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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 122**

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

**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>(1)</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.

(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

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(1) 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).

- (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(2).

#### **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”.