
STATUTORY INSTRUMENTS

2009 No. 351

The Bank Insolvency (Scotland) Rules 2009

PART 8

THE LIQUIDATOR

SECTION B - REMOVAL AND RESIGNATION

Summoning of meeting for removal of bank liquidator

36.—(1) This rule applies where—

- (a) the court has made an order under rule 39 directing the bank liquidator to summon a meeting of creditors for the purpose of his removal; and
- (b) the liquidation committee has passed a full payment resolution.

(2) A copy of the notice summoning the meeting shall be sent to the Bank of England and the FSA.

(3) Where a meeting of creditors is summoned especially for the purpose of removing the bank liquidator, the notice summoning it shall draw attention to section 109 of the 2009 Act with respect to the bank liquidator's release.

(4) At the meeting, a person other than the bank liquidator or his nominee may be elected to act as chair; but if the bank liquidator or his nominee is chair and a resolution has been proposed for the bank liquidator's removal, the chair shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(5) Where a meeting is to be held or is proposed to be summoned for the purpose of removal of the bank liquidator, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this rule.

(6) The Bank of England and FSA shall have the opportunity to make representations at the meeting.

(7) Where, at a meeting held under this rule, the bank liquidator is removed, another bank liquidator may be appointed in accordance with rule 31.

Procedure on bank liquidator's removal

37.—(1) Apply rule 4.24 of the 1986 Rules(1).

(2) At the end of rule 4.24(1)(a) and (b) after "Accountant in Bankruptcy" where it appears insert "the registrar of companies and the Bank of England."

(1) Rule 4.24 was amended by paragraph 19 of Schedule 1(I) to [S.I. 1987/1921](#), and paragraph 141(9) of Schedule 2(II) to [S.I. 1999/1820](#).

Release of bank liquidator on removal

38. Where the bank liquidator has been removed by a creditors' meeting which has not resolved against the bank liquidator's release, the fact of that release shall be stated in the certificate of removal before a copy of it is sent, in accordance with rule 37, to the court, the Accountant in Bankruptcy, the registrar of companies and the Bank of England.

Removal of bank liquidator by the court

39.—(1) This rule applies where application is made to the court for the removal of the bank liquidator, or for an order directing the bank liquidator to summon a meeting of creditors for the purpose of removing him.

(2) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by a person other than the Bank of England, the FSA or the liquidation committee.

(3) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the bank liquidator on the application.

(4) Subject to paragraph (2) and (3), the applicant shall send to the bank liquidator a notice of the hearing, stating date, time and place and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(5) The notice and copies mentioned in paragraph (4) shall be sent—

- (a) if the application is made before the passing of a full payment resolution, so as to give the bank liquidator such notice of the hearing as is reasonable in all the circumstances; and
- (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.

(6) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the bank liquidation.

(7) Where the court removes the bank liquidator—

- (a) it shall send three copies of the order of removal to him;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, rule 8 of these Rules applies.

(8) The bank liquidator, on receipt of the three copies of the court orders under paragraph (7), shall send one copy of the order to each of the registrar of companies, Accountant in Bankruptcy and the Bank of England, together with a notice of his ceasing to act as a bank liquidator.

Advertisement of removal

40.—(1) Apply rule 4.27 of the 1986 Rules.

Resignation of liquidator

41.—(1) Before resigning office in accordance with section 109 of the 2009 Act, the bank liquidator must call a meeting of creditors to notify them of the proposed resignation and, where the bank liquidator was appointed by the Bank of England or by the court, obtain the consent of the Bank of England.

(2) The notice summoning the meeting shall—

- (a) indicate that this is the purpose, or one of the purposes of the meeting;

- (b) draw the creditors' attention to section 111 of the 2009 Act and rule 43 with respect to the bank liquidator's release and shall also be accompanied by an account of the bank liquidator's administration of the bank insolvency, including a summary of his receipts and payments and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part); and
 - (c) where the bank liquidator was appointed by the Bank of England or by the court, enclose a copy of the Bank of England's consent.
- (3) Copies of the notice and of the account mentioned in paragraph (2) shall be sent to the court, the Bank of England and the FSA.
- (4) Subject to paragraph (5), the bank liquidator may only proceed under this rule on the grounds of ill health or because—
- (a) he intends ceasing to be in practice as an insolvency practitioner; or
 - (b) there has been some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of the bank liquidator.
- (5) Where two or more persons are acting as the bank liquidator jointly, any one of them may resign (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint bank liquidators.

Action following acceptance of bank liquidator's resignation

- 42.—**(1) This rule applies where a meeting is summoned to notify the creditors of the bank liquidator's resignation.
- (2) The meeting will resolve whether to give the bank liquidator his release.
- (3) If the meeting decides not to give the bank liquidator his release, the bank liquidator will be given a copy of that resolution and rule 43 applies.
- (4) After the meeting the bank liquidator shall lodge the notice of his resignation in court and shall send copies of it to the Bank of England and registrar of companies.
- (5) The bank liquidator's resignation is effective as from the date on which the court receives notice of his resignation, and the court shall endorse that date on the notice.
- (6) Where the creditors have resolved to appoint a new bank liquidator in place of the one who has resigned, rules 4.19 to 4.21(2) of the 1986 Rules shall apply to the appointment of the new bank liquidator, except that the notice to be given by the new bank liquidator under rules 4.19(4) of the 1986 Rules shall also state that his predecessor as bank liquidator has resigned and whether he has been released.
- (7) If there is no quorum present at the meeting summoned to notify the creditors of the bank liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the bank liquidator's resignation be accepted, and the creditors are deemed not to have resolved against the bank liquidator having his release.

Release of resigning or removed bank liquidator

- 43.—**(1) Where the liquidator's resignation is notified to a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under rule 42.
- (2) Where—
- (a) the bank liquidator is removed by the court following an application under rule 39;

(2) Rule 4.19 was amended by paragraph 17(1) of Schedule 1(I) to [S.I. 1987/1921](#).

- (b) the Bank of England has refused to consent to the bank liquidator's proposed resignation;
- (c) the meeting of creditors held under rule 36 resolves against giving him release;
- (d) the bank liquidator ceases to be qualified to act as an insolvency practitioner; or
- (e) the meeting of the liquidation committee held under rule 44 resolves against the bank liquidator being released,

he must apply to the Accountant of Court for his release.

(3) Where the Accountant of Court gives release under this rule, he shall certify it accordingly, and send the certificate to the Accountant in Bankruptcy, registrar of companies and the Bank of England.

(4) A copy of the certificate shall be sent by the Accountant of Court to the former liquidator, whose release is effective from the date of the certificate.