STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 14

CLAIMS BY AND DISTRIBUTIONS TO CREDITORS IN ADMINISTRATION, WINDING UP AND BANKRUPTCY

CHAPTER 2

Creditors' claims in administration, winding up and bankruptcy

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Provable debts

14.2.—(1) All claims by creditors except as provided in this rule, are provable as debts against the company or bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) The following are not provable—

(a) an obligation arising under a confiscation order made under—

(i) section 1 of the Drug Trafficking Offences Act 1986(**1**),

(ii) section 1 of the Criminal Justice (Scotland) Act 1987(**2**),

(iii) section 71 of the Criminal Justice Act 1988(**3**), or

(iv) Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(**4**);

(b) an obligation arising from a payment out of the social fund under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992(**5**) by way of crisis loan or budgeting loan.

(c) in bankruptcy—

(i) a fine imposed for an offence,

(ii) an obligation (other than an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings, or

(iii) an obligation arising under a maintenance assessment made under the Child Support Act 1991(**6**).

(**1**) 1986 c.32; repealed by Schedule 3 to the Drug Trafficking Act 1994 (c.37).
(**2**) 1987 c.41; repealed by Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).
(**3**) 1988 c.33; repealed by Schedule 12 to the Proceeds of Crime Act 2002 (c.29) with savings in articles 10 and 13 of S.I. 2003/333.
(**4**) 2002 c.29; relevant amendments are made by paragraph 75(1) and (2) of Part 2 of Schedule 3 to the Criminal Justice Act 2003 (c.44); Part 1 of Schedule 8 and paragraphs 1 and 2 of Schedule 14 to the Serious Crime Act 2007 (c.27); and paragraphs 11 and 12 of the Schedule to the Prevention of Social Housing Fraud Act 2013 (c.3).
(**5**) 1992 c.4; section 138(1)(b) is repealed by section 71 of the Welfare Reform Act 2012 c.5.
(**6**) 1991 c.48.

(3) In paragraph (2)(c), "fine" and "family proceedings" have the meanings given by section 281(8) (which applies the Magistrates Courts Act 1980(**7**) and the Matrimonial and Family Proceedings Act 1984(**8**)).

(4) The following claims are not provable until after all other claims of creditors have been paid in full with interest under sections 189(2) (winding up), section 328(4) (bankruptcy) and rule 14.23 (payment of interest)—

(a) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000 (restitution orders)(**9**), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.); or

(b) in administration and winding up, a claim which by virtue of the Act or any other enactment is a claim the payment of which in a bankruptcy, an administration or a winding up is to be postponed.

(5) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Proving a debt

14.3.—(1) A creditor wishing to recover a debt must submit a proof to the office-holder unless—

(a) this rule or an order of the court provides otherwise; or

(b) it is a members' voluntary winding up in which case the creditor is not required to submit a proof unless the liquidator requires one to be submitted.

(2) A creditor is deemed to have proved—

(a) in a winding up immediately preceded by an administration, where the creditor has already proved in the administration; or

(b) in an administration immediately preceded by a winding up, where the creditor has already proved in the winding up.

(3) A creditor is deemed to have proved for the purposes of determination and payment of a dividend but not otherwise where—

(a) the debt is a small debt;

(b) a notice has been delivered to the creditor of intention to declare a dividend or make a distribution under rule 14.29 which complies with rule 14.31 (further contents of notice to creditors owed small debts); and

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

Requirements for proof

14.4.—(1) A proof must—

(a) be made out by, or under the direction of, the creditor 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 total amount of the creditor's claim (including any value added tax) as at the relevant date, less any payments made after that date in relation to the claim, any deduction

(**7**) 1980 c.43.
(**8**) 1984 c.42.
(**9**) 2000 c.8; section 382 has been amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012 (c.21).

under rule 14.20 and any adjustment by way of set-off in accordance with rules 14.24 and 14.25;

(e) state whether or not the claim includes any outstanding uncapitalised interest;

(f) contain particulars of how and when the debt was incurred by the company or the bankrupt;

(g) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;

(h) provide details of any reservation of title in relation to goods to which the debt relates;

(i) provide details of any document by reference to which the debt can be substantiated;

(j) be dated and authenticated; and

(k) state the name, postal address and authority of the person authenticating the proof (if someone other than the creditor).

(2) Where sub-paragraph (i) applies the document need not be delivered with the proof unless the office-holder has requested it.

(3) The office-holder may call for the creditor to produce any document or other evidence which the office-holder considers is necessary to substantiate the whole or any part of a claim.

Costs of proving

14.5. Unless the court orders otherwise—

(a) each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under rule 14.4 (3);

(b) in an administration or winding up, costs incurred by the office-holder in estimating the value of a debt under rule 14.14 are payable out of the assets as an expense of the administration or winding up; and

(c) in a bankruptcy, costs incurred by the office-holder in estimating the value of a debt under section 322(3) fall on the bankrupt's estate as an expense of the bankruptcy.

Allowing inspection of proofs

14.6. The office-holder must, so long as proofs delivered to the office-holder are in the possession of the office-holder, allow them to be inspected, at all reasonable times on any business day, by the following—

(a) a creditor who has delivered a proof (unless the proof has been wholly rejected for purposes of dividend or otherwise, or withdrawn);

(b) a member or contributory of the company or, in the case of a bankruptcy, the bankrupt; and

(c) a person acting on behalf of any of the above.

Admission and rejection of proofs for dividend

14.7.—(1) The office-holder may admit or reject a proof for dividend (in whole or in part).

(2) If the office-holder rejects a proof in whole or in part, the office-holder must deliver to the creditor a statement of the office-holder's reasons for doing so, as soon as reasonably practicable.

Appeal against decision on proof

14.8.—(1) If a creditor is dissatisfied with the office-holder's decision under rule 14.7 in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under rule 14.7(2).

(3) A member, a contributory, any other creditor or, in a bankruptcy, the bankrupt, if dissatisfied with the office-holder's decision admitting, or rejecting the whole or any part of, a proof or agreeing to revalue a creditor's security under rule 14.15, may make such an application within 21 days of becoming aware of the office-holder's decision.

(4) The court must fix a venue for the application to be heard.

(5) The applicant must deliver notice of the venue to the creditor who delivered the proof in question (unless it is the applicant's own proof) and the office-holder.

(6) The office-holder must, on receipt of the notice, file the relevant proof with the court, together (if appropriate) with a copy of the statement sent under rule 14.7(2).

(7) After the application has been heard and determined, a proof which was submitted by the creditor in hard copy form must be returned by the court to the office-holder.

Office-holder not liable for costs under rule 14.8

14.9.—(1) The official receiver is not personally liable for costs incurred by any person in respect of an application under rule 14.8.

(2) An office-holder other than the official receiver is not personally liable for costs incurred by any person in respect of an application under rule 14.8 unless the court orders otherwise.

Withdrawal or variation of proof

14.10.—(1) A creditor may withdraw a proof at any time by delivering a written notice to the office-holder.

(2) The amount claimed by a creditor's proof may be varied at any time by agreement between the creditor and the office-holder.

Exclusion of proof by the court

14.11.—(1) The court may exclude a proof or reduce the amount claimed—

(a) on the office-holder's application, where the office-holder thinks that the proof has been improperly admitted, or ought to be reduced; or

(b) on the application of a creditor, a member, a contributory or a bankrupt, if the office-holder declines to interfere in the matter.

(2) Where application is made under paragraph (1), the court must fix a venue for the application to be heard.

(3) The applicant must deliver notice of the venue—

(a) in the case of an application by the office-holder, to the creditor who submitted the proof; and

(b) in the case of an application by a creditor, a member, a contributory or a bankrupt, to the office-holder and to the creditor who made the proof (if not the applicant).

Administration and winding up by the court: debts of insolvent company to rank equally

[Note: for the equivalent rule for voluntary liquidation see section 107 of the Act and for bankruptcy section 328 of the Act.]

14.12.—(1) This rule applies in an administration and a winding up by the court.

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

Administration and winding up: division of unsold assets

[Note: in respect of bankruptcy see section 326 (distribution of property in specie).]

14.13.—(1) This rule applies in an administration or in a winding up of a company (other than a members' voluntary winding up) to any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The office-holder may with the required permission divide the property in its existing form among the company's creditors according to its estimated value.

(3) The required permission is—

(a) the permission of the creditors' committee in an administration or, if there is no creditors' committee, the creditors; and

(b) the permission of the liquidation committee in a winding up, or, if there is no liquidation committee, the creditors (without prejudice to provisions of the Act about disclaimer).

Administration and winding up: estimate of value of debt

14.14.—(1) In an administration or in a winding up, the office-holder must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

(2) The office-holder may revise such an estimate by reference to a change of circumstances or to information becoming available to the office-holder.

(3) The office-holder must inform the creditor of the office-holder's estimate and any revision.

(4) 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 case of that debt is that of the estimate for the time being.

Secured creditor: value of security

14.15.—(1) A secured creditor may, with the agreement of the office-holder or the permission of the court, at any time alter the value which that creditor has put upon a security in a proof.

(2) Paragraph (3) applies where a secured creditor—

(a) being the applicant for the administration order or the appointer of the administrator, has in the application or the notice of appointment put a value on the security;

(b) being the petitioner in winding-up or bankruptcy proceedings, has put a value on the security in the petition; or

(c) has voted in respect of the unsecured balance of the debt.

(3) Where this paragraph applies—

(a) the secured creditor may re-value the security only with the agreement of the office-holder or the permission of the court; and

(b) where the revaluation was by agreement, the office-holder must deliver a notice of the revaluation to the creditors within five business days after the office-holder's agreement.

Secured creditor: surrender for non-disclosure

14.16.—(1) If a secured creditor fails to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the

secured creditor, relieves the secured creditor from the effect of this rule on the grounds that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

(3) Nothing in this rule or in rules 14.17 or 14.18 affects the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation.

Secured creditor: redemption by office-holder

14.17.—(1) The office-holder may at any time deliver a notice to a creditor whose debt is secured that the office-holder proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the office-holder may allow) in which to alter the value of the security in accordance with rule 14.15.

(3) If the creditor alters the value of the security with the permission of the office-holder or the court then the office-holder may only redeem at the new value.

(4) If the office-holder redeems the security the cost of transferring it is payable as an expense out of the insolvent estate.

(5) A creditor whose debt is secured may at any time deliver a notice to the office-holder requiring the office-holder to elect whether or not to redeem the security at the value then placed on it.

(6) The office-holder then has three months in which to redeem the security or elect not to redeem the security.

Secured creditor: test of security's value

14.18.—(1) If the office-holder is dissatisfied with the value which a secured creditor puts on a security in the creditor's proof the office-holder may require any property comprised in the security to be offered for sale.

(2) The terms of sale will be as agreed between the office-holder and the secured creditor, or as the court may direct.

(3) If the sale is by auction, the office-holder on behalf of the company or the insolvent estate and the creditor may bid.

(4) This rule does not apply if the value of the security has been altered with the court's permission.

Realisation or surrender of security by creditor

14.19.—(1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the office-holder)—

(a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and

(b) the creditor may prove for the balance of the creditor's debt.

(2) A creditor who voluntarily surrenders a security may prove for the whole of the creditor's debt as if it were unsecured.

Discounts

14.20. All trade and other discounts (except a discount for immediate or early settlement) which would have been available to the company or the debtor but for the insolvency proceedings must be deducted from the claim.

Debts in foreign currency

14.21.—(1) A proof for a debt incurred or payable in a foreign currency must state the amount of the debt in that currency.

(2) The office-holder must convert all such debts into sterling at a single rate for each currency determined by the office-holder by reference to the exchange rates prevailing on the relevant date.

(3) On the next occasion when the office-holder communicates with the creditors the office-holder must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the office-holder is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

(6) This rule does not apply to the conversion of foreign currency debts in an application for a debt relief order.

Payments of a periodical nature

14.22.—(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 relevant date.

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

Interest

[Note: provision for the payment of interest out of a surplus remaining after payment of the debts is made by section 189(2) in respect of winding up and section 328(4) in respect of bankruptcy.]

14.23.—(1) Where a debt proved in insolvency proceedings 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 relevant date.

(2) In the circumstances set out below the creditor's claim may include interest on the debt for periods before the relevant date 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 relevant date.

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

(a) the relevant date, in respect of administration or winding up; or

(b) the presentation of the bankruptcy petition or the bankruptcy application.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and, for the purposes of the Act and these Rules, must be charged at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838(**10**) on the relevant date.

(7) In an administration—

(a) any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;

(b) all interest payable under sub-paragraph (a) ranks equally whether or not the debts on which it is payable rank equally; and

(c) the rate of interest payable under sub-paragraph (a) is whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration.

Administration: mutual dealings and set-off

14.24.—(1) This rule applies in an administration where the administrator intends to make a distribution and has delivered a notice under rule 14.29.

(2) An account must be taken as at the date of the notice of what is due from the company and a creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the administration.

(4) If there is a balance owed to the company that must be paid to the administrator as part of the assets.

(5) However if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 14.44) if and when that debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving or claiming to prove for a debt in the administration but does not include any of the following—

(a) a debt arising out of an obligation incurred after the company entered administration;

(b) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) an application for an administration order was pending, or

(ii) any person had delivered notice of intention to appoint an administrator;

(c) a debt arising out of an obligation where—

(i) the administration was immediately preceded by a winding up, and

(ii) at the time when the obligation was incurred the creditor had notice that a decision had been sought from creditors under section 100(**11**) on the nomination of a liquidator or that a winding-up petition was pending;

(**10**) 1838 c.110. Section 17 is amended by the Statute Law Revision (No 2) Act 1988 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) of S.I. 1998/3132.

(**11**) Section 100 is amended by paragraph 24 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) which inserts new subsections (1), (1A) and (1B).

(d) a debt arising out of an obligation incurred during a winding up which immediately preceded the administration; or

(e) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—

(i) after the company entered administration,

(ii) at a time when the creditor had notice that an application for an administration order was pending,

(iii) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator,

(iv) where the administration was immediately preceded by a winding up, at a time when the creditor had notice that a decision had been sought from creditors under section 100 on the nomination of a liquidator or that a winding-up petition was pending, or

(v) during a winding up which immediately preceded the administration.

(7) A sum must be treated as being due to or from the company for the purposes of paragraph (2) whether—

(a) it is payable at present or in the future;

(b) the obligation by virtue of which it is payable is certain or contingent; or

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(8) For the purposes of this rule—

(a) rule 14.14 applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

(b) rules 14.21 to 14.23 apply to sums due to the company which—

(i) are payable in a currency other than sterling,

(ii) are of a periodical nature, or

(iii) bear interest; and

(c) rule 14.44 applies to a sum due to or from the company which is payable in the future.

Winding up: mutual dealings and set-off

14.25.—(1) This rule applies in a winding up where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) An account must be taken of what is due from the company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the winding up.

(4) If there is a balance owed to the company then that must be paid to the liquidator as part of the assets.

(5) However if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under rule 14.44) if and when that debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving or claiming to prove for a debt in the winding up but does not include any of the following—

(a) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a decision had been sought from creditors on the nomination of a liquidator under section 100, or

(ii) a petition for the winding up of the company was pending;

(b) a debt arising out of an obligation where—

(i) the liquidation was immediately preceded by an administration, and

(ii) at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had delivered notice of intention to appoint an administrator; and

(c) a debt arising out of an obligation incurred during an administration which immediately preceded the liquidation;

(d) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—

(i) after the company went into liquidation,

(ii) at a time when the creditor had notice that a decision had been sought from creditors under section 100 on the nomination of a liquidator,

(iii) at a time when the creditor had notice that a winding-up petition was pending,

(iv) where the winding up was immediately preceded by an administration at a time when the creditor had notice that an application for an administration order was pending or a person had delivered notice of intention to appoint an administrator, or

(v) during an administration which immediately preceded the winding up.

(7) A sum must be treated as being due to or from the company for the purposes of paragraph (2) whether—

(a) it is payable at present or in the future;

(b) the obligation by virtue of which it is payable is certain or contingent; or

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(8) For the purposes of this rule—

(a) rule 14.14 applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

(b) rules 14.21 to 14.23 apply to sums due to the company which—

(i) are payable in a currency other than sterling,

(ii) are of a periodical nature, or

(iii) bear interest; and

(c) rule 14.44 applies to a sum due to or from the company which is payable in the future.