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STATUTORY INSTRUMENTS

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**2021 No. 1178**

**The Payment and Electronic Money Institution  
Insolvency (England and Wales) Rules 2021**

**PART 4**

**Expenses of the special administration**

**Expenses of voluntary arrangement**

**97.** Where a special administration order is made and a voluntary arrangement under Part 1 of the IA 1986 is in force for the institution, any expenses properly incurred as expenses of the administration of the arrangement in question are payable in priority to any expenses in rule 98.

**Expenses to be paid out of the institution's assets**

**98.**—(1) Subject to rule 99, the expenses of the special administration to be paid out of the assets of the institution are payable in the following order of priority—

- (a) expenses properly incurred by the administrator in performing the administrator's functions in the special administration (other than unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objectives 2 and 3),
- (b) failure-related costs approved under regulation 42,
- (c) the cost of any security provided by the administrator,
- (d) where a special administration order was made, the costs of the applicant and any person appearing on the hearing of the application,
- (e) any amount payable to a person employed or authorised, under Chapter 1 of Part 3 of these Rules, to assist in the preparation of a statement of affairs or statement of concurrence,
- (f) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence,
- (g) any necessary disbursements incurred by the administrator in the course of the special administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under rule 84, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (h) below),
- (h) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the institution, as required or authorised under the Regulations or these Rules,
- (i) the administrator's remuneration for services in pursuit of Objectives 2 and 3 the basis of which has been fixed under Chapter 2 of Part 9 of these Rules, and unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objectives 2 and 3, and

- (j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the institution (without regard to who the realisation is effected by).
- (2) The priorities laid down by paragraph (1) of this rule are subject to the power of the court to make orders under paragraph (3) of this rule where the assets are insufficient to satisfy the liabilities.
- (3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the special administration in such order of priority as the court thinks just.
- (4) For the purposes of paragraph 99(3) and subject to rule 99, the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this rule.

### **Expenses to be paid out of the relevant funds**

**99.**—(1) The expenses of the special administration to be paid out of the relevant funds held by the institution are payable in the following order of priority—

- (a) expenses properly incurred by the administrator in pursuing Objective 1 (other than unpaid pre-administration costs approved under rule 100 for work done in pursuit of Objective 1),
  - (b) any failure-related costs approved under regulation 42 to the extent that the institution's assets are insufficient to satisfy such liabilities,
  - (c) any necessary disbursements incurred by the administrator in the course of the special administration specific to the achievement of Objective 1 (including any expenses incurred by customer members of the creditors' committee or their representatives and allowed for by the administrator under rule 84 but not including any payment of corporation tax in circumstances referred to in rule 98(1)(j)),
  - (d) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the institution specific to the achievement of Objective 1, as required or authorised under the Regulations or these Rules, and
  - (e) the administrator's remuneration the basis of which has been fixed under rule 163 and unpaid pre-administration costs approved under rule 100 in respect of the work done in pursuance of Objective 1.
- (2) The priorities laid down by paragraph (1) of this rule are subject to the power of the court to make orders under paragraph (3) of this rule where there are insufficient relevant funds to satisfy the liabilities.
- (3) The court may, in the event of the relevant funds being insufficient to satisfy the liabilities, make an order as to the payment out of the relevant funds of the expenses incurred in the special administration in such order of priority as the court thinks just.
- (4) For the purposes of paragraph 99(3) the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 shall comprise all those items set out in paragraph (1) of this rule.
- (5) The "costs of distribution" referred to in regulation 18 comprise the expenses set out in this rule 99.

### **Pre-administration costs**

**100.**—(1) Where the administrator has made a statement of pre-administration costs under rule 26(2)(p), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

- (2) Paragraph (3) applies if—
  - (a) there is no creditors' committee, or

- (b) the creditors' committee does not make the necessary determination, or
  - (c) the creditors' committee makes the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.
- (3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment must be by resolution of—
- (a) a meeting of customers where the pre-administration costs were incurred wholly in pursuance of Objective 1,
  - (b) a meeting of creditors where the pre-administration costs were incurred in pursuance of Objectives 2 and 3, or
  - (c) a meeting of creditors and customers where the pre-administration costs were incurred in pursuance of Objective 1, Objective 2 and Objective 3.
- (4) The administrator must call a meeting of the creditors' committee or a meeting under paragraph (3) if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs, and the administrator must give notice of the meeting within twenty-eight days of receipt of the request.
- (5) The administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment if—
- (a) there is no determination under paragraph (1) or (3), or
  - (b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.
- (6) Paragraphs (2) to (4) of rule 165 apply to an application under paragraph (5) of this rule as they do to an application under paragraph (1) of that rule (references to the administrator being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).
- (7) Where the administrator fails to call a meeting of the creditors' committee or a meeting under paragraph (3) in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

#### **Allocation of expenses to be paid from the relevant funds**

**101.** The administrator must set out, in the distribution plan under rule 112, how the administrator proposes that the expenses of the special administration, to be paid out of the relevant funds in accordance with this Chapter, are to be allocated where the institution has more than one asset pool.