



In The Supreme Court of Bermuda Commercial Court

PRACTICE DIRECTION

ISSUED BY THE CHIEF JUSTICE AND THE COMMERCIAL JUDGES

Ref: A/50

CIRCULAR NO.18 of 2007

GUIDELINES APPLICABLE TO SCHEMES OF ARRANGEMENT UNDER SECTION 99 OF THE COMPANIES ACT 1981

1. This practice direction concerns the practice to be followed on applications pursuant to section 99 of the Companies Act 1981 seeking the sanction of the Court to a scheme of arrangement between a company and its creditors. The direction is required to avoid, if possible, the waste of costs and court time illustrated in *Re Hawk Insurance Co Ltd* [2001] 2 BCLC 480. The purpose is to enable issues concerning the composition of classes of creditor and the summoning of meetings to be identified and if appropriate resolved early in the proceedings. To achieve these objects the following practice should be observed.
2. It is the responsibility of the applicant to determine whether more than one meeting of creditors is required by a scheme and if so to ensure that those meetings are properly constituted by class of creditor so that each meeting consists of creditors whose rights against the company are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.
3. It is the responsibility of the applicant by evidence in support of the application or otherwise to draw to the attention of the Court as soon as possible any issue which may arise as to the constitution of meetings of creditors or which otherwise affect the conduct of those meetings (creditor issues). For this purpose, unless there are good reasons for not doing so, the applicant should take all steps reasonably open to it to notify any person affected by the scheme that it is being promoted, the purpose which the scheme is designed to achieve, the meetings of creditors which the applicant considers will be required and their composition.

4. In considering whether or not to order meetings of creditors (a meetings order) the Court will consider whether more than one meeting of creditors is required and if so what is the appropriate composition of those meetings.
5. Where a creditor issue has been drawn to the attention of the Court it will also consider whether to give directions for the resolution of that issue including if necessary directions for the postponement of meetings of creditors until that resolution has been achieved.
6. Directions for the resolution of creditor issues may include orders giving anyone affected by a meetings order a limited time in which to apply to vary or discharge that order with the creditors' meetings to take place in default of any such application within the time prescribed. While creditors who consider that they have been unfairly treated will still be able to appear and raise objections on the hearing of the petition to sanction the scheme, the Court will expect them to show good reason why they did not raise a creditor issue at an earlier stage.
7. Where possible the judge before whom the application is first brought on should retain carriage of the scheme throughout.

Dated the 8th day of October 2007.

Hon. Chief Justice Richard Ground
Hon. Mr. Justice Ian Kawaley
Hon. Mr. Justice Geoffrey Bell