

---

STATUTORY INSTRUMENTS

---

**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 14**

**CLAIMS BY AND DISTRIBUTIONS TO CREDITORS IN  
ADMINISTRATION, WINDING UP AND BANKRUPTCY**

**CHAPTER 3**

**Distribution to creditors in administration, winding up and bankruptcy**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Application of Chapter to a particular class of creditors and to distributions**

**14.26.**—(1) This Chapter applies where the office-holder makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors in an administration, a reference in this Chapter to creditors is a reference to that class of creditors only.

**Declaration and distribution of dividends in a winding up**

[Note: section 324 makes provision in respect of such a declaration and distribution in a bankruptcy.]

**14.27.** Whenever a liquidator in a creditors' voluntary winding up or a winding up by the court has sufficient funds in hand for the purpose the liquidator must, while retaining such sums as may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in respect of the debts which they have proved.

**Gazette notice of intended first dividend or distribution**

**14.28.**—(1) Subject to paragraphs (2) and (4) where the office-holder intends to declare a first dividend or distribution the office-holder must gazette a notice containing—

- (a) a statement that the office-holder intends to declare a first dividend or distribution;
- (b) the date by which and place to which proofs must be delivered; and
- (c) in the case of a members' voluntary winding up, where the dividend or distribution is to be a sole or final distribution, a statement that the distribution may be made without regard to the claim of any person in respect of a debt not proved.

(2) Where the intended dividend is only to preferential creditors the office-holder need only gazette a notice if the office-holder thinks fit.

(3) The office-holder may in addition advertise such a notice in such other manner (if any) as the office-holder thinks fit.

(4) Paragraph (1) does not apply where the office-holder has previously, by a notice which has been gazetted, invited creditors to prove their debts.

#### **Individual notices to creditors etc. of intended dividend or distribution**

**14.29.**—(1) The office-holder must deliver a notice of the intention to make a distribution to creditors or declare a dividend—

- (a) to the creditors in an administration; and
- (b) to all creditors in a winding up or a bankruptcy who have not proved (including any creditors who are owed small debts and are not deemed under rule 14.3(3) to have proved as a result of a previous notice under rule 14.29).

(2) Where the intended dividend is only for preferential creditors, the office-holder is only required to deliver such a notice to the preferential creditors.

(3) Where the office-holder intends to declare a dividend to unsecured creditors in an administration or winding-up the notice must also state the value of the prescribed part unless there is no prescribed part or the court has made an order under section 176A(5).

#### **Contents of notice of intention to declare a dividend or make a distribution**

**14.30.** A notice under rule 14.29 must contain the following—

- (a) a statement that the office-holder intends to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;
- (b) a statement whether the proposed distribution or dividend is interim or final;
- (c) the last date by which proofs may be delivered which must be—
  - (i) the same date for all creditors who prove, and
  - (ii) not less than 21 days from the date of notice;
- (d) a statement of the place to which proofs must be delivered;
- (e) the additional information required by rule 14.31 where the office-holder intends to treat a small debt as proved for the purposes of paying a dividend; and
- (f) in the case of a members' voluntary winding up, where the distribution is to be a sole or final distribution, a statement that the distribution may be made without regard to the claim of any person in respect of a debt not proved.

#### **Further contents of notice to creditors owed small debts etc.**

**14.31.**—(1) The office-holder may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company or bankrupt, as if it were proved for the purpose of paying a dividend.

(2) Where the office-holder intends to treat such a debt as if it were proved the notice delivered under rule 14.29 must—

- (a) state the amount of the debt which the office-holder believes to be owed to the creditor according to the accounting records or statement of affairs of the company or the bankrupt (as the case may be);
- (b) state that the office-holder will treat the debt which is stated in notice, being for £1,000 or less, as proved for the purposes of paying a dividend unless the creditor advises the office-holder that the amount of the debt is incorrect or that no debt is owed;

- (c) require the creditor to notify the office-holder by the last date for proving if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the office-holder that the amount of the debt is incorrect the creditor must also submit a proof in order to receive a dividend.

(3) The information required by paragraph (2)(a) may take the form of a list of small debts which the office-holder intends to treat as proved which includes that owed to the particular creditor to whom the notice is being delivered.

#### **Admission or rejection of proofs following last date for proving**

**14.32.**—(1) Unless the office-holder has already dealt with them, the office-holder must within 14 days of the last date for proving set out in the notice under rule 14.29—

- (a) admit or reject (in whole or in part) proofs delivered to the office-holder; or
- (b) make such provision in relation to them as the office-holder thinks fit.

(2) The office-holder is not obliged to deal with a proof delivered after the last date for proving, but the office-holder may do so if the office-holder thinks fit.

(3) In the declaration of a dividend a payment must not be made more than once in respect of the same debt.

(4) Subject to rule 14.43 (assignment of right to dividend), payment must only be made to the creditor in a case where both the creditor and a member State liquidator have proved in relation to the same debt.

#### **Postponement or cancellation of dividend**

**14.33.**—(1) The office-holder may postpone or cancel the dividend in the period of two months from the last date for proving if an application is made to the court for the office-holder's decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) The office-holder may postpone a dividend if the office-holder considers that due to the nature of the affairs of the person to whom the proceedings relate there is real complexity in admitting or rejecting proofs of claims submitted.

(3) Where the dividend is postponed or cancelled a new notice under rule 14.29 will be required if the dividend is paid subsequently.

#### **Declaration of dividend**

**14.34.**—(1) The office-holder must declare the dividend in the two month period referred to in rule 14.30(a) in accordance with the notice of intention to declare a dividend unless the office-holder has had cause to postpone or cancel the dividend.

(2) The office-holder must not declare a dividend so long as there is pending an application to the court to reverse or vary a decision of the office-holder on a proof, or to exclude a proof or to reduce the amount claimed unless the court gives permission.

(3) If the court gives such permission, the office-holder must make such provision in relation to the proof as the court directs.

#### **Notice of declaration of a dividend**

**14.35.**—(1) Where the office-holder declares a dividend the office-holder must deliver notice of that fact to all creditors who have proved for their debts (subject to paragraph (5)).

(2) The notice declaring a dividend may be delivered at the same time as the dividend is distributed.

(3) The notice must include the following in relation to the insolvency proceedings—

- (a) the amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) the payments made by the office-holder in carrying out the office-holder's functions;
- (c) the 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; and
- (e) whether, and if so when, any further dividend is expected to be declared.

(4) In an administration, a creditors' voluntary winding-up or a winding up by the court, where the administrator or liquidator intends to make a distribution to unsecured creditors, the notice must also state the value of the prescribed part unless there is no prescribed part or the court has made an order under section 176A(5).

(5) Where the office-holder declares a dividend for preferential creditors only, the notice under paragraph (1) need only be delivered to those preferential creditors who have proved for their debts.

#### **Last notice about dividend in a winding up**

[Note: section 330 contains the requirement to deliver such a notice in a bankruptcy.]

**14.36.**—(1) When the liquidator in a winding up has realised all the company's assets or so much of them as can, in the liquidator's opinion, be realised without needlessly prolonging the winding up, the liquidator must deliver a notice as provided for in this Chapter, either—

- (a) of intention to declare a final dividend; or
- (b) that no dividend, or further dividend, will be declared.

(2) The notice must contain the particulars required by rule 14.30, 14.31, 14.37 or 14.38 as the case may be and must require claims against the assets to be established by a date set out in the notice.

#### **Contents of last notice about dividend (administration, winding up and bankruptcy)**

**14.37.**—(1) This rule applies in an administration, winding up or bankruptcy.

(2) If the office-holder delivers notice to creditors that the office-holder is unable to declare any dividend or (as the case may be) any further dividend, the notice must 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 paying the expenses of the insolvency proceedings.

(3) The information required by paragraph (2) may be included in a progress report.

#### **Sole or final dividend**

[Note: see section 330 in respect of a dividend in a bankruptcy.]

**14.38.**—(1) Where, in an administration or winding up, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under rule 14.29, the office-holder—

- (a) in a winding up, must pay any outstanding expenses of the winding up out of the assets;
- (b) in an administration, must—

- (i) pay any outstanding expenses of a winding up (including any of the items mentioned in rule 6.42 or 7.108 (as appropriate)) or provisional winding up that immediately preceded the administration,
  - (ii) pay any items payable in accordance with the provisions of paragraph 99 of Schedule B1,
  - (iii) pay any amount outstanding (including debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which he had custody or control in accordance with the provisions of paragraph 99, and
  - (iv) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved; or
- (c) in a members' voluntary winding up may, and in every other case must, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.
- (2) The reference in paragraph (1)(b)(iv) and (c) to debts that have not been proved does not include small debts treated as proved by the office-holder.
- (3) The court may, on the application of any person, postpone the date specified in the notice.

#### **Administration and winding up: provisions as to dividends**

[Note: see section 324(4) in respect of such provisions in bankruptcy.]

**14.39.** In an administration or winding up, in the calculation and distribution of a dividend the office-holder must make provision for—

- (a) any debts which are the subject of claims which have not yet been determined; and
- (b) disputed proofs and claims.

#### **Supplementary provisions as to dividends and distributions**

**14.40.**—(1) A creditor is not entitled to disturb the payment of any dividend or making of any distribution because—

- (a) the amount claimed in the creditor's proof is increased after payment of the dividend;
- (b) in an administration, a creditors' voluntary winding up or a winding up by the court the creditor did not prove for a debt before the declaration of the dividend; or
- (c) in a members' voluntary winding up, the creditor did not prove for a debt before the last date for proving or increases the claim in proof after that date.

(2) However the creditor is entitled to be paid a dividend or receive a distribution which the creditor has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) Such a dividend must be paid or distribution made before that money is applied to the payment of any further dividend or making of any further distribution.

(4) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the office-holder, for the credit of the insolvency proceedings, any amount overpaid by way of dividend.

#### **Secured creditors**

**14.41.**—(1) The following applies where a creditor alters the value of a security after a dividend has been declared.

(2) If the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the office-holder, for the credit of the administration or of the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) If the alteration increases the creditor's unsecured claim, the creditor is entitled to receive from the office-holder, 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 the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

### **Disqualification from dividend**

**14.42.** If a creditor contravenes any provision of the Act or these Rules relating to the valuation of securities, the court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

### **Assignment of right to dividend**

**14.43.**—(1) If a person entitled to a dividend (“the entitled person”) delivers notice to the office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the office-holder must pay the dividend to that other person accordingly.

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

### **Debt payable at future time**

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

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof must be discounted by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

### **Administration and winding up: non-payment of dividend**

[Note: see section 325(2) for equivalent provisions in respect of bankruptcy.]

**14.45.**—(1) No action lies against the office-holder in an administration or winding up for payment of a dividend.

(2) However, if the office-holder refuses to pay a dividend the court may, if it thinks just, order the office-holder to pay it and also to pay, out of the office-holder's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(1), from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

---

(1) Section 17 has been amended by the Statute Law Revision (No 2) Act 1888 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.