
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE THIRD GROUP OF PARTS

PART 11

DECLARATION AND PAYMENT OF DIVIDEND (WINDING UP AND BANKRUPTCY)

Preliminary

11.1.—(1) The Rules in this Part relate to the declaration and payment of dividends in companies winding up and in bankruptcy.

(2) The following definitions apply—

- (a) “the insolvent” means the company in liquidation or, as the case may be, the bankrupt; and
- (b) “creditors” means those creditors of the insolvent of whom the responsible insolvency practitioner is aware, or who are identified in the insolvent's statement of affairs.

Notice of intended dividend

11.2.—(1) Before declaring a dividend, the responsible insolvency practitioner shall give notice of his intention to do so to all creditors who have not proved their debts.

(2) The notice shall specify a date (“the last date for proving”) up to which proofs may be lodged. The date shall be the same for all creditors, and not less than 21 days from that of the notice.

(3) The insolvency practitioner shall in the notice state his intention to declare a dividend (specified as interim or final, as the case may be) within the period of 4 months from the last date for proving.

Final admission/rejection of proofs

11.3.—(1) The responsible insolvency practitioner shall, within 7 days from the last date for proving, deal with every creditor's proof (in so far as not already dealt with) by admitting or rejecting it in whole or in part, or by making such provision as he thinks fit in respect of it.

(2) The insolvency practitioner is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit.

Postponement or cancellation of dividend

11.4. If in the period of 4 months referred to in Rule 11.2(3)—

- (a) the responsible insolvency practitioner has rejected a proof in whole or in part and application is made to the court for his decision to be reversed or varied, or
- (b) application is made to the court for the insolvency practitioner's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the insolvency practitioner may postpone or cancel the dividend.

Decision to declare dividend

11.5.—(1) If the responsible insolvency practitioner has not, in the 4-month period referred to in Rule 11.2(3), had cause to postpone or cancel the dividend, he shall within that period proceed to declare the dividend of which he gave notice under that Rule.

(2) Except with the leave of the court, the insolvency practitioner shall not declare the dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

If the court gives leave under this paragraph, the insolvency practitioner shall make such provision in respect of the proof in question as the court directs.

Notice of declaration

11.6.—(1) The responsible insolvency practitioner shall give notice of the dividend to all creditors who have proved their debts.

(2) The notice shall include the following particulars relating to the insolvency and the administration of the insolvent estate—

- (a) amounts realised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the insolvency practitioner in the administration of the insolvent estate;
- (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (d) the total amount to be distributed, and the rate of dividend;
- (e) whether, and if so when, any further dividend is expected to be declared.

(3) The dividend may be distributed simultaneously with the notice declaring it.

(4) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.

(5) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no, or no further, dividend

11.7. If the responsible insolvency practitioner gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised, or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.

Proof altered after payment of dividend

11.8.—(1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is 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.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount of it is reduced, the creditor is liable to repay to the responsible insolvency practitioner, for the credit of the insolvent estate, any amount over paid by way of dividend.

Secured creditors

11.9.—(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall forthwith repay to the responsible insolvency practitioner, for the credit of the insolvent estate, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the insolvency practitioner, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security.

However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

11.10. If a creditor contravenes any provision of the Act or the Rules relating to the valuation of securities, the court may, on the application of the responsible insolvency practitioner, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

11.11.—(1) If a person entitled to a dividend gives notice to the responsible insolvency practitioner that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the insolvency practitioner shall pay the dividend to that other accordingly.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

Preferential creditors

11.12.—(1) Subject as follows, the Rules in this Part apply with respect to any distribution made in the insolvency to preferential creditors, with such adaptations as are appropriate considering that such creditors are of a limited class.

(2) The notice by the responsible insolvency practitioner under Rule 11.2, where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential.

Debt payable at future time

11.13.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and for no other purpose), the amount of the creditor's admitted proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by an amount calculated as follows—

$I \times M12$

I is 5 per cent. and M is the number of months (expressed, if need be, as, or as including, fractions of months) between the declaration of dividend and the date when payment of the creditor's debt would otherwise be due.

(3) Other creditors are not entitled to interest out of surplus funds under section 189(2) or (as the case may be) 328(4) until any creditor to whom paragraph (1) and (2) apply has been paid the full amount of his debt.