STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 1

Introductory Provisions

Citation

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

Commencement

2. These Rules come into force on 30th June 2011.

Extent

3. These Rules extend to England and Wales only.

Interpretation

4.—(1) In these Rules—

"the 1986 Act" means the Insolvency Act 1986;

"the 2006 Act" means the Companies Act 2006(**1**);

"the 2009 Act" means the Banking Act 2009(**2**);

"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 England and Wales under or by virtue of the Banking and Financial Dealings Act 1971(**3**);

"certificate of service" means a certificate of service verified by a statement of truth;

"CPR" means the Civil Procedure Rules 1998(**4**) and "CPR" followed by a Part or a rule number means the Part or rule with that number in those rules;

"file in court and file with the court" means deliver to the court for filing;

"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

(**1**) 2006 c. 46.
(**2**) 2009 c. 1.
(**3**) 1971 c.80.
(**4**) S.I. 1998/ 3132.

nature, including contracts for the delivery or custody of client assets (but not including contracts which are purely administrative or contracts for services);

"the Gazette" means the London Gazette;

"gazetted" means advertised once in the Gazette;

"investment bank" has the meaning set out in section 232 of the 2009 Act(**5**);

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

"means of contacting" means being able to contact that person specifically;

"person connected with the investment bank" has the same meaning in respect of the investment bank as a person connected with a company in accordance with section 249 of the 1986 Act;

"practice direction" means a direction as to the practice and procedure of any court within the scope of the CPR;

"prescribed order of priority" means the order of priority of payments laid down by rule 134;

"prescribed part" has the same meaning as it does in section 176A(2)(a) of the 1986 Act(**6**) and the Insolvency Act 1986 (Prescribed Part) Order 2003(**7**);

"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 England and Wales;

"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 contents" means—

(a) in relation to a notice to be gazetted, the contents specified in rules 305 and 306; and

(b) in relation to a notice to be advertised in any other way, the contents specified in rules 309 and 310;

"statement of truth" means a statement of truth in accordance with CPR Part 22; and

"witness statement" means a witness statement verified by a statement of truth in accordance with CPR Part 22.

(2) A fee or remuneration is charged when the work to which it relates is done.

(3) 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 set out in the Regulations.

(4) 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(**8**), as applied by regulation 15.

(**5**) Section 232 was amended by S.I. 2011/239.
(**6**) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40) and amended by S.I. 2008/948.
(**7**) S.I. 2003/2097.
(**8**) Relevant amendments to Schedule B1 were made by S.I. 2003/2096, S.I. 2005/879, S.I. 2007/2974, S.I. 2008/948, S.I. 2008/1897, S.I. 2009/1941 and S.I. 2010/18.

(5) 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.

(6) 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.

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

Application of rules

5.—(1) The 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.—(1) An application for a special administration order must be made in writing and signed by the applicant.

(2) The application must state—

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

(b) any other trading names;

(c) the investment bank's date of incorporation;

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

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

(f) an email address for the investment bank;

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

(h) 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 for a special administration order must be accompanied by a statement by the proposed administrator—

(a) specifying the name and business 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 the 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.

Witness statement in support of application

8.—(1) An application for a special administration order must be accompanied by a witness statement.

(2) If the application is made by—

(a) the investment bank or one of its directors, the witness statement shall be made by one of its directors or the company secretary of the investment bank, stating that they make it on behalf of the investment bank or, as the case may be, on behalf of the directors;

(b) a creditor or a contributory of the investment bank, the witness statement shall be made by a person acting under the authority of all the creditors, or, as the case may be, all the contributories, making the application;

(c) the FSA, the witness statement must identify the person making the statement and must include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the statement; or

(d) a combination of the persons listed in regulation 5(1)(a) to (e), the witness statement shall be made by a person acting under the authority of all the applicants.

(3) The witness statement shall—

(a) set out the reasons by which the applicant believes the ground in regulation 6 on which the application is based is satisfied;

(b) state the investment bank's current financial position, specifying (to the best of the applicant's knowledge and belief) the investment bank's assets and liabilities, including contingent and prospective liabilities;

(c) specify any security known or believed to be held by the creditors of the investment bank;

(d) specify the amount of client assets held by the investment bank to the best of the applicant's knowledge and belief;

(e) specify how functions are going to be allocated where more than one person is to be appointed as administrator (stating in particular whether functions are to be exercisable jointly or by any or all of the persons appointed); and

(f) specify any other matters which the applicant thinks will assist the court in deciding whether to make the special administration order.

Filing of application

9.—(1) The application and its accompanying documents must be filed in court together with enough copies of the application and accompanying documents for service and proof of service under rule 10.

(2) The court shall fix a venue for the hearing of the application.

(3) In fixing the venue the court shall have regard to—

(a) the desirability of the application being heard as soon as is reasonably practicable; and

(b) the need for the investment bank's representatives to be able to reach the venue in time for the hearing.

(4) Each of the copies filed—

(a) shall have the seal of the court applied to it;

(b) shall be endorsed with the date and time of filing;

(c) shall be endorsed with the venue for the hearing of the application.

Service of application

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

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

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

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

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

(2) Service under paragraph (1) must be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 9.

(3) Service of the application must be effected by the applicant, or their solicitor, or by a person instructed by the applicant or the solicitor, as soon as reasonably practicable before the hearing.

(4) Service shall be effected as follows—

(a) on the investment bank (subject to paragraph (5)), by delivering the documents to its registered office; and

(b) on any other person (subject to paragraph (6)) by delivering the documents to that person's proper address.

(5) If delivery to the investment bank's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(6) For the purposes of paragraph (4)(b), a person's proper address is any which that person has previously notified to the applicant as their address for service, but if no address has been notified, service may be effected by delivery to that person's usual or last known address.

(7) Delivery of documents to any place or address may be made by leaving them there or by electronic delivery in accordance with rule 295 (and where the document is sent electronically, it shall be sent with a read receipt and the message shall be deemed to be delivered when the message is read).

Proof of service

11.—(1) Service of the application shall be verified by a witness statement specifying the date and time on which, and the manner in which, service was effected.

(2) The witness statement, with a sealed copy of the application exhibited to it, shall be filed with the court—

(a) as soon as is reasonably practicable; and

(b) in any event, before the hearing of the application.

Further notification

12. As soon as reasonably practicable after filing the application, the applicant must notify—

(a) any enforcement officer or other officer whom the applicant knows to be charged with effecting an execution or other legal process against the investment bank or its property;

(b) any person whom the applicant knows to have distrained against the investment bank or its property; and

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

The hearing

13. At the hearing of the application, any of the following may appear or be represented—

(a) the applicant;

(b) the investment bank;

(c) one or more of the directors;

(d) the person (or a person) nominated for appointment as administrator;

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

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

(g) the FSA; and

(h) with the permission of the court, any other person who appears to have an interest.

The special administration order

14. If the court makes a special administration order, the order shall state—

(a) the name and address of the applicant;

(b) the name, registered address and registered number of the investment bank to which the order refers;

(c) details of any other parties appearing at the hearing;

(d) the name of any administrator appointed by the order;

(e) the date and time from which their appointment shall take effect;

(f) the terms for costs of the application; and

(g) any further particulars that the court thinks fit.

Costs

15. If the court makes a special administration order, the following are payable as an expense of the special administration—

(a) costs of the applicant; and

(b) any other costs allowed by the court.

Notice of special administration order

16.—(1) If the court makes a special administration order, it shall, as soon as reasonably practicable, send 3 sealed copies to the applicant.

(2) The applicant shall as soon as reasonably practicable, send a sealed copy to—

(a) the administrator; and

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

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

CHAPTER 2

Application for a special administration (bank insolvency) order

Filing of application

17.—(1) The application for a special administration (bank insolvency) order, verified by witness statement in accordance with rule 21, shall be filed in court.

(2) There shall be filed with the application—

(a) a copy for service on the investment bank;

(b) a copy to be attached to the proof of service; and

(c) further copies to be sent to the persons under rule 20.

(3) The court shall fix the venue, date and time for the hearing of the application and in doing so shall have regard to—

(a) the desirability of the application being heard as soon as is reasonably practicable; and

(b) the need to give the investment bank a reasonable opportunity to attend.

(4) Each of the copies issued to the applicant shall be sealed and be endorsed with the venue, date and time for the hearing.

(5) Any application filed in relation to an investment bank in respect of which there is in force a voluntary arrangement under Part 1 of the 1986 Act shall be filed in accordance with this rule, but a copy of that application shall also be sent to the court to which the nominee's report was submitted, if that is not the same court.

Service of application

18.—(1) The applicant shall serve the investment bank with a sealed copy of the application.

(2) The application shall be served on the investment bank by personal service at its registered office.

(3) In paragraph (2), "registered office" means—

(a) the place which is specified, in the investment bank's statement delivered under section 9 of the 2006 Act as the intended situation of its registered office on incorporation; or

(b) if notice has been given by the investment bank to the registrar of companies under section 87 of the 2006 Act, the place specified in that notice or, as the case may be, in the last such notice.

(4) Service of the application at the registered office may be effected in any of the following ways—

(a) it may be handed to a person who there and then acknowledges that they are, or to the best of the server's knowledge, information and belief are, a director or other officer, or employee, of the investment bank; or

(b) it may be handed to a person who there and then acknowledges that they are authorised to accept service of documents on the investment bank's behalf; or

(c) in the absence of such person as is mentioned in sub-paragraphs (a) and (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending the office.

(5) If for any reason it is impracticable to effect service as provided by paragraph (2) or (4), the application may be served in such other manner as the court may approve or direct.

(6) Application for permission of the court under paragraph (5) may be made without notice to the investment bank, stating in a witness statement what steps have been taken to comply with paragraph (2) or (4), and the reasons why it is impracticable to effect service as there provided.

(7) If the investment bank or its legal representatives fail to attend the hearing, the court may make the bank insolvency order in its absence if satisfied that the application has been served in accordance with this rule.

Proof of service

19.—(1) Service of the application must be proved by a certificate of service.

(2) The certificate of service must be sufficient to identify the application served and must specify—

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

(b) the address of the registered office of the investment bank;

(c) whether the applicant is the Bank of England or the FSA;

(d) the address of the Bank of England;

(e) whether the copy served was a sealed copy;

(f) the date on which service was effected; and

(g) the manner in which service was effected.

(3) Where substituted service has been ordered under rule 18(5), the certificate of service must have attached to it a sealed copy of the order.

(4) The certificate of service must be filed in court as soon as reasonably practicable after service.

Other persons to receive copy of application

20.—(1) The applicant shall send 2 sealed copies of the application to—

(a) the proposed administrator;

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

(c) the FSA, (if not the applicant);

(d) the FSCS;

(e) any person who has given notice to the FSA in respect of the investment bank under section 120 of the 2009 Act; and

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

in accordance with paragraph (2).

(2) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the application is served on the investment bank.

(3) Any of the persons in paragraph (1) will have the right to attend and be heard at the hearing of the application.

Verification of application

21.—(1) This rule applies where an application has been filed at the court under rule 17 above.

(2) A witness statement shall be attached to the application to state that the statements in the application are true, or are true to the best of the applicant's knowledge, information and belief.

(3) The witness statement shall identify the person making the statement and shall include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the application.

Persons entitled to copy of application

22.—(1) Every contributory or 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.

Certificate of compliance

23.—(1) The applicant or the applicant's solicitor shall, as soon as reasonably practicable before the hearing of the application, file in court a certificate of compliance with the rules relating to service.

(2) The certificate shall show—

(a) the date of the application;

(b) the date fixed for the hearing; and

(c) the date or dates when the application was served and that notice of it was given in compliance with the Rules.

(3) A witness statement made by the proposed administrator to the effect that—

(a) the person is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act(**9**); and

(b) the person consents to act as the administrator,

shall be filed in court with the certificate.

Leave for the applicant to withdraw

24.—(1) The applicant may withdraw the application for a special administration (bank insolvency) order at any time before the hearing with the permission of the court.

(2) An application for permission under paragraph (1) may be made without notice.

(3) The court may grant permission on such terms as the court thinks fit.

Witness statement in opposition

25.—(1) If the investment bank intends to oppose an application, it may (but need not) file a witness statement in opposition in court.

(2) A statement under paragraph (1) must be filed before the hearing of the application and a copy must be served on the applicant, before the hearing.

(3) The statement may be served on the applicant by personal service or by electronic means.

(**9**) Section 390 has been amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4) section 88(2), Schedule 5 paragraph 18; by the Enterprise Act 2002 (c.40) section 257(3) Schedule 21 paragraph 4; by the Mental Capacity Act 2005 (c. 9) section 67(1) (2), Schedule 6 paragraph 31(1), (3)(b), (3)(c), Schedule 7; by the Tribunals, Courts and Enforcement Act 2007 (c.15) section 108(3), Schedule 20 paragraphs 1, 6(1) to (3); by S.S.I 2005/465; S.I. 2005/2078; S.I. 2009/1941 and S.I. 2009/3081.

(4) The statement should also be sent to the persons in rule 20(1) before the hearing by personal service or by electronic means.

(5) The fact that the investment bank has not filed a statement under this rule shall not prevent it being heard at the hearing.

Making, transmission and advertisement of order

26.—(1) The court shall not make a special administration (bank insolvency) order unless the person nominated to be appointed as the administrator in the application for the order has filed in court a witness statement under rule 23.

(2) When the order has been made, the court shall immediately send 5 sealed copies (or such larger number as the administrator may have requested) to the administrator.

(3) The court shall also, if practicable, immediately send a copy of the order to the administrator electronically.

(4) The administrator shall serve a sealed copy of the order on the investment bank at its registered office and, where the bank liquidator knows the investment bank's email address, will send an electronic copy to the investment bank.

(5) The administrator shall send 2 copies of the order—

(a) to the Bank of England, the FSA and the FSCS; and

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

in accordance with paragraph (6).

(6) One copy shall be sent electronically as soon as reasonably practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the order is served on the investment bank.

Special administration (bank insolvency) order

27. If the court makes a special administration (bank insolvency) order, the order shall state—

(a) the name and address of the applicant;

(b) the name, registered address and registered number of the investment bank to which the order refers;

(c) details of any other parties appearing at the hearing;

(d) the name and business address of any administrator appointed by the order;

(e) the date and time from which their appointment shall take effect;

(f) the terms for costs of the application; and

(g) any further particulars that the court thinks fit.

Authentication of administrator's appointment

28. A sealed copy of the court's order may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the administrator in the special administration (bank insolvency).

Duties of Objective A committee

29.—(1) This rule applies where a special administration (bank insolvency) order has been made.

(2) 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.

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

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

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

(6) As soon as 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 196, 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.

(7) 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

30.—(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 application must be supported by a witness statement stating—

(a) the grounds upon which it is proposed that the person should be appointed;

(b) that the person to be appointed has consented to act;

(c) that the person to be appointed is qualified to act as an insolvency practitioner;

(d) whether to the applicant's knowledge there has been proposed or is in force for the investment bank a company voluntary arrangement under Part 1 of the 1986 Act;

(e) the applicant's estimate of the value of the assets in respect of which the person is to be appointed; and

(f) the functions the applicant wishes to be carried out by the person appointed under this rule in relation to the investment bank's affairs.

(3) 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 appointment, make it on such terms as it thinks fit.

Notice of appointment

31.—(1) Where a person has been appointed under rule 30, the court shall notify the applicant and the person appointed.

(2) Unless the court otherwise directs, on receipt of the notification under paragraph (1) the person appointed shall give notice of that appointment as soon as reasonably practicable. Such notice—

(a) shall be gazetted; and

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

Order of appointment

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

(2) The court shall, immediately after the order is made, send 4 sealed copies of the order (or such larger number as the person appointed may have requested), to the person appointed.

(3) The court shall also, if practicable, immediately send a copy of the order to the person appointed electronically.

(4) The person appointed shall serve a sealed copy of the order on the investment bank at its registered office and, where they know the investment bank's email address, will send an electronic copy to the investment bank.

(5) The person appointed shall send 2 copies of the order—

(a) to the Bank of England, the FSA, and the FSCS; and

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

in accordance with paragraph (6).

(6) One copy shall be sent electronically as soon as reasonably practicable and the other (a sealed copy) shall be sent by first class post of the business day on which the order is served on the investment bank.

(7) The person appointed shall also send notice of the appointment to the registrar of companies.

Security

33.—(1) The following applies where a person is appointed under rule 30.

(2) The cost of providing the security required by the 1986 Act shall be paid in the first instance by the person so appointed; but—

(a) if the special administration (bank insolvency) order is not made, the person so appointed is entitled to be reimbursed out of the estate of the investment bank, and the court may make an order on the investment bank accordingly; and

(b) if the special administration (bank insolvency) order is made, the person so appointed is entitled to be reimbursed as an expense of the administration in the prescribed order of priority.

Failure to give or keep up security

34.—(1) If the person appointed under rule 30 fails to give or keep up their security, that person may be removed by the court and the court make such order as it thinks just as to costs.

(2) If an order is made under this rule, the court shall give directions as to the steps to be taken for the appointment of another person under rule 30.

(3) Where another person is appointed under rule 30, that person shall send notice of their appointment to the registrar of companies.

Remuneration

35.—(1) The remuneration of the person appointed under rule 30 shall be fixed by the court from time to time on that person's application.

(2) In fixing the remuneration, the court shall take into account—

(a) the time properly given by the person appointed;

(b) the complexity (or otherwise) of the case;

(c) any respects in which, in connection with the investment bank's affairs, there falls on the person appointed any responsibility of an exceptional kind or degree;

(d) the effectiveness with which the person appointed appears to be carrying out, or has carried out, their duties; and

(e) the value and nature of the property with which the person appointed has to deal.

(3) Without prejudice to any order the court may make as to costs, the person appointed's remuneration shall be paid to that person and the amount of any expenses incurred by that person shall be reimbursed—

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

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

(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a), the person appointed 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

36.—(1) The appointment of the person appointed under rule 30 may be terminated—

(a) by the court on that person's application; or

(b) on the application of any of the persons specified in rule 30(1).

(2) The appointment of the person so appointed will be automatically terminated on the making of the special administration (bank insolvency) order.

(3) On the termination of the appointment, the court may give such directions as it thinks fit with respect to the account of that person's administration or any other matters which it thinks appropriate.

(4) Unless the court directs otherwise, where the appointment is terminated, the person who was appointed under rule 30 shall give notice of the termination. Such notice—

(a) shall be gazetted; and

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

(5) The person who was appointed under rule 30 shall send notice of the termination of their appointment to the registrar of companies.

CHAPTER 3

Application for a special administration (bank administration) order

Content of application

37.—(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;

(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

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

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

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

(c) giving details of the 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.

Bank of England witness statement

39.—(1) An application for a special administration (bank administration) order in respect of an investment bank must be accompanied by a witness statement made on behalf of the Bank of England—

(a) certifying that the conditions for applying for a special administration (bank administration) order, set out in section 143 of the 2009 Act (as applied by paragraph 6 of Schedule 2 to the Regulations), are met in respect of the investment bank;

(b) stating the investment bank's current financial position to the best of the Bank of England's knowledge and belief (including actual, contingent and prospective assets and liabilities);

(c) specifying any security which the Bank of England knows or believes to be held by a creditor of the investment bank;

(d) specifying the amount of client assets held by the investment bank to the best of the applicant's knowledge and belief;

(e) specifying any insolvency proceedings which have been instituted in respect of the investment bank (including any process notified to the FSA under section 120 of the 2009 Act);

(f) giving details of the property transfer instrument which the Bank of England has made or intends to make in respect of the investment bank;

(g) where the property transfer instrument has not yet been made, explaining what effect it is likely to have on the investment bank's financial position;

(h) specifying how functions are to be allocated where more than one person is to be appointed as administrator (stating, in particular, whether functions are to be exercisable jointly or concurrently); and

(i) including any other material which the Bank of England thinks may help the court to decide whether to make the special administration (bank administration) order.

(2) The statement must identify the person making the statement and must include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the statement.

Filing

40.—(1) The application, and its accompanying documents, must be filed with the court, together with enough copies of the application and accompanying documents for service under rule 41.

(2) Each filed copy—

(a) shall have the seal of the court applied to it;

(b) shall be endorsed with the date and time of filing;

(c) shall be endorsed with the venue for the hearing of the application (fixed by the court under rule 43); and

(d) shall be issued to the Bank of England.

Service

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

(a) on the investment bank;

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

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

(d) if the property transfer instrument was made or is to be made under section 11(2)(b) of the 2009 Act, on each transferee.

(2) Service under paragraph (1) must be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 40.

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

(4) Service must be effected—

(a) by personal service to an address that the person has notified to the Bank of England as an address for service;

(b) by personal service to the person's registered office (where no address for service has been notified);

(c) by personal service to the person's usual or last known principal place of business in England and Wales (where there is no registered office and no address for service has been notified); or

(d) in such other manner and at such a place as the court may direct.

(5) If the Bank of England knows of an email address that is habitually used for business purposes by a person on whom service is required, the Bank must (in addition to personal service) as soon as is reasonably practicable send by email an electronic copy of a sealed and endorsed copy of the application and its accompanying documents.

(6) Service of the application shall be verified by a witness statement specifying the date on which, and the manner in which, service was effected.

(7) The witness statement, with a sealed copy of the application exhibited to it, shall be filed with the court—

(a) as soon as is reasonably practicable; and

(b) in any event, before the hearing of the application.

Other notification

42. As soon as is reasonably practicable after filing the application the Bank of England must notify—

(a) any enforcement officer or other officer whom the Bank of England knows to be charged with effecting an execution or other legal process against the investment bank or its property;

(b) any person whom the Bank of England knows to have distrained against the investment bank or its property; and

(c) the FSA.

Venue

43.—(1) The court shall fix the venue for the hearing when the application is filed.

(2) In fixing the venue the court shall have regard to—

(a) the desirability of the application being heard as soon as is reasonably practicable; and

(b) the need for the investment bank's representatives to be able to reach the venue in time for the hearing.

Hearing

44. At the hearing of the application, any of the following may appear or be represented—

(a) the Bank of England;

(b) the FSA;

(c) the investment bank;

(d) a director of the investment bank;

(e) the person (or a person) nominated for appointment as administrator;

(f) any person who has given notice to the FSA in respect of the investment bank under section 120 of the 2009 Act; and

(g) with the permission of the court, any other person who appears to have an interest.

Special administration (bank administration) order

45. If the court makes an special administration (bank administration) order, the order shall state—

(a) that the Bank of England is the applicant;

(b) the name, registered address and registered number of the investment bank to which the order refers;

(c) details of any other parties appearing at the hearing;

(d) the name and business address of any administrator appointed by the order;

(e) the date and time from which their appointment shall take effect;

(f) the terms for costs of the application; and

(g) any further particulars that the court thinks fit.

Costs

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

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

(b) any other costs allowed by the court.

Notice of order

47.—(1) If the court makes a special administration (bank administration) order, it shall send 4 sealed copies to the Bank of England.

(2) The Bank of England shall as soon as is reasonably practicable send—

(a) a sealed copy to the administrator;

(b) a sealed copy to the FSA; and

(c) a sealed copy to the FSCS.

Remuneration of the administrator

48. 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 196, 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.

Appointment of person under section 135

49.—(1) 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(**10**) and by paragraph 6 of Schedule 2 to the Regulations) may be made by the Bank of England.

(2) The application must be supported by a witness statement stating—

(a) why the Bank of England thinks that such a person should be appointed;

(b) that the person to be appointed has consented to act;

(c) that the person to be appointed is qualified to act as an insolvency practitioner;

(d) whether, to the Bank of England's knowledge, a company voluntary arrangement under Part 1 of the Insolvency Act 1986 has been proposed or is in force in respect of the investment bank; and

(e) the Bank of England's estimate of the value of the assets in respect of which the person is to be appointed.

(3) If satisfied that sufficient grounds are shown for the appointment, the court may make it on such terms as it thinks fit.

Order of appointment

50.—(1) The order appointing a person described in rule 49(1) must specify the functions to be carried out in relation to the investment bank's affairs.

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

(2) If the court makes an order appointing such a person, the court shall send 4 sealed copies of the order to the person appointed (and a copy by email if possible).

(3) As soon as is reasonably practicable after appointment the person appointed must send notice of the order of appointment to—

(a) the investment bank;

(b) the FSA;

(c) the FSCS; and

(d) the registrar of companies.

(4) Notice to the investment bank must be given by service in accordance with rule 41 above.

(5) Unless the court otherwise directs, on receipt of the order of appointment, as soon as reasonably practicable, the person appointed shall give notice of that appointment. Such notice—

(a) shall be gazetted; and

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

(6) The Bank of England may disclose the fact and terms of an order appointing a person under this rule to any person whom the Bank thinks has a sufficient business interest.

(7) Rules 33 to 36 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 rule 30 is to be read as a reference to rule 49.

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

51.—(1) The notice of appointment to be given by the administrator as soon as reasonably practicable after appointment under paragraph 46(2)(b)—

(a) shall be gazetted; and

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

(2) In addition to the standard contents, the notice must state that an administrator has been appointed and the date of the appointment.

(3) The administrator shall as soon as practicable after appointment give notice of the appointment to—

(a) any enforcement officer who, to the administrator's knowledge, is charged with execution or other legal process against the investment bank;

(b) any person who, to the administrator's knowledge, has distrained against the investment bank; and

(c) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act.

(4) The administrator shall send the notice of appointment to the registrar of companies within 7 days of the date of the order appointing them.

(5) Any notice required to be sent by the administrator under these Rules or under Schedule B1 must contain—

(a) details of the court where the proceedings are and the relevant court reference number;

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

(c) the name and business address of the person or persons appointed as administrator and the date of their appointment.

Notice requiring statement of affairs

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

(2) The administrator shall send notice to each relevant person who the administrator deems appropriate requiring that person to prepare and submit a statement of the investment bank's affairs.

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

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

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

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

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

(e) that the statement must be delivered to the administrator within 11 days of receipt of the notice;

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

(g) of the application to that person, and to each other relevant person, of section 235 of the 1986 Act(**11**) (duty to provide information and to attend on the administrator if required).

(4) The administrator shall, on request, provide details to the relevant person as to how the statement should be prepared.

Details of the client assets held by the investment bank

53.—(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.

Verification and filing

54.—(1) In addition to the information required under rule 53, the statement of affairs shall be in Form 2.14B, contain all the particulars required by that form and be verified by a statement of truth by the relevant person.

(**11**) Section 235 was amended by the Enterprise Act 2002 (c. 40) section 248(3), Schedule 17 paragraphs 9, 24.

(2) The administrator may require any relevant person to submit a statement of concurrence in Form 2.15B stating their concurrence in the statement of affairs and where the administrator does so, the relevant person making the statement of affairs shall be informed of that fact.

(3) The statement of affairs shall be delivered by a relevant person making the statement of truth, together with a copy, to the administrator, and the relevant person shall also deliver a copy of the statement of affairs to all those persons whom the administrator has required to make a statement of concurrence.

(4) A person required to submit a statement of concurrence shall do so before the end of the period of 5 business days (or such other period as the administrator may agree) beginning on 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 by the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or where they consider the statement of affairs to be erroneous or misleading, or where they are without the direct knowledge necessary for concurring with it.

(6) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrator by the person who makes it, together with a copy of it.

(7) Subject to rule 55, the administrator shall as soon as reasonably practicable send a copy of the statement of affairs and any statement of concurrence to the registrar of companies and file them with the court.

(8) In this rule, a reference to a specific form shall be to that form as prescribed in the Insolvency Rules 1986(**12**), with any modification that the person using the form thinks desirable to reflect the nature of special administration.

Limited disclosure

55.—(1) Where the administrator thinks that it would prejudice the conduct of the administration (or might reasonably be 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.

(2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies.

(3) The administrator shall, as soon as reasonably practicable, send a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence to the registrar of companies.

(4) If a creditor or a client seeks disclosure of a 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) An application under paragraph (4) shall be supported by written evidence in the form of a witness statement.

(6) 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 and be heard at the hearing or may make written representations.

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

(**12**) S.I. 1986/1925; this instrument has been amended by a number of instruments: relevant amendments have been made by S.I. 1987/1919, S.I. 2002/1307, S.I. 2003/730 and S.I. 2010/686.

(8) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(9) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(10) The administrator shall, as soon as reasonably practicable after the making of an order under paragraph (9), file a copy of the statement of affairs to the extent provided by the order with the registrar of companies.

(11) When the statement of affairs is filed in accordance with paragraph (10), the administrator shall, where they have sent a statement of proposals under paragraph 49, or, in a special administration (bank administration), paragraph 9 of Schedule 2 to the Regulations, provide the creditors and clients with a copy of the statement of affairs as filed, or a summary thereof.

(12) The provisions of CPR Part 31 shall not apply to an application under this rule.

Release from duty to submit statement of affairs

56.—(1) The power of the administrator under paragraph 48(2) to give a release from the obligation imposed by paragraph 47(1) or to grant an extension of time may be exercised at the administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if they request a release of extension of time and it is refused by the administrator, apply to the court for it and when such an application is made, the period referred to in paragraph 48(1) is suspended pending the court's decision.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least 5 business days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing.

(4) If the application is not dismissed under paragraph (3), the court shall fix a venue for it to be heard, and give notice to the relevant person and to the FSA accordingly.

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

(6) The relevant person shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which the relevant person intends to adduce in support of it.

(7) The administrator may appear and be heard on the application and, whether or not they appear, the administrator may file a written report of any matters which they consider ought to be drawn to the court's attention.

(8) If a report is filed under paragraph (7), a copy of it shall be sent by the administrator to the relevant person not later than 5 business days before the hearing.

(9) Sealed copies of any order made on the application shall be sent by the court to the relevant person and the administrator.

(10) On any application under this rule, the relevant person's costs shall be paid in any event by that person and, unless the court otherwise orders, no allowance towards them shall be made as an expense of the special administration.

Expenses of statement of affairs

57.—(1) A relevant person making the statement of the investment bank's affairs or a 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 with respect to the preparation, verification and submission of the statement of affairs or to the provision of information to the administrator.

Submission of accounts

58.—(1) Any of the persons specified in section 235(3) of the 1986 Act shall, at the request of the administrator, provide the administrator with the investment bank's accounts as at such date and for such period as the administrator may specify.

(2) The period specified may begin from a date up to 3 years preceding the date the investment bank entered special administration, or from an earlier date to which the audited accounts of the investment bank were last prepared.

(3) The court may, on the administrator's application, require accounts for an earlier period.

(4) Rule 57 applies (with the necessary modification) in relation to the accounts to be provided under this rule as it applies to the statement of affairs.

(5) The accounts shall (if the administrator so requires) be verified by a statement of truth and (whether or not so verified) be delivered within 21 days of the request under paragraph (1) (or such longer period as the administrator may allow).

CHAPTER 2

Statement of proposals

Administrator's proposals

59.—(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 High 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 55, 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 196, and, if this basis has already been set by the Objective A committee or by the Bank of England in respect of 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 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 investment 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 Objective A is being or has been achieved and the resources devoted to the pursuit of 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 as set out in regulation 10(1)(c); 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—

(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 136; 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 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, either notice shall be advertised in such a manner as the administrator thinks fit.

(9) In addition to the standard contents, a notice under paragraph (7) 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.

Limited disclosure of the statement of proposals

60.—(1) Where the administrator thinks that it would prejudice the conduct of the administration (or might reasonably be expected to lead to violence against any person) for any of the matters specified in rule 59(2)(i) to (k) to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement of proposals.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be sent to the registrar of companies or to creditors, clients or members of the company as otherwise required by paragraph 49(4), or, in the case of a special administration (bank administration), paragraph 9 of Schedule 2 to the Regulations.

(3) The administrator must as soon as reasonably practicable send to the persons specified in paragraph (2) the statement of proposals (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The administrator must also send a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of the statement of proposals in relation to which an order has been made under this rule may apply to the court for an order that the administrator disclose it, and the application must be supported by written evidence in the form of a witness statement.

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

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

(8) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(9) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(10) The administrator must, as soon as reasonably practicable after the making of an order under paragraph (9), send to the persons specified in paragraph (2) a copy of the statement of proposals to the extent provided by the order.

(11) The provisions of CPR Part 31 do not apply to an application under this rule.

CHAPTER 3

Initial meeting to consider proposals

Initial meeting

61.—(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 gazetted—

(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 gazetted under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.

(3) 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).

(4) 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, and where paragraph (3) applies, shall be notified of the extension of the period set out in paragraph 51(2)(b).

(5) 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

62.—(1) Where rule 61 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 High 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 of the meeting.

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

Business of the initial meeting

63.—(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 86 has effect with respect to its voting rights.

(5) If the proposals 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.

(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 64 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

64.—(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

65.—(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 High 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 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 revised statement in accordance with paragraph 54(2) and, in addition to the standard contents, shall—

(a) state 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

66.—(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 a special administration (bank administration) if there are depositors) the FSCS shall be entitled to vote as a creditor under this rule and rule 86 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

67. 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 a copy of the original proposals;

(b) attach a copy of the proposals considered at the meeting to the notice sent to each creditor and each client who did not receive notice of the meeting but of whose claim the administrator has subsequently become aware; and

(c) file with the court a copy of the proposals considered at the meeting and notice of the result of the meeting.

CHAPTER 4

Meetings generally

Meetings generally

68. 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

69.—(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

70.—(1) This rule applies except where the court orders under rule 72 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 clients assets held by the investment bank) and 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

71.—(1) This rule applies except where the court orders under rule 72 that notice of a meeting be given by advertisement only.

(2) Notice summoning a meeting must specify the purpose of and venue for 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 125 must be sent out with every notice summoning a meeting.

Notice of meeting by advertisement only

72.—(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

73.—(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 High 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 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 72.

(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).

Gazetting and advertisement of meetings

74.—(1) The administrator, in convening a meeting under these Rules, must have gazetted a notice which, in addition to the standard contents, must state—

(a) that a creditors', clients', creditors and clients', members' or contributories' meeting 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 gazetted before or as soon as reasonably practicable after notice is given to those attending.

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

Non-receipt of notice of meeting

75. 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

76.—(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 High 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

77.—(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 security 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 deposit 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

78.—(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) 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

79.—(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

80.—(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 69 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

81.—(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

82. 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

83. 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

84.—(1) Where the administrator summons a meeting of members of the investment bank, the administrator shall fix a venue for it having regard to their convenience.

(2) The chair of the meeting shall be the administrator or a 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 the 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 England and Wales, including any applicable provision in or made under the 2006 Act.

(6) The chair of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

CHAPTER 5

Entitlement to vote at meetings

Entitlement to vote (creditors)

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

(a) the administrator has been given written details of the debt which is claimed as due to that person from the investment bank, including any calculation for the purposes of rule 87 or rule 88;

(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 that was due to circumstances beyond that person's control; and

(c) the claim 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) For the purposes of this Chapter, written details of a claim, once lodged or given in accordance with this rule, need not be lodged or given again.

(3) The chair of a meeting of creditors, or at a meeting of creditors and clients, 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.

FSCS and voting rights

86.—(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 may submit, instead of giving written details, 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)

87.—(1) Votes are calculated according to the amount of each creditor's claim as at the date on which the investment bank entered special administration, less any payments that have been made to the creditor after that date in respect of the claim and any adjustment by way of set-off in accordance with rule 164 or 165 as if those rules were applied on the date on which the votes are counted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) Paragraph (2) does not apply to a shortfall claim described in rule 90(4)(b).

(4) A creditor may not vote in respect of any claim or part of a claim—

(a) where the claim or part is secured, except where the vote is cast in respect of the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor;

(b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

(i) to treat as a security in the creditor's hands the liability on the bill or note of every person who is liable on it antecedently to the investment bank, and—

(aa) in the case of a company, has not gone into liquidation, or

(bb) in the case of an individual, against whom a bankruptcy order has not been made or whose estate has not been sequestrated, and

(ii) to estimate the value of the security and for the purposes of voting (but not otherwise) to deduct it from the claim.

Calculation of voting rights: special cases (creditors)

88.—(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.

Procedure for admitting creditors' claims for voting

89.—(1) At a meeting of creditors, the chair must ascertain the entitlement of persons wishing to vote as creditors 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.

Entitlement to vote (clients)

90.—(1) A client is entitled to vote at a meeting of creditors and clients or 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,

(ii) a right of ownership as bailor, or

(iii) 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) submit a claim under paragraph (1), subtracting the value of the shortfall of assets from that claim (as calculated, in respect of securities, in accordance with rule 91); and

(b) submit a claim under rule 85 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 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)

91.—(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 90, 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 the investment bank entered special administration or, in the absence of any such published rate, such rate as the court determines.

Procedure for admitting clients' claims for voting

92.—(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

93.—(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 86 has effect with respect to its voting rights.

Requisite majorities

94.—(1) Subject to paragraph (2), at a meeting of creditors or 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.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors, or, as the case may be, clients, to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the investment bank.

Requisite majorities at contributories' meetings

95. At a meeting of contributories, 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.

Appeals against decisions under this Chapter

96.—(1) The chair's decisions under this Chapter are subject to appeal to the court by any creditor, client or contributory or member.

(2) If the chair's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned or make such order as it thinks just.

(3) An appeal under this rule may not be made later than 21 days after the date of the meeting.

(4) The chair is not personally liable for costs incurred by any person in respect of an appeal under this rule unless the court makes an order to that effect.

CHAPTER 6

Correspondence and remote attendance

Correspondence instead of meetings

97.—(1) The administrator, when convening a meeting, may seek to obtain the passing by creditors, clients or contributories of a written resolution by sending a notice to that effect to every creditor, client or contributory (as the case may be) who would be entitled to be notified of (or in the case of clients, the administrator thinks it appropriate that they are summoned to) a meeting at which the resolution could be passed.

(2) Notice under paragraph (1) must contain the following information—

(a) a statement that the proceedings are being held in the High 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;

(d) the resolution to be voted on; and

(e) the closing date by which the recipient must respond to the administrator.

(3) In order to be counted, votes must—

(a) be received by the administrator by 12.00 hours on the closing date specified in the notice;

(b) in the case of a vote cast by a creditor or by a client, be accompanied by a statement of entitlement to vote on the resolution unless one has already been lodged with or given to the administrator.

(4) A statement of entitlement is written details of the creditor's claim or the client's claim in respect of client assets.

(5) The closing date is to be set at the discretion of the administrator, but must be not less than 14 days from the date of issue of the notice.

(6) Votes must be disregarded if—

(a) the requisite statement of entitlement had not accompanied them or previously been lodged with or given to the administrator, or

(b) in the application of Chapter 5 of this Part, the administrator decides that the creditor or client is not entitled to cast the votes.

(7) For the resolution to be passed, the administrator must receive at least one valid vote in favour by the closing date specified in the notice.

(8) If no valid vote is received by the closing date, the creditor must call a meeting of creditors, clients or contributories (as the case may be) to consider the resolution.

(9) Creditors the debts of whom amount to at least 10% of the total debts of the investment bank may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of creditors to consider the resolution.

(10) 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 resolution.

(11) Contributories representing at least 10% of the total voting rights of all contributories having the right to vote a at 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 resolution.

(12) A reference in these Rules to anything done or required to be done at, or in connection with, or in consequence of, a meeting of creditors, clients or contributories extends to anything done in the course of correspondence in accordance with this rule.

Remote attendance at meetings conducted in accordance with section 246A

98.—(1) This Rule applies to a request to the administrator for a meeting under section 246A(9) of the 1986 Act(**13**) 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.

(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 77 (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).

Action where person excluded

99.—(1) In this rule and rules 100 and 101, 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.

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

(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 101 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

100.—(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

101.—(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 100, 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

Records, returns and reports

Minutes

102.—(1) The chair of any meeting under the Regulations or these Rules, other than a company meeting (for which see rule 84), must cause minutes of its proceedings to be kept.

(2) The minutes must be authenticated by the chair, and be retained by the chair as part of the records of the special administration.

(3) The minutes must include—

(a) a list of the names of creditors who attended a meeting of creditors or a meeting of both creditors and clients (personally, by proxy or by corporate representative) and their claims;

(b) a list of the names of clients who attended a meeting of clients or a meeting of both creditors and clients (personally, by proxy or by corporate representative) and their claims in respect of client assets;

(c) a list of the names of contributories who attended a meeting of contributories;

(d) if a creditors' committee has been established, the names and addresses of those elected to be members of the committee; and

(e) a record of every resolution passed.

Returns or reports of meetings

103. In addition to the information required by rule 313, the notification of a return or a report of a meeting must specify—

(a) the purpose of the meeting including the regulation or rule under which it was convened;

(b) the venue fixed for the meeting;

(c) whether a required quorum was present for the meeting to take place; and

(d) if the meeting took place, the outcome of the meeting (including any resolutions passed at the meeting).

CHAPTER 8

The creditors' committee

Constitution of committee

104.—(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 109.

Formalities of establishment

105.—(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 High 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 104 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, and any amended 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

106.—(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 115**,** the notice period mentioned in paragraph (5) is 7 business days.

The chair at meetings

107.—(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

108. A meeting of the 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

109.—(1) A member of the 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 letter of authority entitling them so to act (either generally or specially) and authenticated by or on behalf of the committee-member.

(3) For the purpose of paragraph (2), any proxy in relation to any meeting of creditors, or clients, or creditors and clients shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally, authenticated by or on behalf of the committee-member.

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

(5) 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) an undischarged bankrupt;

(e) a disqualified director; or

(f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

(6) 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 authentication.

Resignation

110. A member of the committee may resign by notice in writing delivered to the administrator.

Termination of membership

111.—(1) Membership of the creditors' committee is automatically terminated if the member—

(a) becomes bankrupt;

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

(c) subject to paragraph (3), if voted onto the committee under rule 104 by the creditors of the investment bank, ceases to be a creditor and a period of 3 months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor; or

(d) subject to paragraph (4), if voted onto the committee under rule 104 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 144(1)(e)), or is found never to have been a client.

(2) However, if the cause of termination is the member's bankruptcy, their trustee in bankruptcy shall replace them as a member of the committee.

(3) 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 144(1)(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.

(4) 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

112.—(1) A member of the 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 in respect of the member to be removed.

Vacancies

113.—(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.

Procedure at meetings

114.—(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 with the records of the proceedings.

Remote attendance at meetings of creditors' committee

115.—(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 office-holder—

(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 office-holder 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 116 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

116.—(1) This rule applies to a request to the administrator of a meeting under rule 115 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) set a venue (including specification of a 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 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.

(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 of creditors' committees by post

117.—(1) The administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member of the committee (or designated representative) a copy of the proposed resolution.

(2) Where the administrator makes use of this procedure, the administrator shall notify each member or their representative of each proposed resolution on which a decision is sought.

(3) The FSA shall also be notified of each proposed resolution under this rule.

(4) In a special administration (bank administration), if the notification in paragraph (2) happens before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be notified of each proposed resolution under this rule.

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

(6) In the absence of such a request, 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 agree with the resolution.

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

Information from administrator

118.—(1) Where the 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

119.—(1) Subject to paragraph (2), the administrator shall, out of the assets of the investment bank, defray, in the prescribed order of priority as set out in rule 134, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration.

(2) Any client members of the committee shall have their expenses referred to in paragraph (1) paid out of the client assets held by the investment bank.

(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

120.—(1) Membership of the committee does not prevent a person from dealing 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.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this rule, and may give such consequential directions as it thinks just for compensating the investment bank for any loss which it may have incurred in consequence of the transaction.

Formal defects

121. 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

122.—(1) "Progress report" means a report which includes—

(a) a statement that the proceedings are being held in the High 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;

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

(e) details of the basis fixed for the remuneration of the administrator under rules 29, 48 or 196 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);

(f) if the basis of remuneration has been fixed, a statement of—

(i) the remuneration charged by the administrator during the period of the report (subject to paragraph (5), and

(ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the administrator during the periods covered by the previous reports (subject to paragraph (5)), together with a description of the things done by the administrator during those periods in respect of which the remuneration was charged,

irrespective in either case of whether payment was made in respect of that remuneration during the period of the report;

(g) a statement of the expenses incurred by the administrator during the period of the report, (irrespective of whether payment was made in respect of them during that period): the statement to contain a breakdown of expenses incurred in respect of the administrator pursuing Objective 1 of the Special Administration Objectives;

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

(i) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (4) below);

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

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

(l) details of whether a bar date has been set and progress made in pursuit of Objective 1 of the Special Administration Objectives;

(m) a statement of the creditors' right to request information under rule 201 and their right to challenge the administrator's remuneration and expenses under rule 202; and

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

(2) In a special administration (bank insolvency), before a full payment resolution has been passed, a progress report must contain details of—

(a) how Objective A (as defined in paragraph 9 of Schedule 1 to the Regulations) is being achieved;

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

(c) the basis for the administrator's remuneration fixed under rule 29 and whether that has been confirmed or redetermined in accordance with rule 197.

(3) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, a progress report must contain details of—

(a) the extent of the business of the investment bank that has been transferred;

(b) 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);

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

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

(e) the basis for the administrator's remuneration fixed under rule 48 and whether that has been confirmed or redetermined in accordance with rule 198.

(4) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, where the administrator has ceased to act, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act.

(5) Where the basis for the remuneration is a set amount under rule 196(2)(c), it may be shown as that amount without any apportionment to the period of the report.

(6) Where the administrator has made a statement of pre-administration costs under rule 59(2)(m)—

(a) if they are approved under rule 136 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 of that practitioner's decision, not to seek approval.

(7) The progress report must, except where paragraph (6) applies, cover the period of 6 months commencing on the date on which the investment bank entered special administration and every subsequent period of 6 months.

(8) The period to be covered by a progress report ends on the date when an administrator ceases to act, and the period to be covered by each subsequent progress report is each successive period of 6 months beginning immediately after that date (subject to the further application of this paragraph when another administrator ceases to act).

Sending progress report

123.—(1) The administrator must, within 1 month of the end of the period covered by the report, send—

(a) a copy to the creditors and to the clients, and

(b) a copy to the registrar of companies;

but this paragraph does not apply when the period covered by the report is that of a final progress report under rule 220.

(2) The copy sent under paragraph (1)(a) must be accompanied by a statement setting out—

(a) that the proceedings are being held in the High 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 administrator;

(d) the period covered by the progress report.

(3) The court may, on the administrator's application, extend the period of 1 month mentioned in paragraph (1), or make such other order in respect of the content of the report as it thinks just.

(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.

CHAPTER 10

Proxies and corporate representation

Definition of proxy

124.—(1) For the purposes of these Rules, a proxy is an authority given by a person ("the principal") to another person ("the proxy-holder") to attend a meeting and speak and vote as the principal's representative.

(2) Proxies are for use at creditors', creditor and clients', clients, company or contributories' meetings summoned or called under the Regulations or the Rules.

(3) Only one proxy may be given by a person for any one meeting at which that person desires to be represented; and it may only be given to one person, being an individual aged 18 or over. But the principal may specify one or more other such individuals 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.

(5) A person given a proxy under paragraph (4) cannot decline to be the proxy-holder in relation to that proxy.

(6) A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.

Issue and use of forms

125.—(1) When notice is given of a meeting to be held in the course of the special administration and forms of proxy are sent out with the notice, no form so sent out shall have inserted in it the name or description of any person.

(2) No form of proxy shall be used at any meeting except that which is sent out with the notice summoning the meeting, or a substantially similar form.

(3) A form of proxy shall be authenticated by the principal, or by some person authorised by that principal (either generally or with reference to a particular meeting). If the form is authenticated by a person other than the principal, the nature of the person's authority shall be stated.

Use of proxies at meetings

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

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

(3) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as 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.

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

(5) 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

127.—(1) Subject as follows, proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) The chair shall deliver the proxies, as soon as reasonably practicable after the meeting, to the administrator (where the administrator is someone other than the chair).

Right of inspection

128.—(1) So long as proxies lodged with the administrator are in the administrator's hands, the administrator shall 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 company or of its contributories.

(2) The reference in paragraph (1) to creditors or to clients is to persons who have submitted in writing a claim to be creditors or, as the case may be, clients of the investment bank, but does not include a person whose proof or claim has been wholly rejected for purposes of voting, dividend 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 the course of the special administration is entitled, immediately before or during the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor, client, member or contributory for the purpose of that meeting.

(5) This rule is subject to rule 320.

Proxy holder with financial interest

129.—(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 or the client assets, unless the proxy specifically directs P to vote in that way.

(2) Where P has authenticated 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 P was entitled so to authenticate the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity under rule 124 and in its application to the chair, P is deemed an associate of that person.

Company representation

130.—(1) Where a person is authorised to represent a corporation at a meeting held under the Regulations or these Rules, that person shall produce to the chair of the meeting a copy of the resolution from which that person's authority is derived.

(2) The copy resolution must be under the seal of the corporation, 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 authenticate 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 charged property

131.—(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.

(2) The court shall fix a venue for the hearing of the application, and the administrator shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under paragraph 71 or 72 the court shall send 2 sealed copies to the administrator.

(4) The administrator shall send one of the copies to the person who is the holder of the security or owner under the agreement.

(5) The administrator must send notice of the order to the registrar of companies.

Application in a special administration (bank administration)

132. If an application referred to in rule 131(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 at the hearing;

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

PART 4

Expenses of the special administration

Expenses of voluntary arrangement

133. 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 in priority to any expenses in rule 134.

Expenses to be paid out of the investment bank's assets

134.—(1) Subject to rule 135, the expenses of the administration to be paid out of the assets of the investment bank are payable in the following order of priority—

(a) expenses properly incurred by the administrator in performing the administrator's functions in the special administration;

(b) the cost of any security provided by the administrator (and, in a special administration (bank insolvency) or a special administration (bank administration)), the cost of any

security provided by a person appointed under rule 30 or 49 in accordance with the Regulations or the Rules;

(c) in a special administration (bank insolvency) or a special administration (bank administration), the remuneration of a person appointed under rule 30 or 49;

(d) in a special administration (bank insolvency) or a special administration (bank administration), any deposit lodged on the application for the appointment of a person appointed under rule 30 or 49;

(e) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application;

(f) any amount payable to a person employed or authorised, under Chapter 1 of Part 3 of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence;

(g) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;

(h) any necessary disbursements by the administrator in the course of the special administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under rule 119, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (k) below);

(i) 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 under the Regulations or the Rules;

(j) 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 rules 29 or 48 or Chapter 2 of Part 7 of these Rules, and

(iv) unpaid pre-administration costs approved under rule 136 for work done in pursuit of these objectives; and

(k) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the investment bank (without regard to who the realisation is effected by).

(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 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) and subject to rule 135, the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this rule.

Expenses to be paid out of the client assets

135.—(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 136, 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 119 but not including any payment of corporation tax in circumstances referred to in rule 134(1)(k));

(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 the Rules; and

(d) the administrator's remuneration the basis of which has been fixed under rule 196 and unpaid pre-administration costs approved under rule 136 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

136.—(1) Where the administrator has made a statement of pre-administration costs under rule 59(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 Objective 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 (2) to (4) of rule 200 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

137.—(1) The administrator shall set out, in the distribution plan under rule 144, 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 146, 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 those assets are securities, the claim is to be valued in accordance with rule 91and for this purpose the references to "chair" in rule 91 shall be read as references to the administrator.

PART 5

Objective 1

CHAPTER 1

Setting a bar date

Notice of the bar date

138.—(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 gazetted; 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

139.—(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) state 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

140.—(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) state 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

141. Unless the court orders otherwise, every claimant under rules 139 and 140 bears the cost of making a claim, including costs incurred in providing documents or evidence or responding to requests for further information.

New administrator appointed

142.—(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 rules 139 or 140 must be sent to and retained by the new administrator.

CHAPTER 2

Further notification

Notifying potential claimants after bar date has passed

143.—(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 139 or 140,

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 clients 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 rule 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 144, 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 139 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 rule 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 144, 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 140 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

144.—(1) This rule applies where after setting a bar date and making the notification required by rule 143, 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 under regulation 12);

(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 rules 135 and 137 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 143(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

145.—(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

146.—(1) This rule applies where a meeting of the creditors' committee has taken place in accordance with rule 145 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 to—

(a) all persons who have submitted a claim of the type described in regulation 11(1);

(b) all persons notified under rule 143;

(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,

and details as to how to find out the venue for the hearing shall be sent out with the copy of the distribution plan.

(4) The court, on receiving an application under paragraph (2) shall fix the venue for the hearing and in fixing the venue shall have regard to the desirability of the application being heard as soon as is 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 the 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 143 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

147.—(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 139 or, as the case may be, rule 140, 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 139 or 140, 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 proof under rule 152 for the value of those client assets not returned.

(4) Where the claimant's proof 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 91 and for this purpose the references to "chair" in rule 91 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

CHAPTER 1

Application

Distribution to creditors

148.—(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(3) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, no distributions to creditors under this Chapter shall be made without the consent of the Bank of England.

(4) The administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with rule 175**.**

(5) Where it is intended that the distribution is to be a sole or final dividend, the administrator shall, after the date specified in the notice referred to in paragraph (4)—

(a) defray any outstanding expenses of a voluntary arrangement that immediately preceded the special administration in accordance with rule 133;

(b) defray any items payable in accordance with rules 134 and 136;

(c) defray any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the investment bank, be payable out of the property of which the administrator had custody or control in accordance with paragraph 99; and

(d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(6) The court may, on the application of any person, postpone the date specified in the notice.

Debts of investment bank to rank equally

149. Debts, other than preferential debts, rank equally between themselves in the special administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Supplementary provisions as to dividend

150.—(1) In the calculation and distribution of a dividend the administrator shall make provision for—

(a) any debts which appear to the administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

(b) any debts which are the subject of claims which have not yet been determined; and

(c) disputed proofs and claims.

(2) A creditor who has not proved their debt before the declaration of any dividend is not entitled to disturb, by reason that they have not participated in it, the distribution of that dividend or any other dividend declared before their debt was proved, but—

(a) when the creditor has proved that debt, they are entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive; and

(b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend; but if the administrator refuses to pay a dividend the court may, if it thinks just, order the administrator to pay it and also to pay, out of the administrator's own money—

(a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(**14**), from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

Division of unsold assets

151.—(1) The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the investment bank's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

(a) in the receipts and payments account included in the final progress report under rule 220, state the estimated value of the property divided amongst the creditors of the investment during the period to which the report relates, and

(b) as a note to the account, provide details of the basis of the valuation.

CHAPTER 2

Proofs of debts

Proving a debt

152.—(1) A person claiming to be a creditor of the investment bank and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

(2) A creditor who claims is referred to as "proving" for their debt and a document by which that creditor seeks to establish their claim is their "proof".

(3) Subject to the next paragraph, a proof must—

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

(b) state the following matters—

(i) the creditor's name and address,

(ii) if the creditor is a company, its registered number;

(iii) the total amount of the creditor's claim (including value added tax) as at the date on which the investment bank entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 163 and any adjustment by way of set-off in accordance with rule 164 or, as the case may be, rule 165;

(**14**) 1838 c.110 1 and 2 Victoria: section 17 was amended by the Statute Law Revision (No. 2) Act 1888 (55 and 56 Victoria), by the Civil Procedure Acts Repeal Act 1879 (c. 59) section 2, Schedule, Part 1 and by S.I. 1993/565 and S.I.1998/2940.

(iv) whether or not the claim includes outstanding uncapitalised interest,

(v) particulars of how and when the debt was incurred by the investment bank,

(vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,

(vii) details of any reservation of title in respect of goods to which the debt refers, and

(viii) the name, address and authority of the person authenticating the proof (if not the creditor).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced, where the administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Costs of proving

153. Unless the court otherwise orders—

(a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 152; and

(b) costs incurred by the administrator in estimating the quantum of a debt under rule 160 are payable out of the assets as an expense of the administration.

Administrator to allow inspection of proofs

154.—(1) The administrator shall, so long as proofs lodged 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 proof of debt (unless that proof 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

155.—(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 proofs received, together with an itemised list of them.

(2) The new administrator shall authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

156.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the administrator rejects a proof in whole or in part, the administrator shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the creditor.

Appeal against decision on proof

157.—(1) If a creditor is dissatisfied with the administrator's decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied and the application must be made within 21 days of the creditor receiving the statement sent under rule 156.

(2) A member or any other creditor may, if dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the administrator's decision.

(3) Notice of an application under paragraph (1) or (2) shall be given by the applicant 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) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to—

(a) the creditor who lodged the proof in question (if the applicant is not that creditor);

(b) the administrator;

(c) the FSA; and

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

(5) The administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under rule 156.

(6) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the investment bank would be entitled.

(7) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the administrator.

(8) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

Withdrawal or variation of proof

158. A creditor's proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

159.—(1) The court may expunge a proof or reduce the amount claimed—

(a) on the administrator's application, where the administrator thinks that the proof has been improperly admitted, or ought to be reduced; or

(b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

(a) in the case of an application by the administrator, to the creditor who made the proof; and

(b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).

CHAPTER 3

Quantification of claims

Estimate of quantum

160.—(1) The administrator shall estimate the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value; and a previous estimation may be revised, if the administrator thinks fit, by reference to any change of circumstances or to information becoming available to the administrator.

(2) The creditors shall be informed of the estimation and any revision of it.

(3) Where the value of a debt is estimated under this rule, the amount provable in the administration in the case of that debt is that of the estimate for the time being.

Negotiable instruments

161. Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

Secured creditors

162.—(1) If a secured creditor realises their security, the creditor may prove for the balance of their debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders their security for the general benefit of creditors, they may prove for their whole debt, as if it were unsecured.

Discounts

163. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the investment bank but for it going into special administration, except any discount for immediate, early or cash settlement.

Mutual credit and set-off

164.—(1) This rule applies where the administrator, being authorised to make the distribution in question, has, pursuant to rule 175, given notice of a proposal to make the distribution.

(2) In this rule, "mutual dealings" means mutual credits, mutual debts or other mutual dealings between the investment bank and a creditor of the investment bank proving or claiming to prove for a debt in the special administration, but does not include any of the following—

(a) any debt arising out of an obligation incurred after the investment bank entered special administration;

(b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for a special administration order was pending;

(c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—

(i) after the investment bank entered administration, or

(ii) at a time when the creditor had notice that an application for a special administration order was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the investment bank for the purposes of paragraph (3) whether—

(a) it is payable at present or in the future;

(b) the obligation by virtue of which it is payable is certain or contingent; or

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 160 shall apply for the purposes of this rule to any obligation to or from the investment bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 166 to 168 shall apply for the purposes of this rule in relation to any sums due to the investment bank which—

(a) are payable in a currency other than sterling;

(b) are of a periodical nature; or

(c) bear interest.

(7) Rule 186 shall apply for the purposes of this rule to any sum due to or from the investment bank which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the special administration. Alternatively the balance (if any) owed to the investment bank shall be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this rule, "obligation" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Application of rule 164 in a special administration (bank administration) and special administration (bank insolvency)

165.—(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) Rule 164 shall apply, but for the purpose of determining the sums due from the investment bank to an eligible depositor in respect of protected deposits under rule 164(3)—

(a) where the total of the sums held by the investment bank for the 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 Financial Services and Markets Act 2000 ("the limit"), then paragraph (3) applies; and

(b) where the sums held exceed the limit, then paragraph (4) applies.

(3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the investment bank, and the sum due to the depositor from the investment bank will be the total of the sums held by the investment bank for that depositor in respect of the protected deposits.

(4) Where this paragraph applies then—

(a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which the total of the sums due to the depositor exceeds the limit, and

(b) the sums due from the investment bank to the depositor in respect of the protected deposits will be—

(i) the amount by which that total exceeds the limit, set off against the amounts due to the investment bank from the depositor in accordance with rule 164(3); and

(ii) the sums held by the investment bank for the 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 date of the notice referred to in rule 164(1) shall be subject to this rule in so far as they relate to protected deposits.

(6) In this rule—

"eligible depositor" has the meaning given to it by section 93(3) of the 2009 Act;

"FSA Rules" means the FSA's Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(**15**); and

"protected deposit" means a protected deposit within the meaning given by the FSA Rules held by the investment bank at the date of the notice referred to in rule 164(1).

Debt in a foreign currency

166.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the investment bank entered special administration.

(2) "The official exchange rate" means the mean of the buying and selling spot rates prevailing in the London market as published at the close of business for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Payments of a periodical nature

167.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the investment bank entered special administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

168.—(1) In this Rule, "the relevant date" means the date on which the investment bank entered special administration.

(2) Where a debt proved in the special administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(3) In the following circumstances the creditor's claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(4) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(5) If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(**15**) 2000 c.8: section 215 was amended by sections 169 and 170(2) of the 2009 Act.

(6) Interest under paragraph (5) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Regulations and these Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (7).

(7) The rate of interest to be claimed under paragraphs (4) and (5) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

(8) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(9) All interest payable under paragraph (8) ranks equally whether or not the debts on which it is payable rank equally.

(10) The rate of interest payable under paragraph (8) is whichever is the greater of the rate specified under paragraph (7) and the rate applicable to the debt apart from the special administration.

Debt payable at a future time

169. A creditor may prove for a debt of which payment was not yet due on the date when the investment bank entered special administration, subject to rule 186.

Value of security

170.—(1) A secured creditor may, with the agreement of the administrator or the permission of the court, at any time alter the value which that creditor has, in their proof of debt, put upon their security.

(2) However, if a secured creditor—

(a) being the applicant for an special administration order, has in the application put a value on their security; or

(b) has voted in respect of the unsecured balance of their debt,

that creditor may re-value their security only with permission of the court.

Surrender for non-disclosure

171.—(1) If a secured creditor omits to disclose their security in their proof of debt, the creditor shall surrender their security for the general benefit of creditors, unless the court, on application by that creditor, relieves them from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

Redemption by administrator

172.—(1) The administrator may at any time give notice to a creditor whose debt is secured that it is proposed, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the administrator may allow) in which, if the creditor so wishes, to exercise their right to revalue their security (with the permission of the court, where rule 170 applies). If the creditor re-values their security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether the administrator will or will not exercise their power to redeem the security at the value then placed on it; and the administrator then has 3 months in which to exercise the power or determine not to exercise it.

Test of security's value

173.—(1) Subject as follows, the administrator, if dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under rule 170), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the administrator on behalf of the investment bank, and the creditor on their own behalf, may appear and bid.

(3) This rule does not apply if the security has been revalued and the revaluation has been approved by the court.

Realisation of security by creditor

174. If a creditor who has valued their security subsequently realises it (whether or not at the instance of the administrator)—

(a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and

(b) that amount shall be treated in all respects as an amended valuation made by the creditor.

Notice of proposed distribution

175.—(1) Where an administrator is proposing to make a distribution to creditors, the administrator shall give notice of that fact.

(2) The notice in paragraph (1) shall—

(a) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and

(b) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act.

(3) The notice in paragraph (1) shall be given to—

(a) all creditors whose addresses are known to the administrator;

(b) the FSA;

(c) in a special administration (bank administration), the FSCS; and

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

(4) Subject to paragraph (5)(b), before declaring a dividend the administrator shall by notice invite the creditors to prove their debts. Such notice—

(a) shall be gazetted; and

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

(5) A notice pursuant to paragraph (1) must, in addition to the standard contents—

(a) state that it is the intention of the administrator to make a distribution to creditors within the period of 2 months from the last date for proving;

(b) specify whether the proposed dividend is interim or final;

(c) specify a date up to which proofs may be lodged being a date which—

(i) is the same date for all creditors; and

(ii) is not less than 21 days from that of the notice.

(6) Where a dividend is to be declared for preferential creditors—

(a) the notice pursuant to paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential; and

(b) the notice pursuant to paragraph (3) need only be given if the administrator thinks fit.

Admission or rejection of proofs

176.—(1) Unless the administrator has already dealt with them, within 5 business days of the last date for proving, the administrator shall—

(a) admit or reject (in whole or in part) proofs that have been submitted; or

(b) make such provision in respect of them as the administrator thinks fit.

(2) The administrator is not obliged to deal with proofs lodged after the last date for proving, but may do so, if the administrator thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

Postponement or cancellation of dividend

177.—(1) If in the period of 2 months referred to in rule 175(5)(a)—

(a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied; or

(b) an application is made to the court for the administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the administrator may postpone or cancel the dividend.

(2) Where in that same period the administrator considers that, due to the nature of the business of the investment bank, there is real complexity in admitting or rejecting proofs of claims submitted, or that the quantum of claims may be affected by any shortfalls in claims for client assets, the administrator may postpone the dividend.

Declaration of a dividend

178.—(1) Where rule 177(2) does not apply and subject to paragraph (2), within the 2 month period referred to in rule 175(5)(a) the administrator shall proceed to declare the dividend to one or more classes of creditor who have been given notice under that rule.

(2) Except with the permission of the court, the administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary the administrator's decision on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the administrator must make such provision in respect of the proof in question as the court directs.

Notice of declaration of a dividend

179.—(1) Where the administrator declares a dividend, notice of this shall be given to—

(a) all creditors who have proved their debts;

(b) the FSA;

(c) in a special administration (bank administration), the FSCS; and

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

(2) The notice shall include the following particulars relating to the special administration—

(a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;

(b) payments made by the administrator when acting as such;

(c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;

(d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;

(e) the total amount of dividend and the rate of dividend; and

(f) whether, and if so when, any further dividend is expected to be declared.

(3) In a special administration (bank administration) where property of the investment bank has been transferred to a bridge bank under section 12 of the 2009 Act, if the administrator declares a dividend before the Bank of England has given an Objective A Achievement Notice, the notice shall also include details of any payment made from a scheme under a resolution fund order.

Payments of dividend and related matters

180.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid in another way, or held for collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no dividend or no further dividend

181.—(1) If the administrator gives notice to creditors that no dividend (or as the case may be, no further dividend) can be declared, the notice shall contain a statement to the effect either—

(a) that no funds have been realised; or

(b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.

(2) The notice to creditors in paragraph (1) shall also be given to—

(a) the FSA;

(b) in a special administration (bank administration), the FSCS; and

(c) in a special administration (bank administration), in a case where the Bank of England consented to a distribution, to the Bank of England.

Proof altered after payment of dividend

182.—(1) If after payment of dividend the amount claimed by a creditor in their proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but is entitled to be paid, out

of any money for the time being available for the payment of any further dividend, any dividend or dividends which that creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

Secured creditors

183.—(1) The following applies where a creditor re-values their security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as reasonably practicable, repay to the administrator, for the credit of the administration, any amount received by the creditor as dividend in excess of that to which that creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

184.—(1) If a creditor contravenes any provision of the Regulations or these Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

(2) Notice of an application under paragraph (1) shall be given by the administrator to the FSA and the FSA shall have the right to appear and be heard at the hearing of the application.

Assignment of right to dividend

185.—(1) If a person, entitled to a dividend, gives notice to the administrator that they wish the dividend to be paid to another person, or that they have assigned that entitlement to another person, the administrator shall pay the dividend to that other accordingly.

(2) A notice given under this rule must specify the name and address of the person to whom payment is to be made.

Debt payable at a future time

186.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, that creditor is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to that creditor, the amount remaining outstanding in respect of their admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^{\frac{n}{}}}$$

where—

(a) "X" is the value of the admitted proof; and

(b) "n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2), "relevant date" means the date that the investment bank entered special administration.

PART 7

The Administrator

CHAPTER 1

Powers of the administrator

General powers

187.—(1) Any permission given by the creditors' committee (or if there is no such committee, a meeting of the company's creditors and clients or the court under the Rules), shall not be a general permission but shall relate to a particular proposed exercise of the administrator's power in Schedule 4 to the 1986 Act.

(2) A person dealing with the administrator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the administrator has done anything without that permission, the court or the creditors' committee may, for the purpose of enabling the administrator to meet the administrator's expenses out of the assets, ratify what the administrator has done; but neither shall do so unless it is satisfied that the administrator has acted in a case of urgency and has sought ratification without undue delay.

Powers of disclaimer

188.—(1) Where the administrator disclaims property under section 178 of the 1986 Act, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice of disclaimer must be authenticated and dated by the administrator.

(3) As soon as reasonably practicable after authenticating the notice of disclaimer, the administrator must—

(a) send a copy of the notice to the registrar of companies; and

(b) in any case where the disclaimer is of registered land as defined in section 132(1) of the Land Registration Act 2002(**16**), send a copy of the notice to the Chief Land Registrar.

(4) For the purposes of section 178, the date of the prescribed notice is that on which the administrator authenticated it.

Communication of disclaimer to persons interested

189.—(1) Within 7 business days after the date of the notice of disclaimer, the administrator shall send or give copies of the notice to the persons mentioned in paragraphs (2) to (4).

(**16**) 2002 c.9.

(2) Where the property disclaimed is of a leasehold nature, the administrator shall send or give a copy to every person who (to the administrator's knowledge) claims under the company as underlessee or mortgagee.

(3) The administrator shall in any case send or give a copy of the notice to every person who (to the administrator's knowledge)—

(a) claims an interest in the disclaimed property; or

(b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(4) If the disclaimer is of an unprofitable contract, the administrator shall send or give copies of the notice to all such persons as, to the administrator's knowledge, are parties to the contract or have interests under it.

(5) If subsequently it comes to the administrator's knowledge, in the case of any person 'P', that P has such an interest in the disclaimed property as would have entitled P to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (4), the administrator shall then, as soon as reasonably practicable, send or give to P a copy of the notice.

(6) Compliance with paragraph (5) is not required if—

(a) the administrator is satisfied that P has already been made aware of the disclaimer and its date, or

(b) the court, on the administrator's application, orders that compliance is not required in that particular case.

Additional notices

190.—(1) The administrator disclaiming property may at any time send or give copies of the notice of the disclaimer to any persons who in the administrator's opinion ought, in the public interest or otherwise, to be informed of the disclaimer.

(2) Paragraph (1) is without prejudice to the administrator's obligations under sections 178 to 180 of the 1986 Act and rules 188 and 189.

Records

191. The administrator must include in the administrator's records of the special administration a record of—

(a) the persons to whom that administrator has sent or given copies of the notice of disclaimer under the two preceding rules, showing their names and addresses, and the nature of their respective interests;

(b) the dates on which the copies of the notice of disclaimer were sent or given to those persons;

(c) the date on which, as required by rule 188, a copy of the notice of disclaimer was sent to the registrar of companies; and

(d) (where applicable) the date on which, as required by rule 188, a copy of the notice was sent to the Chief Land Registrar.

Application by interested party

192.—(1) The following applies where, in the case of any property, application is made to the administrator by an interested party under section 178(5) of the 1986 Act.

(2) The application must be delivered to the administrator—

(a) personally;

(b) by electronic means in accordance with Part 11; or

(c) by any other means of delivery which enables proof of receipt of the application by the administrator to be provided, if requested.

Interest in property to be declared on request

193.—(1) If, in the case of property which the administrator has the right to disclaim, it appears to the administrator that there is some person 'P' who claims, or may claim, to have an interest in the property, the administrator may give notice to P calling on that person to declare within 14 days whether P claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the administrator is entitled to assume that P has no such interest in the property as will prevent or impede its disclaimer.

Disclaimer presumed valid and effective

194. Any disclaimer of property by the administrator is presumed valid and effective, unless it is proved that the administrator has been in breach of their duty with respect to the giving of notice of disclaimer, or otherwise, under sections 178 to 180 of the 1986 Act or under this Chapter of the Rules.

Application for the exercise of court's powers under section 181

195.—(1) This rule applies with respect to an application by any person under section 181 of the 1986 Act for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of the applicant receiving a copy of the administrator's notice of disclaimer sent under rule 189, whichever is the earlier.

(3) The applicant shall with the application file a witness statement—

(a) stating whether the application is made under—

(i) paragraph (a) of section 181(2) (claim of interest in the property), or

(ii) under paragraph (b) (liability not discharged);

(b) specifying the date on which the applicant received a copy of the administrator's notice of disclaimer, or otherwise became aware of the disclaimer; and

(c) specifying the grounds of the application and the order which the applicant desires the court to make under section 181.

(4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than 5 business days before the date fixed, give to the administrator notice of the venue, accompanied by copies of the application and the witness statement required by paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the administrator.

(7) In a case where the property disclaimed is of a leasehold nature, and section 179 of the 1986 Act applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.

(8) Paragraph (7) does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.

CHAPTER 2

Fixing of remuneration

Fixing of remuneration

196.—(1) The administrator is entitled to receive 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,

to be paid out of the estate of the investment bank; and

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

(2) The basis of remuneration in both cases in paragraph (1) shall be fixed—

(a) as a percentage of the value of the property with which the administrator has to deal; or

(b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the special administration; or

(c) as a set amount.

(3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.

(4) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.

(5) It is for the creditors' committee (if there is one) to determine for each case—

(a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3), and

(b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (4) and the amount (if any) to be set under paragraph (2)(c).

(6) In making the determinations, the committee shall have regard to the following matters—

(a) the complexity (or otherwise) of the case;

(b) any respects in which, in connection with the pursuit of either Objective 1, or of Objectives A, 2 and 3, there falls on the administrator any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, their duties as such; and

(d) the value and nature in each case of the property with which the administrator has to deal.

(7) If there is no creditors' committee, or the committee does not make the requisite determinations, the basis of the administrator's remuneration in each case may be fixed (in accordance with paragraphs (2) to (5)) by resolutions of a meeting of creditors and clients, or in respect of the administrator's remuneration for the purpose outlined in rule 196(1)(b), a meeting of clients and paragraph (6) applies to them as it does to the creditors' committee.

(8) If not fixed as above, the basis of the administrator's remuneration in either case shall, on the administrator's application, be fixed by the court and the provisions above apply as they do to the fixing of the basis of remuneration by the creditors' committee; but such an application may not be made by the administrator unless the administrator has first sought fixing of the basis in accordance

with paragraph (5) or (7), and in any event may not be made more than 18 months after the date of the administrator's appointment.

(9) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order; or

(b) to the creditors' committee or a meeting of creditors and clients, for settlement by resolution.

(10) If the administrator is a solicitor and employs their own firm, or any partner in it, to act on behalf of the investment bank, profit costs shall not be paid unless this is authorised by the creditors' committee, the meeting of the creditors and clients, or the court.

Remuneration (special administration (bank insolvency))

197.—(1) In a special administration (bank insolvency), where the basis for the administrator's remuneration for services set out in rule 196(1)(a) has been fixed in accordance with rule 29, the creditors' committee (or if there is no creditors' committee, the meeting of creditors and clients) shall resolve whether to confirm the basis for remuneration as set by the Objective A committee, or whether to redetermine the basis for remuneration in accordance with rule 196(2) to (5).

(2) Any redetermination by the creditors' committee under paragraph (1) shall apply only in respect of the administrator's remuneration as from the date of the committee's decision and shall not have retrospective effect.

Remuneration (special administration (bank administration)

198.—(1) In a special administration (bank administration), where the basis for the administrator's remuneration for services set out in rule 196(1)(a) has been fixed in accordance with rule 48, the creditors' committee (or if there is no creditors' committee, the meeting of creditors and clients) shall resolve whether to confirm the basis for remuneration as set by the Bank of England, or whether to redetermine the basis for remuneration in accordance with rule 196(2) to (5).

(2) Paragraph (1) only applies where the Bank of England has passed an Objective A Achievement Notice.

(3) Any redetermination by the creditors' committee under paragraph (1) shall apply only in respect of the administrator's remuneration as from the date of the committee's decision and shall not have retrospective effect.

Recourse to meeting of creditors and clients

199.—(1) If the basis of the administrator's remuneration for either case in rule 196(1) has been fixed by the creditors' committee or confirmed or redetermined under rules 197 or 198, and the administrator considers, in either or in both cases, the rate or amount to be insufficient, or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed by resolution of the creditors and the clients.

Recourse to the court

200.—(1) If the administrator considers that the basis of remuneration for either case in rule 196(1) fixed for the administrator by—

(a) the creditors' committee; or

(b) by resolution of the creditors and clients, or as the case may be, a meeting of clients,

is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its 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 196(1)(a) fixed for the administrator by the Objective A committee or under rule 197 above is insufficient or inappropriate, 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 196(1)(a) fixed for the administrator by the Bank of England or under rule 198 above is insufficient or inappropriate, 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 be represented, and to be heard 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 be represented.

(6) Notice of the application shall also be given to the FSA and the FSA may nominate a person to appear and be heard 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 costs of the administrator's application, including the costs 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.

Creditors' and clients' request for further information

201.—(1) If—

(a) within 21 days of receipt of a progress report under rule 122—

(i) a secured creditor,

(ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or

(iii) a client with the concurrence of clients claiming for at least 5% in value of the client assets (including the client in question); or

(b) with the permission of the court upon an application made within that period of 21 days, any unsecured creditor,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by rule 122(1)(g) or (h), the administrator must, within 14 days of receipt of the request, comply with paragraph (2).

(2) The administrator complies with this paragraph by either—

(a) providing all of the information asked for, or

(b) so far as the administrator considers that—

(i) the time or cost of preparation of the information would be excessive, or

(ii) disclosure of the information would be prejudicial to the conduct of the administration or might reasonably be expected to lead to violence against any person, or

(iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor or client, who need not be the same as the person who requested further information under paragraph (1), may apply to the court within 21 days of—

(a) the giving by the administrator of reasons for not providing all of the information asked for, or

(b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of 8 weeks provided for in rule 202(4) by such further period as the court thinks just.

Claim that remuneration is excessive

202.—(1) The following persons may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 196(1)(a) —

(a) a secured creditor;

(b) an unsecured creditor with either the concurrence of at least 10% in value of the unsecured creditors (including that creditor) or the permission of the court; or

(c) a client with the concurrence of clients representing at least 10% of the total claims in respect of client assets held by the investment bank or with the permission of the court; or

(d) the FSA.

(2) A client, with the concurrence of clients representing at least 10% of the total claims in respect of client assets held by the investment bank, or with the permission of the court, may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator's remuneration for services set out in rule 196(1)(b).

(3) Application under paragraphs (1) and (2) may be made on the grounds that—

(a) the remuneration charged by the administrator;

(b) the basis fixed for the administrator's remuneration; or

(c) expenses incurred by the administrator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(4) The application must, subject to any order of the court under rule 201(4)**,** be made no later than 8 weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(5) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 5 business days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(6) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(7) If the court considers the application to be well-founded, it must make one or more of the following orders—

(a) an order reducing the amount of remuneration which the administrator was entitled to charge;

(b) an order fixing the basis of remuneration at a reduced rate or amount;

(c) an order changing the basis of remuneration;

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration;

(e) an order that the administrator or the administrator's personal representative pay to the investment bank the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(8) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the special administration.

(9) In a special administration (bank administration), this rule only applies after the Bank of England has given an Objective A Achievement Notice.

Review of remuneration

203.—(1) Where, after the basis of the administrator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

(a) where the creditors' committee fixed the basis, to the committee;

(b) where the creditors and clients fixed the basis, to the creditors and clients;

(c) where the court fixed the basis, by application to the court;

(d) where the Objective A committee fixed the basis, to that committee (unless that committee has passed a full payment resolution, in which case the request must be made to the creditors' committee, or if there is no creditors' committee, to the meeting of creditors and clients);

(e) where the Bank of England fixed the basis, to the Bank of England (unless the Bank of England has given an Objective A Achievement Notice, in which case the request must be made to the creditors' committee, or if there is no creditors' committee, to the meeting of creditors and clients);

and this Chapter applies as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (1) and not for any earlier period.

Remuneration of new administrator

204.—(1) If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

Apportionment of set fee remuneration

205.—(1) In a case in which the basis of the administrator's remuneration is a set amount under rule 196(2)(c) and the administrator ("the former administrator") ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

(a) by the former administrator or the former administrator's personal representative within the period of 28 days beginning with the date upon which the former administrator ceased to hold office; or

(b) by the administrator for the time being in office if the former administrator or the former administrator's personal representative has not applied by the end of that period.

(3) Application must be made—

(a) where the creditors' committee fixed the basis, to that committee for a resolution determining the portion;

(b) where the creditors and clients fixed the basis, to the creditors and clients for a resolution determining the portion;

(c) where the court fixed the basis, to the court for an order determining the portion;

(d) where the Objective A committee fixed the basis, to that committee (unless that committee has passed a full payment resolution, in which case the request must be made to the creditors' committee, or if there is no creditors' committee, to the meeting of creditors and clients); and

(e) where the Bank of England fixed the basis, to the Bank of England (unless the Bank of England has given an Objective A Achievement Notice, in which case the request must be made to the creditors' committee, or if there is no creditors' committee, to the meeting of creditors and clients).

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator's personal representative, as the case may be ("the recipient").

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the creditors' committee, or to the creditors and clients or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former administrator or the former administrator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors and clients is insufficient, that person may apply—

(a) in the case of a determination by the creditors' committee, to the creditors and clients for a resolution increasing the portion;

(b) in the case of a resolution of the creditors and clients (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.

CHAPTER 3

Replacing the administrator

Grounds for resignation

206.—(1) The administrator may resign in the following circumstances—

(a) on grounds of ill health;

(b) that the administrator intends ceasing to be in practice as an insolvency practitioner; or

(c) that 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 permission 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

207.—(1) The administrator shall in all cases give at least 5 business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the following persons—

(a) if there is a continuing administrator of the investment bank, to that person; and

(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 and its creditors and clients of whose claim the administrator is aware and of 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 the 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.

(5) The notice under paragraph (1) shall set out—

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

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

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

(d) either—

(i) the date on which the administrator's resignation shall take effect; or

(ii) the date upon which the administrator intends to apply to court for leave to resign.

Notice of resignation

208.—(1) The notice of resignation shall set out—

(a) a statement that the proceedings are being held in the High 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;

(d) whether or not the person resigning is the sole administrator of the investment bank; and

(e) a statement that either—

(i) the administrator resigns from office with effect from a specified date; or

(ii) the court gave the administrator leave to resign (and the statement shall include the date of the court's permission) and that the administrator therefore resigns with effect from a specified date.

(2) 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 resignation.

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

(4) The notice shall be filed with the court and a copy of the notice of resignation shall be sent not more than 5 business days after it has been filed with the court to all those to whom the notice of intention to resign was sent.

(5) The administrator shall notify the registrar of companies of their resignation.

Application to court to remove administrator from office

209.—(1) Any application under paragraph 88 shall state the grounds on which it is requested that the administrator should be removed from office.

(2) In a special administration (bank administration), the application must state that either—

(a) the Bank of England has consented to the application being made; or

(b) the Bank of England has given an Objective A Achievement Notice.

(3) Service of the notice of the application shall be effected on—

(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 creditors' committee or joint administrator, 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.

(4) Where a court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable, shall send a copy to the administrator.

(5) The applicant shall also 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.

(6) The applicant shall send notice of the order to the registrar of companies within the same time period.

Notice of vacation of office when administrator ceases to be qualified

210. Where the 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, notice shall also be given—

(a) to 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.

Administrator deceased

211.—(1) Subject as follows, where the administrator has died, it is the duty of the administrator's personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (3) or (4) of this rule.

(2) Notice of the death must also be sent to the registrar of companies.

(3) If the deceased administrator was a partner in or an employee of a firm, notice to the court 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.

(4) Notice of the death may be given to the court by any person producing to the court the relevant death certificate or a copy of it.

Application to replace (special administration)

212.—(1) Where an application is made to court under paragraph 91(1) to appoint a replacement administrator, the application shall be accompanied by a written statement by the person proposed to be the replacement administrator.

(2) The written statement shall be in accordance with rule 7.

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

(a) the person who made the application for a special administration order;

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

(c) on the person nominated for appointment as administrator; and

(d) on the FSA (if not the applicant).

(4) Rule 10 shall apply to the service of an application under paragraph 91(1) as it applies to service of the application for a special administration order.

(5) Rules 11 and 13 apply to an application under this rule and rule 16(1) and (2) shall apply to the notice of appointment under paragraph 91(1) 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))

213.—(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 office 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))

214.—(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 office 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 heard.

Notification and advertisement of appointment of replacement administrator

215.—(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 the appointment, subject to rule 218.

(2) All statements, consents etc as are required shall also be required in the case of the appointment of a replacement.

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

Notification and advertisement of appointment of joint administrator

216. Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to rule 218.

Additional joint administrator (special administration (bank administration))

217.—(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) file written representations; and

(b) be heard 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) Rules 216 and 218 apply in respect to the notification and advertisement of the appointment of a additional joint administrator.

Notification of new administrator

218.—(1) The replacement or additional administrator shall send notice of the appointment to the registrar of companies.

(2) The notice in paragraph (1) shall contain—

(a) the name and business address of the administrator appointed;

(b) the name, registered address and registered number of the investment bank in respect of which the appointment is made;

(c) whether the administrator is appointed to replace an existing administrator or in addition to a previously appointed administrator; and

(d) the date from which the administrator's appointment will take effect.

Administrator's duties on vacating office

219.—(1) 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.

(2) If A makes default in complying with this rule, A is liable to a fine and, for continued contravention, to a daily default fine.

PART 8

End of special administration

Final progress reports

220.—(1) In this Part, reference to a progress report is to a report in the form specified in rule 122.

(2) The final progress report means a progress report which includes a summary of—

(a) the administrator's proposals (including whether the FSA has given a direction under regulation 16 and whether that direction has been withdrawn);

(b) any major amendments to, or deviations from, those proposals;

(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

221.—(1) An application to court under paragraph 79 for an order ending an administration shall have attached to it—

(a) a progress report for the period since the last progress report (if any) or the date the investment bank entered special administration; 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), the administrator shall—

(a) give notice in writing to—

(i) the applicant for the special administration order under which the administrator was appointed,

(ii) the creditors and clients,

(iii) the FSA,

(iv) in a special administration (bank insolvency), the Bank of England, and

(v) in a special administration (bank administration), the Bank of England and the FSCS,

of the intention to make the application; and

(b) attach to the application a statement that the creditors and clients have been notified of the application and copies of any response to that notification.

(3) Notice under paragraph (2)(a) shall be given at least 5 business days before the date that the administrator intends to makes the application.

(4) The administrator—

(a) shall send a copy of the application under paragraph (1) to the FSA;

(b) must, within 5 business days of filing the application, gazette a notice undertaking to provide a copy of the application to any person who so requests it (and an address to which they can write); and

(c) advertise the notice in such other manner as the administrator thinks fit.

Application to court by creditor

222.—(1) Where a creditor applies to the court to end the special administration a 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 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

223.—(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

224.—(1) Where, for the purposes of paragraph 84(1), the administrator sends a notice of moving from administration to dissolution to the registrar of companies, the administrator must attach to that notice a final progress report.

(2) As soon as reasonably practicable, a copy of the notice and the attached document shall be sent to all other persons who received notice of the administrator's appointment.

(3) Where a court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a copy of the order to the administrator.

PART 9

Court procedure and practice

CHAPTER 1

Application of the CPR

Principal court rules and practice to apply

225.—(1) The provisions of the CPR in the first column of the table in this rule (including any related practice direction) apply to special administration by virtue of the provisions of these Rules set out in the second column with any necessary modifications, except so far as inconsistent with these Rules.

Provision of CPR	*Provisions of these Rules*
CPR Part 6 (service of documents)	Chapter 4 of Part 9
CPR Part 18 (further information)	Rules 230 and 251(c)(ii)
CPR Part 31[(a)] (disclosure and inspection of documents)	Rules 230 and 251
CPR Part 37[(b)] (miscellaneous provisions about payments into court)	Rule 229
CPR Parts 44 and 47 (costs)	Chapter 10 of Part 9
CPR Part 52[(c)] (appeals)	Chapter 12 of Part 9

(a) Part 31 was substituted by S.I. 2008/2178.

(b) Part 37 was substituted by S.I. 2006/3435.

(c) Part 52 was inserted by S.I. 2000/221.

(2) Subject to paragraph (3), the provisions of the CPR (including any related practice direction) not referred to in the table apply to proceedings under the Regulations and Rules with any necessary modifications, except so far as inconsistent with these Rules.

(3) Proceedings in a special administration must be allocated to the multi-track for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

(4) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

CHAPTER 2

The Court

Shorthand writers – nomination, appointment, remuneration and costs

226.—(1) The judge or registrar may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of the special administration appoint a shorthand writer to take down evidence of a person examined under section 236 of the 1986 Act.

(3) The remuneration of a shorthand writer appointed under this rule must be paid by the party at whose instance the appointment was made, or out of the insolvent estate, or otherwise, as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this rule must be determined by the court.

Court file

227.—(1) The court must open and maintain a file in any case where documents are filed with it under the Regulations or the Rules.

(2) Any documents which are filed with the court under the Regulations or the Rules must be placed on the file opened in accordance with paragraph (1).

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1)—

(a) the administrator;

(b) the Secretary of State;

(c) the FSA;

(d) in a special administration (bank insolvency) or special administration (bank administration), the Bank of England or the FSCS;

(e) any person who is a creditor of the investment bank if that person provides the court with a statement in writing confirming that that person is a creditor; and

(f) any person who is a client of the investment bank if that person provides the court with a statement in writing confirming that that person is a client.

(4) The same right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) is exercisable by—

(a) an officer or former officer of the investment bank in special administration; or

(b) a member of the investment bank or a contributory in the special administration.

(5) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may be exercised on that person's behalf by a person authorised to do so by that person.

(6) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may do so if that person has the permission of the court.

(7) The court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3), (4) or (5) without the permission of the court.

(8) An application for a direction under paragraph (7) may be made by—

(a) the administrator;

(b) the FSA;

(c) in a special administration (bank insolvency) or special administration (bank administration) the Bank of England; or

(d) any person appearing to the court to have an interest.

(9) Where any person wishes to exercise the right to inspect the file under paragraph (3), (4), (5) or (6), that person—

(a) if the permission of the court is required, must file with the court an application notice in accordance with these Rules; or

(b) if the permission of the court is not required, may inspect the file at any reasonable time.

(10) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4), (5) or (6), that person must pay any prescribed fee and—

(a) if the permission of the court is required, file with the court an application notice in accordance with these Rules; or

(b) if the permission of the court is not required, file with the court a written request for the document.

(11) An application for—

(a) permission to inspect the file or obtain a copy of a document under paragraph (6); or

(b) a direction under paragraph (7),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(12) If for the purposes of powers conferred by the Regulations or the Rules, the Secretary of State makes a request to inspect or requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

Office copies of documents

228.—(1) The court must provide an office copy of any document from the court file of the special administration to any person who has under the Rules the right to inspect the court file where that person has requested such a copy.

(2) A person's rights under this rule may be exercised on that person's behalf by that person's solicitor.

(3) An office copy provided by the court under this rule must be in such form as the registrar thinks appropriate, and must bear the court's seal.

Payments into court

229. CPR Part 37 (miscellaneous provisions about payments into court) apply to money lodged in court under the Rules.

CHAPTER 3

Obtaining information and evidence

Further information and disclosure

230.—(1) Any party to the special administration may apply to court for an order—

(a) that any other party—

(i) clarify any matter that is in dispute in the proceedings, or

(ii) give additional information in relation to any such matter,

in accordance with CPR Part 18 (further information); or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this rule may be made without notice being served on any other party.

(3) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, the court shall only grant an order on an application under paragraph (1)(b) if satisfied that the granting of the order is unlikely to prejudice the achievement of Objective A.

Witness statements – general

231.—(1) Subject to rule 233 where evidence is required by the Regulations or the Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

(a) in any specific case a rule or the Regulations makes different provision; or

(b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person's witness statement must not be used in evidence without the leave of the court.

Filing and service of witness statements

232. Unless the provision of the Regulations or Rules under which the application is made provides otherwise, or the court otherwise allows—

(a) if the applicant intends to rely at the first hearing on evidence in a witness statement, the applicant must file that witness statement with the court and serve a copy of it on the respondent not less than 14 days before the date fixed for the hearing; and

(b) where the respondent to an application intends to oppose it and rely for that purpose on evidence contained in a witness statement, the respondent must file the witness statement with the court and serve a copy on the applicant not less than 5 business days before the date fixed for the hearing.

Evidence provided by the administrator

233.—(1) Where in the special administration a witness statement is made by the administrator, the witness statement must state—

(a) the capacity in which that person makes the statement; and

(b) the person's business address.

(2) The administrator may file a report with the court instead of a witness statement unless the application involves other parties or the court otherwise orders.

(3) In any case where a report is filed instead of a witness statement, the report must be treated for the purpose of rule 232 and any hearing before the court as if it were a witness statement.

(4) Where this rule applies in a special administration (bank insolvency) or a special administration (bank administration), a reference to the administrator in this rule shall, for the period when a person is appointed under rules 30 or 49 be read as a reference to that person.

CHAPTER 4

Service of court documents

Application of Chapter

234.—(1) Subject to paragraph (2), this Chapter applies in relation to the service of—

(a) applications;

(b) documents relating to applications; and

(c) court orders,

which are required to be served by any provision of the Regulations or the Rules ("court documents").

(2) For the purpose of the application by this Chapter of CPR Part 6 to the service of court documents, an application within the special administration against a respondent is to be treated as a claim form.

Service of court documents within the jurisdiction

235. Except where different provision is made in the regulations or these rules, CPR Part 6 applies in relation to the service of court documents with such modifications as the court may direct.

Service of court documents outside jurisdiction

236. CPR Part 6 applies to the service of court documents outside the jurisdiction with such modifications as the court may direct.

Service of orders staying proceedings

237. Where the court makes an order staying any action, execution or other legal process against the property of the investment bank, service within the jurisdiction of the order may be effected by serving a sealed copy of the order on the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Service on joint office-holders

238. Where there are joint administrators, service of court documents on one of them is to be treated as service on all of them.

CHAPTER 5

Applications to court - general

Application of Chapter

239. This Chapter applies to any application made to the court under the Regulations or the Rules except—

(a) an application for a special administration order under regulation 5;

(b) an application for a special administration (bank insolvency) order under section 95 of the 2009 Act (as applied by paragraph 6 of Schedule 1 to the Regulations);

(c) an application for a special administration (bank administration) order under section 143 of the 2009 Act (as applied by paragraph 6 of Schedule 2 to the Regulations).

Form and contents of application

240.—(1) Each application must be in writing and must state—

(a) that the application is made under the Regulations;

(b) the names of the parties;

(c) the name of the investment bank which is the subject of the insolvency proceedings to which the application relates;

(d) that the proceedings are being held in the High Court and the court reference number;

(e) where the court has previously allocated a number to the insolvency proceedings within which the application is made, that number;

(f) the nature of the remedy or order applied for or the directions sought from the court;

(g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

(h) where the Regulations or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and

(i) the applicant's address for service.

(2) The application must be authenticated by the applicant if the applicant is acting in person or, when the applicant is not so acting, by or on behalf of the applicant's solicitor.

Filing and service of application

241.—(1) An application must be filed with the court accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

(a) it considers it is not appropriate to do so;

(b) the rule under which the application is brought provides otherwise; or

(c) the case is one to which rule 243 applies.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent, if more than one).

(4) The court may give any of the following directions—

(a) that the application be served upon persons other than those specified by the relevant provision of the Regulations or Rules;

(b) that the giving of notice to any person may be dispensed with;

(c) that the notice may be given in some way other than that specified in paragraph (3).

(5) An application must be served at least 14 days before the date fixed for its hearing unless—

(a) the provision of the Regulations or the Rules under which the application is made makes different provision; or

(b) the case is one of urgency, to which paragraph (6) applies.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by paragraph (5),

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks just.

Directions

242. The court may at any time give such directions as it thinks just as to—

(a) service or notice of the application on or to any person;

(b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary; and

(c) the matters to be dealt with in evidence.

Hearings without notice

243. Where the relevant provisions of the Regulations or the Rules do not require service of the application on, or notice of it to be given to, any person—

(a) the court may hear the application as soon as reasonably practicable without fixing a venue as required by rule 241(2); or

(b) it may fix a venue for the application to be heard in which case rule 241 must apply to the extent that it is relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

Hearing of application

244.—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom the application must be made in the first instance) unless—

(a) a direction to the contrary has been given, or

(b) it is not within the registrar's power to make the order required.

(3) Where the application is made to the registrar in the High Court, the registrar may refer to the judge any matter which the registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as that judge thinks just.

(4) Nothing in this rule precludes an application being made directly to the judge in a proper case.

Adjournment of the hearing of an application

245.—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

(2) The court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—

(a) the taking of evidence wholly or partly by witness statement or orally;

(b) the cross-examination of the maker of a witness statement; or

(c) any report to be made by the administrator.

CHAPTER 6

Applications to the court under section 176A

Application of Chapter

246. The rules in this Chapter apply to applications in connection with section 176A of the 1986 Act (share of assets for unsecured creditors).

Applications under section 176A(5) to disapply section 176A

247.—(1) An application under section 176A(5) must be accompanied by a witness statement by the administrator.

(2) The witness statement must state—

(a) that the investment bank is in special administration;

(b) a summary of the financial position of the investment bank; and

(c) the information substantiating the administrator's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Notice of application under section 176A(5)

248. An application under section 176A(5) may be made without the application being served upon, or notice being given to any other party.

Notice of an order under section 176A(5)

249.—(1) Where the court makes an order under section 176A(5), it must as soon as reasonably practicable deliver 2 sealed copies of the order to the applicant.

(2) Where the court has made an order under section 176A(5), the administrator must as soon as reasonably practicable give notice to each creditor of whose address the administrator is aware.

(3) Paragraph (2) does not apply where the court directs otherwise.

(4) The court may direct that the requirement in paragraph (2) is complied with if a notice has been published by the administrator which, in addition to containing the standard contents**,** states that the court has made an order disapplying the requirement to set aside the prescribed part. As soon as reasonably practicable the notice—

(a) must be gazetted; and

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

(5) The administrator must send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

CHAPTER 7

Applications for an order under section 236

Application of following rules

250.—(1) This chapter applies to applications to the court for an order under section 236 of the 1986 Act(**17**) (inquiry into company dealings).

(2) In this Chapter, "the respondent" means the person in respect of whom an order is applied for.

(**17**) Section 236 was amended by S.I. 2010/18.

Form and contents of application

251. An application to which this chapter applies—

(a) must be in writing and specify the grounds on which it is made;

(b) must specify the name of the respondent;

(c) must state whether the application is for the respondent—

(i) to be ordered to appear before the court,

(ii) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (in which case CPR Part 18 (further information) shall apply to any such order),

(iii) to submit witness statements (if so, particulars must be given of the matters to be included),

(iv) to produce books, papers or other records (if so, the items in question must be specified), or

(v) for any two or more of those purposes; and

(d) may be made without notice to any other party.

Order for examination etc.

252.—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236.

(2) The court, if it orders the respondent to appear before it, must specify a venue for the respondent's appearance, which must not be less than 14 days from the date of the order.

(3) If the respondent is ordered to submit witness statements, the order must specify—

(a) the matters which are to be dealt with in the respondent's witness statements; and

(b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance must be specified.

(5) The order must be served as soon as reasonably practicable on the respondent.

Procedure for examination

253.—(1) At any examination of the respondent, the administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Unless the administrator objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the administrator)—

(a) any person who could have applied for an order under section 236; and

(b) any creditor or client who has provided information on which the application was made under that section.

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may, at the respondent's own expense, employ a solicitor with or without counsel, who may put to the respondent such questions as the court may allow for the purpose of

enabling the respondent to explain or qualify any answers given by the respondent, and may make representations on the respondent's behalf.

(5) Such written record of the examination must be made as the court thinks proper and such record must be read over either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the Regulations, Rules or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

Record of examination

254.—(1) Unless the court otherwise directs, the written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the court under section 236, are not to be filed with the court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than the administrator.

(3) The documents to which paragraph (2) applies are—

(a) the written record of the respondent's examination;

(b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;

(c) any witness statement by the respondent; and

(d) any document on the court file as shows grounds for the application for the order.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under section 236

255.—(1) Where the court has ordered an examination of any person under section 236 and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by the respondent.

(2) Where the court makes an order against a person under—

(a) section 237(1) of the 1986 Act; or

(b) section 237(2) of the 1986 Act,

the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the administrator's costs must, unless the court otherwise orders, be paid as an expense of the special administration.

(4) A person summoned to attend for examination under this Chapter must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that person's attendance but any other costs falling on that person are at the court's discretion.

CHAPTER 8

People who lack capacity to manage their affairs etc.

Application of Chapter 8

256.—(1) The rules in this Chapter apply where in a special administration it appears to the court that a person affected by the proceedings is someone who lacks capacity to manage and administer their property and affairs either—

(a) by reason of lacking capacity within the meaning of the Mental Capacity Act 2005(**18**); or

(b) due to a physical affliction or disability.

(2) The person concerned is referred to in this Chapter as "the incapacitated person".

Appointment of another person to act

257.—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for that person's incapacity.

(3) The court may make the appointment either of its own motion or on application by—

(a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person;

(b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or

(c) the administrator.

(4) Application under paragraph (3) may be made without notice to any other party; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Witness statement in support of application

258. An application under rule 257(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

259. Any notice served on, or sent to, a person appointed under rule 257 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 9

Formal defects

Formal defects

260. No special administration proceedings shall be invalidated by any formal defect or by any irregularity; unless the court before which an objection is made considers that substantial injustice

(**18**) 2005 c.9.

has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

CHAPTER 10

Costs

Application of Chapter 10

261.—(1) This Chapter applies in relation to costs in connection with the special administration.

(2) In this Chapter, a reference to costs includes charges and expenses.

Requirement to assess costs by the detailed procedure

262.—(1) Where the costs of any person are payable as an expense out of the investment bank's estate the amount payable must be decided by detailed assessment unless agreed between the administrator and the person entitled to payment.

(2) Where the costs of any person are payable as an expense out of the client assets, the amount payable must be decided by detailed assessment unless agreed between a meeting of clients and the person entitled to payment.

(3) In the absence of such agreement as is mentioned in paragraph (1) or (2), the administrator—

(a) may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47; and

(b) must serve such notice where the creditors' committee resolves that the amount of the costs in either case must be decided by detailed assessment.

(4) Detailed assessment proceedings must be commenced in the High Court.

(5) Where the costs of any person employed by the administrator in the special administration are required to be decided by detailed assessment or fixed by order of the court, the administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

(a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and

(b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(6) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

(7) Unless otherwise directed or authorised, the costs of the administrator are to be allowed on the standard basis for which provision is made in—

(a) CPR rule 44.4 (basis of assessment); and

(b) CPR rule 44.5 (factors to be taken into account when deciding the amount of costs).

Procedure where detailed assessment is required

263.—(1) Before making a detailed assessment of the costs of any person employed in the special administration by the administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and signed by the administrator.

(2) The certificate must include—

(a) the name and address of the person employed;

(b) details of the functions to be carried out under the employment; and

(c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in the special administration are required to be decided by detailed assessment must, on being required in writing to do so by the administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the administrator may deal with the investment bank's estate without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against the administrator in the administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs of officers charged with execution of writs or other process

264.—(1) This rule applies where an enforcement officer, or other officer charged with execution of the writ or other person—

(a) is required under section 184(2) of the 1986 Act to deliver up goods or money; or

(b) has under section 184(3) of the 1986 Act(**19**) deducted costs from the proceeds of an execution or money paid to that officer or that person (as the case may be).

(2) The administrator may require in writing that the amount of the enforcement officer's or other officer's bill of costs be decided by detailed assessment and where such a requirement is made, rule 263(4) applies.

(3) Where, in the case of a deduction of the kind mentioned in paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer must as soon as reasonably practicable pay a sum equal to that disallowed to the administrator for the benefit of the investment bank's estate.

Costs paid otherwise than out of the investment bank's estate

265. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the investment bank's estate or out of the client assets, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against the administrator

266. Without prejudice to any provision of the Regulations or Rules by virtue of which the administrator is not in any event to be liable for costs and expenses, where the administrator is made a party to any proceedings on the application of another party to the proceedings, the administrator is not to be personally liable for the costs unless the court otherwise directs.

Applications for costs

267.—(1) This rule applies where a party to, or person affected by, any proceedings in the special administration applies to the court for an order allowing their costs, or part of them, incidental to the proceedings, and that application is not made at the time of the proceedings.

(**19**) Sections 184(2) and 184(3) were amended by the Courts Act 2003, section 109(1), Schedule 8, para 296(1)(3) and by S.I. 1986/1996.

(2) The person concerned must serve a sealed copy of the application on the administrator.

(3) The administrator may appear on an application.

(4) No costs of or incidental to the application are to be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.

(5) The court shall specify in the order whether such costs are to be paid out of the investment bank's estate or out of the client assets.

Costs and expenses of witnesses

268. Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court is to be made to an officer of the investment bank to which the proceedings relate.

Final costs certificate

269.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.

CHAPTER 11

Enforcement procedures

Enforcement of court orders

270.—(1) In a special administration, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with the Rules

271.—(1) The court may, on application by the administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

(a) paragraph 47 (duty to submit statement of affairs); or

(b) section 235 of the 1986 Act (duty of various persons to co-operate with administrator).

(2) An order of the court under this rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

Warrants (general provisions)

272.—(1) A warrant issued by the court under any provision of the Regulations shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.

(3) In this Chapter, references to property include books, papers and records.

Warrants under section 236

273.—(1) When a person ('P') is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting P must as soon as reasonably practicable bring P before the court issuing the warrant in order that P may be examined.

(2) If P cannot immediately be brought up for examination, the officer must deliver P into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate P, the governor of such other prison with appropriate facilities which is able to accommodate P), who must keep that person in custody and produce P before the court as it may from time to time direct.

(3) After arresting P, the officer must as soon as reasonably practicable report to the court the arrest or delivery into custody (as the case may be) of P and apply to the court to fix a venue for P's examination.

(4) The court shall appoint the earliest practicable time for the examination, and must—

(a) direct the governor of the prison to produce P for examination at the time and place appointed; and

(b) as soon as reasonably practicable give notice of the venue to the person who applied for the warrant.

(5) Any property in P's possession which may be seized must be—

(a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or

(b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

CHAPTER 12

Appeals

Application of Chapter 12

274. This Chapter applies in relation to decisions of the court under the Regulations or the Rules.

Appeals and reviews of court orders

275.—(1) The court may review, rescind or vary any order made by it in the exercise of its jurisdiction under the Regulations or the Rules.

(2) Appeals in special administration proceedings are to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

Procedure on appeal

276.—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

Appeal against decision of the Secretary of State

277. An appeal under the Regulations against a decision of the Secretary of State must be brought within 28 days of the notification of the decision.

PART 10

Prohibited names

Preliminary

278.—(1) The Rules in this Part—

(a) relate to the permission required under section 216 of the 1986 Act for a person to act as mentioned in section 216(3) in relation to an investment bank with a prohibited name;

(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 permission.

Application for permission under section 216(3)

279.—(1) At least 14 days notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—

(a) appear at the hearing of the application; and

(b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216, 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

280.—(1) This rule applies where—

(a) a person ("P") was within the period mentioned in section 216(1) a director, or shadow director, of an investment bank that has gone into special administration by virtue of Ground A in regulation 6 being satisfied; and

(b) P acts in all or any of the ways specified in section 216(3) 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, or

(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 or as a person appointed under rule 30 or 49.

(2) P will not be taken to have contravened section 216 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 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) 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 an office-holder acting in relation to the investment bank as supervisor of a voluntary arrangement or as a person appointed under rule 30 or 49 (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.

Second excepted case

281.—(1) Where a person ("P") to whom section 216 applies as having been a director or shadow director of the investment bank in special administration applies for permission of the court under that section not later than 7 business days from the date on which the investment bank went into special administration, P may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that P has not the permission 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 six weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

Third excepted case

282. The court's permission under section 216(3) 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

Costs, expenses etc

283.—(1) All fees, costs, charges and other expenses incurred in the course of the special administration are, unless otherwise stated, 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 costs associated with the prescribed part shall be paid out of the prescribed part.

Provable debts

284.—(1) Subject as follows, all claims by creditors are provable as debts against the investment bank whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) The following are not provable—

(a) any obligation arising under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(**20**);

(b) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim also arising by virtue of section 382(1)(b) of that Act; or

(c) any claim which by virtue of the 1986 Act or any other enactment is a claim the payment of which in a special administration is to be postponed.

(3) Claims under paragraphs (2)(b) and (c) are not provable except at a time when all other claims of creditors in the special administration (other than any of a kind mentioned in this paragraph) have been paid in full with interest under rule 168.

(4) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

False claim of status as creditor, etc

285.—(1) This rule applies where the Rules provide a right for—

(a) creditors;

(b) clients;

(c) members of the investment bank; or

(d) contributories,

to inspect any documents, whether on the court's file or in the hands of the administrator or other person.

(2) It is an offence for a person ('P'), with the intention of obtaining a sight of documents which P has not under the Rules any right to inspect, falsely to claim a status which would entitle P to inspect them.

(3) A person guilty of an offence under this rule is liable to imprisonment or a fine, or both.

(**20**) 2002 c. 29.

Punishment of offences

286.—(1) The Schedule to these Rules has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In relation to an offence under a provision of the Rules specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column shows, in relation to an offence, the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, that person is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) Section 431 of the 1986 Act (summary proceedings), as it is applied by the Regulations, has effect in relation to offences under the Rules as to offences under the 1986 Act.

CHAPTER 2

The giving of notice and the supply of documents

Application

287.—(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Regulations or the Rules by any person, including the administrator.

(2) This Chapter does not apply to the service of—

(a) any application to the court;

(b) any evidence in support of that application; or

(c) any order of the court.

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

Personal delivery

288. Personal delivery of a notice or other document is permissible in any case.

Postal delivery of documents

289. Unless in any particular case some other form of delivery is required by the Regulations or the Rules or an order of the court, a notice or other document may be sent by post in accordance with the rules for postal service in CPR Part 6 and sending by such means has effect as specified in those rules.

Notice etc to solicitors

290. Where under the Regulations or the Rules a notice or other document is required or authorised to be given, delivered or sent to a person, it may be given, delivered or sent instead to a solicitor authorised to accept delivery on that person's behalf.

CHAPTER 3

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

Application

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

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

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

The form

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

Proof of sending

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

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

(a) the administrator;

(b) the administrator's solicitor;

(c) a partner or an employee of either of them.

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

(a) that the notice or document was given, delivered or sent by that person; or

(b) that another person (named in the certificate) was instructed to give, deliver or send it.

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

Authentication

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

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

(a) if the identity of the sender is confirmed in a manner specified by the recipient; or

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

Electronic delivery - general

295.—(1) Unless in any particular case some other form of delivery is required by the Regulations or the Rules or an order of the court and subject to paragraph (3), a notice or other document may

be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

(a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and

(b) provided an electronic address for delivery.

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

(a) the sender can produce a copy of the electronic message which—

(i) contained the notice or other document, or to which the notice or other document was attached, and

(ii) shows the time and date the message was sent; and

(b) that electronic message contains the address supplied under paragraph (1)(b).

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

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

Electronic delivery by administrator

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

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

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

Use of websites by administrator

297.—(1) This rule applies for the purposes of section 246B(**21**).

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

(a) stating that the document is available for viewing and downloading on a website;

(b) specifying the address of that website together with any password necessary to view and download the document from that site; and

(c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

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

(a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and

(b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

(**21**) Section 246B was inserted by S.I. 2010/18.

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

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

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

(a) when the document was first made available on the website, or

(b) if later, when the notice under paragraph (2) was delivered to that person.

Special provision on account of expense as to website use

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

(a) stating that all relevant documents will be made available for viewing and downloading on a website;

(b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and

(c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, e-mail address and postal address which may be used to make that request.

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

(a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent; and

(b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

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

(a) within 5 business days of the receipt by the administrator of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received, or

(b) within 5 business days from the date a relevant document first appears on the website, in all other cases.

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

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

(a) when the relevant document was first made available on the website, or

(b) if later, when the notice under paragraph (1) was delivered to that person.

(6) In this rule, a relevant document means any document which the administrator is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

Electronic delivery of special administration documents to court

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

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

(3) The requirements of this paragraph are—

(a) the court provides an electronic working scheme for the proceedings to which the document relates; and

(b) the electronic communication is—

(i) delivered and authenticated in a form which complies with the requirements of the scheme;

(ii) sent to the electronic address provided by the court for electronic delivery of those proceedings; and

(iii) accompanied by any payment due to the court in respect of those proceedings made in a manner which complies with the requirements of the scheme.

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

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

Notice etc to joint administrators

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

Execution overtaken by judgment debtor's insolvency

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

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

(a) by hand, or

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

Notice to enforcement officers

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

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

Electronic submission of information

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

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

(a) the information is submitted electronically with the agreement of the person to whom the information is sent;

(b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent;

(c) that all the prescribed information is provided in the electronic submission; and

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

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

(a) if the identity of the person who is supplying the information and whose signature is required is confirmed in a manner specified by the recipient; or

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

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

Electronic submission of information where rule 303 does not apply

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

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

(a) the person to whom the information is sent has agreed—

(i) to receiving the information electronically and to the form in which it is to be sent, and

(ii) to the specified manner in which paragraph (3) is to be satisfied;

(b) all the prescribed information required is provided in the electronic submission; and

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

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

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

Contents of notices to be gazetted

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

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

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

(b) the name, postal address and date of appointment of the administrator;

(c) either an e-mail address, or a telephone number, through which the administrator may be contacted;

(d) the name of any person other than the administrator (if any) who may be contacted regarding the proceedings; and

(e) the number assigned to the office-holder by the Secretary of State.

Gazette notices relating to companies

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

(a) the registered name of the company;

(b) its registered number;

(c) its registered office;

(d) any principal trading address if this is different from its registered office;

(e) any name under which it was registered in the 12 months prior to the date the investment bank entered special administration; and

(f) any name or style (other than its registered name) under which—

(i) the investment bank carried on business;

(ii) the investment bank undertook to hold an asset on behalf of a client, or

(iii) any debt owed to a creditor was incurred.

Omission of unobtainable information

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

The Gazette – general

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

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

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

Notices otherwise advertised under the Regulations or Rules

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

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

(a) the name and postal business address of the administrator acting in the special administration to which the notice relates; and

(b) either an e-mail address, or a telephone number, through which the administrator may be contacted.

Non-Gazette notices

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

(a) the registered name of the investment bank;

(b) its registered number;

(c) any name under which it was registered in the 12 months prior to the date the investment bank entered special administration; and

(d) any name or style (other than its registered name) under which—

(i) the investment bank carried on business,

(ii) any asset was given to the investment bank to be held for a client, or

(iii) any debt owed to a creditor was incurred.

Non-Gazette notices – other provisions

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

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

CHAPTER 4

Notifications to the registrar of companies

Application of Chapter 4

312. This Chapter applies where under the Regulations or the Rules information is to be sent or delivered to the registrar of companies.

Information to be contained in all notifications to the registrar

313. Where under the Regulations or the 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;

(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

314. In addition to the information required by rule 313, 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

315. In addition to the information required by rule 313, a notification relating to a document (for example, a statement of affairs) must also specify—

(a) the nature of the document; and

(b) the date of the document; or

(c) 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

316. In addition to the information required by rule 313, 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

317. In addition to the information required by rule 313, 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

318. 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

319.—(1) Where under the Regulations or the 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 5

Further provisions concerning documents

Confidentiality of documents – grounds for refusing inspection

320.—(1) Where the administrator considers that a document forming part of the records of the special administration—

(a) should be treated as confidential, or

(b) is of such a nature that its disclosure would be prejudicial to the conduct of the special administration or might reasonably be expected to lead to violence against any person,

the administrator may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the administrator may under this rule refuse inspection include members of the Objective A committee or the creditors' committee.

(3) Where under this rule the administrator determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled and the court may either overrule it altogether or sustain it subject to such conditions (if any) as it thinks just.

Right to copy documents

321.—(1) Where the Regulations or the Rules confer a right for any person to inspect documents, the right includes that of taking copies of those documents, on payment—

(a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 92 of the Courts Act 2003(**22**); and

(b) in any other case, of the appropriate fee.

Charges for copy documents

322. Except where prohibited by the Rules, the administrator is entitled to require the payment of the appropriate fee for the supply of documents requested by a creditor, client, member, contributory or member of the creditors' committee.

Right to have list of creditors

323.—(1) A creditor has the right to require the administrator to provide a list of the creditors and the amounts of their respective debts unless paragraph (5) applies.

(2) The administrator on being required to furnish the list under paragraph (1)—

(**22**) 2003 c.39: section 92 was amended by the Constitutional Reform Act 2005, section 15(1), Schedule 4, Part 1 paras 308, 345 and section 59(5) Schedule 11, Part 2, para 4(1)(3).

(a) as soon as reasonably practicable must send it to the person requiring the list to be furnished; and

(b) may charge the appropriate fee for doing so.

(3) The name and address of any creditor may be omitted from the list furnished under paragraph (2) where the administrator is of the view that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person provided that—

(a) the amount of the debt in question is shown in the list; and

(b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(4) In a special administration (bank insolvency) or a special administration (bank administration), the list of creditors provided under paragraph (1) shall, in respect of creditors who are depositors, omit the names and addresses of individual depositors and shall contain a single statement of their aggregate debt.

(5) Paragraph (1) does not apply where a statement of affairs has been delivered to the registrar of companies.

CHAPTER 6

Time limits and security

Time limits

324.—(1) The provisions of CPR rule 2.8(**23**) (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

Administrator's security

325.—(1) Wherever under the Rules any person has to appoint, or certify the appointment of an administrator, that person must, before making or certifying the appointment, be satisfied that the person appointed or to be appointed has security for the proper performance of that office.

(2) It is the duty of the creditors' committee to review from time to time the adequacy of the administrator's security.

(3) In a special administration (bank insolvency), before the Objective A committee have passed a full payment resolution, that committee shall have the duty in paragraph (2).

(4) In a special administration (bank administration), before the Bank of England has given a Objective A Achievement Notice, the Bank of England shall have that duty.

(5) The cost of the administrator's security shall be defrayed as an expense of the proceedings.

(**23**) CPR rule 2.8 was amended by S.I. 2009/3390.

CHAPTER 7

Transfer of proceedings

Proceedings commenced in the wrong court

326. Where a special administration is commenced in a court other than the High Court, that court may order the transfer of the proceedings to the High Court.

Proceedings other than special administration commenced

327.—(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 to 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 (2), 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); and

(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).

PART 12

General interpretation and application

Introduction

328. This Part of the Rules has effect for their interpretation and application; and any definition given in this Part applies except, and in so far as, the context otherwise requires.

"The court"; "the registrar"

329.—(1) Anything to be done under or by virtue of the Regulations or the Rules by, to or before the court may be done by, to or before a judge or the registrar.

(2) The registrar may authorise any act of a formal or administrative character which is not by statute the registrar's responsibility to be carried out by the chief clerk or any other officer of the court acting on the registrar's behalf, in accordance with directions given by the Lord Chancellor.

(3) "The registrar" means a Registrar in Bankruptcy of the High Court.

Venue

330. References to the "venue" for any proceeding or attendance before the court, or for a meeting, are to the time, date and place for the proceeding, attendance or meeting or to the time and date for a meeting which is held in accordance with section 246A without any place being specified for it.

Insolvent estate

331. References to "the insolvent estate" are, in relation to a special administration, the investment bank's assets.

The appropriate fee

332. "The appropriate fee" means 15 pence per A4 or A5 page, and 30 pence per A3 page.

"Debt"; "liability"

333.—(1) "Debt", in relation to the special administration means (subject to the next paragraph) any of the following—

(a) any debt or liability to which the investment bank is subject on the date when the investment bank entered special administration;

(b) any debt or liability to which the investment bank may become subject after that date by reason of any obligation incurred before that date; and

(c) any interest provable as mentioned in rule 168.

(2) In paragraph (1)(a), the reference to debt or liability includes a debt incurred by the investment bank as a result of the operation of rules 137 and 146 even if the debt is incurred after the date on which the investment bank entered special administration.

(3) For the purposes of any provision of the Regulations or the Rules, any liability in tort is a debt provable in the special administration, if either—

(a) the cause of action has accrued at the date on which the investment bank went into special administration; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(4) For the purposes of references in any provision of the Regulations or the Rules to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(5) In any provision of the Regulations or the Rules, except in so far as the context otherwise requires, "liability" means (subject to paragraph (4)) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

Application of the 1986 Act and the Company Directors Disqualification Act

334. For the purposes of these Rules, any reference in the 1986 Act or the Company Directors Disqualification Act 1986(**24**) to "leave" of the court is to be construed as meaning "permission" of the court.

Kenneth Clarke
15th May 2011 The Lord Chancellor

We concur

Jeremy Wright
Michael Fabricant
Two of the Lords Commissioners of Her
17th May 2011 Majesty's Treasury

I concur

Sir Andrew Morritt
18th May 2011 The Chancellor of the High Court

(**24**) 1986 c. 46.