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STATUTORY INSTRUMENTS

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**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<sup>(1)</sup> (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<sup>(2)</sup>.

(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.

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

<sup>(2)</sup> 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.

## **CHAPTER 2**

### **Statement of proposals**

#### **Statement of proposals**

**39.**—(1) The administrator shall under paragraph 49 (or in the case of a special administration (bank administration) paragraph 7 of Schedule 2 to the Regulations) make a statement of proposals, which shall be sent to the registrar of companies.

(2) In addition to the information required by that paragraph, the statement of proposals must include—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, any other trading names, the registered address and registered number 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) an account of the circumstances giving rise to the application for the appointment of the administrator;
- (g) if a statement of the investment bank's affairs has been submitted, a copy or summary of it with the administrator's comments, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 36, 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 case of any depositors of the investment bank, a single statement of their aggregate debt);

- (j) if a full statement of affairs is not provided, or if no statement of affairs is provided, the names and addresses of clients of the investment bank together with a description of the amount and type of client assets held, the type of ownership the clients have in respect of those assets and details as to any security interest held by the investment bank or another person in respect of those assets, but where those clients are individuals, their names and addresses are not to be disclosed;
- (k) if no statement of affairs is provided, details of the financial position of the investment bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the investment bank entered special administration), a list of the investment bank's creditors including their names, addresses and details of their debts, including any security held (or in case of any depositors of the investment bank, a single statement of their aggregate debt) and an explanation as to why there is no statement of affairs;
- (l) the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 135, and, if this basis has already been set by the Objective A committee or by the Bank of England in respect of the relevant Objective A, or in respect of Objectives 2 and 3 of the special administration objectives, details as to what has been set and any proposals for this to be changed;
- (m) a statement complying with paragraph (4) of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner;
- (n) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the 1986 Act<sup>(3)</sup> (share of assets for unsecured creditors) as applied by regulation 15 (unless the administrator intends to propose a company voluntary arrangement);
- (o) an estimate of the value of the prescribed part for the purposes of section 176A (unless the bank intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;
- (p) an estimate of the value of the investment bank's net property (unless the administrator intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;
- (q) in—
  - (i) a special administration, an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective), and
  - (ii) a special administration (bank insolvency) or a special administration (bank administration)—
    - (aa) a summary of how the relevant Objective A is being or has been achieved and the resources devoted to the pursuit of the relevant Objective A; and
    - (bb) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective);
- (r) the manner in which the affairs and business of the investment bank have been managed and financed since the date of the administrator's appointment (including the reasons for and terms of any disposal of assets);

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(3) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40) and amended by S.I. 2008/948.

- (s) details as to the order in which the administrator aims to pursue the special administration objectives and the manner in which the affairs and business of the investment bank will be managed and financed if the administrator’s proposals are approved;
  - (t) whether the administrator expects a dividend to be paid to creditors and an estimate of the amount of this dividend;
  - (u) how it is proposed that the special administration shall end (winding-up or voluntary arrangement), in accordance with Objective 3; and
  - (v) any other information which the administrator thinks necessary to enable creditors and clients to vote for the approval of the statement of proposals.
- (3) In this Part—
- (a) “pre-administration costs” are—
    - (i) fees charged, and
    - (ii) expenses incurred,by the administrator, or another person qualified to act as an insolvency practitioner, before the investment bank entered special administration but with a view to its doing so; and
  - (b) “unpaid pre-administration costs” are pre-administration costs which had not been paid when the investment bank entered special administration.
- (4) A statement of pre-administration costs complies with this paragraph if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
  - (b) details of the work done for which the fees were charged and expenses incurred;
  - (c) an explanation of why the work was done before the investment bank entered special administration and how it would further the achievement of the special administration objectives;
  - (d) a statement of the amount of the pre-administration costs, setting out separately—
    - (i) the fees charged by the administrator,
    - (ii) the expenses incurred by the administrator,
    - (iii) the fees charged (to the administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and
    - (iv) the expenses incurred (to the administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);
  - (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
  - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d);
  - (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)); and
  - (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
    - (i) subject to approval under rule 112; and
    - (ii) not part of the proposals subject to approval under paragraph 53.
- (5) The statement of proposals—

- (a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the investment bank; and
  - (b) must include a statement of any exclusion.
- (6) In the case of special administration (bank administration) following transfer to a bridge bank under section 12(2) of the 2009 Act—
- (a) the statement of proposals must state whether any payment is to be made to the investment bank from a scheme under a resolution fund order; or
  - (b) if that information is unavailable when the statement of proposals is made, the administrator must issue a supplemental statement when the information is available.
- (7) Following an application by the administrator under paragraph 107, where the court orders an extension of the period of time in paragraph 49(5), the administrator shall notify—
- (a) every creditor of the investment bank of whose address the administrator is aware;
  - (b) every client of the investment bank of whose claim the administrator is aware and whom the administrator has a means of contacting; and
  - (c) the FSA,

as soon as possible after the order is made.

(8) Where the administrator wishes to publish a notice under paragraph 49(6) or gives notice that the statement of proposals is to be provided free of charge to a market infrastructure body, the notice must be published once in a newspaper which the administrator considers to be suitable.

- (9) A notice under paragraph (7) must include the standard content and must state—
- (a) that persons can write for a copy of the statement of proposals for achieving the purpose of administration; and
  - (b) the address to which to write.

(10) This notice must be published as soon as reasonably practicable after the administrator sends out the statement of proposals in accordance with paragraph 49(4) (or in the case of a special administration (bank administration) under paragraph 9 of Schedule 2 to the Regulations), but no later than 8 weeks (or such other period as may be agreed by the creditors and clients or as the court may order) from the date that the investment bank entered 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.

## CHAPTER 4

### Meetings generally

#### **Meetings generally**

**47.** This Chapter, except where different provision is made in the Regulations or these Rules, applies to meetings summoned by the administrator under—

- (a) paragraph 51 (initial meeting);
- (b) paragraph 54(2) (meeting to consider revision to the administrator’s proposals);
- (c) paragraph 62 (general power to summon meetings),

or following a request or a direction from the court under paragraph 56 (further creditors’ meetings).

#### **Venue**

**48.—**(1) In fixing the venue for a meeting, the convener must have regard to the convenience of those attending.

(2) Meetings must be summoned for commencement between 10.00 and 16.00 hours on a business day (subject to any direction by the court).

- (3) In this rule, “meeting” includes an adjourned meeting.

#### **Notice of meeting by individual notice: when and where sent**

**49.—**(1) This rule applies except where the court orders under rule 51 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must be delivered at least 14 days before the day fixed for the meeting as provided in paragraph (3).

- (3) Notice must be sent—

- (a) for a meeting involving the creditors, to all the creditors of whose address the administrator is aware and who had claims against the investment bank at the date when it entered administration (except for those who have subsequently been paid in full);
- (b) for a meeting involving the clients, to all clients of whose claim the administrator is aware (except for those who have no outstanding claim to client assets held by the investment bank) and whom the administrator has a means of contacting;
- (c) for a meeting of contributories, to every person appearing (by the investment bank’s books or otherwise) to be a contributory of the investment bank.

(4) The FSA, and in a special administration (bank insolvency) or special administration (bank administration), the Bank of England and the FSCS, shall also be notified of any such meeting.

#### **Notice of meeting by individual notice: content and accompanying documents**

**50.—**(1) This rule applies except where the court orders under rule 51 that notice of a meeting be given by advertisement only.

- (2) Notice summoning a meeting must specify—

- (a) the purpose of and venue for the meeting;
- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Chapter 5 on voting at the meeting,

and state that claims or proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order that creditors or clients may be entitled to vote at the meeting.

(3) Forms of proxy complying with rule 102 must be sent out with every notice summoning a meeting.

#### **Notice of meeting by advertisement only**

**51.**—(1) The court may order that notice of any meeting under these Rules be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether so to order, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, clients, members and contributories or any particular class of them.

#### **Content of notice for meetings**

**52.**—(1) Notice of a meeting of the creditors, clients or a meeting of creditors and clients, must contain the following information—

- (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;
- (d) details of the venue, the date and time of the meeting;
- (e) whether the meeting is—
  - (i) an initial creditors and clients' meeting under paragraph 51,
  - (ii) to consider revisions to the administrator's proposals under paragraph 54(2),
  - (iii) a further creditors', or creditors and clients', or clients' meeting under paragraph 56, or
  - (iv) a meeting under paragraph 62,

unless the court orders that it be given by advertisement only in accordance with rule 51.

(2) Where the court orders an extension to the period set out in paragraph 51(2)(b), the administrator shall notify each person who was sent notice in accordance with paragraph 49(4) (or in a special administration (bank administration), paragraph 9 to Schedule 2 to the Regulations).

#### **Advertisement of meetings**

**53.**—(1) The administrator, in convening a meeting under these Rules, must have advertised once in the Edinburgh Gazette a notice which, in addition to the standard content, must state—

- (a) that a meeting of creditors, clients, creditors and clients, members or contributories is to take place;
- (b) the venue fixed for the meeting;
- (c) the purpose of the meeting; and

(d) the time and date by which, and place at which, those attending must lodge proxies and (in the case of a meeting of creditors, clients or both) claims or proofs in order to be entitled to vote.

(2) Notice under this rule must be advertised before or as soon as reasonably practicable after notice is given to those attending.

(3) Information to be advertised in the Edinburgh Gazette under this rule may also be advertised in such other manner as the administrator thinks fit.

### **Non-receipt of notice of meeting**

**54.** Where, in accordance with the Regulations or these Rules, a meeting is summoned by notice, the meeting is presumed to have been duly summoned and held, even if not all those to whom the notice is to be given have received it.

### **Requisition of meetings**

**55.**—(1) In this Chapter, “requisitioned meeting” means a meeting requested under paragraph 56(1).

(2) A request for a meeting must contain the following information—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, registered address and registered number of the investment bank;
- (c) the full name and address of the creditor requesting the meeting; and
- (d) the full amount of that creditor’s claim.

(3) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—

- (a) either—
  - (i) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values, and
  - (ii) written confirmation of concurrence from each creditor or contributory concurring, or
- (b) a statement that the requesting creditor’s debt or contributory’s value alone is sufficient without the concurrence of other creditors or contributories.

(4) In the preceding paragraph, a contributory’s value is the amount in respect of which the contributory may vote at any meeting.

(5) A requisitioned meeting must be held within 28 days of the date of the administrator’s receipt of the notice.

(6) The administrator—

- (a) shall notify the FSA of the details and purpose of the requisitioned meeting;
- (b) shall—
  - (i) in a special administration (bank insolvency), notify the Bank of England of the details and purpose of the requisitioned meeting, or
  - (ii) in a special administration (bank administration), notify the Bank of England and the FSCS of the details and purpose of the requisitioned meeting, and
- (c) may, if the administrator thinks appropriate, also summon the clients to the requisitioned meeting.

### **Expenses of requisitioned meetings**

**56.**—(1) The expenses of summoning and holding a requisitioned meeting shall be paid by the person who makes the request, who shall deposit with the administrator caution for their payment.

(2) The sum to be deposited shall be such as the administrator may determine, and the administrator shall not act without the deposit having been made.

(3) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the investment bank as an expense of the administration.

(4) To the extent that any caution made under this rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

### **Quorum at meetings**

**57.**—(1) A meeting of creditors, clients, creditors and clients or contributories is not competent to act unless a quorum is present.

(2) A quorum is—

- (a) in the case of a meeting of creditors, at least one creditor entitled to vote;
- (b) in the case of a meeting of clients, at least one client entitled to vote;
- (c) in the case of a meeting of creditors and clients, at least one creditor and one client who are each entitled to vote;
- (d) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

(3) For the purposes of this rule, the reference to the creditor or contributories necessary to constitute a quorum is not confined to those persons present or duly represented under section 323 of the 2006 Act but includes those represented by proxy by any person (including the chair).

(4) Where at any meeting under paragraph (2)—

- (a) the provisions of this rule as to a quorum being present are satisfied by the attendance of—
  - (i) the chair alone, or
  - (ii) one other person in addition to the chair, and
- (b) the chair is aware, by virtue of claims or proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

### **Chair at meetings**

**58.**—(1) At any meeting of creditors, clients, or creditors and clients summoned by the administrator, either the administrator shall be the chair, or a person nominated by the administrator in writing to act in the administrator's place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or
- (b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair must propose it unless the chair considers that there is good reason for not doing so, and
- (b) if the chair does not propose it, the chair must as soon as reasonably practicable after the meeting notify the principal of the reason why not.

### **Adjournment by chair**

**59.**—(1) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(2) An adjournment under this paragraph must not be for a period of more than 14 days, subject to any direction by the court.

(3) If there are 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.

(4) Rule 48 applies with regard to the venue fixed for a meeting adjourned under this rule.

(5) This rule does not apply to the initial meeting of creditors and clients.

### **Adjournment in absence of chair**

**60.**—(1) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(2) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

### **Claims, proofs and proxies in adjournment**

**61.** Where a meeting under these Rules is adjourned, claims, 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.

### **Suspension**

**62.** Once only in the course of a meeting, the chair may, without an adjournment, declare it suspended for any period up to 1 hour.

### **Venue and conduct of company meetings**

**63.**—(1) In fixing the date, time and place for a meeting, the administrator shall have regard to the convenience of those members of the investment bank attending.

(2) The chair of the meeting shall be the administrator or the person nominated by the administrator in writing to act in the administrator's place.

(3) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the Regulations and these Rules, the meeting must be summoned and conducted in accordance with the law of Scotland, including any applicable provision in or made under the 2006 Act.

(6) The chair of the meeting shall cause minutes of the proceedings to be entered in the sederunt book.

## CHAPTER 5

### Entitlement to vote at meetings

#### Entitlement to vote (creditors)

**64.**—(1) A creditor is entitled to vote at any creditors' or creditors and clients' meeting of the special administration if that creditor's claim has been submitted to the administrator and that claim has been accepted in whole or in part in accordance with the rules in Part 6.

(2) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of voting at a meeting shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to that creditor's entitlement to vote at any subsequent meeting.

#### FSCS and voting rights

**65.**—(1) For the purpose of voting at a meeting in a special administration (bank insolvency) (or in a special administration (bank administration) if there are depositors), the FSCS, instead of complying with the requirements set out in rule 126(1)(d) may give a statement containing—

- (a) the names of the creditors of the investment bank in respect of whom an obligation of the FSCS has arisen or may reasonably be expected to arise;
- (b) the amount of each such obligation; and
- (c) the total amount of all such obligations.

(2) The FSCS may from time to time submit a further statement; and each such statement supersedes any previous statement.

(3) Any voting rights which a creditor might otherwise exercise in the special administration in respect of a claim are reduced by a sum equal to the amount of that claim in relation to which the FSCS, by virtue of its having submitted a statement under this rule, is entitled to exercise voting rights at the meeting.

#### Calculation of voting rights (creditors)

**66.** Section 50 of the 1985 Act<sup>(4)</sup> (entitlement to vote and draw dividend) (as applied by rule 127) applies with regard to a creditor's entitlement to vote in the special administration.

#### Calculation of voting rights: special cases (creditors)

**67.**—(1) An owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable by the investment bank on the date on which it entered special administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

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<sup>(4)</sup> Section 50 has been amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 ([asp 3](#)), section 226(2), schedule 6 Part 1, and [S.I. 2003/2109](#).

- (a) the making of a special administration application, or
- (b) the investment bank entering special administration.

**Entitlement to vote (clients)**

- 68.**—(1) A client is entitled to vote at a meeting of creditors and clients or of clients only if—
- (a) the administrator has been given written details of the client’s claim as to the total amount of client assets over which the client asserts—
    - (i) a beneficial right of ownership or a right of ownership where the investment bank has been acting as custodian of those assets, or
    - (ii) another means of ownership; and
  - (b) the details were given to the administrator—
    - (i) not later than 12.00 hours on the business day before the day fixed for the meeting, or
    - (ii) later than that time but the chair of the meeting is satisfied that the delay was due to circumstances beyond that client’s control; and
  - (c) the claim for client assets has been admitted for the purposes of entitlement to vote,
- and there has been lodged with the administrator any proxy intended to be used on behalf of that person.
- (2) Subject to paragraph (4), for the purposes of this Chapter, written details of a claim for client assets, once lodged or given in accordance with this rule, need not be lodged or given again.
- (3) The chair may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a claim for client assets.
- (4) Where at the date of the meeting the client is aware that there will be a shortfall in respect of their claim to client assets, the client shall—
- (a) resubmit a claim under paragraph (1), subtracting the value of the shortfall of assets (as calculated, in respect of securities, in accordance with rule 69) from that claim; and
  - (b) submit a claim under rule 64 and under Part 6 as to the debt owed to the client by the investment bank in respect of the shortfall.
- (5) If at the time that the invitation to the initial meeting, or notice of a creditors and clients’ or a client’s meeting, is sent out, the administrator has become aware that there will be a shortfall in respect of a client’s claim to client assets, the administrator shall notify the client at the same time as the invitation or notice is sent out.
- (6) If after the time that the invitation to the initial meeting, or notice of a creditors and clients’ or a clients’ meeting, is sent out, the administrator becomes aware that there will be a shortfall in respect of a client’s claim to client assets, the administrator shall notify the client as soon as reasonably practicable prior to the meeting and take this shortfall into account in calculating the client’s entitlement to vote.

**Calculation of voting rights (clients)**

- 69.**—(1) For the purposes of this Chapter, a client’s voting rights are calculated according to the value of the client’s claim submitted under rule 68(1)(a) taking into account any shortfall identified prior to the meeting.
- (2) Subject to paragraph (4), the chair is to value any securities making up the client’s claim under paragraph (1) by reference to the closing or settlement price for such securities of a particular description.
- (3) In paragraph (2)—

“closing or settlement price” means—

- (a) in relation to securities traded on a relevant exchange, the closing or settlement price published by that exchange; and
- (b) in relation to securities traded elsewhere, the closing or settlement price published by an appropriate pricing source,

on the last business day before the date the investment bank entered special administration; but where such securities are traded outside the United Kingdom, the closing or settlement price shall be the most recent closing price before that date; and

“securities of a particular description” has the meaning set out in regulation 12(9); and in this paragraph—

“appropriate pricing source” means a reputable source used by the investment bank immediately prior to the investment bank entering special administration for valuing or reporting in respect of those securities, unless the client asserts with good reason (and the chair agrees) that an alternative source should be used; and

“relevant exchange” means a recognised investment exchange or recognised overseas investment exchange used by the investment bank to trade such securities immediately prior to the investment bank entering special administration, unless the client asserts with good reason (and the chair agrees) that an alternative exchange should be used.

(4) Where the chair considers that it is not practicable to value a client asset by reference to a closing or settlement price published by a relevant exchange or an appropriate pricing source, the chair may put upon the asset an estimated minimum value for the purposes of the entitlement to vote.

(5) Where client assets are quoted in currencies other than sterling, in order to value the assets for the purposes of this Chapter, the administrator shall convert the market price of the assets to sterling at the rate of exchange for that other currency as at the mean of the buying and selling spot rates prevailing in the London market as published at the close of business on the business day prior to the date of the investment bank entering special administration, or in the absence of any such published rate, such rate as the court determines.

### **Procedure for admitting clients’ claims for voting**

**70.**—(1) At a meeting of creditors and clients, or clients, the chair must ascertain the entitlement of persons wishing to vote as clients and admit or reject their claims accordingly.

(2) The chair may admit or reject a claim in whole or in part.

(3) If the chair is in any doubt whether a claim should be admitted or rejected, the claim must be marked as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

### **Voting at meetings of creditors and clients**

**71.**—(1) This rule applies to meetings of creditors and clients.

(2) If the administrator thinks it appropriate, the creditors and clients may vote on the same resolution at the meeting, however the creditors and the clients shall vote separately on the resolution.

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

### **Requisite majorities**

**72.** At a meeting of creditors, clients, or of creditors and clients, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

### **Requisite majorities at members or contributories' meetings**

73.—(1) At a meeting of members or contributories of the investment bank, voting rights are as at a general meeting of the investment bank, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the investment bank is in liquidation.

(2) References in this rule to a person's share include any other interests which that person may have as a member of the investment bank.

### **Administrator voting**

74.—(1) Where a resolution is proposed which affects a person in respect of that person's remuneration or conduct as the administrator, the vote of that person, or of their firm or of any partner or employee of the administrator shall not be reckoned in the majority required for passing the resolution.

(2) Paragraph (1) applies with respect to a vote given by a person (whether personally or on their behalf by a proxy-holder) either as creditor or client, or contributory or as proxy-holder for a creditor, client or contributory.

## **CHAPTER 6**

### **Correspondence and remote attendance**

#### **Correspondence instead of meetings**

75.—(1) This rule applies where an administrator proposes to conduct the business of a creditors' meeting, a clients' meeting, a creditors and clients' meeting or a meeting of contributories (as the case may be) by correspondence.

(2) Where the meeting in question is a creditors' meeting, a clients' meeting or a creditors and clients' meeting, notice of the business to be conducted shall be given to all who are entitled to be notified of the meeting by virtue of paragraph 51.

(3) The administrator may seek to obtain the agreement of the participants of the meeting to a resolution by sending to each participant a copy of the proposed resolution.

(4) The administrator shall send to the participants of the meeting a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the administrator, but shall not be less than 14 business days from the date of issue of the notice under paragraph (2) of this rule.

(6) In order to be considered, votes and comments must be received by the administrator by the closing date and must be accompanied by the creditor's submission of claim or the client's details of their claim (referred to in rules 64 and 68) except where these have already been provided to the administrator.

(7) Rule 71 applies where both creditors and clients are voting on a proposed resolution as it applies to meetings of creditors and clients.

(8) For the conduct of business to proceed, the administrator must receive at least one response which satisfies the requirements of paragraph (6) of this rule.

(9) If no responses are received by the closing date then the administrator shall summon a meeting of creditors, of clients or of creditors and clients, or a meeting of contributories, as the case may be.

(10) Any single creditor, or a group of creditors, of the company whose debt amounts to at least 10% of the total debts of the investment bank may, within 5 business days from the date of the

administrator sending out the proposed resolution, require the administrator to summon a creditors' meeting to consider the proposed resolution.

(11) Clients asserting claims over at least 10% of the total value of client assets held by the investment bank may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of clients to consider the proposed resolution.

(12) Contributories representing claims over at least 10% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of contributories to consider the proposed resolution.

(13) If the administrator's proposed resolution is rejected by the creditors or by the clients pursuant to this rule, the administrator may summon a meeting of creditors, clients or creditors and clients, as the case may be.

(14) A reference in this Part to anything done at a meeting of creditors, clients, creditors and clients or contributories includes a reference to anything done in the course of correspondence in accordance with this rule.

#### **Remote attendance at meetings conducted in accordance with section 246A(9) of the 1986 Act**

**76.**—(1) This rule applies to a request to the administrator for a meeting under section 246A(9) of the 1986 Act<sup>(5)</sup> (remote attendance at meetings) to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the special administration;
- (b) in the case of a request by clients, a list of the clients making or concurring with the request and the amounts of their respective claims in respect of client assets in the special administration;
- (c) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting);
- (d) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
- (e) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the administrator sent the notice of the meeting in question.

(4) Where the administrator considers that the request has been properly made in accordance with the Regulations and this rule, the administrator must—

- (a) give notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
- (c) give at least 14 days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

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(5) Section 246A was inserted by [S.I. 2010/18](#).

(5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(6) Rule 56 (expenses of requisitioned meetings) does not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9) of the 1986 Act.

### **Action where person excluded**

**77.**—(1) In this rule and rules 78 and 79 an “excluded person” means a person who —

- (a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the administrator under section 246A(6) of the 1986 Act; and
- (b) is not permitted by those arrangements to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again;
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under rule 79 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair’s discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

### **Indication to excluded person**

**78.**—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion (an “indication”).

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the request was made under paragraph (1).

### **Complaint**

**79.**—(1) Any person who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person’s actual, apparent or claimed exclusion,

(“the complainant”) may make a complaint.

(2) The person to whom the complaint must be made (“the relevant person”) is—

- (a) the chair, where it is made during the course of the meeting; or
- (b) the administrator, where it is made after the meeting.

(3) The relevant person must—

- (a) consider whether there is an excluded person; and
- (b) where satisfied that there is an excluded person, consider the complaint,

and, where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.

(4) Paragraph (5) applies where—

- (a) the relevant person is satisfied that the complainant is an excluded person;
- (b) during the period of the person’s exclusion, a resolution was put to the meeting and was voted on; and
- (c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

- (a) count the intended vote as being cast in accordance with the complainant’s stated intention;
- (b) amend the record of the result of the resolution; and
- (c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) The relevant person must notify the complainant in writing of any decision.

(8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following—

- (a) the day on which the person was, appeared or claimed to be excluded; or
- (b) where an indication is sought under rule 78, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made within 2 business days of the date of receiving the decision of the relevant person.

## CHAPTER 7

### Report of meeting

#### **Report of meeting**

**80.**—(1) The chair at any meeting shall cause a report to be made of the proceedings at the meeting and shall sign the report.

(2) The report of the meeting shall include—

- (a) a list of all the creditors, clients or contributories, as the case may be, who attended the meeting, either in person or by proxy;
- (b) a copy of every resolution passed; and
- (c) if the meeting established a creditors’ committee, a list of the names and addresses of those elected to be members of the committee.

(3) The chair shall keep a copy of the report of the meeting as part of the sederunt book in the special administration.

## CHAPTER 8

### The creditors' committee

#### **Constitution of committee**

**81.**—(1) Where it is resolved by a creditors and clients' meeting to establish a creditors' committee for the purposes of the special administration, the committee shall consist of at least 3 and not more than 5 persons elected at the meeting.

(2) In a special administration (bank insolvency), the FSCS shall be a member of the creditors' committee unless it informs the administrator prior to the meeting referred to in paragraph (1) that it does not wish to be a member.

(3) Where paragraph (1) applies, before receiving nominations for members of the committee, the administrator will set out the maximum number of members to be elected onto the committee by each class of voter so as to ensure that, subject to paragraph (2), the make-up of the committee is a reflection of all parties with an interest in the achievement of the special administration objectives.

(4) The classes of voters mentioned in paragraph (3) are—

- (a) creditors; and
- (b) clients.

(5) A person claiming to be a creditor is entitled to be a member of the committee provided that—

- (a) that person's claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and
- (b) the claim mentioned in sub-paragraph (a) is not fully secured.

(6) A person claiming to be a client is entitled to be a member of the committee provided that that person's claim in respect of client assets has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of returning client assets.

(7) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under rule 107.

#### **Formalities of establishment**

**82.**—(1) The creditors' committee does not come into being and accordingly cannot act until the administrator has issued a certificate of its due constitution.

(2) The certificate shall state that the creditors' committee of the investment bank has been duly constituted and shall include the following—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, registered address and registered number of the investment bank;
- (c) the full name and business address of the administrator; and
- (d) the full name and address of each member of the committee.

(3) If the chair of the creditors' meeting which resolves to establish the committee is not the administrator, the chair must as soon as reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the committee.

(4) No person may act as a member of the committee unless and until they have agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement

may be given by their proxy-holder present at the meeting establishing the committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator's certificate of the committee's due constitution shall not be issued before the persons elected to be members of the committee in accordance with rule 81 have agreed to act and shall be issued as soon as reasonably practicable thereafter.

(6) If any further members are elected onto the committee at a later date, the administrator shall issue an amended certificate as and when those persons have agreed to act.

(7) The certificate shall be sent to the registrar of companies by the administrator, as soon as reasonably practicable.

(8) If after the establishment of the committee there is any change in its membership, the administrator shall as soon as reasonably practicable report the change to the registrar of companies by filing an amended certificate.

### **Functions and meetings of the committee**

**83.**—(1) In addition to any functions conferred on the creditors' committee by any provision of the Regulations, the creditors' committee shall assist the administrator in discharging the administrator's functions, and act in relation to the administrator in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held at a time and place determined by the administrator.

(3) The administrator must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(4) After the calling of the first meeting, the administrator must call a meeting—

- (a) if so requested by a member of the committee or the member's representative (the meeting then to be held within 21 days of the request being received by the administrator); and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(5) Subject to paragraph (8), the administrator shall give 5 business days' written notice of the venue of any meeting to every member of the committee (or their representative designated for that purpose) unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

(6) The FSA shall also be given the notice in paragraph (5).

(7) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (5).

(8) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 92, the notice period mentioned in paragraph (5) is 7 business days.

### **The chair at meetings**

**84.**—(1) The chair at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.

(2) A person so appointed must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or
- (b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

## **Quorum**

**85.** A meeting of the creditors' committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

## **Committee members' representatives**

**86.**—(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a mandate entitling that person so to act (either generally or specially) and authenticated by or on behalf of the committee member, and for this purpose any proxy in relation to any meeting of creditors, clients or creditors and clients of the investment bank shall, unless it contains a statement to the contrary, be treated as such a mandate to act generally authenticated by or on behalf of the committee member.

(3) The chair at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce a mandate and may exclude that person if it appears that the mandate is deficient.

(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) a partnership;
- (e) a person whose estate is currently sequestrated;
- (f) an undischarged bankrupt;
- (g) a person who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or interim bankruptcy restrictions order; or
- (h) a disqualified director.

(5) Where a member's representative authenticates any document on the member's behalf, the fact that the representative so authenticates must be stated below the representative's signature.

## **Resignation**

**87.** A member of the creditors' committee may resign by notice in writing delivered to the administrator.

## **Termination of membership**

**88.**—(1) A person's membership of the creditors' committee is automatically terminated if—

- (a) the member's estate is sequestrated or the member becomes bankrupt or grants a trust deed for the benefit of, or makes a composition with, creditors;
- (b) at 3 consecutive meetings of the committee, the member is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to apply in the member's case);
- (c) subject to paragraph (2), the member, having been voted onto the committee under rule 81 by the creditors of the investment bank, ceases to be a creditor and a period of 3 months has elapsed from the date the member ceased to be a creditor, or is found never to have been a creditor; or

(d) subject to paragraph (3), the member, having been voted onto the committee under rule 81 by the clients of the investment bank, has had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any assets being retained by the administrator under rule 120(2)(e)), or is found never to have been a client.

(2) A person to whom paragraph (1)(c) applies shall not have their membership terminated if—

(a) they are also a client of the investment bank; and

(b) they have not had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any of their assets being retained by the administrator under rule 120(2)(e)),

but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

(3) A person to whom paragraph (1)(d) applies shall not have their membership terminated if they are also a creditor of the investment bank; but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

### **Removal**

**89.**—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and clients, at least 14 days' notice having been given of the intention to move that resolution.

(2) The resolution in paragraph (1) will be voted on only by the relevant class of voter under rule 81(4) in respect of the member to be removed.

### **Vacancies**

**90.**—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that—

(a) the total number of members does not fall below 3; and

(b) the administrator thinks that the make-up of the committee will continue to reflect all parties with an interest in the achievement of the special administration objectives.

(3) The administrator may appoint a person (being qualified under these Rules to be a member of the committee) from the same class of voters as the previous member to fill the vacancy, if—

(a) a majority of the other members of the committee agree to the appointment; and

(b) the person concerned consents to act.

### **Voting rights and resolutions**

**91.**—(1) At any meeting of the creditors' committee, each member of it (whether present or represented) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept as part of the sederunt book.

### **Remote attendance at meetings of creditors' committee**

**92.**—(1) This rule applies to any meeting of a creditors' committee held under these Rules.

(2) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this rule—

- (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
- (b) a person is able to exercise the right to vote at a meeting when—
  - (i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and
  - (ii) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where a meeting is to be conducted and held in the manner referred to in paragraph (2), the administrator must make whatever arrangements the administrator considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote; and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the administrator—

- (a) a meeting will be attended by persons who will not be present together at the same place; and
- (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

- (a) the notice of a meeting does not specify a place for the meeting;
- (b) the administrator is requested in accordance with rule 93 to specify a place for the meeting; and
- (c) that request is made by at least one member of the committee,

the administrator must specify a place for the meeting.

### **Procedure for requests that a place for a meeting should be specified**

**93.**—(1) This rule applies to a request to the administrator of a meeting under rule 92 to specify a place for the meeting.

(2) The request must be made within 5 business days of the date on which the administrator sent the notice of the meeting in question.

(3) Where the administrator considers that the request has been properly made in accordance with this rule, the administrator must—

- (a) give notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) specify a time, date and place for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and
- (c) give 5 business days' notice of the time, date and place to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(4) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

#### **Resolutions otherwise than at a meeting**

**94.**—(1) In accordance with this rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or a member's representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this rule, the administrator shall send out to members of the committee or their representatives (as the case may be) a statement incorporating a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(3) The FSA shall also be sent a statement under paragraph (2).

(4) In a special administration (bank administration), if the statement referred to in paragraph (2) is sent out before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall also be sent the statement.

(5) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require the administrator to summon a meeting of the committee to consider the matters raised by the resolution.

(6) In the absence of such a requirement, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(7) A copy of every resolution passed under this rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

#### **Information from administrator**

**95.**—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator shall be in writing, authenticated by the majority of the members of the committee for the time being.

(2) A member's authentication under paragraph (1) may be made by that member's representative.

(3) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as the administrator determines.

(4) The administrator shall notify the FSA of the time and place of the meeting.

(5) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (4).

(6) Where the administrator so attends, the members of the committee may elect any one of their number to be chair of the meeting, in place of the administrator or the administrator's nominee.

### **Expenses of members**

**96.**—(1) Subject to paragraph (2), the administrator shall defray, out of the assets of the investment bank, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the special administration.

(2) The administrator shall defray, out of the client assets held by the investment bank, any expenses referred to in paragraph (1) incurred by a client member of the committee.

(3) Paragraph (1) does not apply to any meeting of the committee held within 6 weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

### **Members dealing with the investment bank**

**97.**—(1) This rule applies to—

- (a) any member of a creditors' committee;
- (b) any committee member's representative;
- (c) any person who is an associate of—
  - (i) a member of the committee, or
  - (ii) a committee member's representative; and
- (d) any person who has been a member of the committee at any time in the last 12 months or who is an associate of such a member.

(2) A person to whom this rule applies may deal with the investment bank while it is in special administration provided that any transactions in the course of such dealings are in good faith and for value.

### **Formal defects**

**98.** The acts of the creditors' committee established for a special administration are valid despite any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment.

## **CHAPTER 9**

### **Progress reports**

#### **Content of progress report**

**99.**—(1) For the purposes of this Part, "progress report" means a report which includes—

- (a) a statement that the special administration order was made by the court and the court reference number (if any);
- (b) the investment bank's name, registered address and registration number;
- (c) the administrator's name, business address and date of appointment;

- (d) where there are joint administrators, details of the apportionment of functions;
  - (e) details of progress to date (containing the information as detailed in paragraph (2) below);
  - (f) details of any assets of the investment bank that remain to be realised;
  - (g) in a special administration (bank administration), details of any amounts received from a scheme under a resolution fund order;
  - (h) details of whether a bar date has been set and progress made in pursuit of Objective 1 of the special administration objectives;
  - (i) whether the FSA have given a direction under regulation 16 and whether that direction has been withdrawn;
  - (j) where a distribution is to be made to creditors, in respect of an accounting period, the scheme of division;
  - (k) details of the basis fixed for the remuneration of the administrator under rule 16 or 29 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it); and
  - (l) any other relevant information for the creditors or clients.
- (2) The information to be provided under paragraph (1)(e) is—
- (a) a receipts and payments account (in the form of an abstract) which states what assets of the investment bank have been realised, for what value, and what payments have been made to creditors including—
    - (i) receipts and payments during the relevant accounting period,
    - (ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the administrator so ceased (or, where the administrator has made no previous progress report, receipts and payments in the period since that person's appointment as administrator), and
    - (iii) the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act<sup>(6)</sup> (prescribed part);
  - (b) in a special administration (bank insolvency), before a full payment resolution has been passed, details of—
    - (i) how Objective A (as defined in paragraph 4(1)(a) of Schedule 1 to the Regulations) is being achieved, and
    - (ii) the arrangements for managing and financing the investment bank while Objective A continues to be pursued;
  - (c) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, details of—
    - (i) the extent of the business of the investment bank that has been transferred,
    - (ii) the property, rights and liabilities that have been transferred or which the administrator expects to be transferred, under a power in Part 1 of the 2009 Act (special resolution regime),
    - (iii) any requirements imposed on the investment bank for the purposes of the pursuit of Objective A (as defined in paragraph 3(1)(a) of Schedule 2 to the Regulations), under a power in Part 1 of the 2009 Act, and
    - (iv) the arrangements for managing and financing the investment bank while Objective A continues to be pursued.

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<sup>(6)</sup> Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252 and was amended by S.I. 2008/948.

- (3) Where the administrator has made a statement of pre-administration costs under rule 39(2)(m)—
- (a) if they are approved under rule 112, the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
  - (b) each successive report, so long as any of the costs remain unapproved, must include a statement either—
    - (i) of any steps taken to get approval, or
    - (ii) that the administrator has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator or that practitioner’s decision, not to seek approval.

### **Sending progress report**

**100.**—(1) The administrator must, within 6 weeks of the end of each accounting period and within 6 weeks after that person ceases to act as administrator, send a copy of the progress report—

- (a) to the creditors and to the clients;
- (b) the court; and
- (c) to the registrar of companies.

(2) For the purposes of these Rules, except for Part 6, “accounting period” in relation to an administration shall be construed as follows—

- (a) the first accounting period is the period of 6 months beginning with the date on which the investment bank entered special administration; and
- (b) any subsequent accounting period is the period of 6 months beginning with the end of the last accounting period.

(3) The court may, on the administrator’s application, extend the period of 6 weeks mentioned in paragraph (1).

(4) If the administrator makes default in complying with this rule, the administrator is liable to a fine and, for continued contravention, to a daily default fine and rule 163 applies.

(5) This rule is without prejudice to the requirements of Part 6 (distributions to creditors).

## **CHAPTER 10**

### **Proxies and corporate representation**

#### **Definition of “proxy”**

**101.**—(1) For the purposes of these Rules, a person (“the principal”) may authorise another person (“the proxy-holder”) to attend, speak and vote as their representative at meetings of creditors, clients, creditors and clients or contributories or members in a special administration and any such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in a special administration or specifically for any meeting or class of meetings.

(3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons to be proxy-holder in the alternative in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting and any person to whom any such proxy is given cannot decline to be proxy-holder in relation to that proxy.

(5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder's own discretion; and it may authorise or require the holder to propose, in the principal's name, a resolution to be voted on by the meeting.

### **Form of proxy**

**102.**—(1) Forms of proxy shall be sent out with every notice summoning a meeting in the special administration.

(2) A form of proxy shall not be sent out with the name or description of any person inserted in it.

(3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.

(4) A form of proxy shall be filled out and signed by the principal, or by some person acting under the principal's authority and, where it is signed by someone other than the principal, the nature of the signatory's authority shall be stated on the form.

### **Use of proxy at a meeting**

**103.**—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) A proxy may be lodged at or before the meeting at which it is to be used.

(3) Where the administrator holds proxies to be used by the administrator as chair of the meeting, and some other person acts as chair, the other person may use the administrator's proxies as if the administrator were the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person to be the administrator, the proxy-holder may, unless the proxy states otherwise, vote for or against (as they think fit) any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which the proxy-holder would be entitled to vote by virtue of the proxy.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at their discretion on resolutions put to the meeting which are not dealt with in the proxy.

### **Retention of proxies**

**104.**—(1) Proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) The chair shall deliver the proxies forthwith after the meeting to the administrator (where the administrator was not the chair).

(3) The administrator shall retain all proxies in the sederunt book.

### **Right of inspection**

**105.**—(1) The administrator shall, so long as proxies lodged with the administrator are in the administrator's hands, allow them to be inspected at all reasonable times on any business day, by—

- (a) the creditors, in the case of proxies used at a meeting of creditors, or a meeting of creditors and clients;
- (b) the clients, in the case of proxies used at a meeting of clients, or a meeting of creditors and clients; and

(c) the investment bank's members or contributories, in the case of proxies used at a meeting of the members of the investment bank or of its contributories.

(2) A reference in paragraph (1) to a creditor or a client is to a person who has submitted a claim in writing to the administrator but does not include a person whose claim has been wholly rejected for purposes of voting or otherwise.

(3) The right of inspection given by this rule is also exercisable by the directors of the investment bank in special administration.

(4) Any person attending a meeting in a special administration is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including claims)—

(a) to be used in connection with that meeting; or

(b) sent or given to the chair of that meeting or to any other person by a creditor, client, member or contributory for the purpose of that meeting, whether or not they are to be used at it.

### **Proxy holder with financial interest**

**106.**—(1) A proxy-holder ("P") shall not vote in favour of any resolution which would directly or indirectly place P, or any associate of P's, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs P to vote in that way.

(2) Where a P has signed the proxy as being authorised to do so by P's principal and the proxy specifically directs P to vote in the way mentioned in paragraph (1), P shall nevertheless not vote in that way unless P produces to the chair of the meeting written authorisation from P's principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity in accordance with rule 103(3); and in the application of this rule to any such person, the proxy-holder is deemed an associate of that person.

### **Representation of corporations**

**107.**—(1) Where a person ("P") is authorised under section 323 of the 2006 Act<sup>(7)</sup> (representation of corporations at meetings) to represent a corporation at a meeting held in a special administration, P shall produce to the chair of the meeting a copy of the resolution from which P's authority is derived.

(2) The copy resolution must be signed or subscribed by or on behalf of the corporation in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995<sup>(8)</sup> or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

## **CHAPTER 11**

### **Disposal of charged property**

#### **Application to dispose of secured property**

**108.**—(1) The following applies where the administrator applies to the court under paragraph 71 or 72 for authority to dispose of property of the investment bank which is subject to a security (other than a floating charge), or goods in the possession of the investment bank under a hire purchase agreement.

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<sup>(7)</sup> 2006 c.46; section 323 was amended by S.I. 2009/1632.

<sup>(8)</sup> 1995 c.7.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(2) If an order is made under paragraph 71 or 72, the administrator shall as soon as reasonably practicable give notice of it to that person or owner and shall send to the person who is the holder of the security or owner under the agreement a copy of the order, certified by the clerk of court.

(3) The administrator shall place in the sederunt book a copy of any order granted under paragraph 71 or 72.

**Application in a special administration (bank administration)**

**109.** If an application referred to in rule 108(1) is made before the Bank of England has given an Objective A Achievement Notice—

- (a) the administrator must notify the Bank of England of the time and place of the hearing;
- (b) the Bank of England may appear or be represented at the hearing;

and if an order is made, the administrator must send a copy to the Bank of England as soon as reasonably practicable.