



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER V

ADMINISTRATION BY TRUSTEE

Distribution of bankrupt's estate

163 Proof of debts

- (1) Subject to the following provisions of this section and to section 164 below, the proof of any bankruptcy debt by any secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.
- (2) Where a bankruptcy debt bears interest, that interest shall be provable as part of that debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.
- (3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.
- (4) Where the value of any bankruptcy debt is estimated by the trustee under subsection (3) above or, by virtue of section 150 above, by the court, the amount provable in the bankruptcy in respect of that debt shall be the amount of the estimate.

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164 Mutual credit and set off

- (1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.
- (2) An account shall be taken 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.
- (3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) above if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.
- (4) Only the balance (if any) of the account taken under subsection (2) above shall be provable as a bankruptcy debt or, as the case may be, be paid to the trustee as part of the bankrupt's estate.

165 Manner of distribution of estate

- (1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.
- (2) The trustee shall give notice of his intention to declare and distribute a dividend.
- (3) Where the trustee has declared a dividend he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.
- (4) In the calculation and distribution of a dividend the trustee shall make provision—
 - (a) for any bankruptcy debts which appear to him 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) for any bankruptcy debts which are the subject of claims which have not yet been determined; and
 - (c) for disputed proofs and claims.
- (5) A creditor who has not proved his debt before the declaration of any dividend shall not be entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—
 - (a) when he has proved that debt he shall be 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 he has failed to receive ; and
 - (b) any dividend or dividends payable under paragraph (a) above shall be paid before that money is applied to the payment of any such further dividend.
- (6) No action shall lie against the trustee for a dividend, but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
 - (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time it was withheld ; and
 - (b) the costs of the proceedings in which the order to pay is made.

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- (7) Without prejudice to section 161 above, the trustee may, with the permission of the committee established under section 148 above, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (8) Subsections (4) and (5) of section 160 above shall have effect in relation to the power conferred by subsection (7) above as they have effect in relation to the powers conferred by subsections (2) and (3) of that section.
- (9) Where the bankruptcy order was made on a petition under section 119(1)(d) above, no distribution shall be made under this section so long as an appeal is pending (within the meaning of section 125 above) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.

166 Priority of debts

- (1) In the distribution of the bankrupt's estate, the preferential debts listed in Part I of Schedule 4 to this Act shall be paid in priority to other debts; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (2) Preferential debts shall rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they shall abate in equal proportions between themselves.
- (3) Debts which are neither preferential debts nor debts falling within subsection (6) below shall also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they shall abate in equal proportions between themselves.
- (4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) above shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts shall rank equally with interest on debts other than preferential debts.
- (5) The rate of the interest payable under subsection (4) above in respect of any debt shall be whichever is the greater of—
 - (a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the bankruptcy; and
 - (b) the rate applicable to that debt apart from the bankruptcy.
- (6) Bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse at the time the credit was provided) was the bankrupt's spouse at the commencement of the bankruptcy shall—
 - (a) rank in priority after the debts and interest required to be paid in pursuance of subsections (3) and (4) above; and
 - (b) be payable with interest at the rate specified in subsection (5) above in respect of the period during which they have been outstanding since the commencement of the bankruptcy; and the interest payable under paragraph (b) above shall have the same priority as the debts on which it is payable.

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- (7) This section is without prejudice to any provision of this Act or of any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

167 Final distribution

- (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the opinion of the trustee, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—
- (a) of his intention to declare a final dividend; or
 - (b) that no dividend, or further dividend, will be declared.
- (2) The notice given under subsection (1) above shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date (" the final date ") specified in the notice.
- (3) The court may, on the application of any person, postpone the final date.
- (4) After the final date, the trustee shall—
- (a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and
 - (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.
- (5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt shall be entitled to the surplus.

168 Final meeting

- (1) Subject to subsections (2) and (3) below, where it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete and the trustee is not the official receiver, the trustee shall summon a final general meeting of the bankrupt's creditors which—
- (a) shall receive the trustee's report of his administration of the bankrupt's estate; and
 - (b) shall determine whether the trustee should have his release under section 146 above.
- (2) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 167(1) above but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (3) In a case where property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse is comprised in the bankrupt's estate and the trustee has been unable for any reason to realise that property, the trustee shall not summon a meeting under this section unless either—
- (a) the court has made an order under section 159 above imposing a charge on that property for the benefit of the bankrupt's estate ; or

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- (b) the court has declined, on an application under that section, to make such an order ; or
 - (c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.
- (4) In the administration of the bankrupt's estate it shall be the duty of the trustee to retain sufficient sums from the bankrupt's estate to cover the expenses of summoning and holding the meeting required by this section.