



Companies Act 1985

1985 CHAPTER 6

PART XIII

ARRANGEMENTS AND RECONSTRUCTIONS

Modifications etc. (not altering text)

- C1** Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(1), [Sch. 25 para. 71\(2\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- C2** Part XIII modified by [S.I. 1989/1461](#), [reg. 2](#)
- C3** Part XIII (ss. 425–430) modified (E.W.) (1.12.1991) by [Statutory Water Companies Act 1991](#) (c. 58, SIF 130), [ss. 9\(1\)](#), 17(2)
- C4** Pt. XIII (ss. 425–430) power to modify conferred (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(1), [Sch. 25 para. 71\(2\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- C5** Part XIII modified by [S.I. 1989/1461](#), [reg. 2](#)

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 [^{F1}or an administration order being in force in relation to a company, of the liquidator or administrator], 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),

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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 [^{F2}in pursuance of section 4 of the ^{M1}Administration of Justice (Scotland) Act 1933] is not subject to review, reduction, suspension or stay of execution.
- (6) In this section and the next—
- (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.

Textual Amendments

F1 Words substituted by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, **Sch. 6 para. 11**

F2 Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pts. I, III**

Modifications etc. (not altering text)

C6 Ss. 425-427 applied (with modifications) (1.12.2001) by [S.I. 2001/1228](#), regs. 1(2)(3), 70, **Sch. 6 paras. 5, 6**; [S.I. 2001/3538](#), **art. 2(1)**

C7 Ss. 425-427 restricted (1.12.2001) by [S.I. 2001/3639](#), **art. 3(3)(a)** (with art. 2)

C8 S. 425 restricted (S.) (1.11.2001) by [2001 asp 10](#), s. 63, **Sch. 7 para. 10(2)**; [S.S.I. 2001/336](#), art. 2(1)(3), **Sch. Pt. II** (subject to transitional provisions in art. 3)

C9 S. 425 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, **Sch. 2 Pt. I**

C10 Ss. 425-427 modified (1.12.2001) by [2000 c. 8, s. 105\(6\)](#); [S.I. 2001/3538](#), **art. 2(1)**

C11 S. 425 amended (1.12.2001) by [2000 c. 8, s. 362\(6\)](#); [S.I. 2001/3538](#), **art. 2(1)**

S. 425 amended (1.12.2001) by [2000 c. 8, s. 365\(7\)](#); [S.I. 2001/3538](#), **art. 2(1)**

S. 425 amended (1.12.2001) by [2000 c. 8, s. 371\(5\)](#); [S.I. 2001/3538](#), **art. 2(1)**

C12 S. 425 applied (with modifications) (6.1.1997) by [S.I. 1996/2827](#), reg. 64, **Sch. 7 paras. 5, 6(1)-(3)**

C13 S. 425: power to apply (with modifications) conferred (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 255(2)(c), 279**; [S.I. 2003/2093](#), **art. 2(1)**, **Sch. 1** (subject to transitional provisions in arts. 3-8 (as amended by [S.I. 2003/2332](#), [S.I. 2003/3340](#)))

C14 S. 425(2) restricted (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\)](#), **reg. 5(2)** (with reg. 3)

C15 S. 425(6)(a) amended (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(1), 4(2), **Sch. 1 para. 40(1)**

C16 S. 425(6)(a) modified (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\)](#), **reg. 5(1)** (with reg. 3)

Marginal Citations

M1 1933 c. 41.

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Changes to legislation: There are currently no known outstanding effects for the Companies Act 1985, Part XIII. (See end of Document for details)

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 ^{F3}or administrator] 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.

Textual Amendments

F3 Words inserted by [Insolvency Act 1985 \(c. 65, SIF 27\)](#), s. 109, [Sch. 6 para. 12](#)

Modifications etc. (not altering text)

C17 [Ss. 425-427](#) applied (with modifications) (1.12.2001) by [S.I. 2001/1228](#), regs. 1(2)(3), 70, [Sch. 6 paras. 5, 6](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

C18 [Ss. 425-427](#) restricted (1.12.2001) by [S.I. 2001/3639](#), [art. 3\(3\)\(a\)](#) (with art. 2)

C19 [S. 426](#) applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), reg. 4, [Sch. 2 Pt. I](#)

C20 [Ss. 425-427](#) modified (1.12.2001) by [2000 c. 8, s. 105\(6\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

C21 [S. 426](#) applied (with modifications) (1.6.1997) by [S.I. 1996/2827](#), reg. 64, [Sch. 7 paras. 5, 6\(1\)-\(3\)](#)

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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—
 - (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).

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Modifications etc. (not altering text)

- C22** Ss. 425-427 applied (with modifications) (1.12.2001) by S.I. 2001/1228, regs. 1(2)(3), 70, Sch. 6 paras. 5, 6; S.I. 2001/3538, art. 2(1)
- C23** Ss. 425-427 restricted (1.12.2001) by S.I. 2001/3639, art. 3(3)(a) (with art. 2)
- C24** S. 427 restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, Sch. 7 para. 10(3); S.S.I. 2001/336, art. 2(3), Sch. Pt. II (subject to transitional provisions in art. 3)
- C25** S. 427 applied (with modifications) (6.4.2001) by S.I. 2001/1090, reg. 4, Sch. 2 Pt. I
- C26** Ss. 425-427 modified (1.12.2001) by 2000 c. 8, s. 105(6); S.I. 2001/3538, art. 2(1)
- C27** S. 427 applied (with modifications) (1.7.1996) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, 6(1)-(3)

[^{F4}427A Application of ss. 425–427 to mergers and divisions of public companies.

(1) Where—

- (a) a compromise or arrangement is proposed between a public company and any such persons as are mentioned in section 425(1) 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,
- (b) the circumstances are as specified in any of the Cases described in subsection (2), and
- (c) the consideration for the transfer or each of the transfers envisaged in the Case in question is to be shares in the transferee company or any of the transferee companies receivable by members of the transferor company or transferor companies, with or without any cash payment to members,

sections 425 to 427 shall, as regards that compromise or arrangement, have effect subject to the provisions of this section and Schedule [^{F5}15B].

(2) The Cases referred to in subsection (1) are as follows—

Case 1 Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be transferred to another public company, other than one formed for the purpose of, or in connection with, the scheme.

Case 2 Where under the scheme the undertaking, property and liabilities of each of two or more public companies concerned in the scheme, including the company in respect of which the compromise or arrangement in question is proposed, are to be transferred to a company (whether or not a public company) formed for the purpose of, or in connection with, the scheme.

Case 3 Where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement in question is proposed are to be divided among and transferred to two or more companies each of which is either—

- (a) a public company, or
- (b) a company (whether or not a public company) formed for the purposes of, or in connection with, the scheme.

(3) Before sanctioning any compromise or arrangement under section 425(2) the court may, on the application of any pre-existing transferee company or any member or creditor of it or, an administration order being in force in relation to the company, the administrator, order a meeting of the members of the company or any class of them or

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of the creditors of the company or any class of them to be summoned in such manner as the court directs.

- (4) This section does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.
- (5) This section does not apply to compromises or arrangements in respect of which an application has been made to the court for an order under section 425(1) before 1st January 1988.
- (6) Where section 427 would apply in the case of a scheme but for the fact that the transferee company or any of the transferee companies is a company within the meaning of Article 3 of the Companies (Northern Ireland) Order ^{M2}1986 (and thus not within the definition of "company" in subsection (6) of section 427), section 427 shall apply notwithstanding that fact.
- (7) In the case of a scheme mentioned in subsection (1), for a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986, the reference in section 427(5) to the registrar of companies shall have effect as a reference to the registrar as defined in Article 2 of that Order.
- (8) In this section and Schedule [^{F5}15B]—
- “transferor company” means a company whose undertaking, property and liabilities are to be transferred by means of a transfer envisaged in any of the Cases specified in subsection (2);
- “transferee company” means a company to which a transfer envisaged in any of those Cases is to be made;
- “pre-existing transferee company” means a transferee company other than one formed for the purpose of, or in connection with, the scheme;
- “compromise or arrangement” means a compromise or arrangement to which subsection (1) applies;
- “the scheme” means the scheme mentioned in subsection (1)(a);
- “company” includes only a company as defined in section 735(1) except that, in the case of a transferee company, it also includes a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986 (referred to in these definitions as a "Northern Ireland company");
- “public company” means, in relation to a transferee company which is a Northern Ireland company, a public company within the meaning of Article 12 of the Companies (Northern Ireland) Order 1986;
- “the registrar of companies” means, in relation to a transferee company which is a Northern Ireland company, the registrar as defined in Article 2 of the Companies (Northern Ireland) Order 1986;
- “the Gazette” means, in relation to a transferee company which is a Northern Ireland company, the Belfast Gazette;
- “Case 1 Scheme”, “Case 2 Scheme” and “Case 3 Scheme” mean a scheme of the kind described in Cases 1, 2 and 3 of subsection (2) respectively;
- “property” and “liabilities” have the same meaning as in section 427.]

Textual Amendments

F4 S. 427A added by S.I. 1987/1991, reg. 2 (a), Sch.

F5 Words substituted by Companies Act 1989 (c. 40, SIF 27), ss. 114(2), 213(2)

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Modifications etc. (not altering text)

C28 S. 427A applied (with modifications) (6.1.1997) by S.I. 1996/2827, reg. 64, Sch. 7 paras. 5, **6(1)-(3)**

Marginal Citations

M2 S.I. 1986/1032 (N.I. 6).

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