

### **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.

### **Mutual credits and set off**

**54.—**(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 65, given notice that the energy administrator proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the energy supply company and any creditor of the energy supply company proving or claiming to prove for a debt in the energy supply company administration but does not include—

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

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

(i) a meeting of creditors had been summoned under section 98 of the 1986 Act,

(ii) a petition for the winding up of the energy supply company was pending,

(iii) an application for an administration order under the 1986 Act was pending;

(iv) an application for an esc administration order was pending; or

(v) any person had given notice of intention to appoint an administrator under the 1986 Rules;

(c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—

(i) at a time when the creditor had notice that an application for an esc administration order was pending;

(ii) after the commencement of energy supply company administration,

(iii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98 of the 1986 Act, or

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

(v) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) 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.

(4) A sum shall be regarded as being due to or from the energy supply company for the purposes of paragraph (3) 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.

(5) Rule 50 shall apply for the purposes of this Rule to any obligation to or from the energy supply company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 55 to 57 shall apply for the purposes of this Rule in relation to any sums due to the energy supply company which—

(a) are payable in a currency other than sterling;

(b) are of a periodical nature; or

(c) bear interest.

(7) Rule 75 shall apply for the purposes of this Rule to any sum due or from the energy supply company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the energy supply company administration.

(9) Alternatively the balance (if any) owed to the energy supply company shall be paid to the energy administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) must be paid if and when the debt becomes due and payable.

(10) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.