
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 114

The Insolvency (Scotland) Amendment Rules 2014

Distribution of company's assets by liquidator

18. For Rule 4.68 (application of the Bankruptcy Act)(1) substitute—

“Estate to be distributed in respect of the accounting periods

4.68.—(1) The liquidator shall make up accounts of the liquidator's intromissions with the company's assets in respect of each accounting period.

(2) In this Rule “accounting period” shall be construed as follows—

- (a) the first accounting period shall be the period of 6 months beginning with the date of commencement of winding up within the meaning of section 129(2); and
- (b) any subsequent accounting period shall be the period of 6 months beginning with the end of the last accounting period; except that—
 - (i) where the liquidator and the liquidation committee agree; or
 - (ii) where there is no liquidation committee, the court determines,

that the accounting period shall be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it shall be that other period.

(3) An agreement or determination under paragraph (2)(b)(i) or (ii) above—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, shall not have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
- (c) may provide for different accounting periods to be of different durations,

and shall be recorded in the sederunt book by the liquidator.

(4) Subject to the following provisions of this Rule, the liquidator shall, if the funds of the company's assets are sufficient and after making allowance for future contingencies, pay under Rule 4.68A(1) a dividend out of the company's assets to the creditors in respect of each accounting period.

(5) The liquidator may pay—

- (a) the expenses of the winding up mentioned in Rule 4.67(1)(a), other than the liquidator's own remuneration, at any time;

(1) Rule 4.68 was amended by [S.I. 2003/2109](#).

(2) Section 129 (commencement of winding up by the court) of the 1986 Act which was amended by the Enterprise Act [2002 \(c.40\)](#), Schedule 17, paragraph 16.

- (b) the preferential debts within the meaning of section 386(3) at any time but only with the consent of the liquidation committee or, if there is no liquidation committee, of the court.

(6) If the liquidator—

- (a) is not ready to pay a dividend in respect of an accounting period; or
- (b) considers it would be inappropriate to pay such a dividend because the expense of doing so would be disproportionate to the amount of the dividend,

the liquidator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(7) Where an appeal is taken under Rule 4.16B against the acceptance or rejection of a creditor's claim, the liquidator shall, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor—

- (a) has failed to produce evidence in support of a claim earlier than 8 weeks before the end of an accounting period on being required by the liquidator to do so under Rule 4.16A(1); and

(b) has given a reason for such failure which is acceptable to the liquidator,

the liquidator shall set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the liquidator to be satisfied under Rule 4.16A(1), an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the liquidator later than 8 weeks before the end of an accounting period but more than 8 weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the liquidator shall, if accepting the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and
- (b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period:

Provided that paragraph (a) above shall be without prejudice to any dividend which has already been paid.

(10) In the declaration of and payment of a dividend, no payments shall be made more than once by virtue of the same debt.

(11) Subject to any notification by the person entitled to a dividend given to the liquidator that the person wishes the dividend to be paid to another person, or has assigned that entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.

Payment of dividends

4.68A.—(1) On the expiry of the period within which an appeal may be taken under Rule 4.32(11) or, if an appeal is so taken, on the final determination of the last such appeal,

(3) Section 386 (categories of preferential debts) of the 1986 Act which was amended by the Pensions Scheme Act 1993 (c.48), Schedule 8, paragraph 18 and the Enterprise Act 2002 (c.40), section 251(3).

the liquidator shall pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under Rule 4.68(7) or (8),

shall be deposited by the liquidator in an appropriate bank or institution.

(3) If a creditor's claim is revalued, the liquidator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as is considered necessary to take account of that revaluation; or
- (b) require the creditor to repay the whole or part of a dividend already paid to that creditor.

(4) The liquidator shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the liquidator's outlays and remuneration.

Unclaimed dividends

4.68B.—(1) Any person, producing evidence of that person's right, may apply to the court to receive a dividend deposited under section 193(2)(4), if the application is made not later than seven years after the date of such deposit.

(2) If the court is satisfied of the applicant's right to the dividend, it shall authorise the appropriate bank or institution to pay to the applicant the amount of that dividend and of any interest which has accrued thereon.

(3) The liquidator shall, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 193(2), hand over the deposit receipt or other voucher relating to such dividend or balance to the Secretary of State, who shall thereupon be entitled to payment of the amount due, principal and interest, from the bank or institution in which the deposit was made.”.