



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER I

VOLUNTARY ARRANGEMENTS

Preliminary

110 Application of Chapter I

This Chapter applies where an individual intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs, being a proposal which provides for some person (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

111 Application for interim order

- (1) An application to the court for an order under section 112 below (in this Chapter referred to as an "interim order ") may be made—
 - (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate or the official receiver ; and
 - (b) in any other case, by the debtor.
- (2) An application for an interim order shall not be made under subsection (1)(a) above unless the debtor has given notice of his proposal to the official receiver and, if there is one, to the trustee of his estate.

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- (3) An application for an interim order shall not be made while a bankruptcy petition presented by the debtor is pending if the court has made an appointment under subsection (2) of section 123 below; and if the court has made such an appointment, it may make an interim order under subsection (5) of that section without an application being made under this section.
- (4) At any time when an application under this section for an interim order is pending the court may stay any action, execution or other legal process against the property or person of the debtor.
- (5) Any court in which proceedings are pending against an individual may, on proof that an application under this section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

112 Interim orders

- (1) On an application under section 111 above or in a case falling within section 123(5) below, the court may make an interim order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposals.
- (2) The court shall not make an interim order on an application under section 111 above unless it is satisfied—
 - (a) that the debtor intends to make such a proposal as is mentioned in section 110 above ;
 - (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy ;
 - (c) that no previous application has been made by the debtor for an interim order in the period of twelve months ending with that day ; and
 - (d) that the nominee is a person who is for the time being qualified to act as an insolvency practitioner in relation to the debtor and is willing to act in relation to the debtor's proposal.
- (3) An interim order shall have the effect that during the period for which it is in force—
 - (a) no bankruptcy petition relating to the debtor may be presented or proceeded with ; and
 - (b) no other proceedings and no execution or other legal process may be commenced or continued against the debtor or his property except with the leave of the court.
- (4) Where the debtor is an undischarged bankrupt an interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.
- (5) Subject to subsection (6) below, the provision contained in an interim order by virtue of subsection (4) above may include provision staying proceedings in the bankruptcy or modifying the provisions of this Part and the rules in their application to the debtor's bankruptcy.
- (6) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of this Part or of the rules unless the court is satisfied that the provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

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- (7) Subject to the following provisions of this Chapter, an interim order shall cease to have effect—
- (a) if made on an application under section 111 above, at the end of the period of fourteen days beginning with the day after the making of the order ;
 - (b) if made in pursuance of section 123(5) below, at the end of such period as the court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.

113 Report by nominee

- (1) This section applies where an interim order has been made on an application under section 111 above.
- (2) The nominee shall, before the order ceases to have effect, submit a report to the court stating—
 - (a) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and
 - (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (3) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—
 - (a) a document setting out the terms of the composition or scheme which the debtor is proposing ; and
 - (b) a statement of his affairs containing—
 - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed; and
 - (ii) such other information as may be prescribed.
- (4) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, do one or both of the following, namely—
 - (a) direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the debtor ;
 - (b) direct that the order mentioned in subsection (1) above shall continue, or (if it has ceased to have effect) shall be renewed, for such further period as the court may specify in the direction.
- (5) The court may, on the application of the nominee, extend the period for which the order mentioned in subsection (1) above has effect so as to enable the nominee to have more time to prepare the report required by this section.
- (6) If the court is satisfied on receiving the report required by this section that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the order mentioned in subsection (1) above has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.
- (7) The court may discharge the order mentioned in subsection (1) above if it is satisfied, on the application of the nominee—

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- (a) that the debtor has failed to comply with his obligations under subsection (3) above ; or
- (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

114 Summing of creditors' meeting

- (1) Where the court has made an interim order and after the making of the order or, as the case may be, with a view to its being made a person has reported to the court under section 113 above or section 123(3) below that a meeting of the debtor's creditors should be summoned, that person shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.
- (2) The persons who shall be summoned to a meeting of creditors under this section shall be every creditor of the debtor of whose claim and address the person summoning the meeting is aware.
- (3) For the purposes of a meeting under this section the creditors of a debtor who is an undischarged bankrupt shall include every person who is a creditor of the bankrupt in respect of a bankruptcy debt and every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Consideration and implementation of proposal

115 Decision of creditors' meeting

- (1) A meeting summoned under section 114 above shall decide whether to approve the composition or scheme proposed by the debtor.
- (2) Such a meeting may approve the proposed composition or scheme with modifications but shall not do so unless the debtor consents to each modification.
- (3) 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 debtor but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 110 above.
- (4) Except with the concurrence of the secured creditor concerned, a meeting summoned under section 114 above shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security.
- (5) Except with the concurrence of the preferential creditor concerned, a meeting summoned under section 114 above shall not approve any proposal or modification under which—
 - (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts; or
 - (b) a preferential creditor of the debtor 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.
- (6) Subject to subsections (1) to (5) above, a meeting summoned under section 114 above shall be conducted in accordance with the rules.

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- (7) After the conclusion in accordance with the rules of a meeting summoned under section 114 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.
- (8) If a report is given to the court under subsection (7) above that the meeting has declined (with or without modifications) to approve the debtor's proposal the court may discharge any interim order which is in force in relation to the debtor.
- (9) In this section " preferential debt" means any of the debts which in the distribution of a bankrupt's estate are, under section 166 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.
- (10) 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 debtor who is not an undischarged bankrupt, as if—
 - (a) references to the relevant date were references to the date of the interim order made with respect to his proposal; and
 - (b) references to the debtor being adjudged bankrupt were references to the making of that order.

116 Effect of approval

- (1) This section has effect where a meeting summoned under section 114 above approves a proposed composition or scheme (with or without modifications).
- (2) The approved composition or scheme shall take effect as if made by the debtor at the meeting and shall bind every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at the meeting) as if he were a party to the composition or scheme.
- (3) The Deeds of Arrangement Act 1914 shall not apply to the approved composition or scheme.
- (4) Subject to subsection (5) below, if the debtor is an undischarged bankrupt the court may do one or both of the following, namely—
 - (a) annul the bankruptcy order by which he was adjudged bankrupt;
 - (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved composition or scheme.
- (5) The court shall not annul a bankruptcy order under subsection (4) above—
 - (a) at any time before the end of the period of twenty-eight days beginning with the day on which the report with respect to the meeting was made to the court under section 115(7) above ; or
 - (b) at any time when an application under section 117 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.
- (6) Except to such extent as the court may direct for the purposes of any application under section 117 below, any interim order in force in relation to the debtor immediately before the end of the period of twenty-eight days beginning with the day on which the

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report with respect to the meeting was made to the court under section 115(7) above shall cease to have effect at the end of that period.

- (7) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (6) above, that petition shall be deemed, unless the court otherwise orders, to have been dismissed.

117 Challenge of meeting's decision

- (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 a meeting summoned under section 114 above unfairly prejudices the interests of a creditor of the debtor ;
 - (b) that there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who shall be entitled to make an application under this section shall be—
- (a) the debtor;
 - (b) a person entitled, in accordance with the rules, to vote at the meeting in question ;
 - (c) the nominee or any person who has replaced him under section 113(4)(a) or 115(3) above ; and
 - (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) An application under this section shall not be made after the end of the period of twenty-eight days beginning with the day on which the report with respect to the meeting in question was made to the court under section 115(7) above.
- (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 any approval given by the meeting in question;
 - (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b) above, to reconsider his original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) above for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (6) Where the court gives a direction under subsection (4)(b) above, it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.
- (7) 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—
- (a) things done since the meeting under any composition or scheme approved by the meeting ; and

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- (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (8) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 114 above shall not be invalidated by any irregularity at or in relation to the meeting.

118 Implementation and supervision of approved composition or scheme

- (1) This section applies where a composition or scheme approved by a meeting summoned under section 114 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 113(4)(a) or 115(3) above on a person other than the nominee, shall be known as the supervisor of the composition or scheme.
- (3) If the debtor, any of his 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.
- (5) Without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement), 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 debtor, 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.