
STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 2

Application for Order

CHAPTER 1

Application for special administration order

Content of application

6.—(1) An application for a special administration order must be made in writing and signed by the applicant.

(2) The application must state—

- (a) the full name and registered number of the investment bank;
- (b) any other trading names;
- (c) the investment bank's date of incorporation;
- (d) the investment bank's nominated capital and the amount of capital paid up;
- (e) the address of the investment bank's registered office;
- (f) an email address for the investment bank;
- (g) the identity of the person (or persons) nominated for appointment as administrator; and
- (h) a statement setting out which of the grounds in regulation 6(1) the applicant is relying on in making the application.

Statement of proposed administrator

7. An application for a special administration order must be accompanied by a statement by the proposed administrator—

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

Witness statement in support of application

8.—(1) An application for a special administration order must be accompanied by a witness statement.

- (2) If the application is made by—
- (a) the investment bank or one of its directors, the witness statement shall be made by one of its directors or the company secretary of the investment bank, stating that they make it on behalf of the investment bank or, as the case may be, on behalf of the directors;
 - (b) a creditor or a contributory of the investment bank, the witness statement shall be made by a person acting under the authority of all the creditors, or, as the case may be, all the contributories, making the application;
 - (c) the FSA, the witness statement must identify the person making the statement and must 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 statement; or
 - (d) a combination of the persons listed in regulation 5(1)(a) to (e), the witness statement shall be made by a person acting under the authority of all the applicants.
- (3) The witness statement shall—
- (a) set out the reasons by which the applicant believes the ground in regulation 6 on which the application is based is satisfied;
 - (b) state the investment bank's current financial position, specifying (to the best of the applicant's knowledge and belief) the investment bank's assets and liabilities, including contingent and prospective liabilities;
 - (c) specify any security known or believed to be held by the creditors of the investment bank;
 - (d) specify the amount of client assets held by the investment bank to the best of the applicant's knowledge and belief;
 - (e) specify how functions are going to be allocated where more than one person is to be appointed as administrator (stating in particular whether functions are to be exercisable jointly or by any or all of the persons appointed); and
 - (f) specify any other matters which the applicant thinks will assist the court in deciding whether to make the special administration order.

Filing of application

9.—(1) The application and its accompanying documents must be filed in court together with enough copies of the application and accompanying documents for service and proof of service under rule 10.

- (2) The court shall fix a venue for the hearing of the application.
- (3) In fixing the venue the court shall have regard to—
- (a) the desirability of the application being heard as soon as is reasonably practicable; and
 - (b) the need for the investment bank's representatives to be able to reach the venue in time for the hearing.
- (4) Each of the copies filed—
- (a) shall have the seal of the court applied to it;
 - (b) shall be endorsed with the date and time of filing;
 - (c) shall be endorsed with the venue for the hearing of the application.

Service of application

10.—(1) The application shall be served on—

- (a) the investment bank (if neither the investment bank nor its directors are the applicant);
- (b) the person (or each of the persons) nominated for appointment as administrator;
- (c) any person who has given notice to the FSA in respect of the investment bank under regulation 8;
- (d) if there is in force for the investment bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement.

(2) Service under paragraph (1) must be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 9.

(3) Service of the application must be effected by the applicant, or their solicitor, or by a person instructed by the applicant or the solicitor, as soon as reasonably practicable before the hearing.

(4) Service shall be effected as follows—

- (a) on the investment bank (subject to paragraph (5)), by delivering the documents to its registered office; and
- (b) on any other person (subject to paragraph (6)) by delivering the documents to that person's proper address.

(5) If delivery to the investment bank's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(6) For the purposes of paragraph (4)(b), a person's proper address is any which that person has previously notified to the applicant as their address for service, but if no address has been notified, service may be effected by delivery to that person's usual or last known address.

(7) Delivery of documents to any place or address may be made by leaving them there or by electronic delivery in accordance with rule 295 (and where the document is sent electronically, it shall be sent with a read receipt and the message shall be deemed to be delivered when the message is read).

Proof of service

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

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

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

Further notification

12. As soon as reasonably practicable after filing the application, the applicant must notify—

- (a) any enforcement officer or other officer whom the applicant knows to be charged with effecting an execution or other legal process against the investment bank or its property;
- (b) any person whom the applicant knows to have distrained against the investment bank or its property; and
- (c) (if not the applicant) the FSA.

The hearing

13. At the hearing of the application, any of the following may appear or be represented—
- (a) the applicant;
 - (b) the investment bank;
 - (c) one or more of the directors;
 - (d) the person (or a person) nominated for appointment as administrator;
 - (e) any supervisor of a voluntary arrangement under Part 1 of the 1986 Act;
 - (f) any person who has given notice to the FSA in respect of the investment bank under regulation 8;
 - (g) the FSA; and
 - (h) with the permission of the court, any other person who appears to have an interest.

The special administration order

14. If the court makes a special administration order, the order shall state—
- (a) the name and address of the applicant;
 - (b) the name, registered address and registered number of the investment bank to which the order refers;
 - (c) details of any other parties appearing at the hearing;
 - (d) the name of any administrator appointed by the order;
 - (e) the date and time from which their appointment shall take effect;
 - (f) the terms for costs of the application; and
 - (g) any further particulars that the court thinks fit.

Costs

15. If the court makes a special administration order, the following are payable as an expense of the special administration—
- (a) costs of the applicant; and
 - (b) any other costs allowed by the court.

Notice of special administration order

- 16.—(1) If the court makes a special administration order, it shall, as soon as reasonably practicable, send 3 sealed copies to the applicant.
- (2) The applicant shall as soon as reasonably practicable, send a sealed copy to—
- (a) the administrator; and
 - (b) the FSA (if not the applicant).
- (3) If the court makes an order under regulation 7(1)(d), or any other order under regulation 7(1)(f), it shall give directions as to the persons to whom and how notice of that order is to be given.