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## STATUTORY INSTRUMENTS

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# 1986 No. 1925

## The Insolvency Rules 1986

### THE FIRST GROUP OF PARTS

#### PART 4

#### COMPANIES WINDING UP

#### CHAPTER 14

#### COLLECTION AND DISTRIBUTION OF COMPANY'S ASSETS BY LIQUIDATOR

##### **General duties of liquidator**

##### **4.179. (NO CVL APPLICATION)**

(1) The duties imposed on the court by the Act with regard to the collection of the company's assets and their application in discharge of its liabilities are discharged by the liquidator as an officer of the court subject to its control.

(2) In the discharge of his duties the liquidator, for the purposes of acquiring and retaining possession of the company's property, has the same powers as a receiver appointed by the High Court, and the court may on his application enforce such acquisition or retention accordingly.

##### **Manner of distributing assets**

**4.180.**—(1) Whenever the liquidator 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 winding up, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved.

(2) The liquidator shall give notice of his intention to declare and distribute a dividend.

(3) Where the liquidator has declared a dividend, he shall give notice of it to the creditors, stating how the dividend is proposed to be distributed. The notice shall contain such particulars with respect to the company, and to its assets and affairs, as will enable the creditors to comprehend the calculation of the amount of the dividend and the manner of its distribution.

##### **Debts of insolvent company to rank equally**

##### **4.181. (NO CVL APPLICATION)**

Debts other than preferential debts rank equally between themselves in the winding up and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

##### **Supplementary provisions as to dividend**

**4.182.**—(1) In the calculation and distribution of a dividend the liquidator shall make provision—

- (a) for any 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 debts which are the subject of claims which have not yet been determined, and
  - (c) for disputed proofs and claims.
- (2) 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 sub-paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.
- (3) No action lies against the liquidator for a dividend; but if he 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—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld, and
  - (b) the costs of the proceedings in which the order to pay is made.

#### **Division of unsold assets**

**4.183.** Without prejudice to provisions of the Act about disclaimer, the liquidator may, with the permission of the liquidation committee, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

#### **General powers of liquidator**

**4.184.**—(1) Any permission given by the liquidation committee or the court under section 167(1) (a), or under the Rules, shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power in question; and a person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(2) Where the liquidator has done anything without that permission, the court or the liquidation committee may, for the purpose of enabling him to meet his expenses out of the assets, ratify what he has done; but neither shall do so unless it is satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

#### **Enforced delivery up of company's property**

##### **4.185. (NO CVL APPLICATION)**

(1) The powers conferred on the court by section 234 (enforced delivery of company property) are exercisable by the liquidator or, where a provisional liquidator has been appointed, by him.

(2) Any person on whom a requirement under section 234(2) is imposed by the liquidator or provisional liquidator shall, without avoidable delay, comply with it.

#### **Final distribution**

**4.186.**—(1) When the liquidator has realised all the company's assets or so much of them as can, in his opinion, be realised without needlessly protracting the liquidation, he shall give notice, under Part 11 of the Rules, either—

- (a) of his intention to declare a final dividend, or
  - (b) that no dividend, or further dividend, will be declared.
- (2) The notice shall contain all such particulars as are required by Part 11 of the Rules and shall require claims against the assets to be established by a date specified in the notice.
- (3) After that date, the liquidator shall—
- (a) defray any outstanding expenses of the winding up out of the assets, 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.
- (4) The court may, on the application of any person, postpone the date specified in the notice.