
STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 7

The Administrator

CHAPTER 3

Replacing the administrator

Grounds for resignation

206.—(1) The administrator may resign in the following circumstances—

- (a) on grounds of ill health;
- (b) that the administrator intends ceasing to be in practice as an insolvency practitioner; or
- (c) that there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by that person of the duties of administrator.

(2) The administrator may, with the permission of the court, resign on grounds other than those specified in paragraph (1).

(3) In a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution, the administrator needs the permission of the Bank of England to resign on grounds other than those specified in paragraph (1).

(4) In a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, the administrator needs the permission of the Bank of England to resign on grounds other than those specified in paragraph (1).

Notice of intention to resign

207.—(1) The administrator shall in all cases give at least 5 business days' notice of their intention to resign, or their intention to apply for the court's permission to do so, to the following persons—

- (a) if there is a continuing administrator of the investment bank, to that person; and
- (b) if there is a creditors' committee, to it; but
- (c) if there is no such administrator and no creditors' committee, to the investment bank and its creditors and clients of whose claim the administrator is aware and of whom the administrator has a means of contacting.

(2) Where the administrator was appointed on the application of the FSA or the Secretary of State, notice under paragraph (1) shall also be given to the applicant.

(3) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, notice under paragraph (1) shall be given to the Bank of England.

(4) In a special administration (bank administration), notice under paragraph (1) shall be given to the FSA and to the Bank of England.

(5) The notice under paragraph (1) shall set out—

- (a) a statement that the proceedings are being held in the High Court and the court reference number;
- (b) the full name, registered address, registered number of the investment bank;
- (c) the full name and business address of the administrator;
- (d) either—
 - (i) the date on which the administrator’s resignation shall take effect; or
 - (ii) the date upon which the administrator intends to apply to court for leave to resign.

Notice of resignation

208.—(1) The notice of resignation shall set out—

- (a) a statement that the proceedings are being held in the High Court and the court reference number;
- (b) the full name, registered address and registered number of the investment bank;
- (c) the full name and business address of the administrator;
- (d) whether or not the person resigning is the sole administrator of the investment bank; and
- (e) a statement that either—
 - (i) the administrator resigns from office with effect from a specified date; or
 - (ii) the court gave the administrator leave to resign (and the statement shall include the date of the court’s permission) and that the administrator therefore resigns with effect from a specified date.

(2) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, where the administrator has applied to court for leave to resign, the notice of resignation shall also contain confirmation from the Bank of England that it consents to the resignation.

(3) In a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice, where the administrator has applied to court for leave to resign, the notice of resignation shall also contain confirmation from the Bank of England that it consents to the resignation.

(4) The notice shall be filed with the court and a copy of the notice of resignation shall be sent not more than 5 business days after it has been filed with the court to all those to whom the notice of intention to resign was sent.

(5) The administrator shall notify the registrar of companies of their resignation.

Application to court to remove administrator from office

209.—(1) Any application under paragraph 88 shall state the grounds on which it is requested that the administrator should be removed from office.

(2) In a special administration (bank administration), the application must state that either—

- (a) the Bank of England has consented to the application being made; or
- (b) the Bank of England has given an Objective A Achievement Notice.

(3) Service of the notice of the application shall be effected on—

- (a) the administrator;
 - (b) the person who made the application for the special administration order;
 - (c) the creditors' committee (if any);
 - (d) the joint administrator (if any);
 - (e) where there is neither a creditors' committee or joint administrator, the investment bank and all the creditors and clients of whose claim the administrator is aware and of whom they have a means of contacting;
 - (f) the FSA; and
 - (g) in a special administration (bank administration) where the Bank of England has not given an Objective A Achievement Notice, the Bank of England.
- (4) Where a court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable, shall send a copy to the administrator.
- (5) The applicant shall also within 5 business days of the order being made send a copy of the order to all those to whom notice of the application was sent.
- (6) The applicant shall send notice of the order to the registrar of companies within the same time period.

Notice of vacation of office when administrator ceases to be qualified

210. Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the investment bank gives notice in accordance with paragraph 89, notice shall also be given—

- (a) to the registrar of companies; and
- (b) (where the administrator was appointed on the application of the FSA or the Secretary of State) to the applicant.

Administrator deceased

211.—(1) Subject as follows, where the administrator has died, it is the duty of the administrator's personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (3) or (4) of this rule.

(2) Notice of the death must also be sent to the registrar of companies.

(3) If the deceased administrator was a partner in or an employee of a firm, notice to the court may be given 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 or the Department of Enterprise, Trade and Investment for Northern Ireland for the authorisation of insolvency practitioners.

(4) Notice of the death may be given to the court by any person producing to the court the relevant death certificate or a copy of it.

Application to replace (special administration)

212.—(1) Where an application is made to court under paragraph 91(1) to appoint a replacement administrator, the application shall be accompanied by a written statement by the person proposed to be the replacement administrator.

(2) The written statement shall be in accordance with rule 7.

(3) A copy of the application shall be served on—

- (a) the person who made the application for a special administration order;

- (b) the investment bank (if neither the investment bank nor its directors are the applicant);
- (c) on the person nominated for appointment as administrator; and
- (d) on the FSA (if not the applicant).

(4) Rule 10 shall apply to the service of an application under paragraph 91(1) as it applies to service of the application for a special administration order.

(5) Rules 11 and 13 apply to an application under this rule and rule 16(1) and (2) shall apply to the notice of appointment under paragraph 91(1) as it applies to notice of a special administration order.

(6) This rule does not apply—

- (a) in a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution; or
- (b) in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice

Application to replace (special administration (bank insolvency))

213.—(1) This rule applies in a special administration (bank insolvency) before the Objective A committee has passed a full payment resolution.

(2) Where there is a vacancy in office the Bank of England must appoint a replacement administrator as soon as reasonably practicable.

(3) The rules for the appointment of an administrator in Chapter 2 of Part 2 shall apply to the appointment of a replacement administrator.

Application to replace (special administration (bank administration))

214.—(1) This rule applies in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice.

(2) Where there is a vacancy in office the Bank of England must appoint a replacement administrator as soon as reasonably practicable.

(3) Where an application is made by the Bank of England to remove or replace an administrator, the rules in Chapter 3 of Part 2 for the application to appoint an administrator shall apply to the service of notice of the application and of the hearing.

(4) Both the person proposed to be appointed and the existing administrator are entitled to be served and heard.

Notification and advertisement of appointment of replacement administrator

215.—(1) Where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment, subject to rule 218.

(2) All statements, consents etc as are required shall also be required in the case of the appointment of a replacement.

(3) All notices shall clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

216. Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator, the same rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to rule 218.

Additional joint administrator (special administration (bank administration))

217.—(1) This rule applies to an application to appoint an additional joint administrator in a special administration (bank administration) before the Bank of England has given an Objective A Achievement Notice.

(2) The process for the initial appointment of an administrator under Chapter 3 of Part 2 shall apply to the appointment of an additional joint administrator.

(3) The existing administrator (or each of them) is entitled to a copy of the application and may—

- (a) file written representations; and
- (b) be heard at the hearing.

(4) An application for the appointment of an additional joint administrator under this rule may only be made by the Bank of England.

(5) Rules 216 and 218 apply in respect to the notification and advertisement of the appointment of a additional joint administrator.

Notification of new administrator

218.—(1) The replacement or additional administrator shall send notice of the appointment to the registrar of companies.

(2) The notice in paragraph (1) shall contain—

- (a) the name and business address of the administrator appointed;
- (b) the name, registered address and registered number of the investment bank in respect of which the appointment is made;
- (c) whether the administrator is appointed to replace an existing administrator or in addition to a previously appointed administrator; and
- (d) the date from which the administrator's appointment will take effect.

Administrator's duties on vacating office

219.—(1) Where the administrator ('A') ceases to be in office in consequence of this chapter, A is under obligation as soon as reasonably practicable to deliver up to the person succeeding A as administrator ('B') the assets (after deduction of any expenses properly incurred and distributions made by A) and further to deliver up to B—

- (a) the records of the administration, including correspondence, proofs and other related papers appertaining to the administration while it was within A's responsibility; and
- (b) the investment bank's books, papers and other records.

(2) If A makes default in complying with this rule, A is liable to a fine and, for continued contravention, to a daily default fine.