

## **SCHEDULE 7**

Sections 234, 255(5), 312

### PREFERENTIAL CLAIMS

1. The liquidator must first pay, in the order of priority in which they are listed,—
  - (a) The fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator:
  - (b) The reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the Court:
  - (c) The actual out-of-pocket expenses necessarily incurred by a liquidation committee.
  
2. After paying the claims referred to in clause 1 of this **Schedule**, the liquidator must next pay the following claims:
  - (a) Subject to clause 6 of this **Schedule**, all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the 4 months preceding the commencement of the liquidation:
  - (b) Subject to clause 6 of this **Schedule**, holiday pay becoming payable to an employee (or where the employee has died, to any other person in the employee's right) on the termination of the employment before or by reason of the commencement of the liquidation:

[(ba) subject to clause 6, any compensation for redundancy owed to an employee that accrues before or by reason of the commencement of the liquidation:]

[(bb) subject to clause 6, any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(b) or section 128 of the Employment Relations Act 2000, to the extent that the reimbursement or payment does not relate to any matter set out in section 123(c) of the Employment Relations Act 2000, in respect of wages or other money or remuneration lost during the 4 months before the commencement of the liquidation:]

(c) Amounts due in respect of any compensation or liability for compensation under the Workers' Compensation Act 1956 accrued before the commencement of the liquidation:

(d) Subject to clause 6 of this **Schedule**, amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee:

(e) Subject to clause 6 of this **Schedule**, amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991:

(f) Amounts that are preferential claims under section 263(2) of this Act:

(g) Any amount that, under section 23 of the Apprenticeship Act 1983, as deemed to form part of any apprenticeship contract by virtue of section 16 of the Industry Training Act 1992, the [Employment Relations Authority] may order to be paid to an apprentice who is deprived of employment by reason of the commencement of the liquidation:

(h) All sums that the Motor Vehicle Dealers Institute Incorporated is entitled to recover from a defaulting licensee company under section 42 of the Motor Vehicle Dealers Act 1975 in the event of the company being put into liquidation:

(i) Repealed.

(j) All sums which by any other enactment are required to be paid in accordance with the priority established by this clause.

3. After paying the claims referred to in clause 2 of this **Schedule**, the liquidator must next pay all sums—

(a) Paid by a buyer to a seller on account of the purchase price of goods; or

(b) To which a buyer is or becomes entitled to receive from a seller under section 9 of the Layby Sales Act 1971—

and for which the buyer is a creditor in the liquidation of the company under section 11 of the Layby Sales Act 1971.

4. After paying the claims referred to in clause 3 of this **Schedule**, the liquidator must next pay the amount of any costs referred to in section 234(c) of this Act.

5. After paying the sums referred to in clause 4 of this **Schedule**, the liquidator must next pay the amount of—

(a) Tax payable by the company in the manner required by Part 3 of the Goods and Services Tax Act 1985:

[(b) Tax deductions made by the company under the PAYE rules of the [Income Tax Act 1994](#).]

[(c) Non-resident withholding tax deducted by a company under the NRWT rules of the [Income Tax Act 1994](#):]

[(d) Every resident withholding tax deduction made by a company under the RWT rules of the [Income Tax Act 1994](#):]

[(e) Duty payable within the meaning of section [2\(1\)](#) of the Customs and Excise Act 1996—]

to the extent that the amount is for the time being unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require.

6. The total sum to which priority is to be given under [any, or all, of paragraphs (a), (b), (ba), (bb), (d), and (e) of clause 2] must not, in the case of any one employee, exceed [\$15,000] or such greater amount as is prescribed [under clause [6A](#)] at the commencement of the liquidation.

[6A. The sum stated in clause [6](#) must be adjusted as follows:

(a) subject to paragraph (d), an adjustment must be made, by the Governor-General by Order in Council, after the 3-year period starting on 1 July 2003 and ending on 30 June 2006 and after every 3-year period following that (an "adjustment period"):

(b) subject to paragraph (d), the Order in Council must be made within 3 months of the end of an adjustment period:

(c) each adjustment must reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Quarterly Employment Survey published by Statistics New Zealand (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period:

(d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, no adjustment may be made for that adjustment period:

(e) if, in accordance with paragraph (d), no adjustment is made, the next adjustment made for any succeeding adjustment period must reflect any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the relevant adjustment period for which the adjustment is to be made:

(f) all adjustments are cumulative and must be rounded to the nearest \$20:

(g) any correction to a Quarterly Employment Survey upon which an adjustment is based must be disregarded until the adjustment that takes effect in the following adjustment period which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this clause.]

7. Where a payment has been made—

(a) To an employee of a company on account of wages or salary; or

(b) To any such employee or, where the employee has died, to any other person in the employee's right, on account of holiday pay—

out of money advanced by some person for that purpose, the person by whom the money was advanced has, in a liquidation, the same right of priority in respect of the money so advanced as the employee, or other person receiving the payment in right of the employee, would have if the payment had not been made.

8. Repealed.

[9. The claims listed in each of clauses 2, 3, 4, and 5—

(a) rank equally among themselves and[[, subject to any maximum payment level specified in any Act or regulations,]] must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them,—

(i) have priority over the claims of any person under a security interest to the extent that the security interest—

(A) is over all or any part of the company's accounts receivable and inventory or all or any part of either of them; and

(B) is not a purchase money security interest; and

(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).

For the purposes of this clause, the terms "account receivable", "inventory", "new value", "proceeds", "purchase money security interest", and "security interest" have the same meanings as in the [Personal Property Securities Act 1999](#)]

[9A. Clause 9, as in force immediately before the commencement of the [Personal Property Securities Act 1999](#), continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.]

10. To the extent that the claims to which clause 9 of this **Schedule** applies are paid out of assets referred to in paragraph (b) of that clause, the amount so paid is an unsecured debt due by the company to the secured party.

11. If a landlord or other person has distrained on goods or effects of the company within the month preceding the commencement of the liquidation, the claims to which priority is given by this **Schedule** are a first charge on the goods or effects so distrained on, or the proceeds from their sale, but where any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

12. For the purposes of this **Schedule**,—

(a) Remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is to be treated as wages in respect of services rendered to the company during that period:

[(ab) "employee" means any person of any age employed by an employer to do any work for hire or reward under a contract of service (including a homemaker as defined in section 5 of the Employment Relations Act 2000); but does not include a person who is, or was at any time during the 12 months before the commencement of the liquidation, a director of the company in liquidation, or a nominee or relative of, or a trustee for, a director of the company:]

(b) The expression "holiday pay", in relation to a person, means all sums payable to that person by the company under [Subpart 1 of Part 2 of the Holidays Act 2003], and includes all sums which by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

[13. This **schedule**, as in force on the date of commencement of a liquidation, continues to apply to that liquidation regardless of any amendment to this **schedule** that comes into force after the date of commencement of the liquidation.]