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STATUTORY INSTRUMENTS

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**2011 No. 1301**

The Investment Bank Special Administration  
(England and Wales) Rules 2011

PART 6

Distributions to creditors

CHAPTER 1

Application

**Distribution to creditors**

**148.**—(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(3) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, no distributions to creditors under this Chapter shall be made without the consent of the Bank of England.

(4) The administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with rule 175.

(5) Where it is intended that the distribution is to be a sole or final dividend, the administrator shall, after the date specified in the notice referred to in paragraph (4)—

- (a) defray any outstanding expenses of a voluntary arrangement that immediately preceded the special administration in accordance with rule 133;
- (b) defray any items payable in accordance with rules 134 and 136;
- (c) defray any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the investment bank, be payable out of the property of which the administrator had custody or control in accordance with paragraph 99; and
- (d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(6) The court may, on the application of any person, postpone the date specified in the notice.

**Debts of investment bank to rank equally**

**149.** Debts, other than preferential debts, rank equally between themselves in the special administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

### Supplementary provisions as to dividend

**150.**—(1) In the calculation and distribution of a dividend the administrator shall make provision for—

- (a) any debts which appear to the administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved their debt before the declaration of any dividend is not entitled to disturb, by reason that they have not participated in it, the distribution of that dividend or any other dividend declared before their debt was proved, but—

- (a) when the creditor has proved that debt, they are entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive; and
- (b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend; but if the administrator refuses to pay a dividend the court may, if it thinks just, order the administrator to pay it and also to pay, out of the administrator's own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838<sup>(1)</sup>, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

### Division of unsold assets

**151.**—(1) The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the investment bank's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

- (a) in the receipts and payments account included in the final progress report under rule 220, state the estimated value of the property divided amongst the creditors of the investment during the period to which the report relates, and
- (b) as a note to the account, provide details of the basis of the valuation.

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(1) [1838 c.110 1 and 2 Victoria](#): section 17 was amended by the Statute Law Revision (No. 2) Act 1888 (55 and 56 Victoria), by the Civil Procedure Acts Repeal Act [1879 \(c. 59\)](#) section 2, Schedule, Part 1 and by [S.I. 1993/565](#) and [S.I.1998/2940](#).