
STATUTORY INSTRUMENTS

2011 No. 2262

The Investment Bank Special
Administration (Scotland) Rules 2011

PART 2

Application for Order

CHAPTER 1

Application for special administration order

Content of application

6. An application for a special administration order in respect of an investment bank must specify

- (a) the full name and registered number of the investment bank;
- (b) any other trading names;
- (c) the investment bank's nominated capital and the amount of capital paid up;
- (d) the address of the investment bank's registered office;
- (e) an email address for the investment bank;
- (f) the identity of the person (or persons) nominated for appointment as administrator; and
- (g) a statement setting out which of the grounds in regulation 6(1) the applicant is relying on in making the application.

Statement of proposed administrator

7. An application must be accompanied by a statement by the proposed administrator—
- (a) specifying the name and address of the person (or each person) proposed to be appointed;
 - (b) giving that person's (or each person's) consent to act;
 - (c) giving details of that person's (or each person's) qualification to act as an insolvency practitioner; and
 - (d) giving details of any prior professional relationship that the person (or any of them) has had with the investment bank.

Lodging of application

8. The application, and its accompanying documents, must be lodged with the court.

Service of application

9.—(1) The application shall be served on—

- (a) the FSA (if not the applicant);
- (b) the investment bank (if neither the investment bank nor its directors are the applicant);
- (c) the person (or each of the persons) nominated for appointment as administrator;
- (d) any person who has given notice to the FSA in respect of the investment bank under regulation 8;
- (e) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement;
- (f) the registrar of companies; and
- (g) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(2) Notice of the application shall also be given to the persons upon whom the court orders that the application be served.

Expenses

10. If the court makes a special administration order, the expenses of the applicant, and of any other party whose expenses are allowed by the court, shall be regarded as expenses of the special administration.

Notice of special administration order

11.—(1) If the court makes a special administration order, the applicant shall immediately after the order is made, send a certified copy of the order to—

- (a) the administrator; and
- (b) the FSA (if not the applicant).

(2) If the court makes an order under regulation 7(1)(d), or any other order under regulation 7(1)(f), it may direct (or give directions as) to whom, and how, notice of that order is to be given.

CHAPTER 2

Application for a special administration (bank insolvency) order

Application for a special administration (bank insolvency) order

12.—(1) An application for a special administration (bank insolvency) order under section 95 of the 2009 Act (as applied by Schedule 1 to the Regulations) shall be in accordance with this Chapter and Chapter 74 of the Rules of the Court of Session 1994.

(2) In this rule, “Rules of the Court of Session 1994” means those rules set out in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(1).

Persons entitled to copy of application

13.—(1) Every contributory, creditor or client of the investment bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

Appointment of administrator by the court

14.—(1) This rule applies where an application is made for a special administration (bank insolvency) order.

(2) The court shall not make the order unless there is lodged in court a statement to the effect that—

- (a) the person proposed to be appointed as the administrator is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act; and
- (b) that person consents so to act.

(3) When the special administration (bank insolvency) order has been made, the court shall immediately send a certified copy of the order to—

- (a) the person appointed as administrator under the order (who shall also, where practicable, be sent an electronic copy of the certified copy of the order); and
- (b) the applicant.

(4) The administrator shall immediately—

- (a) serve a copy of the order on the investment bank at its registered office and, where the administrator has received an electronic copy of the order and knows the investment bank's email address, send an electronic copy to the investment bank; and
- (b) send (electronically or otherwise) a copy of the order to—
 - (i) the FSA (if it is not the applicant);
 - (ii) the Bank of England (if it is not the applicant);
 - (iii) the FSCS; and
 - (iv) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement.

Authentication of the administrator's appointment

15. A copy certified by the clerk of court of the order of court appointing the administrator under rule 14 shall be sufficient evidence for all purposes and in any proceedings that that person has been appointed to exercise the powers and perform the duties of administrator in the special administration (bank insolvency) of that investment bank.

Duties of Objective A committee

16.—(1) As soon as reasonably practicable after the making of a special administration (bank insolvency) order, the Objective A committee shall meet the administrator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the 2009 Act (as applied by paragraph 6 of Schedule 1 to the Regulations) the committee should recommend the administrator to pursue.

(2) If the administrator and every individual on the Objective A committee agree, the meeting may be held by audio or video conference.

(3) The Objective A committee shall make its recommendation to the administrator at the meeting.

(4) The Bank of England shall confirm the Objective A committee's recommendation in writing as soon as reasonably practicable after the meeting.

(5) As soon as reasonably practicable after the making of a special administration (bank insolvency) order, the Objective A committee shall also pass a resolution as to the terms on which, in accordance with rule 135, the administrator is to be remunerated in respect of—

- (a) work done by the administrator in pursuit of Objective A; and
 - (b) work done by the administrator in pursuit of Objectives 2 and 3 of the special administration objectives.
- (6) The Objective A committee—
- (a) shall take decisions and pass resolutions by a simple majority; and
 - (b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Appointment of person under section 135 of the 1986 Act

17.—(1) An application to the court for the appointment of a person under section 135 of the 1986 Act (as applied by paragraph 8 of Schedule 1 to the Regulations) may be made—

- (a) by the Bank of England; or
- (b) by the FSA, with the consent of the Bank of England.

(2) The court may on the application, if satisfied that an application has been made for a special administration (bank insolvency) order and that sufficient grounds are shown for the making of the order, make it on such terms as it thinks fit.

Order of appointment

18.—(1) The order of appointment of a person appointed under rule 17 shall specify the functions to be carried out by that person in relation to the investment bank's affairs.

- (2) The applicant shall, immediately after the order is made, send a certified copy of the order to—
- (a) the person appointed;
 - (b) the Bank of England (if the Bank of England is not the applicant);
 - (c) the FSA (if the FSA is not the applicant); and
 - (d) the FSCS,

and may also send to those persons an electronic copy of the certified copy of the order.

- (3) Immediately after the order of appointment is made, the person appointed shall—
- (a) serve a certified copy of the order on the investment bank and each director of the investment bank;
 - (b) give notice of the appointment to—
 - (i) the registrar of companies; and
 - (ii) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and
 - (c) advertise the appointment in accordance with the directions of the court.

(4) Service on a director may be effected electronically by sending it to that director's work email address.

Caution

19. The cost of providing the caution required by the person appointed under rule 17 shall unless the court otherwise directs be—

- (a) if a special administration (bank insolvency) order is not made, reimbursed to that person out of the property of the investment bank, and the court may make an order against the investment bank accordingly; and

- (b) if a special administration (bank insolvency) order is made, reimbursed to that person as an expense of the special administration.

Failure to find or maintain caution

20.—(1) If the person (“P”) appointed under rule 17 fails to find or to maintain their caution, the court may remove P and make such order as it thinks fit as to expenses.

(2) If an order is made under this rule removing P, or discharging the order appointing P, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in P’s place.

Remuneration

21.—(1) The remuneration of the person (“P”) appointed under rule 17 shall be fixed by the court from time to time.

(2) The basis for fixing the amount of the remuneration payable to P may be a commission calculated by reference to the value of the investment bank’s estate which has been realised by P but there shall in any event be taken into account—

- (a) the work which, having regard to that value, was reasonably undertaken by P; and
- (b) the extent of P’s responsibilities in administering the investment bank’s estate.

(3) Without prejudice to any order of the court as to expenses, P’s remuneration shall be paid, and the amount of any expenses incurred by P reimbursed—

- (a) if a special administration (bank insolvency) order is not made, out of the investment bank’s estate; and
- (b) if a special administration (bank insolvency) order is made, as an expense of the special administration.

(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a), P may retain out of the investment bank’s estate such sums or property as are or may be required for meeting their remuneration and expenses.

Termination of appointment

22.—(1) The appointment of a person (“P”) under rule 17 may be terminated by the court on P’s application, or the application of—

- (a) the Bank of England; or
- (b) the FSA (with the consent of the Bank of England).

(2) If P’s appointment terminates in consequence of the dismissal of the application for the special administration (bank insolvency) order, the court may give such directions as it thinks fit with respect to—

- (a) the accounts of P’s administration;
- (b) the expenses properly incurred by P; or
- (c) other matters which it thinks appropriate.

(3) On the making of a special administration (bank insolvency) order, P’s appointment shall terminate.

(4) Unless the court directs otherwise, where the appointment is terminated, P shall give notice of that termination. Such notice—

- (a) shall be advertised once in the Edinburgh Gazette; and

- (b) may be advertised in such other manner as P thinks fit.
- (5) P shall send notice of the termination of their appointment to the registrar of companies.

CHAPTER 3

Application for a special administration (bank administration) order

Application for a special administration (bank administration) order

23.—(1) An application by the Bank of England for a special administration (bank administration) order in respect of an investment bank must specify—

- (a) the full name of the investment bank;
- (b) any other trading names of the investment bank;
- (c) the address of the investment bank's registered office;
- (d) an email address for the investment bank;
- (e) the address of the Bank of England; and
- (f) the identity of the person (or persons) nominated for appointment as administrator.

(2) If the investment bank has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the registered office, that address shall be specified under paragraph (1)(c).

Statement of proposed administrator

- 24.** An application must be accompanied by a statement by the proposed administrator—
- (a) specifying the name and address of the person proposed (or each person) to be appointed;
 - (b) giving that person's (or each person's) consent to act;
 - (c) giving details of that person's (or each person's) qualification to act as an insolvency practitioner; and
 - (d) giving details of any prior professional relationship that person (or any of them) has had with the investment bank.

Lodging

- 25.** The application, and its accompanying documents, must be lodged with the court.

Service

- 26.**—(1) The Bank of England shall serve the application—
- (a) on the FSA;
 - (b) on the investment bank;
 - (c) on the person (or each of the persons) nominated for appointment as administrator;
 - (d) on any person who has given notice to the FSA in respect of the investment bank under section 120 of the 2009 Act (bank insolvency: notice of preliminary steps of other insolvency procedures);
 - (e) if a property transfer instrument was made or is to be made under section 11(2)(b) of the 2009 Act (transfer to commercial purchaser), on each transferee as referred to in that instrument;
 - (f) on the registrar of companies; and

(g) on the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(2) Service must be effected as soon as reasonably practicable, having regard in particular to the need to give the investment bank's representatives a reasonable opportunity to attend the hearing of the application.

Expenses

27. If the court makes a special administration (bank administration) order, the following are payable as an expense of the special administration—

- (a) the Bank of England's expenses of making the application; and
- (b) any other expenses allowed by the court.

Notice of order

28. If the court makes a special administration (bank administration) order, the Bank of England shall immediately after the order is made, send a certified copy of the order to—

- (a) the administrator;
- (b) the FSA; and
- (c) the FSCS.

Remuneration of the administrator

29. As soon as practicable after the making of a special administration (bank administration) order, the Bank of England shall fix the terms on which, in accordance with rule 135, the administrator is to be remunerated in respect of—

- (a) work done by the administrator in pursuit of Objective A;
- (b) work done by the administrator in pursuit of Objectives 2 and 3 of the special administration objectives.

Appointment of person under section 135 of the 1986 Act

30. An application to the court for the appointment of a person under section 135 of the 1986 Act (as applied by Table 2 in section 145(6) of the 2009 Act⁽²⁾ and by paragraph 6 of Schedule 2 to the Regulations) may be made by the Bank of England.

Order of appointment

31.—(1) The order of appointment of a person appointed under rule 30 shall specify the functions to be carried out by that person in relation to the investment bank's affairs.

(2) The Bank of England shall, immediately after the order is made, send a certified copy of the order to—

- (a) the person appointed;
- (b) the FSA; and
- (c) the FSCS,

and may also send to those persons an electronic copy of the certified copy of the order.

(3) Immediately after the order of appointment is made, the person appointed shall—

(2) Section 145 was amended by section 21 of the Financial Services Act 2010 (c. 28).

- (a) serve a certified copy of the order on the investment bank and each director of the investment bank;
 - (b) give notice of the appointment to—
 - (i) the registrar of companies; and
 - (ii) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and
 - (c) advertise the appointment in accordance with the directions of the court.
- (4) Service on a director may be effected electronically by sending it to that director’s work email address.
- (5) The Bank of England may disclose the fact and terms of the order of appointment to any person whom the Bank of England thinks has a sufficient business interest.
- (6) Rules 19 to 22 shall then apply with the following modifications—
- (a) a reference to “special administration (bank insolvency)” is to be read as a reference to “special administration (bank administration)”; and
 - (b) a reference to a person being appointed under rule 17 is to a person being appointed following an application made under rule 30.