
STATUTORY INSTRUMENTS

2009 No. 356

The Bank Insolvency (England and Wales) Rules 2009

PART 7

PROOF OF DEBTS

Mutual credits and set-off

72. This rule applies where, before the bank goes into bank insolvency, there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the bank proving or claiming to prove for a debt in the bank insolvency.

(1) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under section 98 of the 1986 Act,
 - (ii) a petition for the winding up of the bank was pending, or
 - (iii) an application for a bank insolvency order in respect of the bank was pending;
- (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the commencement of bank insolvency,
 - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98,
 - (iii) at a time when the creditor had notice that a winding up petition was pending, or
 - (iv) at a time when the creditor had notice that an application for a bank insolvency order in respect of the bank was pending.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from 1 party shall be set off against the sums due from the other.

(3) A sum shall be regarded as being due to or from the bank for the purposes of paragraph (2) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(4) Rule 4.86 of the 1986 Rules shall apply for the purposes of this Rule to any obligation to or from the bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(5) Rules 74 to 76 shall apply for the purposes of this Rule in relation to any sums due to the bank which—

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- (a) are payable in a currency other than sterling,
- (b) are of a periodical nature, or
- (c) bear interest.

(6) Rule 259 shall apply for the purposes of this rule to any sum due to or from the bank which is payable in the future.

(7) Subject to rule 73, only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the bank liquidator as part of the assets except where all or part of the balance result from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(8) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.