
STATUTORY INSTRUMENTS

2009 No. 1804

The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009

PART 10

ARRANGEMENTS, RECONSTRUCTIONS AND CROSS-BORDER MERGERS

Arrangements and reconstructions [^{F1}: general]

45.—(1) Sections 895 to 900 ^{M1} apply to LLPs, modified so that they read as follows—

“Application of this Part

895. The provisions of this Part apply where a compromise or arrangement is proposed between an LLP and—

- (a) its creditors, or any class of them, or
- (b) its members, or any class of them.

Court order for holding of meeting

896.—(1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the LLP or class of members (as the case may be), to be summoned in such manner as the court directs.

(2) An application under this section may be made by—

- (a) the LLP,
- (b) any creditor or member of the LLP,
- (c) if the LLP is being wound up, the liquidator, or
- (d) if the LLP is in administration, the administrator.

[^{F2}(4) This section is subject to section 899A (moratorium debts, etc).]

Statement to be circulated or made available

897.—(1) Where a meeting is summoned under section 896—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
- (b) every notice summoning the meeting that is given by advertisement must either—
 - (i) include such a statement, or
 - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) The statement must—

- (a) explain the effect of the compromise or arrangement, and
- (b) in particular, state—
 - (i) any material interests of the members of the LLP (whether as members or as creditors of the LLP or otherwise), and
 - (ii) 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) Where the compromise or arrangement affects the rights of debenture holders of the LLP, the statement must 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 LLP's members.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the LLP with a copy of the statement free of charge.

(5) If an LLP makes default in complying with any requirement of this section, an offence is committed by—

- (a) the LLP, and
- (b) every member of the LLP who is in default.

This is subject to subsection (7) below.

(6) For this purpose the following are treated as members of the LLP—

- (a) a liquidator or administrator of the LLP, and
- (b) a trustee of a deed for securing the issue of debentures of the LLP.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a member or trustee for debenture holders to supply the necessary particulars of his interests.

(8) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Duty of members and trustees to provide information

898.—(1) It is the duty of—

- (a) any member of the LLP, and
- (b) any trustee for its debenture holders,

to give notice to the LLP of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).

(2) Any person who makes default in complying with this section commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Court sanction for compromise or arrangement

899.—(1) If a majority in number representing 75% 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 summoned under section 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

- [^{F3}(1A) Subsection (1) is subject to section 899A (moratorium debts, etc).]
- (2) An application under this section may be made by—
- (a) the LLP,
 - (b) any creditor or member of the LLP,
 - (c) if the LLP is being wound up, the liquidator, or
 - (d) if the LLP is in administration, the administrator.
- (3) A compromise or agreement sanctioned by the court is binding on—
- (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
 - (b) the LLP or, in the case of an LLP in the course of being wound up, the liquidator and contributories of the LLP.
- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

[^{F4}**Moratorium debts, etc**

899A.—(1) This section applies where—

- (a) an application under section 896 in respect of a compromise or arrangement is made before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the LLP under Part A1 of the Insolvency Act 1986 or Part 1A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)), and
 - (b) the creditors with whom the compromise or arrangement is proposed include any relevant creditors (see subsection (2)).
- (2) In this section “relevant creditor” means—
- (a) a creditor in respect of a moratorium debt, or
 - (b) a creditor in respect of a priority pre-moratorium debt.
- (3) The relevant creditors may not participate in the meeting summoned under section 896.
- (4) For the purposes of section 897 (statement to be circulated or made available)—
- (a) the requirement in section 897(1)(a) is to be read as including a requirement to send each relevant creditor a statement complying with section 897;
 - (b) any reference to creditors entitled to attend the meeting summoned under section 896 includes a reference to relevant creditors.
- (5) The court may not sanction the compromise or arrangement under section 899 if it includes provision in respect of any relevant creditor who has not agreed to it.
- (6) In this section—
- “moratorium debt”—
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order;
- “priority pre-moratorium debt”—
- (a) in the case of a moratorium under Part A1 of the Insolvency Act 1986, has the same meaning as in section 174A of that Act;
 - (b) in the case of a moratorium under Part 1A of the Insolvency (Northern Ireland) Order 1989, has the same meaning as in Article 148A of that Order.]

Powers of court to facilitate reconstruction or amalgamation

900.—(1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that—

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more relevant bodies corporate (where one or more of them is an LLP), and
- (b) under the scheme the whole or any part of the undertaking or the property of any LLP concerned in the scheme (“a transferor LLP”) is to be transferred to another relevant body corporate (“the transferee body corporate”).

(2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—

- (a) the transfer to the transferee body corporate of the whole or any part of the undertaking and of the property or liabilities of any transferor LLP;
- (b) the allotting or appropriation by the transferee body corporate of any shares, debentures, policies or other like interests in that body corporate which under the compromise or arrangement are to be allotted or appropriated by that body corporate to or for any person;
- (c) the continuation by or against the transferee body corporate of any legal proceedings pending by or against any transferor LLP;
- (d) the dissolution, without winding up, of any transferor LLP;
- (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.

(3) If an order under this section provides for the transfer of property or liabilities—

- (a) the property is by virtue of the order transferred to, and vests in, the transferee body corporate, and
- (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that body corporate.

(4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) In this section—

“relevant body corporate” means an LLP or a company;

“property” includes property, rights and powers of every description; and

“liabilities” includes duties.

(6) Every body corporate in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.

(7) If default is made in complying with subsection (6) an offence is committed by—

- (a) the LLP, and every member of the LLP who is in default, and
- (b) the company, and every officer of the company who is in default.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.”.

(2) Section 323 of the Companies Act 2006 (representation of corporations at meetings) applies to a meeting of creditors of the LLP under section 896^{F5} ... of that Act.

Textual Amendments

- F1** Word in reg. 45 heading inserted (26.6.2020) by The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 3 para. 2(2)**
- F2** Words in reg. 45(1) inserted (26.6.2020) by The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 3 para. 2(3)(a)**
- F3** Words in reg. 45(1) inserted (26.6.2020) by The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 3 para. 2(3)(b)**
- F4** Words in reg. 45(1) inserted (26.6.2020) by The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 3 para. 2(3)(c)**
- F5** Words in reg. 45(2) omitted (26.6.2020) by virtue of The Limited Liability Partnerships (Amendment etc.) Regulations 2020 (S.I. 2020/643), reg. 1(1), **Sch. 3 para. 2(4)**

Marginal Citations

- M1** Sections 896 and 899 were amended by article 3(1) of, and paragraphs 249 and 250 of Schedule 1 to, S.I. 2008/948.

Status:

Point in time view as at 26/06/2020. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the The Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, Section 45.