
STATUTORY INSTRUMENTS

2011 No. 2262

**The Investment Bank Special
Administration (Scotland) Rules 2011**

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

32.—(1) The notice of the appointment, which an administrator must publish as soon as reasonably practicable after appointment by virtue of paragraph 46(2)(b)—

- (a) shall be advertised once in the Edinburgh Gazette; and
- (b) may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard content, notices published under paragraph (1) must state—

- (a) that an administrator has been appointed; and
- (b) the date of the appointment.

(3) The administrator shall at the same time give notice of the appointment to the following persons—

- (a) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act; and
- (b) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(4) The administrator shall send the notice of appointment and a copy of the special administration order to the registrar of companies within 7 days of the appointment.

(5) Where, by virtue of a provision of Schedule B1 to the 1986 Act or of these Rules, the administrator is required to send a notice of the appointment to any person, the administrator shall satisfy that requirement by sending to that person—

- (a) the full name, registered address and registered number of the investment bank; and
- (b) the name and business address of the person or persons appointed as administrator.

Notice requiring statement of affairs

33.—(1) In this Part, “relevant person” has the meaning given to it in paragraph 47(3).

(2) The administrator shall send to each relevant person upon whom the administrator decides to make a requirement under paragraph 47 a notice requiring the relevant person to provide a statement of the investment bank's affairs.

(3) The notice shall inform each of the relevant persons—

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;

- (b) of the time within which the statement must be delivered;
- (c) of the effect of paragraph 48(4) (penalty for non-compliance); and
- (d) of the application to that relevant person, and to each other relevant person, of section 235 of the 1986 Act⁽¹⁾ (duty to provide information, and to attend on the administrator, if required).

(4) The administrator shall furnish each relevant person upon whom the administrator decides to make a requirement under paragraph 47 with the information that the administrator considers is necessary for the preparation of the statement of affairs.

Details of the client assets held by the investment bank

34.—(1) The statement of affairs shall include particulars of the client assets held by the investment bank.

- (2) The particulars shall include—
 - (a) the names and addresses of clients of the investment bank for whom the investment bank holds client assets, but where these clients are individuals, the administrator shall not disclose their names and addresses;
 - (b) details as to the amount of client assets held, categorised into type and securities of a particular description;
 - (c) details as to the types of ownership those clients assert over the client assets; and
 - (d) details as to any security interest held by the investment bank or another person in respect of the client assets.

Statements of affairs and statements of concurrence

35.—(1) In addition to the information required by rule 34, the statement of the investment bank's affairs shall be in the form required by rule 7.30 of, and Schedule 5 to, the Insolvency (Scotland) Rules 1986⁽²⁾.

(2) Where more than one relevant person is required to submit a statement of affairs the administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in the form required by rule 7.30 and Schedule 5; and where the administrator does so, the person making the statement of affairs shall be informed of that fact.

(3) The person making the statutory declaration in support of a statement of affairs shall send the statement and one copy of the statement to the administrator, and a copy of the statement to each of those persons whom the administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the administrator the statement of concurrence, together with one copy of the statement, before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by that person.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the statement of affairs, the maker considers that statement to be erroneous or misleading, or the maker is without the direct knowledge necessary for concurring with it.

(6) Subject to rule 36, the administrator shall, as soon as reasonably practicable, file a copy of the statement of affairs and any statement of concurrence with the registrar of companies.

⁽¹⁾ Section 235 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraphs 9, 24.

⁽²⁾ S.I. 1986/1915. Schedule 5 was amended by S.I. 2003/2111 and 2006/734; there are other amending instruments but none is relevant.

(7) Subject to rule 36, the administrator shall insert any statement of affairs submitted to the administrator, together with any statement of concurrence, in the sederunt book.

Limited disclosure

36.—(1) Where the administrator thinks that it would prejudice the conduct of the administration or might be reasonably expected to lead to violence against any person for the whole or part of the statement of the investment bank's affairs to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies or entered in the sederunt book.

(3) The administrator shall as soon as reasonably practicable file a copy of that order with the registrar of companies, and shall place a copy of the order in the sederunt book.

(4) If a creditor or a client seeks disclosure of the statement of affairs or a specified part of it in relation to which an order has been made under this rule, that person may apply to the court for an order that the administrator disclose it or a specified part of it.

(5) Where a special administration (bank administration) order has been made, and where an application has been made under paragraph (4), the Bank of England and the FSA may appear or be represented at the hearing or may make written representations.

(6) The applicant shall give the administrator notice of the application at least 3 business days before the hearing.

(7) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(8) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied, and upon the discharge or variation of the order the administrator shall, as soon as reasonably practicable—

- (a) file a copy of the full statement of affairs (or so much of the statement of affairs as is no longer subject to the order) with the registrar of companies;
- (b) where the administrator has previously sent a copy of the statement of proposals to the creditors and clients in accordance with paragraph 49, provide the creditors and clients with a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) or a summary of the statement of affairs; and
- (c) place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.

(9) In paragraph (8)(b) the reference to the statement of proposals having been sent out in accordance with paragraph 49 also includes the situation where the statement has been sent out in accordance with paragraph 9 of Schedule 2 to the Regulations.

Release from duty to submit statement of affairs

37.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement under paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own instance, or at the request of any relevant person.

(2) A relevant person whose request under this rule has been refused by the administrator may apply to the court for a release or extension of time, and where the application is for an extension of time, the period referred to in paragraph 48(1) is suspended pending the court's decision.

(3) An applicant under this rule shall bear their own expenses in the application and, unless the court otherwise orders, no allowance towards such expenses shall be made as an expense of the special administration of the investment bank.

(4) Where an application has been made under paragraph (2), the FSA may be given notice of the hearing and may appear or be represented and in a special administration (bank administration) the administrator and the Bank of England may also be given notice of the hearing and may appear or be represented at the hearing or may make written representations.

Expenses of statement of affairs

38.—(1) A relevant person who provides to the administrator a statement of affairs of the investment bank or statement of concurrence shall be allowed, and paid by the administrator as an expense of the special administration, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this rule is subject to appeal to the court.

(3) Nothing in this rule relieves a relevant person from any obligation to provide a statement of affairs or statement of concurrence, or to provide information to the administrator.