
STATUTORY INSTRUMENTS

2013 No. 3208

The Postal Administration Rules 2013

PART 7

DISTRIBUTION TO CREDITORS

CHAPTER 3

Quantification of Claims

Estimate of quantum

51.—(1) The postal administrator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and the postal administrator may revise any estimate previously made, if the postal administrator thinks fit by reference to any change of circumstances or to information becoming available to the postal administrator. The postal administrator shall inform the creditor as to the postal administrator's estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, the amount provable in the postal administration in the case of that debt is that of the estimate for the time being.

Negotiable instruments, etc

52. Unless the postal administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

Secured creditors

53.—(1) If a secured creditor realises their security, they may prove for the balance of their debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders their security for the general benefit of creditors, they may prove for their whole debt, as if it were unsecured.

Discounts

54. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its postal administration except any discount for immediate, early or cash settlement.

Mutual credits and set-off

55.—(1) This Rule applies where the postal administrator, being authorised to make the distribution in question, has, pursuant to Rule 65 given notice that the postal administrator proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the postal administration but does not include any of the following—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under section 98 of the 1986 Act,
 - (ii) a petition for the winding up of the company was pending,
 - (iii) an application for an administration order under the 1986 Act was pending;
 - (iv) an application for a postal administration order was pending; or
 - (v) any person had given notice of intention to appoint an administrator under the 1986 Rules;
- (b) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) at a time when the creditor had notice that an application for a postal administration order was pending;
 - (ii) after the commencement of postal administration,
 - (iii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98 of the 1986 Act, or
 - (iv) at a time when the creditor had notice that a winding up petition was pending, or
 - (v) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending; or
- (c) any debt arising out of an obligation incurred after the company entered administration.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of this Rule of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the company for the purposes of paragraph (3) of this Rule whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 51 shall apply for the purposes of this Rule to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value;

(6) Rules 56 to 58 shall apply for the purposes of this Rule in relation to any sums due to the company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 76 shall apply for the purposes of this Rule to any sum due to or from the company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the postal administration. Alternatively the balance (if any) owed to the company shall be paid to the postal administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Debt in foreign currency

56.—(1) For the purpose of proving any debt incurred or payable in a currency other than sterling, the amount of those debts shall be converted into sterling at a single rate for that currency determined by the postal administrator with reference to the exchange rates prevailing on the relevant date.

(2) If the postal administrator receives any objections from the creditors to that rate the postal administrator must apply to the court to determine the rate.

(3) In this Rule, and Rule 58, “the relevant date” means the date on which the company entered postal administration.

Payments of a periodical nature

57.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company entered postal administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

58.—(1) Where a debt proved in the postal administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the following circumstances the creditor’s claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(4) If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) of this Rule may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the 1986 Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6) of this Rule.

(6) The rate of interest to be claimed under paragraphs (3) and (4) of this Rule is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

(7) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(8) All interest payable under paragraph (7) of this Rule ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) of this Rule is whichever is the greater of the rate specified under paragraph (6) of this Rule and the rate applicable to the debt apart from the postal administration.

Debt payable at future time

59. A creditor may prove for a debt of which payment was not yet due on the date when the company entered postal administration subject to Rule 76 (adjustment of dividend where payment made before time).

Value of security

60.—(1) A secured creditor may, with the agreement of the postal administrator or the permission of the court, at any time alter the value which they have, in their proof of debt, put upon their security.

(2) However, if a secured creditor has voted in respect of the unsecured balance of their debt, they may re-value their security only with permission of the court.

Surrender for non-disclosure

61.—(1) If a secured creditor omits to disclose their security in their proof of debt, they shall surrender their security for the general benefit of creditors, unless the court, on application by them, relieves them from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

Redemption by postal administrator

62.—(1) The postal administrator may at any time give notice to a creditor whose debt is secured that the postal administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the postal administrator may allow) in which, if they so wish, to exercise their right to revalue their security (with the permission of the court, where Rule 60(2) applies). If the creditor re-values their security, the postal administrator may only redeem at the new value.

(3) If the postal administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the postal administrator to elect whether the postal administrator will or will not exercise the postal administrator's power to redeem the security at the value then placed on it; and the postal administrator then has 3 months in which to exercise the power or determine not to exercise it.

Test of security's value

63.—(1) Subject as follows, if the postal administrator is dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under Rule 60) the postal administrator may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the postal administrator on behalf of the company, and the creditor on his own behalf, may appear and bid.

(3) This Rule does not apply if the security has been re-valued and the revaluation has been approved by the court.

Realisation of security by creditor

64.—(1) If a creditor who has valued their security subsequently realises it (whether or not at the instance of the postal administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by them.

Notice of proposed distribution

65.—(1) Where a postal administrator is proposing to make a distribution to creditors the postal administrator shall give notice of that fact.

(2) The notice given pursuant to paragraph (1) of this Rule shall—

- (a) be sent to all creditors whose addresses are known to the postal administrator;
- (b) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and
- (c) where the postal administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act.

(3) Subject to paragraph (5)(b) of this Rule, before declaring a dividend the postal administrator shall by notice invite the creditors to prove their debts. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the postal administrator thinks fit.

(4) A notice pursuant to paragraph (1) or (3) of this Rule must, in addition to the standard contents—

- (a) state that it is the intention of the postal administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged being a date which—
 - (i) is the same date for all creditors; and
 - (ii) is not less than 21 days from that of the notice.

(5) Where a dividend is to be declared for preferential creditors—

- (a) the notice pursuant to paragraph (1) of this Rule need only be given to those creditors in whose case the postal administrator has reason to believe that their debts are preferential; and
- (b) the notice pursuant to paragraph (3) of this Rule need only be given if the postal administrator thinks fit.

Admission or rejection of proofs

66.—(1) Unless the postal administrator has already dealt with them, within 5 business days of the last date for proving, the postal administrator shall—

- (a) admit or reject (in whole or in part) proofs submitted to the postal administrator; or
- (b) make such provision in respect of them as the postal administrator thinks fit.

(2) The postal administrator is not obliged to deal with proofs lodged after the last date for proving, but may do so, if the postal administrator thinks fit.

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

Postponement or cancellation of dividend

67. If in the period of 2 months referred to in Rule 65(4)(a)—

- (a) the postal administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or
- (b) application is made to the court for the postal administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the postal administrator may postpone or cancel the dividend.

Declaration of dividend

68.—(1) Subject to paragraph (2) of this Rule, within the 2 month period referred to in Rule 65(4) (a) the postal administrator shall proceed to declare the dividend to one or more classes of creditor of which the postal administrator gave notice.

(2) Except with the permission of the court, the postal administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of the postal administrator on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2) of this Rule, the postal administrator must make such provision in respect of the proof in question as the court directs.

Notice of declaration of a dividend

69.—(1) Where the postal administrator declares a dividend the postal administrator shall give notice of that fact to all creditors who have proved their debts.

(2) The notice shall include the following particulars relating to the administration—

- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the postal administrator when acting as such;
- (c) where the postal administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;
- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (e) the total amount of dividend and the rate of dividend; and
- (f) whether, and if so when, any further dividend is expected to be declared.

Payments of dividends and related matters

70.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to them in another way, or held for their collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no dividend, or no further dividend

71. If the postal administrator gives notice to creditors that the postal administrator is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of the postal administration.

Proof altered after payment of dividend

72.—(1) If after payment of dividend the amount claimed by a creditor in their proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but they are entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which they have failed to receive.

(2) Any dividend or dividends payable under paragraph (1) of this Rule shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the postal administrator any amount overpaid by way of dividend.

Secured creditors

73.—(1) The following applies where a creditor re-values their security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of their unsecured claim ranking for dividend, the creditor shall as soon as reasonably practicable repay to the postal administrator, for the credit of the postal administration, any amount received by them as dividend in excess of that to which they would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of their unsecured claim, the creditor is entitled to receive from the postal administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which they have failed to receive, having regard to the revaluation of the security. However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

74. If a creditor contravenes any provision of the 1986 Act or the Rules relating to the valuation of securities, the court may, on the application of the postal administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

75.—(1) If a person entitled to a dividend gives notice to the postal administrator that they wish the dividend to be paid to another person, or that they have assigned their entitlement to another person, the postal administrator shall pay the dividend to that other accordingly.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

Debt payable at future time

76.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, they are entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to them, the amount remaining outstanding in respect of their admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the date the company entered postal administration and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.