/2979))
- grants a market charge (has the same meaning as in Part 5 of the Companies (No, 2) (Northern Ireland) Order 1990) or a system-charge, (same meaning as given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (S.I. 1996/252); or
- provides any collateral security (meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

11. Permitted disposals

Disposal of charged property free from charge & disposal of hire purchase property (Articles 13DM and 13DN)

During a moratorium, the company may, with the permission of the High Court dispose of property which is subject to a security (any property which is subject to a financial collateral arrangement, market charge, a system charge or a collateral security charge as defined by Article 13DI is excluded).

During a moratorium, the company, may with the permission of the High Court dispose of goods which are in the possession of the company under a hire-purchase agreement.

The application to the High Court must comply with Rule 7.07 of the Insolvency Rules (Northern Ireland) 1991 and must be authenticated in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA. The Court must fix a venue for the hearing. The company must serve a sealed copy of the application, endorsed with notice of the venue for the hearing, on the holder of the security or the hirer, as the case may be, at least 14 days before the hearing date, and where the company is a regulated company within the meaning of Article 13H(13), to the appropriate regulator.

12. Challenge to Directors' actions

During the moratorium or after it has ended, a creditor or member of the company may apply to the High Court on the grounds that the company's affairs, business and property are being or have been managed in a way that has unfairly harmed applicant's interests, or that a proposed action would cause such harm. The Court may make any order it thinks fit. The Court's order may, amongst other things, regulate the management of the directors, require the directors to stop taking the action complained of, or require the summoning of a meeting of the company's creditors.

Where the Court makes an order by virtue of Article 13FB(4)(c) requiring the summoning of a meeting of a company's creditors, Rules 4.061 to 4.077 (meetings), Part 8 (proxies) and Rule 12.05 (quorum) of the Insolvency Rules (Northern Ireland) 1991 apply for the purposes of that meeting to the extent set out in the Court's order and subject to any modifications set out in the Court's order. Where the company is a regulated company, the directors must give the appropriate regulator notice of any meeting of the company's creditors that is to be held for the purposes of Article 13FB(4)(c).

13. Challenge to monitor's actions and replacement of monitor by High Court (or appointment of additional monitor)

Article 13F permits a creditor, director, member of the company or any person affected by the moratorium to challenge the actions of the monitor for an act, omission or decision by an application to the High Court. This mirrors the challenge that can be mounted against a nominee in a CVA under Part 2 of the insolvency (Northern Ireland) Order 1989. The challenge may be brought during the moratorium or after it has ended.

Where the court brings the moratorium to an end under Article A13F the directors must notify the monitor that the moratorium has come to an end (within 5 days).

The monitor must notify the registrar of companies and creditors of when the moratorium ended within the period of 5 days beginning with the day on which the monitor received the notice from the directors. The notice to creditors must—

- (a) identify the provision under which it is given,
- (b) state the nature of the notice,
- (c) state the date of the notice,
- (d) state that it is given by the monitor acting in that capacity
- (e) state the name and contact details of the monitor, and
- (f) contain the identification details for the company to which it relates

Article 13FC provides the Board of the Pension Protection Fund the same rights to challenge the actions of the monitor as exist under Article 13F (as well as the same rights to challenge the actions of the company directors as exist under A44). These rights can be exercised in circumstances where a moratorium is in force in relation to a company that is an employer in respect of an eligible scheme, or 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 the trustees or managers of the scheme are a creditor of the company.

Replacement of monitor by the High Court or additional monitor (Article 13EE)

A director or monitor may apply to the High Court to replace the monitor with another insolvency practitioner or the Court may make an order authorising the appointment of an additional monitor. Where the company is a regulated company then the Court may only order that a person be appointed as an additional or replacement monitor if the regulator has given consent to that person's appointment.

A statement under Article 13EE(4) of the Insolvency (Northern Ireland) Order 1989 must be headed "Proposed monitor's statement and consent to act" and must contain the following—

- (a) a certificate that the proposed monitor is qualified to act as an insolvency practitioner in relation to the company,
- (b) the proposed monitor's IP number,
- (c) the name of the relevant recognised professional body which is the source of the proposed monitor's authorisation to act in relation to the company, and
- (d) a statement that the proposed monitor consents to act as monitor in relation to the company.

Timing

The statement under Article 13EE(4) must be made within the period of 5 days ending with the day on which it is filed with the High Court.

Monitor's notice

Where, following a hearing, the High Court makes an order requiring a person to cease to act as a monitor, or providing for the replacement of a monitor, or the appointment of an additional monitor, the monitor is required under Article 13EE(8) to notify the following persons as soon as reasonably practicable after the date on which they are to cease acting as monitor, or to be replaced or on which they are to begin acting, as monitor:

- (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 Article 110 of the Pensions (Northern Ireland) Order 2005, the Board of the Pension Protection Fund.

A notice under Article 13EE(8) of the Insolvency (Northern Ireland) Order 1989 must state—

- (a) the provision under which it is given,
- (b) the nature of the notice,
- (c) the date of the notice,
- (d) the identification details for the company to which it relates,
- (e) that it is given by the monitor acting in that capacity, and
- (f) the name and contact details of the monitor.

The notice must be authenticated by the monitor in accordance with paragraph 49 of in Part 3 of Schedule 8 to the CIGA.

Where relevant, a notice must also be sent by the monitor to the appropriate regulator as defined by Article 13H(13). The Court may make an order under Article 13EE(1) only if the appropriate regulator has given its written consent to the appointment of the proposed monitor.

Monitors should note that failure to comply with without reasonable excuse constitutes an offence under Article 13EE(9).

The monitor may use any of the means of delivery stipulated in Rule 0.3 of the Insolvency Rules (Northern Ireland) 1991 that is sending by post or personal

delivery, or may use electronic delivery under Rule 12.04 of those Rules, as modified by paragraph 46(2) of Schedule 8 to the CIGA.

14. Monitor's remuneration

The remuneration of a monitor in relation to a moratorium, including that for pre-appointment work is a contractual matter between the company and the monitor. Therefore, those Rules in the Insolvency Rules (Northern Ireland) 1991 which relate to an office-holder's remuneration do not apply to the monitor's fees.

However, the monitor should note that if in subsequent insolvency proceedings an administrator or liquidator of the company (that was subject to a prior moratorium) has cause to believe that the remuneration charged by the monitor was excessive, they may bring a challenge to the amount of remuneration charged by way of an application to the High Court.

When an application under this provision is made the procedural rules governing applications to court in the Insolvency Rules (Northern Ireland) 1991 will apply with the modifications set out in paragraph 50 in Part 3 of Schedule 8 to the CIOGA to proceedings under Part 1A. A time limit of 2 years is applicable for challenging the remuneration of a monitor. This period runs from the day after the day on which the moratorium ends. The permission of the Court to make the application is not required. The Court may order the monitor to repay some or all of the remuneration, or make such other order that it thinks fit.

15. Schedule 8: Part 2 - N.I. Moratoriums: Temporary modifications in light of coronavirus

Schedule 8, Part 2 sets out a number of temporary modifications to the moratorium provisions in Part 1A. These are set out below in summary (with details of modifications to specific Articles to follow) and apply during the "*relevant period*" (see *below*).

- Companies that, within twelve months prior to filing for a moratorium have been subject to a CVA or in administration, are permitted to file for a moratorium.
- A company that has had a moratorium during the last 12 months will be permitted to file for a further moratorium.
- The monitor's statement has been adjusted to account for the impact of the Covid 19 pandemic.

- Directors of an eligible company that is subject to an outstanding winding up petition may obtain a moratorium for the company without having to apply to the High Court.

When these temporary modifications end then, provided that the moratorium was entered into during the time that those modifications were in effect, those modifications will continue to apply in respect of that moratorium until it comes to an end. It will not be reassessed under the unmodified/permanent provisions.

Where this is the case then eligibility for an extension, or further extension, to that moratorium will also be determined in accordance with the temporary modifications even if those temporary modifications have ceased to apply for all other purposes at the time the extension, or further extension, is sought.

Part 1 - Meaning of “relevant period”

The relevant period begins with the day on which Schedule 8 comes into force and ends on the 30 September 2020. The end date may be shortened by regulations.

“Eligible” company: additional exclusion

During the relevant period, a company is not eligible to obtain a moratorium for the purposes of Articles 13B, 13BA or 13BB of the Insolvency (Northern Ireland) Order 1989 if the company—

- (a) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on a regulated activity within the meaning of that Act, and
- (b) is not subject to a requirement imposed under that Act to refrain from holding money for clients.

Relaxation of conditions for obtaining moratorium etc

For the purposes of obtaining a moratorium under Article 13B of the Insolvency (Northern Ireland) Order 1989 during the relevant period:

- 13B has effect as if paragraph (1)(a) (companies subject to a winding up petition) were omitted. For the purposes of obtaining a moratorium under this Article:
- 13BC has effect as if paragraph (1)(e) (proposed monitor’s statement) ends with “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”
- Schedule ZA1 has effect as if paragraph 2(1)(b) and (2)(b) (at any time during the period of 12 months ending with the filing date, the company was subject to a voluntary arrangement or the company is in administration) were omitted.

- 13BA (obtaining a moratorium by a company subject to a winding up petition) - A moratorium may only be obtained under this Article of the Insolvency (Northern Ireland) Order 1989 by an overseas company.

In relation to an application for a moratorium made under Article 13BB (Obtaining a moratorium for other overseas companies) of the Insolvency (Northern Ireland) Order 1989 during the relevant period—

- Article 13BC(1)(e) has effect as if at the end there were inserted “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”;
- Schedule ZA1 to that Order has effect as if paragraph 2(1)(b) and (2)(b) were omitted.

Relaxation of conditions for extending moratorium etc

In relation to a moratorium that comes into force during the relevant period the following modifications apply:

- Extension under Articles 13CA and 13CB - these Articles have effect as if paragraph (1)(d) (*monitor’s statement*) ends with “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus”.
- Extension under 13CD - this Article has effect as if paragraph (2)(d) (monitor’s statement) ends with “or would do so if it were not for any worsening of the financial position of the company for reasons relating to coronavirus.”.

Monitoring (Article 13EA)

Article 13EA(1) has effect as if for the words from “it remains likely” to the end, there were substituted “it is likely that the moratorium will result in the rescue of the company as a going concern, or that, if one were to disregard any worsening of the financial position of the company for reasons relating to coronavirus, it is likely that the moratorium would result in the rescue of the company as a going concern.”.

Termination by the monitor (Article 13ED)

Article 13ED(1)(a) has effect as if there were substituted for it “the monitor thinks—
(i) that the moratorium is not likely to result in the rescue of the company as a going concern, and (ii) that, even if one were to disregard any worsening of the financial

position of the company for reasons relating to coronavirus, the moratorium would not be likely to result in the rescue of the company as a going concern.”.

16. Further Information

Any enquiries regarding this document should be sent to the policy team at:

jack.reid@economy-ni.gov.uk