

---

STATUTORY INSTRUMENTS

---

**2018 No. 1082**

**The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018**

**PART 3**

**ADMINISTRATION**

**CHAPTER 15**

Claims by and distributions to Creditors

**Application and interpretation of Chapter**

**3.102.**—(1) This Chapter applies in any case where the administrator proposes to make a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Chapter are to be treated as, so far as the context requires, references to that class of creditors only.

**Payments of dividends**

**3.103.**—(1) On the final determination of the remuneration under rules 3.95 to 3.100 the administrator must, subject to rule 3.117, pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under rule 3.117(7) or (8);

must be held by the administrator in an appropriate bank or institution in the name of the Accountant of Court and the deposit receipts transmitted to the Accountant of Court.

(3) If a creditor's claim is revalued, the administrator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as the administrator considers necessary to take account of that revaluation; or
- (b) require the creditor to repay to the administrator the whole or part of a dividend already paid to the creditor.

**New administrator appointed**

**3.104.**—(1) If a new administrator is appointed in place of another, the former administrator must, as soon as reasonably practicable, transmit to the new administrator all the creditors' claims which the former administrator has received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the creditors' claims and return it to the former administrator.

(3) From then on, all creditors' claims must be sent to and retained by the new administrator.

### **Submission of claims**

**3.105.**—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period, must submit the creditor's claim to the administrator not later than eight weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the administrator—

- (a) a statement of claim as described in paragraph (3); and
- (b) documentary evidence of debt.

but the administrator may dispense with the requirement of sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

- (a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) if the creditor is a company, identify the company;
- (d) state the name and address of any person authorised to act on behalf of the creditor;
- (e) state the total amount as at the date of the administration order claimed in respect of all debts;
- (f) state whether or not the claim includes any outstanding uncapitalised interest;
- (g) contain particulars of how and when the debt was incurred by the company;
- (h) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (i) include details of any retention of title in relation to goods to which the debt relates;
- (j) state the nature and amount of any preference under Schedule 6 to the Act<sup>(1)</sup> claimed in respect of the debt;
- (k) in the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which the creditor is claiming;
- (l) include any details of any document by reference to which the debt can be substantiated; and
- (m) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the administrator has required the creditor to discharge, or convey or assign, the security under rule 3.113.

---

(1) Amendments have been made to Schedule 6 which are not relevant to this instrument.

### **False claims or evidence**

**3.106.**—(1) If a creditor produces under rule 3.105 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false;
- (b) the company is guilty of an offence if the company—
  - (i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false; and
  - (ii) failed as soon as practicable after acquiring such knowledge to report it to the administrator.

### **Evidence of claims**

**3.107.**—(1) The administrator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 3.105, may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who the administrator believes can produce relevant evidence, to produce such evidence.

(2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the administrator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(3) On an application to it under paragraph (2) above the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than eight days nor later than 16 days after the date of the order) and at a time specified in the order.

(4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an “examining commissioner”).

(5) At any private examination under paragraph (2) or where the court grants a commission to take the examination under paragraph (4), a solicitor or counsel may act on behalf of the administrator, or the administrator may appear on the administrator’s own behalf.

(6) The examination, whether before the court or an examining commissioner, must be taken on oath.

(7) A person who fails without reasonable excuse to comply with an order made under paragraph (2) is guilty of an offence.

(8) References in this rule to a creditor in a case where the creditor is one of the following entities—

- (a) a trust;
- (b) a partnership (including a dissolved partnership);
- (c) a body corporate or an unincorporated body;
- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907,

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

### **Adjudication of claims**

**3.108.**—(1) Where funds are available for payment of a dividend out of the company's assets in respect of an accounting period, the administrator for the purpose of determining who is entitled to such a dividend must—

- (a) not later than four weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 3.105; and
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (b).

(2) On accepting or rejecting, under paragraph (1) above, every claim submitted or deemed to have been re-submitted, the administrator must, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to every creditor known to the administrator.

(3) Where the administrator rejects a claim, the administrator must without delay notify the creditor giving reasons for the rejection.

(4) Where the administrator accepts or rejects a claim, the administrator must specify for that claim—

- (a) the amount of the claim accepted;
- (b) the category of debt, and the value of any security, as decided by the administrator; and
- (c) if rejecting the claim, the reasons for doing so.

(5) Any member of the company or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b)) appeal to the court not later than 14 days before the end of the accounting period.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

### **Entitlement to draw a dividend**

**3.109.**—(1) A creditor who has had that creditor's claim accepted in whole or in part by the administrator under rule 3.108(1) or on appeal under rule 3.108(5) is entitled to payment out of the company's assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the company has funds available to make that payment, having regard to rule 3.115.

### **Liabilities and rights of obligants**

**3.110.**—(1) Where a creditor has an obligant bound to the creditor along with the company for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the company or the creditor's voting or drawing a dividend or assenting to or not opposing—

- (a) the dissolution of the company; or
- (b) any composition with creditors.

(2) Paragraph (3) applies where—

- (a) a creditor has had a claim accepted in whole or in part; and
- (b) the obligant holds a security over any part of the company's assets.

(3) The obligant must account to the administrator so as to put the company's assets in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the administration after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt, and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of an obligant who has paid the debt.

(6) In this rule an "obligant" includes a cautioner.

### **Amount which may be claimed generally**

**3.111.**—(1) Subject to the provisions of this rule and rules 3.112 and 3.113 the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date on which the company entered administration.

(2) If a debt does not depend on a contingency but would not be payable but for the administration until after the date on which the company entered administration, the amount of the claim is to be calculated as if the debt were payable on the date on which the company entered administration but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is to be whichever is the greater of—

- (a) the official rate at the date the company entered administration; or
- (b) the rate applicable to that debt apart from the administration.

(5) Where the administration was immediately preceded by a liquidation, the reference to the date on which the company entered administration in paragraph (1) and the second reference to that date in paragraph (2) are to be construed as references to the date the company went into liquidation.

### **Debts depending on contingency**

**3.112.**—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

- (a) to the administrator; or
- (b) if there is no administrator, to the court,

the administrator or court must put a value on the debt in so far as it is contingent.

(3) Where under paragraph (2) a value is put on the debt—

- (a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more;
- (b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(4) Any interested person may appeal to the court against a valuation under paragraph (2) by the administrator, and the court may affirm or vary that valuation.

**Secured debts**

**3.113.**—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the company's assets, the secured creditor is not required to deduct the value of that security.

(3) The administrator may, at any time after the expiry of 12 weeks from the date on which the company entered administration, require a secured creditor at the expense of the company's assets to discharge the security or convey or assign it to the administrator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the administrator makes payment to the creditor, the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

**Claims in foreign currency**

**3.114.**—(1) A creditor may state the amount of his or her claim in a currency other than sterling where—

- (a) the creditor's claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling; or
- (b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the company to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the administrator must convert it into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date on which the company entered administration or, if the administration was immediately preceded by a liquidation, on the date on which the company went into liquidation.

**Order of priority in distribution**

**3.115.**—(1) The funds of the company's assets must be distributed by the administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the administration;
- (b) any preferential debts within the meaning of section 386(2) (excluding any interest which has been accrued thereon to the date on which the company entered administration);
- (c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (d) interest at the official rate, between the date on which the company entered administration and the date of payment, on—
  - (i) the preferential debts, and
  - (ii) the ordinary debts; and

(2) Section 386 was amended by paragraph 18 of schedule 8 of the Pensions Schemes Act 1993 (c.48), section 13(2) of the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2003/2093, S.I. 2014/3486 and S.I. 2015/486.

- (e) any postponed debt.
- (2) In paragraph (1)—
  - (a) “postponed debt” means—
    - (i) a creditor’s right to any alienation which has been reduced or restored to the company’s assets under section 242 or to the proceeds of the sale of such an alienation,
    - (ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(3) (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.), or
    - (iii) in administration, a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed;
  - (b) in sub-paragraph (d), where the administration was immediately preceded by a winding up, the reference to the date on which the company entered administration is to be construed as the date the company went into liquidation.
- (3) The expenses of the administration mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 3.116.
- (4) Subject to section 175—
  - (a) any debt falling within either of paragraphs (1)(b) or (c) is to have the same priority as any other debt falling within the same sub-paragraph; and
  - (b) where the funds of the company’s assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.
- (5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, must (unless the articles of the company provide otherwise) be distributed among the members according to their rights and interests in the company.
- (6) Nothing in this rule affects—
  - (a) the right of a secured creditor which is preferable to the rights of the administrator; or
  - (b) any preference of the holder of a lien over a title deed or other document which the administrator has taken into his or her possession or control in accordance with paragraph 67 of Schedule B1.

### **Order of priority of expenses of administration**

**3.116.**—(1) Subject to rule 3.51 the expenses of the administration are payable out of the assets in the following order of priority—

- (a) any outlays properly chargeable or incurred by the administrator in carrying out its functions in the administration, except those outlays specifically mentioned in the following sub-paragraphs;
- (b) the cost, or proportionate cost, of any caution provided by an administrator in accordance with the Act or these Rules;
- (c) the expenses of the applicant in the administration, and of any person appearing in the petition whose expenses are allowed by the court;
- (d) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised by or under the Act or these Rules;
- (e) the remuneration of the administrator determined in accordance with rules 3.95 to 3.101;

---

(3) 2000 c.8. Section 382(1) was amended by paragraph 21(2) of Schedule 9 to the Financial Services Act 2012 (c.21).

- (f) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the administrator, a secured creditor or otherwise).

### **Estate to be distributed in respect of the accounting periods**

**3.117.**—(1) The administrator must make up accounts of the administrator’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 six months beginning with the date on which the company entered administration; and
- (b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—
  - (i) where the administrator and the creditors’ committee agree; or
  - (ii) where there is no creditors’ 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) An agreement or determination under paragraph (2)(b)—

- (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.

(4) The administrator may make a distribution to secured or preferential creditors or, where the administrator has the permission of the court, to unsecured creditors only if-

- (a) the administrator has sufficient funds for the purpose;
- (b) the administrator does not intend to give notice pursuant to paragraph 83 of Schedule B1(4);
- (c) the administrator’s statement of proposals, as approved by the creditors under paragraph 53(1) or 54(5) of Schedule B1(5), contains a proposal to make a distribution to the class of creditors in question, and
- (d) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by the administrator or which the administrator intends to make.

(5) The administrator may pay—

- (a) the expenses of the administration mentioned in rule 3.116(1)(a), other than the administrator’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 creditors’ committee or, if there is no creditors’ committee, of the court.

(6) If the administrator—

- (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,

(4) Paragraph 83 is amended by section 128(3) of the 2015 Act.

(5) Paragraph 53 is amended by paragraph 10(8) to (10) of Schedule 9 to the 2015 Act. Paragraph 54 is amended by paragraph 10(11) to (16) of Schedule 9 to the 2015 Act.



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

(7) Where an appeal is taken under rule 3.108(5) against the acceptance or rejection of a creditor's claim, the administrator 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.

(8) Where a creditor—

(a) has failed to produce evidence in support of a claim earlier than eight weeks before the end of an accounting period on being required by the administrator to do so under rule 3.107; and

(b) has given a reason for such failure which is acceptable to the administrator,

the administrator 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 administrator to be satisfied under rule 3.107 an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the administrator later than eight weeks before the end of an accounting period but more than eight 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 administrator 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

provided that paragraph (a) above is without prejudice to any dividend which has already been paid.

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

(11) Subject to any notification by the person entitled to a dividend given to the administrator that the person wishes the dividend to be paid to another person, or has assigned that entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment is only to be made to the creditor.

### **Small debts**

**3.118.**—(1) A creditor is deemed to have submitted a claim for the purposes of adjudication of entitlement to and payment of a dividend but not otherwise where—

(a) the debt is a small debt;

(b) notice has been delivered to the creditor under rule 3.119; and

(c) the creditor has not advised the administrator that the debt is incorrect or not owed in response to the notice.

(2) In this rule “small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A(6) of Schedule 8 to the Act and paragraph 18A(7) of Schedule 9 to the Act.

---

(6) Paragraph 13A is inserted by section 131 of the 2015 Act.

(7) Paragraph 18A is inserted by section 132 of the 2015 Act.

**Contents of notice to be delivered to creditors owed small debts etc.**

**3.119.**—(1) The administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company, as if it were accepted under rule 3.108 for the purpose of paying a dividend.

(2) Where the administrator intends to treat such a debt as if it were accepted under rule 3.108 for the purpose of payment of a dividend, the administrator must not later than 12 weeks before the end of the accounting period deliver to the creditor a notice.

(3) The notice must—

- (a) state the amount of the debt which the administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the company;
- (b) state that the administrator will treat the debt which is stated in the notice, being for £1,000 or less, as accepted for the purpose of payment of a dividend unless the creditor advises the administrator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the administrator by not later than eight weeks before the end of the accounting period 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 administrator that the amount of the debt is incorrect the creditor must also submit not later than eight weeks before the end of the accounting period a statement of claim and documentary evidence of debt (see rule 3.105) in order to receive a dividend.