
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

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.