



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART II

#### COMPANY INSOLVENCY ETC

### CHAPTER II

#### VOLUNTARY ARRANGEMENTS

##### *Preliminary*

#### **20 Application of Chapter II**

This Chapter applies where

- (a) in the case of a company which is being wound up or in relation to which an administration order is in force, the liquidator or administrator intends; or
- (b) in the case of any other company, the directors intend,

to make a proposal to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, being a proposal which provides for some person who is qualified to act as an insolvency practitioner in relation to the company (in this Chapter referred to as "the nominee") to act in relation to the composition or scheme either as trustee or otherwise for the purpose of supervising its implementation.

##### *Procedure pending consideration of proposal*

#### **21 Report by nominee who is not liquidator or administrator**

- (1) Where the nominee is not the liquidator or administrator of the company, he shall, within twenty-eight days (or such longer period as the court may allow) after he is given notice of the proposal, submit a report to the court stating—

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- (a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal ; and
  - (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (2) For the purposes of enabling the nominee to prepare his report the person intending to make the proposal shall submit to the nominee—
- (a) a document setting out the terms of the composition or scheme which he is proposing ; and
  - (b) a statement of the company's affairs containing—
    - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed ; and
    - (ii) such other information as may be prescribed.
- (3) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

## 22 **Summoning of meetings**

- (1) Where the nominee is not the liquidator or administrator of the company and a person has reported to the court under section 21 above that such meetings as are mentioned in subsection (1) of that section should be summoned, that person shall, unless the court otherwise directs, summon those meetings for the time, date and place proposed in his report.
- (2) Where the nominee is the liquidator or administrator of the company, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.
- (3) The persons who shall be summoned to a creditors' meeting under this section shall be every creditor of the company of whose claim and address the person summoning the meeting is aware.

### *Consideration and implementation of proposal*

## 23 **Decisions of meetings**

- (1) The meetings summoned under section 22 above shall decide whether to approve the proposed composition or scheme (with or without modifications).
- (2) The modifications subject to which the proposed composition or scheme may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the company but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 20 above.
- (3) Except with the concurrence of the secured creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security.

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- (4) Except with the concurrence of the preferential creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification under which—
  - (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or
  - (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.
- (5) Subject to subsections (1) to (4) above, a meeting summoned under section 22 above shall be conducted in accordance with the rules.
- (6) After the conclusion in accordance with the rules of a meeting summoned under section 22 above, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.
- (7) In this section " preferential debt " means any of the debts which in a winding up are, under section 89 below and Schedule 4 to this Act (read with Schedule 3 to the Social Security Pensions Act 1975), to be paid in priority to all other debts, and " preferential creditor " shall be construed accordingly.
- (8) For the purposes of this section, Schedule 4 to this Act and Schedule 3 to the said Act of 1975 shall each have effect, in relation to a company which is not being wound up, as if—
  - (a) references to the relevant date were references to the date of the making of the administration order or, where no such order has been made, the date of the approval of the proposal; and
  - (b) references to the company being wound up were references to the administration order being made or, as the case may be, the proposal being approved.

## **24 Effect of an approval**

- (1) This section has effect where each of the meetings summoned under section 22 above approves the proposed composition or scheme either with the same modifications or without modifications.
- (2) The approved composition or scheme shall take effect as if made by the company at the creditors' meeting and shall bind every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting (whether or not he was present or represented at the meeting) as if he were a party to the composition or scheme.
- (3) Subject to subsection (4) below, if the company is being wound up or an administration order is in force in relation to the company, the court may do one or both of the following, namely—
  - (a) by order stay or sist all proceedings in the winding up or discharge the administration order ;
  - (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the approved composition or scheme.

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- (4) The court shall not make an order under subsection (3)(a) above—
- (a) at any time before the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court; or
  - (b) at any time when an application under section 25 below or an appeal in respect of such an application is pending or at any time in the period within which such an appeal may be brought

## **25 Challenge of decisions**

- (1) Subject to the provisions of this section, an application to the court may be made, by any of the persons specified in subsection (2) below, on one or both of the following grounds, namely—
- (a) that a composition or scheme approved at the meetings summoned under section 22 above unfairly prejudices the interests of a creditor, member or contributory of the company;
  - (b) that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who shall be entitled to make an application under this section shall be—
- (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
  - (b) the nominee or any person who has replaced him under section 21(3) or 23(2) above; and
  - (c) if the company is being wound up or an administration order is in force in relation to the company, the liquidator or administrator of the company.
- (3) An application under this section shall not be made after the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court.
- (4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1) above, it may do one or both of the following, namely—
- (a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b) above, any approval given by the meeting in question ;
  - (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b) above, a further company or, as the case may be, creditors' meeting to reconsider the original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) above for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.
- (6) In any case where the court, on an application made under this section with respect to any meeting, gives a direction under subsection (4)(b) above or revokes or suspends an approval under subsection (4)(a) or (5) above, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done since the meeting under any composition or scheme approved by the meeting.

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- (7) Except in pursuance of the preceding provisions of this section an approval given at a meeting summoned under section 22 above shall not be invalidated by any irregularity at or in relation to the meeting.

## **26 Implementation and supervision of approved composition or scheme**

- (1) This section applies where a composition or scheme approved by the meetings summoned under section 22 above has taken effect
- (2) The person who is for the time being carrying out in relation to the composition or scheme the functions conferred by virtue of the approval on the nominee, or by virtue of section 21(3) or 23(2) above on a person other than the nominee, shall be known as the supervisor of the composition or scheme.
- (3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the supervisor, may give him directions or may make such other order as it thinks fit.
- (4) The supervisor may apply to the court for directions in relation to any particular matter arising under the composition or scheme and shall be included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to the company.
- (5) The court may, whenever—
- (a) it is expedient to appoint a person to carry out the functions of the supervisor; and
  - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,
- make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) above shall be exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.