
STATUTORY INSTRUMENTS

2009 No. 356

The Bank Insolvency (England and Wales) Rules 2009

PART 22

MISCELLANEOUS AND GENERAL

Power of Secretary of State or Treasury to regulate certain matters

260.—(1) As provided for in paragraph 27 of Schedule 8 to the 1986 Act⁽¹⁾, either the Secretary of State or the Treasury may, subject to the Act and to these Rules, make regulations with respect to any matter provided for in these Rules relating to the carrying out of the functions of a bank liquidator or provisional bank liquidator, including, without prejudice to the generality of the above, provision with respect to the following matters arising in bank insolvency—

- (a) the preparation and keeping by bank liquidators and provisional bank liquidators of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
 - (b) the auditing of bank liquidators' accounts;
 - (c) the manner in which bank liquidators are to act in relation to the bank's books, papers and other records, and the manner of their disposal by the bank liquidator or others;
 - (d) the supply by the bank liquidator to creditors and contributories and to the liquidation committee of copies of documents relating to the bank insolvency and the affairs of the bank (on payment, in such cases as may be specified in the regulations, of a fee.);
 - (e) the manner in which insolvent estates are to be distributed by the bank liquidator, including provision with respect to unclaimed funds and dividends;
 - (f) the manner in which monies coming into the hands of the bank liquidator are to be handled and invested and the payment of interest on sums which, in pursuance of regulations made under this sub-paragraph, have been paid into the Insolvency Services Account;
- (2) Regulations made under paragraph (1) may—
- (a) confer a discretion on the court,
 - (b) make non-compliance with any of the regulations a criminal offence,
 - (c) make different provision for different cases, including different provision for different areas, and
 - (d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State or the Treasury as necessary or expedient.

⁽¹⁾ Schedule 8 was amended by section 125 of the 2009 Act.

Costs, expenses, etc.

261.—(1) All fees, costs, charges and other expenses incurred in the course of bank insolvency, except for any money paid by the FSCS to eligible depositors in pursuance of objective 1, and any expense incurred by the FSCS in this process, are to be regarded as expenses of the bank insolvency.

(2) The costs associated with the Prescribed Part shall be paid out of that Prescribed Part.

Provable debts

262.—(1) Subject to paragraphs (2) and (3) in a bank insolvency all claims by creditors are provable as debts against the bank, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(2) is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under section 189(2) of the 1986 Act—

- (a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim arising by virtue of section 382(1)(b) of that Act; or
- (b) any claim which by virtue of the 1986 Act or any enactment is a claim the payment of which in the bank insolvency is to be postponed.

(4) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Notices

263.—(1) Apply rule 12.4 of the 1986 Rules.

(2) Ignore references to the official receiver.

Quorum at meeting of creditors or contributories

264.—(1) Apply rule 12.4A of the 1986 Rules(3).

(2) For paragraph (3) substitute—

“(3) For the purposes of this rule, the reference to the creditor or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) including persons duly represented under section 375 of the 1985 Act (or, after that section is repealed, by section 323 of the 2006 Act.”

Evidence of proceedings at meetings

265. Apply rule 12.5 of the 1986 Rules.

Documents issuing from Secretary of State

266. Apply rule 12.6 of the 1986 Rules. In paragraph (1) ignore the reference to “members of a company”.

(2) 2002 c. 29.

(3) Rule 12.4A was inserted by S.I. 1987/1919.

Insolvency practitioner's security

267.—(1) — Apply rule 12.8 of the 1986 Rules.

(2) For paragraph (2) substitute—

“(2) 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 security.”.

Time limits

268. Apply rule 12.9(1) of the 1986 Rules⁽⁴⁾ as regards time limits for anything required or authorised to be done by these Rules.

Service by post

269. Apply rule 12.10 of the 1986 Rules⁽⁵⁾.

General provisions as to service

270. CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in bank insolvency proceedings except in cases where a rule makes provision as to the service of a document or the giving of a notice.

Service outside the jurisdiction

271.—(1) CPR Part 6 applies as regards any matter relating to the service of documents in Scotland and Northern Ireland except in cases where a rule makes provision as to the service of a document or the giving of a notice.

(2) Where for the purposes of bank insolvency proceedings any process or order of the court, or other document, is required to be served on a person who is not in the United Kingdom—

(a) with regard to the service of documents to which a rule makes provision, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit,

(b) with regard to the service of documents otherwise, CPR Rules 6.41 to 6.4 apply.

(3) An application under paragraph (2)(a) shall be supported by a witness statement stating—

(a) the grounds on which the application is made, and

(b) in what place or country the person to be served is, or probably may be found.

Confidentiality of documents

272.—(1) Apply rule 12.13 of the 1986 Rules⁽⁶⁾.

(2) In paragraph (2) ignore the reference to a creditors’ committee.

Notices sent simultaneously to the same person

273. Apply rule 12.14 of the 1986 Rules.

⁽⁴⁾ Rule 12.9 was substituted by [S.I. 1999/1022](#).

⁽⁵⁾ Rule 12.10 was amended by [S.I. 1987/1919](#).

⁽⁶⁾ Rule 12.13 was amended by [S.I. 1987/1919](#).

Right to copy documents

274. Apply rule 12.15 of the 1986 Rules(7).

Charge for copy documents

275. Apply rule 12.15A of the 1986 Rules(8).

Non-receipt of notice of meeting

276. Apply rule 12.16 of the 1986 Rules.

Right to have list of creditors

277.—(1) Where a creditor has the right under these Rules to inspect documents on the court file, the creditor may require the bank liquidator to send them a list of the bank’s creditors and the amounts of their respective debts.

(2) Paragraph (1) does not apply if a statement of the bank’s affairs has been filed in court or filed with the registrar of companies.

(3) The bank liquidator must respond to a request in paragraph (1) but may charge the appropriate fee for doing so.

False claim of status as creditor, etc

278. Apply rule 12.18 of the 1986 Rules.

Execution overtaken by judgement debtor’s insolvency

279.—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution under section 184(1) of the 1986 Act (that a bank insolvency order has been made against the debtor, or that a provisional bank liquidator has been appointed).

(2) The notice shall be in writing and be delivered by personal service at, or sent by recorded delivery to, the office of the enforcement officer or (as the case may be) of the officer charged with the execution.

The Gazette

280. Apply rule 12.20 of the 1986 Rules.

Punishment of offences

281. Apply rule 12.21 of the 1986 Rules. For “Schedule 3” substitute “Schedule 5”.

Notice of order under section 176A(5)

282.—(1) Apply rule 12.22 of the 1986 Rules(9). For references to “the liquidator, administrator or receiver” read “bank liquidator”.

(7) Rule 12.15 was inserted by [S.I. 2005/527](#).

(8) Rule 12.15A was inserted by [S.I. 1987/1919](#).

(9) Rule 12.22 was inserted by [S.I. 2003/1730](#).

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