JUDICIARY OF
ENGLAND AND WALES

Practice Statement (Companies: Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006)

1 This practice statement replaces the *Practice Statement (Companies: Schemes of Arrangement)* [2002] 1 WLR 1345. It is directed to the practice to be followed on applications pursuant to Part 26 or Part 26A of the Companies Act 2006 (the "2006 Act") seeking the sanction of the court to a scheme of arrangement between a company and its creditors and/or members (a "Part 26 scheme" and a "Part 26A scheme" respectively). The purpose is to enable issues concerning the jurisdiction of the court to sanction the scheme, the composition of classes of creditors and/or members and the convening of meetings to be identified and if appropriate resolved early in the proceedings. To achieve these objects the following practice should be observed.

2 It is the responsibility of the applicant, in relation to both a Part 26 scheme and a Part 26A scheme, to determine whether more than one meeting of creditors and/or members is required by a scheme and if so to ensure that those meetings are properly constituted.

3 In relation to Part 26 schemes, applications under section 896 of the 2006 Act (to convene a meeting or meetings of creditors or members) may be listed before either an Insolvency and Companies Court Judge or a High Court Judge, but applications in respect of a scheme which gives rise to any of the issues identified in paragraph 6 below should be listed before a High Court Judge. Applications under section 899 of the 2006 Act (to sanction a Part 26 scheme) will be listed before a High Court Judge.

4 All applications under section 901C of the 2006 Act (to convene a meeting or meetings of creditors and/or members) and all applications under section 901F of the 2006 Act (to sanction a Part 26A scheme) will be listed before a High Court Judge.

5 Where a High Court Judge hears an application under section 896 or section 901C of the 2006 Act the same judge should, if possible, hear the application to sanction the scheme.

6 It is the responsibility of the applicant, by evidence in support of the application or otherwise, to draw to the attention of the court at the hearing for an order that meetings of creditors and/or members be held ("the convening hearing"):

a. any issues which may arise as to the constitution of meetings of members or creditors or which otherwise affect the conduct of those meetings;

b. any issues as to the existence of the court's jurisdiction to sanction the scheme;

c. (in relation to a Part 26A scheme) any issues relevant to the conditions to be satisfied pursuant to section 901A of the 2006 Act and, if an application under section 901C(4) of the 2006 Act is to be made, any issues relevant to that

application; and

d. any other issue not going to the merits or fairness of the scheme, but which might lead the court to refuse to sanction the scheme.

7 Where an application is made to convene a meeting or meetings in respect of a scheme which gives rise to any of the issues identified in paragraph 6 above, unless there are good reasons for not doing so, the applicant should, prior to the convening hearing, take all steps reasonably open to it to notify any person affected by the scheme of the following matters:

a. that the scheme is being promoted,

b. the purpose which the scheme is designed to achieve and its effect,

c. the meetings of creditors and/or members which the applicant considers will be required and their composition,

d. the other matters that are to be addressed at the convening hearing, including the issues identified in paragraph 6 above,

e. the date and place fixed for the convening hearing,

f. that such persons are entitled to attend the convening and sanction hearings, and

g. how such persons may make further enquiries about the scheme.

It is the responsibility of the applicant to ensure that such notification is given in a concise form and is communicated to all persons affected by the scheme in the manner which is most appropriate to the circumstances of the case.

8 Save for the circumstance in which there are good reasons for not giving the notification identified in paragraph 7 above, it should be given to persons affected by the scheme in sufficient time to enable them to consider what is proposed, to take appropriate advice and, if so advised, to attend the convening hearing. What is adequate notice will depend on all the circumstances. The evidence at the convening hearing should explain the steps which have been taken to give the notification and what, if any, response the applicant has had to the notification.

9 Where an issue identified in paragraph 6 above has been drawn to the attention of the court it will consider whether to determine that issue forthwith, or whether to give directions for the resolution of that issue.

10 While members and/or creditors will still be able to appear and raise objections based on an issue identified in paragraph 6 above at the sanction hearing, the court will expect them to show good reason why they did not raise the issue at an earlier stage.

11 In considering whether or not to make an order convening meetings of members and/or creditors (a “meetings order”) the court will consider whether more than one meeting of members and/or creditors is required, and if so what is the appropriate composition of those meetings.

12 A meetings order may include an order giving anyone affected a limited time in

which to apply to vary or discharge that order with the meetings of members and/or creditors to take place in default of any such application within the time prescribed.

13. The evidence for the convening hearing should describe how it is proposed that members and/or creditors are to be given notice of any meetings convened to consider the scheme. Where interests in the applicant's debt are held indirectly, for example through intermediaries, if it is proposed that the votes to be cast at the meetings should by some method reflect the views of persons holding such indirect interests, the evidence should set out the applicant's proposals in that respect and any facts justifying those proposals.

14 Explanatory statements should be in a form and style appropriate to the circumstances of the case, including the nature of the member and/or creditor constituency, and should be as concise as the circumstances admit. In addition to complying with the provisions of section 897 or section 901D (as the case may be) of the 2006 Act, the commercial impact of the scheme must be explained and members and/or creditors must be provided with such information as is reasonably necessary to enable them to make an informed decision as to whether or not the scheme is in their interests, and on how to vote on the scheme. Where a document is incorporated into the explanatory statement by reference, readers should be directed to the material part(s) of the document.

15 The court will consider the adequacy of the explanatory statement at the convening hearing. The court may refuse to make a meetings order if it considers that the explanatory statement is not in an appropriate form. However, the court will not approve the explanatory statement at the convening hearing, and it will remain open to any person affected by the scheme to raise issues as to its adequacy at the sanction hearing.

Sir Geoffrey Vos
Chancellor of the High Court
26 June 2020