STATUTORY RULES OF NORTHERN IRELAND

2009 No. 64

The Bank Insolvency Rules (Northern Ireland) 2009

PART 22

MISCELLANEOUS AND GENERAL

Power of Department to regulate certain matters

258.—(1) As provided for in paragraph 27 of Schedule 5 to the Order and paragraph 27 of Schedule 6 to the Order(**1**), either the Department or the Treasury may, subject to the Order and to these Rules, make regulations with respect to any matter provided for in these Rules relating to the carrying out of the functions of a bank liquidator or provisional bank liquidator, including, without prejudice to the generality of the above, provision with respect to the following matters arising in bank insolvency—

(a) the preparation and keeping by bank liquidator and provisional bank liquidators of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;

(b) the auditing of bank liquidators' accounts;

(c) the manner in which bank liquidators are to act in relation to the bank's books, papers and other records, and the manner of their disposal by the bank liquidator or others;

(d) the supply by the bank liquidator to creditors and contributories and to the liquidation committee of copies of documents relating to the bank insolvency and the affairs of the bank (on payment, in such cases as may be specified in the regulations, of a fee.);

(e) the manner in which insolvent estates are to be distributed by the bank liquidator, including provision with respect to unclaimed funds and dividends;

(f) the manner in which monies coming into the hands of the bank liquidator are to be handled and invested and the payment of interest on sums which, in pursuance of regulations made under this sub-paragraph, have been paid into the Insolvency Account;

(2) Regulations made under paragraph (1) may—

(a) confer a discretion on the court;

(b) make non-compliance with any of the regulations a criminal offence;

(c) make different provision for different cases, including different provision for different areas; and

(d) contain such incidental, supplemental and transitional provisions as may appear to the Department or the Treasury as necessary or expedient.

(**1**) Article 359 of the Order, which introduces Schedule 5, was amended by section 112 of the 2009 Act to extend the powers in the Schedule to rules made under Part 2 of the latter Act

Costs, expenses, etc

259.—(1) All fees, costs, charges and other expenses incurred in the course of bank insolvency, except for any money paid by the FSCS to eligible depositors in pursuance of objective 1, and any expense incurred by the FSCS in this process, are to be regarded as expenses of the bank insolvency.

(2) The costs associated with the prescribed part shall be paid out of that prescribed part.

Provable debts

260.—(1) Subject to paragraphs (2) and (3), in a bank insolvency all claims by creditors are provable as debts against the bank, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Articles 4 or 5 of the Criminal Justice (Confiscations (Northern Ireland) Order 1990(**2**) or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002 is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the bank insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Article 160(2) of the Order—

(a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim also arising by virtue of section 382(1)(b) of that Act;

(b) any claim which by virtue of the Order or any other enactment is a claim the payment of which is to be postponed.

(4) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Notices

261.—(1) Apply rule 12.04 of the 1991 Rules.

(2) For paragraph (2) substitute—

"(2) Where in any proceedings a notice is required to be sent or given by the bank liquidator the sending or giving of it may be provided by means of a certificate by the bank liquidator or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.".

(3) For paragraph (3) substitute—

"(3) In the case of a notice to be sent or given by a person other than the bank liquidator the sending or giving of it may be provided by means of a certificate by that person that they posted the notice, or instructed another person (naming them) to do so.".

Quorum at meeting of creditors or contributories

262.—(1) Apply rule 12.05 of the 1991 Rules.

(2) In paragraph (1), for "insolvency proceedings" read "a bank insolvency".

(3) For paragraph (3) substitute—

"(3) For the purposes of this rule, the reference to the creditors or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) under Article 383 of the Order or, after that Article is repealed, by section 323 of the 2006 Act.".

(**2**) S.I. 1990/2588 (N.I. 17).

Evidence of proceedings at meetings

263.—(1) Apply rule 12.06 of the 1991 Rules.

Documents issuing from the Department

264. Apply rule 12.07 of the 1991 Rules.

Insolvency practitioner's security

265.—(1) Apply rule 12.09 of the 1991 Rules.

(2) For paragraph (2) substitute—

"(2) It is the duty of the liquidation committee in a bank insolvency to review from time to time the adequacy of the bank liquidator's security.".

Time

266. Apply rule 12.10 of the 1991 Rules as regards time limits for anything required or authorised to be done by these Rules.

Service by post

267. Apply rule 12.11 of the 1991 Rules.

General provisions as to service

268. Order 65 of The Rules of the Supreme Court (Northern Ireland) 1980 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in bank insolvency proceedings except in cases where a rule makes provision as to the service of a document or the giving of a notice.

Service outside the jurisdiction

269. Apply rule 12.14 of the 1991 Rules.

Confidentiality of documents

270.—(1) Apply rule 12.14 of the 1991 Rules.

(2) In paragraph (2) delete "or a creditors' committee".

Notices sent simultaneously to the same person

271. Apply rule 12.15 of the 1991 Rules.

Right to copy documents

272. Apply rule 12.16 of the 1991 Rules.

Charge for copy documents

273. Apply rule 12.17 of the 1991 Rules.

Non-receipt of notice of meeting

274. Apply rule 12.18 of the 1991 Rules.

Right to have list of creditors

275.—(1) Where a creditor has the right under these Rules to inspect documents on the court file, the creditor may require the bank liquidator to send them a list of the bank's creditors and the amounts of their respective debts.

(2) Paragraph (1) does not apply if a statement of the bank's affairs has been filed in court or filed with the registrar of companies.

(3) The bank liquidator must respond to a request in paragraph (1) but may charge the appropriate fee for doing so.

False claim of status as creditors

276. Apply rule 12.20 of the 1991 Rules.

Execution overtaken by judgement debtor's insolvency

277.—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution under Article 115 of the Order (that a bank insolvency order has been made against the debtor, or that a provisional bank liquidator has been appointed).

(2) The notice shall be in writing and be delivered by personal service at, or sent by recorded delivery to, the office of the enforcement officer or (as the case may be) of the officer charged with the execution.

The Gazette

278. Apply rule 12.21 of the 1991 Rules.

Punishment of offences

279. Apply rule 12.22 of the 1991 Rules.

Notice of order under Article 150A(5)

280.—(1) Apply rule 12.23 of the 1991 Rules.

(2) In paragraphs (2), (3) and (5) for "the liquidator, administrator or receiver, as the case may be", substitute "the bank liquidator".

(3) In paragraph (6), for "The liquidator, administrator or receiver" substitute "The bank liquidator".