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STATUTORY INSTRUMENTS

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**2011 No. 1301**

The Investment Bank Special Administration  
(England and Wales) Rules 2011

PART 11

Provisions of general effect

CHAPTER 3

The giving of notice and the supply of documents to or by the administrator

**Application**

**291.**—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or the Rules.

(2) This Chapter does not apply to the submission of documents to the registrar of companies.

(3) Rules 295 to 298 do not apply to the filing of any notice or other document with the court.

**The form**

**292.** Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing and where electronic delivery is permitted a notice or other document in electronic form is treated as being in writing if a copy of it is capable of being produced in a legible form.

**Proof of sending**

**293.**—(1) Where a notice or other document is required to be given, delivered or sent by the administrator, the giving, delivering or sending of it may be proved by means of a certificate that the notice or other document was duly given, delivered or sent.

(2) In the case of the administrator the certificate may be given by—

- (a) the administrator;
- (b) the administrator's solicitor;
- (c) a partner or an employee of either of them.

(3) In the case of a notice or other document to be given, delivered or sent by a person other than the administrator, the giving, delivering or sending of it may be proved by means of a certificate by that person—

- (a) that the notice or document was given, delivered or sent by that person; or
- (b) that another person (named in the certificate) was instructed to give, deliver or send it.

(4) A certificate under this rule may be endorsed on a copy or specimen of the notice or document to which it relates.

### **Authentication**

**294.**—(1) A document or information given, delivered or sent in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.

(2) A document or information given, delivered or sent in electronic form is sufficiently authenticated—

- (a) if the identity of the sender is confirmed in a manner specified by the recipient; or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

### **Electronic delivery - general**

**295.**—(1) Unless in any particular case some other form of delivery is required by the Regulations or the Rules or an order of the court and subject to paragraph (3), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—
  - (i) contained the notice or other document, or to which the notice or other document was attached, and
  - (ii) shows the time and date the message was sent; and
- (b) that electronic message contains the address supplied under paragraph (1)(b).

(3) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00am on the next business day after it was sent.

(4) Paragraph (3) does not apply in respect of documents sent electronically under Part 2.

### **Electronic delivery by administrator**

**296.**—(1) Where the administrator gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the administrator.

(3) The administrator must not require a person making a request under paragraph (2) to pay a fee for the supply of the document.

### **Use of websites by administrator**

**297.**—(1) This rule applies for the purposes of section 246B(1).

(2) Where the administrator is required to give, deliver or send a document to any person (other than in a case where personal service is required), the administrator may satisfy that requirement by sending that person a notice—

- (a) stating that the document is available for viewing and downloading on a website;
- (b) specifying the address of that website together with any password necessary to view and download the document from that site; and
- (c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(3) Where a notice to which this rule applies is sent, the document to which it relates must—

- (a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and
- (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

(4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the administrator.

(5) The administrator must not require a person making a request under paragraph (4) to pay a fee for the supply of the document.

(6) Where a document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—

- (a) when the document was first made available on the website, or
- (b) if later, when the notice under paragraph (2) was delivered to that person.

### **Special provision on account of expense as to website use**

**298.**—(1) Where the court is satisfied that the expense of sending notices in accordance with rule 292 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notices in accordance with that rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the administrator sending each of those persons a notice—

- (a) stating that all relevant documents will be made available for viewing and downloading on a website;
- (b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and
- (c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, e-mail address and postal address which may be used to make that request.

(2) A document to which this rule relates must—

- (a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent; and
- (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

(3) Where hard copies of relevant documents have been requested, they must be sent by the administrator—

- (a) within 5 business days of the receipt by the administrator of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received, or
  - (b) within 5 business days from the date a relevant document first appears on the website, in all other cases.
- (4) The administrator must not require a person making a request under paragraph (3) to pay a fee for the supply of the document.
- (5) Where a relevant document is given, delivered or sent to a person by means of a website in accordance with this rule, it is deemed to have been delivered—
- (a) when the relevant document was first made available on the website, or
  - (b) if later, when the notice under paragraph (1) was delivered to that person.
- (6) In this rule, a relevant document means any document which the administrator is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

#### **Electronic delivery of special administration documents to court**

**299.**—(1) Except where paragraph (2) applies or the requirements of paragraph (3) are met, no application, notice or other document may be delivered or made to a court by electronic means.

(2) This paragraph applies where electronic delivery of documents to a court is permitted by another rule.

(3) The requirements of this paragraph are—

- (a) the court provides an electronic working scheme for the proceedings to which the document relates; and
- (b) the electronic communication is—
  - (i) delivered and authenticated in a form which complies with the requirements of the scheme;
  - (ii) sent to the electronic address provided by the court for electronic delivery of those proceedings; and
  - (iii) accompanied by any payment due to the court in respect of those proceedings made in a manner which complies with the requirements of the scheme.

(4) In this rule “an electronic working scheme” means a scheme set out in a practice direction permitting insolvency proceedings to be delivered electronically to the court.

(5) Under paragraph (3) an electronic communication is to be treated as delivered to the court at the time it is recorded by the court as having been received.

#### **Notice etc to joint administrators**

**300.** Where there are joint office-holders in a special administration, delivery of a document to one of them is to be treated as delivery to all of them.

#### **Execution overtaken by judgment debtor’s insolvency**

**301.**—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution that the judgment debtor has entered special administration.

(2) Subject to rule 302, the notice must be delivered to the office of the enforcement officer or of the officer charged with the execution—

- (a) by hand, or

- (b) by any other means of delivery which enables proof of receipt of the document at the relevant address.

#### **Notice to enforcement officers**

**302.**—(1) This rule applies in relation to any provision of the Regulations or the Rules which makes provision for the giving of notice to an enforcement officer.

(2) Any such notice as is mentioned in paragraph (1) may be given by electronic means to any person who has been authorised to receive such notice on behalf of a specified enforcement officer or on behalf of enforcement officers generally.

#### **Electronic submission of information**

**303.**—(1) This rule applies in any case where prescribed information is required by the Rules to be sent by any person to the Secretary of State, the Chief Land Registrar or the administrator.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the information is submitted electronically with the agreement of the person to whom the information is sent;
- (b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent;
- (c) that all the prescribed information is provided in the electronic submission; and
- (d) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Where prescribed information is permitted to be sent electronically under paragraph (2), any requirement that the information be accompanied by a signature is taken to be satisfied—

- (a) if the identity of the person who is supplying the information and whose signature is required is confirmed in a manner specified by the recipient; or
- (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the information, and the recipient has no reason to doubt the truth of that statement.

(4) Where prescribed information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

#### **Electronic submission of information where rule 303 does not apply**

**304.**—(1) This rule applies in any case where rule 303 does not apply, where prescribed information is required by the Rules to be sent by any person.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

- (a) the person to whom the information is sent has agreed—
  - (i) to receiving the information electronically and to the form in which it is to be sent, and
  - (ii) to the specified manner in which paragraph (3) is to be satisfied;
- (b) all the prescribed information required is provided in the electronic submission; and

(c) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Any requirement that the information be accompanied by a signature is taken to be satisfied if the identity of the person who is supplying the information and whose signature is required, is confirmed in the specified manner.

(4) Where prescribed information has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

### **Contents of notices to be gazetted**

**305.**—(1) Where under the Regulations or the Rules a notice is gazetted, in addition to any content specifically required by the Regulations or any other provision of the Rules, the content of such a notice must be as set out in this Chapter.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) a statement that the proceedings are being held in the High Court and the court reference number;
- (b) the name, postal address and date of appointment of the administrator;
- (c) either an e-mail address, or a telephone number, through which the administrator may be contacted;
- (d) the name of any person other than the administrator (if any) who may be contacted regarding the proceedings; and
- (e) the number assigned to the office-holder by the Secretary of State.

### **Gazette notices relating to companies**

**306.** In addition to the information required by rule 305 a notice relating to an investment bank that is a company must specify—

- (a) the registered name of the company;
- (b) its registered number;
- (c) its registered office;
- (d) any principal trading address if this is different from its registered office;
- (e) any name under which it was registered in the 12 months prior to the date the investment bank entered special administration; and
- (f) any name or style (other than its registered name) under which—
  - (i) the investment bank carried on business;
  - (ii) the investment bank undertook to hold an asset on behalf of a client, or
  - (iii) any debt owed to a creditor was incurred.

### **Omission of unobtainable information**

**307.** Information required under this Chapter to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.

### **The Gazette – general**

**308.**—(1) A copy of the Gazette containing any notice required by the Regulations or the Rules to be gazetted is evidence of any facts stated in the notice.

(2) In the case of an order of the court notice of which is required by the Regulations or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette must as soon as is reasonably practicable cause the variation of the order to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

### **Notices otherwise advertised under the Regulations or Rules**

**309.**—(1) Where under the Regulations or the Rules a notice may be advertised otherwise than in the Gazette, in addition to any content specifically required by the Regulations or any other provision of the Rules, the content of such a notice must be as set out in this Chapter.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal business address of the administrator acting in the special administration to which the notice relates; and
- (b) either an e-mail address, or a telephone number, through which the administrator may be contacted.

### **Non-Gazette notices**

**310.** In addition to the information required by rule 309, a notice relating to an investment bank must state—

- (a) the registered name of the investment bank;
- (b) its registered number;
- (c) any name under which it was registered in the 12 months prior to the date the investment bank entered special administration; and
- (d) any name or style (other than its registered name) under which—
  - (i) the investment bank carried on business,
  - (ii) any asset was given to the investment bank to be held for a client, or
  - (iii) any debt owed to a creditor was incurred.

### **Non-Gazette notices – other provisions**

**311.**—(1) The information required to be contained in a notice to which rules 309 and 310 apply must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement, will be able to read, hear or see that information.

(2) Information required under this Chapter to be included in a notice may be omitted if it is not reasonably practicable to obtain it.