

## **Chartered Accountants Ireland or CCAB-I material**

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### **Technical Release**

#### **TR 09/2015 - Companies Act 2014 Schemes of Arrangement November 2015 (Updated April 2021)**

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## **INTRODUCTION**

Unless otherwise stated, all references to the Companies Act 2014 in this document refer to the Companies Act 2014 as enacted together with all subsequent amendments thereto as at the date of this release, including but not limited to the Companies (Accounting) Act 2017, the Companies (Statutory Audits) Act 2018 and the Companies (Miscellaneous Provisions) (COVID-19) Act 2020.

- 1.The provisions of Part 9, Reorganisations, Acquisitions, Mergers and Divisions, Companies Act, 2014 came into force on Monday 1 June 2015. Schemes of arrangement are addressed in Chapter 1 of Part 9 (“Chapter 1”).
- 2.This Technical Release summarises key changes made by Chapter 1 to previous company legislation, which include
  - reduced involvement of the High Court in the process;
  - a State authority can accept impairment of its claim;
  - application for court sanction must be advertised.
- 3.This Technical Release is intended to assist members in understanding the changes made to company legislation governing schemes of arrangement. However, it does not purport to be a detailed analysis of the provisions of Chapter 1.
- 4.Statutory references are to the relevant sections of Chapter 1, unless otherwise indicated.

## **SCHEME MEETINGS**

- 5.The company’s directors are empowered by Section 450 to convene meetings of creditors and of members to consider a proposed scheme of arrangement (“the scheme”). The directors are no longer obliged to apply to the High Court (“the Court”) for an order to convene the meeting.
- 6.If the directors do not exercise their right, the company, any creditor or member of the company or (in a winding up) the liquidator can apply to the Court for the appropriate order.

## **PROTECTION**

- 7.While there is no automatic stay from enforcement actions (unlike examinership), where a scheme meeting has been convened, the Court continues to have the power “on such terms as seem just” to stay proceedings, or restrain further proceedings, against the company for such period as the Court sees fit (Section 451).

## **PROVISION OF INFORMATION**

- 8.No changes are made to the earlier statutory requirements.

## **BINDING AGREEMENT**

- 9.As in earlier legislation, the scheme must have been approved by a majority in number representing at least 75% in value of the: creditors; class of creditors; members; or class of members present, and voting either in person or by proxy at the relevant meeting/s.

Section 453(4) empowers a State authority creditor to accept proposals which impair its claim. State Authority is a defined term in the Companies Act 2014, meaning the State, a Minister of the Government, a local authority or the Revenue Commissioners.

- 10.Section 453(2) requires that notice of the passing of the resolution(s) and that an application for Court sanction will be made, is advertised once in at least two daily newspapers circulating in the district where the registered office or principal place of business of the company is situated.

- 11.Provided these conditions are met, the Court can sanction the scheme. If the Court sanctions the scheme, it is then binding on all members and creditors (or classes thereof) who were entitled to attend the ‘Section 450 meeting(s)’. Sanctioning of a scheme by the court is not routine or ‘rubber-stamping’; the courts have set out principles to be considered before making the order.

12. The order does not take effect until a copy is delivered to the Registrar of Companies. Section 454 sets a 21-day limit for delivery, specifying the compliance obligation rests with the company.

Section 454(2) obliges the company to attach a copy of the scheme order to every copy of its constitution issued after the scheme order is made.