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STATUTORY INSTRUMENTS

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**2009 No. 351**

**The Bank Insolvency (Scotland) Rules 2009**

**PART 1**

**INTRODUCTORY PROVISIONS**

**Citation and commencement**

1. These Rules may be cited as the Bank Insolvency (Scotland) Rules 2009 and come into force on 25th February 2009.

**Extent**

2. These rules extend to Scotland only.

**Application of rules, construction and interpretation**

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

(2) In these Rules—

“the 1986 Act” means the Insolvency Act 1986<sup>(2)</sup> as applied by section 103 of the 2009 Act;

“the 1986 Rules” means the Insolvency (Scotland) Rules 1986<sup>(3)</sup>;

“the 2009 Act” means the Banking Act 2009;

“bank” means a bank within the meaning of section 91 of the 2009 Act;

“Bankruptcy Act” means the Bankruptcy (Scotland) Act 1985<sup>(4)</sup>;

“court” means the Court of Session;

“eligible depositor” has the meaning given by section 93(3) of the 2009 Act;

“the FSA” means the Financial Services Authority;

“the FSA Rules” means the FSA’s Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000<sup>(5)</sup>);

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

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

“protected deposits” means a protected deposit within the meaning given in the FSA Rules;

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(1) 2009 c.1.

(2) 1986 c.45.

(3) S.I. 1986/1915. The Insolvency (Scotland) Rules have been amended by a number of instruments.

(4) 1985 c.66.

(5) 2000 c.8.

“registered address” has the meaning given by section 1140 of the Companies Act 2006 (6);  
 “Rules of the Court of Session” means Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(7);  
 “set off” includes (without limitation) claims of compensation, rights of retention and rights of balancing accounts on insolvency; and  
 “sums held by the bank” includes amounts due by the bank to the relevant eligible depositor.

- (3) These Rules consist of–
- (a) the rules set out in full;
  - (b) in the case of a rule applying a rule of the 1986 Rules, the rules as applied with–
    - (i) the modifications set out in paragraph (4);
    - (ii) the modifications contained in the rule applying it; and
    - (iii) any other necessary modification.
- (4) The modifications are that–
- (a) a reference to the liquidator is a reference to the bank liquidator;
  - (b) a reference to the provisional liquidator is a reference to the provisional bank liquidator;
  - (c) a reference to winding up is a reference to bank insolvency;
  - (d) a reference to winding up by the court is a reference to a bank being placed into insolvency by the court;
  - (e) a reference to the commencement of winding up is a reference to the commencement of bank insolvency;
  - (f) a reference to going into liquidation is a reference to entering bank insolvency;
  - (g) a reference to a winding-up order is a reference to a bank insolvency order;
  - (h) a reference to the chairman is a reference to the chair;
  - (i) a reference to insolvency proceedings is a reference to bank insolvency proceedings;
  - (j) a reference to a company is a reference to a bank;
  - (k) a reference to a petition is a reference to an application under section 95 of the 2009 Act;
  - (l) a reference to a petitioner is a reference to an applicant; and
  - (m) a reference to a responsible insolvency practitioner is a reference to a bank liquidator.
- (5) Expressions used–
- (a) both in a rule set out in full and in Part 2 of the Banking Act 2009; or
  - (b) both in a modification to a rule of the 1986 Rules applied by these Rules and in Part 2 of the 2009 Act,

have the same meaning as in Part 2 of the 2009 Act.

(6) Where a rule applies a rule of the 1986 rules and modifies that rule by inserting or substituting text–

- (a) any reference in the modified rule to the 2009 Rules is a reference to these Rules;
- (b) expressions inserted or substituted have the same meaning as in these Rules.

(7) Where a rule in the 1986 Rules (Rule A) contains a reference to another such rule (Rule B) and–

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(6) 2006 c.46.

(7) S.I. 1994/1443, last amended by S.S.I. 2008/401.

- (a) both Rule A and Rule B are applied by these Rules; or
- (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules;

the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.

(8) Where a rule (Rule A) refers to another rule (Rule B) and Rule B applies a rule of the 1986 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied to Rule B.

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

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

(10) The 1986 Rules apply to bank insolvency, to the extent that these Rules do not make express provision, but only so far as consistent with Part 2 of the 2009 Act, these Rules, the Rules of the Court of Session, and any other rule of law relating to bank insolvency.

#### **Time limits**

4.—(1) Where by any provision of the 1986 Act, the 2009 Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

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

#### **Overview**

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