



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 10

#### CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

##### *Submission and adjudication of claims*

#### **122 Submission of claims to trustee**

- (1) A creditor must submit a claim in accordance with this section to the trustee in the sequestration in order to obtain an adjudication as to that person's entitlement—
  - (a) to vote at a meeting of creditors other than the statutory meeting, or
  - (b) (so far as funds are available) to a dividend out of the debtor's estate in respect of any accounting period.
- (2) Where the claim is by virtue of—
  - (a) paragraph (a) of subsection (1), it must be submitted at or before the meeting,
  - (b) paragraph (b) of that subsection, it must be submitted in accordance with subsection (4).
- (3) But subsection (1) is subject to subsections (4), (7) and (8) and to section 131(6) to (9).
- (4) A creditor must, in order to obtain an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate, submit a claim to the trustee not later than the relevant day.
- (5) The "relevant day", in relation to a creditor, means—
  - (a) where notice is given to the creditor under section 44(3), the day which is 120 days after the day on which that notice is given,
  - (b) where no such notice is given, the day which is 120 days after the day on which the trustee gives notice to the creditor inviting the submission of claims.
- (6) If a creditor submits a claim to the trustee after the relevant day, the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if—
  - (a) the claim is submitted not later than 8 weeks before the end of the accounting period, and

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- (b) there were exceptional circumstances which prevented the claim from being submitted before the relevant day.
- (7) Subsection (8) applies as regards a claim submitted by a creditor—
  - (a) under section 46 and accepted in whole or in part by the trustee for the purpose of voting at the statutory meeting, or
  - (b) under this section and not rejected in whole.
- (8) The claim is deemed to have been re-submitted for the purpose of obtaining an adjudication as to the creditor's entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or as the case may be of any subsequent accounting period.
- (9) A creditor submits a claim under this section by producing to the trustee—
  - (a) a statement of claim in the prescribed form, and
  - (b) an account or voucher (according to the nature of the debt) which constitutes *prima facie* evidence of the debt.
- (10) But the trustee, with the consent of the commissioners if any, may dispense with any requirement under subsection (9) in respect of any debt or of any class of debt.
- (11) Where a creditor (in this subsection referred to as "C") neither resides, nor has a place of business, in the United Kingdom, the trustee—
  - (a) must, if the trustee knows where C does reside or have a place of business and if no notification has been given to C under section 44(3), write to C informing C that C may submit a claim under this section, and
  - (b) may allow C to submit an informal claim in writing.
- (12) Where a creditor has submitted a claim under this section (or under section 46 a statement of claim which has been deemed re-submitted as mentioned in subsection (8)), the creditor may at any time submit a further claim under this section specifying a different amount for the creditor's claim.
- (13) But a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the trustee requires the secured creditor to discharge, or convey or assign, the security under paragraph 4(3) of schedule 2.

### **123 Evidence as to validity or amount of claim**

- (1) The trustee in the sequestration, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under section 122, may require—
  - (a) the creditor to produce further evidence, or
  - (b) any other person who the trustee believes can produce relevant evidence to produce such evidence.
- (2) If the creditor (or as the case may be the other person) refuses or delays to do so, the trustee may apply to the sheriff for an order requiring the creditor (or the other person) to attend for private examination before the sheriff.
- (3) At any private examination under subsection (2)—
  - (a) a solicitor or counsel may act on behalf of the trustee, or
  - (b) the trustee may appear on the trustee's own behalf.

- (4) Sections 118(4) to (7) and 121(1) apply, subject to any necessary modifications, to the examination of the creditor (or the other person) as they apply to the examination of a relevant person.
- (5) References in subsections (1) and (4) to the creditor in a case where the creditor is an entity mentioned in section 6(1) are to be construed, unless the context otherwise requires, as references to a person representing the entity.

#### **124 False claims etc.**

- (1) Subsections (2) and (3) apply where a creditor produces under section 122 or 123—
  - (a) a statement of claim,
  - (b) account,
  - (c) voucher, or
  - (d) other evidence,which is false.
- (2) The creditor commits an offence unless it is shown that the creditor neither knew nor had reason to believe that the statement of claim, account, voucher or other evidence was false.
- (3) The debtor commits an offence if the debtor—
  - (a) knew, or became aware, that the statement of claim, account, voucher or other evidence was false, and
  - (b) failed, as soon as practicable after acquiring such knowledge, to report to the trustee that the statement of claim, account, voucher or other evidence was false.
- (4) A person convicted of an offence under subsection (2) or (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or—
    - (i) in a case where the person has previously been convicted of an offence inferring dishonest appropriation of property or an attempt at dishonest appropriation of property, to imprisonment for a term not exceeding 6 months, or
    - (ii) in any other case, to imprisonment for a term not exceeding 3 months, or both to a fine not exceeding the statutory maximum and to such imprisonment as is mentioned, in relation to the case in question, in subparagraph (i) or (ii), or
  - (b) on conviction on indictment—
    - (i) to a fine, or
    - (ii) to imprisonment for a term not exceeding 2 years, or both to a fine and to such imprisonment.

#### **125 Further provision as to claims**

- (1) A creditor may, in such circumstances as may be prescribed, state the amount of the creditor's claim under section 122 in foreign currency.
- (2) The trustee in the sequestration must, on production of any document to the trustee for the purposes of any of sections 122 to 124—
  - (a) initial the document, and

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- (b) if requested by the person producing it, return it (if it is not a statement of claim) to that person.
- (3) The submission of a claim under section 122 bars the effect of any enactment or rule of law relating to the limitation of actions.
- (4) Schedule 2 has effect for determining the amount in respect of which the creditor is entitled to claim.

## **126 Adjudication of claims: general**

- (1) At the commencement of every meeting of creditors (other than the statutory meeting) the trustee in the sequestration must, for the purposes of section 128 so far as it relates to voting at the meeting, accept or reject the claim of each creditor.
- (2) Subsection (3) applies where funds are available for payment of a dividend out of the debtor's estate in respect of an accounting period.
- (3) For the purpose of determining who is entitled to such a dividend, the trustee—
  - (a) must, not later than 4 weeks before the end of the period, accept or reject every claim submitted (or deemed to have been re-submitted) to the trustee under this Act, and
  - (b) must, at the same time, make a decision on any matter required to be specified under paragraph (a) or (b) of subsection (7).
- (4) The trustee must then, as soon as reasonably practicable, send a list of every claim so accepted or rejected (including its amount and whether it has been accepted or rejected) to the debtor and to every creditor known to the trustee.
- (5) If the amount of a claim is stated in foreign currency, the trustee in adjudicating under subsection (1) or (3) on the claim must convert the amount into sterling, in such manner as may be prescribed, at the rate of exchange prevailing at the close of business on the date of sequestration.
- (6) Where the trustee rejects a claim, the trustee must forthwith notify the claimant, giving reasons for the rejection.
- (7) Where the trustee accepts or rejects a claim, the trustee must record the trustee's decision on the claim, specifying—
  - (a) the amount of the claim accepted by the trustee,
  - (b) the category of debt, and the value of any security, as decided by the trustee, and
  - (c) if the trustee is rejecting the claim, the trustee's reasons for doing so.
- (8) Any reference in this section or in section 127 to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

## **127 Adjudication of claims: review and appeal**

- (1) The debtor or any creditor may apply to AiB for a review of—
  - (a) the acceptance or rejection of any claim, or
  - (b) a decision in respect of any matter requiring to be specified under section 126(7)(a) or (b).

- (2) The debtor may make an application under subsection (1) only if the debtor satisfies AiB that the debtor has, or is likely to have, a pecuniary interest in the outcome of the review.
- (3) Any application under subsection (1) must be made, in the case of a review relating to an acceptance or rejection—
  - (a) under subsection (1) of section 126, within 14 days beginning with the day of the decision to accept or reject the claim, and
  - (b) under subsection (3) of that section, within 28 days beginning with that day.
- (4) If an application under subsection (1) is made, AiB must—
  - (a) take into account any representations made by an interested party within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (5) The debtor or any creditor may, within 14 days beginning with the day of a decision by AiB under subsection (4)(b), appeal to the sheriff against that decision.
- (6) The debtor may appeal under subsection (5) only if the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.

*Entitlement to vote and draw a dividend*

**128 Voting and drawing a dividend**

- (1) A creditor whose claim has been accepted in whole or in part by the trustee in the sequestration or on review or appeal under section 127 is entitled, in a case where the acceptance is under (or on review or appeal arising from)—
  - (a) section 126(1), to vote on any matter at the meeting of creditors for the purpose of voting at which the claim is accepted, or
  - (b) section 126(3), to payment out of the debtor's estate of a dividend in respect of the accounting period for the purposes of which the claim is accepted.
- (2) But—
  - (a) paragraph (a) of subsection (1) is subject to sections 70(1)(a) and 77(1) and (7)(b), and
  - (b) the entitlement mentioned in paragraph (b) of that subsection arises only in so far as the estate has funds available, having regard to section 129, to make the payment in question.
- (3) No vote may be cast, by virtue of a debt, more than once on any resolution put to a meeting of creditors.
- (4) Where a creditor—
  - (a) is entitled to vote under this section,
  - (b) has lodged the creditor's claim in one or more sets of other proceedings, and
  - (c) votes (either in person or by proxy) on a resolution put to the meeting,only the creditor's vote is to be counted.
- (5) Subsection (6) applies where—
  - (a) a creditor has lodged the creditor's claim in more than one set of other proceedings, and

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- (b) more than one member State liquidator seeks to vote by virtue of the claim.
- (6) The entitlement to vote by virtue of the claim is exercisable by the member State liquidator in main proceedings whether or not the creditor has lodged the claim in those proceedings.
- (7) For the purposes of subsections (4) to (6), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in a member State other than the United Kingdom.

### *Distribution*

#### **129 Priority in distribution**

- (1) The funds of the debtor’s estate must be distributed by the trustee in the sequestration to meet the following debts in the order in which they are mentioned—
  - (a) the outlays and remuneration of an interim trustee in the administration of the debtor’s estate,
  - (b) the outlays and remuneration of the trustee in the sequestration in the administration of the debtor’s estate,
  - (c) where the debtor has died—
    - (i) deathbed and funeral expenses reasonably incurred, and
    - (ii) expenses reasonably incurred in administering the deceased’s estate,
  - (d) the expenses reasonably incurred by a creditor who is a petitioner for, or concurs in a debtor application for, sequestration,
  - (e) ordinary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
  - (f) secondary preferred debts (excluding any interest which has accrued on those debts to the date of sequestration),
  - (g) ordinary debts (that is to say, debts which are neither secured debts nor debts mentioned in any other paragraph of this subsection),
  - (h) interest, between the date of sequestration and the date of payment of the debt, at the rate specified in subsection (10) on—
    - (i) the ordinary preferred debts,
    - (ii) the secondary preferred debts, and
    - (iii) the ordinary debts,
  - (i) any postponed debt.
- (2) In this Act—
  - “preferred debt” means a debt listed in Part 1 of schedule 3 of this Act,
  - “ordinary preferred debt” means a debt within any of paragraphs 1 to 6 of that Part, and
  - “secondary preferred debt” means a debt within paragraph 7 or 8 of that Part.
- (3) Part 2 of that schedule has effect for the interpretation of Part 1 of that schedule.
- (4) In this Act, “postponed debt” means—
  - (a) a loan made to the debtor, in consideration of a share of the profits in the debtor’s business, which is postponed under section 3 of the Partnership Act 1890 to the claims of other creditors,

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- (b) a loan made to the debtor by the debtor’s spouse or civil partner, or
  - (c) a creditor’s right to—
    - (i) anything vesting in the trustee by virtue of a successful challenge under section 98, or
    - (ii) the proceeds of sale of anything so vesting.
- (5) A debt falling within any of paragraphs (c) to (i) of subsection (1) has 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 in question to be paid in full, those debts are to abate in equal proportions.
- (6) Any surplus remaining after all the debts mentioned in this section have been paid in full must be made over to the debtor or the debtor’s successors or assignees.
- (7) In subsection (6), “surplus”—
- (a) includes any kind of estate, but
  - (b) does not include any unclaimed dividend.
- (8) Subsection (6) is subject to Article 35 of the EC insolvency proceedings regulation (which provides that any surplus in secondary proceedings is to be transferred to main proceedings).
- (9) Nothing in this section affects—
- (a) any right of a secured creditor which is preferable to the rights of the trustee,
  - (b) any preference of the holder of a lien over a title deed, or other document, which has been delivered to the trustee in accordance with a requirement under section 108(5).
- (10) The rate of interest referred to in paragraph (h) of subsection (1) is 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.

### **130 Accounting periods**

- (1) The trustee in the sequestration must make up accounts of the trustee’s intromissions with the debtor’s estate in respect of each accounting period.
- (2) In this Act, “accounting period” is to be construed as follows—
- (a) the first accounting period is the period of 12 months, or such shorter period as may be determined or agreed in accordance with subsection (5), either period beginning with the date on which sequestration is awarded, and
  - (b) any subsequent accounting period is the period of 12 months beginning when its immediately preceding accounting period ends.
- (3) But—
- (a) paragraph (a) of subsection (2) is subject to subsection (4), and
  - (b) paragraph (b) of subsection (2) is subject to the exception that—
    - (i) in a case where AiB is not the trustee, the trustee and the commissioners (or, if there are no commissioners, the trustee and AiB) agree, or
    - (ii) in a case where AiB is the trustee, the trustee determines,

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an accounting period is to be some other period beginning when its immediately preceding accounting period ends, it is that other period.

- (4) Where the trustee was appointed under section 54(1) as interim trustee in the sequestration, the first accounting period is—
- (a) the period—
    - (i) beginning with the date of the appointment as interim trustee, and
    - (ii) ending on the date 12 months after that on which sequestration is awarded, or
  - (b) such shorter period as may be determined or agreed in accordance with subsection (5).
- (5) This subsection applies where the trustee considers that the funds of the debtor's estate are sufficient to pay a dividend in accordance with section 131(1) in respect of—
- (a) in a case where the trustee is AiB, a shorter period of not less than 6 months determined by AiB, and
  - (b) in any other case, a shorter period of not less than 6 months agreed—
    - (i) between the trustee and the commissioners, or
    - (ii) if there are no commissioners, between the trustee and AiB.
- (6) An agreement under sub-paragraph (i), or determination under sub-paragraph (ii), of subsection (3)(b)—
- (a) may be made in respect of one accounting period or more,
  - (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 that accounting period would, but for the agreement or determination, have ended, and
  - (c) may provide for different accounting periods to be of different duration.

### **131 Distribution in accordance with accounting periods**

- (1) The trustee in the sequestration must pay, under section 135(1), a dividend out of the estate in respect of each accounting period—
- (a) if the funds of the debtor's estate are sufficient, and
  - (b) after making allowance for future contingencies.
- (2) But subsection (1) is subject to the following subsections.
- (3) The trustee may pay—
- (a) the debts mentioned in paragraphs (a) to (d) of section 129(1), other than the trustee's 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 AiB.
- (4) If, in respect of an accounting period, the trustee—
- (a) is not ready to pay a dividend, or
  - (b) considers it would be inappropriate to pay a dividend because the expense of doing so would be disproportionate to the amount of the dividend,
- the trustee may, with the consent of the commissioners or, if there are no commissioners, of AiB, postpone the payment to a date not later than the time for payment of a dividend in respect of the next accounting period.



- (5) Where a review or appeal is made under section 127 as respects the acceptance or rejection of a creditor's claim, the trustee must, at the time of payment of dividends and until the review or appeal is determined, set aside an amount which would be sufficient, if the determination in the review or appeal were to provide for the creditor's claim being accepted in full, to pay a dividend in respect of that claim.
- (6) Subsection (7) applies where a creditor—
  - (a) has failed to produce evidence in support of the creditor's claim earlier than 8 weeks before the end of an accounting period on being required to do so under section 123(1), and
  - (b) has given a reason for such failure which is acceptable to the trustee.
- (7) The trustee 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 trustee to be satisfied under that section, an amount which would be sufficient, were the claim accepted in full, to pay a dividend in respect of that claim.
- (8) Where a creditor submits a claim to the 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 future contingencies, funds are available for the payment of a dividend, the trustee must, if the trustee accepts the claim in whole or in part, pay to the creditor—
  - (a) the same dividend as has, or dividends as 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 the creditor in respect of the subsequent accounting period mentioned above.
- (9) Paragraph (a) of subsection (8) is without prejudice to any dividend which has already been paid.
- (10) In the declaration of, and payment of, a dividend, a payment must not be made more than once by virtue of the same debt.
- (11) Any dividend paid in respect of a claim must be paid to the creditor.

*Procedure after end of accounting period*

**132 Submission of accounts and scheme of division**

- (1) Within 2 weeks after the end of an accounting period the trustee in the sequestration must, in respect of that period, submit to the commissioners (or, if there are no commissioners, to AiB)—
  - (a) the trustee's accounts of the trustee's intromissions with the estate of the debtor for audit and, where funds are available after making allowance for future contingencies, a scheme of division of the divisible funds, and
  - (b) a claim for the outlays reasonably incurred by the trustee and for the trustee's remuneration.
- (2) Where documents mentioned in subsection (1) are submitted to the commissioners, the trustee must send a copy of them to AiB.

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- (3) All accounts in respect of legal services incurred by the trustee are, before they are paid by the trustee, to be submitted for taxation to the auditor of the court before which the sequestration is pending.
- (4) But subsection (3) is subject to subsection (5).
- (5) The trustee may pay the account without submitting it for taxation where—
  - (a) any such account has been agreed between the trustee and the person entitled to payment in respect of that account,
  - (b) the trustee is not an associate of that person, and
  - (c) the commissioners have (or, if there are no commissioners, AiB has) determined that the account need not be submitted for taxation.
- (6) This section and sections 133 to 135 do not apply where AiB is the trustee in the sequestration.

**133      Audit of accounts and determination as to outlays and remuneration payable to trustee**

- (1) Within 6 weeks after the end of an accounting period—
  - (a) the commissioners (or, as the case may be, AiB)—
    - (i) may audit the accounts, and
    - (ii) must issue a determination fixing the amount of the outlays and the remuneration payable to the trustee in the sequestration, and
  - (b) the trustee must make the audited accounts, scheme of division and that determination available for inspection by the debtor and the creditors.
- (2) The basis for fixing the amount of the remuneration payable to the trustee may be a commission calculated by reference to the value of the debtor’s estate which has been realised by the trustee.
- (3) But there is in any event to be taken into account—
  - (a) the work which, having regard to that value, was reasonably undertaken by the trustee, and
  - (b) the extent of the trustee’s responsibilities in administering the debtor’s estate.
- (4) In fixing the amount of such remuneration in respect of any accounting period, the commissioners (or, as the case may be, AiB) may take into account any adjustment which the commissioners or AiB may wish to make in the amount of remuneration fixed in respect of any earlier accounting period.

**134      Appeal against determination as to outlays and remuneration payable to trustee**

- (1) Not later than 8 weeks after the end of an accounting period the trustee in the sequestration, the debtor or any creditor may appeal against a determination issued under section 133(1)(a)(ii)—
  - (a) to AiB where it is a determination of the commissioners, and
  - (b) to the sheriff where it is a determination of AiB.
- (2) But subsection (1) is subject to subsection (4).

- (3) The determination of AiB in an appeal under paragraph (a) of subsection (1) is appealable to the sheriff (whose decision on an appeal under this subsection or under paragraph (b) of subsection (1) is final).
- (4) The debtor may appeal under subsection (1) if, and only if, the debtor satisfies AiB, or as the case may be the sheriff, that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.
- (5) Before the debtor or a creditor appeals under subsection (1) or (3), the debtor or, as the case may be, the creditor must give notice to the trustee of the intention to appeal.

### **135 Further provision as to procedure after end of accounting period**

- (1) The trustee in the sequestration must pay to the creditors their dividends in accordance with the scheme of division on—
  - (a) the expiry of the 8 weeks mentioned in section 134(1), or
  - (b) if there is an appeal under that subsection, on the final determination of the last such appeal.
- (2) There must be deposited by the trustee, in an appropriate bank or institution, any dividend—
  - (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.
- (3) If a creditor's claim is revalued, the trustee may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as the trustee considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to the trustee the whole or part of a dividend already paid to the creditor.

### **136 Procedure after end of accounting period where Accountant in Bankruptcy is trustee**

- (1) In any case where AiB is the trustee in the sequestration, AiB must at the end of each accounting period—
  - (a) prepare accounts of AiB's intromissions with the estate of the debtor, and
  - (b) make a determination of AiB's fees and outlays calculated in accordance with regulations under section 205.
- (2) Such accounts and determination must be available for inspection by the debtor and the creditors by not later than 6 weeks after the end of the accounting period to which they relate.
- (3) In making a determination as mentioned in subsection (1), AiB may take into account any adjustment which AiB may wish to make in the amount of AiB's remuneration fixed in respect of any earlier accounting period.
- (4) Not later than 8 weeks after the end of an accounting period the debtor or any creditor may appeal to the sheriff against AiB's determination.
- (5) But subsection (4) is subject to subsection (7).

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- (6) The decision of the sheriff on an appeal under subsection (4) is final.
- (7) The debtor may appeal under subsection (4) if, and only if, the debtor satisfies the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal.
- (8) Before the debtor or a creditor appeals under subsection (4), the debtor or as the case may be the creditor must give notice to AiB of the intention to appeal.
- (9) On the expiry of the 8 weeks mentioned in subsection (4), AiB must pay to the creditors their dividends in accordance with the scheme of division.
- (10) There must be deposited by AiB, in an appropriate bank or institution, any dividend—
  - (a) allocated to a creditor but not cashed or uplifted, or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (5) or (7) of section 131.
- (11) If a creditor's claim is revalued, AiB may—
  - (a) in paying any dividend to that creditor, make such adjustment to it as AiB considers necessary to take account of that revaluation, or
  - (b) require the creditor to repay to AiB the whole or part of a dividend already paid to the creditor.