
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 3

ADMINISTRATION

CHAPTER 15

Claims by and distributions to Creditors

Order of priority in distribution

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

- (a) the expenses of the administration;
 - (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 entered administration);
 - (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 entered administration 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 the 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) in administration, 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 Pensions 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. Section 382(1) was amended by paragraph 21(2) of Schedule 9 to the Financial Services Act 2012 (c.21).

- (b) in sub-paragraph (d), where the administration was immediately preceded by a winding up, the reference to the date on which the company entered administration is to be construed as the date the company went into liquidation.
- (3) The expenses of the administration mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 3.116.
- (4) Subject to section 175—
 - (a) any debt falling within either of paragraphs (1)(b) or (c) 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 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 administrator; or
 - (b) any preference of the holder of a lien over a title deed or other document which the administrator has taken into his or her possession or control in accordance with paragraph 67 of Schedule B1.