

VOLUME: VIII

COMPANIES

Part ID: XV Compromises with Creditors (ss 231-238)

CHAPTER: 42.01

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231. Interpretation

In this Part, unless the context otherwise requires -

"compromise" means a compromise between a company and its creditors, including a compromise-

- (a) cancelling all or part of a debt of the company;
- (b) varying the rights of its creditors or the terms of a debt; or
- (c) relating to an alteration of a company's constitution that affects the likelihood of the company being able to pay a debt;

"creditor" includes-

- (a) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and
- (b) a secured creditor;

"proponent" means a person referred to in section 232 who proposes a compromise in accordance with this Part.

232. Compromise proposal

(1) Any of the following persons may propose a compromise under this Part if that person has reason to believe that a company is or will be unable to pay its debts within the meaning of section 368-

- (a) the Board of directors of the company;
- (b) a liquidator of the company; or
- (c) with the leave of the court, any creditor or shareholder of the company.

(2) Where the court grants leave to a creditor or shareholder under subsection (1)(c), the court may make an order directing the company to supply to the creditor or shareholder, within such time as may be specified, a list of the names and addresses of the company's creditors showing the amounts owed to each of them or such other information as may be specified to enable the creditor or shareholder to propose a compromise.

233. Notice of proposed compromise

(1) The proponent shall compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out-

- (a) the amount owing or estimated to be owing to each of them; and
- (b) the number of votes which each of them is entitled to cast on a resolution approving the compromise.

(2) The proponent shall give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration -

(a) notice of a meeting of creditors, or any two or more classes of creditors, for the purpose of voting on the resolution; and

(b) a statement-

- (i) containing the name and address of the proponent and the capacity in which the proponent is acting,
- (ii) containing the address and telephone number to which inquiries may be directed during normal business hours,
- (iii) setting out the terms of the proposed compromise and the reasons for it; and why it is considered to be reasonably in the interests of the company and its creditors and to have business efficacy,
- (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved,
- (v) setting out the extent of any interest of a director in the proposed compromise,

(vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 234,

(vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval, and

(viii) setting out the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to make a reasoned judgement in relation to it and providing the text of any resolution to be submitted to the meeting; and

(c) a copy of the list or lists of creditors referred to in subsection (1).

234. Approval and effect of compromise

(1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting of creditors or that class of creditors the compromise, including any amendment, is adopted in accordance with subsection (3) (b).

(2) Subject to subsection (3), the meeting of creditors shall be conducted in accordance with the Companies Winding-Up Rules including rule 33(1) in so far as they are reasonably applicable.

(3) At any meeting of creditors held for the purposes of this section-

(a) where in the case of a company in the course of winding up the liquidator or any nominee of the liquidator is present the liquidator or his nominee shall be the chairman of the meeting and in any other case the proponent of the

compromise or his nominee shall be the chairman of the meeting but if neither the proponent or any nominee of the proponent is present, the creditors participating shall choose one of their number to act as chairman of the meeting:

Provided that the chairman shall not have a casting vote;

(b) a resolution is adopted if a majority in number representing 75 per cent in value of the creditors or class of creditors voting in person or by proxy vote in favour of the resolution.

(4) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this Part is binding on the company and on-

(a) all creditors; or

(b) if there is more than one class of creditors, on all creditors of that class to whom notice of a meeting of that class was given under section 233.

(5) If a resolution proposing a compromise, including any amendment, is put to the vote of more than one class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.

(6) The proponent shall give written notice of the result of the voting to each known creditor, the company, any receiver or liquidator, and the Registrar.

235. Variation of compromise

(1) A compromise approved under section 234 may be varied either-

(a) in accordance with any procedure for variation incorporated in the compromise as approved; or

(b) by the approval of a variation of the compromise in accordance with this Part which, for that purpose, shall apply with such modifications as may be necessary as if any proposed variation were a proposed compromise.

(2) The provisions of this Part shall apply to any compromise that is varied in accordance with this section.

236. Powers of court

(1) On the application of the proponent or the company, the court may-

(a) give directions in relation to a procedural requirement imposed by this Part of this Act, or waive or vary any such requirement, if satisfied that it would be just to do so; or

(b) order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it-

(i) proceedings in relation to a debt owing by the company be stayed, or

(ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the company.

(2) Nothing in subsection (1)(b) affects the right of a secured creditor during that period but, subject to subsection (3), not thereafter, to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.

(3) If the court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise that-

(a) insufficient notice of the meeting or of the matter required to be notified under section 233 was given to that creditor;

(b) there was some other material irregularity in obtaining approval of the compromise; or

(c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs, the court may order that the creditor is not bound by the compromise or make such other order as it considers appropriate.

(4) An application under subsection (3) shall be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

237. Effect of compromise in liquidation of company

(1) Where a compromise is approved under section 234 the court may, on the application of-

(a) the company; or

(b) with the leave of the court, any creditor or shareholder of the company -

make such order as the court considers appropriate with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) Where a compromise is approved under section 234 and the company is subsequently put into liquidation, the court may, on the application of-

(a) the liquidator; or

(b) with the leave of the court, any creditor or shareholder of the company -

make such order as the court considers appropriate with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

238. Costs of compromise

Unless the court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise-

(a) shall be met by the company;

(b) if incurred by a liquidator, are a cost of the liquidation; or

(c) if incurred by any other person, are a debt due to that person by the company and, if the company is put into liquidation, are payable in the order of priority required in the liquidation.