

*Draft Regulations laid before Parliament under section 235(2) of the Banking Act 2009, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Investment Bank Special Administration Regulations 2011**

*Made* - - - - **\*\*\***

*Coming into force in accordance with regulation 1*

The Treasury make the following Regulations in exercise of the powers conferred by sections 233, 234 and 259(1) of the Banking Act 2009<sup>(1)</sup> (the power in section 233 having not yet lapsed under section 235(4)).

Before laying these Regulations before Parliament in draft, the Treasury consulted in accordance with section 235(3) of that Act.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 235(2) of that Act.

**Citation and commencement**

**1.** These Regulations may be cited as the Investment Bank Special Administration Regulations 2011 and shall come into force on the day after the day on which they are made.

**Interpretation**

**2.—(1)** In these Regulations, except where the context otherwise requires—

“the Act” means the Banking Act 2009;

“administrator” has the meaning set out in regulation 4;

“Authorities” means the Bank of England, the Treasury and the FSA;

“business day” has the meaning set out in section 251 of the Insolvency Act;

“client” means a person for whom the investment bank has undertaken to receive or hold client assets (whether or not on trust and whether or not that undertaking has been complied with);

“contributory” has the meaning set out in section 79 of the Insolvency Act<sup>(2)</sup>;

“court” means—

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(1) 2009 c. 1.

(2) Section 79 was amended by S.I. 2009/1941.

- (a) in England and Wales, the High Court,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court;

“deposit-taking bank” means an investment bank to which the definition set out either in section 2 or in section 91 of the Act applies;

“the Disqualification Act” means the Company Directors Disqualification Act 1986<sup>(3)</sup>;

“enactment” includes—

- (a) an enactment comprised in or in an instrument made under an Act of the Scottish Parliament;
- (b) Acts and Measures of the National Assembly for Wales and instruments made such an Act or Measure;
- (c) Northern Ireland legislation;

and any EU Instrument (as defined in Part 2 of Schedule 1 of the European Communities Act 1972<sup>(4)</sup>);

“fair” is to be construed in accordance with section 93(8) of the Act;

“FSA” means the Financial Services Authority;

“FSCS” means the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA);

“FSMA” means the Financial Services and Markets Act 2000<sup>(5)</sup>;

“the Insolvency Act” means the Insolvency Act 1986<sup>(6)</sup>;

“insolvency rules” means rules made under section 411 of the Insolvency Act as applied and modified by regulation 15;

“market charge” means a charge to which Part 7 of the Companies Act 1989<sup>(7)</sup> applies as a result of the operation of section 173 of that Act<sup>(8)</sup>;

“market contract” means a contract to which Part 7 of the Companies Act 1989 applies as a result of the operation of section 155 of that Act<sup>(9)</sup>;

“market infrastructure body” means a recognised clearing house, recognised investment exchange, recognised overseas clearing house or recognised overseas investment exchange in relation to which the investment bank is a counterparty in a market contract or to a market charge or is a member or participant;

“Objective 1”, “Objective 2” and “Objective 3” have the meanings set out in regulation 10;

“prescribed” means prescribed by insolvency rules;

“recognised clearing house” has the meaning set out in section 285 of FSMA;

“recognised investment exchange” has the meaning set out in section 285 of FSMA;

“recognised overseas clearing house” means an overseas person in respect of whom the FSA has made a recognition order under section 292 of FSMA<sup>(10)</sup> declaring them to be a recognised clearing house;

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<sup>(3)</sup> 1986 c. 46.

<sup>(4)</sup> 1972 c. 68; Schedule 1 was amended by the European Union (Amendment) Act 2008 (c.7), section 3(3), Schedule, Part 1.

<sup>(5)</sup> 2000 c. 8.

<sup>(6)</sup> 1986 c. 45.

<sup>(7)</sup> 1989 c. 40.

<sup>(8)</sup> Section 173 was amended by S.I. 1991/880 and by S.I. 1992/1315.

<sup>(9)</sup> Section 155 was amended by S.I. 1991/880, S.I. 1998/1748 and by S.I. 2009/853.

<sup>(10)</sup> Section 292 was amended by S.I. 2006/2975.

“recognised overseas investment exchange” means an overseas person in respect of whom the FSA has made a recognition order under section 292 of FSMA declaring them to be a recognised investment exchange;

“Schedule B1” means Schedule B1 to the Insolvency Act(11);

“Schedule B1 administration” means the administration procedure set out in Schedule B1;

“securities” means financial instruments as defined in regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003(12);

“security interest” means any legal or equitable interest or any other right in security (other than a title transfer financial collateral arrangement) created or otherwise arising by way of security including—

- (a) a pledge,
- (b) a mortgage,
- (c) a fixed charge,
- (d) a charge created as a floating charge, or
- (e) a lien;

“special administration” has the meaning set out in regulation 3;

“special administration (bank insolvency)” has the meaning set out in paragraph 1 of Schedule 1;

“special administration (bank administration)” has the meaning set out in paragraph 1 of Schedule 2;

“special administration objectives” has the meaning set out in regulation 10;

“special administration order” has the meaning set out in regulation 4;

“statement of proposals” means the statement of proposals drawn up by the administrator in accordance with—

- (a) paragraph 49 of Schedule B1 (as applied by regulation 15);
- (b) where the FSA has given a direction, regulation 17; or
- (c) in relation to Schedule 2, paragraph 7 of that schedule; and

“title transfer financial collateral arrangement” has the meaning set out in regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003.

(2) In the definition of “security interest”, in sub-paragraph (c), in its application to Scotland, “fixed charge” means a fixed security within the meaning given by section 47(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(13).

(3) References in these Regulations to a regulated activity must be read with—

- (a) section 22 of FSMA (classes of regulated activity and categories of investment);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act (regulated activities).

(4) For the purposes of a reference in these Regulations to inability to pay debts—

- (a) an investment bank that is in default on an obligation to pay a sum due and payable under an agreement is to be treated as unable to pay its debts; and
- (b) section 123 of the Insolvency Act (inability to pay debts) also applies,

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(11) Relevant amendments to Schedule B1 were made by S.I. 2003/2096, S.I. 2005/879, S.I. 2007/2974, S.I. 2008/948, S.I. 2008/1897, S.I. 2009/1941 and S.I. 2010/18.

(12) S.I. 2003/3226.

(13) 2007 asp 3.

and for the purposes of sub-paragraph (a), “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the investment bank.

(5) Expressions used in these Regulations and in the Insolvency Act have the same meaning as in that Act, and the provision made by paragraphs 100 and 101 of Schedule B1 (as applied by regulation 15) in respect of the effect of the references in that Schedule also apply in respect of the same references where used in these Regulations.

(6) Expressions used in these Regulations and in the Companies Act 2006(14) have the same meaning as in that Act.

(7) Regulation 26 applies with respect to the application of these Regulations to Northern Ireland.

## Overview

**3.—**(1) These Regulations provide for a procedure to be known as investment bank special administration (“special administration”).

(2) The main features of special administration are that—

- (a) an investment bank enters the procedure by court order;
- (b) the order appoints an administrator;
- (c) the administrator is to pursue the special administration objectives in accordance with the statement of proposals approved by the meeting of creditors and clients and, in certain circumstances, the FSA; and
- (d) in other respects the procedure is the same as for Schedule B1 administration under the Insolvency Act, subject to specific modifications, and the inclusion of certain liquidation provisions of the Insolvency Act.

(3) Where the investment bank is a deposit-taking bank with eligible depositors (within the meaning of section 93(3) of the Act)—

- (a) regulations 4 to 8 do not apply; and
- (b) in addition to the insolvency procedures established under Parts 2 and 3 of the Act, the Bank of England or, as the case may be, the FSA, may apply for an order to put the bank into—
- (c) special administration (bank insolvency) as set out in Schedule 1 (as applied by regulation 9); or
- (d) special administration (bank administration) as set out in Schedule 2 (as applied by regulation 9).

(4) Where the investment bank is a deposit-taking bank but has no eligible depositors, the investment bank must not be put into special administration (bank insolvency); instead the investment bank may be put into either—

- (a) special administration (bank administration), (in which case regulations 4 to 8 do not apply); or
- (b) special administration.

## Special administration order

**4.—**(1) An investment bank special administration order (“special administration order”) is an order appointing a person as the investment bank administrator (“administrator”) of an investment bank.

(2) A person is eligible for appointment as administrator under a special administration order if qualified to act as an insolvency practitioner.

(3) An appointment may be made only if the person has consented to act.

(4) For the purpose of these Regulations—

- (a) an investment bank is “in special administration” while the appointment of the administrator has effect;
- (b) an investment bank “enters special administration” when the appointment of the administrator takes effect;
- (c) an investment bank ceases to be in special administration when the appointment of the administrator ceases to have effect in accordance with these Regulations; and
- (d) an investment bank does not cease to be in special administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

### Application

**5.—**(1) An application to the court for a special administration order may be made to the court by—

- (a) the investment bank;
- (b) the directors of the investment bank;
- (c) one or more creditors of the investment bank;
- (d) the designated officer for a magistrates’ court in the exercise of the power conferred by section 87A of the Magistrates’ Courts Act 1980<sup>(15)</sup> (fines imposed on companies);
- (e) (subject to paragraph (7)), a contributory of the investment bank;
- (f) a combination of persons listed in sub-paragraphs (a) to (e);
- (g) the Secretary of State; or
- (h) the FSA.

(2) Where an application is made by a person other than the FSA, the FSA is entitled to be heard at—

- (a) the hearing of the application for special administration; and
- (b) any other hearing of the court in relation to the investment bank under these Regulations.

(3) An application must nominate a person to be appointed as the administrator.

(4) As soon as is reasonably practicable after making the application, the applicant shall notify—

- (a) a person who gave notice to the FSA in accordance with Condition 1 of regulation 8; and
- (b) such other persons as may be prescribed.

(5) An application may not be withdrawn without the permission of the court.

(6) In sub-paragraph (1)(c), “creditor” includes a contingent creditor and a prospective creditor.

(7) A contributory (“C”) is not entitled to make an application for special administration unless either—

- (a) the number of members is reduced below 2; or

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<sup>(15)</sup> 1980 c. 43; section 87A was inserted by the Criminal Justice Act 1988 (c. 33), section 62(1) and amended by the Enterprise Act 2002 (c. 40), section 248(3), Schedule 17, paragraph 2, the Courts Act 2003 (c. 39), section 109(1), Schedule 8, paragraph 224(1), (2), (3), Schedule 10, and the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 62(3), Schedule 13, paragraphs 45, 53(1), (2), (3), (4).

- (b) the shares in respect of which C is a contributory, or some of them, either were originally allotted to C, or have been held by C and registered in C's name, for at least 6 months during the 18 months before the commencement of the special administration, or have devolved on C through the death of a former holder.

### Grounds for applying

6.—(1) In this regulation—

- (a) Ground A is that the investment bank is, or is likely to become, unable to pay its debts;
- (b) Ground B is that it would be fair to put the investment bank into special administration; and
- (c) Ground C is that it is expedient in the public interest to put the investment bank into special administration.

(2) The FSA or the persons listed in regulation 5(1)(a) to (e) may apply for a special administration order only if they consider that Ground A or Ground B is met.

(3) The Secretary of State may apply for a special administration order only if it appears to the Secretary of State that Grounds B and C are met.

(4) The sources of information on the basis of which the Secretary of State may reach a decision on Ground C include those listed in section 124A(1)(16) of the Insolvency Act (petition for winding up on grounds of public interest).

### Powers of the court

7.—(1) On an application for a special administration order the court may—

- (a) grant the application in accordance with paragraph (2);
- (b) dismiss the application;
- (c) adjourn the hearing (generally or to a specified date);
- (d) make an interim order;
- (e) on the application of the FSA, treat the application as an administration application by the FSA under Schedule B1 in accordance with section 359(1) of FSMA(17); or
- (f) make any other order which the court thinks appropriate.

(2) The court may make a special administration order if it is satisfied that the company is an investment bank and—

- (a) (on the application of persons listed in regulation 5(1)(a) to (e) or the FSA) that Ground A or Ground B in regulation 6 is satisfied;
- (b) (on the application of the Secretary of State) if satisfied that Grounds B and C in regulation 6 are satisfied.

(3) Where the application for a special administration order is made by members of the investment bank as contributories on the basis that Ground B in regulation 6 is satisfied, the court, if it is of the opinion that—

- (a) the applicants are entitled to relief either by a special administration order being made in respect of the investment bank or by some other means; and

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(16) Section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3) and amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), section 25(1), Schedule 2, Part 3 paragraph 27.

(17) Section 359 was substituted by the Enterprise Act 2002 (c. 40), section 248(3), Schedule 17, paragraphs 53, 55, and by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), article 3(3), Schedule 2, paragraphs 56, 58(1), (2), (3), (4). There are other amendments to this section that are not relevant here.

- (b) in the absence of any other remedy it would be fair that the special administration order be made in respect of the investment bank,

shall make a special administration order; but this does not apply if the court is also of the opinion that an alternative remedy is available to the applicants and that they are acting unreasonably in applying for a special administration order instead of pursuing that other remedy.

- (4) A special administration order takes effect in accordance with its terms.

### **Notice to FSA of preliminary steps to other insolvency proceedings**

8.—(1) An application for an administration order in respect of an investment bank may not be made unless the conditions in paragraph (5) are satisfied.

(2) A petition for a winding up order in respect of an investment bank may not be made unless the conditions in paragraph (5) are satisfied.

(3) A resolution for the voluntary winding up of an investment bank may not be made unless the conditions in paragraph (5) are satisfied.

(4) An administrator of an investment bank may not be appointed unless the conditions in paragraph (5) are satisfied.

(5) The conditions are as follows—

- (a) Condition 1 is that the FSA has been notified of the preliminary steps taken in respect of an insolvency procedure;
- (b) Condition 2 is that a copy of the notice complying with Condition 1 has been filed (in Scotland, lodged) with the court (and made available for public inspection by the court);
- (c) Condition 3 is that —
  - (i) the period of 2 weeks, beginning with the day on which the notice is received by the FSA, has ended, or
  - (ii) the FSA has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead; and
- (d) Condition 4 is that no application for a special administration order is pending.

(6) Where the FSA receives notice under Condition 1, it shall inform the person who gave the notice, within the period in Condition 3—

- (a) whether or not it consents to the insolvency procedure to which the notice relates going ahead;
- (b) whether or not it intends to apply for that (or an alternative) insolvency procedure itself; or
- (c) whether it intends to apply for a special administration order.

(7) Arranging for the giving of the notice in order to satisfy Condition 1 may be treated as a step with a view to minimising the potential loss to the investment bank's creditors for the purpose of section 214 of the Insolvency Act (as applied by regulation 15).

(8) In this regulation—

“investment bank” does not include an investment bank that is a deposit-taking bank; and

“preliminary steps taken in respect of an insolvency procedure” means that—

- (a) an application for an administration order has been made;
- (b) a petition for a winding up order has been presented;
- (c) a resolution for voluntary winding up has been proposed by the investment bank; or
- (d) a resolution for the appointment of an administrator has been proposed.

### **Application where investment bank is a deposit-taking bank**

9. Subject to regulation 3(4), where the investment bank is a deposit-taking bank then Schedule 1 (Special administration (bank insolvency)) and Schedule 2 (Special administration (bank administration)) apply.

### **Special administration objectives**

10.—(1) The administrator has three special administration objectives (“the special administration objectives”)—

- (a) Objective 1 is to ensure the return of client assets as soon as is reasonably practicable;
- (b) Objective 2 is to ensure timely engagement with market infrastructure bodies and the Authorities pursuant to regulation 13; and
- (c) Objective 3 is to either—
  - (i) rescue the investment bank as a going concern, or
  - (ii) wind it up in the best interests of the creditors.

(2) In relation to sub-paragraph (1)(a), the administrator is entitled to deal with and return client assets in whatever order the administrator thinks best achieves Objective 1.

(3) The order in which the special administration objectives are listed in this regulation is not significant: subject to regulation 16, the administrator must—

- (a) commence work on each objective immediately after appointment, prioritising the order of work on each objective as the administrator thinks fit, in order to achieve the best result overall for clients and creditors; and
- (b) set out, in the statement of proposals made under paragraph 49 of Schedule B1 (as applied by regulation 15), the order in which the administrator intends to pursue the objectives once the statement has been approved.

(4) The administrator must work to achieve each objective, in accordance with the priority afforded to the objective as provided in paragraph (3), as quickly and efficiently as is reasonably practicable.

(5) For the purposes of Objective 1, “return of client assets” or where the client assets are “returned” to the client means that the investment bank relinquishes full control over the assets for the benefit of the client to the extent of—

- (a) the client’s beneficial entitlement to those assets (where the assets in question have been held on trust by the investment bank); or
- (b) the client’s right to those assets as bailor or otherwise (where the investment bank has been holding those assets as bailee (in Scotland, as custodian of those assets) or by some other means to the order of the client);

having taken into account any entitlement the investment bank might have, or a third party might have, in respect of those assets, of which the administrator is aware at the time the assets are returned to the client.

(6) In relation to paragraph (5)—

- (a) where client assets are returned to a person other than the client, for “client” substitute “claimant”; and
- (b) where the claimant is the investment bank, for “relinquishes control over the assets for the benefit of the client” substitute “takes full title to the assets for its benefit”.



### **Objective 1 – distribution of client assets**

11.—(1) If the administrator thinks it necessary in order to expedite the return of client assets, the administrator may set a bar date for the submission of—

- (a) claims to the beneficial ownership, or other form of ownership, of the client assets; or
- (b) claims of persons in relation to a security interest asserted over, or other entitlement to, those assets.

(2) Claims under paragraph (1) include claims that are contingent or disputed.

(3) In setting a bar date, the administrator must allow a reasonable time after notice of the special administration has been published (in accordance with insolvency rules) for persons to be able to calculate and submit their claims.

(4) Where the administrator sets a bar date—

- (a) the administrator shall return client assets in accordance with the procedure set down by insolvency rules; but
- (b) no client assets shall be returned after the bar date has been set without the approval of the court in accordance with the procedure set down in insolvency rules.

(5) Where the administrator, after setting a bar date, has returned client assets, if the administrator then receives a late claim of a type described in paragraph (1) in respect of assets that have been returned—

- (a) there shall be no disruption to those client assets that have already been returned;
- (b) the person to whom the assets have been returned acquires good title to them as against the late-claiming claimant,

and insolvency rules shall prescribe how the late claim is to be treated by the administrator.

(6) The restrictions in paragraph (5) shall not apply where—

- (a) the client assets were returned to a person (“P”) by the administrator in bad faith in which P was complicit; or
- (b) P is later found to have made a false claim to those assets.

(7) In this regulation, “bar date” means a date by which claims as described in paragraph (1) must be submitted.

(8) This regulation does not apply to client assets received or held, or which should have been held, by the investment bank in accordance with rules made by virtue of section 139 of FSMA (clients’ money).

### **Objective 1 - shortfall in client assets held in omnibus account**

12.—(1) This regulation applies if—

- (a) the administrator becomes aware that there is a shortfall in the amount available for distribution of securities of a particular description held by the investment bank as client assets in a client omnibus account;
- (b) the shortfall cannot be remedied following the resolution of on-going disputes; and
- (c) the assets in question are not ones which are received or held, or should have been held, by the investment bank in accordance with rules made by virtue of section 139 of FSMA (clients’ money).

(2) The administrator, in making the distribution, shall ensure (subject to the treatment of late claims as described in regulation 11(5)) that the shortfall referred to in paragraph (1) be borne pro rata by all clients for whom the investment bank holds securities of that particular description in that same account in proportion to their beneficial interest in those securities.

(3) A person (including the investment bank) (“a security holder”) with a security interest over securities held in the client omnibus account on behalf of a particular client shall be entitled to participate in distributions and shortfall claims in respect of those securities in accordance with their entitlement as against that client (subject to the treatment of late claims as described in regulation 11(5)).

(4) Security holders shall not, at any time, be entitled to claim in aggregate in excess of the distribution which the client would have been entitled to if there had been no claim by that client.

(5) Any reduction of the client’s beneficial interest as a result of the application of paragraph (2) shall limit correspondingly the rights of the security holder in respect of the distribution, (but this shall not affect the right of the security holder in respect of the client’s shortfall claim as described in paragraph (7)).

(6) Where there is a dispute between persons as to their respective share of a distribution, the administrator may—

- (a) make the distribution in accordance with an agreement drawn up between the parties in dispute; or
- (b) lodge the securities that are the subject of the dispute with the court,

and if the administrator pursues either course of action, the administrator’s obligations in respect of Objective 1 with regard to these securities shall be deemed to be discharged.

(7) The shortfall borne by a client under paragraph (2) is that client’s shortfall claim against the investment bank (“shortfall claim”) and shall rank as an unsecured claim.

(8) The value of a client’s shortfall claim shall be based on the market price for those securities to which the shortfall claim relates on the date the investment bank entered special administration or, if that is not a business day, on the last business day prior to the investment bank entering special administration.

(9) In this regulation—

“client omnibus account” means an account held by the investment bank, or another institution in the name of the investment bank, made up of multiple accounts of clients of the investment bank;

“distribution” means the return of client assets that are securities of a particular description;

“market price” means—

- (a) the value of the securities on the day in question as determined by a reputable source used by the investment bank, immediately prior to the investment bank entering special administration, for valuing or reporting in respect of those securities; or
- (b) if this is not practicable, the value of those securities on the day in question as determined by the administrator which reflects, in the administrator’s opinion, a fair and reasonable price for those securities; and

“securities of a particular description” means securities issued by the same issuer which are of the same class of shares or stock; or in the case of securities other than shares or stock, which are of the same currency and denomination and treated as forming part of the same issue.

## **Objective 2 – engaging with market infrastructure bodies and the Authorities**

**13.**—(1) The administrator shall work with—

- (a) a market infrastructure body to—
  - (i) facilitate the operation of that body’s default rules or default arrangements,
  - (ii) resolve issues arising from the operation of those rules or arrangements, and

- (iii) facilitate the settlement or prompt cancellation of non-settled market contracts or, as the case may be, of unsettled settlement instructions; and
  - (b) the Authorities, to facilitate any actions the Authorities propose to take to minimise the disruption of businesses and the markets as a consequence of a special administration order being made in respect of the investment bank.
- (2) In paragraph (1), “work with” means to—
  - (a) comply, as soon as reasonably practicable, with a written request from such a body or from any of the Authorities for the provision of information or the production of documents (in hard copy or in electronic format) relating to the investment bank;
  - (b) allow that body or any of the Authorities, on reasonable request, access to the facilities, staff and premises of the investment bank for the purposes set out in paragraph (1),but no action need be taken in accordance with this paragraph to the extent that, in the opinion of the administrator, such action would lead to a material reduction in the value of the property of the investment bank.
- (3) In the event that the administrator receives a request under paragraph (2) from a market infrastructure body based overseas, no action needs to be taken in accordance with paragraph (2) if that request conflicts with a request from any of the Authorities.
- (4) Where a market infrastructure body has made a request of the type referred to in paragraph (2), that body shall provide the administrator with such information as the administrator may reasonably require in pursuit of Objective 2.
- (5) Under this regulation a person or body shall not be required to provide any information—
  - (a) which they would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality of communications in the Court of Session; or
  - (b) if such provision by the body holding it would be prohibited by or under any enactment.
- (6) In this regulation—
  - “default arrangements” has the meaning set out in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(18)</sup>; and
  - “default rules” has the meaning set out in section 188 of the Companies Act 1989<sup>(19)</sup>.

### Continuity of supply

- 14.**—(1) This regulation applies where, before the commencement of special administration, the investment bank had entered into arrangements with a supplier for the provision of a supply to the investment bank.
- (2) After the commencement of special administration, the supplier—
    - (a) shall not terminate a supply unless—
      - (i) any charges in respect of the supply, being charges for a supply given after the commencement of special administration, remain unpaid for more than 28 days,
      - (ii) the administrator consents to the termination, or
      - (iii) the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply shall cause the supplier to suffer hardship; and

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<sup>(18)</sup> S.I. 1999/2979 (applied in Northern Ireland by S.I. 2006/50 and S.I. 2007/832); this instrument was amended by S.I. 2006/50.  
<sup>(19)</sup> Section 188 was amended by S.I. 2009/853.

(b) shall not make it a condition of a supply, or do anything which has the effect of making it a condition of the giving of a supply, that any outstanding charges in respect of the supply, being charges for a supply given before the commencement of special administration, are paid.

(3) Where, before the commencement of special administration, a contractual right to terminate a supply has arisen but has not been exercised, then, for the purposes of this regulation, the commencement of special administration shall cause that right to lapse and the supply shall only be terminated if a ground in paragraph (2)(a) applies.

(4) Any provision in a contract between the investment bank and the supplier that purports to terminate the agreement if any action is taken to put the investment bank into special administration is void.

(5) Any expenses incurred by the investment bank on the provision of a supply after the commencement of special administration are to be treated as necessary disbursements in the course of the special administration.

(6) In this regulation—

“accredited network provider” means a person accredited with a relevant system who operates a secure data network through which the investment bank communicates with the relevant system;

“commencement of special administration” means the making of the special administration order;

“relevant system” has the meaning set out in regulation 2(1) of the Uncertificated Securities Regulations 2001(20);

“sponsoring system participant” has the meaning set out in regulation 3 of the Uncertificated Securities Regulations 2001 (in the definition of “system participant”);

“supplier” means the person controlling the provision of a supply to the investment bank under a licence, sub-licence or other arrangement, and includes a company that is a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) in respect of the investment bank, but does not include market infrastructure bodies; and

“supply” means a supply of—

- (a) computer hardware or software or other hardware used by the investment bank in connection with the trading of securities or derivatives;
- (b) financial data;
- (c) infrastructure permitting electronic communication services;
- (d) data processing;
- (e) secure data networks provided by an accredited network provider; or
- (f) access to a relevant system by a sponsoring system participant,

but does not include any services provided for in the contract between the investment bank and the supplier beyond the provision of the supply.

### General powers, duties and effect

15.—(1) Without prejudice to any specific powers conferred on an administrator by these Regulations, an administrator may do anything necessary or expedient for the pursuit of the special administration objectives.

(2) The administrator is an officer of the court.

- (3) The following provisions of this regulation provide for —
- (a) general powers and duties of administrators (by application of provisions about administrators in Schedule B1 administration); and
  - (b) the general process and effect of special administration (by application of provisions about Schedule B1 administration).
- (4) The provisions of Schedule B1 and other provisions of the Insolvency Act set out in the Tables apply in relation to special administration as in relation to other insolvency proceedings with the modifications set out—
- (a) in paragraph (5) (in respect of the provisions listed in Table 1);
  - (b) in paragraph (6) (in respect of the provisions listed in Table 2),
- and any other modification specified in the Tables.
- (5) The modifications in respect of the provisions referred to in Table 1 are that—
- (a) a reference to the administrator is a reference to the administrator appointed under a special administration order;
  - (b) a reference to administration is a reference to special administration;
  - (c) a reference to an administration order is a reference to a special administration order;
  - (d) a reference to a company is a reference to an investment bank;
  - (e) a reference to the purpose of administration is a reference to the special administration objectives; and
  - (f) a reference to a provision of the Insolvency Act is a reference to that provision as applied by this regulation.
- (6) The modifications in respect of the provisions referred to in Table 2 are that—
- (a) a reference to the liquidator is a reference to the administrator appointed under a special administration order;
  - (b) a reference to winding up is a reference to special administration;
  - (c) a reference to winding up by the court is a reference to the imposition of special administration by order of the court;
  - (d) a reference to being wound up under Part 4 or 5 of the Insolvency Act is a reference to an investment bank being in special administration;
  - (e) a reference to the commencement of winding up is a reference to the commencement of special administration;
  - (f) a reference to going into liquidation is a reference to entering special administration;
  - (g) a reference to liquidation or to insolvent liquidation is a reference to special administration;
  - (h) a reference to a winding up order is a reference to a special administration order;
  - (i) a reference to a company is a reference to an investment bank; and
  - (j) a reference to a provision of the Insolvency Act is a reference to that provision as applied by this regulation.

**Table 1: Applied provisions: Schedule B1**

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 40(1)(a)	Dismissal of pending winding up petition	

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 42	Moratorium on insolvency proceedings	Sub-paragraphs (4)(a) and (4)(aa) are not applied.
Para 43	Moratorium on other legal processes	
Para 44(1) and (5)	Interim moratorium	
Para 45	Publicity	
Para 46	Announcement of administrator's appointment	<p>(a) In sub-paragraph (3)(a), in addition to obtaining the list of creditors, the administrator shall also obtain as complete a list as possible of the clients of the investment bank.</p> <p>(b) In sub-paragraph (3)(b), the administrator shall send a notice of their appointment to each client of whose claim and address the administrator is aware.</p> <p>(c) Where the special administration application has not been made by the FSA, notice of the administrator's appointment shall also be sent under sub-paragraph (5) to the FSA.</p> <p>(d) Sub-paragraphs (6)(b) and (c) are not applied.</p>
Para 47	Statement of company's affairs	In sub-paragraph (2), the statement must also include particulars (to the extent prescribed) of the client assets held by the investment bank.
Para 48	Statement of company's affairs	
Para 49	Statement of proposals	<i>Paragraphs 49(1) to (3), 51, 53, 54 and 55 do not apply where the FSA gives a direction under regulation 16 and the direction has not been withdrawn: see regulations 16 - 19.</i>
Para 49		<p>(a) Sub-paragraph (2)(b) is not applied.</p> <p>(b) Under sub-paragraph (4), the administrator shall also send a copy of the statement of proposals to—</p>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(i) every client of whose claim the administrator is aware and has a means of contacting; and</p> <p>(ii) the FSA.</p> <p>(c) The administrator shall also give notice in the prescribed manner that the statement of proposals is to be provided free of charge to a market infrastructure body who applies in writing to a specified address.</p>
Para 50	Creditors' meeting	<p>(a) In sub-paragraph (1), the administrator shall also summon the clients referred to in paragraph 49(4) to the meeting of creditors and such clients shall be given the prescribed period of notice under sub-paragraph (1)(b).</p> <p>(b) The FSA may appoint a person to attend a meeting of creditors and make representations as to any matter for decision.</p>
Para 51	Requirement for initial creditors' meeting	<p>(a) Each copy of an administrator's proposals sent to a client under paragraph 49 shall be accompanied by an invitation to the initial creditors' meeting.</p> <p>(b) The administrator's proposals sent to the FSA must also be accompanied by an invitation to the initial creditors' meeting.</p>
Para 53	Business and result of initial creditors' meeting	<p>(a) Insolvency rules shall prescribe how clients shall vote at meetings of creditors.</p> <p>(b) Under sub-paragraph (2), if the FSA has not appointed a person to attend the meeting, the administrator must also report any decision taken to the FSA.</p>
Para 54	Revision of administrator's proposals	<p>(a) If the revision proposed by the administrator affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients.</p> <p>(b) If the administrator thinks that the revision proposed only affects either creditors or clients, then this paragraph only applies to the affected party, however the party not affected must be informed</p>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>of the revision in a manner prescribed in insolvency rules.</p> <p>(c) The FSA must be invited to the creditors' meeting mentioned in sub-paragraph (2)(a).</p> <p>(d) The statement of the proposed revision mentioned in sub-paragraph (2)(b) must also be sent to the FSA.</p>
Para 55	Failure to obtain approval of administrator's proposals	<p>(a) In making an order under sub-paragraph (2) the court must have regard to the special administration objectives.</p> <p>(b) Sub-paragraph (2)(d) is not applied.</p>
Para 56	Further creditors' meetings	The FSA must be invited to any meeting summoned under this paragraph.
Para 57	Creditors' committee	<p>(a) A creditors' committee can only be established by a creditors' meeting to which creditors and clients have both been given notice.</p> <p>(b) The FSA may appoint a person to attend a meeting of the creditors' committee and make representations as to any matter for decision.</p> <p>(c) Insolvency rules shall ensure that, where a meeting of creditors resolves to establish a creditors' committee, the makeup of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives.</p>
Para 58	Correspondence instead of creditors' meeting	
Para 59	Functions of an administrator	
Para 60 (and Schedule to the Insolvency Act)	General powers	<i>Certain powers in Schedule 4 of the Insolvency Act are also applied (see Table 2).</i>
Para 61	Directors	
Para 62	Power to call meetings	The administrator may also call a meeting of clients or contributories.



<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 63	Application to court for directions	
Para 64	Management powers	
Para 65	Distribution to creditors	Sub-paragraph (3) is not applied.
Para 66	Payments	
Para 67	Property	
Para 68	Management	<p>In this paragraph, references to proposals approved under paragraphs 53 or 54 include—</p> <p>(a) proposals agreed with the FSA under regulations 17 or 18; or</p> <p>(b) proposals in respect of which the court has made an order dispensing with the need for agreement in accordance with those regulations,</p> <p>without need for approval.</p>
Para 69	Agency	
Para 70	Floating charge	
Para 71	Fixed charge	
Para 72	Hire purchase property	
Para 73	Protection for secured or preferential creditors	Sub-paragraph (2)(d) is not applied.
Para 74	Challenge to administrator's conduct	<p>(a) The FSA may also make an application under this paragraph on the grounds that—</p> <p>(i) the administrator is acting or has acted so as unfairly to harm the interests of some or all of the members, creditors or clients; or</p> <p>(ii) the administrator is proposing to act in a way which would unfairly harm the interests of some or all of the members, creditors or clients.</p> <p>(b) A client may also make an application under sub-paragraph (1) or (2).</p> <p>(c) Where the FSA has given a direction under regulation 16 which has not been withdrawn, an order may not be made under</p>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>this paragraph if it would impede or prevent compliance with the direction.</p> <p>(d) Any of the following persons may make an application under this paragraph on the grounds that the administrator is not taking any action in response to a request from that person under regulation 13(2) and that the person is of the opinion that the action requested would not lead to a material reduction in the value of the property of the investment bank—</p> <p>(i) the Bank of England,</p> <p>(ii) the Treasury,</p> <p>(iii) the FSA, or</p> <p>(iv) a market infrastructure body.</p>
Para 75	Misfeasance	A client and the FSA shall be included in the list of persons who may make an application under sub-paragraph (2).
Para 79	Court ending administration on application of administrator	<p>Sub-paragraph (2) is not applied.</p> <p><i>See regulation 20</i></p>
Para 81	Court ending administration on application of a creditor	This paragraph is not applied where the administrator was appointed by the court on the application of the FSA or the Secretary of State.
Para 84	Termination: no more assets for distribution	<p>(a) The administrator shall only send a notice under sub-paragraph (1) if the investment bank no longer holds client assets.</p> <p>(b) In sub-paragraph (5), a copy of the notice should also be sent to every client of the investment bank of whom the administrator is aware and the FSA.</p> <p><i>See regulation 21</i></p>
Para 85	Discharge of administration order	
Para 86	Notice to Companies Registrar at the end of administration	

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 87	Resignation	(a) Where the administrator was appointed by the court on the application of the FSA or the Secretary of State, the notice of the resignation given in accordance with sub-paragraph (2)(a) must be also given to the applicant.  (b) Sub-paragraphs (2)(b) to (d) are not applied.
Para 88	Removal	
Para 89	Disqualification	(a) Where the administrator was appointed by the court on the application of the FSA or the Secretary of State, the notice given in accordance with sub-paragraph (2)(a) must be also given to the applicant.  (b) Sub-paragraphs (2)(b) to (d) are not applied.
Para 90	Replacement	The reference to paragraphs 91 to 95 is to paragraph 91.
Para 91	Replacement	The FSA is added to the list of persons who may make an application to appoint an administrator but to whom the restrictions in sub-paragraph (2) apply.
Para 98	Discharge	Sub-paragraphs (2)(b) and (3) are not applied.
Para 99	Vacation of office: charges and liabilities	(a) In sub-paragraph (3), the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 will be charged on and payable out of the client assets.  (b) In sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) does not include a charge on client assets.
Para 100	Joint administrators	
Para 101	Joint administrators	In sub-paragraph (3), the reference to paragraphs 87 to 99 is to paragraphs 87 to 91 and 98 to 99.
Para 102	Joint administrators	
Para 103	Joint administrators	(a) In sub-paragraph (2), the reference to paragraph 12(1)(a) to (e) is to regulation 5(1).

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		(b) Sub-paragraphs (3) to (5) are not applied.
Para 104	Presumption of validity	
Para 105	Majority decision of directors	
Para 106 (and section 430 of and Schedule 10 to the Insolvency Act)	Fines	Sub-paragraphs (2)(a), (2)(b) and (2)(l) to (2)(n) are not applied.
Para 107	Extension of time limit	In considering an application under paragraph 107, the court must have regard to the special administration objectives.
Para 108	Extension of time limit	(a) To obtain consent under this paragraph, the administrator must also obtain consent of those clients whose claims amount to more than 50% of the total amount of claims for client assets, disregarding the claims of those clients who were sent a copy of the statement of proposals but who did not respond to an invitation to give or withhold consent.  (b) Sub-paragraph (3) is not applied.
Para 109	Extension of time limit	
Para 111	Interpretation	The definition of “administrator” and sub-paragraph (1A)(b) and (c) and sub-paragraph (1B) are not applied.
Paras 112- 116	Scotland	

**Table 2: Applied provisions: other provisions of the Insolvency Act(21)**

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Sections 74 and 76-83	Contributories	

(21) Relevant amendments to the provisions of the Insolvency Act included in Table 2 are as follows: sections 74, 76 to 78, 80 and 83 were amended by S.I. 2009/1941; section 176A was inserted by the Enterprise Act 2002, section 252 and amended by S.I. 2008/948; sections 183 and 184 were amended by the Courts Act 2003 (c. 39), section 109(1), Schedule 8, paragraphs 295 and 296 and section 184 was amended by S.I. 1986/1996; section 185 was amended by

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 167 (and Schedule 4)	Powers of the liquidator	(a) In subsections (1) and (2), references to “liquidation committee” is to “creditors’ committee”.  (b) A client may also apply to the court under subsection (3).  (c) In Schedule 4, paragraphs 4 to 10 and 12 shall not apply, and in paragraph 13, the reference to “winding up the company’s affairs and distributing its assets” is to “pursuing the special administration objectives”.
Section 168(4)	Discretion in managing and distributing assets	
Section 176	Preferential charges on goods distrained	
Section 176A	Unsecured creditors	

the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 226, Schedule 5, paragraph 14; section 187 was amended by S.I. 2007/2194 and by S.I. 2009/1941; section 193 was amended by S.I. 2009/1941; section 196 was amended by S.I. 2009/1941; section 206 was amended by S.I. 1986/1996; section 212 was amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9 and 18; section 215 was amended by the Civil Partnerships Act 2004 (c. 33), section 261(1), Schedule 27, paragraph 112; sections 218(1)(a) and (b) were inserted by the Insolvency Act 2000 (c. 39), sections 10(1), (2), (5) and section 218(5) was substituted by section 10(1) and (5), and amended by S.I. 2009/1941; section 218(2) was repealed by sections 10(1) and (3), 15(1) and Schedule 5; section 219(2A) and (2B) were inserted by the Insolvency Act 2000, section 11, while section 219(1), (3) and (4) were amended by sections 10(1) and (7) of the Insolvency Act 2000 and by S.I. 2009/1941; section 233 was amended by the Water Act 1989 (c. 15), section 190, Schedule 25, paragraph 78, the Gas Act 1995 (c. 45), section 16(1), Schedule 4, paragraph 14, the Utilities Act 2000 (c. 27), section 108, Schedule 6, paragraph 47, the Insolvency Act 2000, section 1, Schedule 1, paragraphs 1, 8, the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 22, the Communications Act 2003 (c. 21), section 406(1), Schedule 17, paragraph 82 and by S.I. 2004/1822; sections 234 and 235 were amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 23, 24; section 236 was amended by S.I. 2010/18; section 238 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 25; section 240 was amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9, 26 and Schedule 26 and by S.I. 2002/1240; section 241 was amended by the Insolvency (No. 2) Act 1994 (c. 12), section 1 and by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 27; sections 242 to 246 were amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9, 28 to 32 and Schedule 26; sections 246A and 246B were inserted by S.I.2010/18; section 386 was amended by the Pension Schemes Act 1993 (c. 48), section 190, Schedule 8, paragraph 18 and by the Enterprise Act 2002, section 251(3); section 387 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 34; section 389 was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 11(2); section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18, by the Enterprise Act 2002, section 257, Schedule 21, paragraph 4, by the Mental Capacity Act 2005 (c. 9), section 67(1), (2), Schedule 6, paragraph 31, Schedule 7, by the Tribunal Courts and Enforcement Act 2007 (c. 15), section 108(3), Schedule 10, paragraphs 1, 6, by S.I. 2005/ 2078, by S.S.I. 2005/465, by S.I. 2009/3081 and by S.I. 2009/1941; section 411 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1), Schedule 4, paragraphs 185, 188, by the Banking Act 2009, sections 125 and 160, by S.I. 2007/2194 and by S.I. 2009/1941; section 414 was amended by S.I. 2007/2194; section 423 was amended by the Civil Partnerships Act 2004, section 261(1), Schedule 27, paragraph 121; section 424 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 36; section 426 was amended by the Insolvency Act 2000, section 8, Schedule 4, paragraph 16; by S.I. 1989/2404, S.I. 1989/2405 and by S.I. 2002/3150; section 431 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), section 5, Schedule 4, paragraph 61; section 433 was amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 48, 59, Schedule 3, paragraph 7; sections 434B and 434C were inserted by S.I. 2008/948; and section 434D was inserted by S.I. 2009/1941.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 178	Disclaimer of onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rent charge	
Section 181	Disclaimer: powers of court	
Section 182	Powers of court (leaseholds)	
Section 183	Effect of execution or attachment (England and Wales)	Subsection (2)(a) is not applied.
Section 184	Duties of officers	In subsection (1), ignore the reference to a resolution having been passed for voluntary winding up.
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 (c. 66), the reference to an order of the court awarding winding up is a reference to the making of the special administration order.
Section 186	Rescission of contracts by the court	
Section 187	Power to make over assets to employees	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons in Scotland	
Section 199	Costs of application for leave to proceed (Scottish companies)	
Section 206	Fraud in anticipation of winding up	In subsection (1), omit the reference to passing a resolution for voluntary winding up.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 207	Transactions in fraud of creditors	In subsection (1), omit the reference to passing a resolution for voluntary winding up.
Section 208	Misconduct in course of winding up	In subsection (1), omit “whether by the court or voluntarily”.
Section 209	Falsification of company’s books	
Section 210	Material omissions from statement	(a) In subsection (1) omit “whether by the court or voluntarily”.  (b) In subsection (2), omit “or has passed a resolution for voluntary winding up”.
Section 211	False representation to creditors	In subsection (1)—  (a) omit “whether by the court or voluntarily”; and  (b) a reference to the company’s creditors includes a reference to clients of the investment bank.
Section 212	Summary remedy	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	Subsection (6) is not applied.
Section 215	Proceedings under section 213 or 214	
Section 216	Restriction on re-use of company names	(a) The reference to “liquidating company” shall be to “company in special administration”.  (b) Subsections (7) and (8) are not applied.
Section 217	Personal liability for debts following contravention of section 216	Subsection (6) is not applied.
Section 218	Prosecution of delinquent officers and members of company	(a) In subsection (3), ignore the first reference to the official receiver and treat the second reference as a reference to the Secretary of State.  (b) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3).

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		(c) Subsections (4) and (6) are not applied.
Section 219	Obligations arising under section 218	Treat the reference to section 218(4) in subsection (1) as a reference to section 218(3).
Section 233	Utilities	
Section 234	Getting in the company's property	(a) Subsection (1) is not applied.  (b) "Office holder" means the administrator.
Section 235	Co-operation with the administrator	(a) Subsections (1) and (4)(b) to (d) are not applied.  (b) "Office holder" means the administrator.
Section 236	Inquiry into company's dealings	(a) Subsection (1) is not applied.  (b) "Office holder" means the administrator.
Section 237	Enforcement by the court	
Section 238	Transactions at an undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Sections 238 and 239: relevant time	(a) In subsection (2)(a), the reference to being unable to pay its debts has the meaning given by regulation 2.  (b) Sub-paragraphs (1)(d) and (3)(a) to (d) are not applied.
Section 241	Orders under sections 238 and 239	Subsections (3A) and (3B) are not applied.
Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	(a) In subsection (3)(c), the reference to—



<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(i) administration application is to be read as an application for special administration, and</p> <p>(ii) administration order is to a special administration order.</p> <p>(b) In subsection (4)(a) and (b), the reference to being unable to pay its debts has the meaning given by regulation 2.</p> <p>(c) Subsections (3)(d) and (5)(a) to (c) are not applied.</p>
Section 246	Unenforceability of liens	<p>(a) Subsection (1) is not applied.</p> <p>(b) “Office holder” means the administrator.</p>
Section 246A	Remote attendance at meetings	Treat every reference to creditors as including clients.
Section 246B	Use of websites	
Section 386 (and Schedule 6 as read with Schedule 4 to the Pensions Schemes Act 1993)	Preferential debts	
Section 387, subsections (1) and (3A).	“The relevant date”	Treat the reference to “administration” as a reference to special administration.
Section 389	Offence of acting without being qualified	<p>(a) Treat the reference to acting as an insolvency practitioner as a reference to acting as the administrator.</p> <p>(b) Subsections (1A) and (2) are not applied.</p>
Section 390	Persons not qualified to act	Treat references to acting as insolvency practitioner as references to acting as the administrator.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of special administration.
Section 411	Insolvency rules	The reference in subsections (1A), (2C) and (3) to Part 2 of the Banking Act 2009 includes a reference to these Regulations.
Section 414	Fees orders	(a) The reference in subsection (1) to “Parts I to VII of this Act” includes these Regulations.  (b) Ignore the reference to the official receiver.
Section 423	Transactions defrauding creditors	Subsection (4) is not applied.
Sections 424 and 425	Transactions defrauding creditors	
Section 426	Co-operation between courts	References to “insolvency law” includes provisions made by or under these Regulations.
Sections 430 and 431 (and Schedule 10)	Offences	
Section 432	Offences by bodies corporate	In subsection (4) ignore all the provisions of the Insolvency Act listed there except for sections 206 to 211.
Section 433	Statements: admissibility	In subsection (1)(a), a statement of affairs prepared “for the purposes of any provision of this Act” includes any statement made for the purposes of a provision of that Act as applied by these Regulations.
Sections 434B – 434D	Supplementary provisions	

### **FSA direction**

16.—(1) The FSA may direct the administrator to prioritise one or more special administration objectives.

(2) A direction under paragraph (1) may only be given if the FSA is satisfied that the giving of the direction is necessary, having regard to the public interest in—

- (a) the stability of the financial systems of the United Kingdom; or

- (b) the maintenance of public confidence in the stability of the financial markets of the United Kingdom.
- (3) A direction under paragraph (1) must be given in writing and should set out reasons for giving the direction.
- (4) Before giving such a direction the FSA must consult the Treasury and the Bank of England.
- (5) If the FSA thinks that the circumstances that gave rise to the need for it to give a direction have passed, it shall withdraw its direction.
- (6) Paragraphs 49(1) to (3), 51, 53, 54 and 55 of Schedule B1 (as applied by regulation 15) shall not apply where the FSA has given a direction under this regulation and the direction has not been withdrawn.

### **Administrator's proposals in the event of FSA direction**

- 17.**—(1) Where the FSA has given a direction under regulation 16, the administrator shall make a statement setting out proposals for achieving the special administration objectives in accordance with the FSA's direction.
- (2) The statement under paragraph (1) must deal with such matters as may be prescribed and may include—
    - (a) a proposal for a voluntary arrangement under Part 1 of the Insolvency Act (although this regulation is without prejudice to section 4(3) of that Act); or
    - (b) a proposal for a compromise or arrangement to be sanctioned under Part 26 of the Companies Act 2006 (arrangements and reconstructions).
  - (3) The statement shall be agreed with the FSA.
  - (4) If the administrator is unable to agree the statement with the FSA, the administrator may apply to the court for directions under paragraph 63 of Schedule B1 (as applied by regulation 15).
  - (5) Following an application under sub-paragraph (4), the court may—
    - (a) make an order dispensing with the need for agreement;
    - (b) adjourn the hearing conditionally or unconditionally; or
    - (c) make any other order that the court thinks appropriate.
  - (6) The court may make an order under sub-paragraph (5)(a) only if it considers that the proposals set out in the statement are reasonably likely to ensure that the administrator acts in accordance with the FSA's direction.
  - (7) Where the court makes an order, the administrator shall as soon as possible send a copy of the order to the registrar of companies.
  - (8) After—
    - (a) the statement has been agreed with the FSA; or
    - (b) the court has made an order dispensing with the need for agreement,paragraph 49(4) to (8) of Schedule B1 (as applied by regulation 15) shall then apply to the statement, but the administrator need not send the FSA a copy of the statement of proposals.
  - (9) Where, before the FSA gives its direction under regulation 16, a meeting of creditors has approved the statement of proposals in accordance with paragraph 53 of Schedule B1 (as applied by regulation 15), that statement of proposals shall be ignored for the purposes of regulation 16, this regulation and paragraph 68 of Schedule B1 (as applied by regulation 15).

### **Revision of proposals in the event of FSA direction**

**18.**—(1) This regulation applies where—

- (a) the administrator’s statement of proposals under regulation 17 has been agreed with the FSA (or the court has made an order dispensing with the need for agreement);
- (b) the administrator proposes a revision to the proposals;
- (c) the administrator thinks the revision is substantial; and
- (d) the FSA has not withdrawn its direction given under regulation 16.

(2) The administrator shall agree the revised statement with the FSA.

(3) Regulation 17(4) to (7) shall apply where the administrator is unable to agree the revised statement with the FSA.

(4) After the revised statement has been agreed with the FSA (or the court has made an order dispensing with the need for agreement) the administrator shall send the revised statement to—

- (a) every creditor of the investment bank of whose claim and address the administrator is aware;
- (b) every client of the investment bank of whose claim the administrator is aware and has a means of contacting;
- (c) every member of the investment bank of whose address the administrator is aware.

(5) The administrator shall be taken to have complied with paragraph (4)(c) if the administrator publishes a notice undertaking to provide a copy of the revised statement free of charge to any member of the investment bank who applies in writing to a specified address.

(6) A notice under paragraph (5) shall be published in the prescribed manner and within the prescribed period.

(7) The administrator shall send a copy of the revised statement to—

- (a) the court; and
- (b) the registrar of companies.

### **FSA direction withdrawn**

**19.**—(1) This regulation applies if, after the administrator’s statement of proposals has been agreed with the FSA or the court has made an order dispensing with the need for agreement under regulation 17, the FSA’s direction is then withdrawn.

(2) If the administrator proposes a revision to the statement of proposals and the administrator thinks that the proposed revision is substantial, then paragraphs 54 and 55 of Schedule B1 (as applied by regulation 15) apply.

### **Successful rescue**

**20.**—(1) This regulation applies if the administrator has pursued the first part of Objective 3 (as set out in regulation 10(1)(c)(i)) and thinks that it has been sufficiently achieved.

(2) The administrator shall make an application under paragraph 79 of Schedule B1 (as applied by regulation 15).

(3) An administrator who makes an application in accordance with paragraph (2) must send a copy to the FSA.

### **Dissolution or voluntary arrangement**

**21.**—(1) This section applies if—

- (a) the administrator believes that Objectives 1 and 2 have been sufficiently achieved, and
  - (b) the administrator pursues the second part of Objective 3 (as set out in regulation 10(1)(c)(ii)).
- (2) The administrator may—
- (a) give a notice which is to be treated as a notice under paragraph 84 of Schedule B1 (as applied by regulation 15); or
  - (b) make a proposal in accordance with Part 1 of the Insolvency Act (company voluntary arrangement).
- (3) Part 1 of the Insolvency Act shall apply to a proposal made by an administrator with the following modifications.
- (4) In section 3 (summoning of meetings), subsection (2) (and not (1)) applies.
- (5) The action that may be taken by a court under section 5(3)(22) (effect of approval) includes suspension of the special administration order.
- (6) On the termination of a company voluntary arrangement the administrator may apply to the court to lift the suspension of the special administration order.
- (7) For the purposes of this regulation, references in Part 1 of the Insolvency Act to “administration” include special administration.

### **Special administration order as an alternative order**

- 22.—(1) On a petition for a winding up order or an application for an administration order in respect of an investment bank the court may instead make a special administration order.
- (2) Paragraph (1) is subject to regulation 3.
- (3) A special administration order may be made under paragraph (1) only on the application of the FSA.

### **Disqualification of directors**

- 23.—(1) In the Disqualification Act—
- (a) a reference to liquidation includes a reference to special administration;
  - (b) a reference to the winding up of a company includes a reference to an investment bank being subject to a special administration order;
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a special administration order; and
  - (d) a reference to a liquidator includes a reference to an administrator.
- (2) Section 6(2) is not applied.
- (3) For the purpose of the application of section 7(3)(23) of the Disqualification Act (disqualification order or undertaking) to an investment bank which is in special administration, the responsible office-holder is the administrator.
- (4) In section 21 of the Disqualification Act(24) (interaction with the Insolvency Act), the references to the provisions of the Insolvency Act include those provisions as applied by these Regulations.

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(22) Section 5(3) was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 11(a) and (b) and by the Insolvency Act 2000 (c.39), section 2(a), Schedule 2, Part 1, paragraphs 1, 6(b), section 15(1), Schedule 5.

(23) Section 7(3) was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 40, 42.

(24) Section 21 was amended by the Companies Act 1989, section 212, Schedule 24, the Insolvency Act 2000, section 8, Schedule 4, paragraphs 1, 14(1) to (3)(a) and S.I. 2009/1941.

### Limited liability partnerships

24. Where an investment bank is formed as a limited liability partnership, Schedule 3 (application of these Regulations to limited liability partnerships) has effect.

### Partnerships

25.—(1) Where an investment bank is formed as a partnership, Schedule 4 (application of these Regulations to partnerships) has effect.

(2) This regulation does not apply to investment banks formed as a partnership constituted under the law of Scotland.

### Northern Irish equivalent enactments

26.—(1) In the application of these Regulations to Northern Ireland, a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland (“equivalent Northern Ireland enactment”).

(2) The table in Schedule 5 shows the enactments referred to in these Regulations together with the equivalent Northern Ireland enactments.

(3) Where these Regulations provide for an enactment to apply with an amendment or modification, the equivalent Northern Ireland enactment is to apply with an equivalent amendment or modification (with any necessary modification being made and subject to what is said in relation to that enactment in the third column of the table in Schedule 5).

### Modifications and consequential amendments to legislation

27. Schedule 6 (modifications and consequential amendments) applies as follows—

- (a) Parts 1 and 2 apply in relation to a case where an investment bank which is a company is in special administration; and
- (b) Part 3 makes amendments to legislation in consequence of these Regulations.

[Date]

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

## SCHEDULE 1

Regulation 9

### Special administration (bank insolvency)

1. This Schedule provides for a procedure known as special administration (bank insolvency) to be used as an alternative to bank insolvency (as set out in Part 2 of the Act) where the investment bank is a deposit-taking bank.

2. A special administration (bank insolvency) order is an order appointing a person as the administrator for the purpose of this Schedule.

3. A special administration (bank insolvency) order is to be treated as a special administration order and an administrator appointed under a special administration (bank insolvency) order is to be treated as if they were appointed under a special administration order for all purposes, save that—

- (a) the modifications set out in this Schedule shall apply; and
- (b) in regulation 22, the Bank of England may also make an application under paragraph (1) and the FSA can only make an application with the consent of the Bank of England.

4.—(1) An administrator appointed under a special administration (bank insolvency) order has the following objectives—

- (a) Objective A is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—
  - (i) has the relevant account transferred to another financial institution, or
  - (ii) receives payments from (or on behalf of) the FSCS; and
- (b) the special administration objectives as set out in regulation 10.

(2) Objective A takes precedence over the special administration objectives until a full payment resolution is passed (but the administrator is to begin working towards the special administration objectives immediately on appointment, in accordance with regulation 10).

(3) The administrator must not comply with a direction of the FSA given under regulation 16 in a way which prejudices the achievement of Objective A.

5.—(1) The provisions of the Insolvency Act as applied by regulation 15 shall apply to special administration (bank insolvency) subject to the following additional modifications to Schedule B1—

- (a) the FSCS shall be appointed as a member of the creditors' committee referred to in paragraph 57 unless it informs the administrator that it does not wish to be appointed;
- (b) the Objective A committee may also make an application under paragraph 74(2));
- (c) disregard paragraph 81;
- (d) in the application of paragraph 87, before the Objective A committee has passed a full payment resolution, the administrator may only resign with the consent of the Bank of England and the notice of resignation shall be copied to the Bank of England;
- (e) before the Objective A committee has passed a full payment resolution, only the Bank of England or the Objective A committee may make an application to remove the administrator from office under paragraph 88;
- (f) the notice given under paragraph 89(2)(a) must also be copied to the Bank of England;
- (g) before the passing of the full payment resolution, paragraph 91 has effect as if it provided for the Bank of England to appoint a replacement administrator as soon as is reasonably practicable;
- (h) the Bank of England may also make an application under paragraph 103(2); and

(i) a reference to a provisional liquidator is to a person appointed under section 135 of the Insolvency Act as applied by paragraph 8.

(2) If any application is made to the court under these Regulations (including under the Insolvency Act as applied by these Regulations) before the Objective A committee has passed a full payment resolution, the court, in giving directions, must have regard to the achievement of Objective A.

**6.—**(1) The provisions of Part 2 of the Act (bank insolvency) set out in the Table apply in relation to special administration (bank insolvency) with the following modifications—

- (a) the modifications set out in sub-paragraph (2); and
- (b) any other modification specified in the Table.

(2) The modifications are that a reference to—

- (a) a bank is to a deposit-taking bank;
- (b) bank insolvency is to special administration (bank insolvency);
- (c) a bank insolvency order is to a special administration (bank insolvency) order;
- (d) the bank liquidator is to the administrator;
- (e) Objective 1 in section 99 of the Act or Objective 1 is to Objective A;
- (f) the liquidation committee is to the Objective A committee;
- (g) rules made under section 411 of the Insolvency Act 1986 is to insolvency rules; and
- (h) section 168(5) of the Insolvency Act is to paragraph 74(2) of Schedule B1 (as applied by regulation 15).

**Table of applied provisions**

<i>Provision of Part 2 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 94(2) to (4)	The order	
Section 95	Application	Subsection (1)(c) is not applied.
Section 96	Grounds for applying	
Section 97	Grounds for making	In making a special administration (bank insolvency) order, the court must also be satisfied that the company is an investment bank.
Section 98	Commencement	
Section 100	Liquidation committee	(a) This committee is established only for the purpose of ensuring that the administrator works towards the achievement of Objective A.  (b) Subsections (6) and (7) are not applied.
Section 101	Liquidation committee: supplemental	(a) In subsection (2) ignore the words from “While the liquidation” to “nominated replacements”).  (b) The references in subsection (5)(b) to sections 168(3) or 169(2) of the Insolvency Act are to



<i>Provision of Part 2 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		paragraph 63 of Schedule B1 (as applied by regulation 15).  (c) On the passing of the full payment resolution, the Objective A committee ceases to exist but the FSCS shall have the right to be a member of the creditors' committee.  (d) Subsections (7) to (9) are not applied
Section 102	Objective 1: (a) or (b)	(a) The references to "Objective 1 (a)" and to "Objective 1(b)" are to Objective A(a) and Objective A(b) respectively.  (b) The reference to Objective 2 is a reference to the special administration objectives.
Section 123	Role of the FSCS	Ignore subsection (3).
Section 124	Transfer of accounts	

7. Section 120 of the Act is applied with the following modifications—

- (a) in subsection (7)(b), the reference to a bank insolvency order includes a special administration order;
- (b) in subsection (8), the reference to bank insolvency order includes a special administration order or a special administration (bank insolvency) order;
- (c) in subsection (10)(b), the reference to bank insolvency order includes a special administration order or a special administration (bank insolvency) order; and
- (d) in subsection (10)(c), the reference to bank insolvency order includes a special administration (bank insolvency) order.

8.—(1) Section 135 of the Insolvency Act is applied with the following modifications where an application is made for a special administration (bank insolvency) order—

- (a) in subsection (1), the reference to the presentation of a winding up petition is to an application for a special administration (bank insolvency) order;
- (b) in subsection (2)—
  - (i) the reference to England and Wales includes Scotland,
  - (ii) the reference to a winding up order is to a special administration order,
  - (iii) "other fit person" means a person qualified to act as an insolvency practitioner and who consents to act, and
  - (iv) ignore the reference to the official receiver; and
- (c) subsection (3) is not applied.

(2) A person appointed under section 135 (as applied by this paragraph)—

- (a) must not pay dividends to creditors;
- (b) may only be removed by order of the court; and
- (c) shall vacate office if they cease to be qualified to act as a insolvency practitioner.

(3) The appointment of the person appointed under section 135 (as applied by this paragraph) lapses on the appointment of an administrator under a special administration (bank insolvency) order.

**9. In this Schedule—**

“eligible depositor” has the meaning set out in section 93(3) of the Act;

“full payment resolution” has the meaning set out in section 100(5) of the Act as applied by paragraph 6;

“Objective A” has the meaning set out in paragraph 4; and

“Objective A committee” means the committee set up to oversee the achievement of Objective A in paragraph 4, (see paragraph 6(2) and the modification to section 100 of the Act in paragraph 6).

## SCHEDULE 2

Regulation 9

### Special administration (bank administration)

#### General provisions

**1.** This Schedule provides for a procedure known as special administration (bank administration) to be used as an alternative to bank administration (as set out in Part 3 of the Act) where part of the business of the deposit-taking bank is sold to a commercial purchaser in accordance with section 11 of the Act, or transferred to a bridge bank in accordance with section 12 (and it can also be used in certain cases of multiple transfers under Part 1 of the Act).

**2.** A special administration (bank administration) order is an order appointing a person as an administrator for the purposes of this Schedule.

**3.—(1)** An administrator appointed under a special administration (bank administration) order has the following objectives—

(a) Objective A: to provide support for a private sector purchaser or bridge bank (see section 138 of the Act as applied by paragraph 6), and

(b) the special administration objectives as set out in regulation 10.

(2) Objective A takes precedence over the special administration objectives until the Bank of England notifies the administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank, but the administrator is to begin working on the special administration objectives immediately on appointment in accordance with regulation 10.

(3) A notice under sub-paragraph (2) is referred to as an “Objective A Achievement Notice”.

(4) The administrator must not comply with a direction of the FSA given under regulation 16 in a way which prejudices the achievement of Objective A.

(5) In pursuing the special administration objectives following transfer to a bridge bank, the administrator may not realise any asset unless—

(a) the asset is on a list of realisable assets agreed between the administrator and the Bank of England; or

(b) the Bank of England has given an Objective A Achievement Notice.

(6) The reference to ‘asset’ in sub-paragraph (5) does not include client assets.

4. An administrator appointed under a special administration (bank administration) order is to be treated as if they were appointed under a special administration order subject to any modification made by this Schedule.

5. A special administration (bank administration) order is to be treated for all purposes as a special administration order save that—

- (a) regulations 20 and 21 do not apply;
- (b) regulation 15 does not apply except where otherwise stated;
- (c) the modifications set out in this Schedule shall apply.

### Application of Part 3 of the Act and the Insolvency Act

6.—(1) The provisions of Part 3 of the Act (bank administration) set out in the Table apply in relation to a special administration (bank administration) with the following modifications—

- (a) the modifications set out in sub-paragraph (2); and
- (b) any other modification specified in the Table.

(2) The modifications are that a reference to—

- (a) a bank is to a deposit-taking bank;
- (b) bank administration is to special administration (bank administration);
- (c) a bank administration order is to a special administration (bank administration) order;
- (d) the bank administrator is to the administrator;
- (e) Objective 1, or Objective 1 in section 137 or 138, is to Objective A in paragraph 3;
- (f) the Objectives in section 137 is to Objective A and the special administration objectives;
- (g) an Objective 1 Achievement Notice is to an Objective A Achievement Notice;
- (h) an Objective 1 Interim Achievement Notice is to an Objective A Interim Achievement Notice (see section 150 of the Act as applied by the Table);
- (i) “provisional liquidator” means a person appointed under section 135 of the Insolvency Act, as applied by this Schedule; and
- (j) rules made under section 411 of the Insolvency Act 1986 is to insolvency rules.

(3) Where section 145 of the Act applies a provision of the Insolvency Act with a modification, that provision applies in relation to special administration (bank administration) with that modification unless otherwise stated in the Table.

**Table of applied provisions**

<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 138	Objective 1: supporting private sector purchaser or bridge bank	
Section 139(2)	Objective A: duration	(a) The reference to section 145 is to that section as applied by this paragraph.  (b) The reference to “notice under subsection (1) above” is to notice under paragraph 3(2).

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Investment Bank Special Administration Regulations 2011 No. 245

<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 141(2) to (4)	Bank administration order	
Section 142	Application	
Section 143	Grounds for applying	
Section 144	Grounds for making	In making a special administration (bank administration) order, the court must also be satisfied that the company is an investment bank.
Section 145	General powers etc.	(a) In subsection (1), the administrator may not rely on subsection (1) for the purpose of recovering property transferred by a property transfer instrument.  (b) Subsection (3)(c), (5) and (6) are not applied.
Section 145	Table 1: Applied Provisions: Insolvency Act 1986, Schedule B1(25)	In Table 1 after subsection (6)— (a) Paragraph 41 is not applied. (b) In paragraph 46 —  (i) in sub-paragraph (3)(a), in addition to obtaining the list of creditors, the administrator shall obtain as complete a list as possible of the clients of the investment bank,  (ii) in sub-paragraph (3)(b), the administrator shall send a notice of their appointment to each client of whose claim and address the administrator is aware and to the FSA.  (c) In paragraph 47, in sub-paragraph (2), the statement must also include particulars (to the extent prescribed) of the client assets held by the investment bank.  (d) Paragraphs 49 to 54 are not applied: <i>see paragraphs 7 to 14 of this Schedule</i> .  (e) Paragraph 55 is only applied where the Bank of England has given the Objective A Achievement Notice and—  (i) sub-paragraph (1)(a) is not applied,  (ii) in sub-paragraph (1)(b), the meeting referred to is one held under paragraph 12 of this Schedule,

(25) The Table in section 145 was amended by section 21 of the Financial Services Act 2010 (c. 28).

<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(iii) in making an order under sub-paragraph (2) the court must have regard to the special administration objectives, and</p> <p>(iv) sub-paragraph (2)(d) is not applied.</p> <p>(f) In paragraph 56—</p> <p>(i) before the Bank of England has given an Objective A Achievement Notice, the administrator may comply with a request under sub-paragraph (1)(a) only if satisfied that it will not prejudice the achievement of Objective A, and</p> <p>(ii) the FSA must be invited to any meeting under this paragraph.</p> <p>(g) In paragraph 57—</p> <p>(i) a creditors’ committee can only be established by a creditors’ meeting of which creditors and clients have been both given notice,</p> <p>(ii) before the Bank of England has given an Objective A Achievement Notice, the creditors’ committee, when exercising functions, must comply with any directions given to it by the Bank of England,</p> <p>(iii) the FSA may appoint a person to attend a meeting of the creditors’ committee and make representations as to any matter for decision,</p> <p>(iv) the FSCS shall be appointed as a member of the creditors’ committee unless it indicates to the administrator that it does not wish to be appointed, and</p> <p>(v) insolvency rules shall ensure that the make up of the creditors’ committee is a reflection of all parties with an interest in the achievement of the special administration objectives.</p> <p>(h) In paragraph 60 (and Schedule 1) the exercise of powers is subject to the need to prioritise Objective A.</p> <p>(i) In paragraph 62, the administrator may also call a meeting of clients or contributories.</p> <p>(j) In paragraph 68—</p> <p>(i) sub-paragraph (1) includes proposals where a court order has been obtained dispensing with the need for</p>

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Investment Bank Special Administration Regulations 2011 No. 245

<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>approval in accordance with paragraph 8 or 13 of this Schedule 2, and</p> <p>(ii) the references to paragraphs 53 and 54 are to paragraphs 7 to 13 of this Schedule.</p> <p>(k) In paragraph 73—</p> <p>(i) the reference to the administrator’s proposals under paragraph 49 is to the statement of proposals under paragraph 7 of this Schedule, and</p> <p>(ii) sub-paragraph (2)(d) is not applied.</p> <p>(l) In paragraph 74—</p> <p>(i) the FSA may also make an application under sub-paragraph (1) on the grounds that —</p> <p>(aa) the administrator is acting or has acted so as unfairly to harm the interests of some or all of the members, creditors or clients, or</p> <p>(bb) the administrator is proposing to act in a way which would unfairly harm the interests of some or all of the members, creditors or clients,</p> <p>(ii) a client may also make an application under sub-paragraphs (1) and (2), but, until the Bank of England has given an Objective A Achievement Notice, an order may be made on the application of a client only if the court is satisfied that it would not prejudice pursuit of Objective A,</p> <p>(iii) where the FSA has given a direction under regulation 16, an order may not be made on an application (by persons other than the Bank of England or the FSA) under this paragraph before the direction is withdrawn if it would impede or prevent compliance with the direction, and</p> <p>(iv) any of the following persons may make an application under this paragraph on the grounds that the administrator is not taking any action in response to a request from that person under regulation 13(2) and that the person is of the opinion that the action requested would not lead to a material reduction in the value of the property of the investment bank—</p> <p>(i) the Bank of England,</p>

Provision of Part 3 of the Act	Subject	Modification or comment
		<p>(ii) the Treasury,</p> <p>(iii) the FSA, or</p> <p>(iv) a market infrastructure body.</p> <p>(m) A client and the FSA are included in the list of those persons who may make an application under paragraph 75(2).</p> <p>(n) Paragraph 79 is not applied: <i>see paragraphs 15 and 16 of this Schedule.</i></p> <p>(o) In paragraph 91, after the Bank of England has given an Objective A Achievement Notice, the FSA may make an application to appoint an administrator but the restrictions in sub-paragraph (2) apply.</p> <p>(p) Paragraph 96 is not applied.</p> <p>(q) In paragraph 98, sub-paragraph (2)(b) is not applied.</p> <p>(r) In paragraph 99—</p> <p>(i) in sub-paragraph (3), the former administrator’s remuneration and expenses incurred in respect of the pursuit of Objective 1 will be charged on and payable out of client assets, and</p> <p>(ii) in sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) does not include a charge on client assets.</p> <p>(s) In paragraph 101, the reference to paragraphs 87 to 99 is to paragraphs 87 to 91, 98 and 99.</p> <p>(t) In paragraph 103(2), after the Bank of England has given the Objective A Achievement Notice, in sub-paragraph (2)(a), an application to the court under sub-paragraph (1) shall be made by a person listed in regulation 5(1).</p> <p>(u) In paragraph 106, sub-paragraphs (2)(a), (2)(b) and (2)(l) to (n) are not applied.</p> <p>(v) In paragraph 107, in considering an application the court must have regard to Objective A and the special administration objectives.</p> <p>(w) In paragraph 108—</p>

<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(i) the references in sub-paragraph (1) are to paragraphs 7 to 13 of this Schedule, and</p> <p>(ii) sub-paragraph (3) is not applied.</p> <p>(x) In paragraph 111, the definition of “administrator” and sub-paragraph (1A)(b) and (c) are not applied, and the reference in sub-paragraph (1) to paragraph 50 is to paragraph 10 of this Schedule.</p>
Section 145	Table 2: Applied Provisions: other provisions of the Insolvency Act	<p>In Table 2 after subsection (6)—</p> <p>(a) In section 135—</p> <p>(i) the reference in (e) to section 138(2)(a) is to that section as applied by this paragraph, and</p> <p>(ii) the reference in (f) to Objective 2 is to the special administration objectives.</p> <p>(b) In section 234—</p> <p>(i) subsection (1) is not applied, and</p> <p>(ii) “office holder” means the administrator.</p> <p>(c) In section 235—</p> <p>(i) subsections (1) and (4)(b) to (d) are not applied, and</p> <p>(ii) “office holder” means the administrator.</p> <p>(d) In section 236—</p> <p>(i) subsection (1) is not applied, and</p> <p>(ii) “office holder” means the administrator.</p> <p>(e) In the application of section 240 to sections 238 and 239—</p> <p>(i) in subsection (2)(a), the reference to being unable to pay its debts has the meaning given by regulation 2, and</p> <p>(ii) subsections (1)(d) and (3)(b) to (e) are not applied.</p> <p>(f) In section 245—</p> <p>(i) in subsection (4)(a) the reference to being unable to pay its debts has the meaning given by regulation 2, and</p>



<i>Provision of Part 3 of the Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		(ii) subsections (3)(d) and (5)(b) to (d) are not applied.  (g) In section 246—  (i) subsection (1) is not applied, and  (ii) “office holder” means the administrator.  (h) In section 387, subsections (2)(b), (2A), (3) and (4) to (6) are not applied.  (i) In section 423, subsection (4) is not applied.  (j) In section 432, in subsection (4) ignore all the provisions of the Insolvency Act listed there except for sections 206 to 211.  (k) In section 433, subsection (4) is not applied.
Section 146	Status of administrator	
Section 147	Administrator’s proposals	Section 147 is not applied.
Section 148	Sharing information	
Section 149	Multiple transfers - general application	
Section 150	Bridge bank to private sector purchaser	In subsection (5), the reference to section 139 is to paragraph 3(2) above.
Section 151	Property transfer from bridge bank	
Section 157	Other processes	The definition of an insolvency power includes regulation 5 (application for a special administration order).

(4) Where a provision of the Insolvency Act is set out in Table 2 in regulation 15(6), but is not applied by section 145 of the Act, that provision also applies to special administration (bank administration) with the modifications specified in that regulation and in sub-paragraph (2).

### Statement of proposals

7.—(1) In a special administration (bank administration), the proposals setting out how the purpose of the administration is to be achieved (“the statement”) shall be drawn up as follows.

(2) The administrator must, as soon as is reasonably practicable after the deposit-taking bank enters special administration (bank administration), make a statement setting out proposals for achieving Objective A and the special administration objectives.

(3) In a case of special administration (bank administration) following transfer to a bridge bank, before making the statement the administrator must consult the Bank of England about the likelihood of a payment to the residual bank from a scheme established by a resolution fund order under section 49(3) of the Act.

**8.—**(1) The statement is to be agreed with the Bank of England and, where the FSA has given a direction under regulation 16, with the FSA.

(2) If the FSA have not given a direction under regulation 16 and the administrator is unable to agree a statement with the Bank of England—

- (a) the administrator may apply to the court for directions under paragraph 63 of Schedule B1 (as applied by section 145 of the Act and this Schedule); and
- (b) the court may make any order it considers appropriate, including dispensing with the need for the Bank of England's agreement.

(3) If the FSA have given a direction under regulation 16 which has not been withdrawn and the administrator is unable to agree a statement with either the Bank of England or the FSA, the administrator may apply to the court for directions under paragraph 63 of Schedule B1.

(4) Following an application under sub-paragraph (3), the court may—

- (a) make an order dispensing with the need for agreement;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any other order that the court thinks appropriate.

(5) The court may make an order in sub-paragraph (4)(a) only if it considers that—

- (i) the proposals set out in the statement are reasonably likely to ensure that the administrator acts in accordance with the FSA's direction, and
- (ii) the FSA direction is not likely to prejudice the achievement of Objective A.

(6) Where the court makes an order, the administrator shall as soon as reasonably practicable send the order to the registrar of companies and to such persons as may be prescribed.

**9.—**(1) The administrator shall send the statement to—

- (a) the FSA;
- (b) the FSCS;
- (c) the registrar of companies;
- (d) every creditor of the deposit-taking bank of whose claim and address the administrator is aware;
- (e) every member of the deposit-taking bank of whose address the administrator is aware; and
- (f) every client of the deposit-taking bank of whose claim the administrator is aware and of whom the administrator has a means of contacting.

(2) The administrator shall comply with sub-paragraph (1) not later than 10 business days after—

- (a) obtaining the agreement of the Bank of England (and where the FSA has given a direction, the FSA); or
- (b) the court has made an order dispensing with the need for this agreement.

(3) The administrator shall be taken to comply with sub-paragraph (1)(d) if the administrator publishes in the prescribed manner a notice undertaking to provide a copy of the statement of

proposals free of charge to any member of the deposit-taking bank who applies in writing to a specified address.

(4) The administrator shall also give notice in the prescribed manner that the statement of proposals is to be provided free of charge to a market infrastructure body which applies in writing to a specified address.

(5) Sub-paragraphs (7) and (8) of paragraph 49 of Schedule B1 apply with the following modifications—

- (a) the reference in paragraph 49(7) to sub-paragraph (5) shall be a reference to sub-paragraph (2) of this paragraph;
- (b) the reference to “this paragraph” in paragraph 49(8) means this paragraph;
- (c) the reference to paragraph 107 is a reference to that paragraph as applied by section 145 of the Act and by paragraph 6(3).

### **Meeting of creditors and clients to approve statement**

**10.**—(1) This paragraph applies after the administrator has sent the statement of proposals to the persons listed in paragraph 9(1) unless (subject to sub-paragraph (6)) the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

(2) Paragraph 50 of Schedule B1 applies save that—

- (a) in sub-paragraph (1), the administrator shall invite the clients to the meeting of creditors and the clients shall be given the prescribed period of notice under sub-paragraph (1)(b); and
- (b) the FSA may appoint a person to attend a meeting of creditors and make representations as to any matter for decision.

(3) Paragraph 51 of Schedule B1 applies save that—

- (a) the reference to paragraph 49(4)(b) is to paragraph 9(1) of this Schedule; and
- (b) each copy of the statement sent to a client or to the FSA under paragraph 9(1) of this Schedule must be accompanied by an invitation to the initial creditor’s meeting.

(4) Paragraph 53 of Schedule B1 applies save that in sub-paragraph (2), if the FSA has not appointed a person to attend the meeting, the administrator must also report any decision taken to the FSA.

(5) If the meeting of creditors is unable to approve the statement, the administrator may apply to court for an order dispensing with the need for the approval of the meeting of creditors, and paragraph 14 applies.

(6) Where, before the FSA gives a direction under regulation 16, a meeting of creditors has already approved the statement under this paragraph, when the FSA gives its direction a new statement shall be drawn up in accordance with paragraphs 7 to 9 to replace the statement that has already been approved.

### **Revision to the statement of proposals (Objective A not yet achieved)**

**11.**—(1) This paragraph applies where—

(a) the administrator’s statement has been—

- (i) agreed with the Bank of England (or the court has made an order dispensing with the need for this agreement under paragraph 8(2)), and
- (ii) approved by the meeting of creditors (or if the court has made an order dispensing with the need for this approval under paragraph 14);

- (b) the administrator proposes a revision to the statement;
- (c) the administrator thinks the revision is substantial; and
- (d) the Bank of England has not given the Objective A Achievement Notice.

(2) The administrator shall agree the revised statement with the Bank of England and, where the FSA has given a direction and it has not been withdrawn, with the FSA.

(3) Paragraph 8(2) to (6) shall apply where the administrator is unable to agree a statement with the Bank of England or (as the case may be) with the FSA.

(4) Once the revision has been approved by the Bank of England (and, as the case may be, with the FSA) or, if the court has made an order dispensing with the need for those approvals, paragraph 54(2) to (5)(a) of Schedule B1 applies in respect of the revised statement save that—

- (a) if the administrator thinks that the proposed revision affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients;
- (b) if the administrator thinks that the proposed revision only affects either creditors or clients, then paragraph 54 only applies in respect of the affected party,

and where sub-paragraph (b) applies, the party not affected must be informed of the proposed revision in a manner prescribed.

(5) In sub-paragraph (2) of paragraph 54, where the FSA has not given a direction under regulation 16, the FSA shall be sent a copy of the statement of the proposed revision and invited to appoint a representative to attend the creditors' meeting.

(6) The FSCS shall be sent a copy of the statement of the proposed revision.

(7) If the meeting of creditors is unable to approve the statement, the administrator may apply to court for an order dispensing with the need for the approval of the meeting of creditors, and paragraph 14 applies.

(8) Where the administrator makes an application under sub-paragraph (7), sub-paragraphs (6) and (7) of paragraph 54 shall apply.

### **Revision to the statement of proposals (Objective A achieved and no FSA direction)**

12.—(1) This paragraph applies where —

- (a) the events in paragraph 11(1)(a) to (c) have occurred;
- (b) the Bank of England has given the Objective A Achievement Notice; and
- (c) the FSA has not given a direction under regulation 16, or if it has, that direction has been withdrawn.

(2) Paragraph 54 of Schedule B1 applies in respect of that statement save that—

- (a) if the administrator considers that the proposed revision affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients;
- (b) if the administrator considers that the proposed revision only affects either creditors or clients, then paragraph 54 only applies in respect of the affected party,

and where sub-paragraph (b) applies, the party not affected must be informed of the proposed revision in a manner prescribed.

(3) In sub-paragraph (2) of paragraph 54 the FSA shall be sent a copy of the statement of the proposed revision and be invited to appoint a representative to attend the creditors' meeting.

(4) The FSCS shall be sent a copy of the statement of the proposed revision.

**Revision to the statement of proposals (Objective A achieved and FSA direction has not been withdrawn)**

13.—(1) This paragraph applies where —

- (a) the events in paragraph 11(1)(a) to (c) have occurred;
- (b) the Bank of England has given the Objective A Achievement Notice; and
- (c) the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

(2) The administrator shall agree the revised statement with the FSA.

(3) Paragraph 8(3) to (6) shall apply where the administrator is unable to agree a revision to the statement with the FSA.

(4) After the revision to the statement has been agreed with the FSA, or if the court makes an order under paragraph 8(4) dispensing with the need for agreement, the administrator shall send the revised statement to—

- (a) every creditor of the investment bank of whose claim and address the administrator is aware;
- (b) every client of the investment bank of whose claim the administrator is aware and has a means of contacting;
- (c) every member of the investment bank of whose address the administrator is aware.

(5) The administrator shall be taken to have complied with paragraph (4)(c) if the administrator publishes a notice undertaking to provide a copy of the statement free of charge to any member of the investment bank who applies in writing to a specified address.

(6) A notice under paragraph (4) shall be published in the prescribed manner and within the prescribed period.

(7) The administrator shall send a copy of the revised statement to—

- (a) the court; and
- (b) the registrar of companies.

**Powers of the court**

14.—(1) Where the administrator makes an application to the court under paragraph 10(5) or 11(7), the court may—

- (a) make the order, if it considers that the proposals set out in the statement are likely to achieve Objective A whilst not preventing the achievement of the special administration objectives;
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any other order that the court thinks appropriate.

(2) Where the court makes an order, the administrator shall as soon as reasonably practicable send the order to the registrar of companies and to such other persons as may be prescribed.

(3) Paragraph 54(7) of Schedule B1 applies as if the reference in that paragraph to sub-paragraph (6) were a reference to sub-paragraph (2) of this paragraph.

**Ending of special administration (bank administration) (rescue)**

15.—(1) This regulation applies if—

- (a) the Bank of England has given an Objective A Achievement Notice; and

- (b) the administrator has pursued the first part of Objective 3 (as set out in regulation 10(1)(c)(i)) and thinks that it has been sufficiently achieved.
- (2) The administrator shall make an application under paragraph 79 of Schedule B1 (as applied by regulation 15).
- (3) An administrator who makes an application in accordance with sub-paragraph (2) must send a copy to the FSA.

### **Ending of special administration (bank administration) (dissolution or voluntary arrangement)**

- 16.**—(1) This section applies if—
- (a) the Bank of England has given an Objective A Achievement Notice;
  - (b) the administrator believes that Objectives 1 and 2 have been sufficiently achieved; and
  - (c) the administrator pursues the second part of Objective 3 (as set out in regulation 10(1)(c)(ii)).
- (2) The administrator may—
- (a) give a notice under paragraph 84 of Schedule B1 (as applied by regulation 15); or
  - (b) make a proposal in accordance with Part 1 of the Insolvency Act (company voluntary arrangement).
- (3) Part 1 of the Insolvency Act shall apply to a proposal made by an administrator with the following modifications—
- (a) in section 3 (summoning of meetings), subsection (2) (and not (1)) applies;
  - (b) the action that may be taken by a court under section 5(3) (effect of approval) includes suspension of the special administration order; and
  - (c) on the termination of a company voluntary arrangement the administrator may apply to the court to lift the suspension of the special administration order.

### **Interpretation**

- 17.** In this Schedule—
- “bridge bank” is a company wholly owned by the Bank of England to which all or part of the business of a deposit-taking bank may be transferred in accordance with section 12 of the Act;
  - “residual bank” means the non-sold or non-transferred part of the deposit-taking bank which remains after a power in section 11 (sale to private sector purchaser) or section 12 (transfer to bridge bank) of the Act has been exercised in respect of that bank;
  - “Objective A” has the meaning set out in paragraph 3(1)(a);
  - “Objective A Achievement Notice” has the meaning set out in paragraph 3(3);
  - “private sector purchaser” means a commercial purchaser to whom part of the business of the deposit-taking bank is sold to in accordance with section 11 of the Act; and
  - “statement” means the statement of proposals drawn up in accordance with paragraph 7.

### SCHEDULE 3

#### Application of these Regulations to limited liability partnerships

1. In this Schedule, “the 2001 Regulations” means the Limited Liability Partnerships Regulations 2001(26).

2. These Regulations apply where the investment bank is a limited liability partnership subject to the following modifications.

3.—(1) Those provisions of the Insolvency Act, as applied and modified by regulation 15 of these Regulations, shall apply in respect of an investment bank formed as a limited liability partnership subject to sub-paragraph (2).

(2) Those provisions of the Insolvency Act set out in the Table in sub-paragraph (3) shall also apply with the modifications set out in sub-paragraph (3).

(3) The modifications are—

- (a) those contained in regulation 5(2) of the 2001 Regulations (not including those in regulation 5(2)(f)); and
- (b) any other modification set out in the Table.

**Table: Applied provisions of the Insolvency Act (General provisions and Schedule B1)**

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 74	Liability as contributories of present and past members	<p>The following is substituted for section 74—</p> <p>74 (1) This section applies when a limited liability partnership goes into special administration, every present and past member of the limited liability partnership is liable to contribute to its assets as follows.</p> <p>(2) Where a member has agreed with the other members or with the limited liability partnership, that that member be liable to contribute to the assets of the limited liability partnership in the event that that body goes into liquidation or special administration, that member is liable, to the extent that they have so agreed, to contribute—</p> <p>(a) to its assets to any amount sufficient for payment of its debts and liabilities;</p> <p>(b) to the expenses of the special administration;</p>

(26) S.I. 2001/1090.

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		(c) for the adjustment of the rights of the contributories among themselves.  (3) A past member shall only be liable under this section if the obligation arising from such agreement in subsection (2) survived them ceasing to be a member of the limited liability partnership.
Sections 76-78	Contributories	These sections are not applied.
Section 79	Meaning of “contributory”	(a) In subsection (1) for “every person” substitute—  “every past and present member of the limited liability partnership”.  (b) At the end of subsection (2), insert “or section 214A (adjustment of withdrawals)”.  (c) Subsection (3) is not applied.
Section 83	Companies registered under the Companies Act Part XXII, Chapter II	Section 83 is not applied.
Section 183	Effect of execution or attachment	Subsection (2)(a) is not applied.
Section 187	Power to make over assets to employees	Section 187 is not applied.
Section 194	Resolutions passed at meetings	After “contributories” insert “or of the members of a limited liability partnership”.
Section 214	Wrongful trading	In subsection (2), omit from “but the court shall not” to the end of the subsection.
After section 214	Adjustment of withdrawals	Insert—  214A(1) This section has effect in relation to a person, “P”, who is or has been a member of a limited liability partnership where, in the course of the special administration of that limited liability partnership, it appears that subsection (2) of this section applies in relation to P.  (2) This subsection applies in relation to P if—



<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(a) within the period of two years ending with the commencement of the special administration, P was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property; and</p> <p>(b) it is proved by the administrator to the satisfaction of the court that at the time of the withdrawal P knew or had reasonable ground for believing that the limited liability partnership—</p> <p>(i) was at the time of the withdrawal unable to pay its debts, or</p> <p>(ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made.</p> <p>(3) Where this section has effect in relation to P, the court, on the application of the administrator, may declare that P is to be liable to make such contribution (if any) to the limited liability partnership’s assets as the court thinks proper.</p> <p>(4) The court shall not make a declaration in relation to P the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by P within the period of two years referred to in that subsection.</p> <p>(5) The court shall not make a declaration under this section with respect to P unless P knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the limited liability partnership would avoid going into an insolvency procedure under the Insolvency Act or special administration.</p>

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<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(6) For the purposes of subsection (5) the facts which P ought to know or ascertain and the conclusions which P ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both:</p> <p>(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by P in relation to the limited liability partnership; and</p> <p>(b) the general knowledge, skill and experience that P has.</p> <p>(8) In this section “member” includes a shadow member.</p> <p>(9) This section is without prejudice to section 214.</p>
Section 215	Proceedings under section 213 or 214	<p>(a) In subsection (1) omit the word “or” between the words “213” and “214” and insert after “214” “or 214A”.</p> <p>(b) In subsection (2) substitute “any of those sections” for “either section”.</p> <p>(c) In subsection (4) substitute “any of those sections” for “either section”.</p> <p>(d) In subsection (5) substitute “sections 213, 214 or 214A” for “sections 213 and 214”.</p>
Section 218	Prosecution of delinquent officers and members of company	<p>(a) In subsection (1), for “officer, or any member, of the company” substitute “member of the limited liability partnership”.</p> <p>(b) In subsection (3) for “officer of the company, or any member of it,” substitute “member of the limited liability partnership”.</p>
Section 386 of and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	<p>(a) In subsection (1) omit the words “or an individual”.</p> <p>(b) In subsection (2) omit the words “or the individual”.</p>

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 387	“The relevant date”	Subsections (5) and (6) are not applied.
Section 432	Offences by bodies corporate	In subsection (2) omit the words “secretary or”.
Schedule B1 Paragraph 42	Moratorium on insolvency proceedings	For sub-paragraph (2) substitute— “(2) No determination to wind up the limited liability partnership voluntarily may be made”.
Schedule B1 Paragraph 61	Directors	For paragraph 61 substitute— “61. The administrator has power to prevent any person from taking part in the management of the business of the limited liability partnership and to appoint any person to be a manager of that business.”.
Schedule B1 Paragraph 62	Power to call meetings	At the end of the paragraph add—  The meeting shall be held in a manner provided by the Investment Bank Special Administration Regulations 2011 or by the limited liability partnership agreement or by insolvency rules (as defined in regulation 2 of those Regulations).  The quorum required for a meeting of the members of the limited liability partnership shall be any quorum required by the limited liability partnership agreement for meetings of the members of the limited liability partnership and if no requirement for a quorum has been agreed upon, the quorum shall be 2 members.
Schedule B1 Paragraph 91	Replacement	Sub-paragraph (1)(c) is not applied.
Schedule B1 Paragraph 105	Majority decision of directors	Paragraph 105 is not applied.

4.—(1) The provisions of the Disqualification Act shall apply with the modifications set out in sub-paragraph (2).

(2) The modifications are—

- (a) those contained in regulation 23 of these Regulations;
- (b) those contained in regulation 4(2) of the 2001 Regulations; and
- (c) that contained in Part 2 of Schedule 2 to the 2001 Regulations.

**Application to Scotland**

5. The provisions of the Insolvency Act listed in this paragraph are not applied to Scotland—
- (a) section 167 (and Schedule 4);
  - (b) sections 185 to 187;
  - (c) sections 193 to 194;
  - (d) section 196 to the extent that that section applies to the specified devolved functions of Part 4 of the Insolvency Act;
  - (e) section 199;
  - (f) sections 206 to 215;
  - (g) sections 218, subsection (1);
  - (h) sections 242 to 243; and
  - (i) section 245.

**Subordinate legislation**

6.—(1) The following subordinate legislation shall apply as from time to time in force to investment banks that are limited liability partnerships in special administration and—

- (a) in case of the legislation listed in sub-paragraph (2), with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act as applied by these Regulations; and
  - (b) in case of the legislation listed in sub-paragraph (3), with such modifications as the context requires for the purpose of giving effect to the provisions of the Companies Act 2006 and the Disqualification Act.
- (2) The legislation referred to in sub-paragraph (1)(a) is—
- (a) The Insolvency Practitioners Regulations 2005**(27)**;
  - (b) The Insolvency Practitioners (Recognised Professional Bodies) Order 1986**(28)**;
  - (c) The Insolvency Proceedings Fees Order 2004**(29)**;
  - (d) The Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986**(30)**; and
  - (e) insolvency rules.
- (3) The legislation referred to in sub-paragraph (1)(b) is—
- (a) The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987**(31)**;
  - (b) The Uncertificated Securities Regulations 2001;**(32)**
  - (c) The Insolvent Companies (Reports on Conduct of Directors) Rules 1996**(33)**; and
  - (d) The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996**(34)**.

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**(27)** S.I. 2005/524.

**(28)** S.I. 1986/1764.

**(29)** S.I. 2004/593.

**(30)** S.I. 1986/952.

**(31)** S.I. 1987/ 2023.

**(32)** S.I. 2001/3755.

**(33)** S.I. 1996/ 1909.

**(34)** S.I. 1996/1910.

## SCHEDULE 4

Regulation 25

### Application of these Regulations to partnerships

1. In this Schedule, “the 1994 Order” means the Insolvent Partnerships Order 1994<sup>(35)</sup>.
2. These Regulations apply where the investment bank is a partnership subject to the following modifications.
3. In the application of these Regulations and the Disqualification Act to partnerships, unless the contrary intention appears, the following apply—
  - (a) references to companies shall be construed as references to partnerships and all references to the registrar of companies shall be omitted;
  - (b) references to shares of a company shall be construed—
    - (i) in relation to a partnership with capital, as references to rights to share in that capital, and
    - (ii) in relation to a partnership without capital, as references to interests—
      - (aa) conferring any right to share in the profits or liability to contribute to the losses of the partnership, or
      - (bb) giving rise to an obligation to contribute to the debts or expenses of the partnership in the event of special administration; and
  - (c) other expressions appropriate to companies shall be construed, in relation to partnerships, as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to a partnership.
- 4.—(1) The provisions of Schedule B1 as applied by regulation 15 apply in respect of a partnership but where a provision of Schedule B1 is listed in Table 1 below, that provision shall apply—
  - (a) as modified by Schedule 2 to the 1994 Order; and
  - (b) with the modifications set out in column 3 of Table 1,instead of as modified in accordance with regulation 15.
  - (2) In the provisions referred to in the second column of Table 1, a reference to—
    - (a) a provision of the Insolvency Act is to that provision as applied by regulation 15 (subject to sub-paragraph (1));
    - (b) action includes a reference to inaction;
    - (c) the administrator means the administrator appointed under regulation 7;
    - (d) the court means the court as defined in regulation 2;
    - (e) the creditors’ meeting has the meaning given by paragraph 50 of Schedule B1 (as applied by regulation 15);
    - (f) entering administration means entering special administration;
    - (g) a hire purchase agreement includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
    - (h) an insolvency order is to a special administration order;
    - (i) an insolvency petition means an application for a special administration order;
    - (j) insolvency proceedings means special administration;

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(35) [S.I. 1994/2421](#); this instrument was amended by [S.I. 2005/1516](#).

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- (k) market value means the amount which would be realised on a sale of property in the open market by a willing vendor;
- (l) the purpose of administration means the pursuit of the special administration objectives;
- (m) partnership is to an investment bank;
- (n) the partnership being in administration is to the investment bank being in special administration;
- (o) a responsible insolvency practitioner is to the administrator;
- (p) a thing in writing includes a reference to a thing in electronic form; and
- (q) an inability to pay its debts has the meaning given in regulation 2(4).

**Table 1: Applied provisions of the 1994 Order with respect to Schedule B1**

<i>Provision of Schedule 2</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 17	Para 42: moratorium on insolvency proceedings	In the modified paragraph 42, sub-paragraph (5)(a) is not applied.
Para 18	Para 43: moratorium on other legal process	In the modified paragraph 43, sub-paragraph (6) is not applied.
Para 19	Para 47: statement of affairs	In the modified paragraph 47, in sub-paragraph (2), the statement must also include particulars (to the extent prescribed) of the client assets held by the investment bank.
Para 20	Para 49: administrator's proposals	In the modified paragraph 49—  (a) sub-paragraph (2)(b) is not applied;  (b) under sub-paragraph (4), the administrator shall also send a copy of the statement of proposals to—  (i) every client of the investment bank of whose claim the administrator is aware and has a means of contacting, and  (ii) the FSA; and  (c) the administrator shall also give notice in the prescribed manner that the statement of proposals is to be provided free of charge to a market infrastructure body who applies in writing to a specified address.
Para 22	Para 61: management	

<i>Provision of Schedule 2</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 23	Para 65: distribution to creditors	In the modified paragraph 61, sub-paragraph (3) is not applied.
Para 24	Para 69: agency	
Para 25	Para 73: protection for secured or preferential creditors	
Para 26	Para 74: challenge to administrator's conduct	<p>In the modified paragraph 74—</p> <p>(a) the FSA may also make an application under this modified paragraph on the grounds that—</p> <p>(i) the administrator is acting or has acted so as unfairly to harm the interests of some or all of the members, creditors or clients; or</p> <p>(ii) the administrator is proposing to act in a way which would unfairly harm the interests of some or all of the members, creditors or clients;</p> <p>(b) a client may also make an application under sub-paragraph (1) or (2);</p> <p>(c) where the FSA has given a direction under regulation 16 which has not been withdrawn, an order may not be made under this paragraph if it would impede or prevent compliance with the direction; and</p> <p>(d) any of the following persons may make an application under this paragraph on the grounds that the administrator is not taking any action in response to a request from that person under regulation 13(2) and that the person is of the opinion that the action requested would not lead to a material reduction in the value of the property of the investment bank—</p> <p>(i) the Bank of England,</p> <p>(ii) the Treasury,</p>

<i>Provision of Schedule 2</i>	<i>Subject</i>	<i>Modification or comment</i>
		(iii) the FSA, or  (iv) a market infrastructure body.
Para 28	Para 84: termination: no more assets for distribution	In the modified paragraph 84—  (a) the administrator shall only file a notice under sub-paragraph (1) if the investment bank no longer holds client assets; and  (b) in sub-paragraph (5), a copy of the notice shall be sent to every client of the investment bank of whom the administrator is aware and the FSA.
Para 29	Para 87: resignation	In the modified paragraph 87—  (a) where the administrator was appointed on the application of the Secretary of State or the FSA, the notice given in accordance with sub-paragraph (2)(a) must also be given to the applicant; and  (b) sub-paragraphs (2)(b) and (c) are not applied.
Para 30	Para 89: disqualification	In the modified paragraph 89—  (a) where the administrator was appointed by the Secretary of State or the FSA, the notice given in accordance with sub-paragraph (2) (a) must also be given to the applicant; and  (b) sub-paragraphs (2)(b) and (c) are not applied.
Para 31	Para 90: replacement	In the modified paragraph 90, the reference to paragraphs 91 to 93 and 95 is to paragraph 91.
Para 32	Para 91: replacement	In the modified paragraph 91, the FSA is added to the list of persons who may make an application to appoint an administrator but to whom the restrictions in sub-paragraph (2) apply.



<i>Provision of Schedule 2</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 38	Para 103: joint administrators	In the modified paragraph 103—  (a) in sub-paragraph (2)(a), the reference to paragraph 12(1)(a) to (c) is to regulation 5(1); and  (b) sub-paragraphs (3) and (4) are not applied.
Para 39	Para 105: majority decision of directors	Paragraph 105 is not applied.
Para 40	Para 106: fines	In the modified paragraph 106, sub-paragraphs (2)(a), (2)(b), (2)(j) and (2)(k) are not applied.
Para 42	Paras 112 to 116: Scotland	Paragraphs 112 to 116 are not applied.

5.—(1) The provisions of the Insolvency Act other than those in Schedule B1 as applied by regulation 15 apply in respect of a partnership but where the provision is listed in Table 2 below, that provision shall apply subject to this paragraph.

(2) The provisions of the 1994 Order set out in Table 2 apply in relation to these Regulations, with—

- (a) the modifications set out in sub-paragraph (3); and
  - (b) any other modification set out in Table 2.
- (3) The modifications are that a reference to—
- (a) the Act (the Insolvency Act) is a reference to the Regulations;
  - (b) a provision of the Insolvency Act is to that provision as applied and modified by regulation 15, unless the provision appears in Table 1;
  - (c) being wound up means that the partnership is in special administration;
  - (d) office-holder means the administrator; and
  - (e) insolvency order means a special administration order.

**Table 2: Applied provisions of the 1994 Order (general)**

<i>Provision</i>	<i>Subject</i>	<i>Modification or comment</i>
Article 16	Application of the Disqualification Act	The reference to the partnership being wound up as an unregistered company under Part V of the Insolvency Act is a reference to it being placed in special administration under these Regulations.
Article 18	Subordinate legislation	
Schedule para 43	Schedule 1 to the Insolvency Act	Paragraph 19 is not applied.

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<i>Provision</i>	<i>Subject</i>	<i>Modification or comment</i>
Schedule para 9	3, Section 234 of the Insolvency Act	The reference in sub-paragraph (1) to article 7 of the 1994 Order is to be read as a reference to regulation 7.
Schedule para 10	3, Schedule 4 to the Insolvency Act	In Schedule 4, paragraphs 4 to 10, and paragraph 12, are not applied, and in paragraph 13, the reference to “winding up the partnership’s affairs and distributing its property” is a reference to “pursuing the special administration objectives.”
Schedule para 25	4, Section 211	Sub-paragraph (1) is not applied.
Schedule 8	Application of the Disqualification Act	The provisions of the Disqualification Act listed in Article 16, and applied with modification by Schedule 8, are to be read with the modifications set out in regulation 23.
Schedule 10	Subordinate legislation	(a) The reference to the Insolvency Rules 1986 is a reference to insolvency rules.  (b) Ignore the reference to the following instruments—  (i) The Insolvency Proceedings (Monetary Limits) Order 1986 <b>(36)</b> ,  (ii) The Administration of Insolvent Estates of Deceased Persons Order 1986 <b>(37)</b> ,  (iii) The Insolvency (Amendment of Subordinate Legislation) Order 1986 <b>(38)</b> ,  (iv) The Companies (Disqualification Orders) Regulations 2001 <b>(39)</b> ,  (v) The Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986 <b>(40)</b> ,

(36) S.I. 1986/1996.

(37) S.I. 1986/1999.

(38) S.I. 1986/2001.

(39) S.I. 2001/967 (now revoked).

(40) S.I. 1986/2123.

<i>Provision</i>	<i>Subject</i>	<i>Modification or comment</i>
		(vi) The Insolvency Practitioners and Insolvency Services Accounts (Fees) Order 2003(41); and  (vii) The Insolvency Proceedings (Fees) Order 2004(42).

## SCHEDULE 5

Regulation 26

Table of enactments referred to in these Regulations together with the equivalent enactment having effect in relation to Northern Ireland

The enactments listed in column 2, being the equivalent Northern Ireland enactments to the enactments listed in column 1, have effect with the modifications (if any) set out in column 3.

<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Insolvency Act	Insolvency (Northern Ireland) Order 1989 (“the Insolvency Order”)(43)	
<i>The following provisions of the Insolvency Act</i>	<i>The following provisions of the Insolvency Order</i>	
Part 1	Part 2	
Part 4 or 5	Part 5 or 6	
Section 3	Article 16	
Section 4	Article 17	
Section 5	Article 18	
Sections 74 and 76 to 83	Articles 61 and 63 to 69	
Section 79	Article 13	
Section 84	Article 70	
Section 123	Article 103	
Section 124(2)	Article 104(2)	

(41) S.I. 2003/3363.

(42) S.I. 2004/593.

(43) S.I. 1989/2405 (N.I.19). This instrument was amended by several instruments; the only relevant amendments were made by S.R. 2006/25.

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<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Section 124A(1)	Article 104A(1)(44)	
Section 125	Article 105	
Section 135	Article 115	
Section 167 (and Schedule 4)	Article 142 (and Schedule 2)	
Section 168	Article 143	
Section 176	Article 150	
Section 176A	Article 150A(45)	
Section 178	Article 152	
Section 179	Article 153	
Section 180	Article 154	
Section 181	Article 155	
Section 182	Article 156	
Section 186	Article 157	
Section 187	Article 158	
Section 194	Article 163	
Section 206	Article 170	
Section 207	Article 171	
Section 208	Article 172	
Section 209	Article 173	
Section 210	Article 174	
Section 211	Article 175	
Section 212	Article 176	
Section 213	Article 177	
Section 214	Article 178	
Section 215	Article 179	
Section 216	Article 180	
Section 217	Article 181	
Section 218	Article 182	The reference to the Secretary of State in the modification to section 218 in regulation 15(6) is to be

(44) Article 104A was inserted by Article 8(3) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)) and amended by section 79(14) of, and Part II of Schedule 6 to, the Criminal Justice Act 1993 (c. 36). It has also been amended by other instruments but those amendments are not relevant.

(45) Article 105A was inserted by Article 7(1) of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
		treated as a reference to the Department of Enterprise, Trade and Investment.
Section 219	Article 183	
Section 233	Article 197	
Section 234	Article 198	
Section 235	Article 199	
Section 236	Article 200	
Section 237	Article 201	
Section 238	Article 202	
Section 239	Article 203	
Section 240	Article 204	
Section 241	Article 205	
Section 244	Article 206	
Section 245	Article 207	
Section 246	Article 208	
section 247	Article 6	
Section 386 (and Schedule 6 and Schedule 4 to the Pensions Schemes Act 1993)	Article 346 (and Schedule 4 and Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975 <sup>(46)</sup> )	
Section 387	Article 347	
Section 388	Article 349	
Section 389	Article 348	
Section 390	Article 349	
Section 391	Article 350	
Section 411 (and Schedule 8)	Article 359 (and Schedule 5)	(a) The modifications to section 411 set out in column 3 of Table 2 in Regulation 15 are not applied.  (b) Rules shall be made by the Department of Justice with the concurrence of—  (i) the Department of Finance and Personnel; and

<sup>(46)</sup> S.I. 1975/1503 (N.I. 15).

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<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
		<p>(ii) in the case of rules that affect court procedure, the Lord Chief Justice of Northern Ireland.</p> <p>(c) The reference to “this Order” in Article 359 includes these Regulations.</p> <p>(d) A reference in Schedule 5 to the Insolvency (Northern Ireland) Order 1989 to doing anything under or for the purpose of a provision in this Order includes a reference to doing anything under or for the purposes of a provision of these Regulations.</p>
Section 414	Article 361	<p>(a) The modifications to section 414 set out in column 3 of Table 2 in Regulation 15 are not applied.</p> <p>(b) The reference in this Article to “this Order” includes these Regulations.</p> <p>(c) Ignore the reference to the official receiver.</p>
Section 423	Article 367	
Sections 424 and 425	Article 368 and 369	
Sections 430 and 431 (and Schedule 10)	Articles 373 and 374 (and Schedule 7)	
Section 432	Article 374	
Section 433	Article 375	<p>(a) The modifications to section 433 set out in column 3 of Table 2 in Regulation 15 are not applied.</p> <p>(b) In paragraph (1)(a) a statement of affairs prepared “for the purposes of any provision of this Order” includes any statement made by a provision of that Order as applied by these Regulations.</p> <p>(c) In paragraph (1)(b), the reference to “this Order” includes these Regulations.</p>
Sections 434B to 434D	Articles 384 to 386	
Schedule B1	Schedule B1	
<i>The following provisions of Schedule B1</i>	<i>The following provisions of Schedule B1</i>	
Para 40(1)(a)	Para 41(1)(a)	

<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Para 42	Para 43	
Para 43	Para 44	
Para 44	Para 45	
Para 45	Para 46	
Para 46	Para 47	
Para 47	Para 48	
Para 48	Para 49	
Para 49	Para 50	
Para 50	Para 51	
Para 51	Para 52	
Para 53	Para 54	
Para 54	Para 55	
Para 55	Para 56	
Para 56	Para 57	
Para 57	Para 58	
Para 58	Para 59	
Para 59	Para 60	
Para 60 (and Schedule 1)	Para 61 (and Schedule 1)	
Para 61	Para 62	
Para 62	Para 63	
Para 63	Para 64	
Para 64	Para 65	
Para 65	Para 66	
Para 66	Para 67	
Para 67	Para 68	
Para 68	Para 69	
Para 69	Para 70	
Para 70	Para 71	
Para 71	Para 72	
Para 72	Para 73	
Para 73	Para 74	

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<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Para 74	Para 75	
Para 75	Para 76	
Para 79	Para 80	
Para 81	Para 82	
Para 84	Para 85	
Para 85	Para 86	
Para 86	Para 87	
Para 87	Para 88	
Para 88	Para 89	
Para 89	Para 90	
Para 90	Para 91	
Para 91	Para 92	
Para 98	Para 99	
Para 99	Para 100	
Para 100	Para 101	
Para 101	Para 102	
Para 102	Para 103	
Para 103	Para 104	
Para 104	Para 105	
Para 105	Para 106	
Para 106 (and section 430 and Schedule 10)	Para 107 (and Article 373 and Schedule 7)	
Para 107	Para 108	
Para 108	Para 109	
Paras 109	Para 110	
Para 111	Para 1	
Section 87A of the Magistrates' Courts Act 1980	Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981(47)	
Company Directors	Company Directors Disqualification	

(47) S.I. 1981/1675 (N.I. 26). This article was inserted by Article 5 of the Criminal Justice (Northern Ireland) Order 1984 (S.I. 1994/2796 (N.I. 15)) and later amended by S.I. 2005/1455 (N.I. 10).



<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Disqualification Act 1986	(Northern Ireland) Order 2002 <b>(48)</b>	
Section 7 of the Company Directors Disqualification Act 1986	Article 10 of the Company Directors Disqualification (Northern Ireland) Order 2002	
Part 7 of the Companies Act 1989	Part 5 of the Companies (No. 2) (Northern Ireland) Order 1990 <b>(49)</b>	
Section 155 of the Companies Act 1989	Article 80 of the Companies (No. 2) (Northern Ireland) Order 1990	
Section 173 of the Companies Act 1989	Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990	
Section 188 of the Companies Act 1989	Article 109 of the Companies (No. 2) (Northern Ireland) Order 1990	
Insolvency Practitioners (Recognised Professional Bodies) Order 1986	Insolvency Practitioners (Recognised Professional Bodies) Order (Northern Ireland) 1991 <b>(50)</b>	
Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987	Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003 <b>(51)</b>	
Insolvent Partnerships Order 1994	Insolvent Partnerships Order (Northern Ireland) 1995 <b>(52)</b>	

**(48)** S.I. 2002/3150 (N.I. 4).**(49)** S.I. 1990/1504 (N.I.10).**(50)** S.R. 1991 No. 301.**(51)** S.R. 2003 No. 358.**(52)** S.R. 1995 No. 225.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Investment Bank Special Administration Regulations 2011 No. 245

<i>Enactment</i>	<i>Equivalent enactment in N. Ireland</i>	<i>Modifications to the N. Ireland enactment</i>
Insolvent Companies (Reports on Conduct of Directors) Rules 1996	Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003( <b>53</b> )	
Limited Liability Partnership Regulations 2001	Limited Liability Partnership Regulations (Northern Ireland) 2004( <b>54</b> )	
Insolvency Proceedings Fees Order 2004	Insolvency (Fees) Order (Northern Ireland) 2006( <b>55</b> )	
Insolvency Practitioners Regulations 2005	Insolvency Practitioners Regulations (Northern Ireland) 2006( <b>56</b> )	
Insolvency Rules	Insolvency Rules (Northern Ireland) 1991( <b>57</b> )	

## SCHEDULE 6

Regulation 27

## Modifications and consequential amendments

## PART 1

1.—(1) Where this Part of this Schedule applies, the enactments set out below apply with the following modifications.

(2) References to—

- (a) an administrator appointed in respect of a Schedule B1 administration include a reference to an administrator appointed under a special administration order;
- (b) administration under Schedule B1 or “insolvent administration” include a reference to special administration;
- (c) “administration order” include a reference to a special administration order;

(53) S.R. 2003 No. 357.

(54) S.R. 2004 No. 307.

(55) S.R. 2006 No. 54.

(56) S.R. 2006 No. 33.

(57) S.R. 1991 No. 364.

- (d) “insolvency legislation”, the “general law of insolvency”, the “enactments relating to insolvency” and similar expressions include special administration and the provisions of the Insolvency Act as applied by these Regulations;
  - (e) becoming insolvent, or an “insolvency event” occurring in respect of the investment bank includes being put into special administration and “insolvency proceedings” or an “insolvency procedure” include special administration;
  - (f) “winding up”, being “wound up”, “wound up by the court” “going into liquidation” or “compulsory liquidation” include being put into special administration, and a “winding-up order” include a special administration order (and, in this context, “liquidator” shall be read as “administrator”);
  - (g) a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act include a person acting as an administrator under these Regulations;
  - (h) the provisions of the Insolvency Act include those provisions as applied and modified by these Regulations; and
  - (i) the provisions of the Insolvency Rules 1986(58), the Insolvency Rules (Northern Ireland) 1991(59) and the Insolvency (Scotland) Rules 1986(60) include the provisions of insolvency rules made under section 411 of the Insolvency Act as applied by regulation 15(6).
- (3) A reference to insolvency or liquidation within the meaning of section 247 of the Insolvency Act includes a reference to special administration.
- (4) A reference to the “purposes of the Insolvency Act 1986” includes a reference to the purposes of these Regulations.

#### *Primary Legislation*

Taxes Management Act 1970(61)  
Prescription and Limitation (Scotland) Act 1973(62)  
Companies Act 1985(63)  
Finance Act 1986(64)  
Companies (Northern Ireland) Order 1986(65)  
Debtors (Scotland) Act 1987(66)  
Companies Act 1989  
Companies (No. 2) (Northern Ireland) Order 1990(67)  
Taxation of Chargeable Gains Act 1992(68)  
Pension Schemes Act 1993(69)  
Pension Schemes (Northern Ireland) Act 1993(70)

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(58) S.I. 1986/1925.

(59) S.R. 1991 No. 364.

(60) S.I. 1986/1915.

(61) 1970 c. 9.

(62) 1973 c. 52.

(63) 1985 c. 6.

(64) 1986 c.41.

(65) S.I. 1986 No. 1032 (N.I. 6).

(66) 1987 c.18.

(67) S.I. 1990/1504 (N.I. 10).

(68) 1992 c.12.

(69) 1993 c. 48.

(70) 1993 c. 49.

Pensions Act 1995**(71)**  
Pensions (Northern Ireland) Order 1995**(72)**  
Proceeds of Crime (Scotland) Act 1995**(73)**  
Employment Rights Act 1996**(74)**  
Employment Rights (Northern Ireland) Order 1996**(75)**  
Terrorism Act 2000**(76)**  
Finance Act 2000**(77)**  
International Criminal Court Act 2001**(78)**  
International Criminal Court (Scotland) Act 2001**(79)**  
Proceeds of Crime Act 2002**(80)**  
Debt Arrangement and Attachment (Scotland) Act 2002**(81)**  
Finance Act 2003**(82)**  
Pensions Act 2004**(83)**  
Pensions (Northern Ireland) Order 2005**(84)**  
Companies Act 2006 (but not including section 1078 (documents subject to Directive disclosure requirements))  
Bankruptcy and Diligence (Scotland) Act 2007**(85)**  
Finance Act 2008**(86)**  
Dormant Bank and Building Society Accounts Act 2008**(87)**  
Corporation Tax Act 2009**(88)**  
Corporation Tax Act 2010**(89)**  
Taxation (International and other Provisions) Act 2010**(90)**

#### *Secondary Legislation*

Statutory Maternity Pay (General) Regulations 1986**(91)**  
Statutory Maternity Pay (General) (Northern Ireland) Regulations 1987**(92)**

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**(71)** 1995 c.26.  
**(72)** S.I. 1995/3213 (N.I. 22).  
**(73)** 1995 c.43.  
**(74)** 1996 c.18.  
**(75)** S.I. 1996/1919 (N.I. 16).  
**(76)** 2000 c.11.  
**(77)** 2000 c.17.  
**(78)** 2001 c.17.  
**(79)** 2001 asp 13.  
**(80)** 2002 c. 29.  
**(81)** 2002 asp 17.  
**(82)** 2003 c.14.  
**(83)** 2004 c. 35.  
**(84)** S.I. 2005/255 (N.I. 1).  
**(85)** 2007 asp 3.  
**(86)** 2008 c. 9.  
**(87)** 2008 c. 31.  
**(88)** 2009 c. 4.  
**(89)** 2010 c. 4.  
**(90)** 2010 c. 8.  
**(91)** S.I. 1986/1960.  
**(92)** S.R. 1987 No. 30.

Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987**(93)**  
Financial Markets and Insolvency Regulations 1991**(94)**  
Financial Markets and Insolvency Regulations (Northern Ireland) 1991**(95)**  
Insolvency Regulations 1994**(96)**  
Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994**(97)**  
Insolvent Companies (Reports on Conduct of Directors) Rules 1996**(98)**  
Financial Markets and Insolvency Regulations 1996**(99)**  
Financial Markets and Insolvency Regulations (Northern Ireland) 1996**(100)**  
Individual Savings Account Regulations 1998**(101)**  
Corporation Tax (Simplified Arrangements for Group Relief) Regulations 1999**(102)**  
Financial Markets and Insolvency (Settlement Finality) Regulations 1999  
Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 **(103)**  
Statutory Paternity Pay and Statutory Adoption Pay (General) (Northern Ireland) Regulations 2002**(104)**  
Financial Collateral Arrangements (No. 2) Regulations 2003  
Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003**(105)**  
Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003**(106)**  
Credit Institutions (Reorganisation and Winding Up) Regulations 2004**(107)**  
Insolvency Practitioners Regulations 2005**(108)**  
Pension Protection Fund (Entry Rules) Regulations 2005**(109)**  
Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005**(110)**  
Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005**(111)**  
Gender Recognition (Disclosure of Information) (Scotland) Order 2005**(112)**  
Financial Assistance Scheme Regulations 2005**(113)**  
Insolvency Practitioners Regulations (Northern Ireland) 2006**(114)**

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**(93)** S.I. 1987/2023.  
**(94)** S.I. 1991/880.  
**(95)** S.R. 1991 No. 443.  
**(96)** S.I. 1994/2507.  
**(97)** S.I. 1994/3200.  
**(98)** S.I. 1996/1909.  
**(99)** S.I. 1996/1469.  
**(100)** S.R. 1996 No. 252.  
**(101)** S.I. 1998/1870.  
**(102)** S.I. 1999/2975.  
**(103)** S.I. 2002/2822.  
**(104)** S.R. 2002 No. 378.  
**(105)** S.R. 2003 No. 357.  
**(106)** S.R. 2003 No. 358.  
**(107)** S.I. 2004/1045.  
**(108)** S.I. 2005/524.  
**(109)** S.I. 2005/590.  
**(110)** S.R. 2005 No. 126.  
**(111)** S.I. 2005/916.  
**(112)** S.S.I. 2005/125.  
**(113)** S.I. 2005/1986.  
**(114)** S.R. 2006 No. 33.

Land Registration (Scotland) Rules 2006(**115**)  
Companies (Cross-Border Mergers) Regulations 2007(**116**)  
Regulated Covered Bonds Regulations 2008(**117**)  
Companies (Trading Disclosures) Regulations 2008(**118**)  
Land Registration (Network Access) Rules 2008(**119**)  
Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**120**)  
Registrar of Companies (Fees) (Companies, Overseas Companies and Limited Liability Partnerships) Regulations 2009(**121**)  
Payment Services Regulations 2009(**122**)  
Companies (Disclosure of Address) Regulations 2009(**123**)  
Additional Statutory Paternity Pay (General) Regulations 2010(**124**)

## PART 2

### Specific modifications

**2.** Where this Part of this Schedule applies, the enactments set out below apply with the modifications indicated.

#### **Financial Services and Markets Act 2000**

**3.**—(1) The following provisions of the Financial Services and Markets Act 2000 apply with the modifications set out in this paragraph.

(2) In section 215(**125**) (rights of the scheme in insolvency)—

- (a) in subsection (3), the reference to making an administration application is to be read as including making an application for a special administration order; and
- (b) subsection (4) is to be read as if it provided the following—

“(4) In the case of a special administration (bank insolvency), if the scheme manager decides, pursuant to section 101 of the Banking Act 2009, as applied by paragraph 6(2) of Schedule 1 to the Investment Bank Special Administration Regulations 2011, not to be a member of the creditors’ committee, the scheme manager has the same rights as are conferred on the Authority by section 371.”

(3) In section 220(3)(**126**), the reference to an administrator is to be read as including an administrator appointed under a special administration order.

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(115) S.I. 2006/485.

(116) S.I. 2007/2974.

(117) S.I. 2008/346.

(118) S.I. 2008/495.

(119) S.I. 2008/1748.

(120) S.I. 2008/1911.

(121) S.I. 2009/2101.

(122) S.I. 2009/209.

(123) S.I. 2009/214.

(124) S.I. 2010/1056.

(125) Section 215(3) was amended by the Enterprise Act 2002 (c. 40), section 248(3), Schedule 17, paragraphs 53, 54(1), (2) and by S.I. 2005/1455.

(126) Section 220(3) was amended but the amendments are not relevant.

(4) In section 362(6)(127), the reference to administration is to be read as including special administration.

(5) In section 375 (Authority's right to apply for an order), references to the provisions of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including references to those provisions as applied and modified by—

- (a) regulation 15; or
- (b) section 145 of the Banking Act 2009 (with the modifications set out in paragraph 6(3) of Schedule 2).

#### **Pensions Act 2004**

4. In section 121(3)(d) of the Pensions Act 2004 (meaning of insolvency event), the reference to “the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act” is to be read so as to include the investment bank entering special administration.

#### **Companies Act 2006**

5.—(1) The following provisions of the Companies Act 2006 apply with the modifications set out in this paragraph.

- (2) In section 461 (permitted disclosure of information obtained under compulsory powers)—
  - (a) subsection (4)(c) is to be read so as to include these Regulations in the list of enactments in that subsection; and
  - (b) subsection (4)(g) is to be read so as to include these Regulations in the list of enactments in that subsection.

(3) Any references in Part 35 (the registrar of companies) to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 are to be read as including that legislation as applied and modified by these Regulations.

- (4) Where an application is made to the court for—
  - (a) a special administration order; or
  - (b) the appointment of a person under section 135 of the Insolvency Act 1986 or article 115 of the Insolvency (Northern Ireland) Order 1989 as applied by these Regulations,

sections 1139 and 1140 (service of documents on company, directors, secretaries and others) have effect subject to the provisions for service set out in rules made under section 411 of the Insolvency Act as applied and modified by regulation 15 of these Regulations.

(5) In Part 2 of Schedule 2(128) (Specified descriptions of disclosures for the purposes of section 948), under heading A—

- (a) paragraph 13 is to be read so as to include these Regulations in the list of enactments in that paragraph, and
- (b) paragraph 37 is to be read so as to include these Regulations in the list of enactments in that paragraph.

(6) In Part 2 of Schedule 11A(129) (Specified descriptions of disclosures for the purposes of section 1224A)—

- (a) paragraph 30 is to be read so as to include these Regulations in the list of enactments in that paragraph, and

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(127) Section 362(6) was amended by S.I. 2008/948.

(128) Schedule 2 was inserted by S.I. 2009/1208.

(129) Schedule 11A was inserted by S.I. 2007/3494.

- (b) paragraph 52 is to be read so as to include these Regulations in the list of enactments in that paragraph.

### **Land Registration Rules 2003**

6. Rule 184(1) of the Land Registration Rules 2003(**130**) is to be read as if the reference to administration included special administration.

### **Credit Institutions (Reorganisation and Winding Up) Regulations 2004**

7.—(1) The following provision of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004(**131**) applies with the modification set out in this paragraph.

(2) Regulation 11(2) is to be read as if it provided the following—

“(2) The prescribed circumstances are that, after the appointment of the administrator, the administrator, in drawing up the statement of proposals in accordance with paragraph 49 of Schedule B1 (as applied by regulation 15(6) of the Investment Bank Special Administration Regulations 2011) or paragraph 7 of Schedule 2 to those Regulations has concluded that it is not possible to rescue the investment bank as a going concern.”.

## **PART 3**

### **Consequential amendments**

#### **Companies Act 1985**

8. After paragraph 9(f) in Schedule 15D(**132**) to the Companies Act 1985 (disclosures), insert—  
“(g) the Investment Bank Special Administration Regulations 2011.”.

#### **Finance Act 1986**

9.—(1) The following provisions of the Finance Act 1986 are amended as follows.

(2) In section 80D(9)(h)(**133**) (stamp duty on repurchases and stock lending: replacement on insolvency) omit “or” and after that paragraph insert—

“(ha) if a special administration order takes effect under the Investment Bank Special Administration Regulations 2011, or”.

(3) In section 89AB(9)(h)(**134**) (stamp duty reserve tax: exception for repurchases and stock lending in case of insolvency) omit “or” and after that paragraph insert—

“(ha) if a special administration order takes effect under the Investment Bank Special Administration Regulations 2011.”.

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(130) S.I. 2003/1417; this instrument was amended by S.I. 2003/2096.

(131) S.I. 2004/1045.

(132) Schedule 15D was inserted by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), section 25(1), Schedule 2, paragraphs 16, 25.

(133) Section 80D was inserted by the Finance Act 2009 (c. 10), section 83(1), Schedule 37, paragraphs 1, 2.

(134) Section 89AB was inserted by the Finance Act 2009, section 83(1), Schedule 37, paragraphs 4, 5.



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## EXPLANATORY NOTE

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

These Regulations provide for a new special administration regime for investment banks (as defined in section 232 of the Banking Act 2009 (c. 1)).

Regulation 3 gives an overview of the new regime.

Regulation 4 provides for the appointment of an administrator by special administration order.

Regulation 5 prescribes those who may apply to the court for a special administration order.

Regulation 6 sets out the grounds under which an application for a special administration order may be made.

Regulation 7 sets out the powers of the court when faced with an application for a special administration order.

Regulation 8 sets out 4 conditions that must be fulfilled before an investment bank can be put into other insolvency proceedings.

Regulation 9 provides that Schedules 1 and 2 apply where the investment bank is a deposit-taker.

Regulation 10 sets out the 3 special administration objectives and the duty on the administrator to achieve the objectives.

Regulation 11 (in respect of the first special administration objective) gives the administrator a power to set a bar date for the submission of claims over the client assets held by the investment bank, and provides for the treatment of claims received after the bar date and after a distribution of assets has taken place.

Regulation 12 (also in respect of the first special administration objective) prescribes how the administrator is to deal with a shortfall in the amount of client assets held by the investment bank in a client omnibus account.

Regulation 13 sets out details of the second special administration objective: that the administrator is to work with market infrastructure bodies to facilitate the operation of default rules and arrangements and the settlement of trades, and with the Authorities (the Bank of England, Financial Services Authority and the Treasury) to facilitate any actions the Authorities might take as a result of the special administration.

Regulation 14 provides for the continuation of certain supply contracts on the commencement of special administration.

Regulation 15 applies relevant provisions of the Insolvency Act 1986 (c. 45) with modification where necessary.

Regulation 16 provides a power for the Financial Services Authority (FSA) to direct the administrator to prioritise one or more of the special administration objectives where the FSA think it necessary to protect the stability of the financial systems of the United Kingdom or public confidence in the financial markets.

Regulation 17 provides for the drawing up of the statement of proposals in the event of the FSA having given a direction.

Regulation 18 provides for the revision of the statement of proposals in the event of the FSA having given a direction.

Regulation 19 provides for the revision of the statement of proposals in the event of the FSA having withdrawn its direction.

Regulations 20 and 21 provide for the ending of special administration.

Regulation 22 provides for a special administration order to be made as an alternative order to a winding up petition or an administration order under Schedule B1 to the Insolvency Act 1986.

Regulation 23 modifies the Company Directors Disqualification Act 1986 (c. 46) to apply in respect of special administration.

Regulations 24 to 27 provide that Schedules 3 to 6 have effect.

Schedule 1 modifies the new regime for use as an alternative to bank insolvency as set out in Part 2 of the Banking Act 2009.

Schedule 2 modifies the new regime for use as an alternative to bank administration as set out in Part 3 of the Banking Act 2009.

Schedule 3 modifies the new regime for limited liability partnerships.

Schedule 4 modifies the new regime for partnerships.

Schedule 5 lists the enactments referred to in the Regulations with their Northern Irish equivalents and any necessary modifications.

Schedule 6 sets out modifications and consequential amendments to legislation.

An Impact Assessment on the effect of the introduction of the new special administration regime has been prepared and may be obtained from the Financial Regulatory Strategy team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).