

Creditors – Order of Priority

There are various classes of creditor and there is a specific order in which they must be paid when an Insolvency Practitioner has funds to distribute.

This list places the classes of creditor in order of priority with the first listed being the first to receive funds.

Secured Fixed Charge creditors –

These creditors have a legal charge registered at Companies House over specific assets owned by a Company which might include buildings, land, plant and machinery, goodwill and intellectual property. They are entitled to receive the proceeds of sale of these assets in priority to any other class of creditor.

Factoring companies usually hold fixed charge security over book debts which are subject to their control.

Where there is more than one fixed charge creditor they rank in order of the date on which they were registered at Companies House with the charge being registered earliest ranking first in priority.

Preferential Creditors

Preferential creditors are employees for arrears of pay (limited to £800), holiday pay (unlimited) and unpaid pension contributions. Prior to 15th September 2003 HM Revenue & Customs was classed as a preferential creditor for arrears of VAT, PAYE and NIC. HM Revenue & Customs is now an unsecured creditor without preferential status alongside trade and other unsecured creditors.

Secured Floating Charge Creditors

These creditors have a legal charge registered at Companies House over general assets owned by a company that the company utilises in its day to day trading. These include stocks, some plant and machinery, work in progress and non-factored book debts.

The amount to be distributed to a floating charge creditor depends upon the date that their charge was registered at Companies House. If it was registered before 15th September 2003 they will be entitled to receive all of the funds available under their charge but if the charge was registered after 15th September 2003 a proportion of the funds to which the floating charge holder is entitled to must be made available to the unsecured non preferential creditors. This proportion is called the Prescribed Part.

Secured creditors who hold a fixed and floating charge.

These creditors hold a debenture registered at Companies House which contains security over the fixed and floating charge assets of the company.

These creditors would firstly be entitled to receive monies realised from the sale of the specific fixed charge assets under their fixed charge. If their debt is not repaid from the fixed charge assets they would then rank as a floating charge creditor for the balance of their debt. Floating charge creditors are paid after preferential creditors. Prescribed Part provisions apply as set out above.

Unsecured or Non-Preferential Creditors

These are basically all other monies owed by the company and include trade and expense creditors, utilities, business rate and Council tax, PAYE/NIC, VAT, Corporation Tax and loans owed to directors or third parties which are not secured.

Amounts owed to employees in respect of arrears of pay (in excess of £800), pay in lieu of notice, redundancy pay, and expenses are also unsecured.

Shareholders – will only receive a return on their capital if the unsecured creditors claims are paid in full plus interest.