

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2018 No. 347**

**The Insolvency (Scotland) (Receivership  
and Winding up) Rules 2018**

**PART 7**

**WINDING UP - REPORTING, ACCOUNTS,  
REMUNERATION, CLAIMS AND DISTRIBUTIONS**

**CHAPTER 4**

Claims by creditors

[Note: a document required by the Act or these Rules must also contain the standard contents required as set out in Part 1.]

**Submission of claims**

**7.16.**—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period, must submit the creditor's claim to the liquidator not later than 8 weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the liquidator—

- (a) a statement of claim as described in paragraph (3); and
- (b) documentary evidence of debt,

but the liquidator may dispense with the requirement in sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

- (a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) if the creditor is a company, identify the company;
- (d) state the name and address of any person authorised to act on behalf of the creditor;
- (e) state the total amount claimed in respect of all debts (under deduction of the value of any security as estimated by the creditor unless the creditor is surrendering or undertaking to surrender the security);
- (f) state whether or not the claim includes any outstanding uncapitalised interest at the date on which the company went into liquidation;
- (g) contain particulars of how and when the debt was incurred by the company, and where relevant the date on which payment of the debt became due;

- (h) contain particulars of any security<sup>(1)</sup> held, the subjects covered, the date on which it was given and the value which the creditor puts on it;
- (i) include details of any retention of title in relation to goods to which the debt relates;
- (j) state the nature and amount of any preference under schedule 6 of the Act claimed in respect of the debt;
- (k) in the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which the creditor is claiming;
- (l) include any details of any document by reference to which the debt can be substantiated; and
- (m) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the liquidator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the liquidator has required the creditor to discharge, or convey or assign, the security under rule 7.24.

#### **False claims or evidence**

**7.17.** If a creditor produces under rule 7.16 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false;
- (b) the company is guilty of an offence if the company—
  - (i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false; and
  - (ii) failed as soon as practicable after acquiring such knowledge to report it to the liquidator.

#### **Evidence of claims**

**7.18.—(1)** The liquidator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 7.16, may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who the liquidator believes can produce relevant evidence, to produce such evidence.

(2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the liquidator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(3) On an application to it under paragraph (2) the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than 8 days nor later than 16 days after the date of the order) and at a time specified in the order.

---

(1) See section 248 of the Act for the definition of "security".

(4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an “examining commissioner”).

(5) At any private examination under paragraph (3) or where the court grants a commission to take the examination under paragraph (4)—

- (a) a solicitor or counsel may act on behalf of the liquidator; or
- (b) the liquidator may appear on the liquidator’s own behalf.

(6) The examination, whether before the court or an examining commissioner, must be taken on oath.

(7) A person who fails without reasonable excuse to comply with an order made under paragraph (3) is guilty of an offence.

(8) References in this rule to a creditor in a case where the creditor is one of the following entities:

—

- (a) a trust;
- (b) a partnership (including a dissolved partnership);
- (c) a body corporate or an unincorporated body;
- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907,

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

### **Adjudication of claims**

**7.19.**—(1) Where funds are available for payment of a dividend out of the company’s assets in respect of an accounting period, the liquidator for the purpose of determining who is entitled to such a dividend must—

- (a) not later than 4 weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 7.16; and
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (b).

(2) On accepting or rejecting, under paragraph (1), every claim submitted or deemed to have been re-submitted, the liquidator must, as soon as reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to every creditor known to the liquidator.

(3) Where the liquidator rejects a claim, the liquidator must without delay notify the creditor giving reasons for the rejection.

(4) Where the liquidator accepts or rejects a claim, the liquidator must specify for that claim—

- (a) the amount of the claim accepted;
- (b) the category of debt, and the value of any security, as decided by the liquidator; and
- (c) if rejecting the claim, the reasons for doing so.

(5) Any member of the company or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection, with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b)) appeal to the court not later than 14 days before the end of the accounting period.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

**Entitlement to draw a dividend**

**7.20.**—(1) A creditor who has had that creditor’s claim accepted in whole or in part by the liquidator under rule 7.19(1) or on appeal under rule 7.19(5) is entitled to payment out of the company’s assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the company has funds available to make that payment, having regard to rule 7.27 (order of priority in distribution).

**Liabilities and rights of co-obligants**

**7.21.**—(1) Where a creditor has an obligant bound to the creditor along with the company for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the company or the creditor’s voting or drawing a dividend or assenting to or not opposing—

(a) the dissolution of the company; or

(b) any composition with creditors.

(2) Paragraph (3) applies where—

(a) a creditor has had a claim accepted in whole or in part; and

(b) the obligant holds a security over any part of the company’s assets,

(3) The obligant must account to the liquidator so as to put the company’s assets in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant’s claim accepted in whole or in part in the liquidation after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant’s own expense from the creditor an assignation of the debt, on payment of the amount of the debt and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of a co-obligant who has paid the debt.

(6) In this rule an “obligant” includes cautioner.

**Amount which may be claimed generally**

**7.22.**—(1) Subject to the provisions of this rule and rules 7.23 and 7.24, the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date on which the company went into liquidation.

(2) If a debt does not depend on a contingency but would not be payable but for the liquidation until after the date on which the company went into liquidation, the amount of the claim is to be calculated as if the debt were payable on the date on which the company went into liquidation but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor’s claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is the official rate.

(5) Where the winding up was immediately preceded by an administration, the reference to the date on which the company went into liquidation in paragraph (1) and the second reference to that date in paragraph (2) are to be construed as references to the date the company entered administration.

### **Debts depending on contingency**

**7.23.**—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

- (a) to the liquidator; or
- (b) if there is no liquidator, to the court,

the liquidator or court must put a value on the debt in so far as it is contingent.

(3) Where under paragraph (2) a value is put on the debt—

- (a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more;
- (b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(4) Any interested person may appeal to the court against a valuation under paragraph (2) by the liquidator, and the court may affirm or vary that valuation.

### **Secured debts**

**7.24.**—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the company's assets, the secured creditor is not required to deduct the value of that security.

(3) The liquidator may, at any time after the expiry of 12 weeks from the date on which the company went into liquidation, require a secured creditor at the expense of the company's assets to discharge the security or convey or assign it to the liquidator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the liquidator makes payment to the creditor the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

### **Claims in foreign currency**

**7.25.**—(1) A creditor may state the amount of the creditor's claim in a currency other than sterling where—

- (a) the creditor's claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling; or
- (b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is, or may be required to be, made by the company to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the liquidator must convert it into sterling at a single rate for each currency determined by the liquidator by reference to the exchange rates prevailing in the London market at the close of business on the date on which the company went into liquidation.

---

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

---