

Enforcement Guide

Chapter 13

Insolvency

13.10 Applications in relation to voluntary arrangements: the FCA's policy

13.10.1 In general terms, the approval of a voluntary arrangement (in relation to *companies, partnerships and individuals*) requires more than 75% of the creditors to whom notice of a meeting has been sent and who are present in person or by proxy. The arrangement must also not be opposed by more than 50% of creditors given notice of the meeting and who have notified their claim, but excluding secured creditors and creditors who are, in the case of companies or partnerships, connected persons and, in the case of individuals, associates. The *FCA* will therefore not normally challenge an arrangement approved by a majority of creditors.

13.10.2 Exceptionally, the *FCA* will consider making such a challenge using its powers in sections 356 and 357 of the *Act* after considering, in particular, the following matters:

- (1) The composition of the creditors of the company including the ratio of *consumer* to non-*consumer* creditors or the nature of their claims;
- (2) whether the *FCA* has concerns, or is aware of concerns of creditors, about the regularity of the meeting or the identification of connected or associated creditors and the extent to which creditors with those concerns could themselves make an application to court;
- (3) whether the *company, partnership* or individual has control of consumer assets which might be affected by the voluntary arrangement;
- (4) the complexity of the arrangement;
- (5) the nature and complexity of the *regulated activity*;
- (6) the *company's, partnership's* or individual's previous dealings with the *FCA*, including the extent of its cooperation with the *FCA* and its compliance history;
- (7) whether the *FCA* is aware of any matters which would materially affect the rights and expectations of creditors under the voluntary arrangement as approved; and
- (8) the extent to which the debtor has made full and accurate disclosure of assets and liabilities in the proposal to creditors.

13.10.3

Similarly, the *FCA* will not normally use its powers under section 358 of the *Act* to petition for sequestration of a debtor's estate following the grant of a trust deed, if the trust deed has been, or appears likely to be, acceded to by a majority of creditors.:

13.10.4

In considering whether to exercise its powers under Schedule A1 to the 1986 *Act* to make a challenge in relation to acts, omissions or decisions of a nominee during a moratorium, the *FCA* will have regard to the following matters in particular:

- (1) whether the *FCA* is aware of matters indicating that the proposed voluntary arrangement does not have a reasonable prospect of being approved and implemented or that the company is likely to have insufficient funds available to it to carry on its business during the moratorium;
- (2) whether consumer assets held by the company are or may be placed at risk; and
- (3) in the case of an unauthorised *company* whether that *company* is able to carry on its business lawfully during the moratorium without undertaking any *regulated activity* in contravention of the *general prohibition*.