



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Distribution

129 Priority in distribution

- (1) The funds of the debtor's estate must be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—
- (a) the outlays and remuneration of an interim trustee in the administration of the debtor's estate,
 - (b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor's estate,
 - (c) where the debtor has died—
 - (i) deathbed and funeral expenses reasonably incurred, and
 - (ii) expenses reasonably incurred in administering the deceased's estate,
 - (d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,
 - (e) ordinary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
 - (f) secondary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
 - (g) ordinary debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),
 - (h) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—
 - (i) the ordinary preferred debts,
 - (ii) the secondary preferred debts, and
 - (iii) the ordinary debts,
 - (i) any postponed debt.
- (2) In this Act—

Status: This is the original version (as it was originally enacted).

- “preferred debt” means a debt listed in Part 1 of schedule 3 of this Act,
“ordinary preferred debt” means a debt within any of paragraphs 1 to 6 of that Part, and
“secondary preferred debt” means a debt within paragraph 7 or 8 of that Part.
- (3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.
- (4) In this Act, “postponed debt” means—
- (a) a loan made to the debtor, in consideration of a share of the profits in the debtor’s business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors,
 - (b) a loan made to the debtor by the debtor’s spouse or civil partner, or
 - (c) a creditor’s right to—
 - (i) anything vesting in the trustee by virtue of a successful challenge under section 98, or
 - (ii) the proceeds of sale of anything so vesting.
- (5) A debt falling within any of paragraphs (c) to (i) of subsection (1) has the same priority as any other debt falling within the same paragraph and, where the funds of the estate are inadequate to enable the debts mentioned in the paragraph in question to be paid in full, those debts are to abate in equal proportions.
- (6) Any surplus remaining after all the debts mentioned in this section have been paid in full must be made over to the debtor or the debtor’s successors or assignees.
- (7) In subsection (6), “surplus”—
- (a) includes any kind of estate, but
 - (b) does not include any unclaimed dividend.
- (8) Subsection (6) is subject to Article 35 of the EC insolvency proceedings regulation (which provides that any surplus in secondary proceedings is to be transferred to main proceedings).
- (9) Nothing in this section affects—
- (a) any right of a secured creditor which is preferable to the rights of the trustee,
 - (b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 108(5).
- (10) The rate of interest referred to in paragraph (h) of subsection (1) is whichever is the greater of—
- (a) the prescribed rate at the date of sequestration, and
 - (b) the rate applicable to that debt apart from the sequestration.