

2009 No. 356

BANKS AND BANKING ENGLAND AND WALES
INSOLVENCY

The Bank Insolvency (England and Wales) Rules 2009

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- SCHEDULE

The Lord Chancellor makes the following Rules in exercise of his powers under section 411(1A)(a), (2), (2C) and (3) of the Insolvency Act 1986(a).

The Treasury concur in the making of the Rules.

The Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the Insolvency Act 1986) concurs in the making of the Rules in so far as they affect court procedure.

The Lord Chancellor has not consulted the Committee existing for the purposes of section 413 of the Insolvency Act 1986: this is the first set of rules made in reliance on section 125 of the Banking Act 2009(b), and the duty to consult does not therefore apply to these rules by virtue of section 125 (8) of that Act.

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Rules may be cited as the Bank Insolvency (England and Wales) Rules 2009 and come into force on 25th February 2009.

Extent

2. These Rules extend to England and Wales only.

Application of rules, construction and interpretation

3.—(1) These Rules apply in relation to a bank undergoing the procedure in Part 2 of the Banking Act 2009(c) known as bank insolvency.

(2) In these Rules—

“the 1985 Act” means the Companies Act 1985(d);

“the 1986 Act” means the Insolvency Act 1986 (and includes those provisions as applied by section 103 of the 2009 Act);

“the 1986 Rules” means the Insolvency Rules 1986(e);

“the 2006 Act” means the Companies Act 2006(f);

(a) 1986 c.45. Section 411 was amended by the Constitutional Reform Act 2005 (2005 c.4), section 15 and Schedule 4, paragraphs 185 and 188, by S.I. 2002/1037 and by the Banking Act 2009 (c.1), section 125.

(b) 2009 c. 1.

(c) 2009 c. 1.

(d) 1985 c. 6.

(e) SI 1986/1925.

(f) 2006 c. 46.

“the 2009 Act” means the Banking Act 2009;

“bank” means the bank (as defined by section 91(1) of the 2009 Act) which is or is to be the subject of the bank insolvency order;

“CPR” means the Civil Procedure Rules 1998(a);

“the FSA” means the Financial Services Authority;

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000(b)) or, where appropriate, the scheme manager of that scheme;

“the insolvent” means the bank that has been put into bank insolvency;

“liquidation committee” means the committee established pursuant to section 100 of the 2009 Act;

“personal service” has the meaning given in Part 6 of the CPR;

“registered address” has the meaning given by section 1140 of the 2006 Act;

“sealed” means sealed with the seal of the court under which the application was made: and

“statement of truth” has the meaning set out in Part 22 of the CPR.

- (3) These Rules consist of—
- (a) the rules set out in full;
 - (b) in the case of a rule applying a rule in Part 4, 7, 8, 9, 11, 12 or 13 of the 1986 Rules, the rule so applied with—
 - (i) the modifications set out in paragraph (4),
 - (ii) the modifications contained in the rule applying it, and
 - (iii) any other necessary modification;
 - (c) the Schedule, which applies the relevant schedules of the 1986 Rules.
- (4) The modifications are that where applicable, a reference to—
- (a) the 1986 Act (or to “the Act”) is a reference to that Act as applied, with modifications, by the 2009 Act, (and includes, where appropriate, a reference to Part 2 of the 2009 Act.)
 - (b) the 1986 Rules (or to “the Rules”) is a reference to these Rules,
 - (c) an affidavit is a reference to a witness statement,
 - (d) the commencement of winding up is a reference to the commencement of bank insolvency,
 - (e) the chairman is a reference to the chair,
 - (f) a reference to a company is a reference to a bank,
 - (g) going into liquidation is a reference to entering bank insolvency,
 - (h) insolvency proceedings is a reference to bank insolvency proceedings,
 - (i) the official receiver should be ignored unless otherwise stated,
 - (j) a petition for winding up is a reference to an application for bank insolvency under section 95 of the 2009 Act,
 - (k) a petitioner is a reference to an applicant,
 - (l) the provisional liquidator is a reference to the provisional bank liquidator,
 - (m) winding up is a reference to bank insolvency,
 - (n) winding up by the court is a reference to a bank being placed into bank insolvency by the court, and
 - (o) a winding-up order is a reference to a bank insolvency order.
- (5) Expressions used—

(a) S.I. 1998/3132.
(b) 2000 c.8.

- (a) both in a rule set out in full and in Part 2 of the 2009 Act, or
- (b) both in a modification to a rule from the 1986 Rules applied by these Rules and in Part 2 of the 2009 Act,

have the same meaning as in Part 2 of the 2009 Act.

(6) Where a rule applies a rule of the 1986 Rules and modifies that rule by inserting or substituting text—

- (a) any reference in the modified rule to the 2009 Rules is a reference to these rules;
- (b) expressions inserted or substituted have the same meaning as in these rules.

(7) Where a rule in the 1986 Rules (Rule A) contains a reference to another such rule (Rule B) and—

- (a) both Rule A and Rule B are applied by these Rules, or
- (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules,

the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.

(8) Where a rule (Rule A) refers to another rule (Rule B), and Rule B applies a rule of the 1986 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied to Rule B.

(9) Any notice or document required to be sent electronically by these Rules shall be treated as having been sent to the person if—

- (a) it is sent by email to the person's last known email address, and
- (b) the email contains a prompt asking the person for an electronic receipt saying that the email has been read.

(10) Where the rules provide for a witness statement (either expressly, or through the application of the 1986 Rules as modified above)—

- (a) that statement is a reference to a witness statement verified by a statement of truth in accordance with Part 22 of the CPR, and
- (b) if the statement is made by the bank liquidator or provisional bank liquidator, the statement should state as such and should include the address at which that person works.

Overview

4. The purpose of these Rules is to provide a procedure for the appointment of a bank liquidator and the operation of bank insolvency under Part 2 of the 2009 Act in England and Wales.

Forms

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

- (a) applies a provision of the Insolvency Rules 1986 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.

(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 insolvency (whether or not the modification is set out in a Practice Form issued by the Treasury for that purpose).

Time Limits

6.—(1) Where by any provision of the 1986 Act, the 2009 Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

(2) If the court's consideration of whether to extend the time for doing anything takes place before a full payment resolution has been passed, the court shall only extend the time if it considers that the resulting delay will not significantly prejudice the achievement of Objective 1.

PART 2

APPLICATION FOR ORDER

Filing of application

7.—(1) The application for a bank insolvency order, verified by witness statement in accordance with rule 11, shall be filed in court.

(2) There shall be filed with the application—

- (a) 1 copy for service on the bank,
- (b) 1 copy to be attached to the proof of service, and
- (c) further copies to be sent to those persons under rule 10.

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

- (a) the desirability of the application being heard as soon as is reasonably practicable, and
- (b) the need to give the bank a reasonable opportunity to attend.

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

(5) Any application filed in relation to a bank in respect of which there is in force a voluntary arrangement under Part 1 of the 1986 Act shall be filed in accordance with this rule, but a copy of that application shall also be sent to the court to which the nominee's report under section 2 of the 1986 Act was submitted, if that is not the same court.

Service of application

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

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

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

- (a) the place which is specified, in the bank's statement delivered under section 9 of the 2006 Act or, before that section comes into force, section 10 of the 1985 Act^(a) as the intended situation of its registered office on incorporation, or
- (b) if notice has been given by the bank to the registrar of companies under section 87 of the 2006 Act or, before that section comes into force, section 287 of the 1985 Act^(b), the place specified in that notice or, as the case may be, in the last such notice.

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

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

(a) Section 10 is repealed on 1 October 2009.

(b) Section 287 of the 1985 Act is repealed on 1 October 2009.

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

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

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

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

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

Proof of service

9. Apply rule 4.9 of the 1986 Rules.

Other persons to receive copy of application

10.—(1) The applicant shall send a sealed copy of the application to—

(a) the proposed bank liquidator,

(b) the Bank of England, (if it is not the applicant,)

(c) the FSA, (if it is not the applicant,)

(d) the FSCS,

(e) on any person who has given notice to the FSA in respect of the bank under section 120 of the Banking Act 2009,

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

(g) if an administrative receiver has been appointed in relation to the bank, that receiver,

in accordance with paragraph (2).

(2) 1 copy shall be sent electronically as soon as practicable and the other shall be sent by first class post on the business day on which the application is served on the bank.

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

Verification of application

11.—(1) This applies where an application has been filed at the court under rule 7 above.

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

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

(4) The witness statement is, unless proved otherwise, evidence of the statements in the application.

Persons entitled to copy of application

12.—(1) Every contributory or creditor of the bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

Certificate of compliance

13.—(1) Apply rule 4.14 of the 1986 Rules.

(2) In paragraph (1) the period for filing shall be as soon as reasonably practicable before the hearing of the application.

(3) In paragraph (2), leave out the words “a copy of the advertisement” to the end, and insert—

“A witness statement made by the proposed bank liquidator to the effect that—

(c) the person is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act, and

(d) the person consents to act as the bank liquidator,

shall be filed in court with the certificate.”

Leave for the applicant to withdraw

14. Apply rule 4.15 of the 1986 Rules. Leave out “at least 5 days” and ignore sub-paragraph (a).

Witness statement in opposition

15.—(1) If the bank intends to oppose an application, the bank or a director of the bank may (but need not) file a witness statement in opposition in court.

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

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

(4) The statement should also be sent to the persons in rule 10(1) before the hearing by personal service or by electronic means.

(5) The fact that the neither the bank nor its directors have filed a statement under this rule shall not prevent any of those persons or their legal representatives from being heard at the hearing.

Making, transmission and advertisement of order

16.—(1) The court shall not make a bank insolvency order unless the person nominated to be appointed as the bank liquidator in the application for the order has filed in court a witness statement under rule 13.

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

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

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

(5) The bank liquidator shall send a sealed copy of the order—

(a) to the Bank of England, the FSA and the FSCS (electronically or otherwise), and

(b) to the registrar of companies in accordance with section 130(1) of the 1986 Act (as applied by the 2009 Act).

(6) The bank liquidator shall as soon as reasonably practicable—

(a) cause the order to be gazetted, and

(b) advertise the order in such other manner as the bank liquidator thinks fit.

Authentication of bank liquidator's appointment

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

Initial duties of bank liquidation committee

18.—(1) As soon as reasonably practicable after the making of a bank insolvency order, the liquidation committee will meet the bank liquidator for the purpose of discussing which of the objectives, or combination of objectives, mentioned in section 102(1) of the 2009 Act, the committee should recommend the bank liquidator to pursue.

(2) If the bank liquidator and every individual on the liquidation committee agree, the meeting may be held by audio or video conference.

(3) The liquidation committee will make its recommendation to the bank liquidator at the meeting.

(4) The Bank of England will confirm the liquidation committee's recommendation in writing as soon as practicable after the meeting.

(5) As soon as practicable after the making of a bank insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 98, the bank liquidator is to be remunerated.

(6) Until a full payment resolution has been passed, the bank liquidation committee—

(a) shall take decisions and pass resolutions by a simple majority, and

(b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Expenses of voluntary arrangement

19. Apply rule 4.21A of the 1986 Rules(a).

PART 3

PROVISIONAL BANK LIQUIDATOR

Appointment of provisional bank liquidator

20.—(1) The rule applies after an application for a bank insolvency order has been filed under rule 7 and before that order is made.

(2) An application to the court for the appointment of a provisional bank liquidator under section 135 of the Act may be made—

(a) by the Bank of England,

(b) by the FSA, (with the consent of the Bank of England), or

(c) by the Secretary of State.

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

(a) the grounds upon which it is proposed that the provisional bank liquidator should be appointed;

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

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

(d) whether to the applicant's knowledge—

(a) Rule 4.21A was inserted by S.I. 1987/1919.

- (i) there has been proposed or is in force for the bank a company voluntary arrangement under Part 1 of the 1986 Act, or
 - (ii) an administrative receiver is acting in relation to the bank.
- (e) the applicant's estimate of the value of the assets in respect of which the provisional bank liquidator is to be appointed, and
- (f) the functions the applicant wishes to be carried out by the provisional bank liquidator in relation to the bank's affairs.
- (4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

Notice of appointment

21. Where a provisional bank liquidator has been appointed, the court shall notify the applicant and the person appointed.

Order of appointment

22.—(1) The order of appointment shall specify the functions to be carried out by the provisional bank liquidator in relation to the bank's affairs.

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

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

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

(5) The bank liquidator shall send a sealed copy of the order—

- (a) to the Bank of England, the FSA, and the FSCS (electronically or otherwise), and
- (b) to the registrar of companies, and
- (c) (if applicable) to any administrative receiver of the bank.

Security

23. Apply rule 4.28 of the 1986 Rules(a).

Failure to give or keep up security

24. Apply rule 4.29 of the 1986 Rules.

Remuneration

25. Apply rule 4.30 of the 1986 Rules. Ignore paragraph (4).

Termination of appointment

26.—(1) Apply rule 4.31 of the 1986 Rules(b).

(2) At the end insert—

“(3) On the making of a bank insolvency order the appointment of the provisional bank liquidator shall terminate.”.

(a) Paragraph (2) was amended by S.I. 2008/737.

(b) The original paragraph (3) was revoked by S.I. 1987/1919.

PART 4

STATEMENT OF AFFAIRS AND OTHER INFORMATION

Notice requiring statement of affairs

27.—(1) Apply rule 4.32 of the 1986 Rules. For “official receiver”, substitute “Bank of England”.

(2) In paragraph (3), for “Chapter” substitute “Part”.

Verification and filing

28.—(1) Apply rule 4.33 of the 1986 Rules.

(2) For paragraph (6), substitute—

“(6) The bank liquidator shall file the statement of affairs in court and shall send a copy of it to the registrar of companies.”

(3) Ignore paragraph (7).

Limited disclosure

29.—(1) Apply rule 4.35 of the 1986 Rules. In paragraph (1), for “official receiver”, substitute “Bank of England”.

(2) After paragraph (1), insert—

“(1A) The Bank of England may also apply to the court for an order of limited disclosure in respect of those depositors of the bank who, at the time of the making of the statement of affairs, still have a claim against the bank in respect of their deposits.”

Release from duty to submit statement of affairs; extension of time

30. Apply rule 4.36 of the 1986 Rules(a). For “official receiver” substitute “bank liquidator.”

Expenses of statement of affairs

31. Apply rule 4.37 of the 1986 Rules(b). For “official receiver”, substitute “Bank of England”.

Submission of accounts

32. Apply rule 4.39 of the 1986 Rules. For “official receiver”, substitute “Bank of England”.

Further disclosure

33. Apply rule 4.42 of the 1986 Rules. For “official receiver”, substitute “Bank of England”.

(a) Paragraph (7) was amended by S.I. 2008/737.

(b) Rule 4.37 was amended by S.I. 2008/737.

PART 5
INFORMATION TO CREDITORS AND CONTRIBUTORIES

Report by bank liquidator

34.—(1) The bank liquidator shall, at least once after the making of the bank insolvency order, make a report with respect to the proceedings in the bank insolvency and the state of the bank's affairs.

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within 8 weeks of the commencement of the bank insolvency, made publicly available on the bank's website.

(3) The bank liquidator shall include in the report under paragraph (1)—

- (a) a statement that the proceedings are being held in the High Court and the relevant court reference number;
- (b) the full name, registered office address, registered companies house number and any other trading names of the bank;
- (c) details relating to the bank liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
 - (i) which functions (if any) are to be exercised by the persons appointed acting jointly, and
 - (ii) which functions (if any) are to be exercised by any of all of the persons appointed.
- (d) the names of the directors and secretary of the bank and details of any shareholdings in the bank that they have;
- (e) an account of the circumstances giving rise to the bank insolvency;
- (f) if a statement of affairs has been submitted, a copy of that statement;
- (g) if a statement of affairs has yet to be submitted—
 - (i) subject to sub paragraph (ii), the names, addresses and details of any debts of the creditors, including details of any security held (or, in the case of depositors who still are creditors of the bank at the time the report is made, a single statement of their aggregate debt),
 - (ii) details of the financial position of the bank at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of bank insolvency);
- (h) the basis upon it has been proposed under rule 41, or, if the full payment resolution has yet to be passed, rule 18, that the bank liquidator's remuneration has been fixed;
- (i) to the best of the bank liquidator's knowledge and belief—
 - (i) an estimate of the value of the prescribed part (within the meaning of section 176A of the 1986 Act) regardless of whether—
 - (aa) the bank liquidator proposes to make an application to the court under section 176A(5) of that Act, or
 - (bb) section 176A(3) of that Act applies, and
 - (ii) an estimate of the value of the company's net property;
- (j) whether, and if so, why, the bank liquidator proposes to make an application to court under section 176A(5) of the 1986 Act;
- (k) a summary of—
 - (i) how Objective 1 is being or has been achieved and an estimate of the costs to the bank liquidator of achieving it,
 - (ii) the manner in which the affairs and business of the bank not involved in the achievement of Objective 1 have, since the commencement of the bank insolvency;

been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made, and
(iii) how the affairs and business of the bank will continue to be managed and financed;
and

(1) an explanation of how it is envisaged the purpose of the bank liquidation will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the bank liquidation shall end.

(4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3) to include any information the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(5) The bank liquidator shall file with the court a copy of any report sent under this rule.

Meaning of “creditors”

35. Apply rule 4.44 of the 1986 Rules.

Report where statement of affairs lodged

36. Apply rule 4.45 of the 1986 Rules(a). For “official receiver”, substitute “Bank of England”.

Statement of affairs dispensed with

37. Apply rule 4.46 of the 1986 Rules.

General rule as to reporting

38.—(1) Apply rule 4.47 of the 1986 Rules.

(2) In paragraph (1), for “Chapter” substitute “Part”.

(3) In paragraph (2), for “official receiver”, substitute “Bank of England”.

Bank insolvency stayed

39.—(1) Apply rule 4.48 of the 1986 Rules.

(2) In paragraph (1), for “Chapter” substitute “Part”.

(3) In paragraph (2), for “official receiver”, substitute “Bank of England”.

PART 6

MEETINGS OF CREDITORS AND CONTRIBUTORIES

RULES OF GENERAL APPLICATION

First meeting

40.—(1) Once the liquidation committee passes a full payment resolution the bank liquidator shall—

(a) immediately summon a meeting of the bank’s creditors and a meeting of the bank’s contributories, and

(b) fix a venue, date and time for the meetings,

(a) Paragraph (1) was amended by S.I. 1987/1919.

and the date must be within 3 months of the date on which the full payment resolution was passed.

(2) When the venue, date and time of the meetings have been fixed the bank liquidator shall give notice of the meetings to—

- (a) the court,
- (b) every creditor who is known to the bank liquidator or is identified in the bank's statement of affairs,
- (c) every person appearing (by the bank's books or otherwise) to be a contributory of the bank, and
- (d) each member of the liquidation committee,

and shall advertise the venue, date and time of the meetings in such manner as the bank liquidator thinks fit.

(3) In giving the notice mentioned in paragraph (2) the bank liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(4) Notice to the court and the members of the liquidation committee shall be given immediately; notice to creditors and contributories shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(5) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(6) The FSCS is entitled to be represented at the meeting and Schedule 1 to the 1986 Rules, as applied by rule 293, has effect with respect to its voting rights at such a meeting.

(7) Meetings summoned under this rule are known respectively as "the first meeting of creditors" and "the first meeting of contributories", and jointly as "the first meetings in the bank liquidation."

Business at first meetings of creditors and contributories

41.—(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At that meeting those creditors present (or represented by proxy) may—

- (a) where the FSCS has not resigned, elect 2 or 4 individuals as new members of the liquidation committee,
- (b) where the FSCS has resigned, elect 3 or 5 individuals as new members of the liquidation committee,

in place of the members nominated by the Bank of England and the FSA. In accordance with section 100(6)(d) of the 2009 Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee would have fewer than 3 members or an even number of members. The maximum number of committee members will be 5.

(3) At the first meeting of creditors no resolutions shall be taken other than the following—

- (a) if an application has been made to the court by the creditors under rule 94 for the court to direct the bank liquidator to summon a meeting of creditors for the purpose of removing him, and the court has directed that a resolution may be passed to that effect at the first meeting of creditors, —
 - (i) a resolution to remove the bank liquidator (or a resolution to remove 1 or more of the bank liquidators if joint liquidators were originally appointed), and
 - (ii) a resolution to appoint a named insolvency practitioner to be bank liquidator or 2 or more insolvency practitioners as joint liquidators;

- (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
 - (c) where 2 or more persons are appointed jointly to act as bank liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only 1;
 - (d) a resolution to adjourn the meeting for not more than 3 weeks; and
 - (e) any other resolutions which the chair thinks it right to allow for special reasons.
- (4) At the first meeting of contributories, no resolutions shall be taken other than the following—
- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 117 shall then apply);
 - (b) a resolution to adjourn the meeting for not more than 3 weeks;
 - (c) any other resolutions which the chair thinks it right to allow for special reasons.

General power to call meetings

42.—(1) Apply rule 4.54 of the 1986 Rules.

(2) Where the bank liquidator has been directed to summon a meeting of creditors under section 195 of the Act (as applied by section 109 of the 2009 Act) for the purpose of removing the bank liquidator, the bank liquidator shall give notice of the meeting to the Bank of England and the FSA.

The chair at meetings

43.—(1) Meetings shall be chaired by the bank liquidator or a person nominated in writing by the bank liquidator.

(2) A person nominated under paragraph (1) must be—

- (a) qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act, or
- (b) an employee of the bank liquidator or of the bank liquidator's firm who is experienced in insolvency matters.

Requisitioned meetings: general

44.—(1) Apply rule 4.57 of the 1986 Rules.

Requisitioned meetings: reforming the liquidation committee

45.—(1) Rule 4.57 of the 1986 Rules also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 41 and no further steps have been taken to re establish that committee; and
- (b) the bank liquidator has been requested, by no less than one-tenth in value of the bank's creditors, to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to re-establish the liquidation committee, the time periods set out in rule 4.57 of the 1986 Rules may be expedited by the bank liquidator on the request of the bank's creditors.

(3) The bank liquidator shall give notice of the meeting to the FSA and Bank of England.

(4) Rule 41(1) and (2) shall apply at this meeting as if it were the first meeting of creditors.

Attendance at meetings of bank's personnel

46. Apply rule 4.58 of the 1986 Rules.

Notice of meetings by advertisement only

47. Apply rule 4.59 of the 1986 Rules.

Venue

48. Apply rule 4.60 of the 1986 Rules.

Expenses of summoning meetings

49. Apply rule 4.61 of the 1986 Rules.(a)

Resolutions

50. Apply rule 4.63 of the 1986 Rules(b).

Chair of meeting as proxy-holder

51. Apply rule 4.64 of the 1986 Rules.

Suspension and adjournment

52.—(1) Apply rule 4.65 of the 1986 Rules.(c)

(2) In paragraph (3), leave out “or, as the case may be, 4.114–CVL(3)”.

Entitlement to vote (creditors)

53.—(1) Apply rule 4.67 of the 1986 Rules(d).

(2) Ignore paragraph (ii) of paragraph (1)(a) and paragraph (8).

(3) In paragraph (9), ignore the reference to paragraph (8).

Entitlement to vote (contributories)

54. Apply rule 4.69 of the 1986 Rules.

Admission and rejection of proof (creditors' meetings)

55. Apply rule 4.70 of the 1986 Rules. For paragraph (5) substitute—

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

Record of proceedings

56. Apply rule 4.71 of the 1986 Rules.

(a) Paragraphs (3) and (4) were amended by S.I. 2008/737.
(b) Rule 4.63 was by S.I. 1987/1919.
(c) Paragraphs (3) and (4) were amended by S.I. 1987/1919.
(d) Rule 4.67) was amended by S.I. 2002/1307.

PART 7

PROOF OF DEBTS

Meaning of “prove”

57.—(1) Apply rule 4.73 of the 1986 Rules.

(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.

(3) Ignore paragraphs (2), and (8)(a).

Supply of forms

58. Apply rule 4.74 of the 1986 Rules(b).

Contents of proof

59. Apply rule 4.75 of the 1986 Rules(c).

Claim established by affidavit

60. Apply rule 4.77 of the 1986 Rules. Ignore paragraph (3).

Cost of proving

61.—(1) Apply rule 4.78 of the 1986 Rules.(d)

(2) In paragraph (1), leave out “or 4.76–CVL”.

Bank liquidator to allow inspection of proofs

62. Apply rule 4.79 of the 1986 Rules.

New bank liquidator appointed

63. Apply rule 4.81 of the 1986 Rules.

Admission and rejection of proofs for dividend

64. Apply rule 4.82 of the 1986 Rules.

Appeal against decision on proof

65.—(1) Apply rule 4.83 of the 1986 Rules.

(2) For paragraph (6) substitute—

“(6) The bank liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

Withdrawal or variation of proof

66. Apply rule 4.84 of the 1986 Rules.

(a) Paragraph (8) was added by S.I. 2003/1730.
(b) Rule 4.74 was substituted by S.I. 2004/584.
(c) Paragraph (1) was substituted by S.I. 2004/584.
(d) Paragraph (2) was amended by S.I. 2008/737.

Expunging of proof by the court

67. Apply rule 4.85 of the 1986 Rules.

Estimate of quantum

68. Apply rule 4.86 of the 1986 Rules.

Negotiable instruments, etc.

69. Apply rule 4.87 of the 1986 Rules.

Secured creditors

70. Apply rule 4.88 of the 1986 Rules.

Discounts

71. Apply rule 4.89 of the 1986 Rules.

Mutual credits and set-off

72. This rule applies where, before the bank goes into bank insolvency, there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the bank proving or claiming to prove for a debt in the bank insolvency.

(1) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under section 98 of the 1986 Act,
 - (ii) a petition for the winding up of the bank was pending, or
 - (iii) an application for a bank insolvency order in respect of the bank was pending;
- (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the commencement of bank insolvency,
 - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98,
 - (iii) at a time when the creditor had notice that a winding up petition was pending, or
 - (iv) at a time when the creditor had notice that an application for a bank insolvency order in respect of the bank was pending.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from 1 party shall be set off against the sums due from the other.

(3) A sum shall be regarded as being due to or from the bank for the purposes of paragraph (2) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(4) Rule 4.86 of the 1986 Rules shall apply for the purposes of this Rule to any obligation to or from the bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(5) Rules 74 to 76 shall apply for the purposes of this Rule in relation to any sums due to the bank which—

- (a) are payable in a currency other than sterling,
- (b) are of a periodical nature, or
- (c) bear interest.

(6) Rule 259 shall apply for the purposes of this rule to any sum due to or from the bank which is payable in the future.

(7) Subject to rule 73, only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the bank liquidator as part of the assets except where all or part of the balance result from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

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

Disapplication of set off for eligible depositors

73.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation. **(a)**.

(2) Rule 72 shall apply but, for the purpose of determining the sums due from the bank to an eligible depositor and from an eligible depositor to the bank for the purpose of rule 72(2)—

- (a) where the total of the sums held by the bank for the eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000, then paragraph (3) applies; and
- (b) where the sums held exceeds that limit, then paragraph (4) applies.

(3) Where paragraph (2)(a) applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the bank, and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that depositor in respect of the protected deposits.

(4) Where paragraph (2)(b) applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which that total exceeds that limit, and
- (b) the sums due from the bank to the eligible depositor will be—
 - (i) the amount by which that total exceeds that limit, set off in accordance with rule 72(2); and
 - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit of the amount prescribed as the maximum compensation payable.

(5) Any arrangements with regard to set off between the bank and the eligible depositor in existence before the commencement of bank insolvency shall be subject to this rule.

(6) “Protected deposit” means a protected deposit within the meaning given by the Compensation Sourcebook. **(b)**

Debt in foreign currency

74. Apply rule 4.91 of the 1986 Rules(c). In paragraph (1), leave out from “or, if” to the end.

(a) The reference to FSA Rules are to the FSA’s Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000).

(b) The FSA’s Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000.)

(c) Rule 4.91 was amended by S.I. 2003/1730 and SI 2005/527.

Payments of a periodical nature

75. Apply rule 4.92 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end.(a)

Interest

76. Apply rule 4.93 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end.(b)

Debt payable at future time

77.—(1) Apply rule 4.94 of the 1986 Rules.(c)

(2) Leave out from “or, if” to “entered administration”.

PART 8

SECURED CREDITORS

Value of security

78. Apply rule 4.95 of the 1986 Rules.

Surrender for non-disclosure

79. Apply rule 4.96 of the 1986 Rules. Ignore paragraph (3)(d).

Redemption by liquidator

80. Apply rule 4.97 of the 1986 Rules(e).

Test of security’s value

81. Apply rule 4.98 of the 1986 Rules.

Realisation of security by creditor

82. Apply rule 4.99 of the 1986 Rules.

PART 9

THE BANK LIQUIDATOR

CHAPTER 1

GENERAL

Remuneration of bank liquidator

83.—(1) This rule applies where—

(a) the liquidation committee has ceased to exist as mentioned in rule 41(1),

(a) Paragraph (1) was amended by S.I. 2005/527.

(b) Rule 4.93 was amended by S.I. 1987/1919 and 2005/527.

(c) Rule 4.94 was amended by S.I. 2005/527.

(d) Paragraph (3) was inserted by S.I. 2002/1307.

(e) Paragraph (3) was amended by S.I. 2008/737

(b) the committee has not been reformed at a meeting of creditors held under either rule 41 rules 44 and 45, and

(c) the committee has not been reformed at a meeting of contributories held under rule 117.

(2) Where this rule applies the creditors may, at the first or any subsequent meeting of creditors, pass a resolution as to the terms on which, in accordance with rule 98, the bank liquidator is to be remunerated.

(3) Where such a resolution is passed—

(a) it supersedes any resolution as to the remuneration of the bank liquidator passed by the liquidation committee before the first meeting of creditors, and

(b) the bank liquidator shall be paid under the resolution passed by the bank liquidation committee under rule 18(5) in respect of the performance of his functions before the day on which the creditors' resolution is passed and under the creditors' resolution in respect of the performance of his functions on and after that day.

Replacement of bank liquidator by creditors

84.—(1) Apply rule 4.100 of the 1986 Rules(a).

(2) For paragraph (1) substitute—

“(1) This rule applies where a person is appointed as bank liquidator by a meeting of creditors.”

(3) For paragraph (4) substitute—

“(4) The chairman of the meeting shall—

(a) send the certificate to the new bank liquidator,

(b) send a copy of the certificate to the Bank of England and the FSA, and

(c) file a copy of the certificate in court .”

Authentication of bank liquidator's appointment

85. Apply rule 4.105 of the 1986 Rules(b)). Leave out from “or (as” to “the Act”.

Appointment to be advertised and registered

86.—(1) This rule applies where the bank liquidator is appointed by a meeting of the creditors or by the Bank of England under rule 106.

(2) The bank liquidator shall, after receiving the certificate of appointment, give notice of his appointment in such manner as the bank liquidator thinks fit for ensuring that it comes to the notice of the bank's creditors and contributories.

(3) The expense of giving notice under this rule shall be borne in the first instance by the bank liquidator; but he is entitled to be reimbursed as an expense of the bank insolvency.

(4) The bank liquidator shall immediately notify his appointment to the registrar of companies.

CHAPTER 2

RESIGNATION AND REMOVAL

Creditors' meeting to be notified of the bank liquidator's resignation

87.—(1) Apply rule 4.108 of the 1986 Rules(c).

(a) Paragraphs (3) to (5) were substituted by S.I. 1987/1919.

(b) Rule 4.105 was amended by S.I. 2003/1730.

(c) Paragraphs (6) and (7) were added by S.I.1987/1919.

(2) For paragraph (1), substitute—

“(1) Before resigning office, the bank liquidator must obtain the consent of the Bank of England and must call a meeting of creditors to notify them of this.

(1A) The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of the meeting and shall draw the attention of the creditors to rule 95 with respect to the bank liquidator’s release.

(1B) The notice in (1A) shall enclose a copy of the Bank of England’s consent.”

(3) For paragraph (2) substitute—

“(2) Copies of the notice and of the account mentioned in paragraph (3) shall be sent to the court, the Bank of England and the FSA.”.

Action following acceptance of resignation

88.—(1) This rule applies where a meeting is summoned to notify the creditors of the bank liquidator’s resignation

(2) The meeting will resolve whether to give the bank liquidator their release.

(3) If the meeting decides to not give the bank liquidator his release, the bank liquidator will be given a copy of that resolution and rule 95 applies.

(4) After the meeting the bank liquidator shall file the notice of his resignation in court and will send copies of the notice to the Bank of England, the FSA and the registrar of companies.

(5) The bank liquidator’s resignation is effective as from the date on which the court receives the notice of his resignation, and the court will endorse that date on the notice.

Advertisement of resignation

89. Apply rule 4.112 of the 1986 Rules.

Meeting of creditors to remove bank liquidator

90.—(1) Apply rule 4.113 of the 1986 Rules.

(2) In paragraph (1), for “section 174(4)” substitute “section 109 of the Banking Act 2009”.

(3) In paragraph (2), for “official receiver” substitute “Bank of England and the FSA”.

(4) In paragraph (4) substitute—

“(4) Where the meeting passes a resolution that—

- (a) the bank liquidator be removed;
- (b) a new bank liquidator be appointed, or
- (c) the bank liquidator not to be given their release

the bank liquidator will be given a copy of that resolution and if it has been resolved to remove the bank liquidator, the bank liquidator will be given a certificate to that effect.”

(5) For paragraph (5) substitute—

“(5) If the creditors have resolved to appoint a new bank liquidator, the certificate of his appointment shall also be sent to the registrar of companies within that time and rule 4.100 shall apply.”

Court’s power to regulate meetings under rule 90

91. Apply rule 4.115 of the 1986 Rules. Leave out “or 4.114–CVL”.

Procedure on removal

- 92.**—(1) Apply rule 4.116 of the 1986 Rules.
- (2) For “official receiver”, wherever it appears, substitute “out-going bank liquidator”.
- (3) For paragraph (3) substitute—
- “**(3)** A copy of the certificate so endorsed shall be sent by the court to the outgoing bank liquidator and, if a new liquidator has been appointed, to him.”
- (4) Ignore paragraph (4).

Advertisement of removal

- 93.** Apply rule 4.118 of the 1986 Rules.

Removal of bank liquidator by the court

- 94.**—(1) Apply rule 4.119 of the 1986 Rules**(a)**.
- (2) After paragraph (1) insert—
- “**(2A)** If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by someone other than the Bank of England, the FSA or the liquidation committee.”
- (3) In paragraph (2), for “at least 7 days’ notice” substitute—
- “(a) if the application is made before the passing of a full payment resolution, such notice as is reasonable in all the circumstances, and
- (b) if the application is made after the passing of a full payment resolution, at least 7 days’ notice.”.
- (4) In paragraph (4), leave out “, at least 14 days before the hearing,”.
- (5) After paragraph (4) insert—
- “**(4A)** The notice and copies mentioned in paragraph (4) shall be sent—
- (a) if the application is made before the passing of a full payment resolution, within such time so as to give the bank liquidator notice of the hearing as is reasonable in all the circumstances, and
- (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.”.
- (6) In paragraph (6)—
- (a) in sub-paragraph (a), for “official receiver” substitute “Bank of England and the FSA” and at the end insert “and”, and
- (b) leave out “and” at the end of sub-paragraph (b), and sub-paragraph (c).

Release of resigning or removed bank liquidator

- 95.**—(1) Apply rule 4.121 of the 1986 Rules.
- (2) In paragraph (1), for “accepted by” substitute “notified to”.
- (3) For rule 4.109 substitute “rule 88 of the Bank Insolvency Rules 2009”.
- (4) In paragraph (3)—
- (a) in sub paragraph (a) for “receive his resignation” substitute “be notified of his resignation”; and
- (b) leave out “or” at the end of sub-paragraph (a) and at the end of sub-paragraph (b) insert—

(a) Paragraph 5 of rule 4.119 was amended by S.I. 2008/737.

“, or

(c) the bank liquidator resigns, and the Bank of England has refused his release.”.

(5) For paragraph (4) substitute—

“(4) When the Secretary of State gives the release, he shall certify it accordingly, file the certificate in court and send a copy to the registrar of companies.”

CHAPTER 3

RELEASE ON COMPLETION OF WINDING UP

Final meeting

96.—(1) The bank liquidator shall give at least 14 days’ notice of the final meeting of the liquidation committee to be held under section 115 of the 2009 Act to the following—

- (a) the FSA,
- (b) the FSCS,
- (c) the Bank of England,
- (d) the Treasury,
- (e) the registrar of companies, and
- (f) the members of the liquidation committee.

(2) The bank liquidator’s final report to be laid before the meeting under that section shall contain an account of the liquidator’s administration of the winding up, including—

- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the bank liquidator in connection with that Objective,
- (b) a summary of the bank liquidator’s receipts and payments,
- (c) a statement that the bank liquidator has reconciled his account with that which is held by the Secretary of State in respect of the winding up, and
- (d) a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part) of the 1986 Act(a).

(3) At the same time that notice of the final meeting is sent out, the bank liquidator shall file the final report in court and send it to the registrar of companies.

(4) The bank liquidator shall give notice that the final report is available to all creditors and contributories, either on request to the bank liquidator or at Companies House, and shall cause that notice to be gazetted at least 14 days before the final meeting is held.

(5) At the final meeting, the liquidation committee may question the bank liquidator with respect to any matter contained in the final report, and may resolve against the bank liquidator being released.

(6) The bank liquidator shall give notice to the court that the final meeting has been held and the notice shall state whether or not he has been given his release.

(7) Where the liquidation committee does not resolve against the bank liquidator’s release, the bank liquidator vacates office at the end of the meeting and has his release when the notice in paragraph (6) is filed in court.

(8) If there is no quorum present at the final meeting, the bank liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the 2009 Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the bank liquidator being released.

(9) If the liquidation committee resolves against the bank liquidator having his release then rule 95 applies.

(a) Section 176A was inserted by the Enterprise Act 2002 (2002 c.40), section 252.

Rule as to reporting

97. Apply rule 4.125A(a) of the 1986 Rules. Ignore the reference to rule 4.124.

CHAPTER 4 REMUNERATION

Fixing of remuneration

98.—(1) Apply rule 4.127 of the 1986 Rules(b).

(2) In paragraph (3), leave out from the beginning to “receiver”.

(3) For paragraph (5) substitute—

“(5) If, under rule 41(2), the liquidation committee ceases to exist at the end of the first meeting of creditors, the remuneration of the bank liquidator fixed by the initial liquidation committee under rule 18 can be redetermined by a resolution of a meeting of creditors, and paragraph (4) applies to the determination of the creditors as it does to the determination of the liquidation committee.”

(4) In paragraph (6), for the words from the beginning to “his” substitute “Where the bank liquidator’s”.

Bank liquidator’s entitlement to remuneration where it is not fixed under rule 98

99.—(1) Apply rule 4.127A(c) of the 1986 Rules.

(2) In paragraph (1), for the words from “liquidator” to “his” substitute “bank liquidator’s”.

(3) In paragraph (2), after “Schedule 6” add “to the 1986 Rules as applied by Schedule 1 to the Bank Insolvency Rules 2009”.

Bank liquidator’s remuneration where he realises assets on behalf of chargeholder

100.—(1) Apply rule 4.127B(d) of the 1986 Rules.

(2) In paragraph (1), for the words from “liquidator” to “and” substitute “bank liquidator”.

(3) In paragraphs (2) and (3), after “Schedule 6” add “to the 1986 Rules as applied by Schedule 1 to the Bank Insolvency Rules 2009”.

Other matters affecting remuneration

101. Apply rule 4.128 of the 1986 Rules(e).

Recourse of bank liquidator to meeting of creditors

102. Apply rule 4.129 of the 1986 Rules.

Recourse to the court

103. Apply rule 4.130 of the 1986 Rules(f).

Creditors’ claim that remuneration is excessive

104. Apply rule 4.131 of the 1986 Rules.

-
- (a) Rule 4.125A was inserted by S.I. 2004/584.
(b) Paragraph (6) was substituted by S.I. 2004/584.
(c) Rule 4.127A was inserted by S.I. 2004/584.
(d) Rule 4.127B was inserted by S.I. 2004/584.
(e) Paragraph (1) was revoked by S.I. 2004/584.
(f) Paragraph (4) was amended by S.I. 1987/1919 and S.I. 2008/737.

Primacy of Objective 1

105. Nothing done under a rule in this chapter may prejudice the achievement of Objective 1.

CHAPTER 5

SUPPLEMENTARY PROVISIONS

Replacement Bank liquidator

106.—(1) Where the bank liquidator vacates his office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 90, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(2) Where a bank liquidator has been removed by a meeting of creditors but 1 month has passed and there has been no resolution passed by a meeting of creditors to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(3) The Bank of England shall file in court the document appointing the new bank liquidator (“the appointment document”) together with statements to the effect that the new bank liquidator—

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

(b) consents to act as the bank liquidator.

(4) The bank liquidator shall send a copy of the appointment document to the FSA and registrar of companies.

(5) The bank liquidator shall as soon as reasonably practicable—

(a) cause the appointment to be gazetted, and

(b) advertise the appointment in such manner as the bank liquidator thinks fit.

Bank liquidator deceased

107.—(1) Unless notice of the death of the bank liquidator has been given under paragraph (2) or (3), it is the duty of the bank liquidator’s personal representatives, where the bank liquidator has died, to give notice of that fact to the Bank of England and the liquidation committee, specifying the date of the death.

(2) If the deceased bank liquidator was a partner in a firm, notice may be given to the Bank of England, the FSA and liquidation committee 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 for the authorisation of insolvency practitioners.

(3) Notice of the death may also be given by any person producing the relevant death certificate or a copy of it to the Bank of England, the FSA and the liquidation committee.

(4) The Bank of England shall give notice to the court, for the purpose of fixing the date of the deceased bank liquidator’s release.

Loss of qualification as insolvency practitioner

108.—(1) Apply rule 4.134 of the 1986 Rules. For paragraph (2) substitute—

“(2) The bank liquidator shall immediately give notice of his doing to the Bank of England.

(3) The Bank of England shall file a copy of this notice in court.”

Resignation of the bank liquidator

109.—(1) This rule applies where the bank liquidator was appointed by the bank insolvency order or by the Bank of England.

(2) The bank liquidator can only resign—

- (a) after the liquidation committee have passed a full payment resolution, and
- (b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 87 to receive notice of the bank liquidator's resignation, the bank liquidator must write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify the bank liquidator in writing within 21 days as to whether it consents to the resignation; if the Bank of England does not consent to the resignation, it shall set out its reasons in writing.

(5) The bank liquidator, if not content with the Bank of England's response, may apply to the Court for directions under section 168(3) of the 1986 Act.

Notice to Bank of England of intention to vacate office

110.—(1) This rule applies where the bank liquidator was appointed by a meeting of creditors.

(2) Apply rule 4.137 of the 1986 Rules(a).

(3) For “official receiver”, wherever it appears, substitute “Bank of England” and for “receive his resignation” substitute “be notified of his resignation”.

Bank liquidator's duties on vacating office

111. Apply rule 4.138 of the 1986 Rules(b). Ignore paragraph (3).

Power of court to set aside certain transactions

112.—(1) Apply rule 4.149 of the 1986 Rules.

(2) In paragraph (2)—

(a) leave out “either”, and

(b) leave out “or” at the end of sub-paragraph (a), and after sub-paragraph (b) insert—

“, or

(c) it is shown to the court's satisfaction that the transaction was entered into by the liquidator for the purpose of achieving Objective 1.”.

Rule against solicitation

113.—(1) Apply rule 4.150 of the 1986 Rules.(c)

PART 10

THE LIQUIDATION COMMITTEE

Application of rules in this Part

114. The rules in this Part apply only in relation to the liquidation committee established under rule 41 after a full payment resolution has been passed.

(a) The rule was substituted by S.I. 1987/1919.

(b) Rule 4.138 was amended by S.I. 1987/1919 and S.I. 2004/584.

(c) Paragraph (1) was amended by S.I. 2008/737.

Membership of committee

115.—(1) Apply rule 4.152 of the 1986 Rules.

(2) For paragraph (1) substitute—

“(1) Subject to rule 4.154 as applied by rule 117 of the Bank Insolvency Rules 2009, the liquidation committee shall consist of either 3 or 5 creditors of the company, elected by the meeting of creditors held under rule 41 of those Rules.”

(3) Ignore paragraphs (2), (4) and (7)(a) and ignore any reference to contributory members in paragraph (6).

Formalities of establishment

116. Apply rule 4.153 of the 1986 Rules(b). In paragraph (3), the reference to section 375 of the 1985 Act, shall, after that section is repealed, be to section 323 of the 2006 Act.(c)

Committee established by contributories

117.—(1) Apply rule 4.154 of the 1986 Rules(d).

(2) For paragraph (1) substitute—

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the bank liquidator under rule 41 of the Bank Insolvency 2009 Rules is, (by virtue of rule 41 (2)), that the liquidation committee ceases to exist at the end of the meeting.”.

(3) In paragraph (2), for “that section” substitute “section 141 of the Act”.

(4) In paragraph (4) for “at least 3 and not more than 5”, substitute “3 or 5”.

Obligations of liquidator to committee

118. Apply rule 4.155 of the 1986 Rules.

Meetings of the committee

119. Apply rule 4.156 of the 1986 Rules.

The chair at meetings

120. Apply rule 4.157 of the 1986 Rules.

Quorum

121. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Committee–members’ representatives

122. Apply rule 4.159 of the 1986 Rules(e). In paragraph (2), the reference to section 375 of the 1985 Act, shall, after that section is repealed, be to section 323 of the 2006 Act.

Resignation

123. Apply rule 4.160 of the 1986 Rules.

(a) Paragraph (7) was substituted by S.I. 2001/3649.

(b) Paragraphs (3) and (3A) were substituted by S.I. 1987/1919.

(c) Section 375 is repealed on 1 October 2009.

(d) Paragraph (4) was amended by S.I. 1987/1919.

(e) Rule 4.159 was amended by S.I. 1987/1919 and S.I. 2004/584.

Termination of membership

124. Apply rule 4.161 of the 1986 Rules(a).

Removal

125. Apply rule 4.162 of the 1986 Rules.

Vacancy (creditor members)

126. Apply rule 4.163 of the 1986 Rules.

Vacancy (contributory members)

127. Apply rule 4.164 of the 1986 Rules.

Voting rights and resolutions

128. Apply rule 4.165 of the 1986 Rules.

Resolutions by post

129. Apply rule 4.167 of the 1986 Rules(b).

Liquidator's reports

130. Apply rule 4.168 of the 1986 Rules.

Expenses of members, etc.

131. Apply rule 4.169 of the 1986 Rules(c).

Dealings by committee—members and others

132. Apply rule 4.170 of the 1986 Rules(d).

Composition of committee when creditors paid in full

133.—(1) Apply rule 4.171 of the 1986 Rules.

(2) For paragraph (4) substitute—

“(4) The members of the liquidation committee will cease to be members at the end of the final meeting held under rule 96 of the Bank Insolvency Rules 2009.”

Committee's functions vested in the Secretary of State

134. Apply rule 4.172 of the 1986 Rules. Ignore paragraph (2).

Formal defects

135. Apply rule 4.172A of the 1986 Rules(e).

(a) Paragraph (1) was amended by S.I. 1987/1919.

(b) Paragraph (2) was amended by S.I. 1987/1919.

(c) Rule 4.169 was amended by S.I. 2008/737.

(d) Paragraphs (2) and (7) were amended by S.I. 2008/737.

(e) Rule 4.172A was inserted by S.I. 1987/1919.

PART 11
COLLECTION AND DISTRIBUTION OF BANK'S ASSETS BY BANK
LIQUIDATOR

General duties of bank liquidator

136. Apply rule 4.179 of the 1986 Rules.

General qualification on powers

137. In exercising any power conferred on the bank liquidator by this Part before a full payment resolution has been passed, the bank liquidator shall exercise it consistently with Objective 1.

Manner of distributing assets

138. Apply rule 4.180 of the 1986 Rules.

Debts of insolvent company to rank equally

139. Apply rule 4.181 of the 1986 Rules(a).

Supplementary provisions as to dividend

140. Apply rule 4.182 of the 1986 Rules.

Division of unsold assets

141. Apply rule 4.183 of the 1986 Rules.

General powers of the liquidator

142. Apply rule 4.184 of the 1986 Rules(b). In paragraph (1) leave out "section 165(2) or".

Enforced delivery up of company's property

143. Apply rule 4.185 of the 1986 Rules.

Final distribution

144. Apply rule 4.186 of the 1986 Rules(c). For "Part 11 of the Rules", substitute "Part 21 of the 2009 Rules".

(a) Paragraph (2) was added by S.I. 1987/1919.
(b) Paragraph (1) was amended by S.I. 2005/527.

(c) Paragraph (3) was amended by S.I. 2008/737.

PART 12 DISCLAIMER

Liquidator's notice of disclaimer

145. Apply rule 4.187 of the 1986 Rules.

Communication of disclaimer to persons interested

146. Apply rule 4.188 of the 1986 Rules.

Additional notices

147. Apply rule 4.189 of the 1986 Rules.

Duty to keep court informed

148. Apply rule 4.190 of the 1986 Rules.

Application by interested party under s 178(5)

149. Apply rule 4.191 of the 1986 Rules.

Interest in property to be declared on request

150. Apply rule 4.192 of the 1986 Rules.

Disclaimer presumed valid and effective

151. Apply rule 4.193 of the 1986 Rules. For "Chapter" substitute "Part".

Application for exercise of court's powers under s 181

152. Apply rule 4.194 of the 1986 Rules.

PART 13 SETTLEMENT OF LIST OF CONTRIBUTORIES

Preliminary

153. Apply rule 4.195 of the 1986 Rules.

Primacy of Objective 1

154. Where the bank liquidator considers that the carrying out of a duty imposed by a rule in this Part would prejudice the achievement of Objective 1, the bank liquidator shall postpone the carrying out of that duty until he considers that the carrying out of the duty would no longer be likely to prejudice the achievement of that Objective.

Duty of liquidator to settle list

155. Apply rule 4.196 of the 1986 Rules.

Form of list

156. Apply rule 4.197 of the 1986 Rules.

Procedure for settling list

157. Apply rule 4.198 of the 1986 Rules.

Application to court for variation of the list

158. Apply rule 4.199 of the 1986 Rules.

Variation of, or addition to, the list

159. Apply rule 4.200 of the 1986 Rules. For “Chapter”, substitute “Part”.

Costs not to fall on bank liquidator

160. The bank liquidator is not personally liable for any costs incurred by a person in respect of an application to set aside or vary the bank liquidator’s act or decision in settling the list of contributories, or varying or adding to the list, unless the court makes an order to that effect.

PART 14

CALLS

Calls by liquidator

161. Apply rule 4.202 of the 1986 Rules.

Control by bank liquidation committee

162. Apply rule 4.203 of the 1986 Rules.

Application to court for leave to make a call

163. Apply rule 4.204 of the 1986 Rules.

Making and enforcement of the call

164. Apply rule 4.205 of the 1986 Rules.

PART 15

SPECIAL MANAGER

Appointment and remuneration

165. Apply rule 4.206 of the 1986 Rules.

Security

166. Apply rule 4.207 of the 1986 Rules(a).

(a) Paragraphs (5) and (6) were amended by S.I. 2008/737.

Failure to give or keep up security

167. Apply rule 4.208 of the 1986 Rules.

Accounting

168. Apply rule 4.209 of the 1986 Rules.

Termination of appointment

169. Apply rule 4.210 of the 1986 Rules.

PART 16

ORDER OF PAYMENT AS TO COSTS, ETC. OUT OF ASSETS

General rule as to priority

170.—(1) Apply rule 4.218 of the 1986 Rules(a).

(2) In paragraph (3)—

(a) ignore sub-paragraphs (a)(iii) and (iv), (b), and (d),

(b) in sub-paragraph (c) leave out the words from “or section 415A” to the end, and

(c) in sub-paragraph (1a), leave out the words from “in any case” to the end.

Litigation expenses and property subject to a floating charge—general application

171. Apply rule 4.218A(b) of the 1986 Rules.

Litigation expenses and property subject to a floating charge—requirement for approval or authorisation

172. Apply rule 4.218B of the 1986 Rules.

Litigation expenses and property subject to a floating charge—request for approval or authorisation

173. Apply rule 4.218C of the 1986 Rules.

Litigation expenses and property subject to a floating charge—grant of approval or authorisation

174. Apply rule 4.218D of the 1986 Rules.

Litigation expenses and property subject to a floating charge—application to court by the bank liquidator

175. Apply rule 4.218E of the 1986 Rules.

Saving for powers of the court

176. Apply rule 4.220 of the 1986 Rules.

(a) Rule 4.218 was amended by S.I. 2008/737.

(b) Rules 4.218A to E were inserted by S.I. 2008/737.

PART 17
MISCELLANEOUS RULES
CHAPTER 1
RETURN OF CAPITAL

Application to court for order authorising return of capital

177. Apply rule 4.221 of the 1986 Rules.

Procedure for return of capital

178. Apply rule 4.222 of the 1986 Rules.

CHAPTER 2
CONCLUSION OF BANK INSOLVENCY

Secretary of State's directions under s 116 of the 2009 Act

179.—(1) Where the Secretary of State gives a direction under section 116 of the 2009 Act (application by an interested person for postponement of dissolution) the Secretary of State shall send 2 copies of the direction to that applicant.

(2) Of those copies, 1 shall be sent by the applicant to the registrar of companies to comply with section 116(4) of the 2009 Act.

Procedure following appeal under s 116 of the 2009 Act

180. Following an appeal under section 116 (2) of the 2009 Act (against a decision of the Secretary of State under that section) the court shall send 2 sealed copies of its order to the person in whose favour the appeal was determined, and that party shall send 1 of the copies to the registrar of companies.

CHAPTER 3
LEAVE TO ACT AS DIRECTOR, ETC. OF BANK WITH PROHIBITED NAME

Preliminary

181. Apply rule 4.226 of the 1986 Rules. In paragraph (c), leave out the words from “whether” to the end(a).

Application for leave under s 216(3) before passing of full payment resolution

182. Where an application for leave under section 216 of the 1986 Act is made before a full payment resolution has been passed, it may only be made with the consent of the bank liquidator.

Consideration of application for leave under s 216(3)

183. Apply rule 4.227 of the 1986 Rules.

First excepted case

184. Apply rule 4.228 of the 1986 Rules(a). In paragraph (1)(b)(ii) ignore the reference to administrator.

(a) The words left out were inserted by S.I. 1987/1919.

Second excepted case

185. Apply rule 4.229 of the 1986 Rules**(b)**. In paragraph (b), the reference to section 242(5) of the 1985 Act should, after that section is repealed, be to section 451 of the 2006 Act.**(c)**

Third excepted case

186. Apply rule 4.230 of the 1986 Rules. In paragraph (a), for “liquidating company went into liquidation” substitute “bank went into bank insolvency”.

Further exception

187. The court’s leave under section 216(3) of the Act is not required in respect of anything done by a person in connection with the exercise of a stabilisation power under Part 1 of the 2009 Act.

PART 18

COURT PROCEDURE AND PRACTICE

CHAPTER 1

APPLICATIONS (GENERAL)

Preliminary

188. This Part applies to any application made to the court under the 2009 Act or these Rules except an application under section 95 of the 2009 Act for a bank insolvency order.

Interpretation

189. Apply rule 7.2 of the 1986 Rules.

Form and contents of application

190. Apply rule 7.3 of the 1986 Rules.

Application under section 176A(5) to disapply section 176A

191.—(1) Apply rule 7.3A**(d)** of the 1986 Rules.

(2) In paragraph (1), ignore “administrator or receiver.”

(3) Ignore paragraph (2)**(a)**.

Filing and service of application

192. Apply rule 7.4 of the 1986 Rules.

Notice of application under section 176A(5)

193. Apply rule 7.4A**(e)** of the 1986 Rules. Leave out the words from “save that notice” to the end.

(a) Rule 4.228 was substituted by S.I. 2007/1974.

(b) Rule 4.229 was substituted by S.I. 2007/1974.

(c) Section 242 is repealed on 1 October 2009.

(d) Rule 7.3A was inserted by the S.I. 2003/1730.

(e) Rule 7.4A was inserted by S.I. 2003/1730.

Other hearings without notice

194. Apply rule 7.5 of the 1986 Rules.

Hearing of application

195. Apply rule 7.6 of the 1986 Rules.

Use of evidence

196. Apply rule 7.7 of the 1986 Rules.

Filing and service of witness statements

197. Apply rule 7.8 of the 1986 Rules. Ignore paragraph (2).

Use of reports

198.—(1) Unless the application involves other parties, or the court orders otherwise, a report may be filed in court instead of a witness statement by—

- (a) the bank liquidator,
- (b) the provisional bank liquidator, or
- (c) the special manager.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of rule 197, and any hearing before the court, as if it were a witness statement.

Adjournment of hearings: directions

199. Apply rule 7.10 of the 1986 Rules.

CHAPTER 3

SHORTHAND WRITERS

Nomination and appointment of shorthand writers

200.—(1) Apply rule 7.16 of the 1986 Rules.

(2) In paragraph (1) leave out “and, in a county court, the registrar”.

(3) In paragraph (2) leave out “133” and “290 or 366”.

(4) Ignore paragraph (3).

Remuneration

201. Apply rule 7.17 of the 1986 Rules(a).

CHAPTER 4

ENFORCEMENT PROCEDURES

Enforcement of court orders

202.—(1) Apply rule 7.19 of the 1986 Rules.

(2) Ignore paragraph (2).

(a) Paragraph (2) was substituted by S.I. 1993/602.

Orders enforcing compliance with the rules

203.—(1) The court may, on the application of the bank liquidator (or the provisional bank liquidator as the case may be,) make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) section 143(2) (liquidator to furnish information, books, papers etc.) of the 1986 Act or
- (b) section 235 (duty to cooperate with liquidator) of that Act.

(2) An order of the court under this rule may provide that all the costs of and incidental to the application for it shall be borne by the person against whom the order is made.

Warrants (general provisions)

204.—(1) A warrant issued by the court under any provision of the 1986 Act shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The person described in section 236(5) of the 1986 Act as the prescribed officer of the court is the tipstaff and his assistants of the court.

(3) In this Chapter, references to property include books, papers and records.

Warrants under section 236

205. Apply rule 7.23 of the 1986 Rules. In paragraph (1), leave out “or 366 (the equivalent in bankruptcy)”.

CHAPTER 5

COURT RECORDS AND RETURNS

Title of proceedings

206. Every proceeding under Part 2 of the 2009 Act shall, with any necessary additions, be titled “IN THE MATTER OF (naming the bank to which the proceedings relate) AND IN THE MATTER OF THE BANKING ACT 2009”.

Court records

207. Apply rule 7.27 of the 1986 Rules.

Inspection of records

208. Apply rule 7.28 of the 1986 Rules.

File of court proceedings and inspection

209.—(1) The Court shall open and maintain a file for each bank insolvency and (subject to the direction of the registrar) all documents relating to that bank insolvency shall be placed on that file.

(2) Where a file has been opened under paragraph (1), the following have the right, at all reasonable times, to inspect that file—

- (a) the bank liquidator,
- (b) any person stating in writing that they are a creditor of the bank to which the bank insolvency relates,
- (c) a member of the bank,
- (d) any person who is, or at any time has been, a director or officer of the bank to which the bank insolvency relates,
- (e) any person who is a contributory of the bank to which the bank insolvency relates, and

(f) the Bank of England, the FSA and the FSCS.

(3) The right of inspection conferred on any person by paragraph (2) may be exercised on their behalf by a person properly authorised by them.

(4) Any person may, with permission of the court, inspect the file.

(5) The right of inspection conferred by this rule is not exercisable in respect of documents, or parts of documents, which the court has directed (either generally or specially) are not to be open to inspection without the court's permission.

(6) An application for a direction of the court under paragraph (5) may be made by the bank liquidator or by any party appearing to the court to have an interest in the bank insolvency.

(7) If, for the purposes of powers conferred by the 1986 Act, the 2009 Act or these rules, the Secretary of State wishes to inspect the file on a bank insolvency and requests the court to transmit the file, the court shall comply with the request or, if the file is for the time being in use for the court's own purposes, as soon as the file is no longer in such use.

(8) Rule 208 applies in respect of the court's records on any bank insolvency as they apply in respect of court records of general insolvency proceedings.

Filing of Gazette notices and advertisements

210. Apply rule 7.32 of the 1986 Rules. For "an officer of the court" substitute "the bank liquidator".

CHAPTER 6

COSTS AND DETAILED ASSESSMENT

Application of the CPR

211. Apply rule 7.33 of the 1986 Rules(a).

Requirement to assess costs by the detailed procedure

212.—(1) Apply rule 7.34 of the 1986 Rules(b).

(2) In paragraph (1)—

(a) for "company insolvency" and "liquidation" substitute "bank insolvency",

(b) ignore sub-paragraph (b), and

(c) for the words from "court to which" to the end substitute "High Court".

(3) In paragraph (2), leave out "or creditors".

(4) In paragraph (5), for "trustee in bankruptcy or a liquidator" substitute "bank liquidator."

(5) Ignore paragraph (6).

Procedure where detailed assessment required

213. Apply rule 7.35 of the 1986 Rules. Ignore paragraph (6).

Costs of officers charged with executions of writs or other process

214.—(1) Apply rule 7.36 of the 1986 Rules(c).

(a) All the rules applied by this Chapter were substituted by S.I. 1999/1022.

(b) Paragraph (1) was amended by S.I. 2008/737.

(c) Paragraph (1) was amended by S.I. 2005/527.

(2) In paragraph (1)(a), leave out “or 346(2)”.

(3) In paragraph (1)(b), leave out “or 346(3)”.

Costs paid otherwise than out of the insolvent estate

215. Apply rule 7.38 of the 1986 Rules.

Award of costs against responsible insolvency practitioner

216.—(1) Apply rule 7.39 of the 1986 Rules.

(2) Leave out from the beginning to “expenses” and “the official receiver or”.

Application for costs

217.—(1) Apply rule 7.40 of the 1986 Rules.

(2) In paragraph (1) for “insolvency” substitute “bank insolvency”.

(3) In paragraph (2), leave out the words from “, and, in winding up” to the end.

(4) In paragraph (3), leave out “and, where appropriate, the official receiver”.

Costs and expenses of witnesses

218.—(1) Apply rule 7.41 of the 1986 Rules.

(2) In paragraph (1), leave out “the bankrupt or”.

(3) Ignore paragraph (2).

Final costs certificate

219. Apply rule 7.42 of the 1986 Rules.

CHAPTER 7

PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS

Introductory

220. Apply rule 7.43 of the 1986 Rules(a). In paragraph (1), for (a), substitute “ by reason of being a protected person within the meaning of Part 21 of the CPR or”.

Appointment of another person to act

221. Apply rule 7.44 of the 1986 Rules. Ignore paragraph (3)(c).

Witness statement in support of application

222.—(1) Apply rule 7.45 of the 1986 Rules.

(2) In paragraph (1) leave out from the beginning to “receiver”.

(3) Ignore paragraph (2).

Service of notices following appointment

223. Apply rule 7.46 of the 1986 Rules.

(a) Paragraph 1 was amended by SI 2007/1898.

CHAPTER 8
APPEALS IN BANK INSOLVENCY PROCEEDINGS

Appeals and review of court orders

224.—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction under Part 2 of the Banking Act 2009.

(2) An appeal from a decision of a registrar of the High Court lies, with the permission of the registrar or a judge of the High Court, to a single judge of the High Court, and a second appeal lies, with the permission of the Court of Appeal to the Court of Appeal.

(3) An appeal of a decision of first instance of a judge of the High Court lies, with the permission of the judge or the Court of Appeal, to the Court of Appeal.

(4) A bank insolvency order made under rule 16 cannot be appealed under this rule.

Procedure on appeal

225. Part 52 of the CPR applies with regard to the procedure for appeals.

Appeal against a decision of the Secretary of State

226. Apply rule 7.50 of the 1986 Rules(a). Ignore the reference to the official receiver and paragraph (2).

CHAPTER 9
GENERAL

Principal court rules and practice to apply

227.—(1) The CPR and the practice and procedure of the High Court (including any practice direction) apply to bank insolvency proceedings in the High Court, with any necessary modifications, except so far as inconsistent with these Rules.

(2) All bank insolvency proceedings shall be allocated to the multi-track for which CPR Part 29 makes provision and, accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

Right of attendance

228. Apply rule 7.53 of the 1986 Rules. In paragraph (1) for “company insolvency proceedings” substitute “bank insolvency proceedings”.

Restriction on concurrent proceedings and remedies

229. Where in a bank insolvency, the court makes an order staying any action, execution or legal process against the property of the bank, service of the order may be effected by delivering a sealed copy by personal service to the applicant for the bank insolvency order.

Security in court

230. Apply rule 7.58 of the 1986 Rules.

Payment into court

231. Apply rule 7.59 of the 1986 Rules(a).

(a) Rule 7.50 was amended by S.I 2003/1730.

Further information and disclosure

- 232.**—(1) Apply rule 7.60 of the 1986 Rules**(b)**.
(2) After paragraph (2) insert—
 “(3) Before the passing of a full payment resolution the court shall only grant an order on an application under paragraph (1)(b) if satisfied that granting the order is unlikely to prejudice the achievement of Objective 1.”

Office copies of documents

- 233.** Apply rule 7.61 of the 1986 Rules.

PART 19

PROXIES AND COMPANY REPRESENTATION

Definition of “proxy”

- 234.**—(1) Apply rule 8.1 of the 1986 Rules**(c)**.
(2) In paragraph (2) leave out “company”.
(3) In paragraph (4), after “the meeting”, add “or the bank liquidator” and ignore the rest of the sentence.

Issue and use of forms

- 235.** Apply rule 8.2 of the 1986 Rules.

Use of proxies at meetings

- 236.** Apply rule 8.3 of the 1986 Rules. Ignore paragraph (2).

Retention of proxies

- 237.** Apply rule 8.4 of the 1986 Rules.

Right of inspection

- 238.**—(1) Apply rule 8.5 of the 1986 Rules.
(2) In paragraph (1)(b), for “ a company’s members or” substitute “of the company’s”.
(3) For paragraph (2) substitute—
 “(2) The reference in paragraph (1) to creditors is to those creditors who have proved their debts, but this does not include a person whose proof has been wholly rejected for purposes of voting, dividend or otherwise.”.
(4) Ignore paragraph (3)(b).

Proxy-holder with financial interest

- 239.** Apply rule 8.6 of the 1986 Rules.

(a) Rule 7.59 was amended by S.I.1999/1022.
(b) Rule 7.60 was substituted by S.I. 1999/1022.
(c) All the rules under this chapter were amended by S.I. 1987/1919.

Company representation

240. Apply rule 8.7 of the 1986 Rules. In paragraph (1), the reference to section 375 of the 1985 Act should, after that section is repealed, be to section 323 of the 2006 Act.

PART 20

EXAMINATION OF PERSONS CONCERNED IN BANK INSOLVENCY

Preliminary

241.—(1) The rules in this Part relate to applications to the court for an order under section 236 of the 1986 Act (inquiry into company’s dealings when it is, or is alleged to be, insolvent).

(2) The following definitions apply—

(a) the person in respect of whom an order is applied for is “the respondent”,

(b) “the applicable section” is section 236 of the 1986 Act, and

(c) the bank is “the insolvent”.

Form and contents of application

242. Apply rule 9.2 of the 1986 Rules(a).

Order for examination, etc.

243. Apply rule 9.3 of the 1986 Rules.

Procedure for examination

244. Apply rule 9.4 of the 1986 Rules(b).

Record of examination

245. Apply rule 9.5 of the 1986 Rules.

Costs of proceedings

246.—(1) Apply rule 9.6 of the 1986 Rules(c).

(2) In paragraph (2)(a) leave out “or 367(1)” and in paragraph (2)(b) leave out “or 367(2)”.

(3) In paragraph (3)(a), for “company insolvency” substitute “bank insolvency”.

(4) Ignore paragraph (3)(b).

(5) Ignore paragraph (5).

(a) Paragraph (3)(b) was substituted by S.I.1999/1022.

(b) Paragraph (3) was substituted by S.I. 1999/1022.

(c) Paragraph (3) was substituted by S.I. 2008/737.

PART 21
DECLARATION AND PAYMENT OF DIVIDEND

Preliminary

247.—(1) The rules in this Part relate to the declaration and payment of dividends in a bank insolvency.

(2) In this Part—

“creditors” means those creditors of the bank of whom the bank liquidator is aware, or who are identified in the bank’s statement of affairs and

“the insolvent” means the bank.

Notice of intended dividend

248. Apply rule 11.2 of the 1986 Rules(a). Ignore paragraph (1)(b).

Final admission/rejection of proofs

249. Apply rule 11.3 of the 1986 Rules(b). Ignore paragraph (4).

Postponement or cancellation of dividend

250. Apply rule 11.4 of the 1986 Rules.

Decision to declare dividend

251. Apply rule 11.5 of the 1986 Rules.

Notice of declaration

252.—(1) Apply rule 11.6 of the 1986 Rules(c).

(2) Ignore paragraph (1)(b)(d).

(3) In paragraph (2), after (b), add—

“(ba) expenses incurred by the bank liquidator in the achievement of objective 1 under section 99 of the Banking Act 2009.”

Notice of no, or no further, dividend

253. Apply rule 11.7 of the 1986 Rules.

Proof altered after payment of dividend

254. Apply rule 11.8 of the 1986 Rules.

Secured creditors

255. Apply rule 11.9 of the 1986 Rules.

(a) Rule 11.2 was amended by S.I. 2002/1307 and S.I. 1987/1919.
(b) Paragraphs (3) and (4) were added by S.I. 2002/1307.
(c) Paragraph (3)(b) was substituted by S.I. 2002/1307.
(d) Sub-paragraphs (a) and (b) of rule 11.6(1) were amended by SI 2002/1307.

Disqualification from dividend

256. Apply rule 11.10 of the 1986 Rules.

Assignment of right to dividend

257. Apply rule 11.11 of the 1986 Rules.

Preferential creditors

258. Apply rule 11.12 of the 1986 Rules(a).

Debt payable at future time

259. Apply rule 11.13 of the 1986 Rules(b). For paragraph (3) substitute “In paragraph (2), “relevant date” means the date of the commencement of bank insolvency.”

PART 22

MISCELLANEOUS AND GENERAL

Power of Secretary of State or Treasury to regulate certain matters

260.—(1) As provided for in paragraph 27 of Schedule 8 to the 1986 Act(c), either the Secretary of State or the Treasury may, subject to the Act and to these Rules, make regulations with respect to any matter provided for in these Rules relating to the carrying out of the functions of a bank liquidator or provisional bank liquidator, including, without prejudice to the generality of the above, provision with respect to the following matters arising in bank insolvency—

- (a) the preparation and keeping by bank liquidators and provisional bank liquidators of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
 - (b) the auditing of bank liquidators’ accounts;
 - (c) the manner in which bank liquidators are to act in relation to the bank’s books, papers and other records, and the manner of their disposal by the bank liquidator or others;
 - (d) the supply by the bank liquidator to creditors and contributories and to the liquidation committee of copies of documents relating to the bank insolvency and the affairs of the bank (on payment, in such cases as may be specified in the regulations, of a fee.);
 - (e) the manner in which insolvent estates are to be distributed by the bank liquidator, including provision with respect to unclaimed funds and dividends;
 - (f) the manner in which monies coming into the hands of the bank liquidator are to be handled and invested and the payment of interest on sums which, in pursuance of regulations made under this sub-paragraph, have been paid into the Insolvency Services Account;
- (2) Regulations made under paragraph (1) may—
- (a) confer a discretion on the court,
 - (b) make non-compliance with any of the regulations a criminal offence,
 - (c) make different provision for different cases, including different provision for different areas, and

(a) Paragraph (2) was amended by S.I.1987/1919.

(b) Paragraph (2) and (3) were substituted for the original paragraph (2) by S.I. 2005/527.

(c) Schedule 8 was amended by section 125 of the 2009 Act.

(d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State or the Treasury as necessary or expedient.

Costs, expenses, etc.

261.—(1) All fees, costs, charges and other expenses incurred in the course of bank insolvency, except for any money paid by the FSCS to eligible depositors in pursuance of objective 1, and any expense incurred by the FSCS in this process, are to be regarded as expenses of the bank insolvency.

(2) The costs associated with the Prescribed Part shall be paid out of that Prescribed Part.

Provable debts

262.—(1) Subject to paragraphs (2) and (3) in a bank insolvency all claims by creditors are provable as debts against the bank, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(a) is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under section 189(2) of the 1986 Act—

(a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim arising by virtue of section 382(1)(b) of that Act; or

(b) any claim which by virtue of the 1986 Act or any enactment is a claim the payment of which in the bank insolvency is to be postponed.

(4) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Notices

263.—(1) Apply rule 12.4 of the 1986 Rules.

(2) Ignore references to the official receiver.

Quorum at meeting of creditors or contributories

264.—(1) Apply rule 12.4A of the 1986 Rules(b).

(2) For paragraph (3) substitute—

“(3) For the purposes of this rule, the reference to the creditor or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) including persons duly represented under section 375 of the 1985 Act (or, after that section is repealed, by section 323 of the 2006 Act.”

Evidence of proceedings at meetings

265. Apply rule 12.5 of the 1986 Rules.

Documents issuing from Secretary of State

266. Apply rule 12.6 of the 1986 Rules. In paragraph (1) ignore the reference to “members of a company”.

(a) 2002 c. 29.

(b) Rule 12.4A was inserted by S.I. 1987/1919.

Insolvency practitioner's security

267.—(1) — Apply rule 12.8 of the 1986 Rules.

(2) For paragraph (2) substitute—

“(2) It is the duty of the liquidation committee in a bank insolvency to review from time to time the adequacy of the bank liquidator's security.”.

Time limits

268. Apply rule 12.9(1) of the 1986 Rules(a) as regards time limits for anything required or authorised to be done by these Rules.

Service by post

269. Apply rule 12.10 of the 1986 Rules(b).

General provisions as to service

270. CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in bank insolvency proceedings except in cases where a rule makes provision as to the service of a document or the giving of a notice.

Service outside the jurisdiction

271.—(1) CPR Part 6 applies as regards any matter relating to the service of documents in Scotland and Northern Ireland except in cases where a rule makes provision as to the service of a document or the giving of a notice.

(2) Where for the purposes of bank insolvency proceedings any process or order of the court, or other document, is required to be served on a person who is not in the United Kingdom—

(a) with regard to the service of documents to which a rule makes provision, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit,

(b) with regard to the service of documents otherwise, CPR Rules 6.41 to 6.4 apply.

(3) An application under paragraph (2)(a) shall be supported by a witness statement stating—

(a) the grounds on which the application is made, and

(b) in what place or country the person to be served is, or probably may be found.

Confidentiality of documents

272.—(1) Apply rule 12.13 of the 1986 Rules(c).

(2) In paragraph (2) ignore the reference to a creditors' committee.

Notices sent simultaneously to the same person

273. Apply rule 12.14 of the 1986 Rules.

Right to copy documents

274. Apply rule 12.15 of the 1986 Rules(d).

(a) Rule 12.9 was substituted by S.I. 1999/1022.

(b) Rule 12.10 was amended by S.I. 1987/1919.

(c) Rule 12.13 was amended by S.I. 1987/1919.

(d) Rule 12.15 was inserted by S.I. 2005/527.

Charge for copy documents

275. Apply rule 12.15A of the 1986 Rules(a).

Non–receipt of notice of meeting

276. Apply rule 12.16 of the 1986 Rules.

Right to have list of creditors

277.—(1) Where a creditor has the right under these Rules to inspect documents on the court file, the creditor may require the bank liquidator to send them a list of the bank’s creditors and the amounts of their respective debts.

(2) Paragraph (1) does not apply if a statement of the bank’s affairs has been filed in court or filed with the registrar of companies.

(3) The bank liquidator must respond to a request in paragraph (1) but may charge the appropriate fee for doing so.

False claim of status as creditor, etc

278. Apply rule 12.18 of the 1986 Rules.

Execution overtaken by judgement debtor’s insolvency

279.—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution under section 184(1) of the 1986 Act (that a bank insolvency order has been made against the debtor, or that a provisional bank liquidator has been appointed).

(2) The notice shall be in writing and be delivered by personal service at, or sent by recorded delivery to, the office of the enforcement officer or (as the case may be) of the officer charged with the execution.

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280. Apply rule 12.20 of the 1986 Rules.

Punishment of offences

281. Apply rule 12.21 of the 1986 Rules. For “Schedule 3” substitute “Schedule 5”.

Notice of order under section 176A(5)

282.—(1) Apply rule 12.22 of the 1986 Rules(b). For references to “the liquidator, administrator or receiver” read “bank liquidator”.

(a) Rule 12.15A was inserted by S.I. 1987/1919.
(b) Rule 12.22 was inserted by S.I. 2003/1730.

PART 23

INTERPRETATION

Introductory

283. This Part of the Rules has effect for their interpretation and application; and any definition given in this Part (and in any provision of the 1986 Rules applied by this Part) applies except, and in so far as, the context requires otherwise.

“The court”; “the registrar”

284.—(1) Apply rule 13.2 of the 1986 Rules.

(2) Ignore paragraphs (3) and (5).

(3) In paragraph (4), for “company insolvency proceedings” substitute “bank insolvency proceedings.”

“Give notice”, etc.

285. Apply rule 13.3 of the 1986 Rules.

Notice, etc. to solicitors

286. Apply rule 13.4 of the 1986 Rules.

Notice to joint bank liquidators

287. Where 2 or more persons are acting jointly as the bank liquidator, delivery of a document to 1 of them is to be treated as delivery to them all.

“Insolvent estate”

288. References to “the insolvent estate” are to the assets of the bank.

“Responsible insolvency practitioner”, etc.

289. In relation to a bank insolvency, “the responsible insolvency practitioner” means the person acting in the bank insolvency as the bank liquidator or provisional bank liquidator.

“The appropriate fee”

290. “The appropriate fee” means 15 pence per A4 or A5 page, and 30 pence per A3 page.

“Debt”, “liability”

291.—(1) Apply rule 13.12 of the 1986 Rules(a).

(2) Ignore paragraph (5).

Expressions used generally

292.—(1) Apply rule 13.13 of the 1986 Rules(b).

(a) The rule was substituted by S.I. 2006/1272.

(b) Rule 13.13 was amended by S.I. 1999/1022 and S.I. 2003/1730.

(2) In paragraph (1) for “Rules 1.7” to “6.23” substitute “rule 10 of the Bank Insolvency Rules 2009”.

(3) In paragraph (5), after “Secretary of State” insert “or the Treasury”.

(4) In paragraph (7), for “Chapter 20 of Part 4 of these Rules, or Chapter 23 of Part 6” substitute “Part 16 of the Bank Insolvency Rules 2009”.

(5) Ignore paragraphs (8) to (14).

(6) In paragraph (15), after “section 176A(2)(a)” insert “as applied by section 103 of the Banking Act 2009”.

The Schedule

293. The Schedule, which applies relevant schedules to the 1986 Rules to these rules with modifications, has effect.

17th February 2009

Jack Straw
Lord Chancellor

We concur

23rd February 2009

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

I concur

19th February 2009

Sir Andrew Morritt
The Chancellor of the High Court

SCHEDULE

1. The following schedules to the 1986 Rules are applied to these Rules—

(a) Schedule 1. Ignore all references to rule 4.72 and for paragraph (1) substitute—

“**1.** This Schedule applies where a bank insolvency order (as defined under Part 2 of the Banking Act 2009) has been made in respect of a bank”.

(b) Schedule 5; and

(c) Schedule 6.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure for the bank insolvency process under Part 2 of the Banking Act 2009 (c. 1).

The main features of bank insolvency are as follows. In the event of a deposit-taking bank becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (FSCS) to either –

- (a) receive compensation for their lost deposits as soon as possible after the bank goes into bank insolvency; or
- (b) have their account transferred to a different bank.

This is the first objective of the insolvency process.

The procedure can only be initiated by the Bank of England, the Financial Services Authority or the Secretary of State by application to the court. The court then makes a bank insolvency order, appointing a bank liquidator. In the initial stages, the bank liquidator is accountable to a liquidation committee formed of the FSA, the Bank of England and the FSCS.

Once the bank liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the bank insolvency will move to the second objective which is to wind up the affairs of the bank so as to achieve the best results for the creditors as a whole.

The Rules are based on, and follow the same order as, the Insolvency Rules 1986 (S.I. 1986/1925) (“the 1986 Rules”) and certain provisions of the 1986 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 2 of the Rules sets out the application process for a bank insolvency order.

Part 3 sets out the procedure for appointing a provisional bank liquidator.

Parts 4 to 8 set out the procedure concerning the creditors and contributories.

Part 9 sets out provisions concerning the bank liquidator.

Part 10 sets out provisions concerning the liquidation committee.

Parts 11- 17 set out provisions relating to the bank’s assets and other miscellaneous provisions.

Part 18 sets out court procedure and practice.

Part 19 sets out provisions re proxies and company representation.

Part 20 sets out provisions concerning the examination of persons concerned in bank insolvency.

Part 21 sets out provisions relating to the declaration of dividend.

Parts 22 and 23 set out miscellaneous and general provisions relating to the procedure.

An Impact Assessment of the effect of the Banking Act 2009 is available on HM Treasury’s website (www.hm-treasury.gov.uk).

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