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COMPANIES ACT (CHAPTER 50)

COMPANIES (PROOFS OF DEBT IN SCHEMES OF ARRANGEMENT) REGULATIONS 2017

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred by sections 211F(12) and 411 of the Companies Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Companies (Proofs of Debt in Schemes of Arrangement) Regulations 2017 and come into operation on 23 May 2017.

Definitions

2. In these Regulations —

“chairman”, in relation to a meeting, means the person appointed by the Court to serve as the chairman of the meeting;

“meeting” means a meeting of the creditors, or a class of the creditors, of a company summoned pursuant to an order of the Court made under section 210(1) of the Act, in relation to a compromise or arrangement between the company and its creditors or any class of those creditors.

List of creditors

3.—(1) The chairman of a meeting must, not later than 7 days after the period mentioned in section 211F(1)(b) of the Act (or as extended by the Court under section 211F(3) of the Act), send a copy of the list of creditors mentioned in paragraph (2) to every creditor who has filed a proof of debt with the company for the purposes of voting at the meeting.

(2) The list of creditors mentioned in paragraph (1) must set out the name of every creditor who has filed a proof of debt with the company for the purposes of voting at the meeting, and state the following particulars in respect of each creditor:

- (a) the address of the creditor as stated in the proof of debt;
- (b) the amount claimed under the proof of debt;
- (c) a brief description of the nature of the claim under the proof of debt.

Inspection of proofs of debt

4.—(1) A creditor (called in this regulation the requesting creditor) who has filed a proof of debt for the purposes of voting at a meeting and who wishes to inspect the proof of debt filed by another creditor (called in this regulation the affected creditor) for the purposes of voting at the same meeting must, not later than 21 days before the meeting —

- (a) send the request in writing to the chairman; and
- (b) send a written notice of the request to the company and the affected creditor.

(2) An affected creditor must, not later than 3 days after the receipt of the written notice mentioned in paragraph (1)(b) —

(a) send a written notice to the chairman stating —

(i) whether the affected creditor objects to the inspection of the proof of debt in question or any part of the proof of debt, and if so, the basis for the objection; and

(ii) where the affected creditor only objects to the inspection of part of the proof of debt, the part of the proof of debt to which the objection relates; and

(b) if the affected creditor objects to the inspection of the proof of debt or any part of the proof of debt, send a written notice of the objection to the company and the requesting creditor.

(3) An affected creditor who fails to comply with paragraph (2) is deemed to have no objection to the inspection of the proof of debt in question by the requesting creditor.

(4) A requesting creditor who wishes to inspect a proof of debt for which an objection to the inspection has been made may, not later than 3 days after the receipt of the written notice of objection mentioned in paragraph (2)(b) —

(a) send a written request, seeking agreement for the appointment of an independent assessor, to the affected creditor; or

(b) make an application to the Court for the appointment of an independent assessor under section 211F(9)(b) of the Act.

(5) The written request mentioned in paragraph (4)(a) and the application mentioned in paragraph (4)(b) must nominate a person to be appointed as the independent assessor and state the dispute that the independent assessor (if appointed) is to adjudicate.

(6) Where an application is made to the Court by the requesting creditor for the appointment of an independent assessor, the requesting creditor must, immediately upon the making of the application, send a written notice of the application to —

- (a) the company;
- (b) the chairman; and
- (c) the affected creditor.

(7) The chairman must provide the proof of debt in question to the requesting creditor for inspection by the requesting creditor —

- (a) in a case where the affected creditor does not object, or is deemed to have no objection, to the inspection of the proof of debt, as soon as practicable after the expiry of the period mentioned in paragraph (2); or
- (b) in a case where the affected creditor objects to the inspection of the proof of debt and an independent assessor is appointed to adjudicate the dispute, as soon as practicable after the receipt of the written notice mentioned in regulation 6(2)(b) informing that the independent assessor has allowed the inspection.

(8) A creditor may not submit more than one request under paragraph (1) to inspect the same proof of debt.

Adjudication of proofs of debt

5.—(1) The chairman of a meeting must, at least 28 days before the meeting —

- (a) complete the adjudication of all proofs of debt filed by creditors for the purposes of voting at the meeting; and
- (b) send in writing the results of the adjudication of the proofs of debts to every creditor who has filed a proof of debt for the purposes of voting at the meeting.

(2) The results of the adjudication mentioned in paragraph (1)(b) must list —

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- (a) every creditor who has filed a proof of debt for the purposes of voting at the meeting;
 - (b) the amount claimed under the proof of debt; and
 - (c) the amount (if any) of the proof of debt admitted, and the amount (if any) rejected, by the chairman.

(3) If the company or any creditor who has filed a proof of debt for the purposes of voting at the meeting objects to the results of the adjudication of any proof of debt by the chairman (called in this regulation the opposing party), the opposing party may, not later than 14 days before the meeting —

- (a) send a written request, seeking agreement for the appointment of an independent assessor, to —
 - (i) the company, unless the opposing party is the company;
 - (ii) the chairman; and
 - (iii) the creditor whose proof of debt will be affected by the decision of the independent assessor, unless the opposing party is that creditor; or
- (b) make an application to the Court for the appointment of an independent assessor under section 211F(9)(b) of the Act.

(4) The written request mentioned in paragraph (3)(a) and the application mentioned in paragraph (3)(b) must nominate a person to be appointed as the independent assessor and state the dispute that the independent assessor (if appointed) is to adjudicate.

(5) Where an application for the appointment of an independent assessor is made to the Court by the opposing party, the opposing party must, immediately upon the making of the application, send a written notice of the application to —

- (a) the company, unless the opposing party is the company;
- (b) the chairman; and
- (c) the creditor whose proof of debt will be affected by the decision of the independent assessor, unless the opposing party is that creditor.

Independent assessor

6.—(1) The chairman must, as soon as practicable after the appointment of an independent assessor under section 211F(9) of the Act, provide the relevant proof of debt to the independent assessor.

(2) The independent assessor must, not later than 7 days after being provided with the relevant proof of debt under paragraph (1) —

(a) make a decision on the dispute that the independent assessor was appointed to adjudicate; and

(b) send a written notice of the decision, together with the reasons for the decision, to the chairman, the company and any creditor who is a party to the dispute.

(3) The remuneration of an independent assessor is to be —

(a) fixed by —

(i) the agreement of all the parties to the dispute to be adjudicated by the independent assessor (where the independent assessor is appointed by the agreement of those parties); or

(ii) the Court (where the independent assessor is appointed by the Court); and

(b) borne by the requesting creditor mentioned in regulation 4(4) or the opposing party mentioned in regulation 5 (whichever is applicable), unless the Court orders otherwise.

Updated list of creditors

7.—(1) On the day of the meeting but before the meeting, the chairman of the meeting must provide a physical copy of an updated list of creditors to every creditor whose proof of debt is admitted for the purposes of voting at the meeting and who is present (whether in person or by proxy) at the venue of the meeting.

(2) The updated list of creditors mentioned in paragraph (1) must —

(a) list every creditor who has filed a proof of debt for the purposes of the meeting, the amount claimed under each

proof of debt, and the amount (if any) admitted and the amount (if any) rejected on each proof of debt; and

- (b) highlight any differences in the results of the adjudication of any proof of debt as compared with the results of the adjudication mentioned in regulation 5(1) sent by the chairman.

Notices of disagreement

8.—(1) Any person who wishes to file a notice of disagreement under section 211F(10) of the Act in relation to an independent assessor's decision on the inspection, admission or rejection of a proof of debt must file the notice, together with a statement of the reasons for the disagreement, at least 7 days before the hearing of the application for the Court's approval under section 210(4) of the Act.

(2) The person filing the notice of disagreement must send a copy of the notice and the accompanying statement mentioned in paragraph (1) to —

- (a) the company in question, unless the notice is filed by the company; and
- (b) any creditor who has filed a proof of debt with the company for the purposes of voting at the meeting in question, upon the request of that creditor.

Sending of notices and other documents

9.—(1) Every written notice or request or other information in writing required or authorised to be sent or given by any person (called in this regulation the sender) to any other person (called in this regulation the recipient) under any provision of these Regulations may be sent or given to the recipient —

- (a) by sending the notice or request or other information in writing to the recipient by pre-paid registered post addressed to the recipient at the last known address of the recipient;
- (b) by sending an electronic communication of the notice or request or other information to the last electronic mail

address of the recipient given to the sender, if such mode of sending the notice or request or other information was previously agreed in writing between the sender and the recipient; or

- (c) by sending the notice or request or other information to the last facsimile transmission number of the recipient given to the sender, if such mode of sending the notice or request or other information was previously agreed in writing between the sender and the recipient.

(2) Where any written notice or request or other information in writing required or authorised to be sent or given by a sender to a recipient under these Regulations is sent by pre-paid registered post, the notice or request or other information is presumed, unless the contrary is proven, to have been duly received by the recipient 2 days after the day that it was posted.

(3) Where any written notice or request or other information in writing required or authorised to be sent or given by a sender to a recipient under these Regulations is sent by electronic communication to an electronic mail address in accordance with paragraph (1)(b), the notice or request or other information is presumed, unless the contrary is proven, to have been duly sent by the sender and received by the recipient at the time the electronic communication enters the information system for that electronic mail address.

(4) Where any written notice or request or other information in writing required or authorised to be sent or given by a sender to a recipient under these Regulations is sent by facsimile transmission to a facsimile transmission number in accordance with paragraph (1)(c), the notice or request or other information is presumed, unless the contrary is proven, to have been duly sent by the sender and received by the recipient on the day of the transmission, subject to the receipt on the sending facsimile machine of a notification (by electronic or other means) of a successful transmission to the facsimile machine for that facsimile transmission number.

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