

2009 No. 63

BANKING

BANK INSOLVENCY

The Bank Administration Rules (Northern Ireland) 2009

Made - - - - - *18th February 2009*

Coming into operation - *25th February 2009*

To be laid before Parliament

The Lord Chancellor makes the following Rules in the exercise of powers conferred by Article 359 of the Insolvency (Northern Ireland) Order 1989 (“the Order”)(**a**) as amended by sections 160 and 167 of the Banking Act 2009(**b**) (“the 2009 Act”), with the concurrence of the Treasury and, in relation to those rules that affect court procedure, with the concurrence of the Lord Chief Justice of Northern Ireland under Article 359 (1A) of the Order.

The Lord Chancellor has not consulted the Committee existing for the purposes of Article 360 of the Order: this is the first exercise of the power in Article 359 of that Order, as amended by section 160 of the 2009 Act, and is therefore excluded from the requirement to consult by section 160(6) of the 2009 Act.

PART 1

Introduction

Citation

1. These Rules may be cited as the Bank Administration Rules (Northern Ireland) 2009.

Commencement

2. These Rules come into operation on 25th February 2009.

Extent

3. These Rules extend to Northern Ireland only.

(a) S.I. 1989/2405 (N.I. 19)
(b) 2009 c.1.

Interpretation

4. The following expressions used in these Rules take their meaning from the Banking Act 2009

- “bank” (s. 2),
- “bank administration” (s. 141(4)(a)),
- “bank administration order” (s. 141(1)),
- “bank administrator” (s. 141(1)),
- “the court” (the High Court – s. 166(1)),
- “the FSA” (the Financial Services Authority – s. 166(2)),
- “Objective 1” (support for commercial purchaser or bridge bank – ss. 137 & 138),
- “Objective 1 Achievement Notice” (s. 139(4)),
- “Objective 2” (normal administration – ss. 137 & 140),
- “residual bank” (s. 136(2)), and
- “resolution fund order” (s. 49(3)).

5. In these Rules—

- (a) “the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000^(a)) or, where appropriate, the scheme manager of that scheme;
- (b) “the Objective 1 Stage” means the period during which a bank administration order is in force before the Bank of England gives an Objective 1 Achievement Notice; and
- (c) “the Objective 2 Stage” means the period during which a bank administration order is in force after the Bank of England gives an Objective 1 Achievement Notice;
- (d) A reference to personal service is a reference to personal service in accordance with Order 65 of the Supreme Court Rules (service of documents); and
- (e) A reference to a witness statement (including a reference implied by the application of an enactment) is a reference to a witness statement verified by a statement of truth.

Overview

6. The purpose of these Rules is to prescribe a procedure for the appointment of a bank administrator, and the operation of bank administration, under Part 3 of the 2009 Act in Northern Ireland.

Forms

7.—(1) This Rule applies where a provision of these Rules—

- (a) applies a provision of the Insolvency Rules (Northern Ireland) 1991 (“the 1991 Rules”)^(b) which requires the use of a prescribed form, or
- (b) makes provision similar to that made by a provision of those Rules which requires the use of a prescribed form.

(a) 2000 c.8.

(b) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355)

(2) The form prescribed for the purposes of those Rules is to be used with any modification that the person using the form thinks desirable to reflect the nature of bank administration (whether or not the modification is set out in a Practice Form issued by the Treasury for that purpose).

PART 2

Application for Bank Administration Order

Introduction

8. This Part makes specific provision for a number of aspects of applications for bank administration orders; Part 5 applies a number of provisions of the 1991 Rules to applications for bank administration orders (with specified modifications).

Content of application

9. An application by the Bank of England for a bank administration order in respect of a bank must specify—

- (a) the full name of the bank,
- (b) any other trading names,
- (c) the address of the bank's registered office,
- (d) an e-mail address for the bank,
- (e) the address of the Bank of England, and
- (f) the identity of the person (or persons) nominated for appointment as bank administrator.

10. If the bank has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the registered office, that address shall be specified under Rule 9(c).

Statement of proposed bank administrator

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

- (a) specifying the name and address of the person (or of each person) proposed to be appointed;
- (b) giving that person's (or each person's) consent to act;
- (c) giving details of the person's (or each person's) qualification to act as an insolvency practitioner; and
- (d) giving details of any prior professional relationship that the person (or any of them) has had with the bank.

Bank of England witness statement

12. An application for a bank administration order in respect of a bank must be accompanied by a witness statement sworn on behalf of the Bank of England—

- (a) certifying that the conditions for applying for a bank administration order, set out in section 143 of the 2009 Act, are met in respect of the bank;
- (b) stating the bank's current financial position to the best of the Bank of England's knowledge and belief (including actual, contingent and prospective assets and liabilities);
- (c) specifying any security which the Bank of England knows or believes to be held by a creditor of the bank;

- (d) specifying whether any security confers power to appoint an administrator under paragraph 15 of Schedule B1 to the Order (holder of qualifying floating charge) or an administrative receiver (and whether an administrative receiver has been appointed);
- (e) specifying any insolvency proceedings which have been instituted in respect of the bank (including any process notified to the FSA under section 120 of the 2009 Act);
- (f) giving details of the property transfer instrument which the Bank of England has made or intends to make in respect of the bank;
- (g) where the property transfer instrument has not yet been made, explaining what effect it is likely to have on the bank's financial position;
- (h) specifying how functions are to be apportioned where more than one person is to be appointed as bank administrator (stating, in particular, whether functions are to be exercisable jointly or concurrently); and
- (i) including any other material which the Bank of England thinks may help the court to decide whether to make the bank administration order.

Filing

13. The application, and its accompanying documents, must be filed with the court, together with enough copies of the application and accompanying documents for service under Rule 15.

14. Each filed copy—

- (a) shall have the seal of the court applied to it;
- (b) shall be endorsed with the date and time of filing;
- (c) shall be endorsed with the venue for the hearing of the application (fixed by the court under Rule 21); and
- (d) shall be issued to the Bank of England.

Service

15. The Bank of England shall serve the application—

- (a) on the bank;
- (b) on the person (or each of the persons) nominated for appointment as bank administrator;
- (c) on any person whom the Bank of England knows to be entitled to appoint an administrator under paragraph 15 of Schedule B1 to the Order or an administrative receiver;
- (d) on any person who has given notice to the FSA in respect of the bank under section 120 of the 2009 Act (bank insolvency: notice of preliminary steps of other insolvency procedures); and
- (e) if the property transfer instrument was made or is to be made under section 11(2)(b) of the 2009 Act (transfer to commercial purchaser), on each transferee.

16. Service under rule 15 shall be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 14.

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

18.—(1) Service must be effected—

- (a) by personal service to an address that the person has notified to the Bank of England as an address for service;
- (b) by personal service to the person's registered office (where no address for service has been notified);

- (c) by personal service to the person's usual or last known principal place of business in Northern Ireland (where there is no registered office and no address for service has been notified); or
- (d) in such other manner and at such a place as the court may direct.

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

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

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

- (a) as soon as is reasonably practicable, and
- (b) in any event, before the hearing of the application.

Other notification

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

- (a) any enforcement officer or other officer whom the Bank of England knows to be charged with effecting an execution or other legal process against the bank or its property;
- (b) any person whom the Bank of England knows to have distrained against the bank or its property; and
- (c) the FSA.

Venue

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

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

- (a) the desirability of the application being heard as soon as is reasonably practicable; and
- (b) the need for the bank's representatives to be able to reach the venue in time for the hearing.

Hearing

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

- (a) the Bank of England,
- (b) the FSA,
- (c) the bank,
- (d) a director of the bank,
- (e) the person (or a person) nominated for appointment as bank administrator,
- (f) any person who has given notice to the FSA in respect of the bank under section 120 of the 2009 Act (bank insolvency: notice of preliminary steps of other insolvency procedures), and
- (g) with the permission of the court, any other person who appears to have an interest.

The order

23. A bank administration order must be in Form 2.04B as specified in Rule 2.012(2) of the 1991 Rules.

Notice of order

24. If the court makes a bank administration order, it shall send four sealed copies to the Bank of England.

25. The Bank of England shall as soon as is reasonably practicable send—

- (a) one sealed copy to the bank administrator;
- (b) one sealed copy to the FSA; and
- (c) one sealed copy to the FSCS.

Costs

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

- (a) the Bank of England's costs of making the application; and
- (b) any other costs allowed by the court.

PART 3

Process of Bank Administration

Introduction

27. This Part makes specific provision for a number of aspects of bank administration; Part 5 applies a number of provisions of the 1991 Rules to bank administration (with specified modifications).

Bank administrator's proposals: Objective 1 Stage

28.—(1) This Rule makes provision about the statement of proposals which the bank administrator is required to make in the Objective 1 Stage under section 147 of the 2009 Act.

(2) In addition to the information required by section 147 the statement must include—

- (a) details of the court where the proceedings are and the court reference number;
- (b) the full name, any other trading names, the registered address and registered number of the bank;
- (c) details of the bank administrator's appointment (including the date);
- (d) in the case of joint bank administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
- (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
- (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the bank administrator's comments, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.033 of the 1991 Rules (as applied by Rule 58), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs,
 - (ii) the date of the order for limited disclosure,
 - (iii) the details or a summary of the details that are not subject to that order,

- (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
 - (j) if no statement of affairs has been submitted, details of the financial position of the bank at the latest practicable date (which shall, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
 - (k) the basis upon which it is proposed that the bank administrator's remuneration should be fixed under Rule 2.107 of the 1991 Rules (as applied by Rule 58);
 - (l) how the bank administrator proposes to pursue Objective 1;
 - (m) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
 - (n) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage;
 - (o) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage, and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
 - (p) the manner in which the affairs and business of the bank have been managed and financed since the date of the bank administrator's appointment (including the reasons for and terms of any disposal of assets);
 - (q) the manner in which the affairs and business of the bank will be managed and financed if the bank administrator's proposals are approved.
- (3) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
 - (b) shall include a statement of any exclusion.

Bank administrator's proposals: Objective 2 Stage

29.—(1) This Rule makes provision about the statement of proposals which the bank administrator is required to make under paragraph 50 of Schedule B1 to the Order as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145(6) of the 2009 Act).

- (2) The statement must include—
- (a) details of the court where the proceedings are and the court reference number;
 - (b) the full name, any other trading names, the registered address and registered number of the bank;
 - (c) details of the bank administrator's appointment (including the date);
 - (d) in the case of joint bank administrators, details of the apportionment of functions;
 - (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
 - (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
 - (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the bank administrator's comments, if any;
 - (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.033 of the 1991 Rules (as applied by Rule 58), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs,

- (ii) the date of the order for limited disclosure,
 - (iii) the details or a summary of the details that are not subject to that order;
- (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
 - (j) if no statement of affairs has been submitted, details of the financial position of the bank at the latest practicable date (which shall, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
 - (k) the basis upon which it is proposed that the bank administrator's remuneration should be fixed under Rule 2.107 of the 1991 Rules (as applied by Rule 58);
 - (l) details of whether (and why) the bank administrator proposes to apply to the court under Article 150A(5) of the Order (omission of distribution to unsecured creditors: as applied by Table 2 in section 145(6) of the 2009 Act) (unless the bank administrator intends to propose a company voluntary arrangement);
 - (m) an estimate of the value of the prescribed part for the purposes of Article 150A (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
 - (n) an estimate of the value of the bank's net property (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
 - (o) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
 - (p) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved;
 - (q) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved, and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
 - (r) if the bank administrator has decided not to call a meeting of creditors, the reasons;
 - (s) the manner in which the affairs and business of the bank have been managed and financed since the date of the bank administrator's appointment (including the reasons for and terms of any disposal of assets);
 - (t) the manner in which the affairs and business of the bank will be managed and financed if the bank administrator's proposals are approved; and
 - (u) any other information which the bank administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act—
- (a) the statement under paragraph 50 of Schedule B1 to the Order must state whether any payment is to be made to the bank from a scheme under a resolution fund order; or
 - (b) if that information is unavailable when the statement under paragraph 50 is made, the bank administrator must issue a supplemental statement when the information is available.
- (4) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
 - (b) shall include a statement of any exclusion.

30. If the bank administrator thinks that the statement made under section 147 of the 2009 Act in accordance with Rule 28 contains information required by Rule 29(2), the statement under paragraph 50 of Schedule B1 to the Order (as applied by Table 1 in section 145(6) of the 2009 Act) may consist of the statement under section 147, with such additions, modifications and supplemental information as the bank administrator thinks necessary—

- (a) to comply with Rule 29(2); and
- (b) to bring the statement under section 147 up to date.

31. Where the court orders an extension of the period of time under paragraph 50(5) of Schedule B1 to the Order on an application by the bank administrator under paragraph 108 of that Schedule (as applied by Table 1 in section 145(6) of the 2009 Act), the bank administrator must notify the persons set out in paragraph 50(4) of that Schedule as soon as is reasonably practicable after the making of the order.

32. Where the bank administrator has made a statement under paragraph 50(1) of Schedule B1 (as applied by Table 1 in section 145(6) of the 2009 Act) and has not called an initial meeting of creditors, the proposals issued in accordance with Rule 29 will be deemed to have been approved by the creditors (if no meeting has been requisitioned under paragraph 53(2) of that Schedule within the period set out in Rule 2.038(1) of the 1991 Rules – as applied by Rule 58).

33. Where the bank administrator intends to apply to the court (or file a notice under paragraph 81(2) of Schedule B1 in accordance with section 153 of the 2009 Act) for the bank administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 50 of Schedule B1, the bank administrator must, at least 10 days before making the application (or filing the notice), send to all known creditors of the bank a report containing the information required by Rule 29(2).

34.—(1) A bank administrator who wishes to publish a notice under paragraph 50(6) of Schedule B1 shall publish the notice once in a newspaper which the bank administrator thinks most appropriate for ensuring that the notice comes to the attention of the bank’s members.

(2) The notice shall—

- (a) state the full name of the bank;
- (b) state the full name and address of the bank administrator;
- (c) give details of the bank administrator’s appointment; and
- (d) specify an address to which members can write for a copy of the statement of proposals.

(3) The notice shall be published as soon as is reasonably practicable after the bank administrator sends the statement of proposals to the bank’s creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the bank entered bank administration.

Reports to creditors

35.—(1) “Progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the bank’s name, address of registered office and registered number;
- (c) full details of the bank administrator’s name and address and date of appointment, including any changes in office-holder;
- (d) in the case of joint bank administrators’ details of the apportionment of functions;
- (e) details of any extensions of the initial period of appointment;
- (f) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2));
- (g) details of any assets that remain to be realised;
- (h) details of any amounts received from a scheme under a resolution fund order; and

(i) any other information likely to be relevant to the creditors.

(2) A receipts and payments account shall state what assets of the bank have been realised, for what value, and what payments have been made to creditors or others.

(3) The account shall be in the form of an abstract showing receipts and payments during the period of the report; and where the bank administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A of the Order (prescribed part).

(4) During the Objective 1 Stage, a progress report must include details of—

- (a) the extent of the business of the bank that has been transferred;
- (b) any property, rights or liabilities that have been transferred, or which the bank administrator expects to be transferred, under a power in Part 1 of the 2009 Act (special resolution regime);
- (c) any requirements imposed on the residual bank, for the purpose of the pursuit of Objective 1, under a power under that Part; and
- (d) the arrangements for managing and financing the bank during the Objective 1 Stage.

(5) In complying with paragraphs (4)(c) and (4)(d) a report—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
- (b) shall include a statement of any exclusion.

36. A progress report shall be produced for—

- (a) the first period of 6 months of the bank administration;
- (b) every subsequent period of 6 months; and
- (c) when the bank administrator ceases to act, the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) until the administrator ceases to act.

37.—(1) The bank administrator must send a copy of each progress report within 28 days of the end of the period covered by the report, to—

- (a) the creditors,
- (b) the court,
- (c) the Bank of England,
- (d) the FSA,
- (e) the FSCS, and
- (f) the registrar of companies.

(2) Instead of complying with paragraph(1)(a) the bank administrator may publish the progress report on the bank administrator's website (and take appropriate steps to draw attention to it).

(3) The court may, on the bank administrator's application—

- (a) extend the period specified in paragraph (1);
- (b) make any other order about the content of a progress report.

38.—(1) A bank administrator who fails to comply with Rules 36 and 37 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with Rules 36 and 37 shall be treated in the same way as failure to comply with Rule 2.048 of the 1991 Rules.

Removal of bank administrator in Objective 1 Stage

39.—(1) This Rule is about an application for removal of a bank administrator made by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the

application of paragraph 91 of Schedule B1 to the Order in Table 1 in section 145(6) of the 2009 Act).

(2) The rules for service of notice of the application, other notification of the application and for the hearing shall be as for the application to appoint a bank administrator under Part 2 of these Rules.

(3) But both the person proposed to be appointed as a replacement and the existing bank administrator are entitled to be served and heard.

Appointment of provisional bank administrator

40. An application to the court for the appointment of a provisional bank administrator under Article 115 of the Order (as applied by Table 2 in section 145(6) of the 2009 Act) may be made by the Bank of England.

41. The application must be supported by a witness statement stating—

- (a) why the Bank of England thinks that a provisional bank administrator should be appointed;
- (b) that the person to be appointed has consented to act;
- (c) that the person to be appointed is qualified to act as an insolvency practitioner; and
- (d) the Bank of England's estimate of the value of the assets in respect of which the provisional bank administrator is to be appointed.

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

43. An order appointing a provisional bank administrator must specify the functions to be carried out in relation to the bank's affairs.

44. If the court makes an order appointing a provisional bank administrator the court shall—

- (a) notify the Bank of England;
- (b) send 4 copies of the order to the person appointed (by email if possible); and
- (c) send a copy of the order to any administrative receiver of the bank.

45.—(1) As soon as is reasonably practicable after appointment a provisional bank administrator must send a copy of the order of appointment to—

- (a) the bank,
- (b) the FSA, and
- (c) the registrar of companies (together with the form specified in Rule 4.029 of the 1991 Rules).

(2) Notice to the bank must be given by personal service in accordance with rule 18.

46. The Bank of England may disclose the fact and terms of an order appointing a provisional bank administrator to any person whom the Bank thinks has a sufficient business interest.

Additional joint bank administrator

47.—(1) The process for the appointment of an additional joint bank administrator is the same as for the initial appointment of a bank administrator.

(2) The existing bank administrator (or each of them) is entitled to a copy of the application and may—

- (a) file written representations; and
- (b) be heard at the hearing.

(3) An application for the appointment of an additional joint bank administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 58 applies Rule 2.128 of the 1991 Rules (notification and advertisement of the appointment of an additional joint administrator).

End of administration: successful rescue

48.—(1) This Rule supplements section 150 of the 2009 Act (end of bank administration where bank administrator satisfied that Objective 2 (a) has been achieved).

(2) The bank administrator's notice under paragraph 81 of Schedule B1 to the Order (as applied by section 153)—

- (a) shall be filed with the court in Form 2.32B (subject to Rule 7(2)); and
- (b) shall be accompanied by a final progress report.

(3) The notice takes effect when the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 81 of Schedule B1 to the Order and the progress report to—

- (a) the registrar of companies,
- (b) the FSA,
- (c) the FSCS, and
- (d) the Bank of England.

(5) Notice under paragraphs (4)(b) and (4)(c) must be given at least 7 days' before the hearing of the application for approval of the notice.

(6) The bank administrator shall be taken to have complied with the requirements of paragraph 81(5) of Schedule B1 if, within 5 business days of filing the notice under paragraph 81 with the court, he publishes once in the same newspaper as he published his notice of appointment, and in the Gazette, a notice specifying—

- (a) the full name of the bank and any other trading names;
- (b) the name and address of the bank administrator;
- (c) the date of the notice under paragraph 81; and
- (d) an address to which creditors can write for a copy of the notice under paragraph 81 and the final progress report.

(7) The bank administrator's application for discharge must certify compliance with the requirements of paragraph 81 and of sub paragraphs (1) to (6) of this Rule.

(8) If the court is satisfied that the conditions in section 153(1) of the 2009 Act have been met it shall—

- (a) discharge the bank administration order; and
- (b) notify the bank administrator, who shall notify the registrar of companies.

End of administration: dissolution

49.—(1) This Rule supplements section 154(2)(a) of the 2009 Act (bank administrator giving notice under paragraph 85 of Schedule B1 to the Order that there are no more assets for distribution, and moving to dissolution).

(2) The bank administrator's notice under paragraph 85—

- (a) shall be filed with the court in Form 2.36B (subject to Rule 7(2)); and
- (b) shall be accompanied by a final progress report.

(3) The notice shall not take effect until the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 85 and the progress report to—

- (a) the registrar of companies; and
 - (b) each person who received notice of the bank administrator’s appointment.
- (5) After the expiry of the period mentioned in paragraph 85(6) (and subject to extension under paragraph 85(7)) if the court discharges the bank administration order —
- (a) the notice takes effect as specified in paragraph 85(6); and
 - (b) the court shall notify the bank administrator, who shall notify the registrar of companies.
- (6) If the court makes an order under paragraph 85(7) it shall notify the bank administrator in Form 2.36B (subject to Rule 7(2)), who shall notify the registrar of companies.

PART 4

Court Procedure and Practice

Introduction

50. This Part makes specific provision for a number of aspects of proceedings under Part 3 of the 2009 Act (bank administration); Part 5 of these Rules applies a number of provisions of the 1991 Rules to proceedings under the 2009 Act (with specified modifications).

Title of proceedings

51. Proceedings under Part 3 of the 2009 Act shall be entitled “IN THE MATTER OF ... (naming the bank to which the proceedings relate) AND IN THE MATTER OF PART 3 OF THE BANKING ACT 2009”.

Right to inspect file

52. The following have the right, at all reasonable times, to inspect the court’s file in respect of bank administration proceedings—

- (a) the bank administrator or provisional bank administrator;
- (b) a person who is or was a director or officer of the bank;
- (c) a member of the bank;
- (d) any person stating himself in writing to be a creditor of the bank;
- (e) any person stating himself in writing to be a contributory in respect of the bank;
- (f) the Bank of England;
- (g) the FSA; and
- (h) the FSCS.

53. A right of inspection may be exercised on a person’s behalf by anyone authorised by him in writing.

54. Any person may, with permission of the court, inspect the court’s file in respect of bank administration proceedings.

55. A right of inspection is not exercisable in the case of documents, or parts of documents, as to which the court directs that they are not to be made open to inspection without the court’s permission; and an application for a direction may be made by—

- (a) the bank administrator or provisional bank administrator; or
- (b) any person appearing to the court to have an interest.

56. Rule 7.25(2) and (3) of the 1991 Rules (as applied by Rule 58) apply in respect of the court’s file of bank administration proceedings as they apply in respect of court records.

57. Proceedings under Articles 177 and 178 of the Order (fraudulent and wrongful trading) shall be conducted in accordance with Article 179 of that Order subject to the modifications specified in section 145 of the 2009 Act.

PART 5

Application of Insolvency Rules (Northern Ireland) 1991

General application

58. The provisions of the 1991 Rules listed in the Table in Rule 61 apply for the purposes of bank administration and applications for bank administration.

59. For that purpose the rules apply with—

- (a) the general modifications set out in Rule 60;
- (b) any specific modification set out in the Table in Rule 61; and
- (c) any other necessary modification.

General modifications

60. The general modifications are that—

- (a) a reference to an administrator or liquidator is to be treated as a reference to the bank administrator;
- (b) a reference to administration or liquidation is to be treated as a reference to bank administration;
- (c) a reference to a provisional liquidator is to be treated as a reference to a provisional bank administrator;
- (d) a reference to a winding-up order is to be treated as a reference to a bank administration order;
- (e) a reference to a petition for a winding-up order is to be treated as a reference to an application for a bank administration order;
- (f) a reference to insolvency proceedings is to be treated as a reference to bank administration (or proceedings for bank administration);
- (g) a reference to the responsible insolvency practitioner is to be treated as a reference to the bank administrator or provisional bank administrator;
- (h) all references to the Official Receiver are to be ignored;
- (i) all references to the EC regulation or to the appointment of a member State liquidator are to be ignored;
- (j) a reference to the company is to be treated as a reference to the bank;
- (k) a reference in the rules to a paragraph of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 is to be treated as a reference to that paragraph as applied and modified by section 145 of the Banking Act 2009; and
- (l) a reference to the Insolvency (Northern Ireland) Order 1989 includes a reference to Part 3 of the Banking Act 2009.

Table of applications and specific modifications

61. This Rule contains the Table of applied Insolvency Rules.

<i>Rule</i>	<i>Subject</i>	<i>Specific modifications</i>
Preparatory steps		
Introductory Provisions Rules 0.1 to 0.7	Interpretation and application	
2.028	Notification and advertisement of administrator's appointment	Ignore paragraph (2)(a), (b) and (e).
2.029	Notice requiring statement of affairs	
2.030	Verification and filing	
2.031	Limited disclosure	On an application for disclosure under paragraph (4) any of the following may appear and be heard, or make written representations— (a) the bank administrator, (b) the Bank of England, (c) the FSA, and (d) the FSCS.
2.032	Release from duty to submit statement of affairs; extension of time	On an application under paragraph (2) for release or extension of time any of the following may appear and be heard, or make written representations— (a) the bank administrator, (b) the Bank of England, (c) the FSA, and (d) the FSCS.
2.033	Expenses of statement of affairs	
Bank administrator's proposals and creditors' meetings		
2.034	<i>Administrator's proposals</i>	<i>Rule 2.034 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
2.035	Meetings to consider administrator's proposals	(1) Rule 2.035 applies in the Objective 2 Stage. (2) The FSA and the FSCS are added to the list in paragraph (2) of persons entitled to notice.
2.036	Creditors' meetings generally	The FSA and FSCS are added to the list in paragraph (3) of persons to whose convenience the bank administrator is to have regard.
2.037	Chairman at meetings	
2.038	Meeting requisitioned by creditors	Treat the reference to the administrator's statement of proposals as a reference to the bank administrator's statement of proposals in accordance with Rule 29.
2.039	Entitlement to vote	
2.040	Admission and rejection of claims	
2.041	Secured creditors	
2.042	Holder of negotiable instruments	
2.043	Hire-purchase, conditional sale and chattel leasing agreements	
2.044	Resolutions	
2.045	Minutes	

2.046	Revision of the administrator's proposals	In paragraph (2)(c) ignore the reference to the person making the appointment.
2.047	Notice to creditors	
2.048	<i>Reports to creditors</i>	<i>Rule 2.048 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
2.049	Correspondence instead of creditors' meetings	
2.050	Venue and conduct of company meeting	
Creditors' committee		
2.051	Constitution of committee	<i>(A creditors' committee cannot be established until the Objective 2 Stage – see the modifications for the application of paragraphs 51 to 59 of Schedule B1 to the Order in Table 1 in section 145 of the 2009 Act.)</i>
2.052	Formalities of establishment	
2.053	Functions and meetings of the committee	
2.054	The chairman at meetings	
2.055	Quorum	
2.056	Committee-members' representatives	
2.057	Resignation	
2.058	Termination of membership	
2.059	Removal	
2.060	Vacancies	
2.061	Procedure at meetings	
2.062	Resolutions of creditors' committee by post	
2.063	Information from administrator	
2.064	Expenses of members	
2.065	Members dealing with the company	In respect of any application to set aside a transaction under paragraph (3)— (a) notice of the application must be given to the FSA and the FSCS, and (b) the FSA and the FSCS may appear and be heard.
2.066	Formal defects	
Process of administration		
2.067	Application to court to dispose of charged property	If an application is made during the Objective 1 Stage, then in addition to the requirements of Rule 2.067— (a) the bank administrator must notify the Bank of England of the time and place of the hearing, (b) the Bank of England may appear, and (c) if an order is made the bank administrator must send a copy to the Bank of England as soon as is reasonably practicable.
2.068	Priority of expenses of administration	In addition to the matters listed in Rule 2.068(1), expenses in connection with

		provisional bank administration are payable in the following order of priority— (a) the cost of any security provided by the provisional bank administrator takes priority equally with security provided by the bank administrator, and (b) the remuneration of the provisional bank administrator ranks next, and (c) any deposit lodged on an application for the appointment of a provisional bank administrator ranks next.
2.069	Distributions to creditors: introduction	<i>(Distributions in the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England's consent – see the modification for the application of paragraph 66 of Schedule B1 to the Order in Table 1 in section 145 of the 2009 Act.)</i>
2.070	Debts of insolvent company to rank equally	
2.071	Dividends: supplementary	
2.072	Division of unsold assets	
2.073	Proving a debt	
2.074	Claim established by a witness statement	
2.075	Costs of proving	
2.076	Administrator to allow inspection of proofs	
2.077	New administrator: transfer of proofs	
2.078	Admission and rejection of proofs for dividend	
2.079	Appeal against decision on proof	In respect of any application under Rule 2.079(1) or (3)— (a) notice of the application must be given to the FSA and the FSCS and, during the Objective 1 Stage, the Bank of England, and (b) the FSA and the FSCS, and the Bank of England during the Objective 1 Stage, may appear and be heard.
2.080	Withdrawal or variation of proof	
2.081	Expunging of proof by the court	In respect of any application under Rule 2.081(1)(b)— (a) notice of the application must be given to the FSA and the FSCS and, during the Objective 1 Stage, the Bank of England, and (b) the FSA and the FSCS, and the Bank of England during the Objective 1 Stage, may appear and be heard.
2.082	Estimate of quantum of claims	
2.083	Negotiable instruments, &c.	
2.084	Secured creditors	

2.085	Discounts	
2.086	Mutual credit and set-off	
2.087	Debt in foreign currency	
2.088	Periodical payments	
2.089	Interest	
2.090	Debt payable in future	
2.091	Value of security	
2.092	Surrender for non-disclosure	
2.093	Redemption by administrator	
2.094	Test of security's value	
2.095	Realisation of security by creditor	
2.096	Notice of proposed distribution	The following are added to the list of those entitled to receive notice under Rule 2.096(2)(a)— (a) the FSA, (b) the FSCS and (c) during the Objective 1 Stage of a bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act, the Bank of England.
2.097	Admission or rejection of proofs	
2.098	Declaration of dividend	
2.099	Notice of declaration of dividend	(1) The following are added to the list of those entitled to receive notice under Rule 2.099(1)— (a) the FSA, (b) the FSCS, and (c) during the Objective 1 Stage of a bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act, the Bank of England. (2) In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage, the particulars required by rule 2.099(2) include details of any payment made from a scheme under a resolution fund order.
2.100	Payment of dividends, &c.	
2.101	Notice of no dividend or no further dividend	The bank administrator must copy any notice under Rule 2.101 to— (a) the FSA, (b) the FSCS, and (c) the Bank of England, in a case where it consented to a distribution under Rule 2.069 (as applied).
2.102	Proof altered after payment of dividend	
2.103	Secured creditors	

2.104	Disqualification from dividend	In respect of any application for disqualification under Rule 2.104— (a) notice of the application must be given to the FSA and the FSCS, and (b) the FSA and the FSCS may appear and be heard.
2.105	Assignment of right to dividend	
2.106	Debt payable in future	The “relevant date” is the date of the bank administration order.
The bank administrator		
2.107	Fixing of remuneration	(1) In the Objective 1 Stage the Bank of England shall fix the bank administrator’s remuneration in accordance with Rule 2.107(2). (2) In the Objective 2 Stage, Rule 2.107 applies (but pending action under paragraphs (3) or (5) arrangements established by the Bank of England in the Objective 1 Stage shall continue to apply.
2.108	Recourse to meeting of creditors	
2.109	Recourse to the court	(1) In respect of remuneration fixed by the Bank of England— (a) Rule 2.109 applies as if references to the creditors’ committee were references to the Bank of England, and (b) the court shall have regard to Objective 1. (2) In respect of any application under Rule 2.109— (a) notice of the application must be given to the FSA and the FSCS, and (b) the FSA and the FSCS may appear and be heard.
2.110	Creditors’ claim that remuneration is excessive	Rule 2.110 applies only during the Objective 2 Stage.
4.134B and Schedule 4	Remuneration where assets realised on behalf of chargeholder	
Ending administration		
2.111	Final progress report	(1) The reference to Rule 2.048 is to be treated as a reference to Rule 35. (2) In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act the final progress report— (a) shall not be made until the bank administrator is satisfied that any payment likely to be made to the bank from a scheme under a resolution fund order has been made, and (b) shall state whether any payment has been received and, if so, its amount.

2.114	<i>Notice of end of administration</i>	<i>Rule 2.114 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
2.115	Application to court by administrator	The reference to paragraph 80 of Schedule B1 to the Order is to be treated as a reference to paragraph 81 (as applied by section 153(2) of the 2009 Act).
2.117	Notification to registrar of companies and Enforcement of Judgements Office	
2.119	Moving from administration to dissolution	<i>Rule 2.119 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
Replacing bank administrator		
2.120	Grounds for resignation	During the Objective 1 Stage the Bank of England's consent, as well as the court's permission, is required for resignation under paragraph (2).
2.121	Notice of intention to resign	The Bank of England, the FSA and the FSCS are added to the list of those entitled to notice under paragraph (1).
2.122	Notice of resignation	
2.123	Application to court to remove administrator	<i>(An application may be made during the Objective 1 Stage only with the Bank of England's consent – see the modifications for the application of paragraph 89 of Schedule B1 to the Order in Table 1 in section 145 of the 2009 Act.)</i> (1) An application must state either— (a) that the Bank of England has consented to its being made, or (b) that the Objective 1 Stage has ended. (2) The FSA and the FSCS are added to the list of those entitled to notice under paragraph (2).
2.124	Notice of vacation of office on ceasing to be qualified	
2.125	Death of administrator	
2.126	Application to replace	Rule 2.126 is applied during the Objective 2 Stage only (and ignoring references to paragraph 96 of Schedule B1 to the Order). <i>For equivalent provision about application for removal by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the application of paragraph 92 of Schedule B1 to the Order in Table 1 in section 145 of the 2009 Act) see Part 3 of these Rules.</i>
2.127	Notification and advertisement of replacement	
2.128	Notification and advertisement of appointment of joint administrator	
2.129	Notice to registrar of companies of replacement or addition	
2.130	Duties on vacating office	

Provisional bank administrator (see application of Article 115 of the Order in Table 2 in section 145 of the 2009Act)		
4.027	<i>Appointment</i>	<i>Rule 4.027 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
4.028	<i>Notice of appointment</i>	<i>Rule 4.028 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
4.029	<i>Order of appointment</i>	<i>Rule 4.029 is not applied – but equivalent provision is made by Part 3 of these Rules.</i>
4.031	Security	
4.032	Failure to give or keep security	
4.033	Remuneration	Ignore paragraph (5).
4.034	Termination of appointment	An application for termination may be made by— (a) the provisional bank liquidator, or (b) the Bank of England.
Disclaimer		
4.197	Notice of disclaimer	<i>(In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009Act notice may be given during the Objective 1 Stage only with the Bank of England’s consent – see the modifications for the application of Article 152 of the Order in Table 2 in section 145 of the 2009Act.)</i>
4.198	Communication to interested persons	
4.199	Additional notices	
4.200	Duty to keep court informed	
4.201	Application by interested party	
4.202	Interest in property to be declared on request	
4.203	Disclaimer presumed valid and effective	
4.204	Application for exercise of court’s powers under Article 155 of the Order	<i>(Article 155 is applied by Table 2 in section 145 of the Banking Act 2009.)</i>
Court procedure and practice		
7.05	Application of Chapter 1 of Part 7	Chapter 1 does not apply to an application for a bank administration order (which is addressed in Part 2 of these Rules).
7.06	Interpretation	
7.07	Form and contents of application	
7.07A	Application to disapply Article 150A of the Order	
7.08	Filing and service of application	
7.08A	Notice of application under Article 150A of the Order	
7.09	Other hearings <i>ex parte</i>	
7.10	Use of witness statement evidence	
7.11	Filing and service of witness statements	
7.12	Use of reports	
7.13	Adjournment of hearings; directions	

7.14	Nomination and appointment of shorthand writers	
7.16	Remuneration of shorthand writers	
7.19	Enforcement of court orders	
7.20	Orders enforcing compliance with Rules	
7.21	Warrants	
7.22	Warrants under Article 200	
7.24	Court records	
7.25	Inspection of records	
7.26	File of court proceedings	
7.27	<i>Right to inspect court file</i>	<i>Rule 7.27 is not applied – but equivalent provision is made in Part 4 of these Rules.</i>
7.28	Filing of Gazette notices and advertisements	
7.29	Costs: application of the Supreme Court Rules	
7.30	Requirement to assess costs by the detailed procedure	
7.32	Procedure where detailed assessment required	
7.34	Costs paid otherwise than out of the assets of the insolvent estate	
7.35	Award of costs against responsible insolvency practitioner	
7.36	Application for costs	
7.37	Costs and expenses of witnesses	
7.38	Persons who lack capacity to manage their affairs: introductory	
7.39	Appointment of another person to act	
7.40	Witness statement in support of application	
7.41	Services of notices following appointment	
7.42	Appeals and reviews of court orders from Master	
7.44	Procedure on appeal	
7.45	Principal court rules and practice to apply	
7.47	Right of attendance	
7.54	Insolvency practitioner's solicitor	
7.50	Formal defects	
7.51	Restriction on concurrent proceedings and remedies	
7.52	Witness statements	
7.53	Security in court	
7.54	Further information and disclosure	
7.56	Office copies of documents	
Proxies		
8.1	Definition of proxy	
8.2	Issue and use of forms	
8.3	Use of proxies at meetings	

8.4	Retention of proxies	
8.5	Right of inspection of proxies	
8.6	Proxy-holder with financial interest	
8.7	Company representation	<i>(The reference to Article 383 of the Companies (Northern Ireland) Order 1986 is now a reference to section 323 of the Companies Act 2006.)</i>
Examination of persons		
9.1	Preliminary	1. Part 9 applies to applications under Article 200 of the Order (inquiry into company's dealings) as applied by Table 2 in section 145 of the Banking Act 2009. 2. Treat a reference to "the insolvent" as a reference to the bank.
9.2	Form and contents of application	
9.3	Order for examination	
9.4	Procedure for examination	
9.5	Record of examination	
9.6	Costs of proceedings	
Declaration and payment of dividend		
11.01	Preliminary	
11.02	Notice of intended dividend	
11.03	Final admission or rejection of proofs	
11.04	Postponement or cancellation of dividend	
11.05	Decision to declare dividend	
11.06	Notice of declaration	
11.07	Notice of no dividend or no further dividend	
11.08	Proof altered after payment of dividend	
11.09	Secured creditors	
11.10	Disqualification from dividend	
11.11	Assignment of right to dividend	
11.12	Preferential creditors	
11.13	Debt payable in future	The "relevant date" is the date of the bank administration order.
Miscellaneous and general		
12.01	Regulation of specified administrative matters	A reference to the Department includes a reference to the Treasury.
12.02	Costs and expenses	
12.03	Provable debts	
12.04	Notices	
12.5	Quorum at meetings	<i>(The reference to Article 383 of the Companies (Northern Ireland) Order 1986 is now a reference to section 323 of the Companies Act 2006.)</i>
12.06	Evidence of proceedings at meeting	
12.07	Documents issued by Department	
12.08	Forms	<i>(See Rule 7.)</i>
12.09	Insolvency practitioner's security	

12.10	Time	
12.11	Service by post	<i>(Rule 12.11 applies subject to express provision about service made in these Rules.)</i>
12.12	Service and notice: general	
12.13	Service outside jurisdiction	
12.14	Confidentiality of documents	
12.15	Notices sent simultaneously to same person	
12.16	Right to copy documents	
12.17	Charge for copy documents	
12.18	Non-receipt of notice of meeting	
12.19	Right to have list of creditors	
12.20	False claim of status as creditor	
12.21	Gazette	
12.22 and Schedule 3	Punishment of offences	
12.23	Notice of order under Article 150A of the Order	

Jack Straw
Lord Chancellor

Dated 18th February 2009

I concur

Brian Kerr
The Lord Chief Justice of Northern Ireland

Dated 19th February 2009

We concur

Dave Watts
Steve McCabe
Two of the Lords Commissioners of Her Majesty's Treasury

Dated 23rd February 2009

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure for the bank administration process under Part 3 of the Banking Act 2009.

The main features of bank administration are that:

- (a) it is used where part of the business of a bank is sold to a commercial purchaser or transferred to a bridge bank in accordance with section 12;
- (b) the court appoints a bank administrator on the application of the Bank of England;
- (c) the bank administrator ensures that the non-sold or non-transferred part of the bank provides services or facilities to enable the commercial purchaser or bridge bank to operate effectively;
- (d) the bank administrator has two objectives (Objective 1 – supporting the private purchaser or bridge bank; and Objective 2 – “normal administration”); and
- (e) in other respects the process is the same as for normal administration under the Insolvency (Northern Ireland) Order 1989, subject to specified modifications.

Part 2 sets out special provisions about applications for bank administration.

Part 3 sets out special provisions about the bank administration process.

Part 4 sets out special provisions about court procedure and practice in connection with bank administration.

Part 5 of the Rules applies specified provisions of the Insolvency Rules (Northern Ireland) 1991 for general purposes in connection with bank administration, subject to a number of general and specific modifications.

© Crown Copyright 2009

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly.

2009 No. 63

BANKING

BANKING INSOLVENCY

The Bank Administration Rules (Northern Ireland) 2009