
DRAFT STATUTORY INSTRUMENTS

2017 No.

**The Investment Bank (Amendment of Definition) and
Special Administration (Amendment) Regulations 2017**

PART 3

Investment bank insolvency regulations

Responsibility for certain costs of the administration

15. After regulation 19 insert—

“Responsibility for certain costs of the administration

19A.—(1) Where the administrator considers that relevant costs have been incurred in consequence of a failure by the investment bank to comply with client money rules or with any relevant requirement (“a default”), the administrator—

- (a) must seek the agreement of the creditors’ committee established under paragraph 57 of Schedule B1 (as applied by regulation 15) to the amount incurred in consequence of the default; or
- (b) if there is no creditors’ committee or the administrator is unable to agree that amount with the creditors’ committee, must apply to the court for an order fixing the amount.

(2) On an application under paragraph (1)(b), the court may fix the amount incurred in consequence of the default or dismiss the application on the ground that there was no default or that no relevant costs have been incurred in consequence of the default.

(3) Paragraph (4) applies where the creditors’ committee agree an amount incurred in consequence of the default or the court fixes an amount by order.

(4) Notwithstanding any provision in insolvency rules prescribing how the expenses of the special administration are to be paid, responsibility for the relevant amount is assigned to the investment bank, and accordingly that amount is to be paid out of the investment bank’s assets.

(5) Where the investment bank’s assets are insufficient to enable the relevant amount to be met out of those assets, paragraph (4) has effect only in relation to that part of the relevant amount which can be met out of those assets.

(6) In this regulation—

“relevant amount” means the amount of relevant costs incurred in consequence of the default as agreed by the creditors’ committee or fixed by the court;

“relevant costs” means costs incurred by the administrator of applying the procedure set out in Schedule B1 (as applied by regulation 15 and as prescribed) for ascertaining particulars of the client assets held by the investment bank, and of taking custody and control and distributing those assets; and

“relevant requirement” means any requirement relating to holding client assets contained in—

- (a) rules made under Part 9A of FSMA (rules and guidance) which make provision relating to the handling of client assets, other than client money, held by a person who is authorised for the purposes of FSMA;
- (b) Commission Delegated Regulation (EU) No. 231/2013 of 19th December 2012 supplementing [Directive 2011/61/EU](#) of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision⁽¹⁾; or
- (c) Commission Delegated Regulation (EU) 2016/438 of 17th December 2015 supplementing [Directive 2009/65/EC](#) of the European Parliament and of the Council with regard to obligations of depositaries⁽²⁾.”.

(1) OJ No. L 83, 22.3.2013, p. 1-95.
(2) OJ No. L 78, 24.3.2016, p 11-30.