



INSOL
INTERNATIONAL



Distribution and contribution accounts, drafting of liquidation and distribution accounts

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SUBMISSION OF LIQUIDATION AND DISTRIBUTION ACCOUNT (L&D)- SEC 91/403/ EXTENSIONS – SEC 109

- Six months after final appointment of Trustee/Liquidator
- If unable to lodge in time:
 - Formal application for an extension to Master by way of an Affidavit stating:
 - Reasons why a first account cannot be submitted, cause for delay, etc.
 - Any Information of importance regarding the affairs of the insolvent
 - Funds available at hand (attach bank statements of the estate bank account), the amount available for distribution to creditors or any shortfall
 - the period required to submit a first account.
- The affidavit must be sent to each proved creditor by registered post.
- Proof that the affidavit was sent to all creditors who have proved their claims

SUBMISSION OF LIQUIDATION AND DISTRIBUTION ACCOUNT (L&D)/ ADVERTISEMENT

- When **all assets** are **sold**, **all claims** were **proved**, and all final meetings held, the Trustee must submit his Liquidation and Distribution Account to the Master of the High Court for **approval** – will advise the Trustee to advertise the L& D
- Once the Master of the High Court approves L & D, the Trustee must advertise the L& D for 14 days
 - in the Government Gazette, Afrikaans and English local newspapers in the district where the insolvent resided or place of business of the insolvent / Company in liquidation – registered address of the company
 - Company or Close Corporation – only advertise in the Government Gazette
 - Submit a copy of the notice to all proved creditors by registered post
 - Duplicate account must also lay open for inspection at the relevant Magistrate office.

OBJECTIONS

Purpose of Advertisement

- Interested parties to raise **objections against the L&D**. Open for inspection at the Master and the Magistrate
- Master examines the L& D and can also object - will issue a query sheet with directions or request to amend the L& D
- Master refers substantiated objections to Trustee for input/comment - 14 days
 - Reply referred to objector for further remarks.
 - The Master will then make a ruling
 - Aggrieved party – must apply to the High Court within 14 days to set aside the ruling
 - Master will not make rulings in case of complex factual disputes- must approach the High Court.

CONFIRMATION – SEC 112

- If the Master receives no objections or objections have been withdrawn or objections have been addressed and re-advertised if L& D was amended and is satisfied with the L&D, then the Master will formally **confirm** (endorsement on the L&D) the L&D on receipt of
 - the proof of advertisements and the Magistrate certificate confirming that the account has lain open for inspection free from objections.
- The trustee must **advertise the confirmation** of the Liquidation – in the Government Gazette

EFFECT OF CONFIRMATION:

- Trustee can draw his remuneration
- Must collect contribution if the contribution was payable
- Trustee must immediately pay all dividends and administration
- Submit proof to the Master that **all creditors** have been **paid**
- If unable to pay dividend within two months – deposit into Guardians Fund on behalf of the creditor
- Surplus of funds if all creditors paid in full – pay to Guardians Fund- Insolvent must rehabilitate to claim funds/ Company pay directly to Members/ shareholders
- Confirmation is final – similar to a final court order

RE-OPENING OF L& D AFTER CONFIRMATION

Before dividends have been paid

- High Court may re-open if good grounds – fraud for instance

After dividends have been paid

- High Court cannot re-open even in case of fraud – remedy to sue Trustee in case of fraud.
- Appeal Court – can be re-opened by the High Court if L& D was not duly confirmed:
 - Must have been duly advertised and lain open for inspection by creditors
 - Objections must be properly dealt with and
 - The Master must have confirmed the L& D

Investec Bank V Strydom & Others –

The court set aside the confirmation because L& D lay open at the wrong Magistrate, and the notice to creditors was not sent per registered post to the creditors.

FURTHER ASSETS AFTER CONFIRMATION OF FINAL L&D

- No need to re-open the duly confirmed L& D
- Submit a supplementary L& D

HOW TO DRAFT AN L&D ACCOUNT

1. Determine the **SECURED CREDITORS** and open an Encumbered Asset Account (EAA) for each secured Asset.
2. Open a Free Residue Account with the remainder of the assets
3. Draft the Distribution Account – Insert the details of the creditors according to the claims proved at the meeting of creditors
4. Draft schedule for shared expenses, which will be shared pro rata between the EEA and the Free Residue
5. Draft Reconciliation Statement
6. Draft heading of the L&D
7. Draft the Trustee's /Liquidators Affidavit

DISTRIBUTION ACCOUNT

- Insert creditors according to how they were proved at the meeting of creditors by the Presiding Officer who allocates the claim numbers.
- Distinguish between the secured, concurrent and preferent creditors and reflect accordingly in the distribution account
- Award dividends as calculated in the EAA's to the secured creditors
- If the Secured creditor relied on security – will only receive the secured award of the dividend. The remainder of the claim will be the deficiency
- If the Secured creditor did not rely on its security, reflect the concurrent portion (his shortfall) under the concurrent column
- Calculate the preferent awards from the Free Residue
- Calculate the concurrent awards to concurrent creditors
- Calculate contribution due by creditors if applicable

DISTRIBUTION ACCOUNT

- First Column: Insert the claim number as allocated by the Presiding Officer at a Meeting of Creditors.
- Second Column: Insert the name of the creditor and his account number/ reference
- Third Column: Insert the amount claim as proved at a creditor's meeting
 - If a claim was rejected at a meeting of creditors and not accepted by the Trustee, insert the claim and state "rejected"
 - If a claim was rejected at a meeting of creditors and was accepted by the Trustee, insert the claim was accepted in terms of Sec 78(3)

DISTRIBUTION ACCOUNT CONTINUED

- Next three columns: Insert the class of creditors
 - SECURED
 - PREFERENT CREDITOR
 - CONCURRENT CREDITOR
- Then the award columns
 - SECURED
 - PREFERENT AWARD
 - CONCURRENT AWARD
- Then, the **contribution** column
- Then, the **shortfall** column

DISTRIBUTION ACCOUNT

CLAIM NUMBER	CREDITOR NAME AND ADDRESS	TOTAL AMOUNT CLAIM PROVED	SECURED CLAIM	PREFERENT CLAIM	CONCURRENT CLAIM	SECURED AWARDS	PREFERENT AWARDS	CONCURRENT AWARDS	SHORTFALL
	TOTALS								

CALCULATING THE CONCURRENT DIVIDEND

- Concurrent creditors are not normally paid in full. This part payment is known as a 'dividend'.
- First, determine the **total amount of all the concurrent claims** against the estate.
- The total reflected in the concurrent column as the **Total** of all concurrent claims against the estate is then used to calculate the concurrent dividend as follows:
- The amount of the individual concurrent claim divided by the total amount of the concurrent creditors * the amount available for distribution = the dividend
- The awards to concurrent creditors are not made in the free residue or encumbered asset accounts. The information reflected in these accounts merely reflects how the proceeds will be applied. The actual award is made in the distribution account.
- It is, however, desirable to reflect the amounts awarded to the preferent creditors in the Free Residue account.
- An example of how the balance available for distribution (after payment of the costs of administration, etc.) will be applied is the following:

DETERMINE THE FACTOR FOR CALCULATING A DIVIDEND TO CONCURRENT CREDITORS

Calculation of the awards to individual concurrent creditors:

- 1 Calculate the total award to preferent creditors under **E**
- 2 How to calculate the total of **F** = The total amount available for distribution to concurrent creditors :
 - Take the Amount available for distribution in the Free Residue Account and deduct the **total amount** under preferent award **E**
- 3 Calculate the total concurrent claims. This is done by totaling all entries in **C**.

- 4 Then calculate the individual concurrent claim as follows:

Y (the amount of the Individual claim) / C (total concurrent claims) x F (amount available for distribution to concurrent creditors) = Z
individual concurrent award.

FINALIZING THE DISTRIBUTION ACCOUNT

No	Name and address of creditor	Claim				Award in this account			Contribution			Previous award	Deficiency
		Total Claim	Secured	Preferent	Concurrent	Secured	Preferent	Concurrent	Amount on which contribution is payable	Amount of contribution payable			
1	Mr Secured -If not relied on security	S	X		S-X= Y	X		Z	Y			S - X-Z	
2	If relied on security	S	X		Nil	X		Nil				S- X	
3	Mr Concurrent				Y			Z	Y			Y-Z	
TOTAL		Total amount of all claims	[A]	[B]	[C]	[D]	[E]	[F]	[i]	[J]	[G]	[H] Total Amount of Contribution payable	

THE CONTRIBUTION ACCOUNT

- The contribution account refers to the contribution payable in terms of section 106 of the Insolvency Act and deals with the case where there are insufficient funds to pay the expenses reflected in the free residue account.
- The contribution account forms part of the L&D Account by adding a contribution column in the distribution account.
- Applicant creditor is always liable to pay contribution – Sec 14(3) even if he has not proved a claim
- Concurrent creditors pay pro rata according to their claim amount.
- Secured creditors who did not rely on their security will pay pro rata on the concurrent portion of their claims.
- Secured creditor who relied on its security will only pay a contribution when there is no other creditor or applicant creditor.
- Preferent creditors – liable in proportion to their claim only if all the concurrent creditors have withdrawn their claims.

HEADING OF THE L&D

- There are no requirements as to the format of the heading to an insolvent estate account.
- The heading should contain at least the following information:

Full description of estate

(Eg the name of the insolvent, or, where it is a community estate, the names of both insolvent persons.

The identity number and address of the insolvent are optional.

The Estate reference number of the Master of the High Court

Title and description of account(First and final liquidation and distribution and or contribution)

Numeric number/type of account description

Date(s) of sequestration order(s)

EXAMPLE – BANK RECONCILIATION

1.	Bank balance on estate's current account as per last statement		
2.	Bank balance on investment or call account as per last statement		
3.	Outstanding deposits (prevents confirmation!)		X
4.	Contribution to be levied (if applicable)		
	<u>Payments still to be made:</u>		X
a)	Master's fees		X
b)	Trustee's remuneration (less wasted costs if applicable)		X
c)	Receiver - VAT on remuneration	Y	
d)	Provisions (eg bank charges, bond premiums, advertisements,		
e)	Postage and petties	Y	
f)	Administration costs not yet paid	Y	
	<u>Awards still to be made:</u>		
i)	Secured creditors out of the relevant encumbered asset accounts (less advances made, if applicable)	Y	
		Y	
ii)	Preferent creditors out of the free residue account	Y	
iii)	Concurrent creditors out of the free residue account		
		_____	_____
		SUM Y's =	SUM X's=

THE TRUSTEE'S AFFIDAVIT

Section 107 determines that the following information must be contained in the form of an affidavit.

- That to date of account it is a complete and proper account and that to his knowledge, all assets have been reflected therein except the following assets....(if it is not a final L&D) →
- If the account is not a final account, the trustee must set out the following information in his account:
 - All property not yet realized;
 - All outstanding debts owing to the estate; and
 - The reason why the property has not yet been realized or why the debts have not yet been collected

The affidavit must be signed by all Trustees personally and independently sworn to. (not by way of a SPA).