
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 4

WINDING UP BY THE COURT

CHAPTER 9

DISTRIBUTION OF COMPANY'S ASSETS BY LIQUIDATOR

Order of priority in distribution

4.66.—(1) The funds of the company's assets shall be distributed by the liquidator to meet the following expenses and debts in the order in which they are mentioned:-

- (a) the expenses of the liquidation;
- (b) any preferential debts within the meaning of section 386 (excluding any interest which has been accrued thereon to the date of commencement of the winding up within the meaning of section 129);
- (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 on -
 - (i) the preferential debts, and
 - (ii) the ordinary debts,between the said date of commencement of the winding up and the date of payment of the debt; and
- (e) any postponed debt.

(2) In the above paragraph -

- (a) "postponed debt" means 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 sale of such an alienation; and
- (b) "official rate" shall be construed in accordance with subsection (4) of section 189 and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in the Rules shall be 15 per centum per annum.

(3) The expenses of the liquidation mentioned in sub-paragraph (a) of paragraph (1) are payable in the order of priority mentioned in Rule 4.67.

(4) Subject to the provisions of section 175, any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub-paragraph and, where the funds of the company's assets are inadequate to enable the debts mentioned in this sub-paragraph to be paid in full, they shall abate in equal proportions.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the company otherwise provide) be distributed among the members according to their rights and interests in the company.

(6) Nothing in this Rule shall affect -

- (a) the right of a secured creditor which is preferable to the rights of the liquidator; or
- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the permanent trustee in accordance with a requirement under section 38(4) of the Bankruptcy Act, as applied by Rule 4.22.

Order of priority of expenses of liquidation

4.67.—(1) Subject to section 156 and paragraph (2), the expenses of the liquidation are payable out of the assets in the following order of priority -

- (a) any outlays properly chargeable or incurred by the provisional liquidator or liquidator in carrying out his functions in the liquidation, except those outlays specifically mentioned in the following sub-paragraphs;
- (b) the cost, or proportionate cost, of any caution provided by a provisional liquidator, liquidator or special manager in accordance with the Act or the Rules;
- (c) the remuneration of the provisional liquidator (if any);
- (d) the expenses of the petitioner in the liquidation, and of any person appearing in the petition whose expenses are allowed by the court;
- (e) the remuneration of the special manager (if any);
- (f) any allowance made by the liquidator under Rule 4.9(1) (expenses of statement of affairs);
- (g) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or the Rules;
- (h) the remuneration of the liquidator determined in accordance with Rule 4.32;
- (i) the amount of any capital gains tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor or otherwise).

(2) In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow, shall have the same priority as the outlays mentioned in sub-paragraph (a) of paragraph (1).

(3) Nothing in this Rule applies to or affects the power of any court, in proceedings by or against the company, to order expenses to be paid by the company, or the liquidator; nor does it affect the rights of any person to whom such expenses are ordered to be paid.

Application of the Bankruptcy Act

4.68.—(1) Sections 52, 53 and 58 of the Bankruptcy Act shall apply in relation to the liquidation of a company as they apply in relation to a sequestration of a debtor's estate, subject to the modifications specified in Rules 4.16(2) and 4.32(2) and (3) and the following paragraph and to any other necessary modifications.

(2) In section 52, the following modifications shall be made: -

- (a) in subsection (4)(a) for the reference to “the debts mentioned in subsection (1)(a) to (d)”, there shall be substituted a reference to the expenses of the winding up mentioned in Rule 4.67(1)(a);

- (b) in subsection (5), the words “with the consent of the commissioners or if there are no commissioners of the Accountant in Bankruptcy” should be deleted; and
- (c) in subsection (7) and (8) for the references to section 48(5) and 49(6)(b) there should be substituted a reference to those sections as applied by Rule 4.16(1).