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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 122**

**BANKING**

**BANK INSOLVENCY**

**The Bank Insolvency (No. 2) Rules (Northern Ireland) 2009**

*Made - - - - 18th March 2009*

*To be laid before Parliament*

*Coming into operation 1st April 2009*

The Lord Chancellor makes the following Rules in exercise of the powers under Article 359 of the Insolvency (Northern Ireland) Order 1989<sup>(1)</sup>.

The Treasury concur in the making of the Rules.

The Lord Chief Justice of Northern Ireland under Article 359(1A)<sup>(2)</sup> of the Insolvency (Northern Ireland) Order 1989 concurs in the making of the Rules in so far as they affect court procedure.

The Lord Chancellor has not consulted the Committee existing for the purposes of Article 360 of the Order: this is the first set of rules made in reliance on section 125 of the Banking Act 2009<sup>(3)</sup> and the duty to consult does not therefore apply to these rules by virtue of section 125(8) of that Act.

**PART 1**

**INTRODUCTORY PROVISIONS**

**Citation, commencement and revocation**

**1.—(1)** These Rules may be cited as the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009 and come into operation on 1st April 2009.

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(1) *S.I. 1989/2405(N.I. 19)*, section 1282 of the Companies Act 2006 (c. 46) inserted a new Article 150ZA into the Insolvency (Northern Ireland) Order 1989 providing for the payment and priority of general expenses of a winding up subject to exceptions prescribed by rules made under Article 359 of the 1989 Order. Article 359 of the Insolvency (Northern Ireland) Order 1989 was amended by the Insolvency (Northern Ireland) 1989 (Amendment) Regulations (Northern Ireland) 2002 *S.R. 2002 N. 223*.  
(2) Article 359(1A) was inserted by the Constitutional Reform Act 2005 (c. 4), Schedule 5, Part 1, paragraphs 80 and 81.  
(3) 2009 c.1. See also section 134.

- (2) The Bank Insolvency Rules (Northern Ireland) 2009(4) are revoked.

## **Extent**

2. These Rules extend only to Northern Ireland.

## **Application of rules, construction and interpretation**

3.—(1) These Rules apply in relation to a bank undergoing the procedure in Part 2 of the 2009 Act known as bank insolvency.

(2) In these Rules—

“the Order” means the Insolvency (Northern Ireland) Order 1989 (and includes those provisions as applied by section 103 of the 2009 Act);

“the 1991 Rules” means the Insolvency Rules (Northern Ireland) 1991(5);

“the 2006 Act” means the Companies Act 2006(6);

“the 2009 Act” means the Banking Act 2009(7)

“the Department” means the Department of Enterprise, Trade and Investment(8);

“bank” means the bank (as defined by section 91(1) of the 2009 Act) which is or is to be the subject of the bank insolvency order;

“Companies Order” means the Companies (Northern Ireland) Order 1986(9);

“the FSA” means the Financial Services Authority;

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000(10)) or, where appropriate, the scheme manager of that scheme;

“the insolvent” means the bank that has been put into bank insolvency;

“liquidation committee” means the committee established pursuant to section 100 of the 2009 Act;

“personal service” has the meaning given at Order 65 of the Supreme Court Rules.

“registered address” has the meaning given by section 1140 of the 2006 Act;

“sealed” means sealed with the seal of the court under which the application was made; and

(3) These Rules consist of—

(a) the rules set out in full;

(b) in the case of rules applying rules in the Introductory Provisions and in Parts 4, 7, 8, 9, 11 and 12 of the 1991 Rules, the rules so applied with—

(i) the modifications set out in paragraph (4),

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(4) S.R. 2009 No. 64

(5) The Insolvency Rules (Northern Ireland) (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No.291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 N.261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

(6) 2006 c. 46.

(7) 2009 c.1

(8) Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1))

(9) S.I. 1986/1032 (N.I. 6).

(10) 2000 c.8.

- (ii) the modifications contained in the relevant rule applying it, and
  - (iii) any other necessary modification; and
  - (c) the Schedule, which applies the relevant schedules of the 1991 Rules.
- (4) The modifications are that, where applicable, a reference to—
- (a) the 1989 Order (or to “the Order”) is a reference to that Order as applied, with modifications, by the 2009 Act (and includes, where appropriate, a reference to Part 2 of the 2009 Act);
  - (b) the 1991 Rules (or to “the Rules”) is a reference to these Rules;
  - (c) an affidavit is a reference to a witness statement;
  - (d) the commencement of winding up is a reference to the commencement of bank insolvency;
  - (e) the chairman is a reference to the chair;
  - (f) a reference to a company is a reference to a bank;
  - (g) going into liquidation is a reference to entering bank insolvency;
  - (h) insolvency proceedings is a reference to bank insolvency proceedings;
  - (i) the official receiver should be ignored unless otherwise stated;
  - (j) a petition for winding up is a reference to an application for bank insolvency under section 95 of the 2009 Act;
  - (k) a petitioner is a reference to an applicant;
  - (l) the provisional liquidator is a reference to the provisional bank liquidator;
  - (m) winding up is a reference to bank insolvency;
  - (n) winding up by the court is a reference to a bank being placed into bank insolvency by the court; and
  - (o) a winding-up order is a reference to a bank insolvency order.
- (5) Expressions used—
- (a) both in a rule set out in full and in Part 2 of the 2009 Act, or
  - (b) both in a modification to a rule from the 1991 Rules applied by these Rules and in Part 2 of the 2009 Act,
- have the same meaning as in Part 2 of the 2009 Act.
- (6) Where a rule applies a rule of the 1991 Rules and modifies that rule by inserting or substituting text—
- (a) any reference in the modified rule to the 2009 Rules is a reference to these rules; and
  - (b) expressions inserted or substituted have the same meaning as in these rules.
- (7) Where a rule in the 1991 Rules (Rule A) contains a reference to another such rule (Rule B) and—
- (a) both Rule A and Rule B are applied by these Rules, or
  - (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules,
- the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.

(8) Where a rule (Rule A) refers to another rule (Rule B), and Rule B applies to a rule of the 1991 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied by Rule B.

(9) Any notice or document required to be sent electronically by these Rules shall be treated as having been sent to the person if—

- (a) it is sent by email to the person's last known email address; and
- (b) the email contains a prompt asking the person for an electronic receipt saying that the email has been read.

(10) Where the rules provide for a witness statement (either expressly or through the application of the 1991 Rules as modified)—

- (a) that statement is a reference to a witness statement verified by a statement of truth; and
- (b) if the statement is made by the bank liquidator or the provisional bank liquidator, the statement should state as such and should include the address at which that person works.

### **Overview**

4. The purpose of these Rules is to provide a procedure for the appointment of a bank liquidator and the operation of bank insolvency under Part 2 of the 2009 Act.

### **Forms**

5.—(1) This Rule applies where a provision of these Rules—

- (a) applies a provision of the 1991 Rules which requires the use of a prescribed form, or
- (b) makes provision similar to that made by a provision of those Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of those Rules is to be used with any modification that the person using the form thinks desirable to reflect the nature of bank insolvency (whether or not the modification is set out in a Practice Form issued by the Treasury for that purpose).

### **Time**

6.—(1) Where by any provision of the Order, the 2009 Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

(2) If the court's consideration of whether to extend the time for doing anything takes place before a full payment resolution has been passed, the court shall only extend the time if it considers that the resulting delay will not significantly prejudice the achievement of Objective 1

## **PART 2**

### **APPLICATION FOR ORDER**

#### **Filing of application**

7.—(1) The application for a bank insolvency order, verified by witness statement in accordance with rule 11, shall be filed in court.

(2) There shall be filed with the application—

- (a) one copy for service on the bank;

- (b) one copy to be attached to the proof of purchase; and
  - (c) further copies to be sent to persons under Rule 10.
- (3) The court shall fix the venue, date and time for the hearing of the application and in doing so shall have regard to—
- (a) the desirability of the application being heard as soon as is reasonably practicable; and
  - (b) the need to give the bank a reasonable opportunity to attend.
- (4) Each of the copies issued to the applicant shall be sealed and be endorsed with the venue, date and time for the hearing.
- (5) Any application filed in relation to a bank in respect of which there is in force a voluntary arrangement under Part II of the Order shall be filed in accordance with this rule but a copy of that application shall also be sent to the court to which the nominee's report under Article 15(2) of the Order was submitted, if that is not the same court.

### **Service of application**

- 8.—**(1) The applicant shall serve the bank with a sealed copy of the application;
- (2) The application shall be served on the bank by personal service at its registered office.
- (3) In paragraph (2) “registered office” means—
- (a) the place which is specified, in the bank's statement delivered under section 9 of the 2006 Act or, before that section comes into force, Article 21 of the Companies Order<sup>(11)</sup>, as the intended situation of its registered office on incorporation; or
  - (b) if notice has been given by the bank to the registrar of companies under section 87 of the 2006 Act or, before that section comes into force, Article 295 of the Companies Order<sup>(12)</sup> (change of registered office), the place specified in that notice or, as the case may be, in the last such notice.
- (4) Service of the application at the registered office may be effected in any of the following ways—
- (a) it may be handed to a person who there and then acknowledges that they are, or to the best of the server's knowledge, information and belief are, a director or other officer, or employee, of the bank; or
  - (b) it may be handed to a person who there and then acknowledges that they are authorised to accept service documents on the company's behalf; or
  - (c) in the absence of such person as is mentioned in sub-paragraphs (a) and (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending the office.
- (5) If for any reason it is impracticable to effect service as provided by paragraph (2) or (4), the application may be served in such other manner as the court may approve or direct.
- (6) Application for permission of the court under paragraph (5) may be made without notice to the bank, stating in a witness statement what steps have been taken to comply with paragraph (2) or (4), and the reasons why it is impracticable to effect service as there provided.
- (7) If the bank or its legal representatives fail to attend the hearing the court may make the bank insolvency order in its absence if satisfied that the application has been served in accordance with this rule.

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(11) Article 21 of the Companies Order is repealed on 1 October 2009

(12) Article 295 is repealed on 1 October 2009.

### **Proof of service**

9. Apply rule 4.009 of the 1991 Rules.

### **Other persons to receive copy of application**

10.—(1) The applicant shall send a sealed copy of the application to—

- (a) the proposed bank liquidator;
- (b) the Bank of England, (if it is not the applicant,);
- (c) the FSA, (if it is not the applicant,);
- (d) the FSCS;
- (e) any person who has given notice to the FSA in respect of the bank under section 120 of the Banking Act 2009;
- (f) if there is in force for the bank a voluntary arrangement under Part II of the Order, the supervisor of that arrangement; and
- (g) if an administrative receiver has been appointed in relation to the bank, that receiver in accordance with paragraph (2).

(2) One copy shall be sent electronically as soon as practicable and the other shall be sent by first class post on the business day on which the application is served on the bank.

(3) Any of the persons in sub-paragraph (1) will have the right to attend and be heard at the hearing of the application.

### **Verification of application**

11.—(1) This rule applies where an application has been filed at the court under rule 7.

(2) A witness statement shall be attached to the application to state that the statements in the application are true, or are true to the best of the applicant's knowledge, information and belief.

(3) The witness statement shall identify the person making the statement and shall include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the application.

(4) The witness statement is, unless proved otherwise, evidence of the statements in the application.

### **Persons entitled to copy of application**

12.—(1) Every contributory or creditor of the bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

### **Certificate of compliance**

13.—(1) Apply rule 4.014 of the 1991 Rules.

(2) In paragraph (1) the period for filing shall be as soon as reasonably practicable before the hearing of the application.

(3) In paragraph (2), leave out the words "a copy of the advertisement" to the end, and insert—"A witness statement made by the proposed bank liquidator to the effect that—"

- (a) the person is qualified to act as an insolvency practitioner in accordance with Article 349 of the Order, and
  - (b) the person consents to act as the bank liquidator,
- shall be filed in court with the certificate.”.

#### **Leave for the applicant to withdraw**

- 14.—(1) Apply rule 4.015 of the 1991 Rules.
- (2) In paragraph (1) delete “at least 5 days”.
  - (3) Delete sub paragraph (a).

#### **Witness Statement in opposition**

15.—(1) If the bank intends to oppose an application, the bank or a director of the bank may (but need not) file a witness statement in opposition in court.

(2) A statement under paragraph (1) must be filed before the hearing of the application and a copy must be served on the applicant, before the hearing.

(3) The statement may be served on the applicant by personal service or by electronic means.

(4) The statement shall also be sent to the persons in rule 10(1) before the hearing by personal service or by electronic means.

(5) The fact that the neither the bank nor its directors have filed a statement under this rule shall not prevent any of those persons or their legal representatives from being heard at the hearing.

#### **Making, transmission and advertisement of order**

16.—(1) The court shall not make a bank insolvency order unless the person nominated to be appointed as the bank liquidator in the application for the order has filed in court a witness statement under rule 13.

(2) When the bank insolvency order has been made the court shall immediately send 5 sealed copies (or such larger number as the bank liquidator may have requested) to the bank liquidator.

(3) The court shall also, if practicable, immediately send a sealed copy of the order to the bank liquidator electronically.

(4) The bank liquidator shall serve a sealed copy of the order on the bank at its registered office and, where the bank liquidator knows the bank’s email address, will send an electronic copy to the bank.

(5) The bank liquidator shall send a sealed copy of the order—

- (a) to the Bank of England, the FSA and the FSCS (electronically or otherwise); and
- (b) to the registrar of companies in accordance with Article 110(1) of the Order (as applied by the 2009 Act).

(6) The bank liquidator shall as soon as reasonably practicable—

- (a) cause the order to be gazetted; and
- (b) advertise the order in such other manner as the bank liquidator thinks fit.

#### **Authentication of bank liquidator’s appointment**

17. A sealed copy of the court’s order may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the bank liquidator in the bank insolvency.

### **Initial duties of bank liquidation committee**

**18.**—(1) As soon as reasonably practicable after the making of a bank insolvency order, the liquidation committee shall meet the bank liquidator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the 2009 Act the committee should recommend the bank liquidator to pursue.

(2) If the bank liquidator and every individual on the liquidation committee agree the meeting may be held by audio or video conference.

(3) The liquidation committee shall make its recommendation to the bank liquidator at the meeting.

(4) The liquidation committee's recommendation shall be confirmed in writing as soon as practicable after the meeting.

(5) As soon as practicable after the making of a bank insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 98 the bank liquidator is to be remunerated.

(6) Until a full payment resolution has been passed the bank liquidation committee—

(a) shall take decisions and pass resolutions by a simply majority; and

(b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

### **Expenses of voluntary arrangement**

**19.** Apply rule 4.022 of the 1991 Rules.

## **PART 3**

### **PROVISIONAL BANK LIQUIDATOR**

#### **Appointment of provisional bank liquidator**

**20.**—(1) This rule applies after an application for a bank insolvency order has been filed under rule 7 and before that order is made.

(2) An application to the court for the appointment of a provisional bank liquidator under Article 115 of the Order may be made—

(a) by the Bank of England;

(b) by the FSA (with the consent of the Bank of England); or

(c) by the Department.

(3) The application must be supported by a witness statement stating—

(a) the grounds upon which it is proposed that the provisional bank liquidator should be appointed;

(b) that the person to be appointed has consented to act,

(c) that the person to be appointed is qualified to act as an insolvency practitioner,

(d) whether to the applicant's knowledge—

(i) there has been proposed or is in force for the bank a company voluntary arrangement under Part II of the Order; or

(ii) an administrative receiver is acting in relation to the bank.

(e) the applicant's estimate of the value of the assets in respect of which the provisional bank liquidator is to be appointed; and

(f) the functions the applicant wishes to be carried out by the provisional bank liquidator in relation to the bank's affairs.

(4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

### **Notice of appointment**

21. Where a provisional bank liquidator has been appointed, the court shall notify the applicant and the person appointed.

### **Order of appointment**

22.—(1) The order of appointment shall specify the functions to be carried out by the provisional bank liquidator in relation to the bank's affairs.

(2) The court shall, immediately after the order is made, send 4 sealed copies of the order (or such larger number as the provisional bank liquidator may have requested), to the provisional bank liquidator.

(3) The court shall also, if practicable, immediately send a copy of the sealed order to the bank liquidator electronically.

(4) The provisional bank liquidator shall serve a sealed copy of the order on the bank at its registered office and, where the provisional bank liquidator knows the bank's email address, will send an electronic copy to the bank.

(5) The bank liquidator shall send a sealed copy of the order—

(a) to the Bank of England, the FSA, and the FSCS (electronically or otherwise); and

(b) to the registrar of companies;

(c) (if applicable) to any administrative receiver of the bank.

### **Security**

23. Apply rule 4.031 of the 1991 Rules.

### **Failure to give or keep up security**

24. Apply rule 4.032 of the 1991 Rules.

### **Remuneration**

25.—(1) Apply rule 4.033 of the 1991 Rules.

(2) Delete paragraph (5).

### **Termination of appointment**

26.—(1) Apply rule 4.034 of the 1991 Rules.

(2) After paragraph (2) insert—

“(3) On the making of a bank insolvency order the appointment of the provisional bank liquidator shall terminate.”.

## PART 4

### STATEMENT OF AFFAIRS AND OTHER INFORMATION

#### **Notice requiring statement of affairs**

**27.**—(1) Apply rule 4.035 of the 1991 Rules. For “official receiver”, substitute “Bank of England”.

(2) In paragraph (3), for “Chapter” substitute “Part”.

#### **Verification and filing**

**28.**—(1) Apply rule 4.036 of the 1991 Rules. For “the official receiver” substitute “the bank liquidator”.

(2) For paragraph (6), substitute—

“(6) The bank liquidator shall file the statement of affairs in court and shall send a copy of it to the registrar of companies.”.

(3) Delete paragraph (7).

#### **Limited disclosure**

**29.**—(1) Apply rule 4.039 of the 1991 Rules. In paragraph (1), for “official receiver”, substitute “Bank of England”.

(2) After paragraph (1), insert—

“(1A) The Bank of England may also apply to the court for an order of limited disclosure in respect of those depositors of the bank who, at the time of the making of the statement of affairs, still have a claim against the bank in respect of their deposits.”.

#### **Release from duty to submit statement of affairs; extension of time**

**30.**—(1) Apply rule 4.040 of the 1991 Rules.

(2) For “official receiver” substitute “bank liquidator.”

#### **Expenses of statement of affairs**

**31.**—(1) Apply rule 4.041 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

#### **Submission of accounts**

**32.**—(1) Apply rule 4.043 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

#### **Further disclosure**

**33.**—(1) Apply rule 4.046 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

## PART 5

### INFORMATION TO CREDITORS AND CONTRIBUTORIES

#### Report by bank liquidator

**34.**—(1) The bank liquidator shall, at least once after the making of the bank insolvency order, make a report with respect to the proceedings in the bank insolvency and the state of the bank's affairs.

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within 8 weeks of the commencement of the bank insolvency, made publicly available on the bank's website.

(3) The bank liquidator shall include in the report under paragraph (1)—

- (a) a statement that the proceedings are being held in the High Court and the relevant court reference number;
- (b) the full name, registered office address, registered companies house number and any other trading names of the bank;
- (c) details relating to the bank liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
  - (i) which functions (if any) are to be exercised by the persons appointed acting jointly; and
  - (ii) which functions (if any) are to be exercised by any of all of the persons appointed;
- (d) the names of the directors and secretary of the bank and details of any shareholdings in the bank that they have;
- (e) an account of the circumstances giving rise to the bank insolvency;
- (f) if a statement of affairs has been submitted, a copy of that statement;
- (g) if a statement of affairs has yet to be submitted—
  - (i) subject to sub paragraph (ii), the names, addresses and details of any debts of the creditors, including details of any security held (or, in the case of depositors who still are creditors of the bank at the time the report is made, a single statement of their aggregate debt),
  - (ii) details of the financial position of the bank at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of bank insolvency);
- (h) the basis upon which it has been proposed under rule 41, or, if the full payment resolution has yet to be passed, rule 18, that the bank liquidator's remuneration has been fixed;
- (i) to the best of the bank liquidator's knowledge and belief—
  - (i) an estimate of the value of the prescribed part (within the meaning of Article 150A of the Order) regardless of whether—
    - (aa) the bank liquidator proposes to make an application to the court under Article 150A(5) of that Order, or
    - (bb) Article 150A(3) applies;
  - (ii) an estimate of the value of the company's net property;
- (j) whether, and if so, why, the bank liquidator proposes to make an application to court under Article 150A(5) of the Order; and
- (k) a summary of—

- (i) how Objective 1 is being or has been achieved and an estimate of the costs to the bank liquidator of achieving it;
  - (ii) the manner in which the affairs and business of the bank not involved in the achievement of Objective 1 have, since the commencement of the bank insolvency, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made;
  - (iii) how the affairs and business of the bank will continue to be managed and financed; and
- (l) an explanation of how it is envisaged the purpose of the bank liquidation will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the bank liquidation shall end.

(4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3) to include any information the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(5) The bank liquidator shall file with the court a copy of any report sent under this rule.

#### **Meaning of “creditors”**

35. Apply rule 4.048 of the 1991 Rules.

#### **Report where statement of affairs lodged**

- 36.—(1) Apply rule 4.049 of the 1991 Rules.
- (2) For “official receiver”, substitute “Bank of England”.

#### **Statement of affairs dispensed with**

37. Apply rule 4.050 of the 1991 Rules.

#### **General rule as to reporting**

- 38.—(1) Apply rule 4.051 of the 1991 Rules.
- (2) In paragraph (1), for “Chapter” substitute “Part”.
- (3) In paragraph (2) for “official receiver”, substitute “Bank of England”.

#### **Bank insolvency stayed**

- 39.—(1) Apply rule 4.052 of the 1991 Rules.
- (2) In paragraph (1), for “Chapter” substitute “Part”; and
- (3) In paragraph (2), for “official receiver”, substitute “Bank of England”.

**PART 6**  
**MEETINGS OF CREDITORS AND CONTRIBUTORIES**  
*RULES OF GENERAL APPLICATION*

**First meeting**

**40.**—(1) Once the liquidation committee passes a full payment resolution the bank liquidator shall—

- (a) immediately summon a meeting of the bank’s creditors and a meeting of the bank’s contributories, and
- (b) fix a venue, date and time for the meetings,

and the date must be within 3 months of the date on which the full payment resolution was passed.

(2) When the venue, date and time of the meetings have been fixed the bank liquidator shall give notice of the meetings to—

- (a) the court;
- (b) every creditor who is known to the bank liquidator or is identified in the bank’s statement of affairs;
- (c) every person appearing (by the bank’s books or otherwise) to be a contributory of the bank; and
- (d) each member of the liquidation committee;

and shall advertise the venue, date and time of the meetings in such manner as the bank liquidator thinks fit.

(3) In giving the notice mentioned in paragraph (2) the bank liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(4) Notice to the court and the members of the liquidation committee shall be given immediately; notice to creditors and contributories shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(5) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(6) The FSCS is entitled to be represented at the meeting and Schedule 1 to the 1991 Rules, as applied by rule 288, has effect with respect to its voting rights at such a meeting.

(7) Meetings summoned under this Rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the bank liquidation.”

**Business at first meetings of creditors and contributories**

**41.**—(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At the meeting those creditors present (or represented by proxy) may—

- (a) where the FSCS has not resigned, elect 2 or 4 individuals as new members of the liquidation committee;
- (b) where the FSCS has resigned, elect 3 or 5 individuals as new members of the liquidation committee;

in place of the members nominated by the Bank of England and the FSA.

(3) In accordance with section 100(6)(e) of the 2009 Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee would have fewer than 3 members or an even number of members. The maximum number of committee members will be 5.

- (4) At the first meeting of creditors, no resolutions shall be taken other than the following—
- (a) if an application has been made to the court by the creditors under rule 94 for the court to direct the bank liquidator to summon a meeting of creditors for the purpose of removing him, and the court has directed that a resolution may be passed to that effect at the first meeting of creditors—
    - (i) a resolution to remove the bank liquidator (or a resolution to remove one or more of the bank liquidators if joint liquidators were originally appointed), and
    - (ii) a resolution to appoint a named insolvency practitioner to be bank liquidator or two or more insolvency practitioners as joint liquidators;
  - (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
  - (c) where two or more persons are appointed jointly to act as bank liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one;
  - (d) a resolution to adjourn the meeting for not more than 3 weeks;
  - (e) any other resolutions which the chair thinks it right to allow for special reasons.
- (5) At the first meeting of contributories, no resolutions shall be taken other than the following—
- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 117 shall then apply);
  - (b) a resolution to adjourn the meeting for not more than 3 weeks;
  - (c) any other resolutions which the chair thinks it right to allow for special reasons.

### **General power to call meetings**

**42.**—(1) Apply rule 4.061 of the 1991 Rules.

(2) Where the bank liquidator has been directed to summon a meeting of creditors under Article 164 of the Order (as applied by section 109 of the 2009 Act) for the purpose of removing the bank liquidator, the bank liquidator shall give notice of the meeting to the Bank of England and the FSA.

### **The chair at meetings**

**43.**—(1) Meetings shall be chaired by the bank liquidator or a person nominated in writing by the bank liquidator.

- (2) A person nominated under paragraph (1) must be—
- (a) qualified to act as an insolvency practitioner in accordance with Article 349 of the Order; or
  - (b) an employee of the bank liquidator or of the bank liquidator's firm who is experienced in insolvency matters.

### **Requisitioned meetings general**

**44.** Apply rule 4.064 of the 1991 Rules.

### **Requisitioned meetings reforming the liquidation committee**

**45.**—(1) Rule 4.064 of the 1991 Rule also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 41 and no further steps have been taken to re establish that committee; and
- (b) the bank liquidator has been requested, by no less than one-tenth in value of the bank’s creditors, to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to reform the liquidation committee, the time periods set out in Rule 4.064 of the 1991 Rules may be expedited by the bank liquidator on the request of the bank’s creditors.

(3) The bank liquidator shall give notice of the meeting to the FSA and Bank of England.

(4) Rule 41(1) and (2) shall then apply at this meeting as if it were the first meeting of creditors.

### **Attendance at meetings of bank’s personnel**

**46.** Apply rule 4.065 of the 1991 Rules.

### **Notice of meetings by advertisement only**

**47.** Apply rule 4.066 of the 1991 Rules.

### **Venue**

**48.** Apply rule 4.067 of the 1991 Rules.

### **Expenses of summoning meetings**

**49.** Apply rule 4.068 of the 1991 Rules.

### **Resolutions**

**50.** Apply rule 4.070 of the 1991 Rules.

### **Chairman of meeting as proxy-holder**

**51.** Apply rule 4.071 of the 1991 Rules.

### **Suspension and adjournment**

**52.**—(1) Apply rule 4.072 of the 1991 Rules.

(2) In paragraph (4) delete “or, as the case may be, 4.121-CVL(3),”.

### **Entitlement to vote (creditors)**

**53.**—(1) Apply rule 4.073 of the 1991 Rules.

(2) Delete paragraph (ii) of paragraph (1)(a).

(3) Delete paragraph (9).

(4) In paragraph (10), delete the reference to paragraph (9).

**Entitlement to vote (contributories)**

54. Apply rule 4.075 of the 1991 Rules.

**Admission and rejection of proof (creditors' meetings)**

55. Apply rule 4.076 of the 1991 Rules.

**Record of proceedings**

56. Apply rule 4.077 of the 1991 Rules. For paragraph (6) substitute—

“(6) The chair is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an application to that effect.”.

**PART 7**

**PROOF OF DEBTS**

**Meaning of “prove”**

57.—(1) Apply rule 4.079 of the 1991 Rules.

(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.

(3) Delete paragraphs (2), (6) and (8).

**Supply of forms**

58. Apply rule 4.080 of the 1991 Rules.

**Contents of proof**

59. Apply rule 4.081 of the 1991 Rules.

**Claim established by affidavit**

60.—(1) Apply rule 4.083 of the 1991 Rules.

(2) Delete paragraph (3).

**Cost of proving**

61.—(1) Apply rule 4.084 of the 1991 Rules.

(2) In paragraph (1) delete “or 4.082-CVL”.

**Bank Liquidator to allow inspection of proofs**

62. Apply rule 4.085 of the 1991 Rules.

**New bank liquidator appointed**

63. Apply rule 4.087 of the 1991 Rules.

### **Admission and rejection of proofs for dividend**

64. Apply rule 4.088 of the 1991 Rules.

### **Appeal against decision on proof**

65.—(1) Apply rule 4.089 of the 1991 Rules

(2) For paragraph (7) substitute—

“(7) The bank liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

### **Withdrawal or variation of proof**

66. Apply rule 4.090 of the 1991 Rules.

### **Expunging of proof by the court**

67. Apply rule 4.091 of the 1991 Rules.

### **Estimate of quantum**

68. Apply rule 4.092 of the 1991 Rules.

### **Negotiable instruments, etc.**

69. Apply rule 4.093 of the 1991 Rules.

### **Secured creditors**

70. Apply rule 4.094 of the 1991 Rules.

### **Discounts**

71. Apply rule 4.095 of the 1991 Rules.

### **Mutual credits and set-off**

72.—(1) This Rule applies where, before the bank goes into bank insolvency, there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the bank proving or claiming to prove for a debt in the bank insolvency.

(2) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
  - (i) a meeting of creditors had been summoned under Article 84 of the Order,
  - (ii) a petition for the winding up of the bank was pending, or
  - (iii) an application for a bank insolvency order in respect of the bank was pending;
- (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
  - (i) after the commencement of bank insolvency,

- (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under Article 84 ,
- (iii) at a time when the creditor had notice that a winding up petition was pending, or
- (iv) at a time when the creditor had notice that an application for a bank insolvency order in respect of the bank was pending.

(3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the bank for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 4.084 of the 1991 Rules shall apply for the purposes of this Rule to any obligation to or from the bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 74 to 76 shall apply in relation to any sums due to the bank which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 259 shall apply to any sum due to or from the bank which is payable in the future.

(8) Subject to Rule 73 only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the bank liquidator as part of the assets except where all or part of the balance result from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

### **Disapplication of set off for eligible depositors**

**73.—**(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation<sup>(13)</sup>.

(2) Rule 71 shall apply but, for the purpose of determining the sums due from the bank to an eligible depositor and from an eligible depositor to the bank for the purpose of paragraph (2)—

- (a) where the total of the sums held by the bank for the eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000, then paragraph (3) applies; and
- (b) where the sums held exceeds that limit, then paragraph (4) applies.

(3) Where paragraph (2)(a) applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the bank, and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that depositor in respect of the protected deposits.

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<sup>(13)</sup> The reference to FSA Rules are to the FSA's Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000) (2000 c. 8).

- (4) Where paragraph (2)(b) applies then—
- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which that total exceeds that limit; and
  - (b) the sums due from the bank to the eligible depositor will be—
    - (i) the amount by which that total exceeds that limit, set off in accordance with rule 71(2); and
    - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit of the amount prescribed as the maximum compensation payable.
- (5) Any arrangements with regard to set off between the bank and the eligible depositor in existence before the commencement of bank insolvency shall be subject to this rule.
- (6) “Protected deposit” means a protected deposit within the meaning given by the Compensation Sourcebook(14).

#### **Debt in foreign Currency**

- 74.—(1) Apply rule 4.097 of the 1991 Rules.
- (2) In paragraph (1), leave out from “or, if” to the end.

#### **Payments of a periodical nature**

- 75.—(1) Apply rule 4.098 of the 1991 Rules.
- (2) In paragraph (1), leave out from “or, if” to the end.

#### **Interest**

- 76.—(1) Apply rule 4.099 of the 1991 Rules.
- (2) In paragraph (1), leave out from “or, if” to the end.

#### **Debt payable at future time**

- 77.—(1) Apply rule 4.100 of the 1991 Rules.
- (2) Leave out from “or, if” to “entered administration”.

## **PART 8**

### **SECURED CREDITORS**

#### **Value of security**

78. Apply rule 4.101 of the 1991 Rules.

#### **Surrender for non-disclosure**

- 79.—(1) Apply rule 4.102 of the 1991 Rules.
- (2) Delete paragraph (3).

**Redemption by liquidator**

80. Apply rule 4.103 of the 1991 Rules.

**Test of security's value**

81. Apply rule 4.104 of the 1991 Rules.

**Realisation of security by creditor**

82. Apply rule 4.105 of the 1991 Rules.

**PART 9**

**THE BANK LIQUIDATOR**

**SECTION A**

*GENERAL*

**Remuneration of bank liquidator**

83.—(1) This rule applies where—

- (a) the liquidation committee has ceased to exist as under rule 41(3);
- (b) the committee has not been reformed at a meeting of creditors held under either rule 41 or rules 44 and 45; and
- (c) the committee has not been reformed at a meeting of contributors held under rule 117.

(2) Where this rule applies the creditors may, at the first or any subsequent meeting of creditors pass a resolution as to the terms on which, in accordance with rule 98, the bank liquidator is to be remunerated.

(3) Where such a resolution is passed—

- (a) it supersedes any resolution as to the remuneration of the bank liquidator passed by the liquidation committee before the first meeting of creditors; and
- (b) the bank liquidator shall be paid under the resolution passed by the bank liquidation committee under rule 18(5) in respect of the performance of his functions before the day on which the creditors' resolution is passed and under the creditors' resolution in respect of the performance of his functions on and after that day.

**Replacement of bank liquidator by creditors**

84.—(1) Apply rule 4.106 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) This Rule applies where a person is appointed as bank liquidator by a meeting of creditors.”.

(3) For paragraph (4) substitute—

“(4) The chairman of the meeting shall—

- (a) send the certificate to the new bank liquidator,
- (b) send a copy of the certificate to the Bank of England and the FSA, and
- (c) file a copy of the certificate in court.”.

### **Authentication of bank liquidator's appointment**

- 85.**—(1) Apply rule 4.112 of the 1991 Rules.  
(2) Delete from “or (as the case may be)...to the Order,”.

### **Appointment to be advertised and registered**

**86.**—(1) This Rule applies where the bank liquidator is appointed by a meeting of the creditors or by the Bank of England under rule 106.

(2) The bank liquidator shall, after receiving the certificate of appointment, give notice of his appointment in such manner as the bank liquidator thinks fit for ensuring that it comes to the notice of the bank's creditors and contributories.

(3) The expense of giving notice under this Rule shall be borne in the first instance by the bank liquidator, but he is entitled to be reimbursed as an expense of the bank insolvency.

(4) The bank liquidator shall forthwith notify his appointment to the registrar of companies.

### **SECTION B**

## *RESIGNATION AND REMOVAL*

### **Creditors' meeting to be notified of bank liquidator's resignation**

- 87.**—(1) Apply rule 4.115 of the 1991 Rules.  
(2) For paragraph (1), substitute—  
    “(1) Before resigning office, the bank liquidator shall obtain the consent of the Bank of England and shall call a meeting of creditors to notify them of this.  
    (1A) The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of the meeting and shall draw the attention of the creditors to rule 95 with respect to the bank liquidator's release.  
    (1B) The notice in (1A) shall enclose a copy of the Bank of England's consent.”.  
(3) For paragraph (2) substitute—  
    “(2) Copies of the notice and of the account mentioned in paragraph (3) shall be sent to the court, the Bank of England and the FSA.”.

### **Action following acceptance of resignation**

**88.**—(1) This rule applies where a meeting is summoned to notify the creditors of the bank liquidator's resignation

- (2) The meeting shall resolve whether to give the bank liquidator their release.  
(3) If the meeting decides to not give the bank liquidator his release, the bank liquidator shall be given a copy of that resolution and rule 95 applies.  
(4) After the meeting the bank liquidator shall file the notice of his resignation in court and shall send copies of the notice to the Bank of England, the FSA and the registrar of companies.  
(5) The bank liquidator's resignation is effective as from the date on which the court receives the notice of his resignation, and the court shall endorse that date on the notice.

### **Advertisement of resignation**

- 89.** Apply rule 4.119 of the 1991 Rules.

### **Meeting of creditors to remove bank liquidator**

- 90.**—(1) Apply rule 4.120 of the 1991 Rules.
- (2) In paragraph (1), for “Article 148(4)”, substitute “section 109 of the 2009 Act”.
- (3) In paragraph (2), for “official receiver” substitute “Bank of England and the FSA”.
- (4) In paragraph (4) substitute—
- “(4) Where the meeting passes a resolution that—
- (a) the bank liquidator be removed;
- (b) a new bank liquidator be appointed, or
- (c) the bank liquidator not to be given their release
- the bank liquidator shall be given a copy of that resolution and if it has been resolved to remove the bank liquidator, the bank liquidator shall be given a certificate to that effect.”.
- (5) For paragraph (5) substitute—
- “(5) If the creditors have resolved to appoint a new bank liquidator, the certificate of his appointment shall also be sent to the registrar of companies within that time and rule 4.106 shall apply.”.

### **Court’s power to regulate meetings under rule 90**

- 91.**—(1) Apply rule 4.122 of the 1991 Rules.
- (2) Delete “or 4.121-CVL”.

### **Procedure on removal**

- 92.**—(1) Apply rule 4.123 of the 1991 Rules.
- (2) For “official receiver”, wherever it appears, substitute “out-going bank liquidator”.
- (3) For paragraph (3) substitute—
- “(3) A copy of the certificate so endorsed shall be sent by the court to the outgoing bank liquidator and, if a new liquidator has been appointed, to him.”.
- (4) Delete paragraph (4).

### **Advertisement of removal**

- 93.** Apply rule 4.125 of the 1991 Rules.

### **Removal of bank liquidator by the court**

- 94.**—(1) Apply rule 4.126 of the 1991 Rules.
- (2) After paragraph (1) insert—
- “(2A) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by someone other than the Bank of England, the FSA or the liquidation committee.”.
- (3) In paragraph (2), for “at least 7 days’ notice” substitute—
- “(a) if the application is made before the passing of a full payment resolution, such notice as is reasonable in all the circumstances, and
- (b) if the application is made after the passing of a full payment resolution, at least 7 days’ notice.”.

- (4) In paragraph (4), leave out “, at least 14 days before the hearing.”.
- (5) After paragraph (4) insert—
- “(4A) The notice and copies mentioned in paragraph (4) shall be sent—
- (a) if the application is made before the passing of a full payment resolution, within such time so as to give the bank liquidator notice of the hearing as is reasonable in all the circumstances, and
- (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.”.
- (6) In paragraph (6)—
- (a) in sub-paragraph (a), for “official receiver” substitute “Bank of England and the FSA” and at the end insert “and”, and
- (b) leave out “and” at the end of sub-paragraph (b), and sub-paragraph (c).

#### **Release of resigning or removed bank liquidator**

- 95.**—(1) Apply rule 4.128 of the 1991 Rules.
- (2) In paragraph (1)—
- (a) for “accepted by” substitute “notified to”;
- (b) for rule 4.116 substitute “rule 88 of the Bank Insolvency (No.2) Rules (Northern Ireland) 2009”.
- (3) In paragraph (3)—
- (a) in sub-paragraph (a) for “receive his resignation” substitute “be notified of his resignation”; and delete “or” at the end;
- (b) at the end of sub-paragraph (b) insert—
- “, or
- (c) the bank liquidator resigns, and the Bank of England has refused his release.”.
- (4) For paragraph (4) substitute—
- “(4) When the Department gives the release it shall certify it accordingly, file the certificate in court and send a copy to the registrar of companies.”.

#### **SECTION C**

#### *RELEASE ON COMPLETION OF WINDING UP*

#### **Final meeting**

- 96.**—(1) The bank liquidator shall give at least 14 days’ notice of the final meeting of the liquidation committee to be held under section 115 of the 2009 Act to the following—
- (a) the FSA;
- (b) the FSCS;
- (c) the Bank of England;
- (d) the Treasury;
- (e) the registrar of companies; and
- (f) the members of the liquidation committee.
- (2) The bank liquidator’s final report to be laid before the meeting under that section shall contain an account of the liquidator’s administration of the winding up, including—

- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the bank liquidator in connection with that Objective;
  - (b) a summary of the bank liquidator's receipt and payments;
  - (c) a statement that the bank liquidator has reconciled his account with that which is held by the Department in respect of the winding up; and
  - (d) a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A of the Order (prescribed part)(15).
- (3) At the same time that notice of the final meeting is sent out, the bank liquidator shall file the final report in court and send it to the registrar of companies.
- (4) The bank liquidator shall give notice that the final report is available to all creditors and contributories either on request to the bank liquidator or at Companies House and, shall cause that notice to be gazetted at least 14 days before the final meeting is held.
- (5) At the final meeting, the liquidation committee may question the bank liquidator with respect to any matter contained in the final report, and may resolve against the bank liquidator being released.
- (6) The bank liquidator shall give notice to the court that the final meeting has been held and the notice shall state whether or not he has been given his release.
- (7) Where the liquidation committee does not resolve against the bank liquidator's release, the bank liquidator vacates office at the end of the meeting and has his release when the notice in paragraph (6) is filed in court.
- (8) If there is no quorum present at the final meeting, the bank liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the 2009 Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the bank liquidator being released.
- (9) If the liquidation committee resolves against the bank liquidator having his release then Rule 95 applies.

### **Rule as to reporting**

- 97.**—(1) Apply rule 4.132A(16) of the 1991 Rules.
- (2) Delete the reference to Rule 4.131.
- SECTION D

## *REMUNERATION*

### **Fixing of remuneration**

- 98.**—(1) Apply rule 4.134 of the 1991 Rules.
- (2) In paragraph (3), delete from "Where" to "receiver,".
- (3) For paragraph (5) substitute—
- “(5) If under rule 41(3), the liquidation ceases to exist at the end of the first meeting of creditors, the remuneration of the bank liquidator fixed by the initial liquidation committee under rule 18 can be re-determined by a resolution of a meeting of creditors and paragraph (4) applies to the determination of the creditors as it does to the determination of the liquidation committee.”
- (4) In paragraph (6), for "Where" to "his" substitute "Where the bank liquidator's".

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(15) Article 150A was inserted by the (Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order S.R. 2006 No. 25.

(16) Rule 4.132A was inserted by the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), rule 33.

### **Bank liquidator's entitlement to remuneration where it is not fixed under rule 98**

**99.**—(1) Apply rule 4.134A of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “his” substitute “bank liquidator’s”.

(3) In paragraph (2), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009”.

### **Bank liquidator's remuneration where he realises assets on behalf of chargeholder**

**100.**—(1) Apply rule 4.134B of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “and” substitute “bank liquidator”.

(3) In paragraphs (2), (3) and (3), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the Bank Insolvency (No.2) Rules (Northern Ireland) 2009”.

### **Other matters affecting remuneration**

**101.** Apply rule 4.135 of the 1991 Rules.

### **Recourse of bank liquidator to meeting of creditors**

**102.** Apply rule 4.136 of the 1991 Rules.

### **Recourse to the court**

**103.** Apply rule 4.137 of the 1991 Rules.

### **Creditors' claim that remuneration is excessive**

**104.** Apply rule 4.138 of the 1991 Rules.

### **Primacy of Objective 1**

**105.** Nothing done under a rule in this chapter may prejudice the achievement of Objective 1.  
SECTION E

## *SUPPLEMENTARY PROVISIONS*

### **Replacement Bank liquidator**

**106.**—(1) Where the bank liquidator vacates his office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 90, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(2) Where a bank liquidator has been removed by a meeting of creditors but one month has passed and there has been no resolution passed by a meeting of creditors to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(3) The Bank of England shall file in court the document appointing the new bank liquidator (“the appointment document”) together with statements to the effect that the new bank liquidator—

(a) is qualified to act as an insolvency practitioner in accordance with Article 349 of the Order;  
and

(b) consents to act as the bank liquidator.

(4) The bank liquidator shall send a copy of the appointment document to the FSA and registrar of companies.

(5) The bank liquidator shall as soon as reasonably practicable—

- (a) cause the appointment to be gazetted; and
- (b) advertise the appointment in such manner as the bank liquidator thinks fit.

#### **Bank liquidator deceased**

**107.**—(1) Unless notice of the death of the bank liquidator has been given under paragraphs (2) or (3), it is the duty of the bank liquidator’s personal representatives, where the bank liquidator has died, to give notice of the fact to the Bank of England and the liquidation committee, specifying the date of the death.

(2) If the deceased bank liquidator was a partner in a firm, notice may be given to the Bank of England, the FSA and liquidation committee by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Department for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing the relevant death certificate or a copy of it to the Bank of England and the liquidation committee.

(4) The Bank of England shall give notice to the court, for the purpose of fixing the date of the deceased bank liquidator’s release.

#### **Loss of qualification as insolvency practitioner**

**108.**—(1) Apply rule 4.141 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) The bank liquidator shall immediately give notice of his doing to the Bank of England.

(3) The Bank of England shall file a copy of this notice in court.”.

#### **Resignation of the bank liquidator**

**109.**—(1) This rule applies where the bank liquidator was appointed by the bank insolvency order, or by the Bank of England.

(2) The bank liquidator can only resign—

- (a) after the liquidation committee has passed a full payment resolution, and
- (b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 87 to receive notice of the bank liquidator’s resignation, the bank liquidator shall write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify in writing the bank liquidator within 21 days as to whether it consents to the resignation. If the Bank of England does not consent to the resignation, it shall set out its reasons in writing.

(5) The bank liquidator, if not content with the Bank of England’s response above, may apply to the Court for directions under Article 143(3) of the Order.

#### **Notice to Bank of England of intention to vacate office**

**110.**—(1) This rule applies where the bank liquidator was appointed by a meeting of creditors.

- (2) Apply rule 4.144 of the 1991 Rules.
- (3) In paragraphs (1), (2) and (3) for “official receiver” substitute “Bank of England”.
- (4) In Paragraph (1) for “receive his resignation” substitute “be notified of his resignation”.

#### **Bank liquidator’s duties on vacating office**

- 111.—(1) Apply rule 4.145 of the 1991 Rules.
- (2) Delete paragraph (3).

#### **Power of court to set aside certain transactions**

- 112.—(1) Apply rule 4.157 of the 1991 Rules.
- (2) In paragraph (2)—
  - (a) delete “either”;
  - (b) delete “or” at the end of sub-paragraph (a), and after sub-paragraph (b) insert—
    - “, or
    - (c) it is shown to the court’s satisfaction that the transaction was entered into by the liquidator for the purpose of achieving Objective 1.”.

#### **Rule against solicitation**

- 113. Apply rule 4.158 of the 1991 Rules.

## **PART 10**

### **THE LIQUIDATION COMMITTEE**

#### **Application of rules in this Part**

114. The rules in this Part apply only in relation to the liquidation committee established under Rule 41 after a full payment resolution has been passed.

#### **Membership of committee**

- 115.—(1) Apply rule 4.160 of the 1991 Rules.
- (2) For paragraph (1) substitute—
  - “(1) Subject to rule 4.162 of the 1991 Rules as applied by rule 117, the liquidation committee shall consist of either 3 or 5 creditors of the company, elected by the meeting of creditors held under rule 40.”
- (3) Delete paragraphs (2), (4) and (7).
- (4) In paragraph (6) delete from “; and those elected” to ““contributory members””.

#### **Formalities of establishment**

- 116.—(1) Apply rule 4.161 of the 1991 Rules.

(2) In paragraph (3), the reference to Article 383 of the Companies Order, shall, after that Article is repealed, be to section 323 of the 2006 Act.(17)

#### **Committee established by contributories**

117.—(1) Apply rule 4.162 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the bank liquidator under rule 40 is (by virtue of rule 41(3)) that the liquidation committee ceased to exist at the end of the meeting.”.

(3) In paragraph (2), for “that Article” substitute “Article 120 of the Order”.

(4) In paragraph (4) for “at least 3 and not more than 5”, substitute “3 or 5”.

#### **Obligations of liquidator to committee**

118. Apply rule 4.163 of the 1991 Rules.

#### **Meetings of the committee**

119. Apply rule 4.164 of the 1991 Rules.

#### **The Chair at meetings**

120. Apply rule 4.165 of the 1991 Rules.

#### **Quorum**

121. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

#### **Committee-members’ representatives**

122.—(1) Apply rule 4.167 of the 1991 Rules.

(2) In paragraph (2), the reference to Article 383 of the Companies Order, shall, after that Article is repealed, be to section 323 of the 2006 Act.(18).

#### **Resignation**

123. Apply rule 4.168 of the 1991 Rules.

#### **Termination of membership**

124. Apply rule 4.169 of the 1991 Rules.

#### **Removal**

125. Apply rule 4.170 of the 1991 Rules.

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(17) Article 383 is repealed on 1 October 2009

(18) Article 383 is repealed on 1 October 2009

**Vacancy (creditor members)**

126. Apply rule 4.171 of the 1991 Rules.

**Vacancy (contributory members)**

127. Apply rule 4.172 of the 1991 Rules.

**Voting rights and resolutions**

128. Apply rule 4.173 of the 1991 Rules.

**Resolutions by post**

129. Apply rule 4.175 of the 1991 Rules.

**Liquidator's reports**

130. Apply rule 4.176 of the 1991 Rules.

**Expenses of members etc.**

131. Apply rule 4.177 of the 1991 Rules.

**Dealings by committee-members and others**

132. Apply rule 4.178 of the 1991 Rules.

**Composition of committee when creditors paid in full**

133.—(1) Apply rule 4.179 of the 1991 Rules.

(2) For paragraph (4) substitute—

“(4) The members of the liquidation committee will cease to be members at the end of the final meeting held under rule 96.”.

**Committee's functions vested in the Department**

134.—(1) Apply rule 4.180 of the 1991 Rules.

(2) Delete paragraph (2).

**Formal defects**

135. Apply rule 4.181 of the 1991 Rules.

## PART 11

### COLLECTION AND DISTRIBUTION OF BANK'S ASSETS BY BANK LIQUIDATOR

**General duties of bank liquidator**

136. Apply rule 4.188 of the 1991 Rules.

#### **General qualification on powers**

137. In exercising any power conferred on the bank liquidator by this Part before a full payment resolution has been passed, the bank liquidator shall exercise it consistently with Objective 1.

#### **Manner of distributing assets**

138. Apply rule 4.189 of the 1991 Rules.

#### **Debts of insolvent company to rank equally**

139. Apply rule 4.190 of the 1991 Rules.

#### **Supplementary provisions as to dividend**

140. Apply rule 4.191 of the 1991 Rules.

#### **Division of unsold assets**

141. Apply rule 4.193 of the 1991 Rules.

#### **General powers of the liquidator**

142.—(1) Apply rule 4.194 of the 1991 Rules.

(2) In paragraph (1) delete “under Article 142(1)(a), or”.

#### **Enforced delivery up of company’s property**

143. Apply rule 4.195 of the 1991 Rules.

#### **Final distribution**

144.—(1) Apply rule 4.196 of the 1991 Rules.

(2) In paragraphs (1) and (2) for “Part 11”, substitute “Part 21”.

## **PART 12**

### **DISCLAIMER**

#### **Liquidator’s notice of disclaimer**

145. Apply rule 4.197 of the 1991 Rules.

#### **Communication of disclaimer to persons interested**

146. Apply rule 4.198 of the 1991 Rules.

#### **Additional notices**

147. Apply rule 4.199 of the 1991 Rules.

**Duty to keep court informed**

148. Apply rule 4.200 of the 1991 Rules.

**Application by interested party under Article 152(4)**

149. Apply rule 4.201 of the 1991 Rules.

**Interest in property to be declared on request**

150. Apply rule 4.202 of the 1991 Rules.

**Disclaimer presumed valid and effective**

151. Apply rule 4.203 of the 1991 Rules.

**Application for exercise of court's powers under Article 155**

152. Apply rule 4.204 of the 1991 Rules.

## PART 13

### SETTLEMENT OF LIST OF CONTRIBUTORIES

**Preliminary**

153. Apply rule 4.205 of the 1991 Rules.

**Primacy of Objective 1**

154. Where the bank liquidator considers that the carrying out of a duty imposed by a rule in this Part would prejudice the achievement of Objective 1, the bank liquidator shall postpone the carrying out of that duty until he considers that the carrying out of the duty would no longer be likely to prejudice the achievement of that Objective.

**Duty of liquidator to settle list**

155. Apply rule 4.206 of the 1991 Rules.

**Form of list**

156. Apply rule 4.207 of the 1991 Rules.

**Procedure for settling list**

157. Apply rule 4.208 of the 1991 Rules.

**Application to court for variation of the list**

158.—(1) Apply rule 4.209 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) A person may only apply under paragraph (1) before a full payment resolution has been passed with the consent of the bank liquidator.

- (3) The application must be made within 21 days of—
- (a) the service on the applicant of the bank liquidator’s notice under rule 157 (in its application of rule 4.208(4) of the 1991 Rules), or
  - (b) where the bank liquidator has consented under paragraph (2), the giving of the consent.”.

**Variation of, or addition to, the list**

- 159.**—(1) Apply rule 4.210 of the 1991 Rules.  
(2) For “Chapter”, substitute “Part”.

**Costs not to fall on bank liquidator**

**160.** The bank liquidator is not personally liable for any costs incurred by a person in respect of an application to set aside or vary the bank liquidator’s act or decision in settling the list of contributories, or varying or adding to the list, unless the court makes an order to that effect.

## PART 14

### CALLS

**Calls by liquidator**

- 161.** Apply rule 4.212 of the 1991 Rules.

**Control by bank liquidation committee**

- 162.** Apply rule 4.213 of the 1991 Rules.

**Application to court for leave to make a call**

- 163.** Apply rule 4.214 of the 1991 Rules.

**Making and enforcement of the call**

- 164.** Apply rule 4.215 of the 1991 Rules.

## PART 15

### SPECIAL MANAGER

**Appointment and remuneration**

- 165.** Apply rule 4.216 of the 1991 Rules.

**Security**

- 166.** Apply rule 4.217 of the 1991 Rules.

**Failure to give or keep up security**

167. Apply rule 4.218 of the 1991 Rules.

**Accounting**

168. Apply rule 4.219 of the 1986 Rule.

**Termination of appointment**

169.—(1) Apply rule 4.220 of the 1991 Rules.

(2) Delete paragraph (1).

## PART 16

### ORDER OF PAYMENT AS TO COSTS, ETC. OUT OF ASSETS

**General rule as to priority**

170.—(1) Apply rule 4.228(19) of the 1991 Rules.

(2) In paragraph (3)—

(a) Delete sub-paragraphs (a)(iii) and (iv), (b), and (d);

(b) in sub-paragraph (c) delete the words from “or Article 361A” to “regulations”; and

(c) in sub-paragraph (la), delete the words from “in any case” to “examination”.

**Litigation expenses and property subject to a floating charge-general application**

171. Apply rule 4.228A(20) of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-requirement for approval or authorisation**

172. Apply rule 4.228B of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-request for approval or authorisation**

173. Apply rule 4.228C of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-grant of approval or authorisation**

174. Apply rule 4.228D of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-application to court by the bank liquidator**

175. Apply rule 4.228E of the 1991 Rules.

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(19) Rule 4.228 was amended by the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118).

(20) Rules 4.228A to E were inserted by the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118).

**Saving for powers of the court**

176. Apply rule 4.230 of the 1991 Rules.

**PART 17**

**MISCELLANEOUS RULES**

**SECTION A**

*RETURN OF CAPITAL*

**Application to court for order authorising return of capital**

177. Apply rule 4.231 of the 1991 Rules.

**Procedure for return of capital**

178. Apply rule 4.232 of the 1991 Rules.

**SECTION B**

*CONCLUSION OF BANK INSOLVENCY*

**Department's directions under section 116 of the 2009 Act**

179.—(1) Where the Department gives a direction under section 116 of the 2009 Act (application by an interested person for postponement of dissolution) it shall send two copies of the direction to the applicant.

(2) Of those copies, one shall be sent by the applicant to the registrar of companies to comply with section 116(4) of the 2009 Act.

**Procedure following appeal under section 116 of the 2009 Act**

180. Following an appeal under section 116(2) of the 2009 Act (against a decision of the Department under the applicable section) the court shall send two sealed copies of its order to the person in whose favour the appeal was determined and that party shall send one of the copies to the registrar of companies.

**SECTION C**

*LEAVE TO ACT AS DIRECTOR, ETC. OF BANK WITH PROHIBITED NAME (ARTICLE 180 OF THE ORDER)*

**Preliminary**

181. Apply rule 4.236 of the 1991 Rules.

**Application for leave under Article 180(3) before passing of full payment resolution**

182. Where an application for leave under Article 180(3) is made before a full payment resolution has been passed, it may only be made with the consent of the bank liquidator.

### **Consideration of application for leave under Article 180(3)**

**183.** Apply rule 4.237 of the 1991 Rules.

#### **First excepted case**

**184.—**(1) Apply rule 4.238 of the 1991 Rules.

(2) In paragraph (3)(b)(ii) ignore the reference to administrator.

#### **Second excepted case**

**185.—**(1) Apply rule 4.239 of the 1991 Rules.

(2) In paragraph (b), the reference to Article 180(3) of the Companies Order should, after that Article is repealed, be to section 451 of the 2006 Act.(21).

#### **Third excepted case**

**186.—**(1) Apply rule 4.240 of the 1991 Rules.

(2) In paragraph (a), for “liquidating company went into liquidation” substitute “bank went into bank insolvency”.

#### **Further exception**

**187.** The court’s leave under Article 180(3) of the Companies Order is not required in respect of anything done by a person in connection with the exercise of a stabilisation power under Part 1 of the 2009 Act.

## **PART 18**

### **COURT PROCEDURE AND PRACTICE**

#### **CHAPTER 1**

#### **APPLICATIONS (GENERAL)**

#### **Preliminary**

**188.** This Part applies to any application made to the court under the 2009 Act or these Rules except an application under section 95 of the 2009 Act for a bank insolvency order.

#### **Interpretation**

**189.** Apply rule 7.06 of the 1991 Rules.

#### **Form and contents of application**

**190.** Apply rule 7.07 of the 1991 Rules.

#### **Application under Article 150A(5) to disapply Article 150A**

**191.—**(1) Apply rule 7.07A(22) of the 1991 Rules.

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(21) Article 180 is repealed on 1 October 2009.

(22) Rule 7.07A was inserted by the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), rule 97.

- (2) In paragraph (1), delete “administrator or receiver”.
- (3) Delete paragraph (2)(a).

#### **Filing and service of application**

**192.** Apply rule 7.08 of the 1991 Rules.

#### **Notice of application under Article 150A(5)**

- 193.**—(1) Apply rule 7.08A(23) of the 1991 Rules.
- (2) Delete from “save that notice” to “State liquidator”.

#### **Other hearings without notice**

**194.** Apply rule 7.09 of the 1991 Rules.

#### **Hearing of application**

**195.** Apply rule 7.03 of the 1991 Rules.

#### **Use of affidavit evidence**

**196.** Apply rule 7.10 of the 1991 Rules.

#### **Filing and service of affidavits**

- 197.**—(1) Apply rule 7.11 of the 1991 Rules.
- (2) Delete paragraph (2).

#### **Use of reports**

**198.**—(1) Unless the application involves other parties, or the court orders otherwise, a report may be filed in court instead of a witness statement by—

- (a) the bank liquidator;
- (b) the provisional bank liquidator; or
- (c) the special manager.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of rule 197 and any hearing before the court as if it were a witness statement.

#### **Adjournment of hearing: directions**

**199.** Apply rule 7.13 of the 1991 Rules.

### **CHAPTER 3**

### **SHORTHAND WRITERS**

#### **Nomination and appointment of shorthand writers**

- 200.**—(1) Apply rule 7.14 of the 1991 Rules.
- (2) In paragraph (2) delete “113” and “263 or 337”.

- (3) Delete paragraph (3).

### **Remuneration**

- 201.** Apply rule 7.16 of the 1991 Rules.

## **CHAPTER 4**

### **ENFORCEMENT PROCEDURES**

#### **Enforcement of court orders**

- 202.**—(1) Apply rule 7.19 of the 1991 Rules.  
(2) Delete paragraph (2).

#### **Orders enforcing compliance with the rules**

**203.**—(1) The court may on application of the bank liquidator, or the provisional liquidator as the case may be, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) Article 121(2) of the Order (liquidator to furnish information, books, papers etc.); or
- (b) Article 199 of the Order (duty to cooperate with liquidator).

(2) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

#### **Warrants (general provisions)**

**204.**—(1) A warrant issued by the court under any provision of the Order shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The person described in Article 199(3) of the Order as the prescribed officer of the court is the tipstaff and his assistants of the court.

- (3) In this Chapter references to property include books, paper and records.

#### **Warrants under Article 200**

- 205.**—(1) Apply rule 7.22 of the 1991 Rules.  
(2) In paragraph (1), delete “or 337 (the equivalent in bankruptcy),”.

## **CHAPTER 5**

### **COURT RECORDS AND RETURNS**

#### **Title of proceedings**

**206.** Every proceeding under Part 2 of the 2009 Act shall, with any necessary additions, be titled “IN THE MATTER OF ..... (naming the bank to which the proceedings relate) AND IN THE MATTER OF THE BANKING ACT 2009”.

#### **Court records**

- 207.** Apply rule 7.24 of the 1991 Rules.

### **Inspection of records**

**208.** Apply rule 7.25 of the 1991 Rules.

### **File of court proceedings and inspection**

**209.**—(1) The Court shall open and maintain a file for each bank insolvency and (subject to the direction of the registrar) all documents relating to that bank insolvency shall be placed on that file.

(2) Where a file has been opened under paragraph (1), the following have the right, at all reasonable times, to inspect that file—

- (a) the bank liquidator;
- (b) any person stating in writing that they are a creditor of the bank to which the bank insolvency relates; and
- (c) a member of the bank;
- (d) any person who is, or at any time has been, a director or officer of the bank to which the bank insolvency relates;
- (e) any person who is a contributory of the bank to which the bank insolvency relates; and
- (f) the Bank of England, the FSA and the FSCS.

(3) The right of inspection conferred on any person by paragraph (2) may be exercised on their behalf by a person properly authorised by them.

(4) Any person may, with special leave of the court, inspect the file.

(5) The right of inspection conferred by this rule is not exercisable in respect of documents, or parts of documents, which the court has directed (either generally or specially) are not to be open to inspection without the court's permission.

(6) An application for a direction of the court under paragraph (5) may be made by the bank liquidator or by any party appearing to the court to have an interest in the bank insolvency.

(7) If for the purposes of powers conferred by the Order, the 2009 Act or these Rules the Department requires to inspect the file on a bank insolvency and requests the court to transmit the file to it, the court shall comply with the request or, if the file is for the time being in use for the court's own purposes, as soon as the file is no longer in such use.

(8) Rule 208 applies in respect of the court's records on any bank insolvency as they apply in respect of court records of general insolvency proceedings.

### **Filing of Gazette notices and advertisements**

**210.**—(1) Apply rule 7.28 of the 1991 Rules.

(2) In paragraph (3) for "An officer of the court" substitute "The bank liquidator".

(3) In paragraph (4) for "The officer's" substitute "the bank liquidator's".

## **CHAPTER 6**

### **COSTS AND DETAILED ASSESSMENT**

#### **Application of the Supreme Court Rules**

**211.** Apply rule 7.29 of the 1991 Rules.

#### **Requirement to assess costs by the detailed procedure**

**212.**—(1) Apply rule 7.30 of the 1991 Rules.

- (2) In paragraph (1)—
  - (a) for “company insolvency” and “liquidation”, substitute “bank insolvency”; and
  - (b) delete sub-paragraph (b).
- (3) In paragraph (2) delete “or creditors”.
- (4) In paragraph (3) for “insolvency proceedings” substitute “a bank insolvency”;
- (5) In paragraph (5) for “trustee in bankruptcy or a liquidator ” substitute “bank liquidator”;
- (6) Delete paragraph (6).

#### **Procedure where detailed assessment required**

**213.** Apply rule 7.32 of the 1991 Rules.

#### **Cost of officers charged with executions of writs or other process**

- 214.**—(1) Apply rule 7.31 of the 1991 Rules.
- (2) In Paragraph (1) for “insolvency proceedings” substitute “a bank insolvency”.
- (3) Delete paragraph (9)

#### **Costs paid otherwise than out of the insolvent estate**

**215.** Apply rule 7.34 of the 1991 Rules.

#### **Award of costs against responsible insolvency practitioner**

- 216.**—(1) Apply rule 7.35 of the 1991 Rules.
- (2) For “Without prejudice” to “the official receiver or” substitute “Where”.

#### **Application for costs**

- 217.**—(1) Apply rule 7.36 of the 1991 Rules.
- (2) In paragraph (1) for “insolvency” substitute “bank insolvency”.
- (3) In paragraph (2), delete “, and, in a winding up by the court or bankruptcy, on the official receiver”;
- (4) In paragraph (3), delete “and, where appropriate, the official receiver”.

#### **Costs and expenses of witnesses**

- 218.**—(1) Apply rule 7.37 of the 1991 Rules.
- (2) In paragraph (1), delete “the bankrupt or”.
- (3) Delete paragraph (2).

### **CHAPTER 7**

#### **PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS**

##### **Introductory**

**219.** Apply rule 7.38 of the 1991 Rules.

### **Appointment of another person to act**

- 220.**—(1) Apply rule 7.39 of the 1991 Rules.  
(2) Delete paragraph (3)(c).

### **Affidavit in support of application**

- 221.**—(1) Apply rule 7.40 of the 1991 Rules.  
(2) In paragraph (1) delete from the beginning to “receiver”.  
(3) Delete paragraph (2).

### **Service of notices following appointment**

- 222.** Apply rule 7.41 of the 1991 Rules.

## CHAPTER 8

### APPEALS IN BANK INSOLVENCY PROCEEDINGS

#### **Appeals and review of court orders**

**223.**—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction under Part 2 of the 2009 Act.

(2) An appeal from a decision of a registrar of the High Court lies, with the permission of the registrar or a judge of the High Court, to a single judge of the High Court, and a second appeal lies, with the permission of the Court of Appeal to the Court of Appeal.

(3) An appeal of a decision of first instance of a judge of the High Court lies, with the permission of the judge or the Court of Appeal, to the Court of Appeal.

(4) A bank insolvency order made under rule 16 cannot be appealed under this rule.

#### **Procedure on appeal**

- 224.** Apply rule 7.42 of the 1991 Rules.

#### **Appeal against a decision of the Department**

- 225.**—(1) Apply rule 7.44 of the 1991 Rules.  
(2) In paragraph (1) delete “or the official receiver”.  
(3) Delete paragraph (2).

## CHAPTER 9

### GENERAL

#### **Principal court rules and practice to apply**

**226.** The Rules of the Supreme Court (Northern Ireland) 1980(**24**) and the practice and procedure of the High Court (including any practice direction) apply to bank insolvency proceedings in the High Court, with any necessary modifications, except so far as is inconsistent with these Rules.

### **Right of attendance**

- 227.—(1) Apply rule 7.47 of the 1991 Rules.  
(2) For “company” substitute “bank”.

### **Restriction on concurrent proceedings and remedies**

228. Where in a bank insolvency, the court makes an order staying any action, execution or legal process against the property of the bank, service of the order may be effected by delivering a sealed copy by personal service to the applicant for the bank insolvency order.

### **Security in court**

229. Apply rule 7.53 of the 1991 Rules.

### **Further information and disclosure**

- 230.—(1) Apply rule 7.54 of the 1991 Rules.  
(2) After paragraph (2) insert—  
    “(3) Before the passing of a full payment resolution the court shall only grant an order on an application under paragraph (1)(b) if satisfied that granting the order is unlikely to prejudice the achievement of Objective 1.”.

### **Office copies of documents**

231. Apply rule 7.55 of the 1991 Rules.

## **PART 19**

### **PROXIES AND COMPANY REPRESENTATION**

#### **Definition of “proxy”**

- 232.—(1) Apply rule 8.1 of the 1991 Rules.  
(2) In paragraph (2) delete “, company”.  
(3) In paragraph (4), for “chairman of the meeting” to “official receiver” substitute: “chair of the meeting or the bank liquidator”.

#### **Issue and use of forms**

233. Apply rule 8.2 of the 1991 Rules.

#### **Use of proxies at meetings**

- 234.—(1) Apply rule 8.3 of the 1991 Rules.  
(2) Delete paragraph (2).

#### **Retention of proxies**

235. Apply rule 8.4 of the 1991 Rules.

### **Right of inspection**

- 236.**—(1) Apply rule 8.5 of the 1991 Rules.
- (2) in paragraph (1)(b) for “company” substitute “bank”.
- (3) For paragraph (2) substitute—
- “(2) The reference in paragraph (1) to creditors is to those creditors who have proved their debts but does not include a person whose proof has been wholly rejected for purposes of voting, dividend or otherwise.”.
- (4) In paragraph (3)(a) delete “, and” and insert a full stop.
- (5) Delete paragraph (3)(b).

### **Proxy-holder with financial interest**

- 237.** Apply rule 8.6 of the 1991 Rules.

### **Company representation**

- 238.**—(1) Apply rule 8.7 of the 1991 Rules.
- (2) In paragraph (1), the reference to Article 383 of the Companies Order should, after that Article is repealed, be to section 323 of the 2006 Act.

## **PART 20**

### **EXAMINATION OF PERSONS CONCERNED IN BANK INSOLVENCY**

#### **Preliminary**

- 239.**—(1) The rules in this Part relates to applications to the court for an order under Article 220 of the Order (inquiry into company’s dealings when it is, or is alleged to be, insolvent).
- (2) The following definitions apply—
- (a) the person in respect of whom an order is applied for is “the respondent”;
- (b) “the applicable Article” is Article 200 of the Order; and
- (c) the bank is “the insolvent”.

#### **Form and contents of application**

- 240.** Apply rule 9.2 of the 1991 Rules.

#### **Order for examination, etc**

- 241.** Apply rule 9.3 of the 1991 Rules.

#### **Procedure for examination**

- 242.** Apply rule 9.4 of the 1991 Rules.

#### **Record of examination**

- 243.** Apply rule 9.5 of the 1991 Rules.

### **Cost of proceedings**

- 244.**—(1) Apply rule 9.6 of the 1991 Rules.
- (2) In paragraph (2)(a) delete “or 338(1)” and in paragraph (2)(b) delete “or 338(2)”.
- (3) In paragraph (3)(a), for “company insolvency” substitute “bank insolvency”.
- (4) Delete sub-paragraph (3)(b).
- (5) Delete paragraph (5).

## **PART 21**

### **DECLARATION AND PAYMENT OF DIVIDEND**

#### **Preliminary**

**245.**—(1) The rules in this Part relate to the declaration and payment of dividends in a bank insolvency.

- (2) In this part—
- (a) “creditors” means those creditors of the bank of whom the bank liquidator is aware, or who are identified in the bank’s statement of affairs; and
- (b) “the insolvent” means the bank.

#### **Notice of intended dividend**

- 246.**—(1) Apply rule 11.02 of the 1991 Rules.
- (2) Delete paragraph (1)(b) .

#### **Final admission/rejection of proofs**

- 247.**—(1) Apply rule 11.03 of the 1991 Rules.
- (2) Delete paragraph (4).

#### **Postponement or cancellation of dividend**

- 248.** Apply rule 11.04 of the 1991 Rules.

#### **Decision to declare dividend**

- 249.** Apply rule 11.05 of the 1991 Rules.

#### **Notice of declaration**

- 250.**—(1) Apply rule 11.06 of the 1991 Rules.
- (2) Delete paragraph (1)(b).
- (3) In paragraph (2), after (b) add—
- “(ba) expenses incurred by the bank liquidator in the achievement of objective 1 under section 99 of the Banking Act 2009;”.

**Notice of no, or no further, dividend**

251. Apply rule 11.07 of the 1991 Rules.

**Proof altered after payment of dividend**

252. Apply rule 11.08 of the 1991 Rules.

**Secured creditors**

253. Apply rule 11.09 of the 1991 Rules.

**Disqualification from dividend**

254.—(1) Apply rule 11.10 of the 1991 Rules.

(2) For “the Order” substitute “the Order as applied by the 2009 Act”.

**Assignment of right to dividend**

255. Apply rule 11.11 of the 1991 Rules.

**Preferential creditors**

256. Apply rule 11.12 of the 1991 Rules.

**Debt payable at future time**

257.—(1) Apply rule 11.13 of the 1991 Rules.

(2) For paragraph (3) substitute—

“(3) In paragraph (2) “relevant date” means the date of the commencement of the bank insolvency.”.

## 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 28 of Schedule 6 to the Order<sup>(25)</sup>, the Department 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;

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(25) Article 359 of the Order, which introduces Schedule 5, was amended by section 134 of the 2009 Act to extend the powers in the Schedule to rules made under Part 2 of that Act

- (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 as necessary or expedient.

### **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 (Confiscation) (Northern Ireland) Order 1990(26) 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—

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(26) S.I. 1990/2588 (N.I. 17).

“(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.”.

#### **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 12.13 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”.

## **PART 23**

### **INTERPRETATION**

#### **Introductory**

**281.** This Part of the Rules has effect for their interpretation and application; and any definition given in this Part (and in any provision of the 1991 Rules applied by this Part) applies except, and in so far as, the context requires otherwise.

#### **Expressions used generally**

**282.**—(1) Apply rule 0.2 of the 1991 Rules.

(2) For the definition “insolvency proceedings” after “the Order” insert “, the 2009 Act”.

#### **“Give notice”, etc**

**283.** Apply rule 0.3 of the 1991 Rules. In paragraph (3) after “personal service of a document”, add “which means the same as service by hand”.

#### **Notice, etc to solicitors**

**284.** Apply rule 0.4 of the 1991 Rules.

#### **Notice to joint bank liquidators**

**285.** Where two or more persons are acting jointly as the bank liquidator, delivery of a document to one of them is to be treated as delivery to them all.

#### **“Insolvent estate”**

**286.** References to “the insolvent estate” are to the assets of a bank which is subject to a bank insolvency order.

#### **“Responsible insolvency practitioner”, etc**

**287.** In relation to a bank insolvency, “the responsible insolvency practitioner” means the person acting in the bank insolvency as bank liquidator or provisional bank liquidator.

## **The Schedule**

**288.** The Schedule, which applies relevant schedules to the 1991 Rules, has effect.

Signed by authority of the Lord Chancellor

Dated 18th March 2009

*Bridget Prentice*  
Parliamentary Under-Secretary of State  
Ministry of Justice

I concur

Dated 19th March 2009

*Brian Kerr*  
The Lord Chief Justice of Northern Ireland

We concur

Dated 19th March 2009

*Frank Roy*  
*Dave Watts*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## SCHEDULE

Rule 288

The following schedules of the 1991 Rules are applied to these Rules.

- (a) Schedule 1. For “Rule 4.078”, wherever it appears, substitute “rule 40”;
- (b) Schedule 2;
- (c) Schedule 3; and
- (d) Schedule 4.

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**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules revoke and replace the Bank Insolvency Rules (Northern Ireland) 2009 to correct drafting errors in that instrument. They set out the procedure for the bank insolvency process under Part 2 of the Banking Act 2009 (c.1).

The main features of Bank Insolvency are that, in the event of a deposit-taking bank becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (FSCS) to either—

- (a) receive compensation for their lost deposits as soon as possible after the bank goes into bank insolvency; or
- (b) have their account transferred to a different bank.

This is the first objective of the insolvency process.

The procedure can only be initiated by the Bank of England, the Financial Services Authority or the Department by application to the court. The court then makes a bank insolvency order, appointing a bank liquidator. In the initial stages, the bank liquidator is accountable to a liquidation committee formed of the FSA, the Bank of England and the FSCS.

Once the bank liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the bank insolvency will move to the second objective which is to wind up the affairs of the bank so as to achieve the best results for the creditors as a whole.

The Rules are based and follow the same order as the Insolvency Rules (Northern Ireland) 1991 (“the 1991 Rules”) and certain provisions of the 1991 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 2 of the Rules sets out the application process for a bank insolvency order.

Part 3 sets out the procedure for appointing a provisional bank liquidator.

Parts 4 to 8 set out the procedure concerning the creditors and contributories.

Part 9 sets out provisions concerning the bank liquidator.

Part 10 sets out provisions concerning the liquidation committee.

Parts 11- 17 set out provisions relating to the bank’s assets and other miscellaneous provisions.

Part 18 sets out court procedure and practice.

Part 19 sets out provisions re proxies and company representation.

Part 20 sets out provisions concerning the examination of persons concerned in bank insolvency.

Part 21 sets out provisions relating to the declaration of dividend,

Parts 22 and 23 set out miscellaneous and general provisions relating to the procedure.

An Impact Assessment of the effect of the Banking Act 2009 is available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).