
STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 10

Prohibited names

Preliminary

278.—(1) The Rules in this Part—

- (a) relate to the permission required under section 216 of the 1986 Act for a person to act as mentioned in section 216(3) in relation to an investment bank with a prohibited name;
- (b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that permission.

Application for permission under section 216(3)

279.—(1) At least 14 days notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—

- (a) appear at the hearing of the application; and
- (b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216, the court may call on the administrator, or any former administrator of the investment bank for a report of the circumstances in which that investment bank became insolvent and the extent (if any) of the applicant's apparent responsibility for its doing so.

First excepted case

280.—(1) This rule applies where—

- (a) a person (“P”) was within the period mentioned in section 216(1) a director, or shadow director, of an investment bank that has gone into special administration by virtue of Ground A in regulation 6 being satisfied; and
- (b) P acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the investment bank where that business (or substantially the whole of it) is (or is to be) acquired from the investment bank under arrangements—
 - (i) made by the administrator, or
 - (ii) made before the investment bank entered into special administration by an office-holder acting in relation to it as supervisor of a voluntary arrangement under Part 1 of the 1986 Act or as a person appointed under rule 30 or 49.

- (2) P will not be taken to have contravened section 216 if prior to P's acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3)—
- (a) given by P to every creditor of the investment bank whose name and address—
 - (i) is known by P, or
 - (ii) is ascertainable by P on the making of such enquiries as are reasonable in the circumstances; and
 - (b) published in the Gazette.
- (3) The notice referred to in paragraph (2)—
- (a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion; and
 - (b) must state—
 - (i) the name and registered number of the investment bank,
 - (ii) P's name,
 - (iii) that it is P's intention to act in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the investment bank, and
 - (iv) the prohibited name.
- (4) Notice may in particular be given under this rule—
- (a) prior to the investment bank entering special administration where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the investment bank as supervisor of a voluntary arrangement or as a person appointed under rule 30 or 49 (whether or not at the time of the giving of the notice P is a director of that other company); or
 - (b) at a time where P is a director of another company where—
 - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the investment bank under arrangements made by the administrator, and
 - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

Second excepted case

281.—(1) Where a person (“P”) to whom section 216 applies as having been a director or shadow director of the investment bank in special administration applies for permission of the court under that section not later than 7 business days from the date on which the investment bank went into special administration, P may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that P has not the permission of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the investment bank goes into special administration and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for permission under section 216, whichever of those days occurs first.

Third excepted case

282. The court's permission under section 216(3) is not required where the investment bank there referred to, though known by a prohibited name within the meaning of the section—

- (a) has been known by that name for the whole of the period of 12 months ending with the day before the investment bank went into special administration; and
- (b) has not at any time in those 12 months been dormant within the meaning of section 1169(1), (2) and (3)(a) of the 2006 Act.