
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 6

Distribution of company's assets by the liquidator

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

Order of priority in distribution

7.27.—(1) The funds of the company's assets must be distributed by the liquidator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the liquidation;
 - (b) any preferential debts within the meaning of section 386(1) (excluding any interest which has been accrued thereon to the date on which the company went into liquidation);
 - (c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
 - (d) interest at the official rate, between the date on which the company went into liquidation and the date of payment, on—
 - (i) the preferential debts; and
 - (ii) the ordinary debts; and
 - (e) any postponed debt.
- (2) In paragraph (1)—
- (a) “postponed debt” means—
 - (i) a creditor's right to any alienation which has been reduced or restored to the company's assets under section 242 or to the proceeds of sale of such an alienation;
 - (ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(2) (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); or
 - (iii) a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed;

(1) Section 386 was amended by paragraph 18 of schedule 8 of the Pension Schemes Act 1993 (c.48), section 13(2) of the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2003/2093, S.I. 2014/3486 and S.I. 2015/486.

(2) 2000 c.8.

- (b) in sub-paragraph (d), where the liquidation was immediately preceded by an administration, the reference to the date on which the company went into liquidation is to be construed as the date the company entered administration.
- (3) The expenses of the liquidation mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 7.28 (order of priority of expenses of liquidation).
- (4) Subject to section 175—
 - (a) any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) is to have the same priority as any other debt falling within the same sub-paragraph; and
 - (b) where the funds of the company's assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.
- (5) Any surplus remaining, after all the expenses and debts mentioned in paragraph (1) have been paid in full, must (unless the articles of the company provide otherwise) be distributed among the members according to their rights and interests in the company.
- (6) Nothing in this rule affects—
 - (a) the right of a secured creditor which is preferable to the rights of the liquidator; or
 - (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the liquidator in accordance with a requirement under rule 5.36(4).

Order of priority of expenses of liquidation

- 7.28.**—(1) All fees, costs, charges and other expenses incurred in the course of the liquidation are to be treated as expenses of the liquidation.
- (2) The expenses associated with the prescribed part must be paid out of the prescribed part.
 - (3) The expenses of the liquidation are payable out of the assets of the company in the following order of priority—
 - (a) any outlays properly chargeable or incurred by the provisional liquidator or liquidator in carrying out the functions of the provisional liquidator or liquidator in the liquidation including any costs referred to in Article 30 and 59 of the EU Regulation, except those outlays specifically mentioned in the following sub-paragraphs;
 - (b) the cost, or proportionate cost, of any caution provided by a provisional liquidator, liquidator or special manager in accordance with the Act or these Rules;
 - (c) the remuneration of the provisional liquidator (if any);
 - (d) the expenses of the petitioner in the liquidation, and of any person appearing in the petition whose expenses are allowed by the court;
 - (e) the remuneration of the special manager (if any);
 - (f) any amount payable to a person employed or authorised, under Chapter 4 of Part 5, to assist in the preparation of a statement of affairs or of accounts;
 - (g) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or these Rules;
 - (h) the remuneration of the liquidator determined in accordance with rules 7.11 to 7.15;
 - (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor or otherwise).

Winding up commencing as voluntary

7.29. In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow have the same priority as the outlays mentioned in rule 7.28(3)(a).

Saving for powers of the court (section 156)

7.30.—(1) The priorities laid down by rules 7.27 and 7.28 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those rules—

- (a) applies to or affects the power of any court, in proceedings by or against the company, to order expenses to be paid by the company, or the liquidator; or
- (b) affects the rights of any person to whom such expenses are ordered to be paid.

Estate to be distributed in respect of the accounting periods

[Note: Where in this rule provision is applicable to the provisional liquidator the term provisional liquidator is used.]

7.31.—(1) The liquidator must 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" is to be construed as follows—

- (a) the first accounting period is the period of 6 months beginning with the date on which the liquidator is appointed (subject to paragraph (3));
- (b) the second accounting period is the period of 6 months beginning with the end of the first accounting period; and
- (c) any subsequent accounting period is the period of 12 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,the accounting period is to 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 is to be that other period.

(3) Where a provisional liquidator is appointed under section 135 the first accounting period is the period of 6 months beginning with the date on which the provisional liquidator is appointed.

(4) An agreement or determination under paragraph (2)(c)—

- (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, is not to 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
- (d) may vary the time periods mentioned in—
 - (i) rule 7.16(1) and paragraphs (10) and (11) of this rule;
 - (ii) rule 7.19(1)(a) and (5); and
 - (iii) rule 7.35 (contents of notice to be delivered to creditors owed small debts etc.).

- (5) Accounting periods are unaffected by any—
- (a) recall of the appointment of a provisional liquidator (prior to a winding up order being made);
 - (b) termination of the appointment of a provisional liquidator and appointment of a liquidator (including an interim liquidator) on the making of a winding up order;
 - (c) change in the provisional liquidator or liquidator.

(6) Subject to the following provisions of this rule, the liquidator must, if the funds of the company's assets are sufficient and after making an allowance for future contingencies, pay under rule 7.32 (payment of dividends) a dividend out of the company's assets to the creditors in respect of each accounting period.

- (7) The liquidator may pay—
- (a) the expenses of the liquidation mentioned in rule 7.28(3)(a), other than the liquidator's own remuneration, at any time;
 - (b) the preferential debts within the meaning of section 386 at any time but only with the consent of the liquidation committee or, if there is no liquidation committee, of the court.
- (8) 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 expenses 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.

(9) Where an appeal is taken under rule 7.19(5) against the acceptance or rejection of a creditor's claim, the liquidator must, 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.

- (10) 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 7.18; and
 - (b) has given a reason for such failure which is acceptable to the liquidator,

the liquidator must 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 7.18, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(11) 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 must, 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.

(12) Paragraph (11)(a) is without prejudice to any dividend which has already been paid.

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

(14) 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 is only to be made to the creditor.

Payment of dividends

7.32.—(1) On the expiry of the period within which an appeal may be taken under rule 7.12 or, if an appeal is so taken, on the final determination of the last such appeal, the liquidator must pay to the creditors the 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 7.31 (9) or (10),

must 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 the liquidator considers necessary to take account of that revaluation; or
- (b) require the creditor to repay to the liquidator the whole or part of a dividend already paid to that creditor.

Unclaimed dividends

7.33.—(1) Any person, producing evidence of that person's right, may apply to the Accountant of Court to receive a dividend deposited under section 193(2), if the application is made not later than 7 years after the date of deposit.

(2) If the Accountant of Court is satisfied of the person's right to the dividend, the Accountant of Court must authorise the bank or institution in which the deposit was made to pay to the person the amount of that dividend and of any interest which has accrued on the dividend.

(3) The Accountant of Court is, at the expiry of 7 years from the date of deposit of any unclaimed dividend or unapplied balance under section 193(2), to hand over the deposit receipt or other voucher relating to the dividend or balance to the Secretary of State.

(4) Where under paragraph (3) the Accountant of Court hands over the deposit receipt or other voucher, the Secretary of State is entitled to payment of the amount due (principal and interest) from the bank or institution in which the deposit was made.

Small debts

7.34.—(1) A creditor is deemed to have submitted a claim for the purposes of adjudication of entitlement to and payment of a dividend but not otherwise where—

- (a) the debt is a small debt;
- (b) notice has been delivered to the creditor under rule 7.35; and
- (c) the creditor has not advised the liquidator that the debt is incorrect or not owed in response to the notice.

(2) In this rule “small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A(3) of schedule 8 of the Act and paragraph 18A of schedule 9 of the Act(4)).

Contents of notice to be delivered to creditors owed small debts etc.

7.35.—(1) The liquidator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company, as if it were accepted under rule 7.19 for the purpose of paying a dividend.

(2) Where the liquidator intends to treat such a debt as if it were accepted under rule 7.19 for the purpose of payment of a dividend, the liquidator must not later than 12 weeks before the end of the accounting period deliver to the creditor a notice.

(3) The notice must—

- (a) state the amount of the debt which the liquidator believes to be owed to the creditor according to the accounting records or statement of affairs of the company;
- (b) state that the liquidator will treat the debt which is stated in the notice, being for £1,000 or less, as accepted for the purpose of payment of a dividend unless the creditor advises the liquidator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the liquidator by not later than 8 weeks before the end of the accounting period if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the liquidator that the amount of the debt is incorrect the creditor must also submit not later than 8 weeks before the end of the accounting period a statement of claim and documentary evidence of debt (see rule 7.16) in order to receive a dividend.

(3) Paragraph 13A is prospectively inserted into schedule 8 by section 131 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

(4) Paragraph 18A is prospectively inserted into schedule 9 by section 132 of the 2015 Act.