

STATUTORY INSTRUMENTS

2011 No. 1301

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

PART 9

Court procedure and practice

CHAPTER 1

Application of the CPR

Principal court rules and practice to apply

225.—(1) The provisions of the CPR in the first column of the table in this rule (including any related practice direction) apply to special administration by virtue of the provisions of these Rules set out in the second column with any necessary modifications, except so far as inconsistent with these Rules.

<i>Provision of CPR</i>	<i>Provisions of these Rules</i>
CPR Part 6 (service of documents)	Chapter 4 of Part 9
CPR Part 18 (further information)	Rules 230 and 251(c)(ii)
CPR Part 31 ^(a) (disclosure and inspection of documents)	Rules 230 and 251
CPR Part 37 ^(b) (miscellaneous provisions about payments into court)	Rule 229
CPR Parts 44 and 47 (costs)	Chapter 10 of Part 9
CPR Part 52 ^(c) (appeals)	Chapter 12 of Part 9

(a) Part 31 was substituted by [S.I. 2008/2178](#).

(b) Part 37 was substituted by [S.I. 2006/3435](#).

(c) Part 52 was inserted by [S.I. 2000/221](#).

(2) Subject to paragraph (3), the provisions of the CPR (including any related practice direction) not referred to in the table apply to proceedings under the Regulations and Rules with any necessary modifications, except so far as inconsistent with these Rules.

(3) Proceedings in a special administration must be allocated to the multi-track for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

(4) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

CHAPTER 2

The Court

Shorthand writers – nomination, appointment, remuneration and costs

226.—(1) The judge or registrar may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of the special administration appoint a shorthand writer to take down evidence of a person examined under section 236 of the 1986 Act.

(3) The remuneration of a shorthand writer appointed under this rule must be paid by the party at whose instance the appointment was made, or out of the insolvent estate, or otherwise, as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this rule must be determined by the court.

Court file

227.—(1) The court must open and maintain a file in any case where documents are filed with it under the Regulations or the Rules.

(2) Any documents which are filed with the court under the Regulations or the Rules must be placed on the file opened in accordance with paragraph (1).

(3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1)—

- (a) the administrator;
- (b) the Secretary of State;
- (c) the FSA;
- (d) in a special administration (bank insolvency) or special administration (bank administration), the Bank of England or the FSCS;
- (e) any person who is a creditor of the investment bank if that person provides the court with a statement in writing confirming that that person is a creditor; and
- (f) any person who is a client of the investment bank if that person provides the court with a statement in writing confirming that that person is a client.

(4) The same right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) is exercisable by—

- (a) an officer or former officer of the investment bank in special administration; or
- (b) a member of the investment bank or a contributory in the special administration.

(5) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may be exercised on that person's behalf by a person authorised to do so by that person.

(6) Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may do so if that person has the permission of the court.

(7) The court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (3), (4) or (5) without the permission of the court.

(8) An application for a direction under paragraph (7) may be made by—

- (a) the administrator;

- (b) the FSA;
 - (c) in a special administration (bank insolvency) or special administration (bank administration) the Bank of England; or
 - (d) any person appearing to the court to have an interest.
- (9) Where any person wishes to exercise the right to inspect the file under paragraph (3), (4), (5) or (6), that person—
- (a) if the permission of the court is required, must file with the court an application notice in accordance with these Rules; or
 - (b) if the permission of the court is not required, may inspect the file at any reasonable time.
- (10) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4), (5) or (6), that person must pay any prescribed fee and—
- (a) if the permission of the court is required, file with the court an application notice in accordance with these Rules; or
 - (b) if the permission of the court is not required, file with the court a written request for the document.
- (11) An application for—
- (a) permission to inspect the file or obtain a copy of a document under paragraph (6); or
 - (b) a direction under paragraph (7),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(12) If for the purposes of powers conferred by the Regulations or the Rules, the Secretary of State makes a request to inspect or requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

Office copies of documents

228.—(1) The court must provide an office copy of any document from the court file of the special administration to any person who has under the Rules the right to inspect the court file where that person has requested such a copy.

(2) A person's rights under this rule may be exercised on that person's behalf by that person's solicitor.

(3) An office copy provided by the court under this rule must be in such form as the registrar thinks appropriate, and must bear the court's seal.

Payments into court

229. CPR Part 37 (miscellaneous provisions about payments into court) apply to money lodged in court under the Rules.

CHAPTER 3

Obtaining information and evidence

Further information and disclosure

230.—(1) Any party to the special administration may apply to court for an order—

- (a) that any other party—
 - (i) clarify any matter that is in dispute in the proceedings, or

- (ii) give additional information in relation to any such matter, in accordance with CPR Part 18 (further information); or
 - (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).
- (2) An application under this rule may be made without notice being served on any other party.
- (3) In a special administration (bank insolvency), before the Objective A committee has passed a full payment resolution, the court shall only grant an order on an application under paragraph (1) (b) if satisfied that the granting of the order is unlikely to prejudice the achievement of Objective A.

Witness statements – general

231.—(1) Subject to rule 233 where evidence is required by the Regulations or the Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

- (a) in any specific case a rule or the Regulations makes different provision; or
- (b) the court otherwise directs.

(2) The court may, on the application of any party to the matter in question order the attendance for cross-examination of the person making the witness statement.

(3) Where, after such an order has been made, the person in question does not attend, that person’s witness statement must not be used in evidence without the leave of the court.

Filing and service of witness statements

232. Unless the provision of the Regulations or Rules under which the application is made provides otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on evidence in a witness statement, the applicant must file that witness statement with the court and serve a copy of it on the respondent not less than 14 days before the date fixed for the hearing; and
- (b) where the respondent to an application intends to oppose it and rely for that purpose on evidence contained in a witness statement, the respondent must file the witness statement with the court and serve a copy on the applicant not less than 5 business days before the date fixed for the hearing.

Evidence provided by the administrator

233.—(1) Where in the special administration a witness statement is made by the administrator, the witness statement must state—

- (a) the capacity in which that person makes the statement; and
- (b) the person’s business address.

(2) The administrator may file a report with the court instead of a witness statement unless the application involves other parties or the court otherwise orders.

(3) In any case where a report is filed instead of a witness statement, the report must be treated for the purpose of rule 232 and any hearing before the court as if it were a witness statement.

(4) Where this rule applies in a special administration (bank insolvency) or a special administration (bank administration), a reference to the administrator in this rule shall, for the period when a person is appointed under rules 30 or 49 be read as a reference to that person.

CHAPTER 4

Service of court documents

Application of Chapter

234.—(1) Subject to paragraph (2), this Chapter applies in relation to the service of—

- (a) applications;
- (b) documents relating to applications; and
- (c) court orders,

which are required to be served by any provision of the Regulations or the Rules (“court documents”).

(2) For the purpose of the application by this Chapter of CPR Part 6 to the service of court documents, an application within the special administration against a respondent is to be treated as a claim form.

Service of court documents within the jurisdiction

235. Except where different provision is made in the regulations or these rules, CPR Part 6 applies in relation to the service of court documents with such modifications as the court may direct.

Service of court documents outside jurisdiction

236. CPR Part 6 applies to the service of court documents outside the jurisdiction with such modifications as the court may direct.

Service of orders staying proceedings

237. Where the court makes an order staying any action, execution or other legal process against the property of the investment bank, service within the jurisdiction of the order may be effected by serving a sealed copy of the order on the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Service on joint office-holders

238. Where there are joint administrators, service of court documents on one of them is to be treated as service on all of them.

CHAPTER 5

Applications to court - general

Application of Chapter

239. This Chapter applies to any application made to the court under the Regulations or the Rules except—

- (a) an application for a special administration order under regulation 5;
- (b) an application for a special administration (bank insolvency) order under section 95 of the 2009 Act (as applied by paragraph 6 of Schedule 1 to the Regulations);
- (c) an application for a special administration (bank administration) order under section 143 of the 2009 Act (as applied by paragraph 6 of Schedule 2 to the Regulations).

Form and contents of application

240.—(1) Each application must be in writing and must state—

- (a) that the application is made under the Regulations;
- (b) the names of the parties;
- (c) the name of the investment bank which is the subject of the insolvency proceedings to which the application relates;
- (d) that the proceedings are being held in the High Court and the court reference number;
- (e) where the court has previously allocated a number to the insolvency proceedings within which the application is made, that number;
- (f) the nature of the remedy or order applied for or the directions sought from the court;
- (g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;
- (h) where the Regulations or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (i) the applicant's address for service.

(2) The application must be authenticated by the applicant if the applicant is acting in person or, when the applicant is not so acting, by or on behalf of the applicant's solicitor.

Filing and service of application

241.—(1) An application must be filed with the court accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

- (a) it considers it is not appropriate to do so;
- (b) the rule under which the application is brought provides otherwise; or
- (c) the case is one to which rule 243 applies.

(3) Unless the court otherwise directs, the applicant must serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent, if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the Regulations or Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that the notice may be given in some way other than that specified in paragraph (3).

(5) An application must be served at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the Regulations or the Rules under which the application is made makes different provision; or
- (b) the case is one of urgency, to which paragraph (6) applies.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorise a shorter period of service than that provided for by paragraph (5), and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks just.

Directions

242. The court may at any time give such directions as it thinks just as to—

- (a) service or notice of the application on or to any person;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application including whether a hearing is necessary; and
- (c) the matters to be dealt with in evidence.

Hearings without notice

243. Where the relevant provisions of the Regulations or the Rules do not require service of the application on, or notice of it to be given to, any person—

- (a) the court may hear the application as soon as reasonably practicable without fixing a venue as required by rule 241(2); or
- (b) it may fix a venue for the application to be heard in which case rule 241 must apply to the extent that it is relevant;

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

Hearing of application

244.—(1) Unless the court otherwise directs, the hearing of an application must be in open court.

(2) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom the application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the registrar's power to make the order required.

(3) Where the application is made to the registrar in the High Court, the registrar may refer to the judge any matter which the registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as that judge thinks just.

(4) Nothing in this rule precludes an application being made directly to the judge in a proper case.

Adjournment of the hearing of an application

245.—(1) The court may adjourn the hearing of an application on such terms as it thinks just.

(2) The court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—

- (a) the taking of evidence wholly or partly by witness statement or orally;
- (b) the cross-examination of the maker of a witness statement; or
- (c) any report to be made by the administrator.

CHAPTER 6

Applications to the court under section 176A

Application of Chapter

246. The rules in this Chapter apply to applications in connection with section 176A of the 1986 Act (share of assets for unsecured creditors).

Applications under section 176A(5) to disapply section 176A

247.—(1) An application under section 176A(5) must be accompanied by a witness statement by the administrator.

(2) The witness statement must state—

- (a) that the investment bank is in special administration;
- (b) a summary of the financial position of the investment bank; and
- (c) the information substantiating the administrator’s view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Notice of application under section 176A(5)

248. An application under section 176A(5) may be made without the application being served upon, or notice being given to any other party.

Notice of an order under section 176A(5)

249.—(1) Where the court makes an order under section 176A(5), it must as soon as reasonably practicable deliver 2 sealed copies of the order to the applicant.

(2) Where the court has made an order under section 176A(5), the administrator must as soon as reasonably practicable give notice to each creditor of whose address the administrator is aware.

(3) Paragraph (2) does not apply where the court directs otherwise.

(4) The court may direct that the requirement in paragraph (2) is complied with if a notice has been published by the administrator which, in addition to containing the standard contents, states that the court has made an order disapplying the requirement to set aside the prescribed part. As soon as reasonably practicable the notice—

- (a) must be gazetted; and
- (b) may be advertised in such other manner as the administrator thinks fit.

(5) The administrator must send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

CHAPTER 7

Applications for an order under section 236

Application of following rules

250.—(1) This chapter applies to applications to the court for an order under section 236 of the 1986 Act(1) (inquiry into company dealings).

(2) In this Chapter, “the respondent” means the person in respect of whom an order is applied for.

(1) Section 236 was amended by [S.I. 2010/18](#).

Form and contents of application

251. An application to which this chapter applies—

- (a) must be in writing and specify the grounds on which it is made;
- (b) must specify the name of the respondent;
- (c) must state whether the application is for the respondent—
 - (i) to be ordered to appear before the court,
 - (ii) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter (in which case CPR Part 18 (further information) shall apply to any such order),
 - (iii) to submit witness statements (if so, particulars must be given of the matters to be included),
 - (iv) to produce books, papers or other records (if so, the items in question must be specified), or
 - (v) for any two or more of those purposes; and
- (d) may be made without notice to any other party.

Order for examination etc.

252.—(1) The court may, whatever the purpose of the application, make any order which it has power to make under section 236.

(2) The court, if it orders the respondent to appear before it, must specify a venue for the respondent's appearance, which must not be less than 14 days from the date of the order.

(3) If the respondent is ordered to submit witness statements, the order must specify—

- (a) the matters which are to be dealt with in the respondent's witness statements; and
- (b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance must be specified.

(5) The order must be served as soon as reasonably practicable on the respondent.

Procedure for examination

253.—(1) At any examination of the respondent, the administrator may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Unless the administrator objects, the following persons may attend the examination with the permission of the court and may put questions to the respondent (but only through the administrator)

- (a) any person who could have applied for an order under section 236; and
- (b) any creditor or client who has provided information on which the application was made under that section.

(3) If the respondent is ordered to clarify any matter or to give additional information, the court must direct the respondent as to the questions which the respondent is required to answer, and as to whether the respondent's answers (if any) are to be made in a witness statement.

(4) The respondent may, at the respondent's own expense, employ a solicitor with or without counsel, who may put to the respondent such questions as the court may allow for the purpose of

enabling the respondent to explain or qualify any answers given by the respondent, and may make representations on the respondent's behalf.

(5) Such written record of the examination must be made as the court thinks proper and such record must be read over either to or by the respondent and authenticated by the respondent at a venue fixed by the court.

(6) The written record may, in any proceedings (whether under the Regulations, Rules or otherwise), be used as evidence against the respondent of any statement made by the respondent in the course of the respondent's examination.

Record of examination

254.—(1) Unless the court otherwise directs, the written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the court under section 236, are not to be filed with the court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than the administrator.

(3) The documents to which paragraph (2) applies are—

- (a) the written record of the respondent's examination;
- (b) copies of questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;
- (c) any witness statement by the respondent; and
- (d) any document on the court file as shows grounds for the application for the order.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under section 236

255.—(1) Where the court has ordered an examination of any person under section 236 and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by the respondent.

(2) Where the court makes an order against a person under—

- (a) section 237(1) of the 1986 Act; or
- (b) section 237(2) of the 1986 Act,

the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2), the administrator's costs must, unless the court otherwise orders, be paid as an expense of the special administration.

(4) A person summoned to attend for examination under this Chapter must be tendered a reasonable sum in respect of travelling expenses incurred in connection with that person's attendance but any other costs falling on that person are at the court's discretion.

CHAPTER 8

People who lack capacity to manage their affairs etc.

Application of Chapter 8

256.—(1) The rules in this Chapter apply where in a special administration it appears to the court that a person affected by the proceedings is someone who lacks capacity to manage and administer their property and affairs either—

- (a) by reason of lacking capacity within the meaning of the Mental Capacity Act 2005(2); or
- (b) due to a physical affliction or disability.

(2) The person concerned is referred to in this Chapter as “the incapacitated person”.

Appointment of another person to act

257.—(1) The court may appoint such person as it thinks just to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for that person’s incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person;
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or
- (c) the administrator.

(4) Application under paragraph (3) may be made without notice to any other party; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Witness statement in support of application

258. An application under rule 257(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

259. Any notice served on, or sent to, a person appointed under rule 257 has the same effect as if it had been served on, or given to, the incapacitated person.

CHAPTER 9

Formal defects

Formal defects

260. No special administration proceedings shall be invalidated by any formal defect or by any irregularity; unless the court before which an objection is made considers that substantial injustice

has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

CHAPTER 10

Costs

Application of Chapter 10

261.—(1) This Chapter applies in relation to costs in connection with the special administration.

(2) In this Chapter, a reference to costs includes charges and expenses.

Requirement to assess costs by the detailed procedure

262.—(1) Where the costs of any person are payable as an expense out of the investment bank's estate the amount payable must be decided by detailed assessment unless agreed between the administrator and the person entitled to payment.

(2) Where the costs of any person are payable as an expense out of the client assets, the amount payable must be decided by detailed assessment unless agreed between a meeting of clients and the person entitled to payment.

(3) In the absence of such agreement as is mentioned in paragraph (1) or (2), the administrator—

(a) may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47; and

(b) must serve such notice where the creditors' committee resolves that the amount of the costs in either case must be decided by detailed assessment.

(4) Detailed assessment proceedings must be commenced in the High Court.

(5) Where the costs of any person employed by the administrator in the special administration are required to be decided by detailed assessment or fixed by order of the court, the administrator may make payments on account to such person in respect of those costs provided that person undertakes in writing—

(a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and

(b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.

(6) In any proceedings before the court, the court may order costs to be decided by detailed assessment.

(7) Unless otherwise directed or authorised, the costs of the administrator are to be allowed on the standard basis for which provision is made in—

(a) CPR rule 44.4 (basis of assessment); and

(b) CPR rule 44.5 (factors to be taken into account when deciding the amount of costs).

Procedure where detailed assessment is required

263.—(1) Before making a detailed assessment of the costs of any person employed in the special administration by the administrator, the costs officer must require a certificate of employment, which must be endorsed on the bill and signed by the administrator.

(2) The certificate must include—

(a) the name and address of the person employed;

- (b) details of the functions to be carried out under the employment; and
- (c) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in the special administration are required to be decided by detailed assessment must, on being required in writing to do so by the administrator, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the administrator may deal with the investment bank's estate without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against the administrator in the administrator's personal capacity, that claim is also forfeited by such failure to commence proceedings.

Costs of officers charged with execution of writs or other process

264.—(1) This rule applies where an enforcement officer, or other officer charged with execution of the writ or other person—

- (a) is required under section 184(2) of the 1986 Act to deliver up goods or money; or
- (b) has under section 184(3) of the 1986 Act(3) deducted costs from the proceeds of an execution or money paid to that officer or that person (as the case may be).

(2) The administrator may require in writing that the amount of the enforcement officer's or other officer's bill of costs be decided by detailed assessment and where such a requirement is made, rule 263(4) applies.

(3) Where, in the case of a deduction of the kind mentioned in paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer must as soon as reasonably practicable pay a sum equal to that disallowed to the administrator for the benefit of the investment bank's estate.

Costs paid otherwise than out of the investment bank's estate

265. Where the amount of costs is decided by detailed assessment under an order of the court directing that those costs are to be paid otherwise than out of the investment bank's estate or out of the client assets, the costs officer must note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

Award of costs against the administrator

266. Without prejudice to any provision of the Regulations or Rules by virtue of which the administrator is not in any event to be liable for costs and expenses, where the administrator is made a party to any proceedings on the application of another party to the proceedings, the administrator is not to be personally liable for the costs unless the court otherwise directs.

Applications for costs

267.—(1) This rule applies where a party to, or person affected by, any proceedings in the special administration applies to the court for an order allowing their costs, or part of them, incidental to the proceedings, and that application is not made at the time of the proceedings.

(3) Sections 184(2) and 184(3) were amended by the Courts Act 2003, section 109(1), Schedule 8, para 296(1)(3) and by S.I. 1986/1996.

- (2) The person concerned must serve a sealed copy of the application on the administrator.
- (3) The administrator may appear on an application.
- (4) No costs of or incidental to the application are to be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceedings.
- (5) The court shall specify in the order whether such costs are to be paid out of the investment bank's estate or out of the client assets.

Costs and expenses of witnesses

268. Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court is to be made to an officer of the investment bank to which the proceedings relate.

Final costs certificate

269.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, the costs officer may issue a duplicate.

CHAPTER 11

Enforcement procedures

Enforcement of court orders

270.—(1) In a special administration, orders of the court may be enforced in the same manner as a judgment to the same effect.

Orders enforcing compliance with the Rules

271.—(1) The court may, on application by the administrator, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) paragraph 47 (duty to submit statement of affairs); or
- (b) section 235 of the 1986 Act (duty of various persons to co-operate with administrator).

(2) An order of the court under this rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

Warrants (general provisions)

272.—(1) A warrant issued by the court under any provision of the Regulations shall be addressed to such officer of the High Court as the warrant specifies, or to any constable.

(2) The persons referred to in section 236(5) of the 1986 Act as the prescribed officer of the court are the tipstaff and the tipstaff's assistants of the court.

(3) In this Chapter, references to property include books, papers and records.

Warrants under section 236

273.—(1) When a person ('P') is arrested under a warrant issued under section 236 of the 1986 Act, the officer arresting P must as soon as reasonably practicable bring P before the court issuing the warrant in order that P may be examined.

(2) If P cannot immediately be brought up for examination, the officer must deliver P into the custody of the governor of the prison named in the warrant (or where that prison is not able to accommodate P, the governor of such other prison with appropriate facilities which is able to accommodate P), who must keep that person in custody and produce P before the court as it may from time to time direct.

(3) After arresting P, the officer must as soon as reasonably practicable report to the court the arrest or delivery into custody (as the case may be) of P and apply to the court to fix a venue for P's examination.

(4) The court shall appoint the earliest practicable time for the examination, and must—

- (a) direct the governor of the prison to produce P for examination at the time and place appointed; and
- (b) as soon as reasonably practicable give notice of the venue to the person who applied for the warrant.

(5) Any property in P's possession which may be seized must be—

- (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
- (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,

as may be directed by the court.

CHAPTER 12

Appeals

Application of Chapter 12

274. This Chapter applies in relation to decisions of the court under the Regulations or the Rules.

Appeals and reviews of court orders

275.—(1) The court may review, rescind or vary any order made by it in the exercise of its jurisdiction under the Regulations or the Rules.

(2) Appeals in special administration proceedings are to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

Procedure on appeal

276.—(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

Appeal against decision of the Secretary of State

277. An appeal under the Regulations against a decision of the Secretary of State must be brought within 28 days of the notification of the decision.