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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 9

PROOF OF DEBTS IN A LIQUIDATION

*SECTION A: PROCEDURE FOR PROVING*

**Meaning of “prove”**

**4.73.**—(1) Where a company is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 4.67(2)) submit his claim in writing to the liquidator. (NO CVL APPLICATION)

(2-CVL) In a voluntary winding up (whether members' or creditors') the liquidator may require a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part, to submit the claim in writing to him.

(3) A creditor who claims (whether or not in writing) is referred to as “proving” for his debt; and a document by which he seeks to establish his claim is his “proof”.

(4) Subject to the next paragraph, a proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and signed by him or a person authorised in that behalf. (NO CVL APPLICATION)

(5) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances. (NO CVL APPLICATION)

(6-CVL) The creditor's proof may be in any form.

(7) In certain circumstances, specified below in this Chapter, the proof must be in the form of an affidavit.

**Supply of forms**

**4.74.** (NO CVL APPLICATION)

(1) Forms of proof shall be sent out by the liquidator to every creditor of the company who is known to him, or is identified in the company's statement of affairs.

(2) The forms shall accompany (whichever is first)—

(a) the notice to creditors under section 136(5)(b) (official receiver's decision not to call meetings of creditors and contributories), or

- (b) the first notice calling a meeting of creditors, or
- (c) where a liquidator is appointed by the court, the notice of his appointment sent by him to creditors.

(3) Where, with the leave of the court under Rule 4.102(5), the liquidator advertises his appointment, he shall send proofs to the creditors within 4 months after the date of the winding-up order.

(4) The above paragraphs of this Rule are subject to any order of the court dispensing with the requirement to send out forms of proof, or altering the time at which the forms are to be sent.

### **Contents of proof**

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

(1) The following matters shall be stated in a creditor's proof of debt—

- (a) the creditor's name and address;
- (b) the total amount of his claim as at the date on which the company went into liquidation;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) whether or not the claim includes value added tax;
- (e) whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts under section 386 of, and Schedule 6 to, the Act (as read with Schedule 3 to the Social Security Pensions Act 1975);
- (f) particulars of how and when the debt was incurred by the company;
- (g) particulars of any security held, the date when it was given and the value which the creditor puts upon it; and
- (h) the name, address and authority of the person signing the proof (if other than the creditor himself).

(2) There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.

(3) The liquidator, or the chairman or convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

### **Particulars of creditor's claim**

**4.76-CVL.** The liquidator, or the convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his proof, call for details of any matter specified in paragraphs (a) to (h) of Rule 4.75(1), or for the production to him of such documentary or other evidence as he may require.

### **Claim established by affidavit**

**4.77.—(1)** The liquidator may, if he thinks it necessary, require a claim of debt to be verified by means of an affidavit, for which purpose there shall be used the form known as “affidavit of debt”, or a substantially similar form.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

(3) The affidavit may be sworn before an official receiver or deputy official receiver, or before an officer of the Department or of the court duly authorised in that behalf. (NO CVL APPLICATION)

### **Cost of proving**

**4.78.**—(1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 4.75(3) or 4.76-CVL.

(2) Costs incurred by the liquidator in estimating the quantum of a debt under Rule 4.86 (debts not bearing a certain value) are payable out of the assets, as an expense of the liquidation.

(3) Paragraphs (1) and (2) apply unless the court otherwise orders.

### **Liquidator to allow inspection of proofs**

**4.79.** The liquidator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company;
- (c) any person acting on behalf of either of the above.

### **Transmission of proofs to liquidator**

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

(1) Where a liquidator is appointed, the official receiver shall forthwith transmit to him all the proofs which he has so far received, together with an itemised list of them.

(2) The liquidator shall sign the list by way of receipt for the proofs, and return it to the official receiver.

(3) From then on, all proofs of debt shall be sent to the liquidator, and retained by him.

### **New liquidator appointed**

**4.81.**—(1) If a new liquidator is appointed in place of another, the former liquidator shall transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new liquidator shall sign the list by way of receipt for the proofs, and return it to his predecessor.

### **Admission and rejection of proofs for dividend**

**4.82.**—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the liquidator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it forthwith to the creditor.

### **Appeal against decision on proof**

**4.83.**—(1) If a creditor is dissatisfied with the liquidator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 4.82(2).

(2) A contributory or any other creditor may, if dissatisfied with the liquidator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the liquidator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the liquidator.

(4) The liquidator shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 4.82(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the liquidator.

(6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

### **Withdrawal or variation of proof**

**4.84.** A creditor's proof may at any time, by agreement between himself and the liquidator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

**4.85.—**(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the liquidator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the liquidator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the liquidator, to the creditor who made the proof, and
- (b) in the case of an application by a creditor, to the liquidator and to the creditor who made the proof (if not himself).

## *SECTION B: QUANTIFICATION OF CLAIM*

### **Estimate of quantum**

**4.86.—**(1) The liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.

He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, or by the court under section 168(3) or (5), the amount provable in the winding up in the case of that debt is that of the estimate for the time being.

### **Negotiable instruments, etc**

**4.87.** Unless the liquidator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

### **Secured creditors**

**4.88.**—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

### **Discounts**

**4.89.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement.

### **Mutual credit and set-off**

**4.90.**—(1) This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.

(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 company to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a meeting of creditors had been summoned under section 98 or (as the case may be) a petition for the winding up of the company was pending.

(4) Only the balance (if any) of the account is provable in the liquidation. Alternatively (as the case may be) the amount shall be paid to the liquidator as part of the assets.

### **Debt in foreign currency**

**4.91.**—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company went into liquidation.

(2) “The official exchange rate” is the middle market rate at the Bank of England, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

### **Payments of a periodical nature**

**4.92.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company went into liquidation.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

### **Interest**

**4.93.**—(1) Where a debt proved in the liquidation 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 company went into liquidation.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the company went into liquidation, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the company went into liquidation.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the company's going into liquidation.

(6) The rate of interest to be claimed under paragraph (3) or (4) of this Rule is the rate specified in section 17 of the Judgments Act 1838 on the date when the company went into liquidation, except that, where the case falls within paragraph (4), the rate is that specified in the notice there referred to, not exceeding the rate under the Judgments Act mentioned above.

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

**4.94.** A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation, but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).