



Insolvency Act 1986

1986 CHAPTER 45

The Second Group of Parts Insolvency of Individuals ; Bankruptcy

PART IX

BANKRUPTCY

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Distribution of bankrupt's estate

322 Proof of debts

- (1) Subject to this section and the next, the proof of any bankruptcy debt by a 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 is provable as part of the 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 a bankruptcy debt is estimated by the trustee under subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

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323 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) 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) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

324 Distribution by means of dividend

- (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.

325 Claims by unsatisfied creditors

- (1) A creditor who has not proved his debt before the declaration of any dividend is not 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 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 ; and
 - (b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.
- (2) No action lies 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—

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- (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.

326 Distribution of property in specie

- (1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, 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.
- (2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.
- (3) Where the trustee has done anything without the permission required by subsection (1), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

But the committee shall not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

327 Distribution in criminal bankruptcy

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.

328 Priority of debts

- (1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to other debts.
- (2) Preferential debts 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 abate in equal proportions between themselves.
- (3) Debts which are neither preferential debts nor debts to which the next section applies 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 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) 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 ranks equally with interest on debts other than preferential debts.
- (5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following—

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- (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) This section and the next are without prejudice to any provision of this Act or 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.

329 Debts to spouse

- (1) This section applies to 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.
- (2) Such debts—
- (a) rank in priority after the debts and interest required to be paid in pursuance of section 328(3) and (4), and
 - (b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy ;
- and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

330 Final distribution

- (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, 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 under subsection (1) 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 is entitled to the surplus.

331 Final meeting

- (1) Subject as follows in this section and the next, this section applies where—
- (a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

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- (b) the trustee is not the official receiver.
- (2) 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 299 in Chapter III.
- (3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(1); 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.
- (4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

332 Saving for bankrupt's home

- (1) This section applies where—
 - (a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse, and
 - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under section 331 unless either—
 - (a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or
 - (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.