



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART I

#### COMPANY VOLUNTARY ARRANGEMENTS

##### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-7), Pt. II (ss. 8-27) modified by [Company Directors Disqualification Act 1986](#) (c. 46, SIF 27), [ss. 21\(2\)](#), 25
- C2** Pts. 1-7 (ss. 1-251) applied (with modifications) by [S.I. 1989/1276](#), [arts. 2](#), 3  
Pt. 1 (ss. 1-7) applied with modifications by [S.I. 1986/2142](#), [arts. 1\(2\)](#), 11, 13(3), 15  
Pt. 1 (ss. 1-7) applied (with modifications) (1.12.1997) by [1986 c. 53](#), [Sch. 15A](#) (as inserted by [1997 c. 32](#), s. 39(2), [Sch. 6 para. 1\(2\)\(a\)](#)); [S.I. 1997/2668](#), art. 2, [Sch. Pt. 1\(i\)](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015](#) (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), [2\(3\)](#))
- C3** Pts. 1-4, 6, 7 applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by [S.I. 2001/1090](#), reg. 5, [Schs. 3](#), [4](#) (as amended (4.3.2004) by [S.I. 2004/355](#), [art. 10](#) and (1.10.2005) by [S.I. 2005/1989](#), reg. 3, [Sch. 2](#) (with reg. 4))
- C4** Pt. I: power to apply or incorporate conferred (6.4.2001) by [2000 c. 12](#), s. 14; [S.I. 2000/3316](#), [art. 2](#)  
Pt. I: power to apply (with modifications) conferred (15.9.2003) by [2002 c. 40](#), ss. 255(2)(a), 279 (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(1\)](#), [Sch. 1](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), art. 2))  
Pt. I: power to apply (with modifications) conferred (20.11.2003 for specified purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), [ss. 24\(2\)](#), 26, 199; [S.I. 2004/759](#), [art. 2](#)  
Pt. I: power to apply (with modifications) conferred (E.W.) (1.3.2007) by [National Health Service Act 2006](#) (c. 41), [ss. 53\(2\)](#), 55, 277
- C5** First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by [The Banks \(Former Authorised Institutions\) \(Insolvency\) Order 2006](#) (S.I. 2006/3107), art. 3, [Sch.](#) (as amended (1.4.2013) by [S.I. 2013/472](#), art. 1(1), [Sch. 2 para. 117](#); and (13.3.2018) by [S.I. 2018/208](#), regs. 1(3), [11](#))
- C6** Pt. I applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), s. [113\(6\)-\(9\)](#) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch.](#)
- C7** Pt. I applied (with modifications) (21.2.2009) by [Banking Act 2009](#) (c. 1), [ss. 103](#), [134](#), 263(1) (with s. 247); [S.I. 2009/296](#), [art. 3](#), [Sch. para. 2](#)

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## The Proposal

### 1 Those who may propose an arrangement.

- (1) The directors of a company (other than one for which an administration order is in force, or which is being wound up) may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (from here on referred to, in either case, as a “voluntary arrangement”).
  - (2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner in relation to the company.
  - (3) Such a proposal may also be made—
    - (a) where an administration order is in force in relation to the company, by the administrator, and
    - (b) where the company is being wound up, by the liquidator.
- [<sup>F1</sup>(4) In this Part a reference to a company includes a reference to a company in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.]

#### Textual Amendments

**F1** S. 1(4) inserted (31.5.2002) by S.I. 2002/1240, reg. 4

VALID FROM 01/01/2003

#### [<sup>F2</sup>1A Moratorium.

- (1) Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.
- (2) The provisions of Schedule A1 to this Act have effect with respect to—
  - (a) companies eligible for a moratorium under this section,
  - (b) the procedure for obtaining such a moratorium,
  - (c) the effects of such a moratorium, and
  - (d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.]

#### Textual Amendments

**F2** S. 1A inserted (1.1.2003) by 2000 c. 39, s. 1, Sch. 1 para. 2; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

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## **2 Procedure where nominee is not the liquidator or administrator.**

- (1) This section applies where the nominee under section 1 is not the liquidator or administrator of the company.
- (2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—
  - (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.
- (3) 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 proposed voluntary arrangement, 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.
- (4) 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 be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

## **3 Summoning of meetings.**

- (1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.
- (2) Where the nominee is the liquidator or administrator, 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 to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the person summoning the meeting is aware.

### *Consideration and implementation of proposal*

## **4 Decisions of meetings.**

- (1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).
- (2) The modifications 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 they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

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- (3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.
- (4) Subject as follows, a meeting so summoned 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.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.
- (5) Subject as above, each of the meetings shall be conducted in accordance with the rules.
- (6) After the conclusion of either meeting in accordance with the rules, 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) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

VALID FROM 01/01/2003

**[<sup>F3</sup>4A Approval of arrangement.**

- (1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.
- (2) The decision has effect if, in accordance with the rules—
  - (a) it has been taken by both meetings summoned under section 3, or
  - (b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.
- (3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the court.
- (4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—
  - (a) the day on which the decision was taken by the creditors' meeting, or
  - (b) where the decision of the company meeting was taken on a later day, that day.
- (5) Where a member of a regulated company, within the meaning given by paragraph 44 of Schedule A1, applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.
- (6) On an application under subsection (3), the court may—
  - (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or

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(b) make such other order as it thinks fit.]

#### Textual Amendments

**F3** S. 4A inserted (1.1.2003) by 2000 c. 39, ss. 2, 16(1), **Sch. 2 Pt. I para. 5**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

#### Modifications etc. (not altering text)

**C8** S. 4A(2) modified (1.1.2003) by 1986 c. 53, **Sch. 15A para. 8A** (as inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 14(3)**); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

## 5 Effect of approval.

- (1) This section has effect where each of the meetings summoned under section 3 approves the proposed voluntary arrangement either with the same modifications or without modifications.
- (2) The approved voluntary arrangement—
  - (a) takes effect as if made by the company at the creditors' meeting, and
  - (b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meetings (whether or not he was present or represented at the meeting) as if he were a party to the voluntary arrangement.
- (3) Subject as follows, if the company is being wound up or an administration order is in force, 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 voluntary arrangement.
- (4) The court shall not make an order under subsection (3)(a)—
  - (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or
  - (b) at any time when an application under the next section 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.

#### Modifications etc. (not altering text)

**C9** S. 5 restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para 10(5)**; S.S.I. 2001/336, **art. 2(3)**, **Sch. Pt.II** (subject to transitional provisions and savings in art. 3)

## 6 Challenge of decisions.

- (1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

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- (a) that a voluntary arrangement approved at the meetings summoned under section 3 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 may apply under this section are—
- (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 2(4) or 4(2); and
  - (c) if the company is being wound up or an administration order is in force, the liquidator or administrator.
- (3) An application under this section shall not be made after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court.
- (4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), 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), 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 the case falling within subsection (1)(b), 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) 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 a case where the court, on an application under this section with respect to any meeting—
- (a) gives a direction under subsection (4)(b), or
  - (b) revokes or suspends an approval under subsection (4)(a) or (5),
- 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 voluntary arrangement approved by the meeting.
- (7) Except in pursuance of the preceding provisions of this section, an approval given at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

**Modifications etc. (not altering text)**

**C10** S. 6 amended (1.12.2001) by 2000 c. 8, s. 356(2); S.I. 2001/3538, art. 2(1)

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VALID FROM 01/01/2003

#### **[<sup>F4</sup>6A False representations, etc.**

- (1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—
  - (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything,he commits an offence.
- (2) Subsection (1) applies even if the proposal is not approved.
- (3) For purposes of this section “officer” includes a shadow director.
- (4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.]

#### **Textual Amendments**

- F4** S. 6A inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 8**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

## **7 Implementation of proposal.**

- (1) This section applies where a voluntary arrangement approved by the meetings summoned under section 3 has taken effect.
- (2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
  - (a) by virtue of the approval on the nominee, or
  - (b) by virtue of section 2(4) or 4(2) on a person other than the nominee,shall be known as the supervisor of the voluntary arrangement.
- (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 the application the court may—
  - (a) confirm, reverse or modify any act or decision of the supervisor,
  - (b) give him directions, or
  - (c) make such other order as it thinks fit.
- (4) The supervisor—
  - (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
  - (b) is 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 it.
- (5) The court may, whenever—
  - (a) it is expedient to appoint a person to carry out the functions of the supervisor, and

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- (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) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

VALID FROM 01/01/2003

### **[<sup>F5</sup>7A Prosecution of delinquent officers of company.**

- (1) This section applies where a moratorium under section 1A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 4A or paragraph 36 of Schedule A1.
- (2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—
- (a) report the matter to the appropriate authority, and
  - (b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the authority requires.
- In this subsection, “the appropriate authority” means—
- (i) in the case of a company registered in England and Wales, the Secretary of State, and
  - (ii) in the case of a company registered in Scotland, the Lord Advocate.
- (3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act to investigate a company’s affairs.
- (4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Act to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.
- (5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.
- (6) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,



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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

- (7) Subsection (6) applies to any offence other than—
- (a) an offence under section 2 or 5 of the <sup>M1</sup>Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
  - (b) an offence under section 44(1) or (2) of the <sup>M2</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose—

“agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company,

“prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

- (9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.]

#### Textual Amendments

**F5** Ss. 7A, 7B inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### Modifications etc. (not altering text)

**C11** S. 7A modified (1.1.2003) by 1986 c. 53, **Sch. 15A para 9A** (as inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 14(4)**); S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

**C12** S. 7A(2) amended (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 13(1)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### Marginal Citations

**M1** 1911 c. 6.

**M2** 1995 c. 39.

VALID FROM 01/01/2003

#### **F6**7B Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in

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respect of all persons bound by the arrangement by virtue of section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.

**Textual Amendments**

**F6** Ss. 7A, 7B inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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