



Insolvency Act 1986

1986 CHAPTER 45

PART I

COMPANY VOLUNTARY ARRANGEMENTS

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 [^{F1}or authorised to act as nominee, in relation to the voluntary arrangement].

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.

- (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.

Status: Point in time view as at 25/07/2003.

Changes to legislation: Insolvency Act 1986, Cross Heading: Consideration and implementation of proposal is up to date with all changes known to be in force on or before 03 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

Textual Amendments

F1 Words in s. 4(2) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 4**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

Modifications etc. (not altering text)

C1 S. 4 modified (20.4.2003) by **The Insurers (Reorganisation and Winding Up) Regulations 2003** (S.I. 2003/1102), **reg. 33(1)(2)** (with **reg. 3**)
S. 4 modified (18.2.2004) by **The Insurers (Reorganisation and Winding Up) Regulations 2004** (S.I. 2004/353), **reg. 33(1)(2)** (with **reg. 3**) (as amended (3.3.2004) by S.I. 2004/546, **reg. 2(5)**) and modified (10.8.2005) by S.I. 2005/1998, **regs. 2(3), 40(1)-(4)**)

[^{F2}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
 - (b) make such other order as it thinks fit.]

Textual Amendments

F2 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**)

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Modifications etc. (not altering text)

- C2** 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.

[^{F3}(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.]

(2) The ^{F4} . . . voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

[^{F5}(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it, as if he were a party to the voluntary arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the 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 ^{F4} . . . 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.

Textual Amendments

F3 S. 5(1) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 6(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F4 Words in s. 5(2)(3) repealed (1.1.2003) by 2000 c. 39, ss. 2, 15, **Sch. 2 Pt. I para. 6(b)**, **Sch. 5**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F5 S. 5(2)(b)(2A) substituted (1.1.2003) for s. 5(2)(b) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 6(c)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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Modifications etc. (not altering text)

C3 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—
 - (a) that a voluntary arrangement [^{F6}which has effect under section 4A] 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;
 - [^{F7}(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it]
 - (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 [^{F8}(a)] 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 [^{F9} or
 - (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,
 but (subject to that) an application made by a person within subsection (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.]
- (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 [^{F10}any decision approving the voluntary arrangement which has effect under section 4A] or, in a case falling within subsection (1)(b), any [^{F11}decision taken by the meeting in question which has effect under that section];
 - (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 [^{F12}decision approving the voluntary arrangement which has effect under section 4A].
- (6) In a case where the court, on an application under this section with respect to any meeting—

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- (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 [^{F13}under the voluntary arrangement since it took effect].

- (7) Except in pursuance of the preceding provisions of this section, [^{F14}a decision taken] at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

Textual Amendments

- F6** Words in s. 6(1)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(2)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F7** S. 6(2)(aa) inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F8** In s. 6(3) “(a)” inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(4)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F9** S. 6(3)(b) and words inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(4)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F10** Words in s. 6(4)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(5)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F11** Words in s. 6(4)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(5)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F12** Words in s. 6(5) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(6)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F13** Words in s. 6(6) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(7)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F14** Words in s. 6(7) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(8)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

- C4** S. 6 amended (1.12.2001) by 2000 c. 8, s. 356(2); S.I. 2001/3538, **art. 2(1)**
S. 6 amended (1.1.2003) by 2000 c. 8, s. 356(1) (as substituted (1.1.2003) by 2000 c. 39, s. 15(3)); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[^{F15}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.]

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Textual Amendments

F15 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 [^{F16}has effect under section 4A].
- (2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
 - [^{F17}(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3]
 - (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
 - (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 [^{F18}or authorised to act as supervisor, in relation to the voluntary arrangement], 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.

Textual Amendments

F16 Words in s. 7(1) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

F17 S. 7(2)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

F18 Words in s. 7(5) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(c)**; S.I. 2002/2711, **art. 2**, (subject to transitional provisions in **arts. 3-5**)

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Modifications etc. (not altering text)

C5 S. 7 amended (1.1.2003) by 2000 c. 8, s. 356(1) (as substituted (1.1.2003) by 2000 c. 39, s. 15(3)); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

[^{F19}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,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 ^{M1}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 ^{M2}Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

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- (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

F19 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)

C6 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)

C7 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.

^{F20}**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 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

F20 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)

Status:

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