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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 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)(1).
- (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(2) 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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(1) Article 150A was inserted by the (Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order [S.R. 2006 No. 25](#).

(2) 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.