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STATUTORY INSTRUMENTS

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**2013 No. 3208**

**The Postal Administration Rules 2013**

**PART 7**

**DISTRIBUTION TO CREDITORS**

**CHAPTER 1**

*Application of Part and General*

**Distribution to creditors generally**

**39.**—(1) This Part applies where the postal administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors. Where the distribution is to a particular class of creditors, references in this Part to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The postal administrator shall give notice to the creditors of the postal administrator's intention to declare and distribute a dividend in accordance with Rule 65.

(3) Where it is intended that the distribution is to be a sole or final dividend, the postal administrator shall, after the date specified in the notice referred to in paragraph (2) of this Rule—

- (a) defray any items payable in accordance with the provisions of paragraph 99;
  - (b) defray any amounts (including any debts or liabilities and the postal administrator's own remuneration and expenses) which would, if the postal administrator were to cease to be the postal administrator of the company, be payable out of the property of which the postal administrator had custody or control in accordance with the provisions of paragraph 99; and
  - (c) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.
- (4) The court may, on the application of any person, postpone the date specified in the notice.

**Debts of insolvent company to rank equally**

**40.** Debts other than preferential debts rank equally between themselves in the postal administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

**Supplementary provisions as to dividend**

**41.**—(1) In the calculation and distribution of a dividend the postal administrator shall make provision for—

- (a) any debts which appear to the postal administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved their debt before the declaration of any dividend is not entitled to disturb, by reason that they have not participated in it, the distribution of that dividend or any other dividend declared before their debt was proved, but—

- (a) when they have proved that debt 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; and
- (b) any dividends payable under sub-paragraph (a) of this paragraph shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the postal administrator for a dividend; but if the postal administrator refuses to pay a dividend the court may, if it thinks just, order the postal administrator to pay it and also to pay, out of the postal administrator's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(1), from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

#### **Division of unsold assets**

**42.**—(1) The postal administrator may, with the permission of the creditors, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The postal administrator must—

- (a) in the receipts and payments account included in the final progress report under Part 9 of the Rules, state the estimated value of the property divided amongst the creditors of the company during the period to which the report relates, and
- (b) as a note to the account, provide details of the basis of the valuation.

## CHAPTER 2

### *Machinery of Proving a Debt*

#### **Proving a debt**

**43.**—(1) A person claiming to be a creditor of the company and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the postal administrator.

(2) A creditor who claims is referred to as “proving” for their debt and a document by which they seek to establish their claim is their “proof”.

(3) Subject to the next paragraph, a proof must—

- (a) be made out by, or under the direction of, the creditor and authenticated by them or a person authorised in that behalf; and
- (b) state the following matters—
  - (i) the creditor's name and address;
  - (ii) if the creditor is a company, its registered number;

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(1) [1838 c. 110](#), as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, [S.I. 1993/564](#), article 2, [S.I. 1998/2940](#), article 3(a),(b) and (c).

- (iii) the total amount of the creditor's claim (including value added tax) as at the date on which the company entered postal administration less any payments made after that date in respect of the claim, any deduction under Rule 54 and any adjustment by way of set-off in accordance with Rule 55;
- (iv) whether or not the claim includes outstanding uncapitalised interest;
- (v) particulars of how and when the debt was incurred by the company;
- (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (vii) details of any reservation of title in respect of goods to which the debt refers; and
- (viii) the name, address and authority of the person authenticating the proof (if other than the creditor themselves).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The postal administrator may call for any document or other evidence to be produced to the postal administrator, where the postal administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

#### **Costs of proving**

**44.** Unless the court otherwise orders—

- (a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under Rule 43(5); and
- (b) costs incurred by the postal administrator in estimating the quantum of a debt under Rule 51 are payable out of the assets as an expense of the postal administration.

#### **Postal administrator to allow inspection of proofs**

**45.** The postal administrator shall, so long as proofs lodged with the postal administrator are in the postal administrator's hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a proof of debt (unless their proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company; and
- (c) any person acting on behalf of either of the above.

#### **New postal administrator appointed**

**46.—(1)** If a new postal administrator is appointed in place of another, the former postal administrator must as soon as reasonably practicable transmit to the new postal administrator all proofs which the former postal administrator has received, together with an itemised list of them.

(2) The new postal administrator shall authenticate the list by way of receipt for the proofs, and return it to the new postal administrator's predecessor.

(3) From then on, all proofs of debt must be sent to and retained by the new postal administrator.

### **Admission and rejection of proofs for dividend**

47.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the postal administrator rejects a proof in whole or in part, the postal administrator shall prepare a written statement of their reasons for doing so, and send it as soon as reasonably practicable to the creditor.

### **Appeal against decision on proof**

48.—(1) If a creditor is dissatisfied with the postal administrator's decision with respect to their proof (including any decision on the question of preference), the creditor may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of the creditor receiving the statement sent under Rule 47(2).

(2) A member or any other creditor may, if dissatisfied with the postal administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the postal administrator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not themselves) and the postal administrator.

(4) The postal administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 47(2).

(5) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the company would be entitled.

(6) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the postal administrator.

(7) The postal administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

### **Withdrawal or variation of proof**

49. A creditor's proof may at any time, by agreement between themselves and the postal administrator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

50.—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the postal administrator's application, where the postal administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the postal administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the postal administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the postal administrator and to the creditor who made the proof (if not themselves).

## 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 to 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

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- (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.