STATUTORY INSTRUMENTS

2011 No. 2262

The Investment Bank Special Administration (Scotland) Rules 2011

PART 11

Provisions of General Effect

CHAPTER 1

Miscellaneous and general

Fees and expenses

162.—(1) Subject to paragraphs (2) and (3), all fees, costs, charges and other expenses incurred in the course of the special administration are to be regarded as expenses of the special administration.

(2) In a special administration (bank insolvency), paragraph (1) does not include any money paid by the FSCS to eligible depositors in pursuance of Objective A.

(3) The fees, costs, charges and other expenses associated with the prescribed part shall be met out of the prescribed part.

(4) In this rule, "eligible depositors" has the meaning given to it by section 93(3) of the 2009 Act.

Punishment of offences

163.—(1) Where the administrator commits an offence under rule 100(4) (administrator failing to send notification as to progress of administration)—

(a) the offence shall be punishable on summary conviction;

(b) the maximum punishment by way of fine shall be one-fifth of the statutory maximum; and

(c) a person convicted of the offence after continued contravention is liable to a daily default fine which shall be one-fiftieth of the statutory maximum; that is to say, that person is liable on a second or subsequent conviction of the offence to this amount for each day on which the contravention is continued instead of the penalty specified for the offence in sub-paragraph (b).

(2) Section 431 of the 1986 Act(**1**) (summary proceedings), as it applies to Scotland, has effect in relation to this offence as to offences under the 1986 Act.

(**1**) Section 431 has been amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4.

CHAPTER 2

Giving of notice and supply of documents

Application of Chapter 2

164.—(1) Subject to paragraph (2), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules by any person, including the administrator.

(2) This Chapter does not apply to—

(a) the lodging of any application, or other document, with the court;

(b) the service of any application, or other document, lodged with the court;

(c) the service of any order of the court; or

(d) the submission of documents to the registrar of companies.

Giving of notices

165.—(1) All notices required or authorised by or under the Regulations or these Rules to be given, sent or delivered must be in writing, unless it is otherwise provided, or the court allows the notice to be sent or given in some other way.

(2) Where electronic delivery is permitted, a notice or other document in electronic form is treated as being in writing if a copy of it is capable of being produced in a legible form.

(3) Any reference in the Regulations or these Rules to giving, sending or delivering a notice or any other document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to rule 166, any form of post may be used.

(4) Personal service of the notice or document is permissible in all cases.

(5) Where under the Regulations or these Rules a notice or other document is required or authorised to be given, sent or delivered by a person ("the sender") to another ("the recipient"), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(6) Where two or more persons are acting jointly as administrators, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

166.—(1) For a document to be properly sent by post, it must be contained in an envelope addressed to the person to whom it is to be sent, and pre-paid for either first or second class post.

(2) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.

(3) Where first class post is used, the document is to be deemed to be received on the second business day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document is to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice

167.—(1) Where in any proceedings a notice or document is required to be given, sent or delivered by the administrator, the date of giving, sending or delivery of it may be proved by means

of a certificate signed by that person or on their behalf by a solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.

(2) In the case of a notice or document to be given, sent or delivered by a person other than the administrator, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that the notice or document was given, posted or otherwise delivered by that person on the date stated in the certificate, or that that person instructed another (named) person to do so.

(3) A certificate under this rule may be endorsed on a copy of the notice to which it relates.

(4) A certificate purporting to be signed by or on behalf of the administrator or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated in the certificate.

Authentication

168.—(1) A document or information given, delivered or sent in hard copy form under these Rules is sufficiently authenticated if it is signed by the person sending or supplying it.

(2) A document or information given, delivered or sent in electronic form under these Rules is sufficiently authenticated—

(a) if the identity of the sender is confirmed in a manner specified by the recipient, or

(b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

Electronic delivery

169.—(1) Unless in any particular case some other form of delivery is required by the Regulations or these Rules or any order of the court, a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

(a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and

(b) provided an electronic address for delivery.

(2) Where an administrator gives, sends or delivers a notice or other document to any person by electronic means, it must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document, and specify a telephone number, email address and postal address which may be used to make such a request.

(3) Where a hard copy of the notice or other document is requested it must be sent within 5 business days of receipt of the request by the administrator, who may not make a charge for sending it in that form.

(4) In the absence of evidence to the contrary, a notice or other document shall be presumed to have been delivered where—

(a) the sender can produce a copy of the electronic message which—

(i) contained the notice or other document, or to which the notice or other document was attached, and

(ii) shows the time and date the message was sent; and

(b) that electronic message was sent to the address supplied under paragraph (1)(b).

(5) A message delivered electronically shall be deemed to have been delivered to the recipient at 9.00 am on the next business day after it was sent.

(6) Paragraph (5) does not apply in respect of documents sent electronically under Part 2.

Use of websites by administrator

170.—(1) This rule applies for the purpose of section 246B of the 1986 Act(**2**) (use of websites).

(2) An administrator required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice—

(a) stating that the document is available for viewing and downloading on a website;

(b) specifying the address of that website together with any password necessary to view and download the document from that website; and

(c) containing a statement that the recipient of the notice may request a hard copy of the document, and specifying a telephone number, email address and postal address which may be used to make such a request.

(3) Where a notice to which this rule applies is sent, the document to which it relates must—

(a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and

(b) be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

(4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the administrator, who may not make a charge for sending it in that form.

(5) Where a document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—

(a) when the document was first made available on the website; or

(b) if later, when the notice under paragraph (2) was delivered to that person.

Special provision on account of expense as to website use

171.—(1) Where the court is satisfied that the expense of sending notices in accordance with rule 165 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notices in accordance with that rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the administrator sending each of those persons a notice—

(a) stating that all relevant documents will be made available for viewing and downloading on a website;

(b) specifying the address of that website together with any password necessary to view and download the document from that site; and

(c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, email address and postal address which may be used to make that request.

(2) A document to which this rule relates must—

(a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent; and

(b) be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

(**2**) Section 246B was inserted by S.I. 2010/18.

(3) Where hard copies of relevant documents have been requested, they must be sent by the administrator—

(a) within 5 business days of the receipt by the administrator of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received; or

(b) within 5 business days from the date a relevant document first appears on the website, in all other cases.

(4) An administrator must not require a person making a request under paragraph (3) to pay a fee for the supply of the document.

(5) Where a relevant document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—

(a) when the relevant document was first made available on the website; or

(b) if later, when the notice under paragraph (1) was delivered to that person.

(6) In this rule a "relevant document" means any document which the administrator is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

Electronic submission of information

172.—(1) This rule applies in any case where information is required by these Rules to be sent by any person to the Secretary of State or the administrator.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

(a) the information is submitted electronically with the agreement of the person to whom the information is sent;

(b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent;

(c) all the information required is provided in the electronic submission; and

(d) the person to whom the information is sent can produce in legible form the information so submitted.

(3) Where information is permitted to be sent electronically under paragraph (2), any requirement that the information be accompanied by a signature is taken to be satisfied—

(a) if the identity of the person who is supplying the information and whose signature is required is confirmed in a manner specified by the recipient; or

(b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the information, and the recipient has no reason to doubt the truth of that statement.

(4) Where information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person as they apply in respect of the original.

Electronic submission of information where rule 172 does not apply

173.—(1) This rule applies in any case where rule 172 does not apply, where information is required by these Rules to be sent by any person.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

(a) the person to whom the information is sent has agreed—

(i) to receiving the information electronically and to the form in which it is to be sent, and

(ii) to the specified manner in which paragraph (3) is to be satisfied;

(b) all the information required to be given is provided in the electronic submission; and

(c) the person to whom the information is sent can produce in legible form the information so sent.

(3) Any requirement that the information be accompanied by a signature is taken to be satisfied if the identity of the person who is supplying the information and whose signature is required is confirmed in the specified manner.

(4) Where information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

Contents of notices to be advertised in the Edinburgh Gazette

174.—(1) Where under the Regulations or these Rules a notice must be published or advertised in the Edinburgh Gazette, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in this rule.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

(a) the name and postal address of the administrator acting in the special administration to which the notice relates and the date of the appointment of that person;

(b) either an email address, or a telephone number, through which the administrator may be contacted;

(c) the name of any person other than the administrator (if any) who may be contacted regarding the special administration;

(d) the number assigned to the administrator by the Secretary of State; and

(e) the court name and any number assigned to the special administration by the court.

(3) All notices published must specify as regards the investment bank to which the notice relates—

(a) the registered name of the investment bank;

(b) its registered number;

(c) its registered office;

(d) any principal trading address if this is different from its registered office;

(e) any name under which it was registered in the 12 months prior to the date of the commencement of the special administration; and

(f) any name or style (other than its registered name) under which—

(i) the investment bank carried on business;

(ii) the investment bank undertook to hold an asset on behalf of a client; or

(iii) any debt owed to a creditor was incurred.

Notices otherwise advertised under the Regulations or these Rules

175.—(1) Where under the Regulations or these Rules a notice may be advertised otherwise than in the Edinburgh Gazette, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in this rule.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

(a) the name and postal address of the administrator acting in the proceedings to which the notice relates; and

(b) either an email address, or a telephone number, through which the administrator may be contacted.

(3) All notices published must specify as regards the investment bank to which the notice relates—

(a) the registered name of the investment bank;

(b) its registered number;

(c) any name under which it was registered in the 12 months prior to the date of the commencement of the special administration; and

(d) any name or style (other than its registered name) under which—

(i) the investment bank carried on business;

(ii) the investment bank undertook to hold an asset on behalf of a client; or

(iii) any debt owed to a creditor was incurred.

Notices otherwise advertised

176. The information required to be contained in a notice to which rule 175 applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement, will be able to read, hear or see that information.

Omission of unobtainable information

177. Information required by rules 174 and 175 to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

CHAPTER 3

Notifications to the registrar of companies

Application of Chapter 3

178. This Chapter applies where under the Regulations or these Rules information is to be sent or delivered to the registrar of companies.

Information to be contained in all notifications to the registrar

179. Where under the Regulations or these Rules a return, notice, or any other document or information is to be sent to the registrar of companies, that notification must specify—

(a) the registered name of the investment bank;

(b) its registered number;

(c) the nature of the notification;

(d) the regulation or the rule under which the notification is made;

(e) the date of the notification;

(f) the name and postal address of person making the notification; and

(g) the capacity in which that person is acting in respect of the investment bank; and

the notification must be authenticated by the person making the notification.

Notification relating to the administrator

180. In addition to the information required by rule 179, a notification relating to the office of the administrator must also specify—

(a) the name and business address of the administrator;

(b) the date of the event notified;

(c) where the notification relates to an appointment, the person, body or court making the appointment; and

(d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation).

Notifications relating to documents

181. In addition to the information required by rule 179, a notification relating to a document (for example, a statement of affairs) must also specify—

(a) the nature of the document; and

(b) either—

(i) the date of the document; or

(ii) where the document relates to a period of time (for example a report) the period of time to which the document relates.

Notifications relating to court orders

182. In addition to the information required by rule 179, a notification relating to a court order must also specify—

(a) the nature of the court order; and

(b) the date of the order.

Notifications relating to other events

183. In addition to the information required by rule 179, a notification relating to any other event (for example, the coming into force of a moratorium) must specify—

(a) the nature of the event including the regulation or rule under which it took place; and

(b) the date the event occurred.

Notifications of more than one nature

184. A notification which includes a notification of more than one nature must satisfy the requirements applying in respect of each of those notifications.

Notifications made to other persons at the same time

185.—(1) Where under the Regulations or these Rules a notice or other document is to be sent to another person at the same time that it is to be sent to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification sent to the registrar.

(2) Paragraph (1) does not apply—

(a) where additional information is prescribed for the notification to the other person; or

(b) where the notification to the registrar of companies is incomplete.

CHAPTER 4

Further provisions concerning documents

Confidentiality of documents

186.—(1) Where the administrator considers, in the case of a document forming part of the records of the special administration—

(a) that it should be treated as confidential, or

(b) that it is of such a nature that its disclosure would be calculated to be injurious to the interests of the investment bank's creditors, clients, members or contributories,

the administrator may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons who may be refused the right to inspect documents under this rule by the administrator include the members of a creditors' committee.

(3) Where under this rule the administrator refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or subject to such conditions, if any, as it thinks fit to impose.

(4) Nothing in this rule entitles the administrator to decline to allow inspection of any claim or proxy.

Right to inspect documents, to have list of creditors and to copy documents

187.—(1) Subject to rule 186, the following persons have the right to inspect documents held by the administrator—

(a) a person who is or was an officer of the investment bank;

(b) a member of the investment bank;

(c) any person stating in writing to be a creditor of the investment bank;

(d) any person stating in writing to be a client of the investment bank;

(e) any person stating in writing to be a contributory of the investment bank;

(f) a member of the creditors' committee;

(g) in a special administration (bank insolvency) the Bank of England or the FSCS;

(h) in a special administration (bank administration) the Bank of England and, if there are depositors, the FSCS;

(i) the FSA.

(2) A right of inspection may be exercised on a person's behalf by anyone authorised by that person in writing.

(3) Subject to rule 186, any of the persons listed in paragraph (1) also has the right to require the administrator to furnish that creditor with a list of the investment bank's creditors and the amounts of their respective debts.

(4) Where the administrator is requested by any of the persons listed in paragraph (1) to supply a copy of any document, the administrator is entitled to require payment of the appropriate fee in respect of the supply of that copy.

(5) Where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

Sederunt book

188.—(1) The administrator shall maintain a sederunt book during their term of office for the purpose of providing an accurate record of the special administration.

(2) Without prejudice to the generality of the above paragraph, there shall be in the sederunt book a copy of anything required to be recorded in it by provision of the Regulations or of these Rules.

(3) The administrator shall make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book shall be sufficient evidence of the facts in that entry, except where it is founded on by the administrator in their own interest.

(5) Without prejudice to paragraph (3), the administrator shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the date the special administration ends, in accordance with paragraph 79 or 84 (as applied by regulation 15) and regulation 20 or 21.

(6) Where the sederunt book is maintained in non-documentary form, it shall be capable of reproduction in legible form.

Disposal of investment bank's books, papers and other records

189.—(1) Where an investment bank is in special administration, the administrator shall dispose of the books, papers and records of the investment bank either in accordance with—

(a) the directions of the creditors' committee (if any); or

(b) where there is no such committee, the court,

or, if, by the date which is 12 months after the dissolution of the investment bank, no such directions have been given, the administrator may do so after that date in such a way as the administrator deems appropriate.

(2) An administrator or former administrator ("A") shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in A's hands or under A's control representing unclaimed or undistributed assets of the investment bank or dividends or other sums due to any person as a member or former member of the investment bank.

CHAPTER 5

Further provisions concerning the administrator

Administrator's caution

190.—(1) Wherever under these Rules any person has to appoint an administrator, that person must be satisfied before making the appointment that the person appointed or to be appointed has caution for the proper performance of the functions of that office.

(2) It is the duty of the creditors' committee to review from time to time the adequacy of the administrator's caution.

(3) The cost of the administrator's caution shall be paid as an expense of the proceedings.

Information about time spent on the special administration

191.—(1) Subject as set out in this rule, the administrator must, on request in writing by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind in paragraph (3).

(2) The persons referred to in paragraph (1) are—

(a) any director of the investment bank; or

(b) any creditor, client or member of the investment bank.

(3) The statement referred to in paragraph (1)—

(a) must comprise the following details—

(i) the total number of hours spent on the special administration by the administrator or a former administrator and any staff assigned to the special administration during the period covered by the statement,

(ii) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged, and

(iii) the number of hours spent by each grade of staff during that period; and

(b) must cover the period beginning with the date of the appointment of that person as administrator and ending—

(i) with the date next before the date of making the request on which that person has completed any period as administrator, which is a multiple of 6 months, or

(ii) where a person has ceased to act as administrator, the date upon which the person so ceased.

(4) No request pursuant to this rule may be made where more than 2 years has elapsed since the person ceased to act as administrator.

(5) Any statement required to be provided to any person under this rule must be supplied within 28 days of the date of the receipt of the request by the person required to supply it.

Service on joint administrators

192. Where there are joint administrators in a special administration, service on one of them is to be treated as service on all of them.

CHAPTER 6

Transfer of proceedings

Proceedings commenced in the wrong court

193. Where a special administration is commenced in a court other than the Court of Session, that court may order the transfer of the proceedings to the Court of Session.

Proceedings other than special administration commenced

194.—(1) Where—

(a) a winding-up order or an administration order has been made in respect of an investment bank; or

(b) a resolution has been made for the winding up of or for the appointment of an administrator of an investment bank,

the Authority may apply to the court for an order that the proceedings be converted to a special administration, a special administration (bank insolvency) or a special administration (bank administration) as the case may be.

(2) In making an order under paragraph (1), the court shall give such directions as it sees fit, including directions as to the former officer-holder's remuneration and expenses.

(3) An application under paragraph (1) may be made without notice.

(4) Without prejudice to the generality of the court's power in paragraph (1), where the person ("P") appointed as office-holder under the original proceedings is not the same person as the administrator of the special administration, the court may direct that—

(a) P be sent a copy of the order under paragraph (1) by the administrator;

(b) P hand over—

(i) the records of the original proceedings, including correspondence, proofs and other related papers appertaining to those proceedings while they were within P's responsibility; and

(ii) the investment bank's books, papers and other records; and

(c) P hand over all the assets of the investment bank and the client assets held by the investment bank in P's possession.

(5) In this rule—

"the Authority" means—

(a) where the investment bank is a deposit-taker and the application under paragraph (1) is for an order to convert the proceedings to—

(i) a special administration (bank administration), the Bank of England; or

(ii) a special administration (bank insolvency), the Bank of England or the FSA (with the consent of the Bank of England); or

(b) otherwise, the FSA;

"office-holder" means provisional liquidator, liquidator or administrator as the case may be; and

"original proceedings" means the proceedings following the making of the winding up order, the administration order or the resolution referred to in paragraph (1).