
STATUTORY INSTRUMENTS

2011 No. 2262

The Investment Bank Special
Administration (Scotland) Rules 2011

PART 3

Process of Special Administration

CHAPTER 3

Initial meeting to consider proposals

Initial meeting

40.—(1) As soon as reasonably practicable after an invitation to the initial meeting has been sent out in accordance with paragraph 51(1), (or in a special administration (bank administration), in accordance with paragraph 10 of Schedule 2 to the Regulations), the administrator must have advertised once in the Edinburgh Gazette—

- (a) that an initial meeting of creditors and clients is to take place;
- (b) the venue fixed for the meeting; and
- (c) the full name and business address of the administrator.

(2) The information required to be advertised under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.

(3) In a special administration (bank insolvency) or a special administration (bank administration) the Bank of England and the FSCS shall also be invited to the initial meeting.

(4) This rule shall not apply where the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

Notice to officers

41.—(1) Where rule 40 applies, notice to attend the meeting must be given to every present or former officer of the investment bank whose presence the administrator thinks is required at the same time that notice is sent to creditors and clients.

(2) That notice must contain—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, registered address, registered number and any other trading names of the investment bank;
- (c) the full name and business address of the administrator; and
- (d) details of the venue, the date and the time of the meeting.

(3) Every person who receives a notice under paragraph (1) must attend.

Business of the initial meeting

- 42.**—(1) At the initial meeting of creditors and clients—
- (a) a creditors’ committee may be established in accordance with Chapter 8 of this Part; and
 - (b) the statement of proposals shall be approved as follows.
- (2) The proposals shall not be approved unless both classes of voter have voted to approve them.
- (3) The creditors and the clients shall vote separately on whether to approve the proposals.
- (4) In a special administration (bank insolvency) (and in a special administration (bank administration) if there are depositors) the FSCS shall be entitled to vote as a creditor under this rule and rule 65 has effect with respect to its voting rights.
- (5) If the proposals were approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposal as modified.
- (6) Where the administrator is unable to get the requisite majority of a class of voter for approval of the statement of proposals (with or without any modifications), rule 43 applies.
- (7) Paragraph (6) shall not apply in a special administration (bank administration).
- (8) This rule shall not apply where the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

Adjournment of meeting to approve the statement of proposals

- 43.**—(1) If, at the initial meeting of creditors and clients, there is not the requisite majority for approval of the statement of proposals (with or without any modifications), the administrator may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days (subject to any direction by the court).
- (2) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held (subject to any direction by the court).
- (3) Where a meeting is adjourned under this rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.
- (4) Where at the initial meeting, the proposals were approved (whether or not with modifications) by one class of voter but not the other, that approval shall no longer stand at the adjourned meeting unless the version of the proposals to be voted on has not been modified from the version that was approved.
- (5) If the administrator is unable to get the requisite majority of creditors or clients for approval of the statement of proposals, the administrator may apply to the court for directions under paragraph 63.
- (6) This rule shall not apply in a special administration (bank administration).

Revision of the statement of proposals

- 44.**—(1) The administrator shall under paragraph 54 (or regulation 18 or paragraph 11 of Schedule 2 to the Regulations as the case may be) make a statement setting out the proposed revisions to the statement of proposals (“the revised statement”).
- (2) The revised statement, which shall be sent out in accordance with paragraph 54(2)(b) and (c), shall include—
- (a) a statement that the proceedings are being held in the court and the court reference number;

- (b) the full name, registered address, registered number and any other trading names of the investment bank;
 - (c) details of the administrator's appointment (including the date of appointment);
 - (d) in the case of joint administrators, details of the apportionment of functions;
 - (e) the names of the directors and secretary of the investment bank and details of any shareholdings in the investment bank they have;
 - (f) a summary of the initial proposals and the reasons for proposing a revision;
 - (g) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon the creditors generally or upon each class of creditor or on the clients (as the case may be); and
 - (h) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (3) The FSA shall be sent a copy of the revised statement at the same time as the revised statement is sent out.
- (4) Where the administrator considers that the revision proposed will only affect creditors or, as the case may be, clients, the notice of the meeting to consider the revised proposals shall be sent to both creditors and clients, but will state who is invited to the meeting.
- (5) In a special administration (bank insolvency) or a special administration (bank administration) the Bank of England and the FSCS shall also be invited to the meeting.
- (6) Subject to paragraph 54(3) within 5 business days of sending out the revised statement in paragraph (1), the administrator shall send a copy of the statement to every member of the investment bank.
- (7) Any notice to be published under paragraph 54(3) shall be advertised in such a manner as the administrator thinks fit.
- (8) The notice shall be published as soon as reasonably practicable after the administrator sends the statement in accordance with paragraph 54(2) and, in addition to the standard content, shall state—
- (a) that members can write for a copy of the statement of revised proposals, and
 - (b) the address to which to write.
- (9) Paragraphs (4) and (5) shall not apply—
- (a) in a special administration (bank administration), where—
 - (i) the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals, and
 - (ii) Objective A has been achieved; and
 - (b) in a special administration or a special administration (bank insolvency) where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals.
- (10) In this rule, a reference to—
- “paragraph 54(2)” also includes a reference to regulation 18(4) or paragraph 13(4) of Schedule 2 to the Regulations as the case may be; and
 - “paragraph 54(3)” also includes a reference to regulation 18(5) or paragraph 13(5) of Schedule 2 to the Regulations as the case may be.

Meeting to approve the revised statement of proposals

45.—(1) This rule applies to a meeting of creditors, a meeting of clients or a meeting of creditors and clients to approve the revisions to the statement of proposals.

(2) Where the revisions are being approved by a meeting of creditors and clients—

- (a) the creditors and the clients shall vote separately on whether to approve the revisions;
- (b) the revisions shall not be approved unless both classes of voter have voted to approve them; and
- (c) where the revisions are approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposals as modified.

(3) In a special administration (bank insolvency) (and in an special administration (bank administration) if there are depositors) the FSCS shall be entitled to vote as a creditor under this rule and rule 65 has effect with respect to its voting rights.

(4) In a special administration or a special administration (bank insolvency), where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals, this rule shall not apply.

(5) In a special administration (bank administration), where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals—

- (a) if Objective A has not been achieved, paragraph (2)(c) shall not apply; and
- (b) if Objective A has been achieved, this rule shall not apply.

Notice to creditors and clients

46. As soon as reasonably practicable after the conclusion of a meeting of creditors or clients, or of creditors and clients to consider the administrator’s proposals or revised proposals, the administrator shall—

- (a) send notice of the result of the meeting to every person who received notice of the meeting and to the registrar of companies;
- (b) lodge in court, and send to any person who did not receive notice of the meeting and of whose claim the administrator has become subsequently aware, a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting; and
- (c) place a copy of the notice of the result of the meeting in the sederunt book.