
STATUTORY INSTRUMENTS

2009 No. 356

The Bank Insolvency (England and Wales) Rules 2009

PART 7

PROOF OF DEBTS

Meaning of “prove”

57.—(1) Apply rule 4.73 of the 1986 Rules.

(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.

(3) Ignore paragraphs (2), and (8)(1).

Supply of forms

58. Apply rule 4.74 of the 1986 Rules(2).

Contents of proof

59. Apply rule 4.75 of the 1986 Rules(3).

Claim established by affidavit

60. Apply rule 4.77 of the 1986 Rules. Ignore paragraph (3).

Cost of proving

61.—(1) Apply rule 4.78 of the 1986 Rules.(4)

(2) In paragraph (1), leave out “or 4.76–CVL”.

Bank liquidator to allow inspection of proofs

62. Apply rule 4.79 of the 1986 Rules.

New bank liquidator appointed

63. Apply rule 4.81 of the 1986 Rules.

Admission and rejection of proofs for dividend

64. Apply rule 4.82 of the 1986 Rules.

(1) Paragraph (8) was added by [S.I. 2003/1730](#).
(2) Rule 4.74 was substituted by [S.I. 2004/584](#).
(3) Paragraph (1) was substituted by [S.I. 2004/584](#).
(4) Paragraph (2) was amended by [S.I. 2008/737](#).

Appeal against decision on proof

65.—(1) Apply rule 4.83 of the 1986 Rules.

(2) For paragraph (6) substitute—

“(6) The bank liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

Withdrawal or variation of proof

66. Apply rule 4.84 of the 1986 Rules.

Expunging of proof by the court

67. Apply rule 4.85 of the 1986 Rules.

Estimate of quantum

68. Apply rule 4.86 of the 1986 Rules.

Negotiable instruments, etc.

69. Apply rule 4.87 of the 1986 Rules.

Secured creditors

70. Apply rule 4.88 of the 1986 Rules.

Discounts

71. Apply rule 4.89 of the 1986 Rules.

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—

- (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.

Disapplication of set off for eligible depositors

73.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation. **(5)**.

(2) Rule 72 shall apply but, for the purpose of determining the sums due from the bank to an eligible depositor and from an eligible depositor to the bank for the purpose of rule 72(2)—

- (a) where the total of the sums held by the bank for the 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, then paragraph (3) applies; and
- (b) where the sums held exceeds that limit, then paragraph (4) applies.

(3) Where paragraph (2)(a) applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the bank, and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that depositor in respect of the protected deposits.

(4) Where paragraph (2)(b) applies then—

(5) The reference to FSA Rules are to the FSA’s Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000).

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which that total exceeds that limit, and
 - (b) the sums due from the bank to the eligible depositor will be—
 - (i) the amount by which that total exceeds that limit, set off in accordance with rule 72(2); 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.
- (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.
- (6) “Protected deposit” means a protected deposit within the meaning given by the Compensation Sourcebook.(6)

Debt in foreign currency

74. Apply rule 4.91 of the 1986 Rules(7). In paragraph (1), leave out from “or, if” to the end.

Payments of a periodical nature

75. Apply rule 4.92 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end.(8)

Interest

76. Apply rule 4.93 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end.(9)

Debt payable at future time

- 77.—(1) Apply rule 4.94 of the 1986 Rules.(10)
- (2) Leave out from “or, if” to “entered administration”.

(6) The FSA’s Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000.)
(7) Rule 4.91 was amended by S.I. 2003/1730 and SI 2005/527.
(8) Paragraph (1) was amended by S.I. 2005/527.
(9) Rule 4.93 was amended by S.I. 1987/1919 and 2005/527.
(10) Rule 4.94 was amended by S.I. 2005/527.