

**2009 No. 351**

**BANKS AND BANKING, SCOTLAND**

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

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The Treasury, in exercise of the powers conferred by section 411(1A)(b), (2), (2C) and (3) of the Insolvency Act 1986(a), make the following Rules.

## 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(b) known as bank insolvency.

(2) In these Rules—

“the 1986 Act” means the Insolvency Act 1986(c) as applied by section 103 of the 2009 Act;

“the 1986 Rules” means the Insolvency (Scotland) Rules 1986(a);

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(a) 1986 c.45. Subsections (1A) and (2C) were inserted by the Banking Act 2009, section 125.

(b) 2009 c.1.

(c) 1986 c.45.

“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**(b)**;

“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**(c)**);

“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;

“registered address” has the meaning given by section 1140 of the Companies Act 2006 **(d)**;

“Rules of the Court of Session” means Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994**(e)**;

“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.

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(a) S.I. 1985/1915. The Insolvency (Scotland) Rules have been amended by a number of instruments.  
 (b) 1985 c.66.  
 (c) 2000 c.8.  
 (d) 2006 c.46.  
 (e) S.I. 1994/1443, last amended by S.S.I. 2008/401.

(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—

- (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.

## PART 2

### APPLICATION FOR ORDER

#### **Application for bank insolvency order**

6. An application for a bank insolvency order under section 95 of the 2009 Act shall be in accordance with Part 2 of these Rules and Part VII of Chapter 74 of the Rules of the Court of Session(a).

#### **Persons entitled to copy of application**

7.—(1) Every contributory or creditor of the bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

(3) In paragraph (2), “the appropriate fee” means 15 pence per A4 or A5 page, and 30 pence per A3 page.

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

8.—(1) This rule applies where an application for a bank insolvency order is made to the court under section 95 of the 2009 Act.

(2) The court shall not make the order unless there is lodged in court a statement to the effect that—

- (a) the person proposed to be appointed as the bank liquidator is qualified to act as an insolvency practitioner in accordance with section 390(b) of the 1986 Act; and
- (b) that person consents so to act.

(3) When the bank insolvency order has been made the court shall immediately send a certified copy of the order to—

- (a) the bank liquidator who shall also, where practicable, be sent an electronic copy of the certified copy order; and
- (b) the applicant.

(4) The bank liquidator shall immediately—

- (a) serve a copy of the order on the bank at its registered office and, where the bank liquidator has received an electronic copy of the order and knows the bank’s email address, send an electronic copy to the bank;
- (b) give notice of the appointment to the Accountant in Bankruptcy;
- (c) forward a copy of the order to the registrar of companies in accordance with section 130(1) of the 1986 Act (as applied by section 103 of the 2009 Act);
- (d) advertise the appointment once in the Edinburgh Gazette and such newspaper as the bank liquidator may select or as the court may otherwise direct; and
- (e) send (electronically or otherwise) a copy of the order to—
  - (i) the FSA, if it is not the applicant;
  - (ii) the Bank of England, if it is not the applicant; and
  - (iii) the FSCS.

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(a) S.I. 1994/1443. Part VII of Chapter 74 was inserted by rule 3 of S.S.I. 2009/63

(b) 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.

### **Initial duties of bank liquidation committee**

9.—(1) As soon as reasonably practicable after the making of a bank insolvency order the liquidation committee will meet the bank liquidator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the 2009 Act the committee should recommend the bank liquidator pursue.

(2) If the bank liquidator and every individual on the liquidation committee agree, the meeting may be held by audio or video conference.

(3) The liquidation committee will make its recommendation to the bank liquidator at the meeting.

(4) The Bank of England will confirm the liquidation committee's recommendation in writing as soon as reasonably practicable after the meeting.

(5) As soon as reasonably practicable after the making of a bank insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 45 the bank liquidator is to be remunerated.

(6) Until a full payment resolution has been passed, the liquidation committee—

(a) shall take decisions and pass resolutions by a simple majority; and

(b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

### **Authentication of bank liquidator's appointment**

10. Apply rule 4.20 of the 1986 Rules.

## **PART 3**

### **PROVISIONAL LIQUIDATION**

#### **Appointment of provisional bank liquidator**

11.—(1) This rule applies after an application for a bank insolvency order has been made under Part 2 of these Rules and Part VII of Chapter 74 of the Court of Session Rules<sup>(a)</sup> and before that order is made.

(2) Apply rule 4.1 of the 1986 Rules.

(3) For rule 4.1(1) substitute—

“(1) An application to the court for the appointment of a provisional bank liquidator under section 135 of the 1986 Act may be made—

(a) by the Bank of England;

(b) by the FSA, with the consent of the Bank of England; or

(c) by the Secretary of State.”.

#### **Order of appointment of provisional bank liquidator**

12.—(1) The order of appointment of the provisional bank liquidator shall specify the functions to be carried out by the provisional bank liquidator in relation to the bank's affairs.

(2) The applicant shall, immediately after the order is made, send a certified copy of the order to—

(a) the provisional bank liquidator;

(b) the Bank of England, if the Bank of England is not the applicant;

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(a) S.I. 1994/1443. Part VII of Chapter 74 was inserted by rule 3 of S.S.I. 2009/63.

- (c) the FSA, if the FSA is not the applicant; and
  - (d) the FSCS,
- and may also send to those persons an electronic copy of the certified copy order.
- (3) The provisional bank liquidator shall immediately after the order appointing him is made—
- (a) serve a certified copy of the order on the bank and each director of the bank;
  - (b) give notice of his appointment to the registrar of companies and the Accountant in Bankruptcy;
  - (c) give notice of his appointment to any receiver of the whole or any part of the property of the bank; and
  - (d) advertise the appointment in accordance with the directions of the court.
- (4) Service on a director may be effected electronically by sending it to his work email address.

### **Caution**

13. Apply rule 4.3 of the 1986 Rules.

### **Failure to find or to maintain caution**

14. Apply rule 4.4 of the 1986 Rules.

### **Remuneration**

15. Apply rule 4.5 of the 1986 Rules(a).

### **Termination of appointment**

- 16.—(1) Apply rule 4.6(1)(b) and (2)(c) of the 1986 Rules.
- (2) In rule 4.6(1) ignore “Except in relation to winding up petitions under section 124A”.
- (3) After rule 4.6(2) insert—
- “(3) On the making of a bank insolvency order, the appointment of the provisional bank liquidator shall terminate.”.

## **PART 4**

### **STATEMENT OF AFFAIRS**

#### **Notice requiring statement of affairs**

- 17.—(1) Apply rule 4.7 of the 1986 Rules.
- (2) Insert new rule 4.7(5)—
- “(5) The bank liquidator shall, at the same time as sending a notice under paragraph (3), send a copy of such notice, to the registrar of companies.”.

#### **Form of the statement of affairs**

- 18.—(1) Apply rule 4.8 of the 1986 Rules.

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(a) Rule 4.5 was amended by paragraph 10 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 4.6(1) was amended by rule 13(b) of S.I. 2006/734.  
(c) Rule 4.6(2) was amended by paragraph 11 of Schedule 1(I) to S.I. 1987/1921.

## **Expenses of statement of affairs**

19. Apply rule 4.9 of the 1986 Rules.

## **Limited disclosure**

20. Without prejudice to any other means of restricting disclosure, the Bank of England may also apply to the court for an order limiting disclosure of the names, addresses and claims of persons who were depositors of the bank and who, at the time of making the statement of affairs, still have a claim against the bank in respect of those deposits.

# **PART 5**

## **INFORMATION TO CREDITORS AND CONTRIBUTORIES**

### **Report by bank liquidator**

21.—(1) The bank liquidator shall, at least once after the making of the bank insolvency order, make a report with respect to the proceedings in the bank insolvency and the state of the bank's affairs.

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within 8 weeks of the commencement of the bank insolvency, made publicly available on the bank's website.

(3) The bank liquidator shall include in the report under paragraph (1)—

- (a) a statement that a petition has been presented to the court and the relevant court number;
- (b) the full name, registered address, registered number and any other trading names of the bank;
- (c) details relating to the bank liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
  - (i) which functions (if any) are to be exercised by the persons appointed acting jointly, and
  - (ii) which functions (if any) are to be exercised by any of all of the persons appointed.
- (d) the names of the directors and secretary of the bank and details of any shareholdings in the bank that they have;
- (e) an account of the circumstances giving rise to the bank insolvency;
- (f) if a statement of affairs has been submitted, a copy of that statement;
- (g) if a statement of affairs has yet to be submitted—
  - (i) subject to sub-paragraph (ii) the names, addresses and details of any debts of the creditors, including details of any security held (or in the case of depositors who still are creditors of the bank at the time the report is made, a single statement of their aggregate debt); and
  - (ii) details of the financial position of the bank at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of bank insolvency);
- (h) the basis upon which it has been proposed under rule 24, or, if the full payment resolution has yet to be passed, rule 9, that the bank liquidator's remuneration has been fixed;
- (i) to the best of the bank liquidator's knowledge and belief—
  - (i) an estimate of the value of the prescribed part (within the meaning of section 176A of the 1986 Act) regardless of whether—

- (aa) the bank liquidator proposes to make an application to the court under section 176A(5) of that Act<sup>(a)</sup>; or
- (bb) section 176A(3) of that Act applies);
- (ii) an estimate of the value of the company's net property;
- (j) whether, and if so, why, the bank liquidator proposes to make an application to the court under section 176A(5) of the 1986 Act;
- (k) a summary of—
  - (i) how Objective 1 is being or has been achieved and an estimate of the costs to the bank liquidator of achieving it;
  - (ii) the manner in which the affairs and business of the bank not involved in the achievement of Objective 1 have, since the commencement of the bank insolvency, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
  - (iii) how the affairs and business of the bank will continue to be managed and financed; and
- (l) an explanation of how it is envisaged the purpose of the bank liquidation will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the bank liquidation shall end.

(4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3)(i) to include any information, the disclosure of which could seriously prejudice the commercial interests of the bank. If such information is excluded from the calculation, the estimate shall be accompanied by a statement to that effect.

(5) Any reference in this rule to creditors is to persons known to the bank liquidator to be creditors of the bank.

(6) Where a statement of affairs has been submitted to him, the bank liquidator may send out to creditors and contributories with the next convenient report to be made under paragraph (1) a summary of the statement and such observations (if any) as he thinks fit to make with respect to it.

(7) The bank liquidator shall insert a copy of any report sent under this rule in the sederunt book.

### **Information as to pending liquidations**

**22.**—(1) Apply rule 4.11 of the 1986 Rules<sup>(b)</sup>.

(2) In rule 4.11(1) after “the Accountant in Bankruptcy” insert “and the registrar of companies”.

## **PART 6**

### **MEETINGS OF CREDITORS AND CONTRIBUTORIES**

#### **First meetings in the bank liquidation**

**23.**—(1) Once the liquidation committee passes a full payment resolution the bank liquidator shall—

- (a) immediately summon a meeting of the bank's creditors and contributories; and
- (b) fix a venue, date and time for the meeting,

and the date must be within three months of the date on which the full payment resolution was passed.

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<sup>(a)</sup> Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).

<sup>(b)</sup> Rule 4.11 was amended by paragraph 13 of Schedule 1(I) to S.I. 1987/1921, and paragraph 141(6) of Schedule 2(II) to S.I. 1999/1820.

(2) When the venue, date and time of the meeting have been fixed, the bank liquidator shall give notice of the meeting to—

- (a) every creditor who is known to the bank liquidator or is identified in the bank’s statement of affairs, and
- (b) each member of the liquidation committee,

and shall advertise the venue, date and time of the meeting in such manner as the bank liquidator thinks fit.

(3) In giving the notice mentioned in paragraph (2), the bank liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(4) Notice to the members of the liquidation committee shall be given immediately.

(5) Notice to creditors shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(6) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge claims and (if applicable) proxies, in order to be entitled to vote at the meeting.

(7) The FSCS is entitled to be represented at the meeting and Schedule 3 to the 1986 Rules has effect with respect to its voting rights at such a meeting.

(8) Meetings summoned under this rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the bank liquidation”.

#### **Business at the first meeting of creditors and contributories**

**24.—**(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At the meeting those creditors present or represented by proxy may—

- (a) where the FSCS has not resigned, elect 2 or 4 individuals as new members of the liquidation committee;
- (b) where the FSCS has resigned, elect 3 or 5 individuals as new members of the liquidation committee,

in place of members nominated by the Bank of England and the FSA.

(3) In accordance with section 100(6)(e) of the 2009 Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee would have fewer than 3 members or an even number of members. The maximum number of committee members will be 5.

(4) At the first meeting of the creditors, no resolutions shall be taken other than the following—

- (a) if an application has been made to the court by creditors under rule 39 for the court to direct the bank liquidator to summon a meeting of creditors for the purpose of removing him, and the court has directed that a resolution may be passed at the first meeting of creditors to that effect—
  - (i) a resolution to remove the bank liquidator (or a resolution to remove one or more of the bank liquidators if joint liquidators were originally appointed); and
  - (ii) a resolution to appoint a named insolvency practitioner to be bank liquidator or two or more insolvency practitioners as joint bank liquidators;
- (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
- (c) where two or more persons are appointed jointly to act as bank liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one;

- (d) a resolution to adjourn the meeting for not more than 3 weeks;
  - (e) any other resolution which the chair considers it right to allow for special reason.
- (5) At the first meeting of contributories, no resolutions shall be taken other than the following–
- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 57 shall then apply);
  - (b) a resolution to adjourn the meeting for not more than 3 weeks;
  - (c) any other resolutions which the chair thinks it right to allow for special reason.

**Other meetings**

25. Apply rule 4.13 of the 1986 Rules.

**Attendance at meetings of bank’s personnel**

26. Apply rule 4.14 of the 1986 Rules.

**PART 7**  
**CLAIMS IN LIQUIDATION**

**Submission of claims**

27. Apply rule 4.15 of the 1986 Rules(a).

**Application of the Bankruptcy Act**

28.—(1) Apply rule 4.16 of the 1986 Rules(b).  
(2) Ignore rule 4.16(3).

**Claims in foreign currency**

29.—(1) Apply rule 4.17 of the 1986 Rules(c).  
(2) In rule 4.17(2) omit from “or, if” to the end.

**Rights of eligible depositor and set-off**

30.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation.

(2) In determining the sums due from the bank to an eligible depositor or from the eligible depositor to the bank for the purpose of any right or claim of set off available to the bank against the eligible depositor–

- (a) where the total of the sums held by the bank for any eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000(d), paragraph (3) applies; and
- (b) where the sums held by the bank exceed that limit, paragraph (4) applies.

(3) Where paragraph (2)(a) applies, regardless of whether there are any sums due from the eligible depositor to the bank, the bank shall not be entitled to exercise or claim any right of set off

(a) Rule 4.15 was amended by regulation 27(1) of S.I. 2003/2109.  
(b) Rule 4.16 was amended by paragraph 15 of Schedule 1(I) to S.I. 1987/1921, and rule 3 of S.S.I. 2008/393.  
(c) Rule 4.17 was amended by rule 4 of S.S.I. 2008/393.  
(d) 2000 c.8.

available to it against or in respect of those sums held by the bank for the eligible depositor in respect of the protected deposits; and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that eligible depositor in respect of protected deposits which sum shall be deemed free from any right or claim of set off by the bank.

(4) Where paragraph (2)(b) applies—

- (a) the bank shall be entitled to exercise any right or claim of set off available to it only in respect of any sums held by the bank for that eligible depositor in excess of that limit, which sums shall be subject to any right or claim of set off available to the bank; and
- (b) the sums due from the bank to the eligible depositor will be—
  - (i) the amount by which the total amount exceeds that limit subject to any right or claim of set off available to the bank; and
  - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit of the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000.

(5) Any arrangements with regard to set off between the bank and the eligible depositor in existence before the commencement of bank insolvency shall be subject to this rule.

## 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(a) 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.

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(a) 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.

(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.

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

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

#### **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(b).

(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."

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(a) Rule 4.22 was inserted by paragraph 19 of Schedule 1(I) to S.I. 1987/1921.

(b) 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.

### **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.

### **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(a) 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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(a) 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(a).

### **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(b) 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.

### **Bank liquidator deceased**

51.—(1) Apply rule 4.36 of the 1986 Rules(c).

(2) In rule 4.36(1) after “court” insert “the Bank of England and liquidation committee”.

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(a) Rule 4.34 was amended by paragraph 22 of Schedule 1(I) to S.I. 1987/1921.

(b) 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.

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

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

**52.**—(1) Apply rule 4.37 paragraphs (1) and (2)(a) 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—

“, 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.

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

## PART 9

### THE LIQUIDATION COMMITTEE

#### **Application of rules**

**57.** The rules in this Part apply only in relation to the liquidation committee established under rule 23 after a full payment resolution has been passed.

#### **Membership of committee**

**58.**—(1) Apply rule 4.41 of the 1986 Rules**(a)**.

(2) For rule 4.41(1) substitute—

“(1) Subject to rule 4.43 of the 1986 Rules as applied by rule 56 of the 2009 Rules, the liquidation committee shall consist of either 3 or 5 creditors of the bank, elected by the meeting of creditors held under rule 23 of those Rules.”.

(3) Ignore paragraphs (3) and (6) and in paragraph (5) ignore any reference to contributory members.

#### **Formalities of establishment**

**59.**—(1) Apply rule 4.42 of the 1986 Rules**(b)**.

#### **Committee established by contributories**

**60.**—(1) Apply rule 4.43 of the 1986 Rules**(c)**.

(2) For rule 4.43(1) of that rule substitute—

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the bank liquidator under rule 23 of the 2009 Rules is, by virtue of rule 24(3), that the liquidation committee ceases to exist at the end of the meeting”.

(3) In rule 4.43(2) omit “Section 138 or”.

(4) In rule 4.43(4) omit “at least 3 and not more than 5” and substitute “3 or 5”.

#### **Obligations of liquidator to committee**

**61.** Apply rule 4.44 of the 1986 Rules.

#### **Meetings of the committee**

**62.** Apply rule 4.45 of the 1986 Rules.

#### **The chair at meetings**

**63.** Apply rule 4.46 of the 1986 Rules.

#### **Quorum**

**64.** Apply rule 4.47 of the 1986 Rules.

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(a) Rule 4.41 was amended by paragraph 23 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 4.42 was amended by paragraph 24 of Schedule 1(I) to S.I. 1987/1921, and paragraph 141(17) of Schedule 2(II) to S.I. 1999/1820. Rule 4.42(3) refers to section 375 of the Companies Act 1985 (c.6). That section was replaced by section 323 of the Companies Act 2006 (c.46) with effect from 1st October 2007.  
(c) Rule 4.43 was amended by paragraph 25 of Schedule 1(I) to S.I. 1987/1921.

### **Committee members' representatives**

65. Apply rule 4.48 of the 1986 Rules(a).

### **Resignation**

66. Apply rule 4.49 of the 1986 Rules.

### **Termination of membership**

67. Apply rule 4.50 of the 1986 Rules.

### **Removal**

68. Apply rule 4.51 of the 1986 Rules.

### **Vacancy (creditor members)**

69. Apply rule 4.52 of the 1986 Rules.

### **Vacancy (contributory members)**

70. Apply rule 4.53 of the 1986 Rules(b).

### **Voting rights and resolutions**

71. Apply rule 4.54 of the 1986 Rules.

### **Resolutions by post**

72.—(1) Apply rule 4.55 of the 1986 Rules(c).

(2) Ignore rule 4.55(3) and (4).

### **Liquidator's reports**

73.—(1) Apply rule 4.56 of the 1986 Rules.

(2) At the end of rule 4.56(1) insert "but does not apply to the FSCS".

### **Expenses of members, etc**

74. Apply rule 4.57(1) of the 1986 Rules.

### **Dealings by committee-members and others**

75. Apply rule 4.58 of the 1986 Rules.

### **Composition of committee when creditors paid in full**

76.—(1) Apply rule 4.59 of the 1986 Rules(d).

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(a) Rule 4.48 was amended by paragraph 26 of Schedule 1(I) to S.I. 1987/1921. Rule 4.48 of the 1986 Rules refers to section 375 of the Companies Act 1985 (c.6). That section was replaced by section 323 of the Companies Act 2006 (c.46) with effect from 1st October 2007.

(b) Rule 4.53 was amended by paragraph 27 of Schedule 1(I) to S.I. 1987/1921.

(c) Rule 4.55 was amended by paragraph 28 of Schedule 1(I) to S.I. 1987/1921.

(d) Rule 4.59 was amended by paragraph 141(18) of Schedule 2(II) to S.I. 1999/1820.

(2) For rule 4.59(4) substitute “The members of the liquidation committee will cease to be members at the end of the final meeting held under rule 44 of the 2009 Rules.”

**Formal defects**

77. Apply rule 4.59A of the 1986 Rules(a).

**PART 10**

**DISTRIBUTION OF BANK ASSETS**

**Order of priority in distribution**

78. Apply rule 4.66 of the 1986 Rules(b).

**Order of priority of expenses of liquidation**

79. Apply rule 4.67 of the 1986 Rules(c).

**Application of the Bankruptcy Act**

80. Apply rule 4.68 of the 1986 Rules(d).

**PART 11**

**SPECIAL MANAGER**

**Appointment and remuneration**

81. Apply rule 4.69 of the 1986 Rules.

**Caution**

82. Apply rule 4.70 of the 1986 Rules.

**Failure to find or maintain caution**

83. Apply rule 4.71 of the 1986 Rules.

**Accounting**

84. Apply rule 4.72 of the 1986 Rules.

**Termination of appointment**

85. Apply rule 4.73 of the 1986 Rules.

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(a) Rule 4.59A was inserted by paragraph 29 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 4.66 was amended by paragraph 31 of Schedule 1(I) to S.I. 1987/1921.  
(c) Rule 4.67 was amended by paragraph 32 of Schedule 1(I) to S.I. 1987/1921.  
(d) Rule 4.68 was amended by regulation 27(2) of S.I. 2003/2109.

**PART 12**  
**MISCELLANEOUS**

**Secretary of State's directions under section 116 of the 2009 Act**

**86.**—(1) Where the Secretary of State gives a direction under section 116 of the 2009 Act (application by an interested person for postponement of dissolution) the Secretary of State shall send two copies of the direction to that applicant for it.

(2) Of those copies, one shall be sent by the applicant to the registrar of companies to comply with section 116(4) of the 2009 Act.

**Procedure following appeal under section 116 of the 2009 Act**

**87.** Following an appeal under section 116(2) of the 2009 Act (against a decision of the Secretary of State under the applicable section) the court shall send two certified copies of its order to the person in whose favour the appeal was determined; and that party shall send one of the copies to the registrar of companies.

**Limitation**

**88.** Apply rule 4.76 of the 1986 Rules.

**Dissolution after winding up**

**89.** Apply rule 4.77 of the 1986 Rules.

**PART 13**  
**COMPANY WITH PROHIBITED NAME**

**Preliminary**

**90.**—(1) Apply rule 4.78 of the 1986 Rules(a).

(2) In paragraph (c) of that rule, omit the words from “whether” to the end.

**Application for leave under section 216(3) before passing of full payment resolution**

**91.** Where an application for leave under section 216 of the 1986 Act is made before a full payment resolution has been passed, it may only be made with the consent of the bank liquidator.

**Application for leave under section 216(3)**

**92.** Apply rule 4.79 of the 1986 Rules.

**First excepted case**

**93.**—(1) Apply rule 4.80 of the 1986 Rules(b).

(2) In rule 4.80(1)(b)(ii) ignore the reference to Administrator.

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(a) Rule 4.78 was amended by paragraph 33 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 4.80 was amended by rule 3(2) of S.I. 2007/2537.

### **Second excepted case**

94. Apply rule 4.81 of the 1986 Rules(a).

### **Third excepted case**

95.—(1) Apply rule 4.82 of the 1986 Rules.

(2) In rule 4.82(a), for the words “liquidating company went into liquidation”, substitute “bank went into bank insolvency”.

(3) In rule 4.82(b), for the words “section 252(5) of the Companies Act”, substitute “section 1169 of the Companies Act 2006(b)”.

### **Further exception**

96. The court’s leave under section 216(3) of the 1986 Act is not required in respect of anything done by a person in connection with the exercise of a stabilisation power under Part 1 of the 2009 Act.

## **PART 14**

### **MEETINGS**

### **Summoning of meetings**

97. Apply rule 7.2 of the 1986 Rules.

### **Notice of meeting**

98.—(1) Apply rule 7.3 of the 1986 Rules(c).

(2) Ignore rule 7.3(2) and (7).

(3) For rule 7.3(3) substitute “The convenor may also publish notice of the date, time and place of the meeting in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting.”.

(4) In rule 7.3(3A) omit “or, in cases” to the end.

(5) In rule 7.3(4), for the words “section 171(2) or 172(2)”, substitute “section 108 of the 2009 Act”.

### **Chair of meetings**

99.—(1) Meetings shall be chaired by the bank liquidator or a person nominated in writing by the bank liquidator.

(2) A person nominated under paragraph (1) must be—

- (a) qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act; or
- (b) an employee of the bank liquidator or of the bank liquidator’s firm who is experienced in insolvency matters.

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(a) Rule 4.81 was amended by paragraph 34 of Schedule 1(I) to S.I. 1987/1921.

(b) 2006 c.46.

(c) Rule 7.3 was amended by paragraph 35 of Schedule 1(I) to S.I. 1987/1921, and paragraph 7 of Schedule 2 to S.I. 2003/2111.

## **Meetings requisitioned**

**100.**—(1) Apply rule 7.6(1) to (8) of the 1986 Rules(a).

(2) For rule 7.6(1) substitute “Subject to paragraph (8), this rule applies to any request by a creditor or creditors to a bank liquidator for a meeting of creditors, separate meetings of creditors or contributories or for any other meeting under any other provision of the 1986 Act as applied by the 2009 Act, or these rules.”.

(3) In rule 7.6(3), (4) and (5) ignore “the administrator, or, as the case may be”.

## **Requisitioned meetings reforming the liquidation committee**

**101.**—(1) Rule 7.6 of the 1986 Act also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 24 and no further steps have been taken to re-establish that committee; and
- (b) the bank liquidator has been requested by no less than one-tenth in value of the bank’s creditors to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to reform the liquidation committee, the time periods set out in rule 7.6 of the 1986 Rules may be expedited by the bank liquidator on request of the bank’s creditors.

(3) The bank liquidator shall give notice of the meeting to the FSA and the Bank of England.

(4) Rule 24(1), (2) and (3) shall then apply at this meeting as it were the first meeting of the creditors.

## **Quorum**

**102.** Apply rule 7.7 of the 1986 Rules(b).

## **Adjournment**

**103.** Apply rule 7.8(1) to (6) of the 1986 Rules(c).

## **Entitlement to vote (creditors)**

**104.** Apply rule 7.9(1) to (3) of the 1986 Rules(d).

## **Entitlement to vote (members and contributories)**

**105.** Apply rule 7.10 of the 1986 Rules(e).

## **Chair of meeting as proxy holder**

**106.** Apply rule 7.11(1) of the 1986 Rules.

## **Resolutions**

**107.** Apply rule 7.12 of the 1986 Rules(f).

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(a) Rule 7.6 was amended by paragraph 38 of Schedule 1(I) to S.I. 1987/1921, and paragraph 8 of Schedule 2(1) to S.I. 2003/2111.

(b) Rule 7.7 was amended by paragraph 39 of Schedule 1(I) to S.I. 1987/1921.

(c) Rule 7.8 was amended by paragraph 40 of Schedule 1(I) to S.I. 1987/1921.

(d) Rule 7.9 was amended by paragraph 9 of Schedule 2 to S.I. 2003/2111.

(e) Rule 7.10 was amended by paragraph 17 of Schedule 1(2) to S.I. 2002/2709.

(f) Rule 7.12 was amended by paragraph 41 of Schedule 1(I) to S.I. 1987/1921.

### **Report of meeting**

108. Apply rule 7.13 of the 1986 Rules.

### **Application under section 176A(5) to disapply section 176A**

109. Apply rule 7.13A of the 1986 Rules.

### **Notice of order under section 176A(5)**

- 110.—(1) Apply rule 7.13B of the 1986 Rules.  
(2) In rule 7.13B(1)(b) omit the words “receiver or”.

### **Definition of “proxy”**

111. Apply rule 7.14 of the 1986 Rules(a).

### **Form of proxy**

112. Apply rule 7.15 of the 1986 Rules.

### **Use of proxy at meeting**

113. Apply rule 7.16 of the 1986 Rules(b).

### **Retention of proxies**

114. Apply rule 7.17 of the 1986 Rules.

### **Right of inspection**

- 115.—(1) Apply rule 7.18 of the 1986 Rules(c).  
(2) In rule 7.18(1)(b) for the words “a company’s members or”, substitute “the company’s”.  
(3) For rule 7.18 (2) substitute—  
    “(2) The reference in paragraph (1) to creditors is to those creditors whose claims have been accepted in whole or in part but does not include a person whose claim has been wholly rejected for purposes of voting, dividend or otherwise.”.

### **Proxy holder with financial interest**

116. Apply rule 7.19 of the 1986 Rules(d).

### **Representation of corporations**

- 117.—(1) Apply rule 7.20 of the 1986 Rules(e).  
(2) In rule 7.20(1) the reference to section 375 of the Companies Act should be read as section 323 of the Companies Act 2006(f).

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(a) Rule 7.14 was amended by paragraph 42 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 7.16 was amended by paragraph 43 of Schedule 1(I) to S.I. 1987/1921.  
(c) Rule 7.18 was amended by paragraph 44 of Schedule 1(I) to S.I. 1987/1921.  
(d) Rule 7.19 was amended by paragraph 45 of Schedule 1(I) to S.I. 1987/1921.  
(e) Rule 7.20 was amended by paragraph 46 of Schedule 1(I) to S.I. 1987/1921.  
(f) 2006 c.46.

(3) For rule 7.20(2), substitute “The copy resolution must be signed or subscribed by or on behalf of the bank in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995(a) or certified by the secretary or director of the bank to be a true copy.”.

## PART 15

### GENERAL PROVISIONS

#### **Giving of notices, etc**

**118.**—(1) Apply rule 7.21 of the 1986 Rules(b).

(2) In rule 7.21(1) for the words “the Act or the Rules” substitute “the Act as applied by the 2009 Act or these Rules”.

#### **Service outside the United Kingdom**

**119.** Where, for the purposes of bank insolvency proceedings, there is a requirement to effect service on a person outwith the United Kingdom, the court may, on application, order service to be effected in such manner as it thinks fit.

#### **Sending by post**

**120.** Apply rule 7.22 of the 1986 Rules(c).

#### **Certificate of giving notice, etc.**

**121.** Apply rule 7.23 of the 1986 Rules.

#### **Validity of proceedings**

**122.**—(1) Apply rule 7.24 of the 1986 Rules.

(2) For the words “the Act or the Rules”, substitute “the Act as applied by the 2009 Act or these Rules”.

#### **Evidence of proceedings at meetings**

**123.** Apply rule 7.25 of the 1986 Rules.

#### **Right to list of creditors and copy documents**

**124.**—(1) Apply rule 7.26 of the 1986 Rules(d).

(2) Apply rule 7.26 of the 1986 Rules.

(3) For rule 7.26(1) substitute “Paragraph (2) applies to bank insolvency proceedings.”.

(4) Ignore rule 7.26(2A) where it first occurs referring to Member State Liquidator.

#### **Confidentiality of documents**

**125.** Apply rule 7.27 of the 1986 Rules(e).

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(a) 1995 c.7.

(b) Rule 7.21 was amended by paragraph 47 of Schedule 1(I) to S.I. 1987/1921.

(c) Rule 7.22 was amended by paragraph 48 of Schedule 1(I) to S.I. 1987/1921.

(d) Rule 7.26 was amended by paragraph 49 of Schedule 1(I) to S.I. 1987/1921, and regulation 28(2) of Part II of S.I. 2003/2109.

(e) Rule 7.27 was amended by paragraph 50 of Schedule 1(I) to S.I. 1987/1921.

### **Insolvency practitioner's caution**

**126.**—(1) Apply rule 7.28 of the 1986 Rules.

(2) For rule 7.28(2) substitute “It is the duty of the liquidation committee in a bank insolvency to review from time to time the adequacy of the bank liquidator’s caution.”.

### **Forms for use in insolvency proceedings**

**127.** The forms contained in Schedule 5 to the 1986 Rules shall be used, with such variations as circumstances require.

### **Fees, expenses, etc**

**128.** Apply rule 7.31 of the 1986 Rules(a).

### **Power of court to cure defects in procedure**

**129.** Apply rule 7.32 of the 1986 Rules.

### **Sederunt book**

**130.**—(1) Apply rule 7.33 of the 1986 Rules(b).

(2) In rule 7.33 for the words “the Act or of the Rules”, substitute “the Act as applied by the 2009 Act and these Rules”.

### **Disposal of company's books, papers and other records**

**131.** Apply rule 7.34(1) and (3) of the 1986 Rules(c).

### **Information about time spent on a case**

**132.** Apply rule 7.36 of the 1986 Rules(d).

23rd February 2009

*Steve McCabe*  
*Dave Watts*  
Two of the Lords Commissioners  
of Her Majesty's Treasury

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(a) Rule 7.31 was amended by article 8 of Part 1 of S.I. 2003/2108.

(b) Rule 7.33 was amended by paragraph 51 of Schedule 1(I) to S.I. 1987/1921, and paragraph 10 of Schedule 2(1) to S.I. 2003/2111.

(c) Rule 7.34 was amended by paragraph 52 of Schedule 1(I) to S.I. 1987/1921, and rule 14 of S.I. 2006/734.

(d) Rule 7.36 was amended by rule 5 of S.S.I. 2008/393.

## EXPLANATORY NOTE

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

These Rules set out the procedure for the bank insolvency process under Part 2 of the Banking Act 2009.

The main features of bank insolvency are as follows. In the event of a deposit-taking bank becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (“the FSCS”) to either–

- (a) receive compensation for their lost deposits as soon as possible after the bank goes into bank insolvency; or
- (b) have their account transferred to a different bank.

This is the first objective of the bank insolvency process.

The procedure can only be initiated by the Bank of England, the Financial Services Authority (“the FSA”) or the Secretary of State by application to the court. The court then makes a bank insolvency order, appointing a bank liquidator. In the initial stages, the bank liquidator is accountable to a liquidation committee formed of the FSA, the Bank of England and the FSCS.

Once the bank liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the bank insolvency will move to the second objective which is to wind up the affairs of the bank so as to achieve the best results for the creditors as a whole.

The Rules are based on the Insolvency (Scotland) Rules 1986 and certain provisions of the 1986 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 2 of these Rules sets out the application process for a bank insolvency order.

Part 3 sets out the procedure for appointing a provisional bank liquidator.

Part 4 sets out provisions relating to the statement of affairs.

Part 5 makes provision in relation to creditors and contributories.

Part 6 sets out the procedure concerning meetings of contributories.

Part 7 sets out procedure concerning claims.

Part 8 sets out provisions relating to the liquidator.

Part 9 sets out provisions concerning the liquidation committee.

Part 10 set out provisions relating to the distribution of bank assets.

Parts 11 to 13 set out miscellaneous procedures.

Part 14 sets out provisions relating to meetings.

Part 15 contains general provisions.

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STATUTORY INSTRUMENTS

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