
STATUTORY INSTRUMENTS

2011 No. 2262

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

PART 7

The Administrator

CHAPTER 1

Remuneration of the administrator

Remuneration of administrator

135.—(1) The administrator's remuneration for services given in respect of—

(a) the pursuit of—

- (i) Objective A in a special administration (bank insolvency),
- (ii) Objective A in a special administration (bank administration), and
- (iii) Objectives 2 and 3,

shall be paid out of the assets of the investment bank; and

(b) the pursuit of Objective 1 shall be paid out the client assets held by the investment bank.

(2) Subject to paragraph (3), within 2 weeks after the end of an accounting period, the administrator shall in respect of that period submit to the creditors' committee (or if there is no creditors' committee, to a meeting of creditors and clients)—

- (a) the administrator's accounts of intromissions with the investment bank's assets for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and
- (b) a claim for the outlays reasonably incurred by the administrator and for the administrator's remuneration,

in respect of the pursuit of the Objectives in paragraph (1)(a).

(3) Within 2 weeks after the end of an accounting period, the administrator shall in respect of that period submit to the creditors' committee (or if there is no creditors' committee, to a meeting of clients) a claim for the outlays reasonably incurred by the administrator and for the administrator's remuneration in respect of the pursuit of the Objective in paragraph (1)(b).

(4) The administrator may, at any time before the end of an accounting period, submit to the creditors' committee or, if there is no creditors' committee, a meeting of creditors and clients (or in respect of a claim in respect of the pursuit of the Objective in paragraph (1)(b), a meeting of clients)—

- (a) an interim claim in respect of that period for the outlays reasonably incurred by the administrator; and
- (b) an interim claim in respect of that period for remuneration,

and the body to whom the claim has been submitted may make an interim determination in relation to the amount of the outlays and remuneration payable to the administrator and, where they do so, they shall take into account that interim determination when making their determination under paragraph (5)(a)(ii).

- (5) Within 6 weeks after the end of an accounting period—
- (a) the creditors' committee or, as the case may be, a meeting of creditors and clients or a meeting of clients—
 - (i) may audit the accounts (in respect of a submission under paragraph (2)); and
 - (ii) shall issue a determination fixing the amount of the outlays and the remuneration payable to the administrator (and in a special administration (bank insolvency or in a special administration (bank administration) this determination shall replace the basis of the remuneration payable fixed under rule 16(5) or 29); and
 - (b) the administrator shall make the audited accounts, scheme of division and the said determination available for inspection by the members of the company, the creditors or clients.

(6) In a special administration (bank administration), paragraph (5) only applies in respect of the remuneration for services in pursuit of Objective A and Objectives 2 and 3, after the Bank of England has passed an Objective A Achievement Notice.

(7) The basis for fixing the amount of the remuneration payable under paragraph (1)(a) and (b) may be a commission calculated by reference to the value of the investment bank's assets which have been realised by the administrator, but there shall in any event be taken into account—

- (a) the work which, having regard to that value, was reasonably undertaken by the administrator; and
- (b) the extent of the administrator's responsibilities in administering the investment bank's assets; or as the case may be, in pursuing Objective 1.

(8) If the administrator's remuneration and outlays have been fixed by determination of the creditors' committee in accordance with paragraph (5)(a)(ii) and the administrator considers the amount to be insufficient, the administrator may request that the remuneration and outlays be increased by—

- (a) resolution of the creditors and clients in respect of a claim under paragraph (1)(a); or
- (b) resolution of the clients in respect of a claim under paragraph (1)(b).

(9) If the creditors' committee fails to issue a determination in accordance with paragraph (5)(a)(ii), the administrator shall submit their claim—

- (a) to a meeting of creditors and clients in respect of a claim under paragraph (1)(a); or
- (b) to a meeting of clients in respect of a claim under paragraph (1)(b),

and the meeting shall issue a determination in accordance with paragraph (5)(a)(ii).

(10) If the meeting of creditors and clients, or as the case may be, the meeting of clients fails to issue a determination in accordance with paragraph (9), then the administrator shall submit their claim to the court and the court shall issue a determination.

(11) In fixing the amount of the administrator's remuneration and outlays in respect of any accounting period, the creditors' committee or, as the case may be, a meeting of creditors and clients or a meeting of clients may take into account any adjustment which that body may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

(12) Where there are joint administrators—

- (a) it is for them to agree between themselves as to how the remuneration payable should be apportioned;

- (b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination—
 - (i) by the court, or
 - (ii) by resolution of the creditors' committee or a meeting of creditors and clients.

Administrator's application to increase remuneration

136.—(1) If the administrator considers that the remuneration or outlays fixed for the administrator under rule 135 by—

- (a) the creditors' committee; or
- (b) by resolution of the creditors and clients, or as the case may be, of the clients,

is insufficient, the administrator may apply to the court for an order increasing this amount or rate.

(2) If in a special administration (bank insolvency) the administrator considers that the basis for remuneration for services set out in rule 16(5) fixed for the administrator by the Objective A committee or under rule 135 above is insufficient, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(3) If in a special administration (bank administration) the administrator considers that the basis for remuneration for services set out in rule 29 fixed for the administrator by the Bank of England or under rule 135 above is insufficient, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(4) The administrator shall give at least 14 days' notice of the application to the members of the creditors' committee; and the committee may nominate one or more members to appear, or to be represented, on the application.

(5) If there is no creditors' committee, the notice of the application shall be sent to such one or more of the investment bank's creditors or clients as the court may direct; those creditors or clients shall nominate one or more of their number to appear or to be represented on the application.

(6) Notice of the application shall also be given to the FSA and the FSA may nominate a person to appear or be represented on the application.

(7) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the court on hearing an application under this rule shall have regard to the achievement of Objective A.

(8) The court may, if it appears to be a proper case, order the expenses of the administrator's application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor or client so appearing or being represented, to be paid as an expense of the administration.