
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.