
STATUTORY INSTRUMENTS

2009 No. 357

The Bank Administration (England and Wales) Rules 2009

PART 3

Process of Bank Administration

Introduction

27. This Part makes specific provision for a number of aspects of bank administration; Part 5 applies a number of provisions of the Insolvency Rules 1986 to bank administration (with specified modifications).

Bank administrator's proposals: Objective 1 Stage

28.—(1) This Rule makes provision about the statement of proposals which the bank administrator is required to make in the Objective 1 Stage under section 147 of the Banking Act 2009.

- (2) In addition to the information required by section 147 the statement must include—
- (a) details of the court where the proceedings are and the court reference number,
 - (b) the full name, any other trading names, the registered address and registered number of the bank,
 - (c) details of the bank administrator's appointment (including the date),
 - (d) in the case of joint bank administrators, details of the apportionment of functions,
 - (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have,
 - (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator,
 - (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the bank administrator's comments, if any,
 - (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.30 of the Insolvency Rules 1986 (as applied by Rule 58 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs,
 - (ii) the date of the order for limited disclosure, and
 - (iii) the details or a summary of the details that are not subject to that order,
 - (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt),
 - (j) if no statement of affairs has been submitted, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's

creditors including their names, addresses and details of their debts, including any security held, (or, in the case of depositors, a single statement of their aggregate debt), and an explanation as to why there is no statement of affairs,

- (k) the basis upon which it is proposed that the bank administrator's remuneration should be fixed under Rule 2.106 of the Insolvency Rules 1986 (as applied by Rule 58),
 - (l) how the bank administrator proposes to pursue Objective 1,
 - (m) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b),
 - (n) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage,
 - (o) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage, and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act 2009),
 - (p) the manner in which the affairs and business of the bank have been managed and financed since the date of the bank administrator's appointment (including the reasons for and terms of any disposal of assets), and
 - (q) the manner in which the affairs and business of the bank will be managed and financed if the bank administrator's proposals are approved.
- (3) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank or of the bridge bank or private sector purchaser, and
 - (b) must include a statement of any exclusion.

Bank administrator's proposals: Objective 2 Stage

29.—(1) This Rule makes provision about the statement of proposals which the bank administrator is required to make under paragraph 49 of Schedule B1 to the Insolvency Act 1986 as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145(6) of the Banking Act 2009).

- (2) The statement must include—
- (a) details of the court where the proceedings are and the court reference number,
 - (b) the full name, any other trading names, the registered address and registered number of the bank,
 - (c) details of the bank administrator's appointment (including the date),
 - (d) in the case of joint bank administrators, details of the apportionment of functions,
 - (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have,
 - (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator,
 - (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the bank administrator's comments, if any,
 - (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.30 of the Insolvency Rules 1986 (as applied by Rule 58 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs,

- (ii) the date of the order for limited disclosure, and
 - (iii) the details or a summary of the details that are not subject to that order,
 - (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt),
 - (j) if no statement of affairs has been submitted, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts including any security held, (or, in the case of depositors, a single statement of their aggregate debt), and an explanation as to why there is no statement of affairs,
 - (k) the basis upon which it is proposed that the bank administrator's remuneration should be fixed under Rule 2.106 of the Insolvency Rules 1986 (as applied by Rule 58 below),
 - (l) details of whether (and why) the bank administrator proposes to apply to the court under section 176A(5) of the Insolvency Act 1986 (omission of distribution to unsecured creditors: as applied by Table 2 in section 145(6) of the Banking Act 2009) (unless the bank administrator intends to propose a company voluntary arrangement),
 - (m) an estimate of the value of the prescribed part for the purposes of section 176A (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief,
 - (n) an estimate of the value of the bank's net property (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief,
 - (o) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b),
 - (p) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved,
 - (q) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved, and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act 2009),
 - (r) if the bank administrator has decided not to call a meeting of creditors, the reasons,
 - (s) the manner in which the affairs and business of the bank have been managed and financed since the date of the bank administrator's appointment (including the reasons for and terms of any disposal of assets),
 - (t) the manner in which the affairs and business of the bank will be managed and financed if the bank administrator's proposals are approved, and
 - (u) any other information which the bank administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of bank administration following transfer to a bridge bank under section 12(2) of the Banking Act 2009—
- (a) the statement under paragraph 49 of Schedule B1 must state whether any payment is to be made to the bank from a scheme under a resolution fund order, or
 - (b) if that information is unavailable when the statement under paragraph 49 is made, the bank administrator must issue a supplemental statement when the information is available.
- (4) The statement—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank, and
- (b) must include a statement of any exclusion.

30. If the bank administrator thinks that the statement made under section 147 of the Banking Act 2009 in accordance with Rule 28 contains information required by Rule 29(2), the statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986 (as applied by Table 1 in section 145(6) of the Banking Act 2009) may consist of the statement under section 147, with such additions, modifications and supplemental information as the bank administrator thinks necessary—

- (a) to comply with Rule 29(2), and
- (b) to bring the statement under section 147 up to date.

31. Where the court orders an extension of the period of time under paragraph 49(5) of Schedule B1 on an application by the bank administrator under paragraph 107 (as applied by Table 1 in section 145(6) of the Banking Act 2009), the bank administrator must notify the persons set out in paragraph 49(4) as soon as is reasonably practicable after the making of the order.

32. Where the bank administrator has made a statement under paragraph 52(1) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009) and has not called an initial meeting of creditors, the proposals issued in accordance with Rule 29 above will be deemed to have been approved by the creditors (if no meeting has been requisitioned under paragraph 52(2) within the period set out in Rule 2.37(1) of the Insolvency Rules 1986 – as applied by Rule 58 below).

33. Where the bank administrator intends to apply to the court (or file a notice under paragraph 80(2) of Schedule B1 in accordance with section 153 of the Banking Act 2009) for the bank administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1, the bank administrator must, at least 10 days before making the application (or filing the notice), send to all known creditors of the bank a report containing the information required by Rule 29(2).

34.—(1) A bank administrator who wishes to publish a notice under paragraph 49(6) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009) must publish the notice in such manner that the bank administrator thinks most appropriate for ensuring that the notice comes to the attention of the bank’s members.

- (2) The notice must—
 - (a) state the full name of the bank,
 - (b) state the full name and address of the bank administrator,
 - (c) give details of the bank administrator’s appointment, and
 - (d) specify an address to which members can write for a copy of the statement of proposals.

(3) The notice must be published as soon as is reasonably practicable after the bank administrator sends the statement of proposals to the bank’s creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the bank entered bank administration.

Reports to creditors

- 35.—(1)** “Progress report” means a report which includes—
- (a) details of the court where the proceedings are and the relevant court reference number,
 - (b) full details of the bank’s name, address of registered office and companies house registered number, and other trading names of the bank,

- (c) full details of the bank administrator's name and address and date of appointment, including any changes in office-holder,
 - (d) in the case of joint bank administrators, details of the apportionment of functions,
 - (e) details of any extensions of the initial period of appointment,
 - (f) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below),
 - (g) details of any assets that remain to be realised,
 - (h) details of any amounts received from a scheme under a resolution fund order, and
 - (i) any other information likely to be relevant to the creditors.
- (2) A receipts and payments account must state what assets of the bank have been realised, for what value, and what payments have been made to creditors or others.
- (3) The account must be in the form of an abstract showing receipts and payments during the period of the report; and where the bank administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the Insolvency Act 1986 (prescribed part).
- (4) During the Objective 1 Stage, a progress report must include details of—
- (a) the extent of the business of the bank that has been transferred,
 - (b) any property, rights or liabilities that have been transferred, or which the bank administrator expects to be transferred, under a power in Part 1 of the Banking Act 2009 (special resolution regime),
 - (c) any requirements imposed on the residual bank, for the purpose of the pursuit of Objective 1, under a power in that Part, and
 - (d) the arrangements for managing and financing the bank during the Objective 1 Stage.
- (5) In complying with paragraph (4)(c) and (d) a report—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank or of the bridge bank or private sector purchaser, and
 - (b) must include a statement of any exclusion.
- 36.** A progress report must be produced for—
- (a) the first period of 6 months of the bank administration,
 - (b) every subsequent period of 6 months, and
 - (c) when the bank administrator ceases to act, the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) until the administrator ceases to act.
- 37.—**(1) The bank administrator must send a copy of each progress report within 28 days of the end of the period covered by the report, to—
- (a) the creditors,
 - (b) the court,
 - (c) the Bank of England,
 - (d) the FSA,
 - (e) the FSCS, and
 - (f) the registrar of companies.
- (2) Instead of complying with paragraph (1)(a) the bank administrator may publish the progress report on its internet website (and take appropriate steps to draw attention to it).

- (3) The court may, on the bank administrator's application—
- (a) extend the period specified in paragraph (1),
 - (b) make any other order about the content of a progress report.

38.—(1) A bank administrator who fails to comply with Rules 36 and 37 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with Rules 36 and 37 shall be treated in the same way as failure to comply with Rule 2.47 of the Insolvency Rules 1986.

Removal of bank administrator in Objective 1 Stage

39.—(1) This Rule is about an application for removal of a bank administrator made by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the application of paragraph 91 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145(6) of the Banking Act 2009).

(2) The rules for service of notice of the application, other notification of the application and for the hearing shall be as for the application to appoint a bank administrator under Part 2 of these Rules.

(3) But both the person proposed to be appointed as a replacement and the existing bank administrator are entitled to be served and heard.

Appointment of provisional bank administrator

40. An application to the court for the appointment of a provisional bank administrator under section 135 of the Insolvency Act 1986 (as applied by Table 2 in section 145(6) of the Banking Act 2009) may be made by the Bank of England.

41. The application must be supported by a witness statement stating—

- (a) why the Bank of England thinks that a provisional bank administrator should be appointed,
- (b) that the person to be appointed has consented to act,
- (c) that the person to be appointed is qualified to act as an insolvency practitioner,
- (d) whether, to the Bank of England's knowledge, a company voluntary arrangement under Part 1 of the Insolvency Act 1986 has been proposed or is in force in respect of the bank,
- (e) whether, to the Bank of England's knowledge, an administrative receiver is acting in respect of the bank, and
- (f) the Bank of England's estimate of the value of the assets in respect of which the provisional bank administrator is to be appointed.

42. If satisfied that sufficient grounds are shown for the appointment, the court may make it on such terms as it thinks fit.

43. An order appointing a provisional bank administrator must specify the functions to be carried out in relation to the bank's affairs.

44. If the court makes an order appointing a provisional bank administrator the court shall—

- (a) notify the Bank of England,
- (b) send 4 copies of the order to the person appointed (by email if possible), and
- (c) send a copy of the order to any administrative receiver of the bank.

45.—(1) As soon as is reasonably practicable after appointment a provisional bank administrator must send a copy of the order of appointment to—

- (a) the bank,
 - (b) the FSA, and
 - (c) the registrar of companies (together with the form specified in Rule 4.26(3)(ii) of the Insolvency Rules 1986, with such variations, if any, as the circumstances may require).
- (2) Notice to the bank must be given by service in accordance with Rule 18 above.

46. The Bank of England may disclose the fact and terms of an order appointing a provisional bank administrator to any person whom the Bank thinks has a sufficient business interest.

Additional joint bank administrator

47.—(1) The process for the appointment of an additional joint bank administrator is the same as for the initial appointment of a bank administrator.

(2) The existing bank administrator (or each of them) is entitled to a copy of the application and may—

- (a) file written representations, and
- (b) be heard at the hearing.

(3) An application for the appointment of an additional joint bank administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 58 below applies Rules 2.127 and 2.128 of the Insolvency Rules 1986 (notification and advertisement of the appointment of an additional joint administrator).

End of administration: successful rescue

48.—(1) This Rule supplements section 153 of the Banking Act 2009 (end of bank administration where bank administrator satisfied that Objective 2(a) has been achieved).

(2) The bank administrator's notice under paragraph 80 of Schedule B1 to the Insolvency Act 1986 (as applied by section 153)—

- (a) must be filed with the court in Form 2.32B (the form specified in rule 2.113 of the Insolvency Rules 1986 subject to Rule 7(2) above), and
- (b) must be accompanied by a final progress report.

(3) The notice takes effect when the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 80 of Schedule B1 and the progress report to—

- (a) the Bank of England,
- (b) the FSA,
- (c) the FSCS, and
- (d) the registrar of companies.

(5) Notice under paragraph (4)(b) and (c) must be given at least 7 days' before the hearing of the application for approval of the notice.

(6) The bank administrator shall be taken to have complied with the requirements of paragraph 80(5) if, within 5 business days of filing the notice under paragraph 80 with the court, he publishes in the same manner as he published his notice of appointment, and in the Gazette, a notice specifying—

- (a) the full name of the bank and any other trading names,
- (b) the name and address of the bank administrator,

- (c) the date of the notice under paragraph 80, and
- (d) an address to which creditors can write for a copy of the notice under paragraph 80 and the final progress report.

(7) The bank administrator's application for discharge must certify compliance with the requirements of paragraph 80 and of the preceding paragraphs of this Rule.

(8) If the court is satisfied that the conditions in section 153(1) of the Banking Act 2009 have been met it shall—

- (a) discharge the bank administration order, and
- (b) notify the bank administrator, who shall notify the registrar of companies.

End of administration: dissolution

49.—(1) This Rule supplements section 154(2)(a) of the Banking Act 2009 (bank administrator giving notice under paragraph 84 of Schedule B1 to the Insolvency Act 1986 that there are no more assets for distribution, and moving to dissolution).

(2) The bank administrator's notice under paragraph 84—

- (a) must be filed with the court in Form 2.35B (the form specified in rule 2.118 of the Insolvency Rules 1986 subject to Rule 7(2) above), and
- (b) must be accompanied by a final progress report.

(3) The notice shall not take effect until the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 84 and the progress report to—

- (a) the registrar of companies, and
- (b) each person who received notice of the bank administrator's appointment.

(5) After the expiry of the period mentioned in paragraph 84(6) (and subject to extension under paragraph 84(7)) if the court discharges the bank administration order—

- (a) the notice takes effect as specified in paragraph 84(6),
- (b) the court shall notify the bank administrator, who shall notify the registrar of companies.

(6) If the court makes an order under paragraph 84(7) it shall notify the bank administrator in Form 2.36B (the form specified in rule 2.118 of the Insolvency Rules 1986 subject to Rule 7(2) above), who shall notify the registrar of companies.