

Protection of creditors

1142. (1) A creditor of any of the merging companies who—

(a) at the date of publication of the notice under section 1135 (1)(b) is entitled to any debt or claim against the company, and

(b) can credibly demonstrate that the proposed merger would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safe-guards have been obtained from the company or the acquiring company,

shall be entitled to object to the confirmation by the court of the merger.

(2) If the court deems it necessary in order to secure the adequate protection of creditors of any of the merging companies it may—

(a) determine a list of creditors entitled to object and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the confirmation;

(b) where a creditor entered on the list whose debt or claim is not discharged or has not terminated does not consent to the confirmation, the court may, if it thinks fit, dispense with the consent of that creditor, on either—

(i) the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount—

(I) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(II) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or, if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court;

(ii) the successor company, on behalf of the company liable for the debt or claim, securing payment of the debt or claim.

(3) If, having regard to any special circumstances of the case it thinks proper so to do, the court may direct that subsection (2) shall not apply as regards any class of creditors.

(4) References in this section to a debt or claim having terminated are references to the debt or claim ceasing to be enforceable or to its otherwise determining.