



# Insolvency Act 1986

## 1986 CHAPTER 45

The Second Group of Parts Insolvency of Individuals ; Bankruptcy

### PART VIII

#### INDIVIDUAL VOLUNTARY ARRANGEMENTS

##### *Moratorium for insolvent debtor*

#### **252 Interim order of court**

- (1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.
- (2) An interim order has the effect that, during the period for which it is in force—
  - (a) no bankruptcy petition relating to the debtor may be presented or proceeded with, and
  - (b) no other proceedings, and no execution or other legal process, may be commenced or continued against the debtor or his property except with the leave of the court.

#### **253 Application for interim order**

- (1) Application to the court for an interim order may be made where the debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as a "voluntary arrangement").
- (2) The proposal must provide 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.
- (3) Subject as follows, the application may be made—
  - (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

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- (b) in any other case, by the debtor.
- (4) An application shall not be made under subsection (3)(a) unless the debtor has given notice of his proposal (that is, the proposal to his creditors for a voluntary arrangement) to the official receiver and, if there is one, the trustee of his estate.
- (5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

#### **254 Effect of application**

- (1) At any time when an application under section 253 for an interim order is pending, the court may stay any action, execution or other legal process against the property or person of the debtor.
- (2) Any court in which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

#### **255 Cases in which interim order can be made**

- (1) The court shall not make an interim order on an application under section 253 unless it is satisfied—
  - (a) that the debtor intends to make such a proposal as is mentioned in that section;
  - (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy ;
  - (c) that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and
  - (d) that the nominee under the debtor's proposal to his creditors is a person who is for the time being qualified to act as an insolvency practitioner in relation to the debtor, and is willing to act in relation to the proposal.
- (2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.
- (3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.
- (4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.
- (5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.
- (6) Subject to the following provisions of this Part, an interim order made on an application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

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## **256 Nominee's report on debtor's proposal**

- (1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating—
  - (a) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and
  - (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—
  - (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
  - (b) a statement of his affairs attaining—
    - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
    - (ii) such other information as may be prescribed.
- (3) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, do one or both of the following, namely—
  - (a) direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the debtor ;
  - (b) direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.
- (4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.
- (5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.
- (6) The court may discharge the interim order if it is satisfied, on the application of the nominee—
  - (a) that the debtor has failed to comply with his obligations under subsection (2),  
or
  - (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

## **257 Summoning of creditors' meeting**

- (1) Where it has been reported to the court under section 256 that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under section 256(3)(a)) shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

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- (2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.
- (3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—
  - (a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and
  - (b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

*Consideration and implementation of debtor's proposal*

**258 Decisions of creditors' meeting**

- (1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.
- (2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.
- (3) The modifications subject to which the proposed voluntary arrangement may be approved 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 debtor.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 253.

- (4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.
- (5) Subject as follows, the meeting shall not approve any proposal or modification under which—
  - (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
  - (b) a preferential creditor of the debtor 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.

- (6) Subject as above, the meeting shall be conducted in accordance with the rules.
- (7) In this section "preferential debt" has the meaning given by section 386 in Part XII; and "preferential creditor" is to be construed accordingly.

**259 Report of decisions to court**

- (1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall report the result of it to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

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- (2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

## **260 Effect of approval**

- (1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).
- (2) The approved arrangement—
  - (a) takes effect as if made by the debtor at the meeting, and
  - (b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at it) as if he were a party to the arrangement.
- (3) The Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.
- (4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

- (5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), that petition is deemed, unless the court otherwise orders, to have been dismissed.

## **261 Effect where debtor an undischarged bankrupt**

- (1) Subject as follows, where the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications) and the debtor is an undischarged bankrupt, the court may do one or both of the following, namely—
  - (a) annul the bankruptcy order by which he was adjudged bankrupt;
  - (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.
- (2) The court shall not annul a bankruptcy order under subsection (1)—
  - (a) at any time before the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259, or
  - (b) at any time when an application under section 262 below, 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.

## **262 Challenge of meeting's decision**

- (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 by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor ;
  - (b) that there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who may apply under this section are—
- (a) the debtor;
  - (b) a person entitled, in accordance with the rules, to vote at the creditors' meeting ;
  - (c) the nominee (or his replacement under section 256(3)(a) or 258(3)); and
  - (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) An application under this section shall not be made after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259.
- (4) Where on an application under this section 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 any approval given by the meeting;
  - (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.
- (5) Where at any time after giving a direction under subsection (4) (b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.
- (7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4) (b) or 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—
- (a) things done since the meeting under any voluntary arrangement approved by the meeting, and
  - (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

## **263 Implementation and supervision of approved voluntary arrangement**

- (1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.
- (2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his

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replacement under section 256(3)(a) or 258(3)) shall be known as the supervisor of the voluntary arrangement.

- (3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an 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 may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.
- (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 in relation to the debtor, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

- (6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.