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STATUTORY INSTRUMENTS

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**2022 No. 1239**

**The Payment and Electronic Money  
Institution Insolvency (Scotland) Rules 2022**

**PART 5**

**Relevant funds claims**

**Content of relevant funds claim**

- 99.**—(1) This rule applies to the submission of relevant funds claims.
- (2) A person submitting a relevant funds claim must submit that claim in writing to the administrator.
- (3) The relevant funds claim must—
- (a) be made out by, or under the direction of, the claimant and must be authenticated by the claimant or a person authorised on its behalf,
  - (b) contain the claimant’s name and address,
  - (c) state the name, address and authority of the person authenticating the claim, if not the claimant.
- (4) The relevant funds claim must include the following information to the extent that the information is known by the claimant—
- (a) the amount of the relevant funds claim as at the time the institution entered special administration less any payments made after that date in relation to the relevant funds claim,
  - (b) details of how and when the debt was incurred by the institution including details of all PS or EMI contracts the claimant has entered into under which, at the time the relevant funds claim is submitted, liabilities are still owed from either the institution to the claimant or vice versa,
  - (c) details of any security granted by the claimant in respect of its relevant funds claim.
- (5) Where a relevant funds claim does not include the information set out in paragraph (4)(a) or where such information differs from the information held by the institution, the administrator shall be entitled to rely on their and the institution’s own records to assess the amount of the relevant funds claim.
- (6) The relevant funds claim must specify details of any documents by reference to which the relevant funds claim can be substantiated but, subject to paragraph (7), it is not essential that such documents be attached to the relevant funds claim or submitted with it.
- (7) Where the administrator thinks it necessary for the purpose of substantiating the whole or any part of a relevant funds claim submitted, the administrator may—
- (a) call for any document or other evidence to be produced,
  - (b) send a request in writing for further information from the claimant.

### **Debt in a foreign currency**

**100.**—(1) A relevant funds claim payable in a foreign currency must state the amount of the relevant funds claim in that currency.

(2) The administrator must convert all such relevant funds claims into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date the institution entered special administration.

### **Costs of making a claim**

**101.** Unless the court orders otherwise, every claimant under rule 99 bears the cost of making a relevant funds claim, including costs incurred in providing documents or evidence or responding to requests for further information.

### **New administrator appointed**

**102.**—(1) If a new administrator is appointed in place of another, the former administrator must as soon as is reasonably practicable transmit to the new administrator all relevant funds claims received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the relevant funds claims and return it to the former administrator.

(3) From then on, all relevant funds claims submitted under rule 99 must be sent to and retained by the new administrator.

### **Admission and rejection of relevant funds claim**

**103.**—(1) The administrator may admit or reject a relevant funds claim in whole or in part.

(2) If the administrator rejects a relevant funds claim in whole or in part, the administrator must prepare a written statement of reasons for doing so, and deliver it as soon as is reasonably practicable to the claimant.

(3) The administrator must include the following information in the sederunt book—

- (a) details of a decision of the administrator to accept a relevant funds claim (whether in whole or in part) under paragraph (1) including the amount of the claim accepted,
- (b) details of the administrator's reasons for rejecting a relevant funds claim (whether in whole or in part) under paragraph (2),
- (c) any decision of the court on an appeal under rule 104,
- (d) any decision of the court on an application made under rule 106.

### **Appeal against decision on relevant funds claim**

**104.**—(1) If a claimant is dissatisfied with the administrator's decision with respect to their relevant funds claim, that claimant may apply to the court for the decision to be reversed or varied.

(2) An application under paragraph (1) must be made within twenty-one days (or such other period as the administrator may agree or the court may order) of the claimant receiving the statement sent under rule 103.

(3) The applicant must give notice of an application under paragraph (1) to the FCA.

(4) Where application is made to the court under this rule, the court must fix a venue for the application to be heard.

(5) The applicant must send notice of the venue fixed by the court under paragraph (4) to—

- (a) the administrator,
- (b) the FCA.

(6) The administrator must, on receipt of the notice, lodge with the court the relevant funds claim, together (if relevant) with a copy of the statement sent under rule 103.

(7) After the application has been heard and determined, the documentation relating to the relevant funds claim must, unless the relevant funds claim has been wholly disallowed, be returned by the court to the administrator.

(8) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

(9) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to exclude a statement of claim or to reduce the amount claimed.

(10) If the court gives permission under paragraph (9), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.

#### **Withdrawal or variation of relevant funds claim**

**105.** A relevant funds claim may at any time, with the agreement of the administrator, be withdrawn or varied as to the amount claimed.

#### **Exclusion of relevant funds claim by the court**

**106.—**(1) The court may exclude a relevant funds claim or reduce the amount claimed—

- (a) on the administrator's application, where the administrator thinks that the relevant funds claim has been improperly admitted, or ought to be reduced,
- (b) on the application of a creditor or customer, if the administrator declines to interfere in the matter.

(2) Where an application is made to the court under this rule, the court must fix a venue for the application to be heard.

(3) The applicant must send notice of the venue fixed by the court under paragraph (2)—

- (a) in the case of an application by the administrator, to the claimant who made the relevant funds claim,
- (b) in the case of an application by a customer or creditor, to the administrator and to the claimant who made the relevant funds claim (if the applicant is not the same customer).

(4) Except with the permission of the court, the administrator must not make a distribution out of the asset pool so long as there is pending any application to the court to reverse or vary the administrator's decision on a relevant funds claim, or to reduce the amount claimed.

(5) If the court gives permission under paragraph (3), the administrator must make such provision in respect of the relevant funds claim in question as the court directs.