



Companies Act 1985

1985 CHAPTER 6

PART XIII

ARRANGEMENTS AND RECONSTRUCTIONS

425 Power of company to compromise with creditors and members

- (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.
- (3) The court's order under subsection (2) has no effect until an office copy of it has been delivered to the registrar of companies for registration ; and a copy of every such order shall be annexed to every copy of the company's memorandum issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting the company or defining its constitution
- (4) If a company makes default in complying with subsection (3), the company and every officer of it who is in default is liable to a fine.
- (5) An order under subsection (1) pronounced in Scotland by the judge acting as vacation judge in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933 is not subject to review, reduction, suspension or stay of execution.
- (6) In this section and the next—

Status: This is the original version (as it was originally enacted).

- (a) " company " means any company liable to be wound up under this Act, and
- (b) " arrangement" includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

426 Information as to compromise to be circulated

- (1) The following applies where a meeting of creditors or any class of creditors, or of members or any class of members, is summoned under section 425.
- (2) With every notice summoning the meeting which is sent to a creditor or member there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) In every notice summoning the meeting which is given by advertisement there shall be included either such a statement as above-mentioned or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.
- (4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.
- (5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.
- (6) If a company makes default in complying with any requirement of this section, the company and every officer of it who is in default is liable to a fine; and for this purpose a liquidator of the company and a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it.

However, a person is not liable under this subsection if he shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of his interests.

- (7) It is the duty of any director of the company, and of any trustee for its debenture holders, to give notice to the company of such matters relating to himself as may be necessary for purposes of this section ; and any person who makes default in complying with this subsection is liable to a fine.

427 Provisions for facilitating company reconstruction or amalgamation

- (1) The following applies where application is made to the court under section 425 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section.
- (2) If it is shown—

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- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
- (b) that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (" a transferor company ") is to be transferred to another company (" the transferee company "),

the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters.

- (3) The matters for which the court's order may make provision are—
 - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person,
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,
 - (d) the dissolution, without winding up, of any transferor company,
 - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement,
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (4) If an order under this section provides for the transfer of property or liabilities, then—
 - (a) that property is by virtue of the order transferred to, and vests in, the transferee company, and
 - (b) those liabilities are, by virtue of the order, transferred to and become liabilities of that company ;and property (if the order so directs) vests freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.
- (5) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy of the order to be delivered to the registrar of companies for registration within 7 days after its making; and if default is made in complying with this subsection, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.
- (6) In this section the expression " property " includes property, rights and powers of every description ; the expression " liabilities " includes duties and " company " includes only a company as defined in section 735(1).

428 Power to acquire shares of dissenting minority

- (1) This section applies where a scheme or contract involving the transfer of shares or any class of shares in a company (" the transferor company ") to another company, whether or not a company as defined in section 735(1) ("the transferee company") has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary).

Status: This is the original version (as it was originally enacted).

- (2) In those circumstances, the transferee company may, at any time within 2 months after the expiration of the 4 months mentioned above, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- (3) The expression "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract, and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract
- (4) If such a notice is given, the transferee company is then (unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the court thinks fit to order otherwise) entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (5) But where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held (at the date of the offer) by, or by a nominee for, the transferee company or its subsidiary to a value greater than one-tenth of the aggregate of their value and that of the shares (other than those already so held) whose transfer is involved, subsections (2) and (4) do not apply unless—
 - (a) the transferee company offers the same terms to all holders of the shares (other than those already so held) whose transfer is involved or, where those shares include shares of different classes, of each class of them, and
 - (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those so held) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

429 Dissentient's right to compel acquisition of his shares

- (1) This section applies where, in pursuance of such a scheme or contract as is mentioned in section 428(1), shares in a company are transferred to another company or its nominee, and those shares (together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer) comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares.
- (2) The transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class (as the case may be) who have not assented to the scheme or contract.
- (3) Any such holder may, within 3 months from the giving of that notice to him, himself give notice (in the prescribed form) requiring the transferee company to acquire the shares in question.
- (4) If a shareholder gives notice under subsection (3) with respect to any shares, the transferee company is then entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the court on the application of either the transferee company or the shareholder thinks fit to order.

430 Provisions supplementing ss. 428, 429

- (1) Where notice has been given by the transferee company under section 428(2) and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the two following subsections apply.
- (2) The transferee company shall, on expiration of one month from the date on which the notice has been given (or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of) transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company.

An instrument of transfer is not required for any share for which a share warrant is for the time being outstanding.

- (3) The transferee company shall also pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of section 428(4) that company is entitled to acquire; and the transferor company shall thereupon register the transferee company as the holder of those shares.
- (4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which those sums, or that other consideration, were respectively received.