

SECTION L - CLAIMS OF CREDITORS

L1. Claims admissible for payment

- a) *In relation to each type of insolvency procedure available in the legal system of this economy, what types of claims of creditors are properly admissible for payment in the context of the procedure? (For example liquidated debts, future debts, contingent claims, secured claims, unliquidated claims for damages, interest claims, costs of administration or of legal proceedings, periodical payments, debts owed by guarantors of the business organization.)*

Unsecured creditors may file a claim for repayment of debt if the cause of the indebtedness arose before the date on which the court ordered receivership of the asset, even if such debt may not yet be due or is subject to conditions. (Bankruptcy Act, s. 94) Therefore, liquidated debts, future debts for a liquidated amount, secured claims, costs of administration or of legal proceedings, interest claims and debts owed by guarantors of the business organization, are admissible for payment in the context of the procedure.

- b) *At what date are the amounts of admissible debts computed?*

The amounts of admissible debts are computed as of the date on which the court ordered receivership of the asset.

- c) *By what method are claims of creditors proven by those creditors in the context of each type of insolvency procedure?*

Upon the expiry of the two months following the date of publication of the order of absolute receivership, the receiver must fix a date for a meeting of the debtor and all creditors to examine the claims for repayment of debts, by giving notice thereof not less than seven days in advance (s. 104). In examining the claims for repayment of debts, whether such debts are judgment debts or not, the receiver has the power to issue summons to creditors, or other persons to appear for questioning as to the debts, and to report his opinion and send the case file of such claims for repayment of debts to the court, together with a

report as to whether any of the claims are contested or not (s.105). The court will then decide in accordance with the official receiver's findings.

d) How are disputed claims made by creditors adjudicated upon? (For example by the administrator, or by a Court.)

For disputed claims made by creditors, the court will conduct a review and issue any of the following orders:

1. Dismiss the claim for repayment of debt;
2. Approve repayment of the whole debt;
3. Approve repayment of part of the debt.

(s.108)

L2. Priority and payment of creditors' claims

a) In relation to each type of insolvency procedure available in the legal system of this economy, what principles apply to the division of available assets of the corporate debtor among those of its creditors entitled to payment? Is there a basic principle of equality of payment, or are rights of priority of payment enjoyed by secured creditors, or by certain classes of creditors over others? (For example costs of the administration, claims for taxes owed by the debtor, amounts owed to employees of the organization.)

In bankruptcy cases, the available assets of the corporate debtor are sold in order that the money received from such sale will be shared among the creditors.

Secured creditors naturally have rights over the secured assets which is security afforded to the creditor by the debtor prior to the order of receivership of the debtor's assets. Secured creditors need not to file a claim for repayment of the debt. However, the secured creditor must allow the receiver to inspect secured assets.

A secured creditor may file a claim for repayment of the debt on the following conditions:-

1. When he agrees to surrender the asset afforded as security for the benefit of all creditors, he may claim for the full amount of the debt.
2. After he has already enforced his claim against the asset given as security, he can claim for the balance of the debt remaining unpaid.
3. When he has asked the receiver to sell by public auction the asset given to him as security, he can claim for the balance of the debt remaining unpaid.
4. When he has appraised the asset given as security, he can claim for the unpaid balance. In such case, the receiver is authorized to redeem the asset at valuation. If he considers the valuation incorrect, the receiver is authorized to sell the asset by such method as the receiver and the creditor may agree. However, if no agreement is reached, the asset may be sold by public auction but not at a loss to the creditor.

Any creditor filing a claim in bankruptcy, whether or not he is a petitioning creditor, shall file his claim with the receiver within two months following the date of publication of the order of absolute receivership. However, if the creditor resides outside of the Kingdom, the receiver may extend this period by up to an additional two months. The claim must be made in accordance with the standard printed form, with a statement showing details of the debt, evidence of such debt, and any assets the debtor holds as security or which may be in the creditor's possession.

An unsecured creditor may file a claim for repayment of debt if the cause of indebtedness arose before the date on which the court ordered receivership of the asset, even if such debt may not yet be due.

In the event that the court orders the debtor to be under absolute receivership, creditors with the right to receive repayment of debts for business reorganization and the creditors of other debts eligible to apply for payment from the obligations arising from the time the court issues an order to reorganization business are required to file an application for repayment with the receiver. The debts incurred by the receiver, planner, plan administrator, or interim plan administrator, in accordance with the plan for the benefit of the reorganization of business operation of the debtor, shall have the same rank as the expenses incurred by the receiver in the administration of debtor's asset, which shall have the

priority payment over other creditors

Secured creditors may enforce payment of debt from assets used as collateral without having to file an application for repayment of debts for the business reorganization. However, they must allow the receiver or planner to examine such asset.

b) Give a brief account of the order of priorities, if any, of payment of creditors prescribed by the legal system of this economy.

Expenses shall be deducted prior to distribution of proceeds in the following order:

- 1) Expenses of administration of a deceased debtor's estate.
- 2) Expenses of the receiver in managing the debtor's assets.
- 3) Funeral expenses of a deceased debtor proper to his status.
- 4) Fees for collecting the assets.
- 5) Taxes due for payment within 6 months preceding the order for control of the property.
- 6) Wages, salaries for 2 months prior to the order for control of the property
- 7) Debt in any series (secured, unsecured). (s.130)