
STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 7

The Administrator

CHAPTER 2

Fixing of remuneration

Fixing of remuneration

- 196.**—(1) The administrator is entitled to receive remuneration for services given in respect of—
- (a) the pursuit of—
 - (i) Objective A in a special administration (bank insolvency),
 - (ii) Objective A in a special administration (bank administration), and
 - (iii) Objectives 2 and 3,to be paid out of the estate of the investment bank; and
 - (b) the pursuit of Objective 1 to be paid out of the client assets held by the investment bank.
- (2) The basis of remuneration in both cases in paragraph (1) shall be fixed—
- (a) as a percentage of the value of the property with which the administrator has to deal; or
 - (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the special administration; or
 - (c) as a set amount.
- (3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.
- (4) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.
- (5) It is for the creditors' committee (if there is one) to determine for each case—
- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3), and
 - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (4) and the amount (if any) to be set under paragraph (2)(c).
- (6) In making the determinations, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case;

- (b) any respects in which, in connection with the pursuit of either Objective 1, or of Objectives A, 2 and 3, there falls on the administrator any responsibility of an exceptional kind or degree;
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, their duties as such; and
- (d) the value and nature in each case of the property with which the administrator has to deal.

(7) If there is no creditors' committee, or the committee does not make the requisite determinations, the basis of the administrator's remuneration in each case may be fixed (in accordance with paragraphs (2) to (5)) by resolutions of a meeting of creditors and clients, or in respect of the administrator's remuneration for the purpose outlined in rule 196(1)(b), a meeting of clients and paragraph (6) applies to them as it does to the creditors' committee.

(8) If not fixed as above, the basis of the administrator's remuneration in either case shall, on the administrator's application, be fixed by the court and the provisions above apply as they do to the fixing of the basis of remuneration by the creditors' committee; but such an application may not be made by the administrator unless the administrator has first sought fixing of the basis in accordance with paragraph (5) or (7), and in any event may not be made more than 18 months after the date of the administrator's appointment.

(9) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order; or
- (b) to the creditors' committee or a meeting of creditors and clients, for settlement by resolution.

(10) If the administrator is a solicitor and employs their own firm, or any partner in it, to act on behalf of the investment bank, profit costs shall not be paid unless this is authorised by the creditors' committee, the meeting of the creditors and clients, or the court.

Remuneration (special administration (bank insolvency))

197.—(1) In a special administration (bank insolvency), where the basis for the administrator's remuneration for services set out in rule 196(1)(a) has been fixed in accordance with rule 29, the creditors' committee (or if there is no creditors' committee, the meeting of creditors and clients) shall resolve whether to confirm the basis for remuneration as set by the Objective A committee, or whether to redetermine the basis for remuneration in accordance with rule 196(2) to (5).

(2) Any redetermination by the creditors' committee under paragraph (1) shall apply only in respect of the administrator's remuneration as from the date of the committee's decision and shall not have retrospective effect.

Remuneration (special administration (bank administration))

198.—(1) In a special administration (bank administration), where the basis for the administrator's remuneration for services set out in rule 196(1)(a) has been fixed in accordance with rule 48, the creditors' committee (or if there is no creditors' committee, the meeting of creditors and clients) shall resolve whether to confirm the basis for remuneration as set by the Bank of England, or whether to redetermine the basis for remuneration in accordance with rule 196(2) to (5).

(2) Paragraph (1) only applies where the Bank of England has passed an Objective A Achievement Notice.

(3) Any redetermination by the creditors' committee under paragraph (1) shall apply only in respect of the administrator's remuneration as from the date of the committee's decision and shall not have retrospective effect.

Recourse to meeting of creditors and clients

199.—(1) If the basis of the administrator’s remuneration for either case in rule 196(1) has been fixed by the creditors’ committee or confirmed or redetermined under rules 197 or 198, and the administrator considers, in either or in both cases, the rate or amount to be insufficient, or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed by resolution of the creditors and the clients.

Recourse to the court

200.—(1) If the administrator considers that the basis of remuneration for either case in rule 196(1) fixed for the administrator by—

- (a) the creditors’ committee; or
- (b) by resolution of the creditors and clients, or as the case may be, a meeting of clients,

is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(2) If in a special administration (bank insolvency) the administrator considers that the basis for remuneration for services set out in rule 196(1)(a) fixed for the administrator by the Objective A committee or under rule 197 above is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(3) If in a special administration (bank administration) the administrator considers that the basis for remuneration for services set out in rule 196(1)(a) fixed for the administrator by the Bank of England or under rule 198 above is insufficient or inappropriate, the administrator may apply to the court for an order changing it or increasing its amount or rate.

(4) The administrator shall give at least 14 days’ notice of the application to the members of the creditors’ committee; and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(5) If there is no creditors’ committee, the notice of the application shall be sent to such one or more of the investment bank’s creditors or clients as the court may direct; those creditors or clients shall nominate one or more of their number to appear or be represented.

(6) Notice of the application shall also be given to the FSA and the FSA may nominate a person to appear and be heard on the application.

(7) In a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the court on hearing an application under this rule shall have regard to the achievement of Objective A.

(8) The court may, if it appears to be a proper case, order the costs of the administrator’s application, including the costs of any member of the creditors’ committee appearing or being represented on it, or any creditor or client so appearing or being represented, to be paid as an expense of the administration.

Creditors’ and clients’ request for further information

201.—(1) If—

- (a) within 21 days of receipt of a progress report under rule 122—
 - (i) a secured creditor,
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 - (iii) a client with the concurrence of clients claiming for at least 5% in value of the client assets (including the client in question); or

- (b) with the permission of the court upon an application made within that period of 21 days, any unsecured creditor,

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by rule 122(1)(g) or (h), the administrator must, within 14 days of receipt of the request, comply with paragraph (2).

- (2) The administrator complies with this paragraph by either—
- (a) providing all of the information asked for, or
 - (b) so far as the administrator considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the administration or might reasonably be expected to lead to violence against any person, or
 - (iii) the administrator is subject to an obligation of confidentiality in respect of the information,
 giving reasons for not providing all of the information.

(3) Any creditor or client, who need not be the same as the person who requested further information under paragraph (1), may apply to the court within 21 days of—

- (a) the giving by the administrator of reasons for not providing all of the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of 8 weeks provided for in rule 202(4) by such further period as the court thinks just.

Claim that remuneration is excessive

202.—(1) The following persons may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator’s remuneration for services set out in rule 196(1)(a) —

- (a) a secured creditor;
- (b) an unsecured creditor with either the concurrence of at least 10% in value of the unsecured creditors (including that creditor) or the permission of the court; or
- (c) a client with the concurrence of clients representing at least 10% of the total claims in respect of client assets held by the investment bank or with the permission of the court; or
- (d) the FSA.

(2) A client, with the concurrence of clients representing at least 10% of the total claims in respect of client assets held by the investment bank, or with the permission of the court, may apply to the court for one or more of the orders in paragraph (7) in respect of the administrator’s remuneration for services set out in rule 196(1)(b).

- (3) Application under paragraphs (1) and (2) may be made on the grounds that—
- (a) the remuneration charged by the administrator;
 - (b) the basis fixed for the administrator’s remuneration; or
 - (c) expenses incurred by the administrator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(4) The application must, subject to any order of the court under rule 201(4), be made no later than 8 weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).

(5) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 5 business days’ notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(6) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(7) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the administrator was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration;
- (e) an order that the administrator or the administrator’s personal representative pay to the investment bank the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(8) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the special administration.

(9) In a special administration (bank administration), this rule only applies after the Bank of England has given an Objective A Achievement Notice.

Review of remuneration

203.—(1) Where, after the basis of the administrator’s remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

- (a) where the creditors’ committee fixed the basis, to the committee;
- (b) where the creditors and clients fixed the basis, to the creditors and clients;
- (c) where the court fixed the basis, by application to the court;
- (d) where the Objective A committee fixed the basis, to that committee (unless that committee has passed a full payment resolution, in which case the request must be made to the creditors’ committee, or if there is no creditors’ committee, to the meeting of creditors and clients);
- (e) where the Bank of England fixed the basis, to the Bank of England (unless the Bank of England has given an Objective A Achievement Notice, in which case the request must be made to the creditors’ committee, or if there is no creditors’ committee, to the meeting of creditors and clients);

and this Chapter applies as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (1) and not for any earlier period.

Remuneration of new administrator

204.—(1) If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

Apportionment of set fee remuneration

205.—(1) In a case in which the basis of the administrator’s remuneration is a set amount under rule 196(2)(c) and the administrator (“the former administrator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator’s personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

- (a) by the former administrator or the former administrator’s personal representative within the period of 28 days beginning with the date upon which the former administrator ceased to hold office; or
- (b) by the administrator for the time being in office if the former administrator or the former administrator’s personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors’ committee fixed the basis, to that committee for a resolution determining the portion;
- (b) where the creditors and clients fixed the basis, to the creditors and clients for a resolution determining the portion;
- (c) where the court fixed the basis, to the court for an order determining the portion;
- (d) where the Objective A committee fixed the basis, to that committee (unless that committee has passed a full payment resolution, in which case the request must be made to the creditors’ committee, or if there is no creditors’ committee, to the meeting of creditors and clients); and
- (e) where the Bank of England fixed the basis, to the Bank of England (unless the Bank of England has given an Objective A Achievement Notice, in which case the request must be made to the creditors’ committee, or if there is no creditors’ committee, to the meeting of creditors and clients).

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator’s personal representative, as the case may be (“the recipient”).

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the creditors’ committee, or to the creditors and clients or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former administrator or the former administrator’s personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors’ committee or the creditors and clients is insufficient, that person may apply—

- (a) in the case of a determination by the creditors’ committee, to the creditors and clients for a resolution increasing the portion;
- (b) in the case of a resolution of the creditors and clients (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.