
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 7

WINDING UP BY THE COURT

CHAPTER 14

Priority of payment of costs and expenses, etc.

General rule as to priority

7.108.—(1) All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up.

(2) The expenses of the winding up are payable out of assets of the company available for the payment of general creditors, including—

- (a) proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company;
- (b) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company;
- (c) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure;
- (d) payments made as a result of an assignment or a settlement of any such action, arrangement or procedure in lieu of or before any judgment being given or award being made; and
- (e) subject as provided in rules 7.111 to 7.116, property comprised in or subject to a floating charge created by the company.

(3) The expenses associated with the prescribed part must be paid out of the prescribed part.

(4) Subject as provided in rules 7.112 to 7.116, the expenses are payable in the following order of priority—

- (a) the following expenses, which rank equally in order of priority—
 - (i) expenses that are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on the provisional liquidator by the court,
 - (ii) expenses that are properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation, conduct or assignment of any legal proceedings, arbitration or other dispute resolution procedures, which the official receiver or liquidator has power to bring in the official receiver's or liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate,

- (iii) expenses that relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination, and
- (iv) expenses that are incurred in holding a hearing under rule 7.104 (examinee unfit) where the application for it was made by the official receiver;
- (b) any other expenses incurred or disbursements made by the official receiver or under the official receiver's authority, including those incurred or made in carrying on the business of the company;
- (c) the fees payable under any order made under section 414 or section 415A(1), including those payable to the official receiver (other than the fee referred to in sub-paragraph (d)), and any remuneration payable to the official receiver under general regulations;
- (d) the fee payable under any order made under section 414 for the performance by the official receiver of the general duties of the official receiver and any repayable sum deposited under any such order as security for the fee;
- (e) the cost of any security provided by a provisional liquidator, liquidator or special manager in accordance with the Act or these Rules;
- (f) the remuneration of the provisional liquidator (if any);
- (g) any sum deposited on an application for the appointment of a provisional liquidator;
- (h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;
- (i) the remuneration of the special manager (if any);
- (j) any amount payable to a person employed or authorised, under Chapter 6 of this Part, to assist in the preparation of a statement of affairs or of accounts;
- (k) any allowance made, by order of the court, in respect of costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
- (l) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination;
- (m) any necessary disbursements by the liquidator in the course of the administration of the winding up (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (p));
- (n) 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 these Rules;
- (o) the remuneration of the liquidator, up to an amount not exceeding that which is payable under Schedule 11 (determination of insolvency office-holder's remuneration);
- (p) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected);
- (q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the liquidator; and
- (r) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.

(1) Section 415A was inserted by section 270 of the Enterprise Act 2002 (c.40) and is amended by section 17(5) and paragraph 22(5) of Schedule 6 to the Deregulation Act 2015 (c.20) and sections 139(2) and 140(2) of the Small Business, Enterprise and Employment Act 2015 (c.26).

Winding up commencing as voluntary

7.109. Where the winding up by the court immediately follows a voluntary winding up (whether members' voluntary or creditors' voluntary), such remuneration of the voluntary liquidator and costs and expenses of the voluntary winding up as the court may allow are to rank in priority with the expenses specified in rule 7.108(4)(a).

Saving for powers of the court (section 156)

7.110.—(1) The priorities laid down by rules 7.108 and 7.109 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those rules—

- (a) applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; or
- (b) affects the rights of any person to whom such costs are ordered to be paid.