STATUTORY INSTRUMENTS

2022 No. 1239

The Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022

PART 1

Introductory Provisions

Citation

1. These Rules may be cited as the Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022.

Commencement

2. These Rules come into force on 19th December 2022.

Extent

3. These Rules extend to Scotland only.

Interpretation

4.—(1) The following definitions apply to these Rules or may be seen at the places indicated—

Word or expression	*Meaning*
accounting period	has the meaning given in rule 86 or, in relation to Part 7, rule 128
asset pool	together (a) the asset pool as defined in the Regulations and (b) any funds properly transferred into a relevant funds account following the commencement of the special administration
authenticate	to authenticate in accordance with rule 168, other than in relation to rule 93, where it shall have the meaning set out in rule 93(4)
business address	the place where a person works
business day	any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Scotland or

Word or expression	*Meaning*
	England and Wales under or by virtue of the Banking and Financial Dealings Act 1971 (**1**)
contact details	a postal address, an email address or a telephone number through which a customer may be contacted
customer	(a) user, which has the meaning set out in regulation 6, or (b) holder, which has the meaning set out in regulation 6
debt	has the meaning set out in rule 205
expense of the special administration	means those expenses incurred in the course of the special administration, or treated as incurred as such by these Rules, that are to be paid out in accordance with Part 4
final progress report	has the meaning set out in rule 143
the Gazette	the Edinburgh Gazette
gazetted	advertised once in the Gazette
IP number	the number assigned to an office-holder as an insolvency practitioner by the Secretary of State
means of contacting	being able to contact that person specifically
official rate	the rate of interest on a sheriff court decree or extract under section 9 of the Sheriff Courts (Scotland) Extracts Act 1892(**2**) (as it may be amended by section 4 of the Administration of Justice (Scotland) Act 1972)(**3**)
Payment Systems Regulator	the body established under section 40 of the Financial Services (Banking Reform) Act 2013(**4**)
prescribed part	has the same meaning as it does in section 176A(2)(a) of the IA 1986 (**5**) and the Insolvency Act 1986 (Prescribed Part) Order 2003(**6**)
principal	has the meaning set out in rule 87(1), unless the context otherwise requires
progress report	a report which complies with rule 85
proxy-holder	has the meaning set out in rule 87(1)

(**1**) 1971 c. 80.
(**2**) 1892 c. 17. See S.I. 1993/769.
(**3**) 1972 c. 59.
(**4**) 2013 c. 33.
(**5**) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40).
(**6**) S.I. 2003/2097.

Word or expression	*Meaning*
registered number	has the meaning set out in section 1066 of the CA 2006(**7**)
registrar of companies	the registrar of companies for Scotland
the Regulations	the Payment and Electronic Money Institution Insolvency Regulations 2021
requisitioned meeting	a meeting requested under paragraph 56(1)
sederunt book	has the meaning set out in rule 194(1)
shortfall claim	that part of a relevant funds claim which will not be met from the asset pool because of a shortfall in the amount available in the asset pool to settle relevant funds claims, including where the shortfall arises as a result of any deduction from the relevant funds of costs under rule 96 or amounts that the court orders be paid from the asset pool or from the relevant funds
standard contents	(a) in relation to a notice to be gazetted, the contents specified in rule 177, (b) in relation to a notice to be advertised in any other way, the contents specified in rule 180
standard fee for copies	15 pence per A4 or A5 page or 30 pence per A3 page
statement of claim	is to be interpreted in accordance with rule 116
statement of concurrence	a statement, verified by a statutory declaration, that that person concurs in the statement of affairs under paragraph 47 submitted by a nominated person

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

(3) Reference to a notice or other document being given, delivered or sent under these Rules or in the Regulations shall be interpreted in accordance with Chapters 2 to 4 of Part 12 of these Rules.

(4) Expressions used both in these Rules and in the Regulations (including expressions used in the provisions of the IA 1986 applied by the Regulations) have, unless otherwise stated, the meaning set out in the Regulations.

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

(a) it is a reference to a paragraph within the same rule (in which case the number of the paragraph is written in parenthesis), or

(b) otherwise stated,

be to the paragraph so numbered in Schedule B1 to the IA 1986, as applied by regulation 37.

(**7**) 2006 c. 46.

(6) A reference to a provision of the IA 1986, if that provision is listed in the Table in regulation 37, is a reference to that provision as applied and modified by the Regulations.

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

(8) For the purposes of these Rules references to a customer, or to relevant funds do not include a customer of, or relevant funds received by—

(a) a small payment institution, or

(b) in the case of funds received for the execution of payment transactions that are not related to the issuance of electronic money, a small electronic money institution,

where the institution had not chosen voluntarily to safeguard the funds when it entered special administration.

(9) To the extent that a customer claims a shortfall as a creditor, that shortfall claim is to be treated as a debt owed to the customer by the institution arising before the institution entered special administration.

(10) A relevant funds claim which is held jointly by one or more customers shall be treated as a single relevant funds claim under these Rules.

Application of Rules

5. These Rules apply in respect of a special administration.

PART 2

Application for special administration order

Content of application

6. An application for a special administration order must state—

(a) the full name and registered number of the institution,

(b) any other trading names of the institution,

(c) the institution's date of incorporation,

(d) the institution's nominal capital and the amount of capital paid up,

(e) the address of the institution's registered office,

(f) an email address for the institution,

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

(h) which of the grounds in regulation 9(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,

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

Lodging of application

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

Service of application

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

(a) the FCA (if not the applicant),

(b) the institution (if neither the institution nor its directors are the applicant),

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

(d) any person who has given notice to the FCA in respect of the institution under regulation 11(6),

(e) if there is in force for the institution a voluntary arrangement under Part 1 of the IA 1986, the supervisor of that arrangement,

(f) the registrar of companies,

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

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

Further notification

10. As soon as is reasonably practicable after lodging the application, the applicant must notify—

(a) any messenger-at-arms or sheriff officer whom the applicant knows to be charged with executing diligence or other legal process against the institution or its property,

(b) any person whom the applicant knows to have exercised diligence or other legal process against the institution or its property.

The hearing

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

(a) the applicant,

(b) the institution,

(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 IA 1986,

(f) any person who has given notice to the FCA in respect of the institution under regulation 11(6),

(g) the FCA,

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

The special administration order

12. If the court makes a special administration order, the order must state—

(a) the name and address of the applicant,

(b) the name, registered address and registered number of the institution 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,

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

Expenses allowed by the court

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

(a) costs of the applicant,

(b) the costs of any other party whose expenses are allowed by the court.

Notice of special administration order

14.—(1) If the court makes a special administration order, it must, as soon as is reasonably practicable, deliver two copies of the order certified by the court to the applicant.

(2) The applicant must as soon as is reasonably practicable, deliver a certified copy to—

(a) the administrator,

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

(3) If the court makes an order under regulation 10(1)(d) or regulation 10(1)(f), it may direct (or give directions as) to whom and how notice of that order is to be given.

PART 3

Process of Special Administration

CHAPTER 1

Notice of appointment and statement of affairs

Notification and advertisement of administrator's appointment

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

(a) must be gazetted,

(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 must as soon as is reasonably practicable after appointment give notice of the appointment to—

(a) any messenger-at-arms or sheriff officer who, to the administrator's knowledge, is charged with executing diligence or other legal process against the institution,

(b) any person who, to the administrator's knowledge, has exercised diligence or other legal process against the institution,

(c) the Keeper of the Register of Inhibitions and Adjudications,

(d) any supervisor of a voluntary arrangement under Part 1 of the IA 1986.

(4) The administrator must send the notice of appointment to the registrar of companies within seven 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—

(a) contain details of the court and the relevant court reference number,

(b) contain the full name, registered address, registered number, all trading names and principal trading office of the institution,

(c) contain the name, business address and IP number of the person or persons appointed as administrator and the date of their appointment,

(d) be authenticated and dated by the administrator.

Notice requiring statement of affairs

16.—(1) In this Part, "relevant person" has the meaning given to it in paragraph 47(3) and "nominated person" is the relevant person who has been required by the administrator to make out and deliver a statement of affairs to the administrator.

(2) The administrator must deliver notice to each relevant person who the administrator deems appropriate requiring that relevant person to make out and deliver a statement of the institution's affairs.

(3) The notice must be headed "notice requiring statement of affairs" and must inform each of the nominated persons of—

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

(b) the date by which the statement must be delivered to the administrator, being before the end of the period of eleven days beginning with the day on which the nominated person receives notice of the requirement,

(c) the effect of paragraph 48(4),

(d) the application to that nominated person and to each other relevant person of section 235 of the IA 1986(**8**).

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

(5) The nominated person must deliver the statement of affairs, together with a copy, to the administrator.

Statement of affairs: content

17.—(1) The statement of the institution's affairs must be headed "Statement of affairs" and must—

(a) identify the institution immediately below the heading,

(**8**) Section 235 was modified by S.I. 2021/716. There are other amending instruments, but none is relevant.

(b) state that it is a statement of the affairs of the institution on a specified date, being the date on which it entered special administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2)) —

(a) a summary of the assets of the institution, setting out the book value and the estimated realisable value of—

(i) any assets subject to a fixed charge,

(ii) any assets subject to a floating charge,

(iii) any uncharged assets,

(iv) the total value of all the assets available for preferential creditors,

(b) a summary of the liabilities of the institution, setting out—

(i) the amount of preferential debts,

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,

(iii) an estimate of the prescribed part, if applicable,

(iv) an estimate of the total assets available to pay debts secured by floating charges,

(v) the amount of debts secured by floating charges,

(vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,

(vii) the amount of unsecured debts (excluding preferential debts),

(viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,

(ix) any issued and called-up capital,

(x) an estimate of the deficiency with respect to, or surplus available to, members of the institution,

(c) a list of the institution's creditors with the further particulars required by paragraph (3) indicating—

(i) any creditors under hire-purchase, conditional sale and hiring agreements,

(ii) any creditors claiming retention of title over property in the institution's possession,

(d) the name and address of each member of the institution and the number, nominal value and other details of the shares held by each member.

(3) Subject to paragraphs (4) and (5), the list of creditors required by paragraph 47(2) and paragraph (2)(c) of this rule must contain the following details—

(a) the name and postal address of the creditor,

(b) the amount of the debt owed to the creditor,

(c) details of any security held by the creditor,

(d) the date on which the security was given,

(e) the value of any such security.

(4) Paragraph (5) applies where the particulars required by paragraph (3) relate to creditors who are—

(a) employees or former employees of the institution, or

(b) consumers claiming amounts paid in advance for the supply of goods or services.

(5) Where this paragraph applies—

(a) the statement of affairs itself must state—

(i) the number of employees or former employees of the institution and the total of the debts owed to them,

(ii) the number of consumers claiming amounts paid in advance for the supply of goods or services and the total of the debts owed to them,

(b) the particulars required by paragraph (3) must be set out in a separate schedule to the statement of affairs for each of the employees, former employees and consumers referred to in paragraphs (4)(a) and (4)(b).

(6) Subject to paragraph (7), the administrator must not—

(a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (5)(b),

(b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (5)(b) at the same time as sending or delivering the statement of affairs,

(c) include a schedule or any of the details contained in any schedule provided under paragraph (5)(b) in a statement of proposals under rule 24 or a revised statement of proposals under rule 30.

(7) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (5)(b).

Details of the asset pool, safeguarding measures and reconciliation

18.—(1) In addition to the matters required by paragraph 47(2), paragraph 47(5) and under rule 17, the statement of affairs must include particulars of the asset pool including the relevant funds held by the institution.

(2) The particulars must include—

(a) subject to paragraph (3), the names and contact details of each customer of the institution and each such customer's relevant funds claim,

(b) details of the asset pool including details of—

(i) the safeguarding measures employed by the institution and the amount of relevant funds safeguarded in accordance with each of such measures,

(ii) any relevant funds invested (in the case of a payment institution) in secure, liquid assets approved by the FCA in accordance with regulation 23(6) of the PSR 2017(**9**) or (in the case of an electronic money institution) in secure, liquid low-risk assets in accordance with regulation 21(2) of the EMR 2011(**10**),

(iii) any insurance policy covering relevant funds,

(iv) the accounts in which relevant funds are held,

(v) any guarantee given by an authorised insurer or authorised credit institution covering relevant funds,

(c) details as to any security interest held by the institution or another person in respect of the asset pool.

(3) Where the particulars required by paragraph (2)(a) relate to customers who are individuals—

(a) the particulars must be set out in a separate schedule from the statement of affairs,

(**9**) S.I. 2017/752, amended by S.I. 2017/1173, 2018/1021. There are other amending instruments but none is relevant.
(**10**) S.I. 2011/99, amended by S.I. 2013/3115, 2015/575, 2017/252, 2017/1173, 2018/1021. There are other amending instruments, but none is relevant.

(b) the statement of affairs must state the number of customers who are individuals and the total of the debts owed to them.

(4) Subject to paragraph (5), the administrator must not—

(a) disclose to any person any schedule or any of the details contained in any schedule provided under paragraph (3)(a),

(b) send or deliver to any person (including the registrar of companies) any schedule provided under paragraph (3)(a) at the same time as sending or delivering the statement of affairs,

(c) include any schedule or any of the details contained in any schedule provided under paragraph (3)(a) in a statement of proposals under rule 24 or a revised statement of proposals under rule 30.

(5) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (3)(a).

Statement of concurrence

19.—(1) The administrator may require any relevant person to submit a statement of concurrence.

(2) Where the administrator requires a statement of concurrence, the nominated person making the statement of affairs must be informed of that fact.

(3) The nominated person must deliver a copy of the statement of affairs to every person who has been required to submit a statement of concurrence.

(4) The relevant person required to submit a statement of concurrence must deliver the statement of concurrence together with a copy before the end of the period of five 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 relevant person.

(5) A statement of concurrence—

(a) must identify the institution,

(b) may be qualified in respect of matters dealt with by the statement of affairs, where the relevant person making the statement of concurrence—

(i) is not in agreement with the statement of affairs,

(ii) considers the statement of affairs to be erroneous or misleading,

(iii) is without the direct knowledge necessary for concurring with it.

(6) A statement of concurrence must be a statutory declaration made in accordance with the Statutory Declaration Act 1835(**11**).

(7) Subject to paragraph (9) and rule 20, the administrator must as soon as is reasonably practicable deliver a copy of the statement of affairs and any statement of concurrence to the registrar of companies.

(8) Subject to paragraph (10) and rule 20, the administrator must insert any statement of affairs submitted to the administrator, together with any statement of concurrence, in the sederunt book.

(9) The administrator must not deliver to the registrar of companies with the statement of affairs and any statement of concurrence any schedule required by rule 17(5)(b) or rule 18(3)(a).

(10) Any schedule required by rule 17(5)(b) or rule 18(3)(a) must not be entered in the sederunt book.

(**11**) 1835 c. 62.

Limited disclosure

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

(2) The court may, on such application, order that the statement of affairs or any statement of concurrence or, as the case may be, a specified part of either must not be delivered to the registrar of companies or entered in the sederunt book.

(3) The administrator must, as soon as is reasonably practicable, deliver a copy of the order, the statement of affairs and any statement of concurrence (to the extent provided by the order) to the registrar of companies and must place a copy of the order in the sederunt book.

(4) If a creditor or a customer seeks disclosure of the statement of affairs, a statement of concurrence or a specified part of either 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) must be supported by written evidence in the form of an affidavit.

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

(7) The court may make any order for disclosure subject to such conditions as to—

(a) confidentiality,

(b) duration,

(c) the scope of the order in the event of any change of circumstances, or

(d) other matters,

as it thinks just.

(8) 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 is reasonably practicable after the change, apply to the court for the order or any part of it to be discharged or varied.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (8)—

(a) deliver a copy of the statement of affairs and any statement of concurrence to the extent provided by the order to the registrar of companies,

(b) place a copy of the order in the sederunt book together with a copy of the statement of affairs and any statement of concurrence to the extent no longer subject to the order under paragraph (2).

(10) When the statement of affairs or a statement of concurrence is delivered to the registrar of companies in accordance with paragraph (9)(a), the administrator must, where they have sent a statement of proposals under paragraph 49, deliver to the creditors and the customers a copy or summary of the statement of affairs and any statement of concurrence as delivered to the registrar of companies.

Release from duty to submit statement of affairs

21.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement to submit a statement of affairs or to extend the period within which it must be submitted may be exercised

upon the administrator's own initiative, or at the request of any nominated person who has been required to provide the statement of affairs.

(2) The nominated person may, if they request a revocation or extension 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) and rule 16(3)(b) 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 giving notice to any other party other than the applicant.

(4) The applicant must, at least fourteen days before any hearing, deliver to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence on which the applicant intends to rely.

(5) Where an application has been made under paragraph (2), the FCA may be given notice of the hearing and may appear or be represented at the hearing or may make written representations.

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

(7) If a report is lodged under paragraph (6), a copy of it must be delivered by the administrator to the applicant not later than five business days before the hearing.

(8) Copies of any order made on the application must be delivered by the court to the applicant and the administrator.

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

(10) A copy of any order made on the application must be placed in the sederunt book.

Expenses of statement of affairs

22.—(1) A nominated person making the statement of affairs and a statutory declaration or a relevant person making a statement of concurrence must be allowed and paid by the administrator as an expense of the special administration, any expenses incurred by the nominated person or 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 nominated person or a relevant person from any obligation with respect to—

(a) the preparation, verification and submission of the statement of affairs or a statement of concurrence,

(b) the provision of information to the administrator.

Submission of accounts

23.—(1) Any of the persons specified in section 235(3) of the IA 1986 must, at the request of the administrator, provide the administrator with the institution'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 institution entered special administration, or from an earlier date to which the audited accounts of the institution were last prepared.

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

(4) Rule 22 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 must (if the administrator so requires) be verified by a statutory declaration and (whether or not so verified) be delivered within twenty-one days of the request under paragraph (1) (or such longer period as the administrator may allow).

CHAPTER 2

Statement of proposals

Administrator's proposals

24.—(1) The administrator must under paragraph 49 (or regulation 39 where the FCA has given a direction under regulation 38 which has not been withdrawn) make a statement of proposals, which is required by paragraph 49(4) to be delivered to the registrar of companies, creditors, every customer of whose claim the administrator is aware and who the administrator has a means of contacting, the FCA and members.

(2) In addition to the information required by paragraph 49 (or regulation 39, if applicable), the statement of proposals must include—

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

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

(c) details of the administrator's appointment (including the date of appointment and details of who applied for the appointment),

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

(e) the names of the directors and secretary of the institution and details of any shareholdings in the institution they have,

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

(g) if a statement of affairs has been submitted—

(i) a copy or summary of it, except so far as an order under rule 20 limits disclosure of it, and excluding any schedule referred to in rule 17(5)(b) or rule 18(3)(a) or the particulars relating to creditors or customers contained in any such schedule,

(ii) any comments which the administrator may have on the statement of affairs,

(h) if an order limiting the disclosure of the statement of affairs has been made under rule 20, a statement of that fact, as well as—

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

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

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

(i) subject to sub-paragraphs (j) and (k), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name, postal address and the amount of the debt owing to each creditor of the institution including details of any security held and the value of any such security,

(j) sub-paragraph (k) applies where the particulars required by sub-paragraph (i) relate to creditors who are—

(i) employees or former employees of the institution, or

(ii) consumers claiming amounts paid in advance for the supply of goods or services,

(k) where this paragraph applies—

(i) the particulars required under sub-paragraph (i) must state separately for each of sub-paragraphs (j)(i) and (j)(ii) the number of such creditors and the total of the debts owed to them,

(ii) the particulars required by sub-paragraph (i) in respect of such creditors under sub-paragraphs (j)(i) and (j)(ii) must be set out in separate schedules,

(l) subject to sub-paragraph (m), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name and (to the extent known to the administrator after making all reasonable enquiries) the contact details of each customer of the institution and each customer's relevant funds claim together with—

(i) details as to any security interest held by the institution or another person in respect of the asset pool,

(ii) details of the asset pool and the measures used by the institution to safeguard relevant funds,

(m) where customers are individuals—

(i) the particulars required under sub-paragraph (1) must state separately the number of such customers and the total of the debts owed to them,

(ii) the remaining details required under sub-paragraph (1) in relation to such customers must be set out in a separate schedule,

(n) if no statement of affairs is submitted, details of the financial position of the institution at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the institution entered special administration) and an explanation as to why there is no statement of affairs,

(o) a statement of the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 129,

(p) a statement complying with paragraph (6) 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,

(q) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the IA 1986 (unless the administrator intends to propose a company voluntary arrangement),

(r) an estimate of the value of the prescribed part for the purposes of section 176A of the IA 1986 (unless the institution intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief,

(s) an estimate of the value of the institution'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,

(t) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FCA has given a direction under regulation 38, an explanation as to how this has dictated the priority given to a particular objective),

(u) the manner in which the affairs and business of the institution have been managed and financed since the date of the administrator's appointment (including the reasons for and terms of any disposal of assets),

(v) 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 institution will be managed and financed if the administrator's proposals are approved,

(w) details of any reconciliation undertaken by the administrator (whether under regulation 13 or otherwise),

(x) details of the steps taken by the administrator to constitute any asset pool,

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

(z) how it is proposed that the special administration shall end, in accordance with Objective 3,

(aa) any other information which the administrator thinks necessary to enable creditors and customers to decide whether or not to approve the statement of proposals.

(3) Subject to paragraph (4), the administrator must not—

(a) disclose any schedule or any of the details contained in any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) to any person,

(b) send or deliver any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) with a statement of proposals or revised statement of proposals to any person (including the registrar of companies) or enter any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) in the sederunt book.

(4) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii).

(5) In this Part—

(a) "pre-administration costs" are—

(i) fees charged,

(ii) expenses incurred,

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

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

(6) 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 institution 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 costs incurred in connection with the pursuit of Objective 1,

(ii) the costs incurred in connection with the pursuit of Objectives 2 and 3,

(iii) the fees charged by the administrator,

(iv) the expenses incurred by the administrator,

(v) 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),

(vi) 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)),

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

(i) subject to approval under rule 97,

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

(7) The statement of proposals—

(a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the institution,

(b) must include a statement of any exclusion.

(8) In addition to the standard contents, a notice published by the administrator under paragraph 49(6) must—

(a) identify the proceedings,

(b) be advertised in such manner as the administrator thinks fit,

(c) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.

(9) In addition to the standard contents, a notice published by the administrator under paragraph 49(6) that the statement of proposals is to be provided free of charge to a payment system operator must—

(a) identify the proceedings,

(b) include a statement confirming that a copy of the statement of proposals will also be provided free of charge to the Payment Systems Regulator if it applies in writing to a specified address,

(c) be advertised in such a manner as the administrator thinks fit,

(d) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.

(10) 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 must as soon as is reasonably practicable after the order has been made deliver a notice of the extension to—

(a) every creditor of the institution of whose address the administrator is aware,

(b) every customer of the institution who the administrator has a means of contacting and of whose relevant funds claim the administrator is aware,

(c) the members of the institution of whose address the administrator is aware,

(d) any relevant payment system operator,

(e) the registrar of companies,

(f) the FCA.

(11) A notice under paragraph (10) must—

(a) identify the proceedings,

(b) state the date to which the court has ordered an extension,

(c) contain the registered office of the institution.

(12) The administrator is taken to have complied with paragraph (10)(c) if the administrator publishes a notice which—

(a) contains the standard contents,

(b) contains the information in paragraph (9),

(c) is advertised in such a manner as the administrator thinks fit,

(d) states that the member may request in writing a copy of the notice of the extension, and states the address to which to write,

(e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.

(13) The administrator is taken to have complied with paragraph (10)(d) if the administrator publishes a notice which—

(a) contains the standard contents,

(b) contains the information in paragraph (9),

(c) is advertised in such a manner as the administrator thinks fit,

(d) states that the payment system operator may request in writing a copy of the notice of the extension free of charge, and states the address to which to write,

(e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.

Limited disclosure of the statement of proposals

25.—(1) Where the administrator thinks that it would prejudice the conduct of the special administration (or might reasonably be expected to lead to violence against any person) for any of the matters specified in rule 24(2)(i) to (n) 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, customers or members of the institution as otherwise required by paragraph 49(4) or to a payment system operator or to the Payment Systems Regulator or entered in the sederunt book.

(3) The administrator must as soon as is reasonably practicable deliver 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 deliver a copy of the order to the registrar of companies and must place a copy in the sederunt book.

(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 an affidavit.

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

(7) The court may make any order for disclosure subject to such conditions as to—

(a) confidentiality,

(b) duration,

(c) the scope of the order in the event of any change of circumstances, or

(d) other matters,

as it thinks just.

(8) 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 is reasonably practicable after the change, apply to the court for the order or any part of it to be discharged or varied.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (7)—

(a) deliver to the persons specified in paragraph (2) a copy of the statement of proposals to the extent allowed by the order,

(b) place a copy of the order in the sederunt book together with a copy of the statement of proposals to the extent no longer subject to the order under paragraph (2).

CHAPTER 3

Initial meeting to consider proposals

Initial meeting

26.—(1) As soon as is reasonably practicable after an invitation to the initial meeting has been sent out in accordance with paragraph 51(1), the administrator must have gazetted—

(a) that an initial meeting of creditors and customers is to take place,

(b) the venue fixed for the meeting,

(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 must notify each person who was sent notice in accordance with paragraph 49(4).

(4) This rule does not apply where the FCA has given a direction under regulation 38 and the direction has not been withdrawn.

Notice to officers

27.—(1) Where rule 26 applies, notice to attend the meeting must be given to every present or former officer of the institution whose presence the administrator thinks is required at the same time that notice is sent to creditors and customers.

(2) That notice must contain—

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

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

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

(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

28.—(1) At the initial meeting of creditors and customers—

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

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

(2) Creditors and customers must vote as separate classes on whether to approve the proposals.

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

(4) 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.

(5) 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 29 applies.

(6) This rule does not apply where the FCA has given a direction under regulation 38 and the direction has not been withdrawn.

Adjournment of meeting to approve the statement of proposals

29.—(1) If, at the initial meeting of creditors and customers, there is not the requisite majority for approval of the statement of proposals (with or without any modifications) for each class of voter, the administrator may, and must if a resolution is passed to that effect, adjourn the meeting for not more than fourteen 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 fourteen 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, statements of claim 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 must 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 customers for approval of the statement of proposals, the administrator may apply to the court for directions under paragraph 63.

Revision of the statement of proposals

30.—(1) The administrator must under paragraph 54 (or regulation 40 where the FCA has given a direction under regulation 38 which has not been withdrawn) make a statement setting out the proposed revisions to the statement of proposals ("the revised statement").

(2) The revised statement, which must be delivered in accordance with paragraphs 54(2)(b) and (c), must include—

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

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

(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 institution and details of any shareholdings in the institution 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 upon the customers (as the case may be),

(h) any other information that the administrator thinks necessary to enable creditors and customers (where applicable) to decide whether or not to approve the proposed revisions.

(3) A copy of the revised statement must be delivered to the FCA at the same time as the revised statement is delivered to others in accordance with paragraph 54(2).

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

(5) Subject to paragraph 54(3), within five business days of delivering the revised statement the administrator must deliver a copy of the statement to every member of the institution of whose address the administrator is aware.

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

(7) The notice must be published as soon as is reasonably practicable after the administrator delivers the revised statement in accordance with paragraph 54(2) and, in addition to the standard contents, must—

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

(b) state the address to which to write.

(8) A copy of the revised statement must be placed in the sederunt book.

(9) Paragraph (4) shall not apply where the FCA has given a direction under regulation 38 which has not been withdrawn at the time the administrator proposes a revision to the statement of proposals.

(10) In this rule, a reference to—

(a) "paragraph 54(2)" also includes a reference to regulation 40(4),

(b) "paragraph 54(3)" also includes a reference to regulation 40(5).

Meeting to approve the revised statement of proposals

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

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

(a) creditors and customers must vote as separate classes on whether to approve the revisions,

(b) the revisions must not be approved unless both classes of voter have voted to approve them,

(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) If the administrator is unable to get the requisite majority of creditors or customers for approval of the revised statement of proposals, the administrator may apply to the court for directions under paragraph 55.

(4) Where the FCA has given a direction under regulation 38 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.

Notice to creditors and customers

32.—(1) As soon as is reasonably practicable after the conclusion of a meeting of creditors, of customers, or of creditors and customers to consider the administrator's proposals or revised proposals, the administrator must—

(a) deliver notice of the result of the meeting to every person who received a notice of the meeting,

(b) deliver notice of the result of the meeting to the Payment Systems Regulator and any payment system operator,

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

(d) lodge with the court a copy of the proposals considered at the meeting and notice of the result of the meeting,

(e) place a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting in the sederunt book.

(2) The administrator is taken to have complied with paragraph (1)(b) if the administrator publishes a notice which—

(a) contains the standard contents,

(b) identifies the proceedings,

(c) contains the registered office of the institution,

(d) is advertised in such manner as the administrator thinks fit,

(e) states that the payment system operator may request in writing a copy of the notice of the result of the meeting free of charge, and states the address to which to write,

(f) is published as soon as is reasonably practicable after the administrator has delivered the notice of the result of the meeting to those who received a copy of the original proposals.

CHAPTER 4

Meetings generally

Meetings generally

33. Except where different provision is made in the Regulations or these Rules, this Chapter applies to meetings called by the administrator—

(a) under paragraph 51, 54(2) or 62,

(b) following a request or a direction from the court under paragraph 56.

Venue

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

(2) Meetings must be called 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

35.—(1) This rule applies except where the court orders under rule 37 that notice of a meeting be given by advertisement only.

(2) Notice calling a meeting must be delivered at least fourteen 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 institution at the date when it entered special administration (except for those who have subsequently been paid in full),

(b) for a meeting involving the customers, to all customers of whose relevant funds claim the administrator is aware and has a means of contacting (except for those who have no outstanding relevant funds claims),

(c) for a meeting of contributories, to every person appearing (by the institution's books or otherwise) to be a contributory of the institution and of whose address the administrator is aware.

(4) The FCA must also be notified of any such meeting.

Notice of meeting by individual notice: content and accompanying documents

36.—(1) This rule applies except where the court orders under rule 37 that notice of a meeting be given by advertisement only.

(2) Notice calling a meeting must specify the purpose of and venue for the meeting, the persons entitled to attend and vote at the meeting, and state that a creditor or customer (as the case may be) wishing to vote at the meeting must lodge a statement of claim (including relevant funds claims) and (if applicable) a proxy at or before the date fixed for the meeting.

(3) A blank proxy complying with rule 88 must be sent out with every notice calling a meeting.

Notice of meeting by advertisement only

37.—(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—

(a) the cost of advertisement,

(b) the amount of assets available,

(c) the extent of the interest of creditors, customers, members and contributories or any particular class of them.

Content of notice for meetings

38. Notice of a meeting of the creditors, the customers or a meeting of creditors and customers, must contain the following information—

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

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

(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 customers' meeting under paragraph 51,

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

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

(iv) a meeting under paragraph 62,

unless the court orders that notice be given by advertisement only in accordance with rule 37.

Gazetting and advertisement of meetings

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

(a) that a meeting of—

(i) creditors,

(ii) customers,

(iii) creditors and customers,

(iv) members, or

(v) contributories

is to take place,

(b) the venue fixed for the meeting,

(c) the purpose of the meeting,

(d) the time and date by which, and place at which, those attending who wish to vote must lodge proxies and (in the case of a meeting of creditors, customers or both) statements of claim.

(2) Notice under this rule must be gazetted before or as soon as is 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

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

Requisition of meetings

41.—(1) A request for a requisitioned meeting must contain the following information—

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

(b) the full name, registered address and registered number of the institution,

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

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

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

(a) a list of the creditors concurring with the request and of the amounts of their respective claims, and written confirmation of concurrence from each creditor concurring, or

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

(3) A requisitioned meeting must be held within twenty-eight days of the date of the administrator's receipt of the notice.

(4) The administrator—

(a) must notify the FCA of the details and purpose of the requisitioned meeting,

(b) may, if the administrator thinks appropriate, summon customers to the requisitioned meeting.

Expenses of requisitioned meetings

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

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

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

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

Quorum at meetings

43.—(1) A meeting of creditors, customers, creditors and customers 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 customers, at least one customer entitled to vote,

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

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

(3) For the purpose of this rule, the reference to the creditor, customer or contributories necessary to constitute a quorum is not confined to those persons present or duly represented in accordance with section 434B of the IA 1986 or under section 323 of the CA 2006(**12**) but includes those represented by proxy by any person (including the chair).

(4) Where—

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

(i) the chair alone,

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

(b) the chair is aware, by virtue of statements of claim 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.

(**12**) 2006 c. 46; section 323 was amended by S.I. 2009/1632.

Chair at meetings

44.—(1) At any meeting of the creditors, the customers, or creditors and customers summoned by the administrator, the administrator must 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—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, 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,

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

Adjournment by chair

45.—(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 rule must not be for a period of more than fourteen 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 fourteen days after the date on which the meeting was originally held.

(4) Rule 34 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 customers.

Adjournment in absence of chair

46.—(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.

Statements of claim and proxies in adjournment

47. Where a meeting under these Rules is adjourned, statements of claim and proxies may be used if lodged before the resumption of the adjourned meeting.

Suspension

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

Venue and conduct of company meetings

49.—(1) Where the administrator calls a meeting of members of the institution, the administrator must fix a venue for it having regard to the convenience of the members of the institution.

(2) The chair of the meeting must 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—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

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

(4) If within 30 minutes after 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 called and conducted in accordance with the law of Scotland, including any applicable provision in or made under CA 2006.

(6) The chair of the meeting must ensure that minutes of its proceedings are entered in the institution's minute book and a copy placed in the sederunt book.

CHAPTER 5

Entitlement to vote at meetings

Entitlement to vote (creditors)

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

(a) the creditor has delivered to the administrator a statement of claim and documentary evidence of the debt which is claimed as due to that person from the institution, including any calculation for the purposes of rule 51 or rule 52,

(b) the details were given to the administrator at or before the meeting,

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

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

(2) Where under rule 54(4) the administrator has become aware that a customer has a shortfall claim—

(a) the administrator must treat the customer as having provided details of the shortfall claim under paragraphs (1)(a) and (b),

(b) the claim must be admitted under paragraph (1)(c) for the purposes of entitlement to vote,

(c) the customer does not need to submit a separate claim under paragraph (1) in order to be entitled to vote as a creditor at a meeting of creditors and customers in respect of its shortfall claim but a customer should, if relevant, lodge a proxy in accordance with paragraph (1)(d).

(3) 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.

(4) The chair of a meeting of creditors, or of a meeting of creditors and customers, may dispense with the requirement to produce documentary evidence of debt in paragraph (1)(a).

Calculation of voting rights (creditors)

51.—(1) Votes are calculated according to the amount of each creditor's claim as at the date on which the institution 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 which has been

made in accordance with that principle or would have been made if that principle 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.

(4) Where a debt is wholly secured its value for voting purposes is nil.

(5) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.

(6) No vote may be cast in respect of a claim more than once on any resolution put to the meeting.

(7) Paragraph (6) does not prevent a creditor from—

(a) voting in respect of less than the full value of an entitlement to vote,

(b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

Calculation of voting rights: special cases (creditors)

52.—(1) A creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the institution 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,

(b) the institution entering special administration.

Procedure for admitting creditors' claims for voting

53.—(1) At a meeting of creditors, or creditors and customers, 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 (customers)

54.—(1) A customer is entitled to vote at a meeting of creditors and customers, or customers only if—

(a) the administrator has been given written details of the customer's relevant funds claim in accordance with rule 99,

(b) the details were given to the administrator at or before the meeting,

(c) the relevant funds claim has been admitted for the purposes of entitlement to vote,

(d) 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 relevant funds claim, once lodged or given in accordance with this rule, need not be lodged or given again.

(3) The chair at a meeting of customers, or creditors and customers, 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 relevant funds claim.

(4) If at any time prior to the initial meeting or to a meeting of creditors and customers, or customers only, the administrator has become aware that a customer has a shortfall claim, the administrator must—

(a) adjust the relevant funds claim submitted, subtracting the value of the shortfall claim from that relevant funds claim,

(b) submit a claim under rule 50(1)(c) on behalf of the customer as to the shortfall claim,

(c) take this shortfall into account in calculating the customer's entitlement to vote,

(d) as soon as is reasonably practicable, notify the customer—

(i) of the amended relevant funds claim and the shortfall claim,

(ii) that a claim for the shortfall claim has been submitted under rule 50.

(5) For the purposes of this Chapter, a customer's voting rights are calculated according to the value of the customer's relevant funds claim submitted under this rule, taking into account any shortfall claim identified prior to the meeting.

Procedure for admitting customers' relevant funds claims for voting

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

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

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

Voting at meetings of creditors and customers

56.—(1) This rule applies to meetings of creditors and customers.

(2) If the administrator thinks it appropriate, the creditors and customers may vote on the same resolution at the meeting, however the creditors and the customers must vote in separate classes on the resolution.

Requisite majorities

57.—(1) Subject to paragraph (2), at a meeting of creditors or customers, or of creditors and customers, a resolution is passed when a majority (in value) of those present and voting in each class, in person or by proxy, have voted at the relevant meeting 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, customers, to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the institution.

(3) "Persons connected with the institution" has the same meaning in respect of the institution as a person connected with a company in accordance with section 249 of the IA 1986.

Requisite majorities at contributories' meetings

58. At a meeting of contributories, voting rights are as at a general meeting of the institution, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the institution is in liquidation.

Appeals against decisions under this Chapter

59.—(1) The chair's decisions under this Chapter are subject to appeal to the court by any creditor, customer, 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 called or make such order as it thinks just.

(3) An appeal under this rule may not be made later than twenty-one 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

60.—(1) The administrator may seek to obtain the passing by creditors, customers, or contributories of a written resolution by delivering a notice to that effect to every creditor, customer, or contributory (as the case may be) who would be entitled to be notified of 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 court and the court reference number,

(b) the full name, registered address and registered number of the institution,

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

(d) the resolution to be voted on (which must be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient of the copy so sent),

(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 the closing date specified in the notice,

(b) in the case of a vote cast by a creditor or by a customer, 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 customer's relevant funds claim.

(5) The closing date is to be set at the discretion of the administrator, but must be not less than fourteen 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,

(b) in the application of Chapter 5 of this Part, the administrator decides that the creditor or customer 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 or where the resolution is one which were it to be passed at a meeting of creditors and customers would require approval by each class voting separately, at least one valid vote from each class.

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

(9) Creditors whose debts amount to at least ten per cent of the total debts of the institution may, within five business days of the date of issue of the notice, require the administrator to call a meeting of creditors and customers (if relevant) to consider the resolution.

(10) Customers whose relevant funds claims amount to at least ten per cent of the total relevant funds claims may, within five business days of the date of issue of the notice, require the administrator to call a meeting of customers and creditors (if relevant) to consider the resolution.

(11) Contributories whose claims represent at least ten per cent of the total voting rights of all contributories having the right to vote a at meeting of contributories may, within five business days of the date of issue of the notice, require the administrator to call a meeting of contributories to consider the resolution.

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

(13) 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, customers 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 of the IA 1986

61.—(1) This rule applies to a request for the administrator under section 246A(9) of the IA 1986(**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 customers, a list of the customers making or concurring with the request and the amounts of their respective relevant funds claims 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,

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

(3) The request must be made within seven 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,

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

(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 twenty-eight days after the original date for the meeting,

(c) give at least fourteen 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 42 does not apply to the calling and holding of a meeting at a place specified in accordance with section 246A(9) of the IA 1986.

Action where person excluded

62.—(1) In this rule and rules 63 and 64, 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 IA 1986,

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

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

(a) continue the meeting,

(b) declare the meeting void and call the meeting again, or

(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 64 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, without an adjournment, declare the meeting suspended for any period up to 1 hour.

Indication to excluded person

63.—(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 is 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 is 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

64.—(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,

(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,

(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,

(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 is 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 63, 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 two business days of the date of receiving the decision of the relevant person.

CHAPTER 7

Records, returns and reports

Minutes

65.—(1) The chair of any meeting under the Regulations or these Rules, other than a company meeting (for which see rule 49(6)), must ensure minutes of its proceedings are 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 and as part of the sederunt book.

(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 customers (personally, by proxy or by corporate representative) and their claims,

(b) a list of the names of customers who attended a meeting of customers or a meeting of both creditors and customers (personally, by proxy or by corporate representative) and their relevant funds claims,

(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 creditors' committee,

(e) a record of every resolution passed.

Returns or reports of meetings

66.—(1) In addition to the information required by rule 183, 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 called,

(b) the venue fixed for the meeting,

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

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

(2) The chair must keep a copy of the report of the meeting as part of the sederunt book.

CHAPTER 8

The creditors' committee

Constitution of creditors' committee

67.—(1) Where it is resolved by a meeting of creditors and customers to establish a creditors' committee (see paragraph 57) for the purposes of the special administration, the creditors' committee must consist of at least three and not more than five persons elected at the meeting.

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

(3) The classes of voters mentioned in paragraph (2) are—

(a) creditors,

(b) customers.

(4) A person claiming to be a creditor is entitled to be a member of the committee provided that the following conditions are met—

(a) that person's claim has not been—

(i) wholly disallowed for voting purposes, or

(ii) wholly rejected for the purpose of distribution or dividend,

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

(5) A person claiming to be a customer is entitled to be a member of the creditors' committee provided that that person's relevant funds claim has not been—

(a) wholly disallowed for voting purposes, or

(b) wholly rejected for the purpose of settling relevant funds claims.

(6) A body corporate may be a member of the creditors' committee, but it cannot act as such otherwise than by a representative appointed under rule 72.

Formalities of establishment

68.—(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 must state that the creditors' committee of the institution has been duly constituted and must include the following—

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

(b) the full name, registered address and registered number of the institution,

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

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

(3) If the chair of the meeting of creditors and customers which resolves to establish the creditors' committee is not the administrator, the chair must as soon as is 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 creditors' committee.

(4) No person may act as a member of the creditors' 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 creditors' committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator's certificate of the creditors' committee's due constitution must not be issued before the persons elected to be members of the creditors' committee in accordance with rule 67 have agreed to act and must be issued as soon as is reasonably practicable afterwards.

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

(7) A copy of the certificate, and of any amended certificate, must be sent to the registrar of companies by the administrator, as soon as is reasonably practicable.

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

Functions and meetings of the creditors' committee

69.—(1) In addition to any functions conferred on the creditors' committee by any provision of the Regulations, the creditors' committee must 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 to paragraphs (3) to (7), meetings of the creditors' committee must be held at a time and place determined by the administrator.

(3) The administrator must call a first meeting of the creditors' committee to take place within six weeks of the creditors' 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 creditors' committee or the member's representative (the meeting then to be held within twenty-one days of the request being received by the administrator),

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

(5) Subject to paragraph (7), the administrator must give five business days' written notice of the venue of any meeting to every member of the creditors' 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 FCA must also be given the notice in paragraph (5).

(7) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 78, the notice period mentioned in paragraph (5) is seven business days.

The chair at meetings

70.—(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—

(a) one who is qualified to act as an insolvency practitioner in relation to the institution, or

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

Quorum

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

Creditors' committee members' representatives

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

(2) A person acting as a representative of a creditors' committee member must hold a letter of authority entitling them so to act (either generally or specially) and authenticated by or on behalf of the creditors' committee-member.

(3) For the purpose of paragraph (2), any proxy in relation to any meeting of creditors, or customers, or creditors and customers must, 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 creditors' committee-member.

(4) The chair at any meeting of the creditors' committee may call on a person claiming to act as a creditors' 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 creditors' committee,

(b) a person who is at the same time representing another creditors' committee member,

(c) a body corporate,

(d) an undischarged bankrupt,

(e) a disqualified director,

(f) a person whose estate has been sequestrated and who has not been discharged,

(g) a person who has granted a trust deed for the benefit of creditors,

(h) a person who has made a composition with creditors,

(i) a person to whom a moratorium period under a debt relief order applies,

(j) 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

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

Termination of membership

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

(a) becomes bankrupt or that person's estate is sequestrated,

(b) grants a trust deed for the benefit of creditors,

(c) makes a composition with creditors,

(d) is a person to whom a moratorium under a debt relief order applies,

(e) at three consecutive meetings of the creditors' 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),

(f) subject to paragraph (3), if voted onto the creditors' committee under rule 67 by the creditors of the institution, ceases to be a creditor and a period of three months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor, or

(g) subject to paragraph (4), if voted onto the creditors' committee under rule 67 by the customers of the institution, has had all relevant funds claims settled (subject to there being an identified shortfall claim or any amounts being retained by the administrator under rule 109(2)(d)), or is found never to have been a customer.

(2) If the cause of termination is the member's bankruptcy or their estate is sequestrated, their trustee in bankruptcy or the trustee in sequestration must replace them as a member of the creditors' committee.

(3) A person to whom paragraph (1)(f) applies must not have their membership terminated if the following conditions are met—

(a) that person is also a customer of the institution,

(b) that person has not had all relevant funds claims settled (subject to there being an identified shortfall claim or any amount being retained by the administrator under rule 109(2)(d)),

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

(4) A person to whom paragraph (1)(g) applies must not have their membership terminated if they are also a creditor of the institution but the administrator may require them to resign if the

administrator thinks that the make-up of the creditors' committee does not reflect all parties with an interest in the achievement of the special administration objectives.

Removal

75.—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and customers, provided that at least fourteen days' notice has 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

76.—(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 creditors' committee so agree, provided that—

(a) the total number of members does not fall below three,

(b) the administrator thinks that the make-up of the creditors' 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 creditors' 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 creditors' committee who are from the same class of voters agree to the appointment,

(b) the person concerned consents to act.

Procedure at meetings

77.—(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 placed in the sederunt book.

Remote attendance at meetings of creditors' committee

78.—(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,

(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,

(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,

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

(6) Any requirement under these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the administrator—

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

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

(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 creditors' committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) The administrator must specify a place for the meeting if—

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

(b) the administrator is requested in accordance with rule 79 to specify a place for the meeting,

(c) that request is made by at least one member of the creditors' committee.

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

79.—(1) This rule applies to a request to the administrator of a meeting under rule 78 to specify a place for the meeting.

(2) The request must be made within five 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,

(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 seven business days after the original date for the meeting,

(c) give five business days' notice of the venue to all those previously given notice of the meeting.

(4) The notices required by paragraphs (3)(a) and (3)(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.

Resolutions of creditors' committees by post

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

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

(3) The FCA must also be notified of each proposed resolution under this rule.

(4) Any member of the creditors' committee may, within seven business days of the date of the administrator notifying them of a resolution, require the administrator to call a meeting of the creditors' committee to consider matters raised by the resolution.

(5) In the absence of such a request, the resolution is deemed to have been passed by the creditors' committee if and when the administrator is notified in writing by a majority of the members that they agree with the resolution.

(6) A copy of every resolution passed under this rule and a note that the creditors' committee's concurrence was obtained must be filed in the sederunt book.

Information from administrator

81.—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator must be in writing, authenticated by the majority of the members of the creditors' 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 must be fixed by the creditors' committee for a business day, and must be held at such time and place as the administrator determines.

(4) The administrator must notify the FCA of the time and place of the meeting.

(5) Where the administrator so attends, the members of the creditors' 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

82.—(1) The administrator must pay any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the creditors' committee's meetings, or otherwise on the creditors' committee's business.

(2) Where the expenses referred to in paragraph (1) are incurred by a creditor member of the creditors' committee, the expenses will be paid out of assets of the institution as an expense of the special administration in the order of priority of payments laid down by rule 95.

(3) Where the expenses referred to in paragraph (1) are incurred by a customer member of the creditors' committee, the expenses will be paid out of the relevant funds as an expense of the special administration in the order of priority of payments laid down by rule 96.

(4) Paragraph (1) does not apply to any meeting of the creditors' committee held within six weeks of a previous meeting, unless the meeting in question is called at the instance of the administrator.

Members dealing with the institution

83.—(1) Membership of the creditors' committee does not prevent a person from dealing with the institution 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 institution for any loss which it may have incurred in consequence of the transaction.

Formal defects

84. 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 creditors' committee or any creditors' committee-member's representative or in the formalities of its establishment.

CHAPTER 9

Progress reports

Content of progress report

85.—(1) A progress report must include—

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

(b) the full name, registered address and registered number of the institution,

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

(d) the date of appointment of the administrator and (subject to paragraph (6)) details of any changes in the administrator since the previous report,

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

(f) whether the FCA have given a direction under regulation 38 and whether that direction has been withdrawn,

(g) details of progress during the period of the report in accordance with paragraph (2) below,

(h) details of any assets of the institution that remain to be realised,

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

(j) where no distribution plan has been approved by the court, how the administrator proposes that the expenses of the special administration, to be paid out of the relevant funds in accordance with Part 4, are to be allocated where the institution has more than one asset pool,

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

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

(2) The details of the progress during the period of the report must include—

(a) a receipts and payments account stating what assets of the institution have been realised, for what value and what payments have been made to creditors, in the form of a summary showing—

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

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

(b) where—

(i) no claim for outlays and remuneration is submitted under rule 129, or

(ii) a claim for outlays and remuneration is submitted under 129 but no determination fixing the amount of outlays and remuneration in accordance with rule 129(8) has been made in respect of such a claim—

(aa) a receipts and payments account which meets the requirements of paragraph (2)(a),

(bb) an estimate of the remuneration due to the administrator during the accounting period together with the basis or bases set out in rule 129(2) on which the estimate is based,

(cc) where remuneration due is not yet determined from the immediately preceding accounting period, an estimate of the remuneration due during that period,

(dd) any outlays incurred,

(c) the receipts and payments account must include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the IA 1986.

(3) Where the basis for the remuneration is a set amount under rule 129(2)(c), it may be shown as that amount without any apportionment to the period of the report.

(4) Where the administrator has made a statement of pre-administration costs under rule 24(2)(p)—

(a) if they are approved under rule 97 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—

(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.

(5) A change in administrator is only required to be shown in the next report after the change.

(6) Where the current administrator is seeking repayment of pre-administration expenses from a former administrator, the change in office-holder must be noted in each report until the claim is settled.

Sending a progress report

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

(a) to the creditors and to the customers,

(b) to the court,

(c) to the registrar of companies.

(2) For the purposes of these Rules, except for Part 7, "accounting period" in relation to a special administration shall be construed as follows—

(a) the first accounting period is the period of six months beginning with the date on which the institution entered special administration,

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

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

(4) An administrator who fails to send a progress report within the time periods referred to in paragraph (1) is guilty of an offence.

(5) This rule is without prejudice to the requirements of Part 7.

CHAPTER 10

Proxies and corporate representation

Definition of proxy

87.—(1) For the purposes of these Rules, a "proxy" is a document made by a creditor, customer, member or contributory (the "principal") which directs or authorises another person ("the proxy-holder") to act as the representative of the principal at one or more meetings by speaking, voting on, abstaining from, or proposing resolutions.

(2) A proxy-holder must be an individual aged 18 or over.

(3) Proxies are for use at meetings called under the Regulations or these Rules.

(4) Only one proxy-holder may be appointed by a principal for any one meeting at which the principal wants to be represented, but the principal may specify one or more proxy-holders in the alternative, in the order in which they are named in the proxy.

(5) Without prejudice to paragraph (4), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting.

(6) Where a proxy appoints the chair (howsoever described in the proxy) as proxy-holder, the chair may not refuse to be the proxy-holder.

(7) A proxy may be—

(a) a specific proxy which relates to a specific meeting, or

(b) a continuing proxy for the duration of the special administration.

(8) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the duration of the special administration.

(9) A specific proxy must—

(a) direct the proxy-holder how to act at the meeting by giving specific instructions,

(b) authorise the proxy-holder to act at the meeting without specific instructions, or

(c) contain both direction and authorisation.

(10) A continuing proxy must authorise the proxy-holder to attend, speak, vote on or abstain from voting on, or propose resolutions without giving the proxy-holder any specific instructions how to do so.

(11) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the administrator.

Issue and use of forms

88.—(1) Forms of proxy must be sent out with every notice calling a meeting to be held in the special administration and such form must be a "blank proxy".

(2) A "blank proxy" is a document which—

(a) complies with the requirements in this rule,

(b) when completed with the details specified in paragraph (4) will be a proxy as described in rule 87.

(3) A blank proxy must state that the principal named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the principal.

(4) The specified details are—

(a) the name and address of the creditor, customer, member or contributory,

(b) either the name of the proxy-holder or the identification of the proxy-holder (such as the chair of the meeting or the administrator),

(c) a statement that the proxy is—

(i) for a specific meeting, which is identified in the proxy, or

(ii) a continuing proxy for the proceedings,and

(d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy-holder is directed to vote in a particular way, to abstain or to propose any resolution.

(5) When it is delivered to the principal, a blank proxy must not contain the name or description of any person as proxy-holder, or instructions as to how a proxy-holder is to act.

(6) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

(7) A form of proxy must be authenticated by the principal, or by some person authorised by that principal (either generally or with reference to a particular meeting).

(8) If the form is authenticated by a person other than the principal, the nature of the person's authority must be stated.

Use of proxies at meetings

89.—(1) A proxy for a specific meeting must be delivered to the chair at or before the meeting.

(2) A continuing proxy must be delivered to the administrator and may be exercised by the proxy-holder at any meeting which begins after the proxy is delivered.

(3) A proxy given for a particular meeting may be used at any adjournment of that meeting but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair before the start of the resumed meeting.

(4) 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.

(5) 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.

(6) A proxy-holder may propose any resolution which is one on which the proxy-holder would be entitled to vote if someone else proposed it.

(7) 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

90.—(1) Subject to paragraph (2), proxies used for voting at any meeting must be retained by the chair of the meeting.

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

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

Right of inspection

91.—(1) So long as proxies lodged with the administrator are in the administrator's hands, the administrator must 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 at a meeting of creditors and customers,

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

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

(2) The reference in paragraph (1) to creditors or to customers is to persons who have submitted in writing a claim to be creditors or, as the case may be, customers of the institution, but does not include a person whose 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 institution 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 or any statement of claim or documentary evidence of debt delivered in accordance with the notice convening the meeting 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, customer, member or contributory for the purpose of that meeting.

(5) This rule is subject to rule 190.

Proxy-holder with financial interest

92.—(1) A proxy-holder must not vote in favour of any resolution which would—

(a) directly or indirectly place the proxy-holder, or any associate of the proxy-holder, in a position to receive any remuneration, fees or expenses out of the insolvent estate or the asset pool, or

(b) fix or change the amount of or the basis of any remuneration, fees or expenses receivable by the proxy-holder or any associate of the proxy-holder from the insolvent estate or the asset pool.

(2) However, a proxy-holder may vote for a resolution described in paragraph (1) if the proxy specifically directs the proxy-holder to vote in that way.

(3) Where the administrator is appointed as proxy-holder and that proxy is used under rule 89(4) by another person acting as chair, the administrator is deemed to be an associate of the person acting as chair.

Corporate representation

93.—(1) Where a person is authorised to represent a corporation (other than as proxy-holder) at a meeting held under the Regulations or these Rules, that person must produce to the chair of the meeting a copy of the resolution from which that person's authority is derived.

(2) The resolution must have been signed or subscribed (or in the case of an electronic document, authenticated) by or on behalf of the corporation in accordance with the Requirements of Writing (Scotland) Act 1995(**14**), and the copy must be 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.

(4) In this rule "authenticated" has the meaning given in the Requirements of Writing (Scotland) Act 1995.

CHAPTER 11

Disposal of charged property

Application to dispose of secured property

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

(2) The court must fix a venue for the hearing of the application, and the administrator must as soon as is reasonably practicable afterwards give notice of the venue to the person who is the holder of the security or the owner of the goods.

(3) If an order is made under paragraph 71 or 72, the court must deliver two copies of the order certified by the court to the administrator.

(4) The administrator must deliver—

(a) a certified copy of the order to the person who is the holder of the security or owner of the goods,

(b) a certified copy of the order to the registrar of companies.

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

PART 4

Expenses of the special administration

Expenses to be paid out of the institution's assets

95.—(1) Subject to rule 96, the expenses of the special administration to be paid out of the assets of the institution 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 (other than unpaid pre-administration costs approved under rule 97 for work done in pursuit of Objectives 2 and 3),

(b) failure-related costs approved under regulation 42,

(**14**) 1995 c. 7.

(c) the cost or proportionate cost of any caution provided by the administrator,

(d) the costs of the applicant for the special administration order and any person appearing on the hearing of the application,

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

(f) 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,

(g) any necessary disbursements incurred 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 82, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (j) below),

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

(i) the administrator's remuneration for services in pursuit of Objectives 2 and 3 the basis of which has been fixed under Chapter 1 of Part 8 of these Rules, and unpaid pre-administration costs approved under rule 97 for work done in pursuit of Objectives 2 and 3,

(j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the institution (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 special administration in such order of priority as the court thinks just.

(4) For the purposes of paragraph 99(3) and subject to rule 96, 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 relevant funds

96.—(1) The expenses of the special administration to be paid out of the relevant funds held by the institution are payable in the following order of priority—

(a) expenses properly incurred by the administrator in pursuing Objective 1 (other than unpaid pre-administration costs approved under rule 97 for work done in pursuit of Objective 1),

(b) any failure-related costs approved under regulation 42 to the extent that the institution's assets are insufficient to satisfy such liabilities,

(c) any necessary disbursements incurred by the administrator in the course of the special administration specific to the achievement of Objective 1 (including any expenses incurred by customer members of the creditors' committee or their representatives and allowed for by the administrator under rule 82 but not including any payment of corporation tax in circumstances referred to in rule 95(1)(j),

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

(e) the administrator's remuneration the basis of which has been fixed under rule 129 and unpaid pre-administration costs approved under rule 97 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 there are insufficient relevant funds to satisfy the liabilities.

(3) The court may, in the event of the relevant funds being insufficient to satisfy the liabilities, make an order as to the payment out of the relevant funds of the expenses incurred in the special 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.

(5) The "costs of distribution" referred to in regulation 18(5) comprise the expenses set out in this rule.

Pre-administration costs

97.—(1) Where the administrator has made a statement of pre-administration costs under rule 24(2)(p), 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) Paragraph (3) applies if—

(a) there is no creditors' committee,

(b) the creditors' committee does not make the necessary determination, or

(c) the creditors' committee makes the necessary 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.

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

(a) a meeting of customers where the pre-administration costs were incurred wholly in pursuance of Objective 1,

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

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

(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 twenty-eight days of receipt of the request.

(5) 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 if—

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

(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.

(6) Paragraphs (2) to (4) of rule 130 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 the relevant funds

98. The administrator must set out, in the distribution plan under rule 109, how the administrator proposes that the expenses of the special administration, to be paid out of the relevant funds in accordance with this Chapter, are to be allocated where the institution has more than one asset pool.

PART 5

Relevant funds claims

Content of relevant funds claim

99.—(1) This rule applies to the submission of relevant funds claims.

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

(3) The relevant funds claim must—

(a) be made out by, or under the direction of, the claimant and must be authenticated by the claimant or a person authorised on its behalf,

(b) contain the claimant's name and address,

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

(4) The relevant funds claim must include the following information to the extent that the information is known by the claimant—

(a) the amount of the relevant funds claim as at the time the institution entered special administration less any payments made after that date in relation to the relevant funds claim,

(b) details of how and when the debt was incurred by the institution including details of all PS or EMI contracts the claimant has entered into under which, at the time the relevant funds claim is submitted, liabilities are still owed from either the institution to the claimant or vice versa,

(c) details of any security granted by the claimant in respect of its relevant funds claim.

(5) Where a relevant funds claim does not include the information set out in paragraph (4)(a) or where such information differs from the information held by the institution, the administrator shall be entitled to rely on their and the institution's own records to assess the amount of the relevant funds claim.

(6) The relevant funds claim must specify details of any documents by reference to which the relevant funds claim can be substantiated but, subject to paragraph (7), it is not essential that such documents be attached to the relevant funds claim or submitted with it.

(7) Where the administrator thinks it necessary for the purpose of substantiating the whole or any part of a relevant funds claim submitted, the administrator may—

(a) call for any document or other evidence to be produced,

(b) send a request in writing for further information from the claimant.

Debt in a foreign currency

100.—(1) A relevant funds claim payable in a foreign currency must state the amount of the relevant funds claim in that currency.

(2) The administrator must convert all such relevant funds claims into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date the institution entered special administration.

Costs of making a claim

101. Unless the court orders otherwise, every claimant under rule 99 bears the cost of making a relevant funds claim, including costs incurred in providing documents or evidence or responding to requests for further information.

New administrator appointed

102.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all relevant funds claims received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the relevant funds claims and return it to the former administrator.

(3) From then on, all relevant funds claims submitted under rule 99 must be sent to and retained by the new administrator.

Admission and rejection of relevant funds claim

103.—(1) The administrator may admit or reject a relevant funds claim in whole or in part.

(2) If the administrator rejects a relevant funds claim in whole or in part, the administrator must prepare a written statement of reasons for doing so, and deliver it as soon as is reasonably practicable to the claimant.

(3) The administrator must include the following information in the sederunt book—

(a) details of a decision of the administrator to accept a relevant funds claim (whether in whole or in part) under paragraph (1) including the amount of the claim accepted,

(b) details of the administrator's reasons for rejecting a relevant funds claim (whether in whole or in part) under paragraph (2),

(c) any decision of the court on an appeal under rule 104,

(d) any decision of the court on an application made under rule 106.

Appeal against decision on relevant funds claim

104.—(1) If a claimant is dissatisfied with the administrator's decision with respect to their relevant funds claim, that claimant may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days (or such other period as the administrator may agree or the court may order) of the claimant receiving the statement sent under rule 103.

(3) The applicant must give notice of an application under paragraph (1) to the FCA.

(4) Where application is made to the court under this rule, the court must fix a venue for the application to be heard.

(5) The applicant must send notice of the venue fixed by the court under paragraph (4) to—

(a) the administrator,

(b) the FCA.

(6) The administrator must, on receipt of the notice, lodge with the court the relevant funds claim, together (if relevant) with a copy of the statement sent under rule 103.

(7) After the application has been heard and determined, the documentation relating to the relevant funds claim must, unless the relevant funds claim 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.

(9) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to exclude a statement of claim or to reduce the amount claimed.

(10) If the court gives permission under paragraph (9), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.

Withdrawal or variation of relevant funds claim

105. A relevant funds claim may at any time, with the agreement of the administrator, be withdrawn or varied as to the amount claimed.

Exclusion of relevant funds claim by the court

106.—(1) The court may exclude a relevant funds claim or reduce the amount claimed—

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

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

(2) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(3) The applicant must send notice of the venue fixed by the court under paragraph (2)—

(a) in the case of an application by the administrator, to the claimant who made the relevant funds claim,

(b) in the case of an application by a customer or creditor, to the administrator and to the claimant who made the relevant funds claim (if the applicant is not the same customer).

(4) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to reduce the amount claimed.

(5) If the court gives permission under paragraph (3), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.

PART 6

Objective 1

CHAPTER 1

Setting a bar date and further notifications

Notice of the bar date

107.—(1) This rule applies where the administrator sets a bar date for the submission of relevant funds claims as set out in regulation 20(1) and 21(1) (and for the purposes of this rule "bar date" includes a hard bar date).

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

(a) to each customer of whose relevant funds claim the administrator is aware and whom the administrator has a means of contacting,

(b) to each person whom the administrator believes has a right to assert a security interest or other entitlement over the asset pool and whom the administrator has a means of contacting.

(3) Notice of the bar date must also be sent to the FCA.

(4) Notice of the bar date—

(a) must be gazetted,

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

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

Notifying potential claimants after bar date has passed

108.—(1) This rule applies where, after the bar date under regulation 20 has passed—

(a) there is evidence from—

(i) the records of the institution, or

(ii) information received by the administrator,

that there is a customer who is eligible to make a relevant funds claim but that the administrator has not received a relevant funds claim from that customer,

(b) the administrator has a means of contacting that customer.

(2) The administrator must send notice to that customer in writing stating that the administrator believes that customer is eligible to submit a relevant funds claim.

(3) The notice under paragraph (2) must state that—

(a) the administrator believes that that customer has a relevant funds claim,

(b) in making the distribution plan under rule 109, the administrator intends to calculate that customer's relevant funds claim according to the information available to the administrator unless—

(i) that customer advises the administrator that it is not owed any relevant funds within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator,

(ii) that customer submits a relevant funds claim in accordance with rule 99 within fourteen business days of receipt of the notice or such longer period as may be agreed by the administrator, or

(iii) the court directs otherwise following an application made in accordance with rule 106.

CHAPTER 2

Distribution plan

Distribution plan

109.—(1) This rule applies where after setting a bar date under regulation 20, the administrator proposes to make a distribution from the asset pool.

(2) The administrator must draw up a distribution plan setting out—

(a) subject to paragraph (3), a schedule of dates on which a distribution is to be made from the asset pool ("a distribution"),

(b) the identity of the customers to whom a distribution is to be made,

(c) how each relevant funds claim is to be calculated, taking into account—

(i) any liabilities owed by the customer to the institution under a PS or EMI contract,

(ii) any liabilities owed to the customer by the institution under a PS or EMI contract,

(iii) any shortfall claim of the customer,

(d) the amount to be retained by the administrator from the asset pool to pay the expenses of the special administration in accordance with rules 96 and 98 and how the retention of these amounts will affect the amount paid to settle relevant funds claims,

(e) the amount to be retained by the administrator from the asset pool by way of provision for any third party fees and expenses in respect of which a third party has a right of set-off or security right which takes priority over relevant funds claims in terms of regulation 18 and how the retention of these amounts will affect the amount paid to settle relevant funds claims.

(3) In setting out the schedule of dates for distributions, no date must be earlier than three months after the bar date.

(4) For the purpose of calculating the customer's relevant funds claim so that the claim can be paid out (or partly paid out) before the contingency occurs or the dispute is resolved, the distribution plan must also set out—

(a) where any liabilities under paragraph (2)(c) are contingent, how the administrator intends to value the liability,

(b) where any liabilities are disputed, whether the administrator intends to make an assumption as to the outcome of the dispute.

(5) Where an institution has more than one asset pool, the administrator must draw up a distribution plan for each asset pool.

Approval by the creditors' committee

110.—(1) Where there is a creditors' committee, the administrator must call a meeting of that committee to approve the distribution plan.

(2) The administrator must 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

111.—(1) This rule applies where a meeting of the creditors' committee has taken place in accordance with rule 110 or where there is no creditors' committee.

(2) The administrator must apply to the court for approval of the distribution plan.

(3) The administrator must send a copy of the distribution plan together with details as to how to find out the venue of the hearing, to the following—

(a) all persons who have submitted a relevant funds claim,

(b) any customer notified under rule 108,

(c) the FCA.

(4) The court, on receiving an application under paragraph (2) must fix the venue for the hearing and in fixing the venue must 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 108 applies, the administrator has made the necessary notifications in accordance with that rule,

(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

112.—(1) This rule applies where the administrator receives a relevant funds claim after the bar date set under regulation 20.

(2) Where the relevant funds claim is not submitted in accordance with rule 99, the administrator must notify the claimant accordingly and ask them to resubmit their relevant funds claim in accordance with the relevant rule.

(3) Where the relevant funds claim is submitted in accordance with rule 99 after the bar date set under regulation 20 but before a distribution under either regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable, include within the distribution any such relevant funds claim in accordance with regulation 20(5).

(4) Where the relevant funds claim is submitted in accordance with rule 99 after a distribution under either regulation 20 or a distribution plan, the administrator must, so far as is reasonably practicable include within any subsequent distribution any such relevant funds claim in accordance with regulation 20(9).

(5) The administrator may amend the distribution plan to reflect distributions under this rule without the need for the plan to be approved again by either the court or the creditors' committee.

PART 7

Claims by and distributions to creditors

Application and Interpretation of Part

113.—(1) This Part applies where the administrator proposes to make a distribution to creditors or any class of creditors.

(2) Where the distribution is to a particular class of creditors, references in this Part to creditors shall be a reference to that class of creditors only.

Payments of dividends

114.—(1) On the final determination of the remuneration under Chapter 1 of Part 8 the administrator must, subject to rule 128, pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

(a) allocated to a creditor which is not cashed or uplifted, or

(b) dependent on a claim in respect of which an amount has been set aside under rule 128(6) or rule 128(7)

must be held by the administrator in an appropriate bank or institution in the name of the Accountant of Court and the deposit receipts transmitted to the Accountant of Court.

(3) If a creditor's claim is revalued, the administrator may—

(a) in paying any dividend to that creditor, make such adjustment to it as the administrator considers necessary to take account of that revaluation, or

(b) require the creditor to repay to the administrator the whole or part of a dividend already paid to the creditor.

(4) The administrator must insert in the sederunt book the audited accounts, scheme of division and the final determination in relation to the administrator's outlays and remuneration.

New administrator appointed

115.—(1) If a new administrator is appointed in place of another, the former administrator must, as soon as is reasonably practicable, transmit to the new administrator all the creditors' claims which the former administrator has received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the creditors' claims and return it to the former administrator.

(3) From then on, all creditors' claims must be sent to and retained by the new administrator.

Submission of claims

116.—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the institution in respect of any accounting period, must submit the creditor's claim to the administrator not later than eight weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the administrator the following—

(a) a statement of claim as described in paragraph (3),

(b) documentary evidence of debt,

but the administrator may dispense with the requirement of sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

(a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf,

(b) state the creditor's name and address,

(c) if the creditor is a company, identify the company,

(d) state the name and address of any person authorised to act on behalf of the creditor,

(e) state the total amount claimed in respect of all debts as at the date on which the institution entered special administration,

(f) state whether or not the claim includes any outstanding uncapitalised interest,

(g) contain particulars of how and when the debt was incurred by the institution,

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

(i) include details of any retention of title in relation to goods to which the debt relates,

(j) state the nature and amount of any preference under Schedule 6 to the IA 1986(**15**) claimed in respect of the debt,

(k) include any details of any document by reference to which the debt can be substantiated,

(l) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the administrator has required the creditor to discharge, or convey or assign, the security under Rule 124.

(6) Where the administrator becomes aware that a customer has a shortfall claim, the administrator must—

(a) keep a record of the shortfall claim, including the details set out in paragraphs (3)(b) to (3)(l) to the extent relevant,

(b) treat each record under sub-paragraph (a) as if it were a statement of claim submitted by a customer in respect of its shortfall claim,

(c) notify the customer that a statement of claim for the shortfall claim has been submitted under this rule as soon as is reasonably practicable.

(7) Where paragraph (6) applies, a customer does not need to submit a separate statement of claim under paragraph (1) for the shortfall claim.

False claims or evidence

117. If a creditor produces under rule 116 a statement of claim or documentary evidence of debt or other evidence which is false—

(**15**) Amendments have been made to Schedule 6 of the IA 1986 which are not relevant to this instrument.

(a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false,

(b) the institution is guilty of an offence if the institution—

(i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false,

(ii) failed as soon as is reasonably practicable after acquiring such knowledge to report it to the administrator.

Evidence of Claims

118.—(1) The administrator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 116, may require—

(a) the creditor to produce further evidence, or

(b) any other person who the administrator believes can produce relevant evidence, to produce such evidence.

(2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the administrator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(3) On an application to it under paragraph (2) above the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than eight days nor later than sixteen days after the date of the order) and at a time specified in the order.

(4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an "examining commissioner").

(5) At any private examination under paragraph (2) or where the court grants a commission to take the examination under paragraph (4), a solicitor or counsel may act on behalf of the administrator, or the administrator may appear on the administrator's own behalf.

(6) The examination, whether before the court or an examining commissioner, must be taken on oath.

(7) A person who fails without reasonable excuse to comply with an order made under paragraph (2) is guilty of an offence.

(8) References in this rule to a creditor in a case where the creditor is one of the following entities—

(a) a trust,

(b) a partnership (including a dissolved partnership),

(c) a body corporate or an unincorporated body,

(d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907(**16**),

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

(**16**) 1907 c. 24.

Adjudication of Claims

119.—(1) Where funds are available for payment of a dividend out of the institution's assets in respect of an accounting period, the administrator for the purpose of determining who is entitled to such a dividend must—

(a) not later than four weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 116,

(b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (4)(b).

(2) On accepting or rejecting, under paragraph (1), every claim submitted or deemed to have been re-submitted, the administrator must, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to the following—

(a) every creditor known to the administrator,

(b) the FCA.

(3) Where the administrator rejects a claim, the administrator must without delay notify the creditor giving reasons for the rejection.

(4) the administrator must include the following information in the sederunt book—

(a) details of the decision whether to accept a claim including—

(i) the amount of the claim accepted,

(ii) the category of debt, and the value of any security, as decided by the administrator,

(b) if the administrator is rejecting the claim, the administrator's reasons for doing so,

(c) any decision of the court on an appeal under paragraph (5).

(5) Any member of the institution or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection with a decision in respect of any matter requiring to be recorded under paragraph (4)(a) or (4)(b)) appeal to the court not later than 14 days before the end of the accounting period, and the applicant must give notice of an application under this paragraph to the FCA.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

Entitlement to draw a dividend

120.—(1) A creditor who has had a claim accepted in whole or in part by the administrator under rule 119(1) or on appeal under rule 119(5) is entitled to payment out of the institution's assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the institution has funds available to make that payment, having regard to rule 127.

Liabilities and rights of obligants

121.—(1) Where a creditor has an obligant bound to the creditor along with the institution for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the institution or the creditor's voting or drawing a dividend or assenting to or not opposing—

(a) the dissolution of the institution, or

(b) any composition with creditors.

(2) Paragraph (3) applies where—

(a) a creditor has had a claim accepted in whole or in part,

(b) the obligant holds a security over any part of the institution's assets.

(3) The obligant must account to the administrator so as to put the institution's assets in the same position as if the obligant had paid the debt to the creditor and subsequently had had the obligant's claim accepted in whole or in part in the special administration after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt, and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of an obligant who has paid the debt.

(6) In this rule an "obligant" includes a cautioner.

Amount which may be claimed generally

122.—(1) Subject to the provisions of this rule and rules 123 and 124 a creditor is entitled to claim the accumulated sum of principal and any interest which is due on the debt as at the date on which the institution entered special administration.

(2) If a debt does not depend on a contingency but would not be payable but for the special administration until after the date on which the institution entered special administration, the amount of the claim is to be calculated as if the debt were payable on the date on which the institution entered special administration but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the institution or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is to be whichever is the greater of—

(a) the official rate at the date the institution entered special administration, or

(b) the rate applicable to that debt apart from the special administration.

Debts depending on contingency

123.—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

(a) to the administrator, or

(b) if there is no administrator, to the court,

the administrator or court must put a value on the debt in so far as it is contingent.

(3) Where under paragraph (2) a value is put on the debt—

(a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more,

(b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(4) Any interested person may appeal to the court against a valuation under paragraph (2) by the administrator, and the court may affirm or vary that valuation.

Secured debts

124.—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the institution's assets, the secured creditor is not required to deduct the value of that security.

(3) The administrator may, at any time after the expiry of twelve weeks from the date on which the institution entered special administration, require a secured creditor at the expense of the institution's assets to discharge the security or convey or assign it to the administrator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the administrator makes payment to the creditor, the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised, the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

Claims in a foreign currency

125.—(1) A creditor may state the amount of their claim in a currency other than sterling where—

(a) the creditor's claim is constituted by decree or other order made by a court ordering the institution to pay to the creditor a sum expressed in a currency other than sterling, or

(b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the institution to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the administrator must convert it into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date on which the institution entered special administration.

(3) On the next occasion when the administrator communicates with the creditors the administrator must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the administrator is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

(6) The administrator must place a copy of any court order granted under paragraph (5) in the sederunt book.

Administrator to allow inspection of statements of claim

126. The administrator must, so long as submitted claims are in the administrator's hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(a) any creditor who has submitted a claim (unless that claim has been wholly rejected for purposes of dividend or otherwise),

(b) any contributory of the institution,

(c) any person acting on behalf of either of the above.

Order of priority in distribution

127.—(1) The funds of the institution's assets must be distributed by the administrator to meet the following expenses and debts in the order in which they are mentioned—

(a) the expenses of the special administration,

(b) any preferential debts within the meaning of section 386(1) of the IA 1986(**17**) (excluding any interest which has been accrued to the date on which the institution entered special administration),

(c) ordinary debts, that is to say, a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph,

(d) interest at the official rate, between the date on which the institution entered special administration and the date of payment, on—

(i) the preferential debts,

(ii) the ordinary debts,

(e) any postponed debt.

(2) In paragraph (1)—

(a) "postponed debt" means—

(i) a creditor's right to any alienation which has been reduced or restored to the institution's assets under section 242 of the IA 1986(**18**) or to the proceeds of the sale of such an alienation,

(ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(**19**) (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.), or

(iii) in special administration, a claim which by virtue of the IA 1986 (as applied by Regulation 37) or any other enactment is a claim the payment of which is to be postponed.

(3) The expenses of the special administration mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 95.

(4) Subject to section 175 of the IA 1986(**20**) (as applied by paragraph 65(2))—

(a) any debt falling within either of sub-paragraphs (1)(b) or (1)(c) is to have the same priority as any other debt falling within the same sub-paragraph,

(b) where the funds of the institution's assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph have been paid in full, must (unless the articles of the institution provide otherwise) be distributed among the members according to their rights and interests in the institution.

(6) Nothing in this rule affects—

(a) the right of a secured creditor which is preferable to the rights of the administrator, or

(b) any preference of the holder of a lien over a title deed or other document which the administrator has taken into their custody or control in accordance with paragraph 67.

(**17**) Section 386(1) was amended by section 251(3) of the Enterprise Act 2002 (c. 40), section 13(2) of the Financial Services (Banking Reform) Act 2013 (c. 33), section 98(1)(a) of the Finance Act 2020 (c. 14), S.I. 2014/3486 and S.I. 2015/486.
(**18**) Section 242 was amended by section 248(3) of the Enterprise Act 2002 and S.I. 2016/1034.
(**19**) 2000 c. 8; section 382(1) was amended by Schedule 9 to the Financial Services Act 2012 (c. 21), paragraph 21(2).
(**20**) Section 175 was amended by section 2(1) of the Corporate Insolvency and Governance Act 2020 (c. 12) and S.I. 2014/3486.

Assets to be distributed in respect of the accounting periods

128.—(1) The administrator must make up accounts of the administrator's intromissions with the institution's assets in respect of each accounting period.

(2) In this rule, "accounting period" is to be construed as follows—

(a) the first accounting period is the period of six months beginning with the date on which the institution entered special administration,

(b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—

(i) where the administrator and the creditors' committee agree, or

(ii) where there is no creditors' committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) An agreement or determination under paragraph (2)(b)—

(a) may be made in respect of one or more than one accounting period,

(b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended,

(c) may provide for different accounting periods to be of different durations.

(4) The administrator may pay a dividend to secured or preferential creditors or, where the administrator has the permission of the court, to unsecured creditors only if the following conditions are met—

(a) the administrator has sufficient funds for the purpose,

(b) the administrator's statement of proposals, as approved by the creditors under Chapter 3 of Part 3, contains a proposal to make a distribution to the class of creditors in question,

(c) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by the administrator or which the administrator intends to make.

(5) The administrator may pay—

(a) the expenses of the special administration mentioned in rule 95, other than the administrator's remuneration, at any time,

(b) the preferential debts within the meaning of section 386 of IA 1986 at any time but only with the consent of the creditors' committee or, if there is no creditors' committee, of the court.

(6) If the administrator—

(a) is not ready to pay a dividend in respect of an accounting period, or

(b) considers it would be inappropriate to pay such a dividend because the expenses of doing so would be disproportionate to the amount of the dividend,

the administrator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(7) Where an appeal is taken under rule 119(5) against the acceptance or rejection of a creditor's claim, the administrator must at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor—

(a) has failed to produce evidence in support of a claim earlier than eight weeks before the end of an accounting period on being required by the administrator to do so under rule 118,

(b) has given a reason for such failure which is acceptable to the administrator,

the administrator must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the administrator to be satisfied under rule 118, an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the administrator later than eight weeks before the end of an accounting period but more than eight weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the administrator must, if accepting the claim in whole or in part, pay to the creditor—

(a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods,

(b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period,

provided that paragraph (a) is without prejudice to any dividend which has already been paid.

(10) In the declaration of and payment of a dividend, no payments are to be made more than once by virtue of the same debt.

(11) Where the administrator pays a dividend under this rule, notice of the dividend must be given to the FCA.

(12) Where the administrator postpones payment of a dividend in accordance with paragraph (6), the administrator must notify the FCA.

(13) Details of any agreement reached under paragraph (2)(b)(i) and of any determination made under paragraph (2)(b)(ii) must be inserted in the sederunt book.

PART 8

The Administrator

CHAPTER 1

Remuneration of the administrator

Remuneration of administrator

129.—(1) The administrator is entitled to receive remuneration—

(a) to be paid out of the estate of the institution for services given—

(i) in respect of the pursuit of Objectives 2 and 3,

(ii) as a consequence of a failure by the institution to safeguard relevant funds,

(b) to be paid out of relevant funds for services given in respect of the pursuit of Objective 1.

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

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

(b) by reference to the time properly given by the insolvency practitioner (as administrator) and their 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 or administrator's staff.

(4) Subject to paragraph (5) and paragraph (6), where an administrator intends to submit a claim for the outlays reasonably incurred by the administrator and for remuneration within two weeks of the end of an accounting period, the administrator must submit to the creditors' committee, or, if there is no creditors' committee, to a meeting of creditors and customers, in respect of that period—

(a) the administrator's accounts of their intromissions with the institution's assets for audit,

(b) where funds are available after making allowance for contingencies, a scheme of division of the divisible funds,

(c) a claim for—

(i) any outlays reasonably incurred by the administrator,

(ii) the administrator's remuneration, in respect of the pursuit of the Objectives in paragraph (1)(a).

(5) The administrator may, at any time within two weeks after the end of an accounting period, in respect of the previous accounting period, submit to a creditors' committee, or if there is no creditors' committee, to a meeting of creditors and customers, in respect of that period—

(a) the administrator's accounts of its intromissions with the institutions' assets for audit (such accounts of intromissions may include or consist of a progress report),

(b) a claim for—

(i) the outlays reasonably incurred by the administrator,

(ii) the administrator's remuneration in respect of the pursuit of the Objectives under paragraph (1)(a).

(6) Within two weeks after the end of an accounting period, the administrator must in respect of that period submit to the creditors' committee (or if there is no creditors' committee, to a meeting of customers) a claim for the outlays reasonably incurred by the administrator and for the administrator's remuneration in respect of the pursuit of the Objective under paragraph (1)(b).

(7) The administrator may, at any time before the end of an accounting period, submit to the creditors' committee or, if there is no creditors' committee, a meeting of creditors and customers (or in respect of a claim in respect of the pursuit of the Objective in paragraph (1)(b), a meeting of customers)—

(a) an interim claim in respect of that period for the outlays reasonably incurred by the administrator,

(b) an interim claim in respect of that period for remuneration,

and the body to whom the claim has been submitted may make an interim determination in relation to the amount of the outlays and remuneration payable to the administrator and, where they do so, they must take into account that interim determination when making their determination under paragraph (9)(a)(ii).

(8) In fixing the amount of the administrator's remuneration and outlays in respect of any accounting period, the body to whom the claim has been submitted may take into account any adjustment which it may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

(9) Within six weeks of the end of an accounting period—

(a) the creditors' committee or, as the case may be, a meeting of creditors and customers or a meeting of customers—

(i) may audit the accounts (in respect of a submission under paragraph (2)),

(ii) must issue a determination fixing the amount of the outlays and the remuneration payable to the administrator,

(b) the administrator must make the audited accounts, scheme of division and the said determination available for inspection by the members of the institution, the creditors or customers.

(10) If the administrator's remuneration and outlays have been fixed by determination of the creditor's committee in accordance with paragraph (9)(a)(ii) and the administrator considers the amount to be insufficient, the administrator may request that the remuneration and outlays be increased by—

(a) resolution of the creditors and customers in respect of claim under paragraph (1)(a), or

(b) resolution of the customers in respect of a claim under paragraph (1)(b).

(11) If the creditor's committee fails to issue a determination in accordance with paragraph (9)(a)(ii), the administrator must submit their claim—

(a) to a meeting of creditors and customers in respect of a claim under paragraph (1)(a), or

(b) to a meeting of customers in respect of a claim under paragraph (1)(b),

and the meeting must issue a determination in accordance with paragraph (9)(a)(ii).

(12) If the meeting of creditors and customers, or as the case may be, the meeting of customers fails to issue a determination in accordance with paragraph (11), then the administrator must submit their claim to the court and the court must issue a determination.

(13) Where there are joint administrators—

(a) it is for them to agree between themselves as to how the remuneration payable should be apportioned,

(b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination—

(i) by the court, or

(ii) by resolution of the creditors' committee or a meeting of creditors and customers.

(14) The administrator must insert the final determination in relation to the administrators' outlays and remuneration in the sederunt book, together with the audited accounts and scheme of division.

Appeal against fixing of remuneration

130.—(1) If the administrator considers that the remuneration or outlays fixed for the administrator under rule 129 by—

(a) the creditors' committee, or

(b) by resolution of the creditors and customers, or as the case may be, of the customers,

is insufficient, the administrator may apply to the court for an order increasing this amount or rate.

(2) The administrator must give at least fourteen 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.

(3) If there is no creditors' committee, the notice of the application must be sent to such one or more of the institution's creditors or customers as the court may direct, which creditors or customers may nominate one or more of their number to appear or be represented and heard on the application.

(4) Notice of the application must also be given to the FCA.

(5) The court may order the expenses of the administrator's application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor or customer so appearing or being represented, to be paid as an expense of the special administration.

Claim that remuneration is excessive

131.—(1) The following persons may apply to the court for an order that the administrator's remuneration or outlays be reduced on the grounds that they are, in all the circumstances, excessive in respect of the administrator's remuneration for services set out in rule 129(1)(a)—

(a) a secured creditor,

(b) any unsecured creditor or creditors representing at least twenty-five per cent in value of the unsecured creditors (including that creditor),

(c) a customer or customers whose relevant funds claims represent at least twenty-five per cent of all relevant funds claims,

(d) the FCA.

(2) A customer, with the concurrence of customers whose relevant funds claims represent at least twenty-five per cent of the total relevant funds claims, or with the permission of the court, may apply to the court for an order in paragraph (1) in respect of the administrator's remuneration for services set out in rule 129(1)(b).

(3) An application under paragraphs (1) and (2) may be made on the grounds that the remuneration charged by the administrator is, or the expenses incurred by the administrator are, in all the circumstances, excessive.

(4) The application must be made no later than eight weeks after the end of an accounting period.

(5) The court may make an order fixing the remuneration or outlays at a reduced amount or rate.

(6) The court may order the expenses of the person making application to be paid as an expense of the special administration.

CHAPTER 2

Replacing the administrator

Grounds for resignation

132.—(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).

Notice of intention to resign

133.—(1) The administrator must in all cases give at least five 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 institution, to that person,

(b) if there is a creditors' committee, to it.

(2) If there is no continuing administrator and no creditors' committee, the administrator must give at least five business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the institution and its creditors and customers of whose claim the administrator is aware and whom the administrator has a means of contacting.

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

(4) Notice under paragraph (1) or paragraph (2) must set out—

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

(b) the full name, registered address, registered number of the institution,

(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 the court for leave to resign.

(5) The notice must be accompanied by a summary of the administrator's receipts and payments.

Notice of resignation

134.—(1) The notice of resignation must set out—

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

(b) the full name, registered address and registered number of the institution,

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

(d) whether or not the person resigning is the sole administrator of the institution,

(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 must include the date of the court's permission) and that the administrator therefore resigns with effect from a specified date.

(2) The notice must be lodged with the court and a copy of the notice of resignation must be sent not more than five business days after it has been lodged with the court to all those to whom the notice of intention to resign was sent.

(3) The administrator must notify the registrar of companies of their resignation.

Application to court to remove administrator from office

135.—(1) Any application for an order under paragraph 88 must state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application must be served on the following—

(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 nor a joint administrator, the institution and all the creditors and customers of whose claim the administrator is aware and of whom they have a means of contacting,

(f) the FCA.

(3) Where a court makes an order removing the administrator it must give a copy of the order to the applicant, who as soon as is reasonably practicable must send a copy to the administrator.

(4) The applicant must also within five business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) The applicant must send notice of the order to the registrar of companies within five business days of the order being made.

Notice of vacation of office when administrator ceases to be qualified

136. Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the institution gives notice in accordance with paragraph 89, notice must also be given—

(a) to the registrar of companies,

(b) where the administrator was appointed on the application of the FCA or the Secretary of State, to the applicant.

Administrator deceased

137.—(1) Subject to paragraphs (2) to (4), where the administrator has died, it is the duty of the administrator's executors 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 for the Economy for Northern Ireland for the authorisation of insolvency practitioners.

(4) Notice of the death may be given to the court by any person.

Application to replace

138.—(1) Where an application is made to court under paragraph 91(1) to appoint a replacement administrator, the application must be accompanied by a written statement by the person proposed to be the replacement administrator.

(2) The written statement must be in accordance with rule 7.

(3) A copy of the application must be served on the following—

(a) the person who made the application for a special administration order,

(b) the institution (if neither the institution nor its directors are the applicant),

(c) the person nominated for appointment as administrator,

(d) the FCA (if not the applicant),

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

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

(5) Rule 14 shall apply to the notice of appointment of a replacement administrator as it applies to notice of a special administration order.

Notification and advertisement of appointment of replacement administrator

139.—(1) Subject to rule 141, 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 initial appointment.

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

Notification and advertisement of appointment of joint administrator

140. Subject to rule 141, where a person is to be appointed in accordance with paragraph 100 to act as administrator, jointly or concurrently with the person or persons then acting, the same provisions apply, subject to this rule and to such other modification as may be necessary, in respect of the making of this appointment, in the case of the original appointment of an administrator.

Notification of new administrator

141.—(1) The replacement or additional administrator must send notice of the appointment to the registrar of companies.

(2) The notice in paragraph (1) must contain—

(a) the name and business address of the administrator appointed,

(b) the name, registered address and registered number of the institution 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,

(d) the date from which the administrator's appointment will take effect.

Administrator's duties on vacating office

142.—(1) Where the administrator ('A') ceases to be in office in consequence of this Chapter, A is under an obligation as soon as is reasonably practicable to deliver up to the person succeeding A as administrator ('B')—

(a) the assets (after deduction of any expenses properly incurred and distributions made by A),

(b) the records of the special administration, including correspondence, statements of claim and other related papers appertaining to the special administration while it was within A's responsibility,

(c) the institution's books, papers and other records.

(2) If A makes default in complying with this rule, A is guilty of an offence.

PART 9

End of special administration

Final progress reports

143. The final progress report means a progress report which includes a summary of the following—

(a) the administrator's proposals (including whether the FCA has given a direction under regulation 38 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,

(d) the outcome.

Application to court by administrator

144.—(1) An application to court under paragraph 79 for an order ending a special administration must be accompanied by the following—

(a) a progress report for the period since the last progress report (if any) or, if there has been no previous progress report, the date the institution entered special administration,

(b) a statement indicating what the administrator thinks should be the next steps for the institution (if applicable).

(2) Before making the application under paragraph (1), the administrator must give notice in writing to the following—

(a) the applicant for the special administration order under which the administrator was appointed,

(b) the creditors and customers,

(c) the FCA,

and the application must be accompanied by a statement that the creditors and customers have been notified of the application and copies of any response to that notification.

(3) Notice under paragraph (2) must be given at least five business days before the date that the administrator intends to make the application.

(4) The administrator—

(a) must send a copy of the application under paragraph (1) to the FCA,

(b) must, within five 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),

(c) advertise the notice in such other manner as the administrator thinks fit.

Application to court by creditor

145.—(1) Where a creditor applies to the court to end the special administration a copy of the application must be served on the following—

(a) the administrator,

(b) the person who made the application for the special administration order,

(c) the FCA.

(2) Service must be effected not less than five 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 must send a copy of the order to the administrator.

Notification by administrator of court order

146. Where the court makes an order to end the special administration, the administrator must send—

(a) a copy of the court order to the registrar of companies within fourteen days of the date of the order,

(b) a copy of the final progress report to the registrar of companies as soon as is reasonably practicable,

(c) a copy of the court order and a copy of the final progress report to all other persons to whom notice of the administrator's appointment was delivered as soon as is reasonably practicable.

Moving from special administration to dissolution

147.—(1) The notice of moving from special administration to dissolution to the registrar of companies required to be sent by the administrator in accordance with paragraph 84(1) must be accompanied by a copy of the final progress report.

(2) As soon as is reasonably practicable, a copy of the notice and the accompanying document must 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 must, where the applicant is not the administrator, give a copy of the order to the administrator.

PART 10

Applications to court

CHAPTER 1

Applications to the court under section 176A of the IA 1986

Application of Chapter

148. The rules in this Chapter apply to applications in connection with section 176A of the IA 1986.

Applications under section 176A(5) of the IA 1986 to disapply section 176A(2) of the IA 1986

149. An application under section 176A(5) of the IA 1986 must include averments—

(a) that the application arises in respect of a special administration,

(b) as to the financial position of the institution,

(c) as to the basis of the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Notice of an order under section 176A(5) of the IA 1986

150.—(1) Where the court makes an order under section 176A(5) of the IA 1986, the applicant must as soon as is reasonably practicable after the making of the order—

(a) send to the institution a copy of the order certified by the clerk of court,

(b) send to the registrar of companies a copy of the order certified by the clerk of court,

(c) give notice of the order to each creditor of whose claim and address the applicant is aware.

(2) The court may direct that the requirement of paragraph (1)(c) be met by publication of a notice containing the standard content and stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(3) The notice referred to in paragraph (2)—

(a) must be gazetted as soon as is reasonably practicable,

(b) may be further advertised in such other manner as the court may direct.

CHAPTER 2

Formal defects

Power to cure defects in procedure

151.—(1) The court may, on the application of any person having an interest—

(a) if there has been a failure to comply with any requirement of the Regulations or these Rules, make an order waiving any such failure and, so far as practicable, restoring any person prejudiced by the failure to the position that person would have been in but for the failure,

(b) if for any reason anything required or authorised to be done in, or in connection with, the special administration cannot be done, make such order as may be necessary to enable that thing to be done.

(2) The court, in an order under paragraph (1), may impose such conditions, including conditions as to expenses, as the court thinks fit and may—

(a) authorise or dispense with the performance of any act in the special administration,

(b) appoint as administrator of the institution a person who would be eligible to be appointed as such under Part 2 of these Rules, whether or not in place of an existing administrator,

(c) extend or waive any time limit specified in or under the Regulations or these Rules.

(3) The administrator must record in the sederunt book the decision of the court under this rule.

Formal defects

152. 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 has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

PART 11

Prohibited names

Preliminary

153. The rules in this Part—

(a) relate to the permission required under section 216 of the IA 1986 for a person to act in all or any of the ways specified in section 216(3) of the IA 1986 in relation to an institution with a prohibited name,

(b) prescribe the cases excepted from section 216 of the IA 1986, that is to say, those in which a person to whom that section applies may so act without that permission.

Application for permission under section 216(3) of the IA 1986

154.—(1) At least fourteen days' notice of any application for permission to act in all or any of the ways which would otherwise be prohibited by section 216(3) of the IA 1986 must be given by the applicant to the Secretary of State, who may—

(a) appear at the hearing of the application,

(b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216 of the IA 1986, the court may call on the administrator, or any former administrator, of the institution for a report of the circumstances in which that institution became insolvent and the extent (if any) of the applicant's apparent responsibility for the institution becoming insolvent.

First excepted case

155.—(1) This rule applies where—

(a) a person ('P') was within the period mentioned in section 216(1) of the IA 1986 a director, or shadow director, of an institution that has gone into special administration by virtue of Ground A in regulation 9 being satisfied,

(b) P acts in all or any of the ways specified in section 216(3) of the IA 1986 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 institution where that business (or substantially the whole of it) is (or is to be) acquired from the institution under arrangements—

(i) made by the administrator, or

(ii) made before the institution entered into special administration by an office-holder acting in relation to it as supervisor of a voluntary arrangement under Part 1 of the IA 1986.

(2) P will not be taken to have contravened section 216 of the IA 1986 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 and customer of the institution 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,

(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 twenty-eight days after that completion,

(b) must contain the following—

(i) the name and registered number of the institution,

(ii) the date that the institution went into special administration,

(iii) P's name,

(iv) a statement that P was a director of the institution during the period of twelve months ending with the day before the institution entered special administration,

(v) a statement that it is P's intention to act (or, where the institution has not entered into special administration, to act or continue to act) in all or any of the ways specified in section 216(3) of the IA 1986 in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the institution,

(vi) the prohibited name or, where the institution has not entered into special administration, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of P in the event of the institution entering special administration,

(vii) a statement that P would not otherwise be permitted to act in all or any of the ways specified in section 216(3) of the IA 1986 without the leave of the court or the application of an exception created by these Rules,

(viii) a statement that contravention of the prohibition created by section 216 of the IA 1986 is a criminal offence,

(ix) a statement as set out in paragraph (6) of the effect of issuing the notice under this paragraph.

(4) Notice may in particular be given under this rule—

(a) prior to the institution 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 institution as supervisor of a voluntary arrangement (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 institution under arrangements made by the administrator,

(ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

(5) Notice may not be given under this rule by a person who has already acted in contravention of section 216 of the IA 1986.

(6) The statement as to the effect of the notice under paragraph (2) must be as set out below—

"Section 216(3) of the Insolvency Act 1986 lists the activities that a director of an institution that has gone into special administration may not undertake unless the court gives permission or there is an exception in the Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022. This includes the exceptions in Part 11 of those Rules. These activities are—

(a) being a director of another company that is known by a name which is either the same as a name used by the institution in special administration during the period of twelve months ending with the day before the institution entered special administration or is so similar as to suggest an association with that institution,

(b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company,

(c) directly or indirectly being concerned or taking part in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given under Rule 155 of the Payment and Electronic Money Institution Insolvency (Scotland) Rules 2022 because the business of an institution which is in, or may go into, special administration is, or is to be, carried on otherwise than by the institution in special administration with the involvement of a director of that institution and under the same or a similar name to that of that institution.

The purpose of giving this notice is to permit the director to act in these circumstances where the institution enters (or has entered) special administration without the director committing a criminal offence and, in the case of the carrying on of the business through another company, being personally liable for that company's debts.

Notice may be given where the person giving the notice is already the director of a company which proposes to adopt a prohibited name.".

Second excepted case

156.—(1) Where a person ('P') to whom section 216 of the IA 1986 applies, applies for permission of the court under that section not later than seven business days from the date on which the institution went into special administration, P may, during the period specified in paragraph (2), act in any of the ways mentioned in section 216(3) of the IA 1986, 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 institution 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 of the IA 1986, whichever of those days occurs first.

Third excepted case

157. The court's permission under section 216(3) of the IA 1986 is not required where the company there referred to, though known by a prohibited name—

(a) has been known by that name for the whole of the period of twelve months ending with the day before the institution went into special administration,

(b) has not at any time in those twelve months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the CA 2006.

PART 12

Provisions of general effect

CHAPTER 1

Miscellaneous and general

Costs, expenses etc

158.—(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) The costs associated with the prescribed part must be paid out of the prescribed part.

False representation of status for purpose of inspecting documents

159.—(1) It is an offence for a person who does not have a right under these Rules to inspect a relevant document falsely to claim to be a creditor, customer, member of the institution or contributory of the institution with the intention of gaining sight of the relevant document.

(2) A relevant document is one which is on the court file or in the hands of the administrator or any other person and which a creditor, customer, member of the institution or contributory of the institution has a right to inspect under these Rules.

Punishment of offences

160. The Schedule sets out the maximum penalties for offences under the Rules.

CHAPTER 2

The giving of notice and the supply of documents

Application

161.—(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 these Rules by any person, including the administrator.

(2) This Chapter does not apply to —

(a) the lodging of any application, or other document, with the court,

(b) the service of any application, or other document, lodged with the court,

(c) the service of any order of the court.

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

Personal delivery

162.—(1) Personal delivery of a notice or other document is permissible in any case.

(2) A document is personally delivered—

(a) in the case of an individual, if it is left with that individual,

(b) in the case of a legal person, if it is left with an individual at the registered office, official address or place of business of that legal person.

Postal delivery of documents

163.—(1) A notice or other document may be sent by post in accordance with the provisions of this rule unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court.

(2) A document delivered by post may be delivered to the last known address of a person.

(3) First class or second class post may be used to deliver a notice or other document.

(4) Unless the contrary is shown—

(a) a notice or other document sent by first class post is treated as delivered on the second business day after the day on which it is posted,

(b) a notice or other document sent by second class post is treated as delivered on the fourth business day after the day on which it is posted,

(c) where a post-mark appears on the envelope in which a notice or other document was posted, the date of that post-mark is to be treated as the date on which the notice or other document was posted.

(5) In this rule "post-mark" means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

Notice etc to authorised recipients

164. Where a notice or other document is to be given, delivered or sent to a person under the Regulations or these Rules, it may be given, delivered or sent instead to any other person authorised in writing to accept delivery on behalf of the first-mentioned person.

CHAPTER 3

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

Application

165.—(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 these Rules.

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

(3) Rules 169 to 172 do not apply to the filing of any notice or other document with the court.

The form

166. 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 it is capable of being—

(a) read by the recipient in electronic form,

(b) reproduced by the recipient in hard-copy form.

Proof of sending

167.—(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) A certificate must state the method of delivery and the date of the sending, posting or delivering (as the case may be).

(3) A certificate under paragraph (1) may be given by any of the following—

(a) the administrator,

(b) the administrator's solicitor,

(c) a partner or an employee of either of them.

(4) Where a notice or other document is required 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.

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

Authentication

168.—(1) A notice, other document or information given, delivered, sent or supplied in hard copy form is sufficiently authenticated if it is signed by the person giving, delivering, sending or supplying it.

(2) A notice, other 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.

(3) If a notice, other document or information is authenticated by the signature of an individual on behalf of—

(a) a body of persons, the document must also state the position of that individual in relation to the body,

(b) a body corporate of which the individual is the sole member, the document must also state that fact.

Electronic delivery — general

169.—(1) A notice or other document may be given, delivered or sent by electronic means unless in any particular case some other form of delivery is required by the Regulations or these Rules or an order of the court, provided that the intended recipient of the notice or other document has—

(a) given actual consent (whether in the specific case or generally) to electronic delivery and has—

(i) not revoked that consent,

(ii) provided an electronic address for delivery,

(b) given deemed consent in accordance with paragraph (2) (in which case the electronic address for delivery shall be the address used by the institution for communications with the intended recipient before the special administration commenced) and has not revoked that consent.

(2) For the purposes of paragraph (1) an intended recipient is deemed to have consented to the electronic delivery of a notice or other document by the administrator where the intended recipient and the institution had customarily communicated with each other by electronic means before the special administration commenced.

(3) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered by electronic means where the sender can produce a copy of the electronic communication which—

(a) contains the notice or other document, or to which the notice or other document was attached,

(b) shows the time and date the electronic communication was sent and the electronic address to which it was sent.

(4) Unless the contrary is shown, a document sent electronically is deemed to have been delivered to the recipient at 9.00am on the next business day after it was sent.

(5) Paragraph (4) does not apply in respect of notices or other documents sent electronically under Part 2.

Electronic delivery by administrator

170.—(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—

(a) that the recipient may request a hard copy of the notice or document,

(b) specifying a telephone number, email address and postal address which may be used to make that request.

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

Use of websites by administrator

171.—(1) This rule applies for the purposes of section 246B of the IA 1986.

(2) Where the administrator is required to give, deliver or send a notice or other 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 which contains—

(a) a statement that the notice or other document is available for viewing and downloading on a website,

(b) the address of that website together with any password necessary to view and download the notice or other document from that site,

(c) a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the notice or other document and specifying a telephone number, email address and postal address which may be used to make that request.

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

(a) be available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration,

(b) be in a format that enables it to be downloaded from the website within a reasonable time of a request being made for it to be downloaded.

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

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

(a) when the document was first made available on the website, or

(b) if later, when the notice under paragraph (2) was delivered to that person.

General use of websites to deliver notices and other documents

172.—(1) The administrator may deliver a notice to each person to whom a notice or other document will be required to be given, delivered or sent in the special administration which contains—

(a) a statement that—

(i) future notices or other documents in the special administration other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient,

(ii) the administrator will not be obliged to deliver, give or send any such notices or other documents to the recipient of the notice unless it is requested by that person,

(b) a statement that the recipient of the notice may at any time request a hard copy of any or all of the following—

(i) all notices and other documents currently available for viewing on the website,

(ii) all future documents which may be made available there,

(c) a telephone number, email address and postal address which may be used to make a request for a hard copy of a notice or other document, and

(d) the address of the website and any password required to view and download a relevant document from that site.

(2) A statement under paragraph (1)(a) does not apply to the following notices or other documents—

(a) a notice or other document for which personal delivery is required,

(b) a notice or other document which is not delivered, given or sent generally.

(3) A notice or other document is delivered, given or sent generally if it is delivered, given or sent to some or all of the following classes of persons—

(a) members,

(b) contributories,

(c) creditors,

(d) customers,

(e) any class of members, contributories, customers or creditors.

(4) An administrator who has delivered a notice under paragraph (1) is under no obligation—

(a) to notify a person to whom the notice has been delivered when a notice or other document to which the notice applies has been made available on the website,

(b) to deliver a hard copy of such a notice or other document unless a request is received under paragraph (1)(b).

(5) An administrator who receives a request under paragraph (1)(b)—

(a) in respect of a notice or other document which is already available on the website must deliver a hard copy of the notice or other document to the recipient free of charge within five business days of receipt of the request,

(b) in respect of all future notices or other documents must deliver each such notice or other document in accordance with the requirements for delivery of such a notice or other document in the Regulations and these Rules.

(6) A document to which a statement under paragraph (1)(a) applies must—

(a) remain available on the website for a period of not less than two months after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration,

(b) must be in a format that enables it to be downloaded within a reasonable time of a request being made for it to be downloaded.

(7) A notice or other document which is delivered to a person by means of a website in accordance with this rule, is deemed to have been delivered—

(a) when that notice or other document was first made available on the website, or

(b) if later, when the notice under paragraph (1) was delivered to that person.

(8) Paragraph (7) does not apply in respect of a person who has made a request under paragraph (1)(b)(ii) for hard copies of all future documents.

Electronic delivery of special administration documents to court

173.—(1) A document may not be delivered to the court by electronic means unless this is expressly permitted by Rules of Court.

(2) A document delivered by electronic means is to be treated as delivered to the court at the time it is recorded by the court as having been received or otherwise as the Rules of Court provide.

Notice etc to joint administrators

174. 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.

Delivery of statements of claim and documentary evidence of debt

175.—(1) Once a statement of claim or documentary evidence of debt has been delivered to an administrator in accordance with these Rules it need not be delivered again.

(2) Where these Rules require such delivery by a certain time, that requirement is satisfied if that statement or evidence has already been delivered.

Electronic submission of information

176.—(1) A requirement under these Rules for information to be sent by any person to the Secretary of State or the administrator shall be treated as having been satisfied where—

(a) the information is submitted electronically with the agreement of the person to whom the information is sent,

(b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent,

(c) all the information required is provided in the electronic submission,

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

(2) Where information is permitted to be sent electronically under paragraph (1), 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.

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

Contents of notices to be gazetted

177.—(1) Subject to rule 178, where under the Regulations or these Rules a notice is gazetted, in addition to any content specifically required by the Regulations or any other provision of these Rules, the content of such a notice must be as set out in paragraph (2) and rule (3).

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

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

(b) the name, business address and date of appointment of the administrator,

(c) either an email 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,

(e) the IP number of the administrator,

(f) the court name and any number assigned to the special administration by the court.

(3) All notices published must specify as regards the institution to which the notice relates—

(a) the registered name of the institution,

(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 twelve months prior to the date of commencement of the special administration,

(f) any name or style (other than its registered name) under which—

(i) the institution carried on business,

(ii) the institution received relevant funds from a customer, or

(iii) any debt owed to a creditor was incurred.

Omission of unobtainable information

178. Information required under rule 177 to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.

The Gazette — general

179.—(1) A copy of the Gazette containing any notice required by the Regulations or these 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 these 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—

(a) an order of the court which is gazetted has been varied, or

(b) 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.

(4) A Gazette notice, variation or correction is taken to be gazetted or published on the date it first appears in either electronic or hard copy form.

Content of notices advertised other than in the Gazette

180.—(1) Subject to rule 181, where under the Regulations or these 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 these Rules, the content of such a notice must be as set out in this rule.

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

(a) the name and business address of the administrator acting in the special administration to which the notice relates,

(b) either an email address, or a telephone number, through which the administrator may be contacted.

(3) All notices published must specify as regards the institution to which the notice relates—

(a) the registered name of the institution,

(b) its registered number,

(c) any name under which it was registered in the twelve months prior to the date on which the institution entered special administration,

(d) any name or style (other than its registered name) under which—

(i) the institution carried on business,

(ii) the institution received relevant funds from a customer, or

(iii) any debt owed to a creditor was incurred.

Non-Gazette notices — other provisions

181.—(1) The information required to be contained in a notice to which rule 180 applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement will be able to read, hear or see that information.

(2) Information required under rule 180 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

182. This Chapter applies where a return, notice, document or other information is to be sent or delivered to the registrar of companies under the Regulations or these Rules. For the purposes of this Chapter, "notification" means any return, notice, document or other information which is to be sent or delivered to the registrar of companies.

Information to be contained in all notifications to the registrar of companies

183.—(1) A notification to be sent to the registrar of companies under the Regulations or these Rules must specify—

(a) the registered name of the institution,

(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 the person sending or delivering the notification,

(g) the capacity in which that person is acting in respect of the institution.

(2) The notification must be authenticated by the person sending or delivering the notification.

Notification relating to the administrator

184. In addition to the information required by rule 183, 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,

(d) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation).

Notifications relating to documents

185. In addition to the information required by rule 183, a notification relating to a document other than a court order must also specify the nature of the document, and either—

(a) the date of the document, or

(b) where the document relates to a period of time, the period of time to which the document relates.

Notifications relating to court orders

186. In addition to the information required by rule 183, a notification relating to a court order must also specify the following—

(a) the nature of the court order,

(b) the name of the court,

(c) the date of the order.

Notifications relating to other events

187. In addition to the information required by rule 183, a notification relating to any other event (for example the coming into force of a moratorium) must specify the following—

(a) the nature of the event including the regulation or rule under which it took place,

(b) the date the event occurred.

Notifications of more than one nature

188. A notification which includes two or more of the types of notification set out in rules 183 to 187 must satisfy the requirements applying in respect of each of those notifications.

Notifications made to other persons at the same time

189.—(1) Where under the Regulations or these Rules a notification 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 of companies.

(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

190.—(1) The administrator may refuse inspection of a document which forms part of the records of the special administration by a person who would otherwise be entitled to inspect it where the administrator considers that the document—

(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.

(2) The persons to whom the administrator may refuse inspection under this rule include members of the creditors' committee.

(3) Where the administrator refuses inspection of a document, the person wishing to inspect it may apply to the court for an order to overrule the administrator's decision.

(4) The court's decision on the application may be subject to such conditions (if any) as it thinks just.

Right to copy documents

191. Where the Regulations or these Rules confer a right for any person to inspect documents, that person has a right to be supplied on request with copies of those documents, on payment of the standard fee for copies.

Charges for copy documents

192. Except where prohibited by these Rules, the administrator is entitled to require the payment of the standard fee for copies of documents requested by a creditor, customer, member, contributory or member of the creditors' committee.

Right to have list of creditors

193.—(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)—

(a) must send it to the person requiring the list to be furnished as soon as is reasonably practicable,

(b) may charge the standard fee for copies for doing so.

(3) Where any of the creditors of the institution are either—

(a) employees or former employees of the institution, or

(b) consumers claiming amounts paid in advance for the supply of goods or services,

the list furnished under paragraph (2) shall state the number of employees or former employees of the institution and the total of the debts owed to them, and the number of consumers claiming amounts paid in advance for the supply of goods or services and the total of the debts owed to them, but shall not include the names and addresses of such creditors.

(4) 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,

(b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(5) Paragraph (1) does not apply where a statement of affairs has been delivered to the registrar of companies.

Sederunt book

194.—(1) The administrator must maintain a sederunt book ("the sederunt book") during their term of office for the purpose of providing an accurate record of the insolvency proceedings.

(2) Without prejudice to the generality of the above, the administrator must include in the sederunt book a copy of anything else required to be recorded in it by any provision of the Regulations or these Rules.

(3) The administrator must make the sederunt book available for inspection at all reasonable hours by any interested person.

(4) Any entry in the sederunt book is sufficient evidence of the facts stated in it, except where it is relied upon by the administrator in the administrator's own interest.

(5) The administrator must retain, or make arrangements for the retention of, the sederunt book for a period of not less than six years after the end of the special administration or (if later) the release of the last person to hold office as administrator in the special administration.

Transfer and disposal of institution's books, papers and other records

195.—(1) Where an institution is in special administration, the administrator must dispose of the books, papers and records of the institution in accordance with the directions of—

(a) the creditors' committee (if there is one), or

(b) where there is no creditors' committee, the court.

(2) If no directions under paragraph (1) have been given by the expiry of the period of 12 months after the date of dissolution of the institution, the administrator may dispose of the institution's books, papers and records in such a way as the administrator considers appropriate.

(3) An administrator or former administrator ("A") must within fourteen days of a request by the Secretary of State give the Secretary of State particulars of any money in A's hands or under A's control representing unclaimed or undistributed assets of the institution or dividends or other sums due to any person as a member or former member of the institution.

CHAPTER 6

Periods of time and caution

Periods of time expressed in days

196.—(1) This rule applies to the calculation of a period of time expressed in days.

(2) A period of time expressed as a number of days is to be computed as clear days.

(3) In this rule, "clear days" means that in computing the number of days the following are not included—

(a) the day on which the period begins,

(b) if the end of the period is defined by reference to an event, the day on which that event occurs.

Periods of time expressed in months

197.—(1) This rule applies to the calculation of a period of time expressed in months.

(2) The beginning and the end of a period expressed in months are to be determined as follows—

(a) if the beginning of the period is specified—

(i) the month in which the period ends is the specified number of months after the month in which it begins,

(ii) the date in the month on which the period ends is—

(aa) the day before the date corresponding to the date in the month on which it begins, or

(bb) if there is no such date in the month in which it ends, the last day of that month,

(b) if the end of the period is specified—

(i) the month in which the period begins is the specified number of months before the month in which it ends,

(ii) the date in the month on which the period begins is—

(aa) the day after the date corresponding to the date in the month on which it ends, or

(bb) if there is no such date in the month in which it begins, the last day of that month.

Administrator's caution

198.—(1) Wherever under these 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 caution 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 caution.

(3) The cost of the administrator's caution must be paid as an expense of the proceedings.

Service on joint administrators

199. Where there are joint administrators in a special administration, service on one of them is to be treated as service on all of them.

CHAPTER 7

Transfer of proceedings

Proceedings commenced in the wrong court

200. Where a special administration is commenced in a court other than the Court of Session, that court may order the transfer of the proceedings to the Court of Session.

Proceedings other than special administration commenced

201.—(1) The FCA may apply to the court to order that the proceedings be converted to a special administration where—

(a) a winding up order or a Schedule B1 administration order has been made in respect of an institution, or

(b) a resolution has been made for the winding up of or for the appointment of a Schedule B1 administrator of an institution.

(2) In making an order under paragraph (1) the court may 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 appointed as office-holder under the original proceedings ('P') is not the same person as the administrator in 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, statements of claim and other related papers appertaining to those proceedings while they were within P's responsibility,

(ii) the institution's books, papers and other records,

(iii) all the assets of the institution and the relevant funds held by the institution in P's possession.

(5) In this rule—

(a) "office-holder" means provisional liquidator, liquidator or Schedule B1 administrator as the case may be,

(b) "original proceedings" means the proceedings following the making of the winding up order, the Schedule B1 administration order or the resolution referred to in paragraph (1).

PART 13

General interpretation and application

Introduction

202. Any definition given in this Part applies except and in so far as the context otherwise requires.

Venue

203. Reference to a "venue"—

(a) in relation to any proceeding or attendance before the court is to the time, date and place or platform for the proceeding or attendance,

(b) in relation to a meeting is to the time, date and place for the meeting, but

in the case of a meeting to be conducted and held in accordance with rule 78(2) or section 246A(3) of IA 1986, is to the time and date for the meeting and the arrangements the administrator proposes to enable persons to exercise their rights to speak and vote at the meeting.

Insolvent estate and institution's assets

204. References to "the insolvent estate" are to the institution's assets.

"Debt"

205.—(1) Subject to paragraph (2), "debt" means any of the following—

(a) any debt or liability to which the institution is subject on the date on which the institution entered special administration,

(b) any debt or liability to which the institution may become subject after that date by reason of any obligation incurred before that date,

(c) any interest entitled to be claimed as mentioned in rule 122.

(2) In paragraph (1)(a), the reference to debt or liability includes a shortfall claim even if the shortfall claim is incurred after the date on which the institution entered special administration.

Application of the IA 1986 and the Company Directors Disqualification Act

206. For the purposes of these Rules, any reference in IA 1986 or the Company Directors Disqualification Act 1986(**21**) to "leave" of the court is to be construed as meaning "permission" of the court.

Nigel Huddleston
Amanda Solloway
Two of the Lords Commissioners of His Majesty's Treasury

25th November 2022

(**21**) 1986 c. 46.