
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

**The Insolvency (Scotland) (Receivership
and Winding up) Rules 2018**

PART 7

**WINDING UP - REPORTING, ACCOUNTS,
REMUNERATION, CLAIMS AND DISTRIBUTIONS**

CHAPTER 6

Distribution of company's assets by the liquidator

7.31.—(1) The liquidator must make up accounts of the liquidator's intromissions with the company's assets in respect of each accounting period.

(2) In this Rule, “accounting period” is to be construed as follows—

- (a) the first accounting period is the period of 6 months beginning with the date on which the liquidator is appointed (subject to paragraph (3));
- (b) the second accounting period is the period of 6 months beginning with the end of the first accounting period; and
- (c) any subsequent accounting period is the period of 12 months beginning with the end of the last accounting period except that—

- (i) where the liquidator and the liquidation' committee agree; or
- (ii) where there is no liquidation committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) Where a provisional liquidator is appointed under section 135 the first accounting period is the period of 6 months beginning with the date on which the provisional liquidator is appointed.

(4) An agreement or determination under paragraph (2)(c)—

- (a) may be made in respect of one or more than one accounting period;
- (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 such accounting period would, but for the agreement or determination, have ended;
- (c) may provide for different accounting periods to be of different durations; and
- (d) may vary the time periods mentioned in—
 - (i) rule 7.16(1) and paragraphs (10) and (11) of this rule;
 - (ii) rule 7.19(1)(a) and (5); and
 - (iii) rule 7.35 (contents of notice to be delivered to creditors owed small debts etc.).

- (5) Accounting periods are unaffected by any—
- (a) recall of the appointment of a provisional liquidator (prior to a winding up order being made);
 - (b) termination of the appointment of a provisional liquidator and appointment of a liquidator (including an interim liquidator) on the making of a winding up order;
 - (c) change in the provisional liquidator or liquidator.

(6) Subject to the following provisions of this rule, the liquidator must, if the funds of the company's assets are sufficient and after making an allowance for future contingencies, pay under rule 7.32 (payment of dividends) a dividend out of the company's assets to the creditors in respect of each accounting period.

- (7) The liquidator may pay—
- (a) the expenses of the liquidation mentioned in rule 7.28(3)(a), other than the liquidator's own remuneration, at any time;
 - (b) the preferential debts within the meaning of section 386 at any time but only with the consent of the liquidation committee or, if there is no liquidation committee, of the court.

[^{F1}(7A) Where section 174A of the Act applies, paragraph (7)(b) shall have effect as if the reference to preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.]

- (8) If the liquidator—
- (a) is not ready to pay a dividend in respect of an accounting period; or
 - (b) considers it would be inappropriate to pay such a dividend because the expenses of doing so would be disproportionate to the amount of the dividend,

the liquidator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(9) Where an appeal is taken under rule 7.19(5) against the acceptance or rejection of a creditor's claim, the liquidator must, at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

- (10) Where a creditor—
- (a) has failed to produce evidence in support of a claim earlier than 8 weeks before the end of an accounting period on being required by the liquidator to do so under rule 7.18; and
 - (b) has given a reason for such failure which is acceptable to the liquidator,

the liquidator 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 liquidator to be satisfied under rule 7.18, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(11) Where a creditor submits a claim to the liquidator 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 contingencies, funds are available for the payment of a dividend, the liquidator must, if accepting the claim in whole or in part, pay to the creditor—

- (a) the same dividend or dividends as has or 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 that creditor in respect of the said subsequent accounting period.

(12) Paragraph (11)(a) is without prejudice to any dividend which has already been paid.

(13) In the declaration of and payment of a dividend, no payments are to be made more than once by virtue of the same debt.

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| <p>F1 Rule 7.31(7A) inserted (1.10.2021) by The Insolvency (Scotland) (Receivership and Winding up) (Amendment) Rules 2021 (S.I. 2021/1025), rules 1, 14(2) (with rules 4, 5)</p> <p>F2 Rule 7.31(14) omitted (31.12.2020) by virtue of S.I. 2019/146, Sch. para. 137H (as inserted by The Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1459), reg. 1(2), Sch. para. 6; 2020 c. 1, Sch. 5 para. 1(1))</p> |
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Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, Section 7.