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STATUTORY INSTRUMENTS

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**2011 No. 2262**

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

**PART 6**

**Distributions to Creditors**

**Application of Part 6**

**124.**—(1) This Part applies in any case where the administrator proposes to make a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Part (except rule 132(4)(b)) to creditors shall, so far as the context requires, be references to that class of creditors only.

**Submission of claim**

**125.**—(1) A creditor, in order to obtain an adjudication as to that creditor's entitlement—

- (a) to vote at any meeting of the creditors, or of the creditors and clients, in the special administration; or
- (b) to a dividend (so far as funds are available) out of the assets of the investment bank in respect of any accounting period,

shall submit their claim to the administrator at or before the meeting or, as the case may be, not later than 8 weeks before the end of the accounting period.

(2) A creditor shall submit their claim by producing to the administrator—

- (a) a statement of claim in accordance with rule 126; and
- (b) an account or voucher (according to the nature of the debt claimed) which constitutes prima facie evidence of the debt,

but the administrator may dispense with any requirement of this paragraph in respect of any debt or any class of debt.

(3) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of drawing a dividend in respect of any accounting period, shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to that creditor's entitlement (so far as funds are available) to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(4) A creditor, who has submitted a claim, may at any time submit a further claim specifying a different amount for their claim, provided that a secured creditor shall not be entitled to produce a further claim specifying a different value for the security at any time after the administrator has required the creditor to discharge, or convey or assign, the security.

(5) In this rule, and in rule 127 including the provisions of the 1985 Act applied by that rule, any reference to the administrator includes a reference to the chair of the meeting.

### Statement of claim

**126.**—(1) A creditor’s statement of claim under this rule shall set out—

- (a) the name of the investment bank and the date on which it entered special administration;
- (b) the name and address of the creditor;
- (c) the name and address of any person acting on behalf of that creditor; and
- (d) the total amount of debt claimed for, including particulars of the debt.

(2) In this rule, “particulars of the debt” means—

- (a) details of the nature of the debt, when it was incurred and the due date for payment;
- (b) the amount of the debt, including the principal debt and interest due on the debt at the due date (if the creditor is entitled to claim interest);
- (c) VAT on the debt and whether the VAT is being claimed back from HM Revenue and Customs;
- (d) details of any preference under Schedule 6 to the 1986 Act being claimed for the debt;
- (e) details of any security being held in respect of the debt including—
  - (i) the subjects covered,
  - (ii) the date on which the security was given,
  - (iii) the value of that security and whether the creditor is surrendering or intends to surrender this security,

and in giving the total amount of the debt, the creditor shall deduct the value of any security as estimated by that creditor, unless the creditor surrenders the security.

(3) The particulars of the debt submitted under this rule must be signed by the creditor, or a person acting on behalf of the creditor, certifying that the particulars of debt are true, complete and accurate to the best of the creditor’s knowledge and belief.

### Application of the 1985 Act in relation to creditor’s claims

**127.**—(1) The following provisions of the 1985 Act<sup>(1)</sup> shall apply in relation to a special administration of the investment bank in a like manner as they apply in a sequestration of a debtor’s estate, subject to the modifications specified in paragraphs (2) and (3) and to any other necessary modifications—

- (a) section 22(5) and (10) (criminal offence in relation to producing false claims or evidence);
- (b) section 48(5), (6) and (8), together with sections 44(2) and (3) and 47(1) as applied by those sections (further evidence in relation to claims);
- (c) section 49 (adjudication of claim);
- (d) section 50(1) (entitlement to vote and draw dividend);
- (e) section 60 (liabilities and rights of co-obligants); and
- (f) Schedule 1, except paragraphs 2, 4 and 6, (determination of amount of creditor’s claim).

(2) For any reference in the provisions of the 1985 Act as applied by these Rules to any expression in column 1 below, there shall be substituted a reference to the expression in column 2—

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(1) 1985 c.66; sections 22(5), 48(5) and (8), 49(1) to (5), 50(1) and 60(2) and paragraphs 3 and 5 of Schedule 1 have been amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 226(2), schedule 6, Part 1; section 49(2A) was inserted by section 8(3) of that Act, section 49(6) has been amended by section 31(1)(a) of that Act, and section 49(6A) was inserted by section 31(1)(b) of that Act; section 50(1) has also been amended by S.I. 2003/2109.

### Expressions used in the 1985 Act

<i>Column 1</i>	<i>Column 2</i>
Accountant in Bankruptcy	The court
Commissioners	The creditors' committee
Date of sequestration	Commencement of special administration
Debtor	Investment bank (and in the application of section 49(6) of the 1985 Act, any member or contributory of the investment bank)
Debtor's estate	Investment bank's estate
Preferred debts	Preferential debts within the meaning of section 386 of the 1986 Act.
Sequestration	Special administration
Sheriff	The court
Trustee	Administrator

(3) In the application of—

(a) section 49(6) of the 1985 Act—

- (i) notice of the application must be given to the FSA and in a special administration (bank insolvency) to the Bank of England and those bodies may appear or be represented at the hearing; and
- (ii) in a special administration (bank administration), notice must be given to the FSCS and, in the period before the Bank of England has given an Objective A Achievement Notice, to the Bank of England and in those circumstances those bodies may appear or be represented at the hearing; and

(b) section 60 of the 1985 Act, omit references to the discharge of the debtor.

### Claims in foreign currency

**128.**—(1) A creditor may state the amount of their claim in a currency other than sterling where—

- (a) their claim is constituted by decree or other order made by a court ordering the investment bank to pay to the creditor a sum expressed in a currency other than sterling; or
- (b) where it is not so constituted, their claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the investment bank to the creditor in a currency other than sterling.

(2) Where a claim is stated in currency other than sterling for the purpose of the preceding paragraph, it shall be converted into sterling at the rate of exchange for that other currency at the mean of the buying and selling spot rates prevailing in the London market at the close of business on the date of commencement of the special administration.

### Administrator to allow inspection of proofs

**129.** The administrator shall, so long as submitted claims are in the administrator's hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a claim (unless that claim has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company; and
- (c) any person acting on behalf of either of the above.

### **New administrator appointed**

**130.**—(1) If a new administrator is appointed in place of another, the former administrator must, as soon as reasonably practicable, transmit to the new administrator all the creditors' claims which the former administrator has received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the creditors' claims and return it to the former administrator.

(3) From then on, all creditors' claims must be sent to and retained by the new administrator.

### **Order of priority of distribution**

**131.**—(1) The funds of the investment bank's assets shall be distributed by the administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the special administration;
- (b) where a special administration order, a special administration (bank insolvency) order or a special administration (bank administration) order is made and a voluntary arrangement under Part 1 of the 1986 Act is in force for the investment bank, any expenses properly incurred as expenses of the administration of the arrangement in question;
- (c) any preferential debts within the meaning of section 386 of the 1986 Act<sup>(2)</sup> (excluding any interest which has been accrued thereon to the date of commencement of the special administration);
- (d) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (e) interest at the official rate on—
  - (i) the preferential debts, and
  - (ii) the ordinary debts,
 between the date of the commencement of the special administration and the date of the payment of the debt; and
- (f) any postponed debt.

(2) In the above paragraph—

“official rate” in respect of any debt is whichever is the greater of—

- (a) 15 per centum per annum; and
  - (b) the rate applicable to that debt apart from the effect of the special administration; and
- “postponed debt” means a creditor's right to any alienation which has been reduced or restored to the investment bank's assets under section 242 of the 1986 Act<sup>(3)</sup> or to the proceeds of sale of such an alienation.

(3) The expenses of the special administration mentioned in sub-paragraph (a) of paragraph (1) are payable in the order of priority mentioned in rule 110.

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(2) Section 386 has been amended by section 251 of the Enterprise Act 2002 (c.40) and Schedule 8 to the Pension Schemes Act 1993 (c.48).

(3) Section 242 has been amended by Schedule 17 to the Enterprise Act 2002.

(4) Subject to the provisions of section 175 of the 1986 Act (as applied by paragraph 65(2)), any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub-paragraph and, where the funds of the investment bank's assets are inadequate to enable the debts mentioned in this sub-paragraph to be paid in full, they shall abate in equal proportions.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the investment bank otherwise provide) be distributed among the members according to their rights and interests in the investment bank.

(6) Nothing in this rule shall effect—

- (a) the right of a secured creditor which is preferable to the rights of the administrator; or
- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the administrator.

### **Application of 1985 Act in relation to distribution of assets**

**132.**—(1) Sections 52(4) and 58(5) of the 1985 Act shall apply in relation to the special administration of an investment bank as they apply in relation to the sequestration of a debtor's estate, subject to the modifications specified in rule 127(2) and the following paragraphs and to any other necessary modifications.

(2) In section 52, the following modifications shall be made—

(a) for subsection (2)(b) substitute—

“(b) any subsequent accounting period shall be the period of 6 months beginning with the end of the last accounting period; except that if the administrator and the creditors' committee (or if there is no creditors' committee, the court) agree that the accounting period shall be such other period beginning with the end of the last accounting period as may be agreed, it shall be that other period.”;

(b) in subsection (4)(a) for the reference to “the debts mentioned in subsection (1)(a) to (d) of section 51 of this Act”, there shall be substituted a reference to “the expenses of the special administration mentioned in rule 110(1) of the Investment Bank Special Administration (Scotland) Rules 2011”;

(c) in subsection (5), ignore the words from “with the consent of” to “Accountant in Bankruptcy”;

(d) in subsections (7) and (8) for the references to sections 48(5) and 49(6)(b) there should be substituted a reference to those sections as applied by rule 127; and

(e) for subsection (11) substitute—

“(11) Subject to any notification by the creditor entitled to the dividend given to the administrator that the creditor wishes the dividend to be paid to another person or that the creditor has assigned the creditor's entitlement to another person, payment of a dividend in respect of a claim shall only be made to the creditor.”.

(3) Section 52(3) of the 1985 Act, as applied by this rule, shall apply subject to paragraph (4).

(4) The administrator may pay a dividend to secured or preferential creditors or to unsecured creditors only if—

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(4) Subsection (1) of section 52 has been amended by the Bankruptcy (Scotland) Act 1993 (c.6), section 11(3) and Schedule 1, paragraph 21; subsections (1) to (9) of section 52 have been amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007, section 226(2), schedule 6, Part 1; subsection (2) has also been amended by section 36 of, and schedule 1, paragraph 44(1) and (2)(b) to, that Act; subsection (2ZA) has been inserted by section 36 of, and schedule 1, paragraph 44(1) and (3) to, that Act; and subsections (10) and (11) have been inserted by S.I. 2003/2109.

(5) Subsections (1) and (3) of section 58 have been amended by the Bankruptcy (Scotland) Act 1993, Schedule 1, paragraph 25.

- (a) the administrator has sufficient funds for the purpose;
  - (b) the administrator’s statement of proposals, as approved by the creditors under Chapter 3 of Part 3, contains a proposal to make a distribution to the class of creditors in question;
  - (c) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by that administrator or which the administrator intends to make; and
  - (d) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the administrator has the consent of the Bank of England.
- (5) Where the administrator pays a dividend under section 52(3), notice of the dividend shall be given to—
- (a) the FSA;
  - (b) in a special administration (bank insolvency), the Bank of England; and
  - (c) in a special administration (bank administration), notice must be given to the FSCS and, if the dividend is paid in the period before the Bank of England has given an Objective A Achievement Notice, to the Bank of England,
- and in a special administration (bank administration) following transfer to a bridge bank under section 12(2) of the 2009 Act, the notice shall include details of any payment from a scheme under a resolution fund order.
- (6) Where the administrator postpones a payment under section 52(5), the administrator shall notify—
- (a) the FSA;
  - (b) in a special administration (bank insolvency), the Bank of England; and
  - (c) in a special administration (bank administration), the FSCS and, if the payment is made in the period before the Bank of England has given an Objective A Achievement Notice, the Bank of England.
- (7) Section 58 applies with the modification that in subsections (1) and (3) for “section 57(1)(a) or 58A(3) of this Act” there is substituted “rule 133(2) of the Investment Bank Special Administration (Scotland) Rules 2011”.

### **Payment of dividends**

**133.—**(1) On the final determination of the remuneration under rules 135 and 136 the administrator shall, subject to the rules in this Chapter, pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under subsection (7) or (8) of section 52 of the 1985 Act as applied by rule 132,

shall be deposited by the administrator in an appropriate bank or institution.

(3) If a creditor’s claim is revalued, the administrator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as the administrator considers necessary to take account of that revaluation; or
- (b) require the creditor to repay to the administrator the whole or part of a dividend already paid to that creditor.

(4) The administrator shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the administrator's outlays and remuneration.

(5) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in rule 110.

### **Rights of eligible depositors and set-off**

**134.**—(1) This rule applies—

- (a) in a special administration (bank insolvency); and
- (b) in a special administration (bank administration) if all or part of a creditor's claim against the investment bank is in respect of protected deposits.

(2) In determining the sums due from the investment bank to an eligible depositor or from the eligible depositor to the investment bank for the purpose of any right or claim of set-off available to the investment bank against the eligible depositor—

- (a) where the total of the sums held by the investment bank for any eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the 2000 Act ("the limit") paragraph (3) applies; and
- (b) where the sums held by the investment bank exceed the limit, paragraph (4) applies.

(3) Where this paragraph applies, regardless of whether there are any sums due from the eligible depositor to the investment bank, the investment bank shall not be entitled to exercise or claim any right of set-off available to it against or in respect of those sums held by the investment bank for the eligible depositor in respect of the protected deposits; and the sum due to the eligible depositor from the investment bank will be the total of the sums held by the investment bank for that eligible depositor in respect of protected deposits which sum shall be deemed free from any right or claim of set-off by the investment bank.

(4) Where this paragraph applies—

- (a) the investment bank shall be entitled to exercise any right or claim of set-off available to it only in respect of any sums held by the investment bank for that eligible depositor in excess of the limit, which sums shall be subject to any right or claim of set-off available to the investment bank; and
- (b) the sums due from the investment bank to the eligible depositor in respect of the protected deposits will be—
  - (i) the amount by which the total amount exceeds the limit, subject to any right or claim of set-off available to the investment bank; and
  - (ii) the sums held by the investment bank for the eligible depositor in respect of protected deposits up to the limit.

(5) Any arrangements with regard to set-off between the investment bank and the eligible depositor in existence before the commencement of special administration (bank insolvency) or special administration (bank administration), as the case may be, shall be subject to this rule in so far as they relate to protected deposits.

(6) In this rule—

"2000 Act" means the Financial Services and Markets Act 2000(6);

"eligible depositor" has the meaning given by section 93(3) of the 2009 Act;

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“protected deposit” means a protected deposit within the meaning given in the General Provisions and Glossary Instrument 2001 (2001/7) made by the Financial Services Authority under the 2000 Act; and

“set-off” includes (without limitation) claims of compensation, rights of retention and rights of balancing accounts on insolvency.