



# Bankruptcy (Scotland) Act 1985

## 1985 CHAPTER 66

### *Distribution of debtor's estate*

#### **51 Order of priority in distribution**

- (1) The funds of the debtor's estate shall be distributed by the permanent trustee to meet the following debts in the order in which they are mentioned—
  - (a) the outlays and remuneration of the interim trustee in the administration of the debtor's estate ;
  - (b) the outlays and remuneration of the permanent trustee in the administration of the debtor's estate ;
  - (c) where the debtor is a deceased debtor, deathbed and funeral expenses reasonably incurred and expenses reasonably incurred in administering the deceased's estate;
  - (d) the expenses reasonably incurred by a creditor who is a petitioner, or concurs in the petition, for sequestration ;
  - (e) preferred debts (excluding any interest which has accrued thereon to the date of sequestration);
  - (f) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other paragraph of this subsection;
  - (g) interest at the rate specified in subsection (7) below on—
    - (i) the preferred debts ;
    - (ii) the ordinary debts,between the date of sequestration and the date of payment of the debt;
  - (h) any postponed debt.
- (2) In this Act " preferred debt" means a debt listed in Part I of Schedule 3 to this Act; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (3) In this Act " postponed debt" means—
  - (a) a loan made to the debtor, in consideration of a share of the profits in his 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 ;
  - (c) a creditor's right to anything vesting in the permanent trustee by virtue of a successful challenge under section 34 of this Act or to the proceeds of sale of such a thing.
- (4) Any debt falling within any of paragraphs (c) to (h) of subsection (1) above shall have 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 to be paid in full, they shall abate in equal proportions.
- (5) Any surplus remaining, after all the debts mentioned in this section have been paid in full, shall be made over to the debtor or to his successors or assignees; and in this subsection " surplus " includes any kind of estate but does not include any unclaimed dividend.
- (6) Nothing in this section shall affect—
- (a) the right of a secured creditor which is preferable to the rights of the permanent trustee ; or
  - (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the permanent trustee in accordance with a requirement under section 38(4) of this Act.
- (7) The rate of interest referred to in paragraph (g) of subsection (1) above shall be 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.

## **52 Estate to be distributed in respect of accounting periods**

- (1) Subject to subsection (6) below, the permanent trustee, until the funds of the estate are exhausted, shall make up accounts of his intromissions with the debtor's estate in respect of periods of 26 weeks, the first such period commencing with the date of sequestration.
- (2) In this Act " accounting period " shall be construed in accordance with subsections (1) above and (6) below.
- (3) Subject to the following provisions of this section, the permanent trustee shall, if the funds of the debtor's estate are sufficient and after making allowance for future contingencies, pay under section 53(7) of this Act a dividend out of the estate to the creditors in respect of each accounting period.
- (4) The permanent trustee may pay—
- (a) the debts mentioned in subsection (1)(a) to (d) of section 51 of this Act, other than his own remuneration, at any time;
  - (b) the preferred debts at any time but only with the consent of the commissioners or, if there are no commissioners, of the Accountant in Bankruptcy.
- (5) If the permanent trustee—
- (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,

he may, with the consent of the commissioners, or if there are no commissioners of the Accountant in Bankruptcy, postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

- (6) Where the permanent trustee considers that it would be expedient to accelerate payment of a dividend other than a dividend in respect of the first accounting period, the accounting period, shall be shortened so as to end on such date as the permanent trustee, with the consent of the commissioners (if any), may specify and the next accounting period shall run from the end of that shortened period; and the permanent trustee shall record in the sederunt book the date so specified.
- (7) Where an appeal is taken under section 49 (6)(b) of this Act against the acceptance or rejection of a creditor's claim, the permanent trustee 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 his claim earlier than 8 weeks before the end of an accounting period on being required by the permanent trustee to do so under section 48(5) of this Act; and
  - (b) has given a reason for such failure which is acceptable to the permanent trustee,

the permanent trustee shall set aside, for such time as is reasonable to enable him to produce that evidence or any other evidence that will enable the permanent trustee to be satisfied under the said section 48(5), 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 permanent trustee 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 permanent trustee shall, if he accepts 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 him 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.

### **53 Procedure after end of accounting period**

- (1) Within 2 weeks after the end of an accounting period, the permanent trustee shall in respect of that period submit to the commissioners or, if there are no commissioners, to the Accountant in Bankruptcy—
  - (a) his accounts of his intromissions with the debtor's estate for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds ; and
  - (b) a claim for the outlays reasonably incurred by him and for his remuneration; and, where the said documents are submitted to the commissioners, he shall send a copy of them to the Accountant in Bankruptcy.

- (2) All accounts in respect of legal services incurred by the permanent trustee shall, before payment thereof by him, be submitted for taxation to the auditor of the court before which the sequestration is pending:

Provided that the permanent trustee may be authorised by the Accountant in Bankruptcy to pay any such account without taxation.

- (3) Within 6 weeks after the end of an accounting period—
- (a) the commissioners or, as the case may be, the Accountant in Bankruptcy shall—
    - (i) audit the accounts ; and
    - (ii) issue a determination fixing the amount of the outlays and the remuneration payable to the permanent trustee; and
  - (b) the permanent trustee shall make the audited accounts, scheme of division and the said determination available for inspection by the debtor and the creditors.
- (4) The basis for fixing the amount of the remuneration payable to the permanent trustee may be a commission calculated by reference to the value of the debtor's estate which has been realised by the permanent trustee, but there shall in any event be taken into account—
- (a) the work which, having regard to that value, was reasonably undertaken by him ; and
  - (b) the extent of his responsibilities in administering the debtor's estate.
- (5) In fixing the amount of such remuneration in respect of the final accounting period, the commissioners or, as the case may be, the Accountant in Bankruptcy may take into account any adjustment which the commissioners or the Accountant in Bankruptcy may wish to make in the amount of the remuneration fixed in respect of any earlier accounting period.
- (6) Not later than 8 weeks after the end of an accounting period, the permanent trustee, the debtor or any creditor may appeal against a determination issued under subsection (3)(a)(ii) above—
- (a) where it is a determination of the commissioners, to the Accountant in Bankruptcy; and
  - (b) where it is a determination of the Accountant in Bankruptcy, to the sheriff;
- and the determination of the Accountant in Bankruptcy under paragraph (a) above shall be appealable to the sheriff.
- (7) On the expiry of the period within which an appeal may be taken under subsection (6) above or, if an appeal is so taken, on the final determination of the last such appeal, the permanent trustee shall pay to the creditors their dividends in accordance with the scheme of division.
- (8) 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 subsection (7) or (8) of section 52 of this Act,
- shall be deposited by the permanent trustee in an appropriate bank or institution.
- (9) If a creditor's claim is revalued, the permanent trustee may—

- (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation ; or
  - (b) require the creditor to repay to him the whole or part of a dividend already paid to him.
- (10) The permanent trustee shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the permanent trustee's outlays and remuneration.