
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.

CHAPTER 2

Replacing the administrator

Grounds for resignation

137.—(1) The administrator may resign on grounds of ill health or because—

- (a) the administrator intends ceasing to be in practice as an insolvency practitioner; or
- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by that person of the duties of administrator.

(2) The administrator may, with the leave of the court, resign on grounds other than those specified in paragraph (1).

(3) In a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution, the administrator needs the permission of the Bank of England to resign on grounds other than those specified in paragraph (1).

(4) In a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the administrator needs the permission of the Bank of England to resign on grounds other than those specified in paragraph (1).

Notice of intention to resign

138.—(1) The administrator must give at least 5 business days' notice of the administrator's intention to resign, or to apply for the court's leave to do so—

- (a) if there is a continuing administrator of the investment bank, to that person;
- (b) if there is a creditors' committee, to it; but
- (c) if there is no such administrator and no creditors' committee, to the investment bank, its creditors and its clients of whose claim the administrator is aware and whom the administrator has a means of contacting.

(2) Where the administrator was appointed on the application of the FSA or the Secretary of State, notice under paragraph (1) shall also be given to that applicant.

(3) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, notice under paragraph (1) shall be given to the Bank of England.

(4) In a special administration (bank administration), notice under paragraph (1) shall be given to the FSA and to the Bank of England.

Notice of resignation

139.—(1) The notice of resignation shall be lodged in court, and a copy sent to the registrar of companies.

(2) A copy of the notice of resignation shall be sent, not more than 5 business days after it has been lodged in court, to all other persons to whom notice of intention to resign was sent.

(3) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, where the administrator has applied to court for leave to resign, the notice of resignation shall also contain confirmation from the Bank of England that it consents to the application.

(4) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, where the administrator has applied to the court for leave to resign, the notice of resignation shall also contain confirmation from the Bank of England that it consents to the resignation.

Application to court to remove administrator from office

140.—(1) An application to the court to remove an administrator from office shall be served upon—

- (a) the administrator;
- (b) the person who made the application for the special administration order;
- (c) the creditors' committee (if any);
- (d) the joint administrator (if any);

- (e) where there is neither a creditor's committee nor a joint administrator, upon the investment bank and all the creditors and clients of whose claim the administrator is aware and of whom they have a means of contacting;
 - (f) the FSA; and
 - (g) in a special administration (bank administration) where the Bank of England has not given an Objective A Achievement Notice, the Bank of England.
- (2) In a special administration (bank administration) the application must state that either—
- (a) the Bank of England has consented to the application; or
 - (b) the Bank of England has given an Objective A Achievement Notice.
- (3) An applicant under this rule shall, within 5 business days of the order being made, send a copy of the order to all those to whom notice of the application was sent, and notice of the order to the registrar of companies.

Incapacity of administrator to act through death or otherwise

141.—(1) Subject to the following paragraphs of this rule, where the administrator has died, it is the duty of that person's executors to give notice of that fact to the court and to the registrar of companies, specifying the date of death.

(2) If the deceased administrator was a partner in or an employee of a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State or the Department of Enterprise, Trade and Investment for Northern Ireland for the authorisation of insolvency practitioners.

(3) Notice of the death may also be given by any person.

(4) Where an administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the investment bank gives notice in accordance with paragraph 89(2), the administrator shall also give notice to—

- (a) the registrar of companies; and
- (b) where the administrator was appointed on the application of the FSA or the Secretary of State, to the applicant.

Application to replace (special administration)

142.—(1) Where an application is made to the court under paragraph 91(1) to appoint a replacement administrator, the application shall be accompanied by a statement of the proposed administrator in accordance with rule 7.

(2) A copy of the application shall be served on—

- (a) the person who made the application for the special administration order;
- (b) the person nominated for appointment as administrator;
- (c) the FSA (if not the applicant); and
- (d) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(3) Where the court makes an order filling a vacancy in the office of administrator, the same provisions shall apply, subject to such modification as may be necessary, in respect of giving notice of, and advertising, the appointment as in the case of the making of the special administration order.

(4) Service of the application under this rule shall be the same as service of an application for a special administration order.

(5) Rule 11 shall apply to the notice of appointment of a replacement administrator as it applies to notice of a special administration order.

(6) This rule does not apply—

- (a) in a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution; or
- (b) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice.

Application to replace (special administration (bank insolvency))

143.—(1) This rule applies in a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution.

(2) Where there is a vacancy in the office of administrator the Bank of England must appoint a replacement administrator as soon as reasonably practicable.

(3) The rules for the appointment of an administrator in Chapter 2 of Part 2 shall apply to the appointment of a replacement administrator.

Application to replace (special administration (bank administration))

144.—(1) This rule applies in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice.

(2) Where there is a vacancy in the office of administrator the Bank of England must appoint a replacement administrator as soon as reasonably practicable.

(3) Where an application is made by the Bank of England to remove or replace an administrator, the rules in Chapter 3 of Part 2 for the application to appoint an administrator shall apply to the service of notice of the application and of the hearing.

(4) Both the person proposed to be appointed and the existing administrator are entitled to be served and to appear or be represented.

Notification and advertisement of appointment of replacement administrator

145.—(1) Where a replacement administrator is appointed the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of an initial appointment, and all statements, consents and other documents as required shall also be required in this case.

(2) All notices shall clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

146.—(1) Where a person is appointed in accordance with paragraph 103 to act as administrator jointly or concurrently with the person or persons then acting, the same provisions shall apply, subject to this rule and to such other modification as may be necessary, in respect of the making of this appointment as in the case of the original appointment of an administrator.

(2) An appointment made under paragraph 103 shall be notified to the registrar of companies.

Additional joint administrator (special administration (bank administration))

147.—(1) This rule applies to an application to appoint an additional joint administrator in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice.

(2) The process for the initial appointment of an administrator under Chapter 3 of Part 2 shall apply to the appointment of an additional joint administrator.

- (3) The existing administrator (or each of them) is entitled to a copy of the application and may—
 - (a) lodge written representations; and
 - (b) appear or be represented at the hearing.
- (4) An application for the appointment of an additional joint administrator under this rule may only be made by the Bank of England.
- (5) Rule 145 applies in respect to the notification and advertisement of the appointment of an additional joint administrator.

Administrator's duties on vacating office

148. Where the administrator ('A') ceases to be in office in consequence of this Chapter, A is under obligation as soon as reasonably practicable to deliver up to the person succeeding A as administrator ('B') the assets (after deduction of any expenses properly incurred and distributions made by A) and further to deliver up to B—

- (a) the records of the administration, including correspondence, proofs and other related papers appertaining to the administration while it was within A's responsibility; and
- (b) the investment bank's books, papers and other records.