STATUTORY INSTRUMENTS

2011 No. 2262 (S.3)

FINANCIAL SERVICES AND MARKETS INSOLVENCY, SCOTLAND

The Investment Bank Special Administration (Scotland) Rules 2011

Made - - - -	*12th September 2011*
Laid before Parliament	*13th September 2011*
Coming into force - -	*14th November 2011*

The Treasury, in exercise of the powers conferred by section 411(1A)(b), (2), (2C) and (3) of the Insolvency Act 1986(**1**), as applied by the Investment Bank Special Administration Regulations 2011(**2**), make the following Rules:

PART 1

Introductory Provisions

Citation

1. These Rules may be cited as the Investment Bank Special Administration (Scotland) Rules 2011.

Commencement

2. These Rules come into force on 14th November 2011.

Extent

3. These Rules extend to Scotland only.

(**1**) 1986 c.45: section 411 is applied with modifications by regulation 15 of S.I. 2011/245; subsections (1A) and (2C) were inserted by and subsections (2) and (3) amended by sections 125 and 160 of the Banking Act 2009 (c.1); subsection (2) was also amended by S.I. 2009/1941 and subsection (3) was also amended by S.I. 2007/2194.

(**2**) S.I. 2011/245.

Interpretation

4.—(1) In these Rules—

"the 1985 Act" means the Bankruptcy (Scotland) Act 1985(**3**);

"the 1986 Act" means the Insolvency Act 1986;

"the 2006 Act" means the Companies Act 2006(**4**);

"the 2009 Act" means the Banking Act 2009(**5**);

"accounting period" has the meaning given in rule 100 or, in relation to Part 6, section 52 of the 1985 Act(**6**) as applied by rule 132;

"appropriate fee" means 15 pence per A4 or A5 page and 30 pence per A3 page;

"business address" means the place where a person works;

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

"expenses of the special administration" means those expenses incurred in the course of the special administration, or treated as incurred as such by these Rules, that are to be paid out in accordance with Part 4;

"final progress report" has the meaning set out in rule 149;

"financial contract" means a bilateral or multilateral contract entered into with the investment bank before it entered special administration, relating to transactions or positions of a financial nature, including contracts for the delivery or custody of client assets (but not including contracts which are purely administrative or contracts for services);

"investment bank" has the meaning set out in section 232 of the 2009 Act(**7**);

"market price" has the meaning set out in regulation 12(9);

"prescribed part" has the same meaning as it does in section 176A(2)(a) of the 1986 Act(**8**) and the Insolvency Act 1986 (Prescribed Part) Order 2003(**9**);

"principal" has the meaning set out in rule 101(1);

"proxy-holder" has the meaning set out in rule 101(1);

"registered number" of the investment bank has the meaning set out in section 1066 of the 2006 Act;

"registrar of companies" means the registrar of companies for Scotland;

"the Regulations" means the Investment Bank Special Administration Regulations 2011;

"resolution fund order" has the meaning set out in section 49(3) of the 2009 Act;

"special administration" means, unless otherwise stated, special administration, special administration (bank insolvency) or special administration (bank administration) as the case may be;

"standard content" means—

(a) in relation to a notice to be published or advertised in the Edinburgh Gazette, the content specified in rule 174; and

(**3**) 1985 c.66.
(**4**) 2006 c.46.
(**5**) 2009 c.1.
(**6**) Section 52 was amended by the Bankruptcy (Scotland) Act 1993 (c.6), section 11(3) and Schedule 1; the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 36 and 226(2) and schedule 1 and schedule 6, Part 1; and S.I. 2003/2109.
(**7**) Section 232 was amended by S.I. 2011/239.
(**8**) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40) and amended by S.I. 2008/948.
(**9**) S.I. 2003/2097.

(b) in relation to a notice to be advertised in any other way, the content specified in rule 175.

(2) Expressions used both in these Rules and in the Regulations (including expressions used in the provisions of the 1986 Act applied by the Regulations) have, unless otherwise stated, the meaning given in the Regulations.

(3) A reference to a numbered paragraph in these Rules shall, unless—

(a) it is a reference to a paragraph within the same rule; or

(b) otherwise stated,

be to the paragraph so numbered in Schedule B1 to the 1986 Act(**10**), as applied by regulation 15.

(4) A reference to a provision of the 1986 Act, if that provision is listed in Table 1 or 2 in regulation 15, is, unless otherwise stated and subject to paragraph (5), a reference to that provision as applied by regulation 15.

(5) A reference to a provision of the 1986 Act being applied by regulation 15 in a special administration (bank administration) means that provision as applied by section 145 of the 2009 Act, together with the modifications (if any) set out in the table in paragraph 6 of Schedule 2 to the Regulations.

(6) A reference to a numbered regulation shall, unless otherwise stated, be to the regulation so numbered in the Regulations.

Application of Rules

5.—(1) These Rules apply as follows—

(a) Part 2, Chapter 1 applies where an application is made for a special administration order;

(b) Part 2, Chapter 2 applies where an application is made for a special administration (bank insolvency) order; and

(c) Part 2, Chapter 3 applies where an application is made for a special administration (bank administration) order.

(2) Unless otherwise stated, the remaining rules apply in respect of special administration, special administration (bank insolvency) and special administration (bank administration).

PART 2

Application for Order

CHAPTER 1

Application for special administration order

Content of application

6. An application for a special administration order in respect of an investment bank must specify—

(a) the full name and registered number of the investment bank;

(b) any other trading names;

(c) the investment bank's nominated capital and the amount of capital paid up;

(d) the address of the investment bank's registered office;

(**10**) Relevant amendments to Schedule B1 were made by S.I. 2003/2096, 2005/879, 2007/2974, 2008/948, 2008/1897, 2009/1941 and 2010/18.

(e) an email address for the investment bank;

(f) the identity of the person (or persons) nominated for appointment as administrator; and

(g) a statement setting out which of the grounds in regulation 6(1) the applicant is relying on in making the application.

Statement of proposed administrator

7. An application must be accompanied by a statement by the proposed administrator—

(a) specifying the name and address of the person (or each person) proposed to be appointed;

(b) giving that person's (or each person's) consent to act;

(c) giving details of that person's (or each person's) qualification to act as an insolvency practitioner; and

(d) giving details of any prior professional relationship that the person (or any of them) has had with the investment bank.

Lodging of application

8. The application, and its accompanying documents, must be lodged with the court.

Service of application

9.—(1) The application shall be served on—

(a) the FSA (if not the applicant);

(b) the investment bank (if neither the investment bank nor its directors are the applicant);

(c) the person (or each of the persons) nominated for appointment as administrator;

(d) any person who has given notice to the FSA in respect of the investment bank under regulation 8;

(e) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement;

(f) the registrar of companies; and

(g) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(2) Notice of the application shall also be given to the persons upon whom the court orders that the application be served.

Expenses

10. If the court makes a special administration order, the expenses of the applicant, and of any other party whose expenses are allowed by the court, shall be regarded as expenses of the special administration.

Notice of special administration order

11.—(1) If the court makes a special administration order, the applicant shall immediately after the order is made, send a certified copy of the order to—

(a) the administrator; and

(b) the FSA (if not the applicant).

(2) If the court makes an order under regulation 7(1)(d), or any other order under regulation 7(1)(f), it may direct (or give directions as) to whom, and how, notice of that order is to be given.

CHAPTER 2

Application for a special administration (bank insolvency) order

Application for a special administration (bank insolvency) order

12.—(1) An application for a special administration (bank insolvency) order under section 95 of the 2009 Act (as applied by Schedule 1 to the Regulations) shall be in accordance with this Chapter and Chapter 74 of the Rules of the Court of Session 1994.

(2) In this rule, "Rules of the Court of Session 1994" means those rules set out in Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(**11**).

Persons entitled to copy of application

13.—(1) Every contributory, creditor or client of the investment bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

Appointment of administrator by the court

14.—(1) This rule applies where an application is made for a special administration (bank insolvency) order.

(2) The court shall not make the order unless there is lodged in court a statement to the effect that—

(a) the person proposed to be appointed as the administrator is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act; and

(b) that person consents so to act.

(3) When the special administration (bank insolvency) order has been made, the court shall immediately send a certified copy of the order to—

(a) the person appointed as administrator under the order (who shall also, where practicable, be sent an electronic copy of the certified copy of the order); and

(b) the applicant.

(4) The administrator shall immediately—

(a) serve a copy of the order on the investment bank at its registered office and, where the administrator has received an electronic copy of the order and knows the investment bank's email address, send an electronic copy to the investment bank; and

(b) send (electronically or otherwise) a copy of the order to—

(i) the FSA (if it is not the applicant);

(ii) the Bank of England (if it is not the applicant);

(iii) the FSCS; and

(iv) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement.

(**11**) S.I. 1994/1443, last amended by S.S.I. 2011/303.

Authentication of the administrator's appointment

15. A copy certified by the clerk of court of the order of court appointing the administrator under rule 14 shall be sufficient evidence for all purposes and in any proceedings that that person has been appointed to exercise the powers and perform the duties of administrator in the special administration (bank insolvency) of that investment bank.

Duties of Objective A committee

16.—(1) As soon as reasonably practicable after the making of a special administration (bank insolvency) order, the Objective A committee shall meet the administrator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the 2009 Act (as applied by paragraph 6 of Schedule 1 to the Regulations) the committee should recommend the administrator to pursue.

(2) If the administrator and every individual on the Objective A committee agree, the meeting may be held by audio or video conference.

(3) The Objective A committee shall make its recommendation to the administrator at the meeting.

(4) The Bank of England shall confirm the Objective A committee's recommendation in writing as soon as reasonably practicable after the meeting.

(5) As soon as reasonably practicable after the making of a special administration (bank insolvency) order, the Objective A committee shall also pass a resolution as to the terms on which, in accordance with rule 135, the administrator is to be remunerated in respect of—

(a) work done by the administrator in pursuit of Objective A; and

(b) work done by the administrator in pursuit of Objectives 2 and 3 of the special administration objectives.

(6) The Objective A committee—

(a) shall take decisions and pass resolutions by a simple majority; and

(b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Appointment of person under section 135 of the 1986 Act

17.—(1) An application to the court for the appointment of a person under section 135 of the 1986 Act (as applied by paragraph 8 of Schedule 1 to the Regulations) may be made—

(a) by the Bank of England; or

(b) by the FSA, with the consent of the Bank of England.

(2) The court may on the application, if satisfied that an application has been made for a special administration (bank insolvency) order and that sufficient grounds are shown for the making of the order, make it on such terms as it thinks fit.

Order of appointment

18.—(1) The order of appointment of a person appointed under rule 17 shall specify the functions to be carried out by that person in relation to the investment bank's affairs.

(2) The applicant shall, immediately after the order is made, send a certified copy of the order to—

(a) the person appointed;

(b) the Bank of England (if the Bank of England is not the applicant);

(c) the FSA (if the FSA is not the applicant); and

(d) the FSCS,

and may also send to those persons an electronic copy of the certified copy of the order.

(3) Immediately after the order of appointment is made, the person appointed shall—

(a) serve a certified copy of the order on the investment bank and each director of the investment bank;

(b) give notice of the appointment to—

(i) the registrar of companies; and

(ii) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and

(c) advertise the appointment in accordance with the directions of the court.

(4) Service on a director may be effected electronically by sending it to that director's work email address.

Caution

19. The cost of providing the caution required by the person appointed under rule 17 shall unless the court otherwise directs be—

(a) if a special administration (bank insolvency) order is not made, reimbursed to that person out of the property of the investment bank, and the court may make an order against the investment bank accordingly; and

(b) if a special administration (bank insolvency) order is made, reimbursed to that person as an expense of the special administration.

Failure to find or maintain caution

20.—(1) If the person ("P") appointed under rule 17 fails to find or to maintain their caution, the court may remove P and make such order as it thinks fit as to expenses.

(2) If an order is made under this rule removing P, or discharging the order appointing P, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in P's place.

Remuneration

21.—(1) The remuneration of the person ("P") appointed under rule 17 shall be fixed by the court from time to time.

(2) The basis for fixing the amount of the remuneration payable to P may be a commission calculated by reference to the value of the investment bank's estate which has been realised by P but there shall in any event be taken into account—

(a) the work which, having regard to that value, was reasonably undertaken by P; and

(b) the extent of P's responsibilities in administering the investment bank's estate.

(3) Without prejudice to any order of the court as to expenses, P's remuneration shall be paid, and the amount of any expenses incurred by P reimbursed—

(a) if a special administration (bank insolvency) order is not made, out of the investment bank's estate; and

(b) if a special administration (bank insolvency) order is made, as an expense of the special administration.

(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a), P may retain out of the investment bank's estate such sums or property as are or may be required for meeting their remuneration and expenses.

Termination of appointment

22.—(1) The appointment of a person ("P") under rule 17 may be terminated by the court on P's application, or the application of—

(a) the Bank of England; or

(b) the FSA (with the consent of the Bank of England).

(2) If P's appointment terminates in consequence of the dismissal of the application for the special administration (bank insolvency) order, the court may give such directions as it thinks fit with respect to—

(a) the accounts of P's administration;

(b) the expenses properly incurred by P; or

(c) other matters which it thinks appropriate.

(3) On the making of a special administration (bank insolvency) order, P's appointment shall terminate.

(4) Unless the court directs otherwise, where the appointment is terminated, P shall give notice of that termination. Such notice—

(a) shall be advertised once in the Edinburgh Gazette; and

(b) may be advertised in such other manner as P thinks fit.

(5) P shall send notice of the termination of their appointment to the registrar of companies.

CHAPTER 3

Application for a special administration (bank administration) order

Application for a special administration (bank administration) order

23.—(1) An application by the Bank of England for a special administration (bank administration) order in respect of an investment bank must specify—

(a) the full name of the investment bank;

(b) any other trading names of the investment bank;

(c) the address of the investment bank's registered office;

(d) an email address for the investment bank;

(e) the address of the Bank of England; and

(f) the identity of the person (or persons) nominated for appointment as administrator.

(2) If the investment bank has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the registered office, that address shall be specified under paragraph (1)(c).

Statement of proposed administrator

24. An application must be accompanied by a statement by the proposed administrator—

(a) specifying the name and address of the person proposed (or each person) to be appointed;

(b) giving that person's (or each person's) consent to act;

(c) giving details of that person's (or each person's) qualification to act as an insolvency practitioner; and

(d) giving details of any prior professional relationship that person (or any of them) has had with the investment bank.

Lodging

25. The application, and its accompanying documents, must be lodged with the court.

Service

26.—(1) The Bank of England shall serve the application—

(a) on the FSA;

(b) on the investment bank;

(c) on the person (or each of the persons) nominated for appointment as administrator;

(d) on any person who has given notice to the FSA in respect of the investment bank under section 120 of the 2009 Act (bank insolvency: notice of preliminary steps of other insolvency procedures);

(e) if a property transfer instrument was made or is to be made under section 11(2)(b) of the 2009 Act (transfer to commercial purchaser), on each transferee as referred to in that instrument;

(f) on the registrar of companies; and

(g) on the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(2) Service must be effected as soon as reasonably practicable, having regard in particular to the need to give the investment bank's representatives a reasonable opportunity to attend the hearing of the application.

Expenses

27. If the court makes a special administration (bank administration) order, the following are payable as an expense of the special administration—

(a) the Bank of England's expenses of making the application; and

(b) any other expenses allowed by the court.

Notice of order

28. If the court makes a special administration (bank administration) order, the Bank of England shall immediately after the order is made, send a certified copy of the order to—

(a) the administrator;

(b) the FSA; and

(c) the FSCS.

Remuneration of the administrator

29. As soon as practicable after the making of a special administration (bank administration) order, the Bank of England shall fix the terms on which, in accordance with rule 135, the administrator is to be remunerated in respect of—

(a) work done by the administrator in pursuit of Objective A;

(b) work done by the administrator in pursuit of Objectives 2 and 3 of the special administration objectives.

Appointment of person under section 135 of the 1986 Act

30. An application to the court for the appointment of a person under section 135 of the 1986 Act (as applied by Table 2 in section 145(6) of the 2009 Act(**12**) and by paragraph 6 of Schedule 2 to the Regulations) may be made by the Bank of England.

Order of appointment

31.—(1) The order of appointment of a person appointed under rule 30 shall specify the functions to be carried out by that person in relation to the investment bank's affairs.

(2) The Bank of England shall, immediately after the order is made, send a certified copy of the order to—

(a) the person appointed;

(b) the FSA; and

(c) the FSCS,

and may also send to those persons an electronic copy of the certified copy of the order.

(3) Immediately after the order of appointment is made, the person appointed shall—

(a) serve a certified copy of the order on the investment bank and each director of the investment bank;

(b) give notice of the appointment to—

(i) the registrar of companies; and

(ii) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and

(c) advertise the appointment in accordance with the directions of the court.

(4) Service on a director may be effected electronically by sending it to that director's work email address.

(5) The Bank of England may disclose the fact and terms of the order of appointment to any person whom the Bank of England thinks has a sufficient business interest.

(6) Rules 19 to 22 shall then apply with the following modifications—

(a) a reference to "special administration (bank insolvency)" is to be read as a reference to "special administration (bank administration)"; and

(b) a reference to a person being appointed under rule 17 is to a person being appointed following an application made under rule 30.

(**12**) Section 145 was amended by section 21 of the Financial Services Act 2010 (c. 28).

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

32.—(1) The notice of the appointment, which an administrator must publish as soon as reasonably practicable after appointment by virtue of paragraph 46(2)(b)—

(a) shall be advertised once in the Edinburgh Gazette; and

(b) may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard content, notices published under paragraph (1) must state—

(a) that an administrator has been appointed; and

(b) the date of the appointment.

(3) The administrator shall at the same time give notice of the appointment to the following persons—

(a) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act; and

(b) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(4) The administrator shall send the notice of appointment and a copy of the special administration order to the registrar of companies within 7 days of the appointment.

(5) Where, by virtue of a provision of Schedule B1 to the 1986 Act or of these Rules, the administrator is required to send a notice of the appointment to any person, the administrator shall satisfy that requirement by sending to that person—

(a) the full name, registered address and registered number of the investment bank; and

(b) the name and business address of the person or persons appointed as administrator.

Notice requiring statement of affairs

33.—(1) In this Part, "relevant person" has the meaning given to it in paragraph 47(3).

(2) The administrator shall send to each relevant person upon whom the administrator decides to make a requirement under paragraph 47 a notice requiring the relevant person to provide a statement of the investment bank's affairs.

(3) The notice shall inform each of the relevant persons—

(a) of the names and addresses of all others (if any) to whom the same notice has been sent;

(b) of the time within which the statement must be delivered;

(c) of the effect of paragraph 48(4) (penalty for non-compliance); and

(d) of the application to that relevant person, and to each other relevant person, of section 235 of the 1986 Act(**13**) (duty to provide information, and to attend on the administrator, if required).

(4) The administrator shall furnish each relevant person upon whom the administrator decides to make a requirement under paragraph 47 with the information that the administrator considers is necessary for the preparation of the statement of affairs.

(**13**) Section 235 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraphs 9, 24.

Details of the client assets held by the investment bank

34.—(1) The statement of affairs shall include particulars of the client assets held by the investment bank.

(2) The particulars shall include—

(a) the names and addresses of clients of the investment bank for whom the investment bank holds client assets, but where these clients are individuals, the administrator shall not disclose their names and addresses;

(b) details as to the amount of client assets held, categorised into type and securities of a particular description;

(c) details as to the types of ownership those clients assert over the client assets; and

(d) details as to any security interest held by the investment bank or another person in respect of the client assets.

Statements of affairs and statements of concurrence

35.—(1) In addition to the information required by rule 34, the statement of the investment bank's affairs shall be in the form required by rule 7.30 of, and Schedule 5 to, the Insolvency (Scotland) Rules 1986(**14**).

(2) Where more than one relevant person is required to submit a statement of affairs the administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in the form required by rule 7.30 and Schedule 5; and where the administrator does so, the person making the statement of affairs shall be informed of that fact.

(3) The person making the statutory declaration in support of a statement of affairs shall send the statement and one copy of the statement to the administrator, and a copy of the statement to each of those persons whom the administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the administrator the statement of concurrence, together with one copy of the statement, before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by that person.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the statement of affairs, the maker considers that statement to be erroneous or misleading, or the maker is without the direct knowledge necessary for concurring with it.

(6) Subject to rule 36, the administrator shall, as soon as reasonably practicable, file a copy of the statement of affairs and any statement of concurrence with the registrar of companies.

(7) Subject to rule 36, the administrator shall insert any statement of affairs submitted to the administrator, together with any statement of concurrence, in the sederunt book.

Limited disclosure

36.—(1) Where the administrator thinks that it would prejudice the conduct of the administration or might be reasonably expected to lead to violence against any person for the whole or part of the statement of the investment bank's affairs to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies or entered in the sederunt book.

(**14**) S.I. 1986/1915. Schedule 5 was amended by S.I. 2003/2111 and 2006/734; there are other amending instruments but none is relevant.

(3) The administrator shall as soon as reasonably practicable file a copy of that order with the registrar of companies, and shall place a copy of the order in the sederunt book.

(4) If a creditor or a client seeks disclosure of the statement of affairs or a specified part of it in relation to which an order has been made under this rule, that person may apply to the court for an order that the administrator disclose it or a specified part of it.

(5) Where a special administration (bank administration) order has been made, and where an application has been made under paragraph (4), the Bank of England and the FSA may appear or be represented at the hearing or may make written representations.

(6) The applicant shall give the administrator notice of the application at least 3 business days before the hearing.

(7) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(8) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied, and upon the discharge or variation of the order the administrator shall, as soon as reasonably practicable—

(a) file a copy of the full statement of affairs (or so much of the statement of affairs as is no longer subject to the order) with the registrar of companies;

(b) where the administrator has previously sent a copy of the statement of proposals to the creditors and clients in accordance with paragraph 49, provide the creditors and clients with a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) or a summary of the statement of affairs; and

(c) place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.

(9) In paragraph (8)(b) the reference to the statement of proposals having been sent out in accordance with paragraph 49 also includes the situation where the statement has been sent out in accordance with paragraph 9 of Schedule 2 to the Regulations.

Release from duty to submit statement of affairs

37.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement under paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own instance, or at the request of any relevant person.

(2) A relevant person whose request under this rule has been refused by the administrator may apply to the court for a release or extension of time, and where the application is for an extension of time, the period referred to in paragraph 48(1) is suspended pending the court's decision.

(3) An applicant under this rule shall bear their own expenses in the application and, unless the court otherwise orders, no allowance towards such expenses shall be made as an expense of the special administration of the investment bank.

(4) Where an application has been made under paragraph (2), the FSA may be given notice of the hearing and may appear or be represented and in a special administration (bank administration) the administrator and the Bank of England may also be given notice of the hearing and may appear or be represented at the hearing or may make written representations.

Expenses of statement of affairs

38.—(1) A relevant person who provides to the administrator a statement of affairs of the investment bank or statement of concurrence shall be allowed, and paid by the administrator as an

expense of the special administration, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this rule is subject to appeal to the court.

(3) Nothing in this rule relieves a relevant person from any obligation to provide a statement of affairs or statement of concurrence, or to provide information to the administrator.

CHAPTER 2

Statement of proposals

Statement of proposals

39.—(1) The administrator shall under paragraph 49 (or in the case of a special administration (bank administration) paragraph 7 of Schedule 2 to the Regulations) make a statement of proposals, which shall be sent to the registrar of companies.

(2) In addition to the information required by that paragraph, the statement of proposals must include—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, any other trading names, the registered address and registered number of the investment bank;

(c) details of the administrator's appointment (including the date of appointment);

(d) in the case of joint administrators, details of the apportionment of functions;

(e) the names of the directors and secretary of the investment bank and details of any shareholdings in the investment bank they have;

(f) an account of the circumstances giving rise to the application for the appointment of the administrator;

(g) if a statement of the investment bank's affairs has been submitted, a copy or summary of it with the administrator's comments, if any;

(h) if an order limiting the disclosure of the statement of affairs has been made under rule 36, a statement of that fact, as well as—

(i) details of who provided the statement of affairs,

(ii) the date of the order for limited disclosure, and

(iii) the details or a summary of the details that are not subject to that order;

(i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or in case of any depositors of the investment bank, a single statement of their aggregate debt);

(j) if a full statement of affairs is not provided, or if no statement of affairs is provided, the names and addresses of clients of the investment bank together with a description of the amount and type of client assets held, the type of ownership the clients have in respect of those assets and details as to any security interest held by the investment bank or another person in respect of those assets, but where those clients are individuals, their names and addresses are not to be disclosed;

(k) if no statement of affairs is provided, details of the financial position of the investment bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the investment bank entered special administration), a list of the investment bank's creditors including their names, addresses and details of their debts, including any security held (or in case of any depositors of the investment

bank, a single statement of their aggregate debt) and an explanation as to why there is no statement of affairs;

(l) the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 135, and, if this basis has already been set by the Objective A committee or by the Bank of England in respect of the relevant Objective A, or in respect of Objectives 2 and 3 of the special administration objectives, details as to what has been set and any proposals for this to be changed;

(m) a statement complying with paragraph (4) of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner;

(n) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the 1986 Act(**15**) (share of assets for unsecured creditors) as applied by regulation 15 (unless the administrator intends to propose a company voluntary arrangement);

(o) an estimate of the value of the prescribed part for the purposes of section 176A (unless the bank intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;

(p) an estimate of the value of the investment bank's net property (unless the administrator intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;

(q) in—

(i) a special administration, an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective), and

(ii) a special administration (bank insolvency) or a special administration (bank administration)—

(aa) a summary of how the relevant Objective A is being or has been achieved and the resources devoted to the pursuit of the relevant Objective A; and

(bb) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective);

(r) the manner in which the affairs and business of the investment bank have been managed and financed since the date of the administrator's appointment (including the reasons for and terms of any disposal of assets);

(s) details as to the order in which the administrator aims to pursue the special administration objectives and the manner in which the affairs and business of the investment bank will be managed and financed if the administrator's proposals are approved;

(t) whether the administrator expects a dividend to be paid to creditors and an estimate of the amount of this dividend;

(u) how it is proposed that the special administration shall end (winding-up or voluntary arrangement), in accordance with Objective 3; and

(v) any other information which the administrator thinks necessary to enable creditors and clients to vote for the approval of the statement of proposals.

(3) In this Part—

(**15**) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40) and amended by S.I. 2008/948.

(a) "pre-administration costs" are—

(i) fees charged, and

(ii) expenses incurred,

by the administrator, or another person qualified to act as an insolvency practitioner, before the investment bank entered special administration but with a view to its doing so; and

(b) "unpaid pre-administration costs" are pre-administration costs which had not been paid when the investment bank entered special administration.

(4) A statement of pre-administration costs complies with this paragraph if it includes—

(a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;

(b) details of the work done for which the fees were charged and expenses incurred;

(c) an explanation of why the work was done before the investment bank entered special administration and how it would further the achievement of the special administration objectives;

(d) a statement of the amount of the pre-administration costs, setting out separately—

(i) the fees charged by the administrator,

(ii) the expenses incurred by the administrator,

(iii) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and

(iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);

(e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));

(f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d);

(g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)); and

(h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—

(i) subject to approval under rule 112; and

(ii) not part of the proposals subject to approval under paragraph 53.

(5) The statement of proposals—

(a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the investment bank; and

(b) must include a statement of any exclusion.

(6) In the case of special administration (bank administration) following transfer to a bridge bank under section 12(2) of the 2009 Act—

(a) the statement of proposals must state whether any payment is to be made to the investment bank from a scheme under a resolution fund order; or

(b) if that information is unavailable when the statement of proposals is made, the administrator must issue a supplemental statement when the information is available.

(7) Following an application by the administrator under paragraph 107, where the court orders an extension of the period of time in paragraph 49(5), the administrator shall notify—

(a) every creditor of the investment bank of whose address the administrator is aware;

(b) every client of the investment bank of whose claim the administrator is aware and whom the administrator has a means of contacting; and

(c) the FSA,

as soon as possible after the order is made.

(8) Where the administrator wishes to publish a notice under paragraph 49(6) or gives notice that the statement of proposals is to be provided free of charge to a market infrastructure body, the notice must be published once in a newspaper which the administrator considers to be suitable.

(9) A notice under paragraph (7) must include the standard content and must state—

(a) that persons can write for a copy of the statement of proposals for achieving the purpose of administration; and

(b) the address to which to write.

(10) This notice must be published as soon as reasonably practicable after the administrator sends out the statement of proposals in accordance with paragraph 49(4) (or in the case of a special administration (bank administration) under paragraph 9 of Schedule 2 to the Regulations), but no later than 8 weeks (or such other period as may be agreed by the creditors and clients or as the court may order) from the date that the investment bank entered special administration.

CHAPTER 3

Initial meeting to consider proposals

Initial meeting

40.—(1) As soon as reasonably practicable after an invitation to the initial meeting has been sent out in accordance with paragraph 51(1), (or in a special administration (bank administration), in accordance with paragraph 10 of Schedule 2 to the Regulations), the administrator must have advertised once in the Edinburgh Gazette—

(a) that an initial meeting of creditors and clients is to take place;

(b) the venue fixed for the meeting; and

(c) the full name and business address of the administrator.

(2) The information required to be advertised under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.

(3) In a special administration (bank insolvency) or a special administration (bank administration) the Bank of England and the FSCS shall also be invited to the initial meeting.

(4) This rule shall not apply where the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

Notice to officers

41.—(1) Where rule 40 applies, notice to attend the meeting must be given to every present or former officer of the investment bank whose presence the administrator thinks is required at the same time that notice is sent to creditors and clients.

(2) That notice must contain—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address, registered number and any other trading names of the investment bank;

(c) the full name and business address of the administrator; and

(d) details of the venue, the date and the time of the meeting.

(3) Every person who receives a notice under paragraph (1) must attend.

Business of the initial meeting

42.—(1) At the initial meeting of creditors and clients—

(a) a creditors' committee may be established in accordance with Chapter 8 of this Part; and

(b) the statement of proposals shall be approved as follows.

(2) The proposals shall not be approved unless both classes of voter have voted to approve them.

(3) The creditors and the clients shall vote separately on whether to approve the proposals.

(4) In a special administration (bank insolvency) (and in a special administration (bank administration) if there are depositors) the FSCS shall be entitled to vote as a creditor under this rule and rule 65 has effect with respect to its voting rights.

(5) If the proposals were approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposal as modified.

(6) Where the administrator is unable to get the requisite majority of a class of voter for approval of the statement of proposals (with or without any modifications), rule 43 applies.

(7) Paragraph (6) shall not apply in a special administration (bank administration).

(8) This rule shall not apply where the FSA has given a direction under regulation 16 and the direction has not been withdrawn.

Adjournment of meeting to approve the statement of proposals

43.—(1) If, at the initial meeting of creditors and clients, there is not the requisite majority for approval of the statement of proposals (with or without any modifications), the administrator may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days (subject to any direction by the court).

(2) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held (subject to any direction by the court).

(3) Where a meeting is adjourned under this rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

(4) Where at the initial meeting, the proposals were approved (whether or not with modifications) by one class of voter but not the other, that approval shall no longer stand at the adjourned meeting unless the version of the proposals to be voted on has not been modified from the version that was approved.

(5) If the administrator is unable to get the requisite majority of creditors or clients for approval of the statement of proposals, the administrator may apply to the court for directions under paragraph 63.

(6) This rule shall not apply in a special administration (bank administration).

Revision of the statement of proposals

44.—(1) The administrator shall under paragraph 54 (or regulation 18 or paragraph 11 of Schedule 2 to the Regulations as the case may be) make a statement setting out the proposed revisions to the statement of proposals ("the revised statement").

(2) The revised statement, which shall be sent out in accordance with paragraph 54(2)(b) and (c), shall include—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address, registered number and any other trading names of the investment bank;

(c) details of the administrator's appointment (including the date of appointment);

(d) in the case of joint administrators, details of the apportionment of functions;

(e) the names of the directors and secretary of the investment bank and details of any shareholdings in the investment bank they have;

(f) a summary of the initial proposals and the reasons for proposing a revision;

(g) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon the creditors generally or upon each class of creditor or on the clients (as the case may be); and

(h) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(3) The FSA shall be sent a copy of the revised statement at the same time as the revised statement is sent out.

(4) Where the administrator considers that the revision proposed will only affect creditors or, as the case may be, clients, the notice of the meeting to consider the revised proposals shall be sent to both creditors and clients, but will state who is invited to the meeting.

(5) In a special administration (bank insolvency) or a special administration (bank administration) the Bank of England and the FSCS shall also be invited to the meeting.

(6) Subject to paragraph 54(3) within 5 business days of sending out the revised statement in paragraph (1), the administrator shall send a copy of the statement to every member of the investment bank.

(7) Any notice to be published under paragraph 54(3) shall be advertised in such a manner as the administrator thinks fit.

(8) The notice shall be published as soon as reasonably practicable after the administrator sends the statement in accordance with paragraph 54(2) and, in addition to the standard content, shall state—

(a) that members can write for a copy of the statement of revised proposals, and

(b) the address to which to write.

(9) Paragraphs (4) and (5) shall not apply—

(a) in a special administration (bank administration), where—

(i) the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals, and

(ii) Objective A has been achieved; and

(b) in a special administration or a special administration (bank insolvency) where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals.

(10) In this rule, a reference to—

"paragraph 54(2)" also includes a reference to regulation 18(4) or paragraph 13(4) of Schedule 2 to the Regulations as the case may be; and

"paragraph 54(3)" also includes a reference to regulation 18(5) or paragraph 13(5) of Schedule 2 to the Regulations as the case may be.

Meeting to approve the revised statement of proposals

45.—(1) This rule applies to a meeting of creditors, a meeting of clients or a meeting of creditors and clients to approve the revisions to the statement of proposals.

(2) Where the revisions are being approved by a meeting of creditors and clients—

(a) the creditors and the clients shall vote separately on whether to approve the revisions;

(b) the revisions shall not be approved unless both classes of voter have voted to approve them; and

(c) where the revisions are approved by a class of voter subject to a modification, the proposals will not be considered approved by the other class unless that other class has approved the proposals as modified.

(3) In a special administration (bank insolvency) (and in an special administration (bank administration) if there are depositors) the FSCS shall be entitled to vote as a creditor under this rule and rule 65 has effect with respect to its voting rights.

(4) In a special administration or a special administration (bank insolvency), where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals, this rule shall not apply.

(5) In a special administration (bank administration), where the FSA has given a direction under regulation 16 and has not withdrawn its direction at the time that the administrator proposes a revision to the statement of proposals—

(a) if Objective A has not been achieved, paragraph (2)(c) shall not apply; and

(b) if Objective A has been achieved, this rule shall not apply.

Notice to creditors and clients

46. As soon as reasonably practicable after the conclusion of a meeting of creditors or clients, or of creditors and clients to consider the administrator's proposals or revised proposals, the administrator shall—

(a) send notice of the result of the meeting to every person who received notice of the meeting and to the registrar of companies;

(b) lodge in court, and send to any person who did not receive notice of the meeting and of whose claim the administrator has become subsequently aware, a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting; and

(c) place a copy of the notice of the result of the meeting in the sederunt book.

CHAPTER 4

Meetings generally

Meetings generally

47. This Chapter, except where different provision is made in the Regulations or these Rules, applies to meetings summoned by the administrator under—

(a) paragraph 51 (initial meeting);

(b) paragraph 54(2) (meeting to consider revision to the administrator's proposals);

(c) paragraph 62 (general power to summon meetings),

or following a request or a direction from the court under paragraph 56 (further creditors' meetings).

Venue

48.—(1) In fixing the venue for a meeting, the convener must have regard to the convenience of those attending.

(2) Meetings must be summoned for commencement between 10.00 and 16.00 hours on a business day (subject to any direction by the court).

(3) In this rule, "meeting" includes an adjourned meeting.

Notice of meeting by individual notice: when and where sent

49.—(1) This rule applies except where the court orders under rule 51 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must be delivered at least 14 days before the day fixed for the meeting as provided in paragraph (3).

(3) Notice must be sent—

(a) for a meeting involving the creditors, to all the creditors of whose address the administrator is aware and who had claims against the investment bank at the date when it entered administration (except for those who have subsequently been paid in full);

(b) for a meeting involving the clients, to all clients of whose claim the administrator is aware (except for those who have no outstanding claim to client assets held by the investment bank) and whom the administrator has a means of contacting;

(c) for a meeting of contributories, to every person appearing (by the investment bank's books or otherwise) to be a contributory of the investment bank.

(4) The FSA, and in a special administration (bank insolvency) or special administration (bank administration), the Bank of England and the FSCS, shall also be notified of any such meeting.

Notice of meeting by individual notice: content and accompanying documents

50.—(1) This rule applies except where the court orders under rule 51 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must specify—

(a) the purpose of and venue for the meeting;

(b) the persons who are entitled to attend and vote at the meeting;

(c) the effects of Chapter 5 on voting at the meeting,

and state that claims or proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order that creditors or clients may be entitled to vote at the meeting.

(3) Forms of proxy complying with rule 102 must be sent out with every notice summoning a meeting.

Notice of meeting by advertisement only

51.—(1) The court may order that notice of any meeting under these Rules be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether so to order, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, clients, members and contributories or any particular class of them.

Content of notice for meetings

52.—(1) Notice of a meeting of the creditors, clients or a meeting of creditors and clients, must contain the following information—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address, registered number and any other trading names of the investment bank;

(c) the full name and business address of the administrator;

(d) details of the venue, the date and time of the meeting;

(e) whether the meeting is—

(i) an initial creditors and clients' meeting under paragraph 51,

(ii) to consider revisions to the administrator's proposals under paragraph 54(2),

(iii) a further creditors', or creditors and clients', or clients' meeting under paragraph 56, or

(iv) a meeting under paragraph 62,

unless the court orders that it be given by advertisement only in accordance with rule 51.

(2) Where the court orders an extension to the period set out in paragraph 51(2)(b), the administrator shall notify each person who was sent notice in accordance with paragraph 49(4) (or in a special administration (bank administration), paragraph 9 to Schedule 2 to the Regulations).

Advertisement of meetings

53.—(1) The administrator, in convening a meeting under these Rules, must have advertised once in the Edinburgh Gazette a notice which, in addition to the standard content, must state—

(a) that a meeting of creditors, clients, creditors and clients, members or contributories is to take place;

(b) the venue fixed for the meeting;

(c) the purpose of the meeting; and

(d) the time and date by which, and place at which, those attending must lodge proxies and (in the case of a meeting of creditors, clients or both) claims or proofs in order to be entitled to vote.

(2) Notice under this rule must be advertised before or as soon as reasonably practicable after notice is given to those attending.

(3) Information to be advertised in the Edinburgh Gazette under this rule may also be advertised in such other manner as the administrator thinks fit.

Non-receipt of notice of meeting

54. Where, in accordance with the Regulations or these Rules, a meeting is summoned by notice, the meeting is presumed to have been duly summoned and held, even if not all those to whom the notice is to be given have received it.

Requisition of meetings

55.—(1) In this Chapter, "requisitioned meeting" means a meeting requested under paragraph 56(1).

(2) A request for a meeting must contain the following information—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address and registered number of the investment bank;

(c) the full name and address of the creditor requesting the meeting; and

(d) the full amount of that creditor's claim.

(3) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—

(a) either—

(i) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values, and

(ii) written confirmation of concurrence from each creditor or contributory concurring, or

(b) a statement that the requesting creditor's debt or contributory's value alone is sufficient without the concurrence of other creditors or contributories.

(4) In the preceding paragraph, a contributory's value is the amount in respect of which the contributory may vote at any meeting.

(5) A requisitioned meeting must be held within 28 days of the date of the administrator's receipt of the notice.

(6) The administrator—

(a) shall notify the FSA of the details and purpose of the requisitioned meeting;

(b) shall—

(i) in a special administration (bank insolvency), notify the Bank of England of the details and purpose of the requisitioned meeting, or

(ii) in a special administration (bank administration), notify the Bank of England and the FSCS of the details and purpose of the requisitioned meeting, and

(c) may, if the administrator thinks appropriate, also summon the clients to the requisitioned meeting.

Expenses of requisitioned meetings

56.—(1) The expenses of summoning and holding a requisitioned meeting shall be paid by the person who makes the request, who shall deposit with the administrator caution for their payment.

(2) The sum to be deposited shall be such as the administrator may determine, and the administrator shall not act without the deposit having been made.

(3) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the investment bank as an expense of the administration.

(4) To the extent that any caution made under this rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Quorum at meetings

57.—(1) A meeting of creditors, clients, creditors and clients or contributories is not competent to act unless a quorum is present.

(2) A quorum is—

(a) in the case of a meeting of creditors, at least one creditor entitled to vote;

(b) in the case of a meeting of clients, at least one client entitled to vote;

(c) in the case of a meeting of creditors and clients, at least one creditor and one client who are each entitled to vote;

(d) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

(3) For the purposes of this rule, the reference to the creditor or contributories necessary to constitute a quorum is not confined to those persons present or duly represented under section 323 of the 2006 Act but includes those represented by proxy by any person (including the chair).

(4) Where at any meeting under paragraph (2)—

(a) the provisions of this rule as to a quorum being present are satisfied by the attendance of—

(i) the chair alone, or

(ii) one other person in addition to the chair, and

(b) the chair is aware, by virtue of claims or proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

Chair at meetings

58.—(1) At any meeting of creditors, clients, or creditors and clients summoned by the administrator, either the administrator shall be the chair, or a person nominated by the administrator in writing to act in the administrator's place.

(2) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

(a) the chair must propose it unless the chair considers that there is good reason for not doing so, and

(b) if the chair does not propose it, the chair must as soon as reasonably practicable after the meeting notify the principal of the reason why not.

Adjournment by chair

59.—(1) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances.

(2) An adjournment under this paragraph must not be for a period of more than 14 days, subject to any direction by the court.

(3) If there are further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held.

(4) Rule 48 applies with regard to the venue fixed for a meeting adjourned under this rule.

(5) This rule does not apply to the initial meeting of creditors and clients.

Adjournment in absence of chair

60.—(1) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(2) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

Claims, proofs and proxies in adjournment

61. Where a meeting under these Rules is adjourned, claims, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

Suspension

62. Once only in the course of a meeting, the chair may, without an adjournment, declare it suspended for any period up to 1 hour.

Venue and conduct of company meetings

63.—(1) In fixing the date, time and place for a meeting, the administrator shall have regard to the convenience of those members of the investment bank attending.

(2) The chair of the meeting shall be the administrator or the person nominated by the administrator in writing to act in the administrator's place.

(3) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of a meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the Regulations and these Rules, the meeting must be summoned and conducted in accordance with the law of Scotland, including any applicable provision in or made under the 2006 Act.

(6) The chair of the meeting shall cause minutes of the proceedings to be entered in the sederunt book.

CHAPTER 5

Entitlement to vote at meetings

Entitlement to vote (creditors)

64.—(1) A creditor is entitled to vote at any creditors' or creditors and clients' meeting of the special administration if that creditor's claim has been submitted to the administrator and that claim has been accepted in whole or in part in accordance with the rules in Part 6.

(2) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of voting at a meeting shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to that creditor's entitlement to vote at any subsequent meeting.

FSCS and voting rights

65.—(1) For the purpose of voting at a meeting in a special administration (bank insolvency) (or in a special administration (bank administration) if there are depositors), the FSCS, instead of complying with the requirements set out in rule 126(1)(d) may give a statement containing—

(a) the names of the creditors of the investment bank in respect of whom an obligation of the FSCS has arisen or may reasonably be expected to arise;

(b) the amount of each such obligation; and

(c) the total amount of all such obligations.

(2) The FSCS may from time to time submit a further statement; and each such statement supersedes any previous statement.

(3) Any voting rights which a creditor might otherwise exercise in the special administration in respect of a claim are reduced by a sum equal to the amount of that claim in relation to which the FSCS, by virtue of its having submitted a statement under this rule, is entitled to exercise voting rights at the meeting.

Calculation of voting rights (creditors)

66. Section 50 of the 1985 Act(**16**) (entitlement to vote and draw dividend) (as applied by rule 127) applies with regard to a creditor's entitlement to vote in the special administration.

Calculation of voting rights: special cases (creditors)

67.—(1) An owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable by the investment bank on the date on which it entered special administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

(a) the making of a special administration application, or

(b) the investment bank entering special administration.

(**16**) Section 50 has been amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 226(2), schedule 6 Part 1, and S.I. 2003/2109.

Entitlement to vote (clients)

68.—(1) A client is entitled to vote at a meeting of creditors and clients or of clients only if—

(a) the administrator has been given written details of the client's claim as to the total amount of client assets over which the client asserts—

(i) a beneficial right of ownership or a right of ownership where the investment bank has been acting as custodier of those assets, or

(ii) another means of ownership; and

(b) the details were given to the administrator—

(i) not later than 12.00 hours on the business day before the day fixed for the meeting, or

(ii) later than that time but the chair of the meeting is satisfied that the delay was due to circumstances beyond that client's control; and

(c) the claim for client assets has been admitted for the purposes of entitlement to vote,

and there has been lodged with the administrator any proxy intended to be used on behalf of that person.

(2) Subject to paragraph (4), for the purposes of this Chapter, written details of a claim for client assets, once lodged or given in accordance with this rule, need not be lodged or given again.

(3) The chair may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a claim for client assets.

(4) Where at the date of the meeting the client is aware that there will be a shortfall in respect of their claim to client assets, the client shall—

(a) resubmit a claim under paragraph (1), subtracting the value of the shortfall of assets (as calculated, in respect of securities, in accordance with rule 69) from that claim; and

(b) submit a claim under rule 64 and under Part 6 as to the debt owed to the client by the investment bank in respect of the shortfall.

(5) If at the time that the invitation to the initial meeting, or notice of a creditors and clients' or a client's meeting, is sent out, the administrator has become aware that there will be a shortfall in respect of a client's claim to client assets, the administrator shall notify the client at the same time as the invitation or notice is sent out.

(6) If after the time that the invitation to the initial meeting, or notice of a creditors and clients' or a clients' meeting, is sent out, the administrator becomes aware that there will be a shortfall in respect of a client's claim to client assets, the administrator shall notify the client as soon as reasonably practicable prior to the meeting and take this shortfall into account in calculating the client's entitlement to vote.

Calculation of voting rights (clients)

69.—(1) For the purposes of this Chapter, a client's voting rights are calculated according to the value of the client's claim submitted under rule 68(1)(a) taking into account any shortfall identified prior to the meeting.

(2) Subject to paragraph (4), the chair is to value any securities making up the client's claim under paragraph (1) by reference to the closing or settlement price for such securities of a particular description.

(3) In paragraph (2)—

"closing or settlement price" means—

(a) in relation to securities traded on a relevant exchange, the closing or settlement price published by that exchange; and

(b) in relation to securities traded elsewhere, the closing or settlement price published by an appropriate pricing source,

on the last business day before the date the investment bank entered special administration; but where such securities are traded outside the United Kingdom, the closing or settlement price shall be the most recent closing price before that date; and

"securities of a particular description" has the meaning set out in regulation 12(9);

and in this paragraph—

"appropriate pricing source" means a reputable source used by the investment bank immediately prior to the investment bank entering special administration for valuing or reporting in respect of those securities, unless the client asserts with good reason (and the chair agrees) that an alternative source should be used; and

"relevant exchange" means a recognised investment exchange or recognised overseas investment exchange used by the investment bank to trade such securities immediately prior to the investment bank entering special administration, unless the client asserts with good reason (and the chair agrees) that an alternative exchange should be used.

(4) Where the chair considers that it is not practicable to value a client asset by reference to a closing or settlement price published by a relevant exchange or an appropriate pricing source, the chair may put upon the asset an estimated minimum value for the purposes of the entitlement to vote.

(5) Where client assets are quoted in currencies other than sterling, in order to value the assets for the purposes of this Chapter, the administrator shall convert the market price of the assets to sterling at the rate of exchange for that other currency as at the mean of the buying and selling spot rates prevailing in the London market as published at the close of business on the business day prior to the date of the investment bank entering special administration, or in the absence of any such published rate, such rate as the court determines.

Procedure for admitting clients' claims for voting

70.—(1) At a meeting of creditors and clients, or clients, the chair must ascertain the entitlement of persons wishing to vote as clients and admit or reject their claims accordingly.

(2) The chair may admit or reject a claim in whole or in part.

(3) If the chair is in any doubt whether a claim should be admitted or rejected, the claim must be marked as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Voting at meetings of creditors and clients

71.—(1) This rule applies to meetings of creditors and clients.

(2) If the administrator thinks it appropriate, the creditors and clients may vote on the same resolution at the meeting, however the creditors and the clients shall vote separately on the resolution.

(3) In a special administration (bank insolvency) the FSCS shall be entitled to vote as a creditor under this rule and rule 65 has effect with respect to its voting rights.

Requisite majorities

72. At a meeting of creditors, clients, or of creditors and clients, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

Requisite majorities at members or contributories' meetings

73.—(1) At a meeting of members or contributories of the investment bank, voting rights are as at a general meeting of the investment bank, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the investment bank is in liquidation.

(2) References in this rule to a person's share include any other interests which that person may have as a member of the investment bank.

Administrator voting

74.—(1) Where a resolution is proposed which affects a person in respect of that person's remuneration or conduct as the administrator, the vote of that person, or of their firm or of any partner or employee of the administrator shall not be reckoned in the majority required for passing the resolution.

(2) Paragraph (1) applies with respect to a vote given by a person (whether personally or on their behalf by a proxy-holder) either as creditor or client, or contributory or as proxy-holder for a creditor, client or contributory.

CHAPTER 6

Correspondence and remote attendance

Correspondence instead of meetings

75.—(1) This rule applies where an administrator proposes to conduct the business of a creditors' meeting, a clients' meeting, a creditors and clients' meeting or a meeting of contributories (as the case may be) by correspondence.

(2) Where the meeting in question is a creditors' meeting, a clients' meeting or a creditors and clients' meeting, notice of the business to be conducted shall be given to all who are entitled to be notified of the meeting by virtue of paragraph 51.

(3) The administrator may seek to obtain the agreement of the participants of the meeting to a resolution by sending to each participant a copy of the proposed resolution.

(4) The administrator shall send to the participants of the meeting a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the administrator, but shall not be less than 14 business days from the date of issue of the notice under paragraph (2) of this rule.

(6) In order to be considered, votes and comments must be received by the administrator by the closing date and must be accompanied by the creditor's submission of claim or the client's details of their claim (referred to in rules 64 and 68) except where these have already been provided to the administrator.

(7) Rule 71 applies where both creditors and clients are voting on a proposed resolution as it applies to meetings of creditors and clients.

(8) For the conduct of business to proceed, the administrator must receive at least one response which satisfies the requirements of paragraph (6) of this rule.

(9) If no responses are received by the closing date then the administrator shall summon a meeting of creditors, of clients or of creditors and clients, or a meeting of contributories, as the case may be.

(10) Any single creditor, or a group of creditors, of the company whose debt amounts to at least 10% of the total debts of the investment bank may, within 5 business days from the date of the

administrator sending out the proposed resolution, require the administrator to summon a creditors' meeting to consider the proposed resolution.

(11) Clients asserting claims over at least 10% of the total value of client assets held by the investment bank may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of clients to consider the proposed resolution.

(12) Contributories representing claims over at least 10% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of contributories to consider the proposed resolution.

(13) If the administrator's proposed resolution is rejected by the creditors or by the clients pursuant to this rule, the administrator may summon a meeting of creditors, clients or creditors and clients, as the case may be.

(14) A reference in this Part to anything done at a meeting of creditors, clients, creditors and clients or contributories includes a reference to anything done in the course of correspondence in accordance with this rule.

Remote attendance at meetings conducted in accordance with section 246A(9) of the 1986 Act

76.—(1) This rule applies to a request to the administrator for a meeting under section 246A(9) of the 1986 Act(**17**) (remote attendance at meetings) to specify a place for the meeting.

(2) The request must be accompanied by—

(a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the special administration;

(b) in the case of a request by clients, a list of the clients making or concurring with the request and the amounts of their respective claims in respect of client assets in the special administration;

(c) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting);

(d) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and

(e) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the administrator sent the notice of the meeting in question.

(4) Where the administrator considers that the request has been properly made in accordance with the Regulations and this rule, the administrator must—

(a) give notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not;

(b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and

(c) give at least 14 days' notice of that venue to all those previously given notice of the meeting,

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(**17**) Section 246A was inserted by S.I. 2010/18.

(5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(6) Rule 56 (expenses of requisitioned meetings) does not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9) of the 1986 Act.

Action where person excluded

77.—(1) In this rule and rules 78 and 79 an "excluded person" means a person who —

(a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the administrator under section 246A(6) of the 1986 Act; and

(b) is not permitted by those arrangements to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

(a) continue the meeting;

(b) declare the meeting void and convene the meeting again;

(c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

(a) the chair decides in consequence of a complaint under rule 79 to declare the meeting void and hold the meeting again; or

(b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

Indication to excluded person

78.—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion (an "indication").

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

(a) the chair, where it is made during the course of the business of the meeting; or

(b) the administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the request was made under paragraph (1).

Complaint

79.—(1) Any person who—

(a) is, or claims to be, an excluded person; or

(b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person's actual, apparent or claimed exclusion,

("the complainant") may make a complaint.

(2) The person to whom the complaint must be made ("the relevant person") is—

(a) the chair, where it is made during the course of the meeting; or

(b) the administrator, where it is made after the meeting.

(3) The relevant person must—

(a) consider whether there is an excluded person; and

(b) where satisfied that there is an excluded person, consider the complaint,

and, where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.

(4) Paragraph (5) applies where—

(a) the relevant person is satisfied that the complainant is an excluded person;

(b) during the period of the person's exclusion, a resolution was put to the meeting and was voted on; and

(c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

(a) count the intended vote as being cast in accordance with the complainant's stated intention;

(b) amend the record of the result of the resolution; and

(c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) The relevant person must notify the complainant in writing of any decision.

(8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following—

(a) the day on which the person was, appeared or claimed to be excluded; or

(b) where an indication is sought under rule 78, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made within 2 business days of the date of receiving the decision of the relevant person.

CHAPTER 7

Report of meeting

Report of meeting

80.—(1) The chair at any meeting shall cause a report to be made of the proceedings at the meeting and shall sign the report.

(2) The report of the meeting shall include—

(a) a list of all the creditors, clients or contributories, as the case may be, who attended the meeting, either in person or by proxy;

(b) a copy of every resolution passed; and

(c) if the meeting established a creditors' committee, a list of the names and addresses of those elected to be members of the committee.

(3) The chair shall keep a copy of the report of the meeting as part of the sederunt book in the special administration.

CHAPTER 8

The creditors' committee

Constitution of committee

81.—(1) Where it is resolved by a creditors and clients' meeting to establish a creditors' committee for the purposes of the special administration, the committee shall consist of at least 3 and not more than 5 persons elected at the meeting.

(2) In a special administration (bank insolvency), the FSCS shall be a member of the creditors' committee unless it informs the administrator prior to the meeting referred to in paragraph (1) that it does not wish to be a member.

(3) Where paragraph (1) applies, before receiving nominations for members of the committee, the administrator will set out the maximum number of members to be elected onto the committee by each class of voter so as to ensure that, subject to paragraph (2), the make-up of the committee is a reflection of all parties with an interest in the achievement of the special administration objectives.

(4) The classes of voters mentioned in paragraph (3) are—

(a) creditors; and

(b) clients.

(5) A person claiming to be a creditor is entitled to be a member of the committee provided that—

(a) that person's claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and

(b) the claim mentioned in sub-paragraph (a) is not fully secured.

(6) A person claiming to be a client is entitled to be a member of the committee provided that that person's claim in respect of client assets has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of returning client assets.

(7) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under rule 107.

Formalities of establishment

82.—(1) The creditors' committee does not come into being and accordingly cannot act until the administrator has issued a certificate of its due constitution.

(2) The certificate shall state that the creditors' committee of the investment bank has been duly constituted and shall include the following—

(a) a statement that the proceedings are being held in the court and the court reference number;

(b) the full name, registered address and registered number of the investment bank;

(c) the full name and business address of the administrator; and

(d) the full name and address of each member of the committee.

(3) If the chair of the creditors' meeting which resolves to establish the committee is not the administrator, the chair must as soon as reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the committee.

(4) No person may act as a member of the committee unless and until they have agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement

may be given by their proxy-holder present at the meeting establishing the committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator's certificate of the committee's due constitution shall not be issued before the persons elected to be members of the committee in accordance with rule 81 have agreed to act and shall be issued as soon as reasonably practicable thereafter.

(6) If any further members are elected onto the committee at a later date, the administrator shall issue an amended certificate as and when those persons have agreed to act.

(7) The certificate shall be sent to the registrar of companies by the administrator, as soon as reasonably practicable.

(8) If after the establishment of the committee there is any change in its membership, the administrator shall as soon as reasonably practicable report the change to the registrar of companies by filing an amended certificate.

Functions and meetings of the committee

83.—(1) In addition to any functions conferred on the creditors' committee by any provision of the Regulations, the creditors' committee shall assist the administrator in discharging the administrator's functions, and act in relation to the administrator in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held at a time and place determined by the administrator.

(3) The administrator must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(4) After the calling of the first meeting, the administrator must call a meeting—

(a) if so requested by a member of the committee or the member's representative (the meeting then to be held within 21 days of the request being received by the administrator); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(5) Subject to paragraph (8), the administrator shall give 5 business days' written notice of the venue of any meeting to every member of the committee (or their representative designated for that purpose) unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

(6) The FSA shall also be given the notice in paragraph (5).

(7) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (5).

(8) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 92, the notice period mentioned in paragraph (5) is 7 business days.

The chair at meetings

84.—(1) The chair at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.

(2) A person so appointed must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or

(b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

Quorum

85. A meeting of the creditors' committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Committee members' representatives

86.—(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a mandate entitling that person so to act (either generally or specially) and authenticated by or on behalf of the committee member, and for this purpose any proxy in relation to any meeting of creditors, clients or creditors and clients of the investment bank shall, unless it contains a statement to the contrary, be treated as such a mandate to act generally authenticated by or on behalf of the committee member.

(3) The chair at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce a mandate and may exclude that person if it appears that the mandate is deficient.

(4) No member may be represented by—

(a) another member of the committee;

(b) a person who is at the same time representing another committee member;

(c) a body corporate;

(d) a partnership;

(e) a person whose estate is currently sequestrated;

(f) an undischarged bankrupt;

(g) a person who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or interim bankruptcy restrictions order; or

(h) a disqualified director.

(5) Where a member's representative authenticates any document on the member's behalf, the fact that the representative so authenticates must be stated below the representative's signature.

Resignation

87. A member of the creditors' committee may resign by notice in writing delivered to the administrator.

Termination of membership

88.—(1) A person's membership of the creditors' committee is automatically terminated if—

(a) the member's estate is sequestrated or the member becomes bankrupt or grants a trust deed for the benefit of, or makes a composition with, creditors;

(b) at 3 consecutive meetings of the committee, the member is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to apply in the member's case);

(c) subject to paragraph (2), the member, having been voted onto the committee under rule 81 by the creditors of the investment bank, ceases to be a creditor and a period of 3 months has elapsed from the date the member ceased to be a creditor, or is found never to have been a creditor; or

(d) subject to paragraph (3), the member, having been voted onto the committee under rule 81 by the clients of the investment bank, has had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any assets being retained by the administrator under rule 120(2)(e)), or is found never to have been a client.

(2) A person to whom paragraph (1)(c) applies shall not have their membership terminated if—

(a) they are also a client of the investment bank; and

(b) they have not had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any of their assets being retained by the administrator under rule 120(2)(e)),

but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

(3) A person to whom paragraph (1)(d) applies shall not have their membership terminated if they are also a creditor of the investment bank; but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

Removal

89.—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and clients, at least 14 days' notice having been given of the intention to move that resolution.

(2) The resolution in paragraph (1) will be voted on only by the relevant class of voter under rule 81(4) in respect of the member to be removed.

Vacancies

90.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that—

(a) the total number of members does not fall below 3; and

(b) the administrator thinks that the make-up of the committee will continue to reflect all parties with an interest in the achievement of the special administration objectives.

(3) The administrator may appoint a person (being qualified under these Rules to be a member of the committee) from the same class of voters as the previous member to fill the vacancy, if—

(a) a majority of the other members of the committee agree to the appointment; and

(b) the person concerned consents to act.

Voting rights and resolutions

91.—(1) At any meeting of the creditors' committee, each member of it (whether present or represented) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept as part of the sederunt book.

Remote attendance at meetings of creditors' committee

92.—(1) This rule applies to any meeting of a creditors' committee held under these Rules.

(2) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this rule—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where a meeting is to be conducted and held in the manner referred to in paragraph (2), the administrator must make whatever arrangements the administrator considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the administrator—

(a) a meeting will be attended by persons who will not be present together at the same place; and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting;

(b) the administrator is requested in accordance with rule 93 to specify a place for the meeting; and

(c) that request is made by at least one member of the committee,

the administrator must specify a place for the meeting.

Procedure for requests that a place for a meeting should be specified

93.—(1) This rule applies to a request to the administrator of a meeting under rule 92 to specify a place for the meeting.

(2) The request must be made within 5 business days of the date on which the administrator sent the notice of the meeting in question.

(3) Where the administrator considers that the request has been properly made in accordance with this rule, the administrator must—

(a) give notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place, and

(ii) as to whether the date and time are to remain the same or not;

(b) specify a time, date and place for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and

(c) give 5 business days' notice of the time, date and place to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(4) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

Resolutions otherwise than at a meeting

94.—(1) In accordance with this rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or a member's representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this rule, the administrator shall send out to members of the committee or their representatives (as the case may be) a statement incorporating a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(3) The FSA shall also be sent a statement under paragraph (2).

(4) In a special administration (bank administration), if the statement referred to in paragraph (2) is sent out before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall also be sent the statement.

(5) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require the administrator to summon a meeting of the committee to consider the matters raised by the resolution.

(6) In the absence of such a requirement, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(7) A copy of every resolution passed under this rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

Information from administrator

95.—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator shall be in writing, authenticated by the majority of the members of the committee for the time being.

(2) A member's authentication under paragraph (1) may be made by that member's representative.

(3) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as the administrator determines.

(4) The administrator shall notify the FSA of the time and place of the meeting.

(5) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (4).

(6) Where the administrator so attends, the members of the committee may elect any one of their number to be chair of the meeting, in place of the administrator or the administrator's nominee.

Expenses of members

96.—(1) Subject to paragraph (2), the administrator shall defray, out of the assets of the investment bank, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the special administration.

(2) The administrator shall defray, out of the client assets held by the investment bank, any expenses referred to in paragraph (1) incurred by a client member of the committee.

(3) Paragraph (1) does not apply to any meeting of the committee held within 6 weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

Members dealing with the investment bank

97.—(1) This rule applies to—

(a) any member of a creditors' committee;

(b) any committee member's representative;

(c) any person who is an associate of—

(i) a member of the committee, or

(ii) a committee member's representative; and

(d) any person who has been a member of the committee at any time in the last 12 months or who is an associate of such a member.

(2) A person to whom this rule applies may deal with the investment bank while it is in special administration provided that any transactions in the course of such dealings are in good faith and for value.

Formal defects

98. The acts of the creditors' committee established for a special administration are valid despite any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment.

CHAPTER 9

Progress reports

Content of progress report

99.—(1) For the purposes of this Part, "progress report" means a report which includes—

(a) a statement that the special administration order was made by the court and the court reference number (if any);

(b) the investment bank's name, registered address and registration number;

(c) the administrator's name, business address and date of appointment;

(d) where there are joint administrators, details of the apportionment of functions;

(e) details of progress to date (containing the information as detailed in paragraph (2) below);

(f) details of any assets of the investment bank that remain to be realised;

(g) in a special administration (bank administration), details of any amounts received from a scheme under a resolution fund order;

(h) details of whether a bar date has been set and progress made in pursuit of Objective 1 of the special administration objectives;

(i) whether the FSA have given a direction under regulation 16 and whether that direction has been withdrawn;

(j) where a distribution is to be made to creditors, in respect of an accounting period, the scheme of division;

(k) details of the basis fixed for the remuneration of the administrator under rule 16 or 29 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it); and

(l) any other relevant information for the creditors or clients.

(2) The information to be provided under paragraph (1)(e) is—

(a) a receipts and payments account (in the form of an abstract) which states what assets of the investment bank have been realised, for what value, and what payments have been made to creditors including—

(i) receipts and payments during the relevant accounting period,

(ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the administrator so ceased (or, where the administrator has made no previous progress report, receipts and payments in the period since that person's appointment as administrator), and

(iii) the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act(**18**) (prescribed part);

(b) in a special administration (bank insolvency), before a full payment resolution has been passed, details of—

(i) how Objective A (as defined in paragraph 4(1)(a) of Schedule 1 to the Regulations) is being achieved, and

(ii) the arrangements for managing and financing the investment bank while Objective A continues to be pursued;

(c) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, details of—

(i) the extent of the business of the investment bank that has been transferred,

(ii) the property, rights and liabilities that have been transferred or which the administrator expects to be transferred, under a power in Part 1 of the 2009 Act (special resolution regime),

(iii) any requirements imposed on the investment bank for the purposes of the pursuit of Objective A (as defined in paragraph 3(1)(a) of Schedule 2 to the Regulations), under a power in Part 1 of the 2009 Act, and

(iv) the arrangements for managing and financing the investment bank while Objective A continues to be pursued.

(**18**) Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252 and was amended by S.I. 2008/948.

(3) Where the administrator has made a statement of pre-administration costs under rule 39(2)(m)—

(a) if they are approved under rule 112, the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;

(b) each successive report, so long as any of the costs remain unapproved, must include a statement either—

(i) of any steps taken to get approval, or

(ii) that the administrator has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator or that practitioner's decision, not to seek approval.

Sending progress report

100.—(1) The administrator must, within 6 weeks of the end of each accounting period and within 6 weeks after that person ceases to act as administrator, send a copy of the progress report—

(a) to the creditors and to the clients;

(b) the court; and

(c) to the registrar of companies.

(2) For the purposes of these Rules, except for Part 6, "accounting period" in relation to an administration shall be construed as follows—

(a) the first accounting period is the period of 6 months beginning with the date on which the investment bank entered special administration; and

(b) any subsequent accounting period is the period of 6 months beginning with the end of the last accounting period.

(3) The court may, on the administrator's application, extend the period of 6 weeks mentioned in paragraph (1).

(4) If the administrator makes default in complying with this rule, the administrator is liable to a fine and, for continued contravention, to a daily default fine and rule 163 applies.

(5) This rule is without prejudice to the requirements of Part 6 (distributions to creditors).

CHAPTER 10

Proxies and corporate representation

Definition of "proxy"

101.—(1) For the purposes of these Rules, a person ("the principal") may authorise another person ("the proxy-holder") to attend, speak and vote as their representative at meetings of creditors, clients, creditors and clients or contributories or members in a special administration and any such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in a special administration or specifically for any meeting or class of meetings.

(3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons to be proxy-holder in the alternative in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting and any person to whom any such proxy is given cannot decline to be proxy-holder in relation to that proxy.

(5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder's own discretion; and it may authorise or require the holder to propose, in the principal's name, a resolution to be voted on by the meeting.

Form of proxy

102.—(1) Forms of proxy shall be sent out with every notice summoning a meeting in the special administration.

(2) A form of proxy shall not be sent out with the name or description of any person inserted in it.

(3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.

(4) A form of proxy shall be filled out and signed by the principal, or by some person acting under the principal's authority and, where it is signed by someone other than the principal, the nature of the signatory's authority shall be stated on the form.

Use of proxy at a meeting

103.—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) A proxy may be lodged at or before the meeting at which it is to be used.

(3) Where the administrator holds proxies to be used by the administrator as chair of the meeting, and some other person acts as chair, the other person may use the administrator's proxies as if the administrator were the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person to be the administrator, the proxy-holder may, unless the proxy states otherwise, vote for or against (as they think fit) any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which the proxy-holder would be entitled to vote by virtue of the proxy.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at their discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

104.—(1) Proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) The chair shall deliver the proxies forthwith after the meeting to the administrator (where the administrator was not the chair).

(3) The administrator shall retain all proxies in the sederunt book.

Right of inspection

105.—(1) The administrator shall, so long as proxies lodged with the administrator are in the administrator's hands, allow them to be inspected at all reasonable times on any business day, by—

(a) the creditors, in the case of proxies used at a meeting of creditors, or a meeting of creditors and clients;

(b) the clients, in the case of proxies used at a meeting of clients, or a meeting of creditors and clients; and

(c) the investment bank's members or contributories, in the case of proxies used at a meeting of the members of the investment bank or of its contributories.

(2) A reference in paragraph (1) to a creditor or a client is to a person who has submitted a claim in writing to the administrator but does not include a person whose claim has been wholly rejected for purposes of voting or otherwise.

(3) The right of inspection given by this rule is also exercisable by the directors of the investment bank in special administration.

(4) Any person attending a meeting in a special administration is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including claims)—

(a) to be used in connection with that meeting; or

(b) sent or given to the chair of that meeting or to any other person by a creditor, client, member or contributory for the purpose of that meeting, whether or not they are to be used at it.

Proxy holder with financial interest

106.—(1) A proxy-holder ("P") shall not vote in favour of any resolution which would directly or indirectly place P, or any associate of P's, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs P to vote in that way.

(2) Where a P has signed the proxy as being authorised to do so by P's principal and the proxy specifically directs P to vote in the way mentioned in paragraph (1), P shall nevertheless not vote in that way unless P produces to the chair of the meeting written authorisation from P's principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity in accordance with rule 103(3); and in the application of this rule to any such person, the proxy-holder is deemed an associate of that person.

Representation of corporations

107.—(1) Where a person ("P") is authorised under section 323 of the 2006 Act(**19**) (representation of corporations at meetings) to represent a corporation at a meeting held in a special administration, P shall produce to the chair of the meeting a copy of the resolution from which P's authority is derived.

(2) The copy resolution must be signed or subscribed by or on behalf of the corporation in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995(**20**) or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

CHAPTER 11

Disposal of charged property

Application to dispose of secured property

108.—(1) The following applies where the administrator applies to the court under paragraph 71 or 72 for authority to dispose of property of the investment bank which is subject to a security (other than a floating charge), or goods in the possession of the investment bank under a hire purchase agreement.

(**19**) 2006 c.46; section 323 was amended by S.I. 2009/1632.
(**20**) 1995 c.7.

(2) If an order is made under paragraph 71 or 72, the administrator shall as soon as reasonably practicable give notice of it to that person or owner and shall send to the person who is the holder of the security or owner under the agreement a copy of the order, certified by the clerk of court.

(3) The administrator shall place in the sederunt book a copy of any order granted under paragraph 71 or 72.

Application in a special administration (bank administration)

109. If an application referred to in rule 108(1) is made before the Bank of England has given an Objective A Achievement Notice—

(a) the administrator must notify the Bank of England of the time and place of the hearing;

(b) the Bank of England may appear or be represented at the hearing;

and if an order is made, the administrator must send a copy to the Bank of England as soon as reasonably practicable.

PART 4

Expenses of the Special Administration

Order of priority of expenses of the special administration

110.—(1) Subject to rule 111, the expenses of the special administration are payable out of the assets of the investment bank in the following order of priority—

(a) any outlays properly chargeable or incurred by a person appointed under section 135 or the administrator in carrying out the administrator's functions in the special administration, except those outlays specifically mentioned in the following sub-paragraphs;

(b) the cost, or proportionate cost, of any caution provided by the administrator or by a person appointed under section 135 in accordance with the Regulations or these Rules;

(c) in a special administration (bank insolvency) or special administration (bank administration) the remuneration of the person appointed under section 135 (if any);

(d) the expenses of the applicant for a special administration order, and of any other party whose expenses are allowed by the court;

(e) any allowance made by the administrator under rule 38 (expenses of statement of affairs);

(f) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the investment bank, as required or authorised by or under the Regulations or these Rules;

(g) the administrator's remuneration for services in 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,

the basis of which has been fixed under rule 16, 29, or 135, and

(iv) unpaid pre-administration costs for work done in pursuit of these Objectives approved under rule 112; and

(h) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the investment bank (without regard to whether the realisation is effected by the administrator, a secured creditor or otherwise).

(2) 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 shall be payable after the expenses set out in paragraph (1).

(3) Nothing in this rule applies to or affects the power of any court, in proceedings by or against the investment bank, to order expenses to be paid by the investment bank or the administrator nor does it affect the rights of any person to whom such expenses are ordered to be paid.

(4) The priorities laid down by virtue of paragraph (1) are subject to the power of the court to make orders under paragraph (5) where the assets are insufficient to satisfy the liabilities.

(5) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the special administration in such order of priority as the court thinks just.

(6) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1).

(7) In this rule, a reference to "section 135" is to section 135 of the 1986 Act (appointment and powers of provisional liquidator) as modified by—

(a) in a special administration (bank insolvency), Schedule 1; or

(b) in a special administration (bank administration), Schedule 2,

to the Regulations.

Expenses to be paid out of the client assets

111.—(1) The expenses of the special administration to be paid out of the client assets held by the investment bank are payable in the following order of priority—

(a) subject to rule 112, expenses properly incurred by the administrator in pursuing Objective 1;

(b) any necessary disbursements by the administrator in the course of the special administration specific to the achievement of Objective 1 (including any expenses incurred by client members of the creditors' committee or their representatives and allowed for by the administrator under rule 96 but not including any payment of corporation tax in circumstances referred to in rule 110(1)(h));

(c) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the investment bank specific to the achievement of Objective 1, as required or authorised under the Regulations or these Rules; and

(d) the administrator's remuneration, the basis of which has been fixed under rule 135 and unpaid pre-administration costs approved under rule 112 in respect of the work done in pursuance of Objective 1.

(2) The priorities laid down by paragraph (1) of this rule are subject to the power of the court to make orders under paragraph (3) of this rule where the client assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 shall comprise all those items set out in paragraph (1) of this rule.

Pre-administration costs

112.—(1) Where the administrator has made a statement of pre-administration costs under rule 39(2)(m), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) But if—

(a) there is no creditors' committee; or

(b) there is but it does not make the necessary determination; or

(c) it does do so but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

paragraph (3) applies.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment shall be by resolution of—

(a) where the pre-administration costs were incurred in pursuance of Objective A, or Objectives 2 and 3, a meeting of creditors;

(b) where the pre-administration costs were incurred wholly in pursuance of Objective 1, a meeting of clients; or

(c) where the pre-administration costs were incurred in pursuance of Objective 1, Objective A and Objectives 2 and 3, a meeting of creditors and clients.

(4) The administrator must call a meeting of the creditors' committee or a meeting under paragraph (3) if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs, and the administrator must give notice of the meeting within 28 days of receipt of the request.

(5) If—

(a) there is no determination under paragraph (1) or (3); or

(b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

the administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

(6) Paragraphs (4), (5) and (8) of rule 136 apply to an application under paragraph (5) of this rule as they do to an application under paragraph (1) of that rule (references to the administrator being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).

(7) Where the administrator fails to call a meeting of the creditors' committee or a meeting under paragraph (3) in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

Allocation of expenses to be paid from client assets

113.—(1) The administrator shall set out, in the distribution plan under rule 120, how the administrator proposes that the expenses of the special administration, to be paid out of the client assets in accordance with this Chapter, are to be allocated between client assets.

(2) Where paragraph (1) applies and, as a result of this, on the court approving the distribution plan in accordance with rule 122, there is a shortfall in the amount of assets to be returned to a client—

(a) that shortfall is to be treated as a debt owed to the client by the investment bank arising before the investment bank entered special administration; and

(b) where the assets are securities, the claim is to be valued in accordance with rule 69 and for this purpose the references to "chair" in rule 69 shall be read as references to the administrator.

PART 5

Objective 1

CHAPTER 1

Setting a bar date

Notice of the bar date

114.—(1) This Part applies where the administrator sets a bar date for the submission of claims as set out in regulation 11(1).

(2) The administrator shall give notice of the bar date—

(a) to all clients of whose claim in respect of the client assets the administrator is aware; and

(b) to all those persons whom the administrator believes have a right to assert a security interest or other entitlement over the client assets,

and whom the administrator has a means of contacting.

(3) Notice of the bar date shall also be sent to—

(a) the FSA; and

(b) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(4) Notice of the bar date—

(a) shall be advertised once in the Edinburgh Gazette; and

(b) may be advertised in such other manner as the administrator thinks fit.

(5) In advertising the date under paragraph (4), the administrator shall aim to ensure that the bar date comes to the attention of as many of those persons who are eligible to submit a claim under regulation 11(1) as the administrator considers practicable.

(6) After setting a bar date, the administrator may agree a later date for the submission of a claim under regulation 11(1) if the potential claimant submits a request to administrator before the bar date.

(7) The FSA may also submit a request to the administrator under paragraph (6) if the FSA considers that there are particular circumstances in respect of a claimant, or a class of claimants, that mean that those persons will have difficulty submitting their claim before the bar date.

Content of claim for client assets

115.—(1) This rule applies to the submission of claims as described in regulation 11(1)(a).

(2) A person submitting a claim must submit that claim in writing to the administrator.

(3) The claim must—

(a) be made out by, or under the direction of, the claimant and must be signed by the claimant or a person authorised in that behalf; and

(b) state the following matters—

(i) the claimant's name and address,

(ii) the total amount of client assets held or believed to be held for that claimant by the investment bank as at the time that the investment bank entered administration, categorised into type and securities of a particular description,

(iii) details as to the types of ownership the claimant asserts over those assets,

(iv) details of all financial contracts the claimant has entered into under which, at the time the claim is submitted, liabilities are still owed from either the investment bank to the claimant or vice versa, and

(v) details of any security granted by the claimant in respect of the client assets held by the investment bank; and

(c) the name, address and authority of the person signing the claim, if not the claimant.

(4) The claim shall specify details of any documents by reference to which the claim can be substantiated; but (subject to paragraph (5)), it is not essential that such documents be attached to the claim or submitted with it.

(5) Where the administrator thinks it necessary for the purpose of substantiating the whole or any part of a claim submitted, the administrator may—

(a) call for any document or other evidence to be produced; or

(b) send a request in writing for further information from the claimant.

(6) In this rule, "securities of a particular description" has the meaning set out in regulation 12(9).

Content of claim in respect of security interest

116.—(1) This rule applies to the submission of claims as described in regulation 11(1)(b).

(2) A person submitting a claim must submit that claim in writing to the administrator.

(3) The claim must—

(a) be made out by, or under the direction of, the claimant and must be signed by the claimant or a person authorised in that behalf; and

(b) state the following matters—

(i) the claimant's name and address,

(ii) details of any security interest asserted by the claimant over any client assets held by the investment bank, including details of the client assets to which the security interest relates, the date on which the security interest was granted, conditions for the release of the security and the value which the claimant puts on the security interest,

(iii) details of any other parties' interest in the security interest that are known to the claimant, and

(iv) any other information relating to the security interest that the claimant considers useful to the administrator in determining the rights attached to the client assets which are the subject of the claim; and

(c) the name, address and authority of the person signing the claim.

(4) The claim shall specify details of any documents by reference to which the claim can be substantiated; but (subject to paragraph (5)), it is not essential that such documents be attached to the claim or submitted with it.

(5) Where the administrator thinks it necessary for the purpose of substantiating the whole or any part of a claim submitted, the administrator may—

(a) call for any document or other evidence to be produced; or

(b) send a request in writing for further information from the claimant.

Costs of making a claim

117. Unless the court orders otherwise, every claimant under rule 115 or 116 bears the cost of making a claim, including expenses incurred in providing documents or evidence or responding to requests for further information.

New administrator appointed

118.—(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 claims received, together with an itemised list of them.

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

(3) From then on, all claims submitted under rule 115 or 116 must be sent to and retained by the new administrator.

CHAPTER 2

Further notification

Notifying potential claimants after bar date has passed

119.—(1) This rule applies where, after the bar date has passed—

(a) there is evidence from either—

(i) the records of the investment bank; or

(ii) information received by the administrator under rule 115 or 116,

that there is a person ("P") who is eligible to make a claim under regulation 11(1) in respect of certain client assets, but that the administrator has not received a claim from P in respect of those client assets; and

(b) the administrator has a means of contacting P.

(2) The administrator shall send notice to P in writing stating that the administrator believes P would have been eligible to submit a claim under regulation 11(1).

(3) Where P would have been eligible to submit a claim under regulation 11(1)(a), the notice under paragraph (2) shall state that—

(a) the administrator believes that the investment bank holds client assets on behalf of P; and

(b) in making the distribution plan under rule 120, the administrator intends to calculate the amount of assets to be returned to P according to the information available to the administrator, unless P submits a claim in accordance with rule 115 within 14 business days of receipt of the notice (or such longer period as may be agreed by the administrator).

(4) Where P would have been eligible to submit a claim under regulation 11(1)(b), the notice under paragraph (2) shall state that—

(a) the administrator believes that P is able to assert a security interest over certain client assets held by the investment bank; and

(b) in making the distribution plan under rule 120, the administrator intends to take into account the security interest according to the information available to the administrator, unless P submits a claim in accordance with rule 116 within 14 business days of receipt of the notice (or such longer period as may be agreed by the administrator).

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.

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(**21**) 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

(**21**) 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.

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—

Expressions used in the 1985 Act

Column 1	*Column 2*
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(**22**) (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.

(**22**) 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).

(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(**23**) 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.

(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(**24**) and 58(**25**) 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";

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

(**24**) 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.

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

(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—

(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(**26**);

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

"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.

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).

(**26**) 2000 c. 8.

(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.

PART 8

End of Special Administration

Final progress report

149. "Final progress report" means a progress report which includes a summary account of—

(a) the administrator's original proposals (including whether the FSA has given a direction under regulation 16 and whether that direction has been withdrawn);

(b) any major changes to, or deviations from, those proposals in the course of the special administration;

(c) the steps taken during the special administration, including in a special administration (bank insolvency) or a special administration (bank administration), the steps taken to achieve Objective A; and

(d) the outcome.

Application to court by administrator

150.—(1) An application under paragraph 79 for an order providing for the appointment of an administrator of the investment bank to cease to have effect shall be accompanied by—

(a) a progress report for the period since the last such report (if any); and

(b) a statement indicating what the administrator thinks should be the next steps for the investment bank (if applicable).

(2) Before making the application under paragraph (1), administrator shall give notice in writing of the administrator's intention to apply to—

(a) the applicant for the special administration order under which the administrator was appointed;

(b) the creditors and clients;

(c) the FSA;

(d) in a special administration (bank insolvency), the Bank of England; and

(e) in a special administration (bank administration), the Bank of England and the FSCS.

(3) Notice under paragraph (2) shall be give at least 5 business days before the date on which the administrator intends to make the application.

Application to court by creditor

151.—(1) Where a creditor applies to the court to end the special administration a certified copy of the application shall be served on—

(a) the administrator;

(b) the person who made the application for the special administration order; and

(c) the FSA.

(2) Service shall be effected not less than 5 business days before the date fixed for the hearing.

(3) The persons in paragraph (1) may appear or be represented at the hearing of the application.

(4) Where the court makes an order to end the special administration, the court shall send a copy of the order to the administrator.

(5) This rule does not apply in a special administration (bank insolvency) or a special administration (bank administration).

Notification by administrator of court order

152.—(1) Where the court makes an order to end the administration, the administrator must send a copy of the court order and a copy of the final progress report to the registrar of companies.

(2) As soon as reasonably practicable, the administrator must send a copy of the notice and the final progress report to all other persons who received notice of the administrator's appointment.

Moving from administration to dissolution

153.—(1) The notice of vacation of office required to be sent by the administrator in accordance with paragraph 84(1) shall be accompanied by a final progress report.

(2) As soon as reasonably practicable a copy of the notice and accompanying documents shall be sent to all other persons who received notice of the administrator's appointment**.**

(3) Where the court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a certified copy of the order to the administrator.

PART 9

Applications to Court

CHAPTER 1

Applications under section 176A of the 1986 Act

Applications under section 176A(5) of the 1986 Act to disapply section 176A

154. An application under section 176A(5) of the 1986 Act(**27**) (share of assets for unsecured creditors) shall include averments—

(a) that the application arises in respect of a special administration;

(b) as to the financial position of the investment bank; and

(c) as to the basis of the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Notice of an order under section 176A(5) of the 1986 Act

155.—(1) Where the court makes an order under section 176A(5) of the 1986 Act the applicant shall, as soon as reasonably practicable after the making of the order—

(a) send to the investment bank a copy of the order certified by the clerk of court,

(b) send to the registrar of companies a copy of the order; and

(c) give notice of the order to each creditor of whose claim and address the applicant is aware.

(2) The court may direct that the requirement of paragraph (1)(c) of this rule be met by the publication of a notice containing the standard content and stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(3) The notice referred to in paragraph (2) must be published once as soon as reasonably practicable in the Edinburgh Gazette and be further advertised in such other manner as the court may direct.

CHAPTER 2

Defects

Power of court to cure defects

156.—(1) The court may, on the application of any person having an interest—

(a) if there has been a failure to comply with any requirement of the Regulations or these Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure;

(b) if for any reason anything required or authorised to be done in, or in connection with, the special administration cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as the court thinks fit and may—

(a) authorise or dispense with the performance of any act in the special administration;

(**27**) 1986 c.45; section 176A was inserted by the Enterprise Act 2002 (c.40), section 252 and amended by S.I. 2008/948.

(b) appoint as administrator of the investment bank a person who would be eligible to be appointed as such under Part 2 of these Rules, whether or not in place of an existing administrator;

(c) extend or waive any time limit specified in or under the Regulations or these Rules.

(3) The administrator shall record in the sederunt book the decision of the court under this rule.

PART 10

Application of section 216 of the 1986 Act

Preliminary

157. The Rules in this Part—

(a) relate to the leave required under section 216 of the 1986 Act (restriction on re-use of company names) for a person to act as mentioned in section 216(3) of that Act in relation to an investment bank with a prohibited name; and

(b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that leave.

Application for leave under section 216(3) of the 1986 Act

158. When considering an application for leave under section 216(3) of the 1986 Act, the court may call on the administrator or any former administrator of the investment bank for a report of the circumstances in which that investment bank became insolvent, and the extent (if any) of the applicant's apparent responsibility for its doing so.

First excepted case

159.—(1) This rule applies where—

(a) a person ("P") was within the period mentioned in section 216(1) of the 1986 Act a director, or shadow director, of an investment bank that has gone into special administration by virtue of Ground A in regulation 6(1) being satisfied; and

(b) P acts in all or any of the ways specified in section 216(3) of that Act in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the investment bank where that business (or substantially the whole of it) is (or is to be) acquired from the investment bank under arrangements—

(i) made by the administrator,

(ii) made before the investment bank entered into special administration by an office-holder acting in relation to it as supervisor of a voluntary arrangement under Part 1 of the 1986 Act,

(iii) made before the investment bank entered into special administration (bank administration) or special administration (bank insolvency) by a person appointed in accordance with rule 17 or 30, or

(iv) made before the investment bank entered into special administration (bank administration) by the Bank of England under a power in Part 1 of the 2009 Act (special resolution regime).

(2) P will not be taken to have contravened section 216 of the 1986 Act if prior to P's acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3)—

(a) given by P to every creditor of the investment bank whose name and address—

(i) is known by P, or

(ii) is ascertainable by P on the making of such enquiries as are reasonable in the circumstances; and

(b) published in the Edinburgh Gazette.

(3) The notice referred to in paragraph (2)—

(a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion; and

(b) must state—

(i) the name and registered number of the investment bank,

(ii) P's name,

(iii) that it is P's intention to act in all or any of the ways specified in section 216(3) of the 1986 Act in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the investment bank, and

(iv) the prohibited name.

(4) Notice may in particular be given under this rule—

(a) prior to the investment bank entering special administration where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by any of the persons mentioned in paragraph (1)(b) (whether or not at the time of the giving of the notice P is a director of that other company); or

(b) at a time where P is a director of another company where—

(i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the investment bank under arrangements made by the administrator, and

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Where the investment bank has gone into special administration (bank administration), the reference in this rule to the business of the investment bank may be considered as a reference to only the deposit-taking business of the investment bank.

Second excepted case

160.—(1) Where a person ("P") to whom section 216 of the 1986 Act applies as having been a director or shadow director of the investment bank applies for leave of the court under that section not later than 7 days from the date on which the investment bank went into special administration, P may, during the period specified in paragraph (2), act in any of the ways mentioned in section 216(3), notwithstanding that P has not the leave of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the investment bank goes into special administration and ends either on the day falling 6 weeks after that date or on the day on which the court disposes of the application for leave under section 216, whichever of those days occurs first.

Third excepted case

161. The court's leave under section 216(3) of the 1986 Act is not required where the investment bank there referred to, though known by a prohibited name within the meaning of the section—

(a) has been known by that name for the whole of the period of 12 months ending with the day before the investment bank went into special administration, and

(b) has not at any time in those 12 months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the 2006 Act.

PART 11

Provisions of General Effect

CHAPTER 1

Miscellaneous and general

Fees and expenses

162.—(1) Subject to paragraphs (2) and (3), all fees, costs, charges and other expenses incurred in the course of the special administration are to be regarded as expenses of the special administration.

(2) In a special administration (bank insolvency), paragraph (1) does not include any money paid by the FSCS to eligible depositors in pursuance of Objective A.

(3) The fees, costs, charges and other expenses associated with the prescribed part shall be met out of the prescribed part.

(4) In this rule, "eligible depositors" has the meaning given to it by section 93(3) of the 2009 Act.

Punishment of offences

163.—(1) Where the administrator commits an offence under rule 100(4) (administrator failing to send notification as to progress of administration)—

(a) the offence shall be punishable on summary conviction;

(b) the maximum punishment by way of fine shall be one-fifth of the statutory maximum; and

(c) a person convicted of the offence after continued contravention is liable to a daily default fine which shall be one-fiftieth of the statutory maximum; that is to say, that person is liable on a second or subsequent conviction of the offence to this amount for each day on which the contravention is continued instead of the penalty specified for the offence in sub-paragraph (b).

(2) Section 431 of the 1986 Act(**28**) (summary proceedings), as it applies to Scotland, has effect in relation to this offence as to offences under the 1986 Act.

CHAPTER 2

Giving of notice and supply of documents

Application of Chapter 2

164.—(1) Subject to paragraph (2), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or these Rules by any person, including the administrator.

(2) This Chapter does not apply to—

(a) the lodging of any application, or other document, with the court;

(**28**) Section 431 has been amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4.

(b) the service of any application, or other document, lodged with the court;

(c) the service of any order of the court; or

(d) the submission of documents to the registrar of companies.

Giving of notices

165.—(1) All notices required or authorised by or under the Regulations or these Rules to be given, sent or delivered must be in writing, unless it is otherwise provided, or the court allows the notice to be sent or given in some other way.

(2) 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.

(3) Any reference in the Regulations or these Rules to giving, sending or delivering a notice or any other document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to rule 166, any form of post may be used.

(4) Personal service of the notice or document is permissible in all cases.

(5) Where under the Regulations or these Rules a notice or other document is required or authorised to be given, sent or delivered by a person ("the sender") to another ("the recipient"), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(6) Where two or more persons are acting jointly as administrators, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

166.—(1) For a document to be properly sent by post, it must be contained in an envelope addressed to the person to whom it is to be sent, and pre-paid for either first or second class post.

(2) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.

(3) Where first class post is used, the document is to be deemed to be received on the second business day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document is to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice

167.—(1) Where in any proceedings a notice or document is required to be given, sent or delivered by the administrator, the date of giving, sending or delivery of it may be proved by means of a certificate signed by that person or on their behalf by a solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.

(2) In the case of a notice or document to be given, sent or delivered by a person other than the administrator, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that the notice or document was given, posted or otherwise delivered by that person on the date stated in the certificate, or that that person instructed another (named) person to do so.

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

(4) A certificate purporting to be signed by or on behalf of the administrator or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated in the certificate.

Authentication

168.—(1) A document or information given, delivered or sent in hard copy form under these Rules 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 under these Rules 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

169.—(1) Unless in any particular case some other form of delivery is required by the Regulations or these Rules or any order of the court, 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) Where an administrator gives, sends or delivers a notice or other document to any person by electronic means, it must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document, and specify a telephone number, email address and postal address which may be used to make such a request.

(3) 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, who may not make a charge for sending it in that form.

(4) In the absence of evidence to the contrary, a notice or other document shall be 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 was sent to the address supplied under paragraph (1)(b).

(5) A message delivered electronically shall be deemed to have been delivered to the recipient at 9.00 am on the next business day after it was sent.

(6) Paragraph (5) does not apply in respect of documents sent electronically under Part 2.

Use of websites by administrator

170.—(1) This rule applies for the purpose of section 246B of the 1986 Act(**29**) (use of websites).

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

(**29**) Section 246B was inserted by S.I. 2010/18.

(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 website; and

(c) containing a statement that the recipient of the notice may request a hard copy of the document, and specifying a telephone number, email address and postal address which may be used to make such a request.

(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) 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, who may not make a charge for sending it in that form.

(5) 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

171.—(1) Where the court is satisfied that the expense of sending notices in accordance with rule 165 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 the 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, email 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) 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) An 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 submission of information

172.—(1) This rule applies in any case where information is required by these Rules to be sent by any person to the Secretary of State 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) all the information required is provided in the electronic submission; and

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

(3) Where 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 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 172 does not apply

173.—(1) This rule applies in any case where rule 172 does not apply, where information is required by these 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 information required to be given is provided in the electronic submission; and

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

(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 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 advertised in the Edinburgh Gazette

174.—(1) Where under the Regulations or these Rules a notice must be published or advertised in the Edinburgh Gazette, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in this rule.

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

(a) the name and postal address of the administrator acting in the special administration to which the notice relates and the date of the appointment of that person;

(b) either an email address, or a telephone number, through which the administrator may be contacted;

(c) the name of any person other than the administrator (if any) who may be contacted regarding the special administration;

(d) the number assigned to the administrator by the Secretary of State; and

(e) the court name and any number assigned to the special administration by the court.

(3) All notices published must specify as regards the investment bank to which the notice relates—

(a) the registered name of the investment bank;

(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 of the commencement of the 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.

Notices otherwise advertised under the Regulations or these Rules

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

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

(a) the name and postal address of the administrator acting in the proceedings to which the notice relates; and

(b) either an email address, or a telephone number, through which the administrator may be contacted.

(3) All notices published must specify as regards the investment bank to which the notice relates—

(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 of the commencement of the special administration; and

(d) 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.

Notices otherwise advertised

176. The information required to be contained in a notice to which rule 175 applies 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.

Omission of unobtainable information

177. Information required by rules 174 and 175 to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

CHAPTER 3

Notifications to the registrar of companies

Application of Chapter 3

178. This Chapter applies where under the Regulations or these Rules information is to be sent or delivered to the registrar of companies.

Information to be contained in all notifications to the registrar

179. Where under the Regulations or these Rules a return, notice, or any other document or information is to be sent to the registrar of companies, that notification must specify—

(a) the registered name of the investment bank;

(b) its registered number;

(c) the nature of the notification;

(d) the regulation or the rule under which the notification is made;

(e) the date of the notification;

(f) the name and postal address of person making the notification; and

(g) the capacity in which that person is acting in respect of the investment bank; and

the notification must be authenticated by the person making the notification.

Notification relating to the administrator

180. In addition to the information required by rule 179, a notification relating to the office of the administrator must also specify—

(a) the name and business address of the administrator;

(b) the date of the event notified;

(c) where the notification relates to an appointment, the person, body or court making the appointment; and

(d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation).

Notifications relating to documents

181. In addition to the information required by rule 179, a notification relating to a document (for example, a statement of affairs) must also specify—

(a) the nature of the document; and

(b) either—

(i) the date of the document; or

(ii) where the document relates to a period of time (for example a report) the period of time to which the document relates.

Notifications relating to court orders

182. In addition to the information required by rule 179, a notification relating to a court order must also specify—

(a) the nature of the court order; and

(b) the date of the order.

Notifications relating to other events

183. In addition to the information required by rule 179, a notification relating to any other event (for example, the coming into force of a moratorium) must specify—

(a) the nature of the event including the regulation or rule under which it took place; and

(b) the date the event occurred.

Notifications of more than one nature

184. A notification which includes a notification of more than one nature must satisfy the requirements applying in respect of each of those notifications.

Notifications made to other persons at the same time

185.—(1) Where under the Regulations or these Rules a notice or other document is to be sent to another person at the same time that it is to be sent to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification sent to the registrar.

(2) Paragraph (1) does not apply—

(a) where additional information is prescribed for the notification to the other person; or

(b) where the notification to the registrar of companies is incomplete.

CHAPTER 4

Further provisions concerning documents

Confidentiality of documents

186.—(1) Where the administrator considers, in the case of a document forming part of the records of the special administration—

(a) that it should be treated as confidential, or

(b) that it is of such a nature that its disclosure would be calculated to be injurious to the interests of the investment bank's creditors, clients, members or contributories,

the administrator may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons who may be refused the right to inspect documents under this rule by the administrator include the members of a creditors' committee.

(3) Where under this rule the administrator refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or subject to such conditions, if any, as it thinks fit to impose.

(4) Nothing in this rule entitles the administrator to decline to allow inspection of any claim or proxy.

Right to inspect documents, to have list of creditors and to copy documents

187.—(1) Subject to rule 186, the following persons have the right to inspect documents held by the administrator—

(a) a person who is or was an officer of the investment bank;

(b) a member of the investment bank;

(c) any person stating in writing to be a creditor of the investment bank;

(d) any person stating in writing to be a client of the investment bank;

(e) any person stating in writing to be a contributory of the investment bank;

(f) a member of the creditors' committee;

(g) in a special administration (bank insolvency) the Bank of England or the FSCS;

(h) in a special administration (bank administration) the Bank of England and, if there are depositors, the FSCS;

(i) the FSA.

(2) A right of inspection may be exercised on a person's behalf by anyone authorised by that person in writing.

(3) Subject to rule 186, any of the persons listed in paragraph (1) also has the right to require the administrator to furnish that creditor with a list of the investment bank's creditors and the amounts of their respective debts.

(4) Where the administrator is requested by any of the persons listed in paragraph (1) to supply a copy of any document, the administrator is entitled to require payment of the appropriate fee in respect of the supply of that copy.

(5) Where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

Sederunt book

188.—(1) The administrator shall maintain a sederunt book during their term of office for the purpose of providing an accurate record of the special administration.

(2) Without prejudice to the generality of the above paragraph, there shall be in the sederunt book a copy of anything required to be recorded in it by provision of the Regulations or of these Rules.

(3) The administrator shall make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book shall be sufficient evidence of the facts in that entry, except where it is founded on by the administrator in their own interest.

(5) Without prejudice to paragraph (3), the administrator shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the date the special administration ends, in accordance with paragraph 79 or 84 (as applied by regulation 15) and regulation 20 or 21.

(6) Where the sederunt book is maintained in non-documentary form, it shall be capable of reproduction in legible form.

Disposal of investment bank's books, papers and other records

189.—(1) Where an investment bank is in special administration, the administrator shall dispose of the books, papers and records of the investment bank either in accordance with—

(a) the directions of the creditors' committee (if any); or

(b) where there is no such committee, the court,

or, if, by the date which is 12 months after the dissolution of the investment bank, no such directions have been given, the administrator may do so after that date in such a way as the administrator deems appropriate.

(2) An administrator or former administrator ("A") shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in A's hands or under A's control representing unclaimed or undistributed assets of the investment bank or dividends or other sums due to any person as a member or former member of the investment bank.

CHAPTER 5

Further provisions concerning the administrator

Administrator's caution

190.—(1) Wherever under these Rules any person has to appoint an administrator, that person must be satisfied before making the appointment that the person appointed or to be appointed has caution for the proper performance of the functions of that office.

(2) It is the duty of the creditors' committee to review from time to time the adequacy of the administrator's caution.

(3) The cost of the administrator's caution shall be paid as an expense of the proceedings.

Information about time spent on the special administration

191.—(1) Subject as set out in this rule, the administrator must, on request in writing by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind in paragraph (3).

(2) The persons referred to in paragraph (1) are—

(a) any director of the investment bank; or

(b) any creditor, client or member of the investment bank.

(3) The statement referred to in paragraph (1)—

(a) must comprise the following details—

(i) the total number of hours spent on the special administration by the administrator or a former administrator and any staff assigned to the special administration during the period covered by the statement,

(ii) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged, and

(iii) the number of hours spent by each grade of staff during that period; and

(b) must cover the period beginning with the date of the appointment of that person as administrator and ending—

(i) with the date next before the date of making the request on which that person has completed any period as administrator, which is a multiple of 6 months, or

(ii) where a person has ceased to act as administrator, the date upon which the person so ceased.

(4) No request pursuant to this rule may be made where more than 2 years has elapsed since the person ceased to act as administrator.

(5) Any statement required to be provided to any person under this rule must be supplied within 28 days of the date of the receipt of the request by the person required to supply it.

Service on joint administrators

192. Where there are joint administrators in a special administration, service on one of them is to be treated as service on all of them.

CHAPTER 6

Transfer of proceedings

Proceedings commenced in the wrong court

193. Where a special administration is commenced in a court other than the Court of Session, that court may order the transfer of the proceedings to the Court of Session.

Proceedings other than special administration commenced

194.—(1) Where—

(a) a winding-up order or an administration order has been made in respect of an investment bank; or

(b) a resolution has been made for the winding up of or for the appointment of an administrator of an investment bank,

the Authority may apply to the court for an order that the proceedings be converted to a special administration, a special administration (bank insolvency) or a special administration (bank administration) as the case may be.

(2) In making an order under paragraph (1), the court shall give such directions as it sees fit, including directions as to the former officer-holder's remuneration and expenses.

(3) An application under paragraph (1) may be made without notice.

(4) Without prejudice to the generality of the court's power in paragraph (1), where the person ("P") appointed as office-holder under the original proceedings is not the same person as the administrator of the special administration, the court may direct that—

(a) P be sent a copy of the order under paragraph (1) by the administrator;

(b) P hand over—

(i) the records of the original proceedings, including correspondence, proofs and other related papers appertaining to those proceedings while they were within P's responsibility; and

(ii) the investment bank's books, papers and other records; and

(c) P hand over all the assets of the investment bank and the client assets held by the investment bank in P's possession.

(5) In this rule—

"the Authority" means—

(a) where the investment bank is a deposit-taker and the application under paragraph (1) is for an order to convert the proceedings to—

(i) a special administration (bank administration), the Bank of England; or

(ii) a special administration (bank insolvency), the Bank of England or the FSA (with the consent of the Bank of England); or

(b) otherwise, the FSA;

"office-holder" means provisional liquidator, liquidator or administrator as the case may be; and

"original proceedings" means the proceedings following the making of the winding up order, the administration order or the resolution referred to in paragraph (1).

Jeremy Wright
James Duddridge
Two of the Lords Commissioners of Her Majesty's Treasury

12th September 2011

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure in Scotland for the investment bank special administration process under the Investment Bank Special Administration Regulations 2011 (S.I. 2011/245) ("the Regulations").

The main features of investment bank special administration are that:

(c) the investment bank enters the procedure by court order;

(d) the order appoints an administrator;

(e) the administrator is to pursue the special administration objectives in accordance with the statement of proposals approved by the meeting of creditors and clients and, in certain circumstances, the FSA; and

(f) in other respects the procedure is similar to administration under Schedule B1 to the Insolvency Act 1986 (c.45).

Where the investment bank is also a deposit-taking bank, the Rules also apply in relation to the special administration (bank insolvency) and special administration (bank administration) processes under Schedules 1 and 2 to the Regulations.

Part 2 sets out the procedure for applying for a special administration order, a special administration (bank insolvency) order or a special administration (bank administration) order.

Part 3 sets out the process of the special administration.

Part 4 provides for the expenses of the special administration.

Part 5 provides for the pursuit of Objective 1 set out in the Regulations (to ensure the return of client assets as soon as reasonably practicable).

Part 6 provides for distributions to creditors.

Part 7 sets out rules concerning the administrator (and there are further rules concerning the administrator in Chapter 5 of Part 11).

Part 8 provides for the end of the special administration.

Part 9 sets out special rules in respect of court procedure and practice.

Part 10 provides for the application of section 216 of the Insolvency Act 1986 (as applied by the Regulations).

Part 11 contains provisions of general effect.

The Rules apply to investment banks incorporated as companies and also to investment banks that are limited liability partnerships by virtue of paragraph 6 of Schedule 3 to the Regulations which applies the Rules with such modifications as the context requires for giving effect to the Regulations.

An impact assessment of the effect that these Rules will have on the costs of business and the voluntary sector is available from the Financial Regulatory Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also published with the Explanatory Memorandum alongside the Rules on legislation.gov.uk and on HM Treasury's website (www.hm-treasury.gov.uk).