

Application to court for confirming order, objections by creditors and settlement of list of such creditors

85. (1) Where a company has passed a special resolution under section 84 (2)(b) for reducing its company capital it may apply to the court for an order confirming the resolution.

(2) A company which proposes to apply to the court for such an order shall cause notice of the passing of the resolution—

(a) to be advertised once at least in one daily newspaper circulating in the district where the registered office or principal place of business of the company is situated; and

(b) to be notified by ordinary post to all creditors of the company who are resident, or have their principal place of business, outside the State,

and no further advertisement of the passing of the resolution shall be required.

(3) In determining any preliminary application for directions as to the hearing of an application under this section, the court shall have regard to compliance by the company with the requirements of subsection (2).

(4) Where the proposed reduction of the company's company capital involves either diminution of liability in respect of unpaid company capital, or the payment to any shareholder of any paid up company capital, and in any other case if the court so directs, the following provisions shall have effect (but subject to subsection (5))—

(a) every creditor of the company who—

(i) at the date fixed by the court, is entitled to a debt or claim that, if that date were the commencement of the winding up of the company, would be admissible in proof against the company; and

(ii) can credibly demonstrate that the proposed reduction in company capital would be likely to put the satisfaction of that debt or claim at risk, and that no adequate safeguards have been obtained from the company,

is entitled to object to the reduction,

(b) the court shall settle a list of creditors entitled to object, and for that purpose may publish notices fixing a day or days within which creditors are to claim to be entered on the list or are to be excluded from the right of objecting to the reduction of company capital, and

(c) 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 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.

(5) Where a proposed reduction of company capital involves either the diminution of any liability in respect of unpaid company capital or the payment to any shareholder of any paid up company capital, the court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (4) shall not apply as regards any class or any classes of creditors.

(6) If satisfied that the following requirement is satisfied, the court may make an order confirming the resolution on such terms and conditions as it thinks fit.

(7) That requirement is that, in relation to every creditor of the company who, under this section is entitled to object to the confirmation, either—

(a) the creditor's consent to the confirmation has been obtained, or

(b) the creditor's debt or claim has been discharged or has terminated, or has been secured.

(8) Where the court makes an order confirming the resolution, it may make an order requiring the company to publish, as the court directs, the reasons for reduction of its company capital or such other information in regard thereto as the court may think expedient, with a view to giving proper information to the public, and if the court thinks fit, the causes which led to that reduction.

(9) 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.