

Enforcement by creditor of liability: restrictions in that regard unless certain procedure employed to the benefit of third person

549. (1) If the creditor proposes to enforce, by legal proceedings or otherwise, the obligation of the third person in respect of the liability, then he or she shall—

(a) if 14 days or more notice is given of such meeting, at least 14 days before the day on which the meeting concerned under section 540 to consider the proposals is held, or

(b) if less than 14 days' notice is given of such meeting, not more than 48 hours after he or she has received notice of such meeting,

serve a notice on the third person containing the following offer.

(2) That offer is an offer in writing by the creditor to transfer to the third person (which the creditor is, by virtue of this section, empowered to do) any rights, so far as they relate to the debt, he or she may have under section 540 to vote in respect of proposals for a compromise or scheme of arrangement in relation to the company.

(3) If that offer is accepted by the third person, that offer shall, if the third person furnishes to the examiner at the meeting concerned, a copy of the offer and informs the examiner of his or her having accepted it, operate, without the necessity for any assignment or the execution of any other instrument, to entitle the third person to exercise the rights referred to in subsection (2).

(4) However neither that transfer nor any vote cast by the third person on foot of the transfer shall operate to prejudice the right of the creditor to object to the proposals under section 543.

(5) If the creditor fails to make the offer referred to in subsection (1) in accordance with that subsection, then, subject to subsection (6), the creditor may not enforce by legal proceedings or otherwise the obligation of the third person in respect of the liability.

(6) Subsection (5) shall not apply if—

(a) a compromise or scheme of arrangement in relation to the company is not entered into or does not take effect under section 542 (3); and

(b) in either of those cases, the creditor has obtained the leave of the court to enforce the obligation of the third person in respect of the liability.