

# Client Alert

## Courts of England and Wales introduce new Practice Statement on Schemes of Arrangement

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On 30 June 2020, the Chancellor of the High Court issued a new Practice Statement relating to Schemes of Arrangement under Part 26 and Part 26A of the Companies Act 2006. The text of the new Practice Statement can be accessed [here](#). The new Practice Statement replaces the previous Practice Statement from 2002.

### Key features of the new Practice Statement

The new Practice Statement sets out the practice to be followed by all companies proposing a scheme of arrangement, and it is intended to ensure that certain key issues are identified and, if appropriate, resolved early in the scheme of arrangement process.

The new Practice Statement incorporates or expands on a number of principals from existing case law and practice in this area. By combining guidance applicable to schemes under the “old” Part 26 and the “new” Part 26A of the Companies Act, the new Practice Statement reinforces the theme that these two mechanisms will largely follow similar processes (to the extent possible).

As the Practice Statement is not primary legislation, it does not address some of the open questions that have arisen following the introduction of the Corporate Insolvency and Governance Act 2020 (for a summary of the new legislation please see our previous client alert [here](#)). In particular, the new Practice Statement does not address how the Court might expect the company to evidence that it believes a class does not have a “genuine economic interest” and therefore should be denied a vote, nor does it give any guidance regarding questions of valuation. These important questions will therefore remain to be addressed in case law as the “new” scheme is adopted and pursued by companies in distress.

Some key provisions of the new Practice Statement are summarised below.

- **Purpose:** The new Practice Statement adds to the list of key issues to be identified early in the proceedings issues concerning the jurisdiction of the Court to sanction the scheme, and clarifies that issues concerning classes are relevant to classes of a company’s members (not just its creditors).

- **Court listing:** The new Practice Statement emphasizes that, “*if possible*” applications should be listed before the same Judge at both the first (“convening”) hearing and at the second (“sanction”) hearing.
- **Matters for evidence at convening hearing:** The new Practice Statement includes in the list of matters to be drawn to the attention of the Court at the convening hearing any issues as to the existence of the court’s jurisdiction to sanction the scheme, any issues that might be relevant to the conditions to a scheme under Part 26A of the Companies Act, and 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.
- **Matters to be notified to persons affected by the scheme:** The new Practice Statement also specifies the matters to be notified to persons affected by the scheme. These include the fact and purpose of the scheme, details of the meetings to be convened and composition of classes for voting, the matters for evidence (see above), and details of the convening hearing (which it should be clear that affected persons are entitled to attend).
- **Sufficiency of notice periods:** The new Practice Statement emphasises the importance of giving persons affected by a scheme “*sufficient time to enable them to consider what is proposed, to take appropriate advice and, if so advised, to attend the convening hearing*”. The new Practice Statement does not indicate any fixed time periods, but rather states that adequate notice will depend on the circumstances. From initial application of the new Practice Statement, the Court will likely look at the identity of creditors as an important factor in assessing the adequacy of notice periods, and will potentially encourage longer notice period be used than has become market practice.
- **Voting for holders of intermediated securities:** The new Practice Statement specifically provides for situations where a scheme company wishes to count as its “creditors” for voting purposes the indirect holders of debt interests (i.e. the beneficially holders), rather than intermediate legal holders. In these cases, the new Practice Statement requires that appropriate evidence of the proposed process for voting by these indirect holders be submitted at the convening hearing. This reflects market practice that allows for beneficial holders of interests in bonds and notes to vote on a scheme where legal title is held by a trustee or common depositary.
- **Communications to be “concise”:** The new Practice Statement emphasises that communications with persons affected by schemes should be “*concise*”.
- **Adequacy of Explanatory Statement:** The new Practice Statement, provides that the Court at the convening hearing stage must consider the “*adequacy*” of the explanatory statement. From initial application of the new Practice Statement, the extent of this consideration is likely to be the subject of further examination as case law develops.

The new Practice Statement is already in effect, and has been applied in the matters of *ColourOz Investment 2 LLC and Others*. Milbank advises the scheme companies in these cases.

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