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STATUTORY INSTRUMENTS

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**2009 No. 351**

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

**PART 8**

**THE LIQUIDATOR**

*SECTION A - APPOINTMENT BY CREDITORS AND FUNCTIONS OF LIQUIDATOR*

**Appointment by creditors**

**31.**—(1) This rule applies where a person is appointed as bank liquidator by a meeting of creditors.

(2) The chair of the meeting shall certify the appointment of a person as bank liquidator by the meeting but not until the person to be appointed has provided him with a written statement to the effect that he is qualified to act as an insolvency practitioner in accordance with section 390(1) of the 1986 Act, and that he consents so to act.

(3) The appointment of the bank liquidator takes effect upon the passing of the resolution for the appointment and the date of the appointment shall be stated in the certificate.

(4) The chair of the meeting shall send the certificate to the new bank liquidator who shall send a copy of the certificate to the Bank of England (if the Bank of England was the applicant for the bank insolvency order), or the FSA, (if the FSA was that applicant).

**Appointment to be advertised and registered**

**32.**—(1) This rule applies where the bank liquidator is appointed by a meeting of the creditors under rule 31 or by the Bank of England under rule 50.

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

(3) The expense of giving notice under this rule shall be borne in the first instance by the bank liquidator and such expense shall be treated as an expense of the bank insolvency.

(4) The bank liquidator shall immediately notify the appointment to the court, the registrar of companies and the Accountant in Bankruptcy.

**Hand-over of assets to bank liquidator**

**33.** Apply rule 4.21 of the 1986 Rules.

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(1) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the [Insolvency Act 2000 \(c.39\)](#); paragraph 18 of Schedule 5 to the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#); paragraph 4 of Schedule 21 to the [Enterprise Act 2002 \(c.40\)](#); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the [Mental Capacity Act 2005 \(c.9\)](#); paragraph 18(3) of Schedule 1 to [S.S.I. 2005/465](#); and paragraph 3(3) of Schedule 1 to [S.I. 2005/2078](#).

### **Taking possession and realisation of the company's assets**

34. Apply rule 4.22 of the 1986 Rules(2).

### **General qualification on powers**

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

## **SECTION B - REMOVAL AND RESIGNATION**

### **Summoning of meeting for removal of bank liquidator**

36.—(1) This rule applies where—

- (a) the court has made an order under rule 39 directing the bank liquidator to summon a meeting of creditors for the purpose of his removal; and
- (b) the liquidation committee has passed a full payment resolution.

(2) A copy of the notice summoning the meeting shall be sent to the Bank of England and the FSA.

(3) Where a meeting of creditors is summoned especially for the purpose of removing the bank liquidator, the notice summoning it shall draw attention to section 109 of the 2009 Act with respect to the bank liquidator's release.

(4) At the meeting, a person other than the bank liquidator or his nominee may be elected to act as chair; but if the bank liquidator or his nominee is chair and a resolution has been proposed for the bank liquidator's removal, the chair shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(5) Where a meeting is to be held or is proposed to be summoned for the purpose of removal of the bank liquidator, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this rule.

(6) The Bank of England and FSA shall have the opportunity to make representations at the meeting.

(7) Where, at a meeting held under this rule, the bank liquidator is removed, another bank liquidator may be appointed in accordance with rule 31.

### **Procedure on bank liquidator's removal**

37.—(1) Apply rule 4.24 of the 1986 Rules(3).

(2) At the end of rule 4.24(1)(a) and (b) after "Accountant in Bankruptcy" where it appears insert "the registrar of companies and the Bank of England."

### **Release of bank liquidator on removal**

38. Where the bank liquidator has been removed by a creditors' meeting which has not resolved against the bank liquidator's release, the fact of that release shall be stated in the certificate of removal before a copy of it is sent, in accordance with rule 37, to the court, the Accountant in Bankruptcy, the registrar of companies and the Bank of England.

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(2) Rule 4.22 was inserted by paragraph 19 of Schedule 1(I) to [S.I. 1987/1921](#).

(3) Rule 4.24 was amended by paragraph 19 of Schedule 1(I) to [S.I. 1987/1921](#), and paragraph 141(9) of Schedule 2(II) to [S.I. 1999/1820](#).

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

**39.**—(1) This rule applies where application is made to the court for the removal of the bank liquidator, or for an order directing the bank liquidator to summon a meeting of creditors for the purpose of removing him.

(2) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by a person other than the Bank of England, the FSA or the liquidation committee.

(3) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the bank liquidator on the application.

(4) Subject to paragraph (2) and (3), the applicant shall send to the bank liquidator a notice of the hearing, stating date, time and place and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(5) The notice and copies mentioned in paragraph (4) shall be sent—

- (a) if the application is made before the passing of a full payment resolution, so as to give the bank liquidator such notice of the hearing as is reasonable in all the circumstances; and
- (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.

(6) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the bank liquidation.

(7) Where the court removes the bank liquidator—

- (a) it shall send three copies of the order of removal to him;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, rule 8 of these Rules applies.

(8) The bank liquidator, on receipt of the three copies of the court orders under paragraph (7), shall send one copy of the order to each of the registrar of companies, Accountant in Bankruptcy and the Bank of England, together with a notice of his ceasing to act as a bank liquidator.

### **Advertisement of removal**

**40.**—(1) Apply rule 4.27 of the 1986 Rules.

### **Resignation of liquidator**

**41.**—(1) Before resigning office in accordance with section 109 of the 2009 Act, the bank liquidator must call a meeting of creditors to notify them of the proposed resignation and, where the bank liquidator was appointed by the Bank of England or by the court, obtain the consent of the Bank of England.

(2) The notice summoning the meeting shall—

- (a) indicate that this is the purpose, or one of the purposes of the meeting;
- (b) draw the creditors' attention to section 111 of the 2009 Act and rule 43 with respect to the bank liquidator's release and shall also be accompanied by an account of the bank liquidator's administration of the bank insolvency, including a summary of his receipts and payments and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part); and
- (c) where the bank liquidator was appointed by the Bank of England or by the court, enclose a copy of the Bank of England's consent.

(3) Copies of the notice and of the account mentioned in paragraph (2) shall be sent to the court, the Bank of England and the FSA.

(4) Subject to paragraph (5), the bank liquidator may only proceed under this rule on the grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner; or
- (b) there has been some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of the bank liquidator.

(5) Where two or more persons are acting as the bank liquidator jointly, any one of them may resign (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint bank liquidators.

#### **Action following acceptance of bank liquidator's resignation**

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

(2) The meeting will resolve whether to give the bank liquidator his release.

(3) If the meeting decides not to give the bank liquidator his release, the bank liquidator will be given a copy of that resolution and rule 43 applies.

(4) After the meeting the bank liquidator shall lodge the notice of his resignation in court and shall send copies of it to the Bank of England and registrar of companies.

(5) The bank liquidator's resignation is effective as from the date on which the court receives notice of his resignation, and the court shall endorse that date on the notice.

(6) Where the creditors have resolved to appoint a new bank liquidator in place of the one who has resigned, rules 4.19 to 4.21(4) of the 1986 Rules shall apply to the appointment of the new bank liquidator, except that the notice to be given by the new bank liquidator under rules 4.19(4) of the 1986 Rules shall also state that his predecessor as bank liquidator has resigned and whether he has been released.

(7) If there is no quorum present at the meeting summoned to notify the creditors of the bank liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the bank liquidator's resignation be accepted, and the creditors are deemed not to have resolved against the bank liquidator having his release.

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

**43.**—(1) Where the liquidator's resignation is notified to a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under rule 42.

(2) Where—

- (a) the bank liquidator is removed by the court following an application under rule 39;
- (b) the Bank of England has refused to consent to the bank liquidator's proposed resignation;
- (c) the meeting of creditors held under rule 36 resolves against giving him release;
- (d) the bank liquidator ceases to be qualified to act as an insolvency practitioner; or
- (e) the meeting of the liquidation committee held under rule 44 resolves against the bank liquidator being released,

he must apply to the Accountant of Court for his release.

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(4) Rule 4.19 was amended by paragraph 17(1) of Schedule 1(I) to [S.I. 1987/1921](#).

(3) Where the Accountant of Court gives release under this rule, he shall certify it accordingly, and send the certificate to the Accountant in Bankruptcy, registrar of companies and the Bank of England.

(4) A copy of the certificate shall be sent by the Accountant of Court to the former liquidator, whose release is effective from the date of the certificate.

### *SECTION C – RELEASE ON COMPLETION OF WINDING UP*

#### **Final meeting**

**44.**—(1) The bank liquidator shall give at least 14 days' notice of the final meeting of the liquidation committee to be held under section 115 of the 2009 Act to the following—

- (a) the FSA;
- (b) the FSCS;
- (c) the Bank of England;
- (d) the Treasury;
- (e) the registrar of companies; and
- (f) the members of the liquidation committee.

(2) The bank liquidator's final report to be laid before the meeting under section 115 of the 2009 Act shall contain an account of the liquidator's administration of the winding up, including—

- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the bank liquidator in connection with that Objective;
- (b) a summary of the bank liquidator's receipts and payments;
- (c) a statement that the bank liquidator has reconciled his account with that which is held by the Secretary of State in respect of the winding up; and
- (d) a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part) of the 1986 Act.

(3) At the same time that notice of the final meeting is sent out, the bank liquidator shall lodge the final report in court and send it to the registrar of companies and the Accountant in Bankruptcy.

(4) The bank liquidator shall give notice that the final report is available to all creditors and contributories, either on request to the bank liquidator or the registrar of companies, and shall cause that notice to be advertised in the Edinburgh Gazette at least 14 days before the final meeting is held.

(5) At the final meeting, the liquidation committee may question the bank liquidator with respect to any matter contained in the final report, and may resolve against the bank liquidator being released.

(6) The bank liquidator shall give notice to the court, the registrar of companies and the Accountant in Bankruptcy that the final meeting has been held and the notice shall state whether or not he has been given his release.

(7) Where the liquidation committee does not resolve against the bank liquidator's release, the bank liquidator vacates office and has his release when the notice in paragraph (6) is lodged in court.

(8) If there is no quorum present at the final meeting, the bank liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the 2009 Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the bank liquidator being released.

(9) If the liquidation committee resolves against the bank liquidator having his release then rule 43 of these Rules applies.

## SECTION D - OUTLAYS AND REMUNERATION

### Determination of amount of outlays and remuneration

45. Apply rule 4.32 of the 1986 Rules.

### Recourse of liquidator to meeting of creditors

46. Apply rule 4.33 of the 1986 Rules.

### Recourse to the court

47. Apply rule 4.34 of the 1986 Rules(5).

### Creditors' claim that remuneration is excessive

48. Apply rule 4.35 of the 1986 Rules.

### Primacy of Objective 1

49. Nothing done under this section of the Rules may prejudice the achievement of Objective 1.

## SECTION E – SUPPLEMENTARY PROVISIONS

### Replacement bank liquidator

50.—(1) Where the bank liquidator vacates his office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 36, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(2) Where a bank liquidator has been removed by a meeting of creditors but 1 month has passed and there has been no resolution passed by a meeting of creditors to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.

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

(a) is qualified to act as an insolvency practitioner in accordance with section 390(6) of the 1986 Act; and

(b) consents to act as the bank liquidator.

(4) The Bank of England shall send a copy of the appointment document to the bank.

(5) The bank liquidator shall forward a copy of the appointment document to the registrar of companies and the Accountant in Bankruptcy.

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

(a) advertise the appointment in the Edinburgh Gazette; and

(b) advertise the appointment in such manner as the bank liquidator thinks fit.

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(5) Rule 4.34 was amended by paragraph 22 of Schedule 1(I) to [S.I. 1987/1921](#).

(6) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the [Insolvency Act 2000 \(c.39\)](#); paragraph 18 of Schedule 5 to the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#); paragraph 4 of Schedule 21 to the [Enterprise Act 2002 \(c.40\)](#); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the [Mental Capacity Act 2005 \(c.9\)](#); paragraph 18(3) of Schedule 1 to [S.S.I. 2005/465](#); and paragraph 3(3) of Schedule 1 to [S.I. 2005/2078](#).

### **Bank liquidator deceased**

- 51.—(1) Apply rule 4.36 of the 1986 Rules(7).  
(2) In rule 4.36(1) after “court” insert “the Bank of England and liquidation committee”.

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

- 52.—(1) Apply rule 4.37 paragraphs (1) and (2)(8) of the 1986 Rules.  
(2) In rule 4.37(2) after “Accountant in Bankruptcy” insert “and the Bank of England”.

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

53.—(1) This rule applies where the bank liquidator was appointed by the court or by the Bank of England under rule 50.

- (2) The bank liquidator can only resign—  
(a) after the liquidation committee has passed a full payment resolution; and  
(b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 41 to receive notice of the bank liquidator’s resignation, the bank liquidator must write to the Bank of England notifying it of the intention to resign.

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

(5) The bank liquidator, if not content with the Bank of England’s response above, may apply to the court for directions in relation to any particular matter in the bank insolvency.

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

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

(2) Where the bank liquidator intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the Bank of England together with notice of any creditors’ meeting to be held in respect of his vacation of office, including any meeting to be notified of his resignation.

(3) The Bank of England must be given at least 21 days before any such creditors’ meeting.

(4) Where there remains any property of the bank which has not been realised, applied, distributed or otherwise fully dealt with in the bank insolvency, the bank liquidator shall include in his notice to the Bank of England details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the bank liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

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

- 55.—(1) Apply rule 4.38 of the 1986 Rules.  
(2) In rule 4.38(2) of that Rule –  
(a) leave out “either”;  
(b) leave out “or” at the end of sub-paragraph (a); and  
(c) after sub-paragraph (b) insert–

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(7) Rule 4.36 was amended by paragraph 141(15) of Schedule 2(II) to [S.I. 1999/1820](#).

(8) Rule 4.37(2) was amended by paragraph 141(16) of Schedule 2(II) to [S.I. 1999/1820](#).

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“, or (c) it is shown to the court’s satisfaction that the transaction was entered into by the bank liquidator for the purpose of achieving Objective 1.”.

**Rule against solicitation**

**56.** Apply rule 4.39 of the 1986 Rules.