
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 8

PROOF OF BANKRUPTCY DEBTS

SECTION A: PROCEDURE FOR PROVING

Meaning of “prove”

6.96.—(1) A person claiming to be a creditor of the bankrupt and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 6.93(2)) submit his claim in writing to the official receiver, where acting as receiver and manager, or to the trustee.

(2) The creditor is referred to as “proving” for his debt; and the document by which he seeks to establish his claim is his “proof”.

(3) Subject to the next two paragraphs, the proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and signed by him or a person authorised in that behalf.

(4) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances.

(5) Where an existing trustee proves in a later bankruptcy under section 335(5), the proof must be in FORM 6.38.

(6) In certain circumstances, specified below in this Chapter, the proof must be in the form of an affidavit.

Supply of forms

6.97.—(1) Forms to be used for the purpose of proving bankruptcy debts shall be sent out by the official receiver or the trustee to every creditor of the bankrupt who is known to the sender, or is identified in the bankrupt's statement of affairs.

(2) The forms shall accompany (whichever is first)—

(a) the notice to creditors under section 293(2) (official receiver's decision not to call meeting of creditors), or

(b) the first notice calling a meeting of creditors, or

- (c) where a certificate of summary administration has been issued by the court, the notice sent by the official receiver under Rule 6.49(2), or
- (d) where a trustee is appointed by the court, the notice of his appointment sent by him to creditors.

(3) Where, with the leave of the court under section 297(7), the trustee advertises his appointment, he shall send proofs to the creditors within 4 months after the date of the bankruptcy order.

(4) The above paragraphs of this Rule are subject to any order of the court dispensing with the requirement to send out forms of proof, or altering the time at which the forms are to be sent.

Contents of proof

6.98.—(1) The following matters shall be stated in a creditor's proof of debt—

- (a) the creditor's name and address;
- (b) the total amount of his claim as at the date of the bankruptcy order;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) whether or not the claim includes value added tax;
- (e) whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts under section 386 of, and Schedule 6 to, the Act (as read with Schedule 3 to the Social Security Pensions Act 1975;
- (f) particulars of how and when the debt was incurred by the debtor;
- (g) particulars of any security held, the date when it was given and the value which the creditor puts upon it; and
- (h) the name, address and authority of the person signing the proof (if other than the creditor himself).

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

(3) The trustee, or the convener or chairman of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Claim established by affidavit

6.99.—(1) The trustee may, if he thinks it necessary, require a claim of debt to be verified by affidavit, for which purpose there shall be used the form known as “affidavit of debt”.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

(3) The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department or of the court duly authorised in that behalf.

Cost of proving

6.100.—(1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 6.98(3).

(2) Costs incurred by the trustee in estimating the value of a bankruptcy debt under section 322(3) (debts not bearing a certain value) fall on the estate, as an expense of the bankruptcy.

(3) Paragraphs (1) and (2) apply unless the court otherwise orders.

Trustee to allow inspection of proofs

6.101. The trustee shall, so long as proofs lodged with him are in his 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 his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise),
- (b) the bankrupt, and
- (c) any person acting on behalf of either of the above.

Proof of licensed moneylender

6.102. A proof of debt in respect of a moneylending transaction made before 27th January 1980, where the creditor was at the time of the transaction a licensed moneylender, shall have endorsed on or annexed to it a statement setting out in detail the particulars mentioned in section 9(2) of the Moneylenders Act 1927.

Transmission of proofs to trustee

6.103.—(1) Where a trustee is appointed, the official receiver shall forthwith transmit to him all the proofs which he has so far received, together with an itemised list of them.

(2) The trustee shall sign the list by way of receipt for the proofs, and return it to the official receiver.

(3) From then on, all proofs of debt shall be sent to the trustee and retained by him.

Admission and rejection of proofs for dividend

6.104.—(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 trustee rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it forthwith to the creditor.

Appeal against decision on proof

6.105.—(1) If a creditor is dissatisfied with the trustee's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 6.104(2).

(2) The bankrupt or any other creditor may, if dissatisfied with the trustee'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 trustee'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 himself) and to the trustee.

(4) The trustee shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 6.104(2).

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

(6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the trustee (if other than the official receiver) is not so liable unless the court makes an order to that effect.

Withdrawal or variation of proof

6.106. A creditor's proof may at any time, by agreement between himself and the trustee, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

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

- (a) on the trustee's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the trustee 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 trustee, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the trustee and to the creditor who made the proof (if not himself).

SECTION B: QUANTIFICATION OF CLAIM

Negotiable instruments, etc

6.108. Unless the trustee 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 his authorised representative to be a true copy.

Secured creditors

6.109.—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

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

Discounts

6.110. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the bankrupt but for his bankruptcy, except any discount for immediate, early or cash settlement.

Debt in foreign currency

6.111.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date of the bankruptcy order.

(2) “The official exchange rate” is the middle market rate at the Bank of England, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Payments of a periodical nature

6.112.—(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 of the bankruptcy order.

(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

6.113.—(1) In the following circumstances the creditor's claim may include interest on the debt for periods before the bankruptcy order, although not previously reserved or agreed.

(2) 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 date of the bankruptcy order.

(3) If the debt is due otherwise, interest may only be claimed if, before the presentation of the bankruptcy petition, a demand for payment 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.

In that case interest may be claimed under this Rule for the period from the date of the demand to that of the bankruptcy order.

(4) The rate of interest to be claimed under this Rule is the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order; except that, where the case falls within paragraph (3), the rate is that specified in the notice there referred to, not exceeding the rate under the Judgments Act as mentioned above.

Debt payable at future time

6.114. A creditor may prove for a debt of which payment was not yet due at the date of the bankruptcy order, but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).