
STATUTORY INSTRUMENTS

2011 No. 2262

The Investment Bank Special
Administration (Scotland) Rules 2011

PART 5

Objective 1

CHAPTER 3

Distribution plan

Distribution plan

120.—(1) This rule applies where after setting a bar date and making the notification required by rule 119, the administrator proposes to return client assets.

(2) The administrator shall draw up a distribution plan setting out—

- (a) subject to paragraph (3), a schedule of dates on which the client assets are to be returned (“a distribution”);
- (b) the unencumbered assets to be returned and to whom;
- (c) in respect of encumbered client assets, how the amount of client assets to be returned to a particular client is to be calculated (“the net asset claim”), taking into account—
 - (i) any liabilities owed by the client to the investment bank in respect of financial contracts,
 - (ii) any liabilities owed to the client by the investment bank in respect of financial contracts, and
 - (iii) any shortfall claim of the client (as defined in regulation 12(7));
- (d) in respect of a client’s net assets claim, whether the administrator intends to pay the client money or money’s worth in lieu of returning the assets to the client (but a client cannot be paid money or money’s worth out of the investment bank’s estate in lieu of assets unless the estate is able to retain assets the value of which is equivalent to that paid out); and
- (e) the amount and identity of client assets that are to be retained by the administrator to pay the expenses of the special administration in accordance with rule 113 and how the retention of these assets will affect the amount of client assets to be returned to clients.

(3) In setting out the schedule of dates for the return of the client assets, no date shall be sooner than the date which is 3 months after the bar date.

(4) In setting out the schedule for the return of encumbered client assets—

- (a) where a person (“P”) notified under rule 119(2) has failed to respond to that notice, the administrator shall make provision in the distribution plan—

- (i) for client assets to be returned to P according to the information available to the administrator in respect of the amount of client assets held for P by the investment bank; or
 - (ii) to take into account any security interest that according to the information available to the administrator, P is entitled to assert over certain client assets held by the investment bank,
- as the case may be;
- (b) the administrator shall make provision in respect of any security interest asserted over those assets by another person; and
 - (c) the administrator shall set out the extent to which a proportion of securities are to be held back from the initial distributions and the reasons why.
- (5) The distribution plan will also set out—
- (a) where any liabilities under paragraph (2)(c) are contingent, how the administrator intends to value the liability; and
 - (b) where any liabilities are disputed, whether the administrator intends to make an assumption as to the outcome of the dispute,

for the purpose of calculating the client’s net asset claim so that the claim can be paid out (or partly paid out) or assets returned (or returned in part) before the contingency occurs or the dispute is resolved, and the arrangements by which the administrator may revise such valuations or assumptions when further information becomes known.

(6) In this rule, “encumbered client assets” means client assets over which a third party or the investment bank exerts a security interest.

Approval by the creditors’ committee

121.—(1) Where there is a creditors’ committee, the administrator shall summon a meeting of that committee to approve the distribution plan.

(2) The administrator shall send the proposed distribution plan to each member of the creditors’ committee when sending out notice of the meeting.

(3) The creditors’ committee may approve the distribution plan with or without modification.

Approval by the court

122.—(1) This rule applies where a meeting of the creditors’ committee has taken place in accordance with rule 121 or where there is no creditors’ committee.

(2) The administrator shall apply to the court for approval of the distribution plan.

(3) The administrator shall send a copy of the distribution plan, together with details as to how to find out the venue, time and place for the hearing, to—

- (a) all persons who have submitted a claim of the type described in regulation 11(1);
- (b) all persons notified under rule 119;
- (c) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England; and
- (d) the FSA.

(4) The court, on receiving an application under paragraph (2) shall fix the venue, time and date for the hearing and in fixing the venue shall have regard to the desirability of the application being heard as soon as reasonably practicable subject to the persons notified under paragraph (3) and the members of the creditors’ committee being able to attend and make representations at the hearing.

- (5) On hearing an application under paragraph (2) the court may—
- (a) make an order approving the distribution plan with or without modification if satisfied that—
 - (i) where rule 119 applies, the administrator has made the necessary notifications in accordance with that rule, and
 - (ii) where there is a creditors' committee, either that the committee has approved the distribution plan with or without modification or where the committee has been unable to approve the plan, the court has heard from the members of the committee or has given them an opportunity to explain why the committee were unable to approve the plan;
 - (b) dismiss the application;
 - (c) adjourn the hearing (generally or to a specified date); or
 - (d) make any other order which the court thinks appropriate.

Treatment of late claimants

123.—(1) This rule applies where after a distribution has taken place, the administrator receives a claim of the type described in regulation 11(1).

(2) Where the claim is not submitted in accordance with rule 115 or, as the case may be, rule 116, the administrator shall notify the claimant accordingly and ask them to resubmit their claim in accordance with the relevant rule.

(3) Where the claim is submitted in accordance with rule 115 or 116, if the administrator determines that, had the claim been submitted before the bar date, the claimant would have received client assets as part of the distribution—

- (a) if enough of those assets amounting to what the client would have received in the distribution are still available to be distributed, they shall be returned to the client as soon as reasonably practicable and any remainder of the claimant's claim shall be included in the distribution plan for further distributions; and
- (b) if there are insufficient assets, any assets that can be returned to the claimant shall be, but the claimant may submit a claim under rule 125 for the value of those client assets not returned.

(4) Where the claimant's claim under paragraph (3)(b) is in respect of assets that are securities, the value of those securities is to be calculated in accordance with rule 69 and for this purpose the references to "chair" in rule 69 shall be read as references to the administrator.

(5) The administrator may amend the distribution plan to reflect the return of client assets under this rule without need for the plan to be approved again by either the court or the creditors' committee.