

## **Proof of Debts Rules**

**(Cap. 6 sub. leg. E)**

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## **Proof of Debts Rules**

(Cap. 6, section 36)

[1 January 1932]

*(Format changes—E.R. 4 of 2020)*

### **Proof in Ordinary Cases**

1. Every creditor shall prove his debt as soon as may be after the making of a bankruptcy order.  
*(L.N. 85 of 1998)*
2. A debt may be proved by delivering or sending through the post to the trustee a proof of debt in the prescribed form which shall be accompanied by the prescribed fee as the case may require.  
*(L.N. 220 of 1992; L.N. 129 of 2007)*
3. A proof of debt may be made by the creditor himself or by a person authorized by or on behalf of the creditor and having knowledge of the facts.  
*(L.N. 220 of 1992)*
4. (1) The creditor or the person authorized by or on behalf of the creditor shall declare in the proof of debt—
  - (a) the creditor's name and address;
  - (b) the total amount of his claim as at the date of the bankruptcy order; *(L.N. 85 of 1998)*
  - (c) whether or not that amount includes outstanding uncapitalised interest;

- (d) particulars of how and when the debt was incurred by the bankrupt; (*L.N. 85 of 1998*)
  - (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it; and
  - (f) the name and the authority of the person signing the proof (if other than the creditor himself) and means of knowledge of the facts.
- (2) There shall be specified in the proof any documents by reference to which the debt can be substantiated and such documents or a copy of such documents shall be submitted together with the proof.
- (3) The trustee to whom the proof is sent may call for any document, which has not already been submitted, 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. (*L.N. 129 of 2007*)
- (*L.N. 220 of 1992*)

- 5.**
- (1) The trustee may, if he thinks it necessary, require a claim of debt to be verified by affidavit in the prescribed form notwithstanding that a proof of debt has already been lodged.
  - (2) The affidavit may be sworn before any person authorized to administer oaths or take statutory declarations.

(*L.N. 220 of 1992; L.N. 129 of 2007*)

- 5A.** If it is found at any time that the proof made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the trustee for the general benefit of the creditors unless the court on application is satisfied that the omission has arisen from inadvertence in which case the court may allow the proof to be amended upon such terms

as to the repayment of any dividends or otherwise as the court may consider just.

*(L.N. 220 of 1992; L.N. 129 of 2007)*

6. A creditor shall bear the cost of proving his debt unless the court otherwise specially orders.
7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the general meeting, and at all reasonable times on payment of the prescribed fee.  
*(L.N. 85 of 1998)*
8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding 5 per cent on the net amount of his claim, which he may have agreed to allow for payment in cash.

### **Proof by Secured Creditors**

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.
10. If a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove for his whole debt.  
*(L.N. 129 of 2007)*
11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

- 12.** (1) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.
- (2) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee or as, in default of such agreement, the court may direct. If the sale be by public auction, the creditor, or the trustee on behalf of the estate, may bid or purchase.
- (3) Provided that the creditor may at any time by notice in writing require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not within 6 months after receiving the notice signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.
- 13.** Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the court that the valuation and proof were made bona fide on a mistaken estimate or that the security has diminished or increased in value since its previous valuation, but every such amendment shall be made at the cost of the creditor and upon such terms as the court shall order, unless the trustee allows the amendment without application to the court.
- 14.** Where a valuation has been amended in accordance with rule 13, the creditor shall forthwith repay any surplus dividend which he

may have received in excess of that to which he would have been entitled on the amended valuation or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.
16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.
17. Subject to the provisions of rule 12, a creditor shall in no case receive more than the full amount of his debt, and interest as provided by the Ordinance.

### **Proof in respect of Distinct Contracts**

18. If a bankrupt was at the date of the bankruptcy order liable in respect of distinct contracts as a member of 2 or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

*(L.N. 85 of 1998)*

### **Periodical Payments**

- 19.** When any rent or other payment falls due at stated periods and the bankruptcy order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment became due from day to day.

*(L.N. 85 of 1998)*

- 20.** On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed and which is overdue at the date of the bankruptcy order and provable in bankruptcy, the creditor may prove for interest at the rate determined under section 49(1)(b) of the High Court Ordinance (Cap. 4) that is in effect on the date of the bankruptcy order to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

*(L.N. 85 of 1998; L.N. 129 of 2007)*

### **Interest**

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

- 21.** A creditor may prove for a debt not payable on the date of the bankruptcy order as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of 5 per cent per annum computed from the declaration of a dividend to the time when the debt would



have become payable, according to the terms on which it was contracted.

*(L.N. 85 of 1998)*

### **Admission or Rejection of Proofs**

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.
23. If the trustee thinks that a proof has been improperly admitted, the court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.
24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision. The trustee shall not be personally liable for any costs in respect of the rejection by him in whole or in part of any proof unless it is proved to the satisfaction of the court that he has acted mala fide or with gross negligence.
- (L.N. 129 of 2007)*
25. The court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter.
- (L.N. 85 of 1998)*
26. *(Repealed L.N. 129 of 2007)*
27. These rules may be cited as the Proof of Debts Rules.