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STATUTORY RULES OF NORTHERN IRELAND

2009 No. 122

BANKING

BANK INSOLVENCY

The Bank Insolvency (No. 2) Rules (Northern Ireland) 2009

Made - - - - 18th March 2009

To be laid before Parliament

Coming into operation 1st April 2009

The Lord Chancellor makes the following Rules in exercise of the powers under Article 359 of the Insolvency (Northern Ireland) Order 1989⁽¹⁾.

The Treasury concur in the making of the Rules.

The Lord Chief Justice of Northern Ireland under Article 359(1A)⁽²⁾ of the Insolvency (Northern Ireland) Order 1989 concurs in the making of the Rules in so far as they affect court procedure.

The Lord Chancellor has not consulted the Committee existing for the purposes of Article 360 of the Order: this is the first set of rules made in reliance on section 125 of the Banking Act 2009⁽³⁾ and the duty to consult does not therefore apply to these rules by virtue of section 125(8) of that Act.

Modifications etc. (not altering text)

- C1** Rules applied (with modifications) (23.11.2009) by [The Scottish and Northern Ireland Banknote Regulations 2009 \(S.I. 2009/3056\)](#), reg. 1, **Sch. 1 para. 8**

(1) [S.I. 1989/2405\(N.I. 19\)](#), section 1282 of the Companies Act 2006 (c. 46) inserted a new Article 150ZA into the Insolvency (Northern Ireland) Order 1989 providing for the payment and priority of general expenses of a winding up subject to exceptions prescribed by rules made under Article 359 of the 1989 Order. Article 359 of the Insolvency (Northern Ireland) Order 1989 was amended by the Insolvency (Northern Ireland) 1989 (Amendment) Regulations (Northern Ireland) 2002 [S.R. 2002 N. 223](#).

(2) Article 359(1A) was inserted by the Constitutional Reform Act 2005 (c. 4), Schedule 5, Part 1, paragraphs 80 and 81.

(3) 2009 c.1. See also section 134.

PART 1

INTRODUCTORY PROVISIONS

Citation, commencement and revocation

1.—(1) These Rules may be cited as the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009 and come into operation on 1st April 2009.

(2) The Bank Insolvency Rules (Northern Ireland) 2009⁽⁴⁾ are revoked.

Commencement Information

I1 Rule 1 in operation at 1.4.2009, see [rule 1\(1\)](#)

Extent

2. These Rules extend only to Northern Ireland.

Commencement Information

I2 Rule 2 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application of rules, construction and interpretation

3.—(1) These Rules apply in relation to a bank undergoing the procedure in Part 2 of the 2009 Act known as bank insolvency.

(2) In these Rules—

“the Order” means the Insolvency (Northern Ireland) Order 1989 (and includes those provisions as applied by section 103 of the 2009 Act);

“the 1991 Rules” means the Insolvency Rules (Northern Ireland) 1991⁽⁵⁾;

“the 2006 Act” means the Companies Act 2006⁽⁶⁾;

“the 2009 Act” means the Banking Act 2009⁽⁷⁾;

“the Department” means the Department of Enterprise, Trade and Investment⁽⁸⁾;

[^{F1}“the appropriate regulator” in relation to a bank means—

(a) if the bank is a PRA-authorised person (within the meaning of the Financial Services and Markets Act 2000), the Prudential Regulation Authority and the Financial Conduct Authority;

(b) in any other case, the Financial Conduct Authority;]

⁽⁴⁾ S.R. 2009 No. 64

⁽⁵⁾ The Insolvency Rules (Northern Ireland) (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No.291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 N.261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

⁽⁶⁾ 2006 c. 46.

⁽⁷⁾ 2009 c.1

⁽⁸⁾ Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1))

“bank” means the bank (as defined by section 91(1) of the 2009 Act) which is or is to be the subject of the bank insolvency order;

“Companies Order” means the Companies (Northern Ireland) Order 1986⁽⁹⁾;

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...

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000⁽¹⁰⁾) or, where appropriate, the scheme manager of that scheme;

“the insolvent” means the bank that has been put into bank insolvency;

“liquidation committee” means the committee established pursuant to section 100 of the 2009 Act;

“personal service” has the meaning given at Order 65 of the Supreme Court Rules.

“registered address” has the meaning given by section 1140 of the 2006 Act;

“sealed” means sealed with the seal of the court under which the application was made; and

(3) These Rules consist of—

- (a) the rules set out in full;
- (b) in the case of rules applying rules in the Introductory Provisions and in Parts 4, 7, 8, 9, 11 and 12 of the 1991 Rules, the rules so applied with—
 - (i) the modifications set out in paragraph (4),
 - (ii) the modifications contained in the relevant rule applying it, and
 - (iii) any other necessary modification; and
- (c) the Schedule, which applies the relevant schedules of the 1991 Rules.

(4) The modifications are that, where applicable, a reference to—

- (a) the 1989 Order (or to “the Order”) is a reference to that Order as applied, with modifications, by the 2009 Act (and includes, where appropriate, a reference to Part 2 of the 2009 Act);
- (b) the 1991 Rules (or to “the Rules”) is a reference to these Rules;
- (c) an affidavit is a reference to a witness statement;
- (d) the commencement of winding up is a reference to the commencement of bank insolvency;
- (e) the chairman is a reference to the chair;
- (f) a reference to a company is a reference to a bank;
- (g) going into liquidation is a reference to entering bank insolvency;
- (h) insolvency proceedings is a reference to bank insolvency proceedings;
- (i) the official receiver should be ignored unless otherwise stated;
- (j) a petition for winding up is a reference to an application for bank insolvency under section 95 of the 2009 Act;
- (k) a petitioner is a reference to an applicant;
- (l) the provisional liquidator is a reference to the provisional bank liquidator;
- (m) winding up is a reference to bank insolvency;
- (n) winding up by the court is a reference to a bank being placed into bank insolvency by the court; and

⁽⁹⁾ S.I. 1986/1032 (N.I. 6).

⁽¹⁰⁾ 2000 c.8.

- (o) a winding-up order is a reference to a bank insolvency order.
- (5) Expressions used—
- (a) both in a rule set out in full and in Part 2 of the 2009 Act, or
 - (b) both in a modification to a rule from the 1991 Rules applied by these Rules and in Part 2 of the 2009 Act,
- have the same meaning as in Part 2 of the 2009 Act.
- (6) Where a rule applies a rule of the 1991 Rules and modifies that rule by inserting or substituting text—
- (a) any reference in the modified rule to the 2009 Rules is a reference to these rules; and
 - (b) expressions inserted or substituted have the same meaning as in these rules.
- (7) Where a rule in the 1991 Rules (Rule A) contains a reference to another such rule (Rule B) and—
- (a) both Rule A and Rule B are applied by these Rules, or
 - (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules,
- the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.
- (8) Where a rule (Rule A) refers to another rule (Rule B), and Rule B applies to a rule of the 1991 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied by Rule B.
- (9) Any notice or document required to be sent electronically by these Rules shall be treated as having been sent to the person if—
- (a) it is sent by email to the person’s last known email address; and
 - (b) the email contains a prompt asking the person for an electronic receipt saying that the email has been read.
- (10) Where the rules provide for a witness statement (either expressly or through the application of the 1991 Rules as modified)—
- (a) that statement is a reference to a witness statement verified by a statement of truth; and
 - (b) if the statement is made by the bank liquidator or the provisional bank liquidator, the statement should state as such and should include the address at which that person works.

Textual Amendments

- F1** Words in [rule 3\(2\)](#) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(a\)\(ii\)](#)
- F2** Words in [rule 3\(2\)](#) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(a\)\(i\)](#)
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Commencement Information

- I3** Rule 3 in operation at 1.4.2009, see [rule 1\(1\)](#)

Overview

4. The purpose of these Rules is to provide a procedure for the appointment of a bank liquidator and the operation of bank insolvency under Part 2 of the 2009 Act.

Commencement Information

I4 Rule 4 in operation at 1.4.2009, see [rule 1\(1\)](#)

Forms

5.—(1) This Rule applies where a provision of these Rules—

- (a) applies a provision of the 1991 Rules which requires the use of a prescribed form, or
- (b) makes provision similar to that made by a provision of those Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of those Rules is to be used with any modification that the person using the form thinks desirable to reflect the nature of bank insolvency (whether or not the modification is set out in a Practice Form issued by the Treasury for that purpose).

Commencement Information

I5 Rule 5 in operation at 1.4.2009, see [rule 1\(1\)](#)

Time

6.—(1) Where by any provision of the Order, the 2009 Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

(2) If the court's consideration of whether to extend the time for doing anything takes place before a full payment resolution has been passed, the court shall only extend the time if it considers that the resulting delay will not significantly prejudice the achievement of Objective 1

Commencement Information

I6 Rule 6 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 2

APPLICATION FOR ORDER

Filing of application

7.—(1) The application for a bank insolvency order, verified by witness statement in accordance with rule 11, shall be filed in court.

(2) There shall be filed with the application—

- (a) one copy for service on the bank;
- (b) one copy to be attached to the proof of purchase; and
- (c) further copies to be sent to persons under Rule 10.

(3) The court shall fix the venue, date and time for the hearing of the application and in doing so shall have regard to—

- (a) the desirability of the application being heard as soon as is reasonably practicable; and

(b) the need to give the bank a reasonable opportunity to attend.

(4) Each of the copies issued to the applicant shall be sealed and be endorsed with the venue, date and time for the hearing.

(5) Any application filed in relation to a bank in respect of which there is in force a voluntary arrangement under Part II of the Order shall be filed in accordance with this rule but a copy of that application shall also be sent to the court to which the nominee's report under Article 15(2) of the Order was submitted, if that is not the same court.

Commencement Information

I7 Rule 7 in operation at 1.4.2009, see [rule 1\(1\)](#)

Service of application

8.—(1) The applicant shall serve the bank with a sealed copy of the application;

(2) The application shall be served on the bank by personal service at its registered office.

(3) In paragraph (2) “registered office” means—

(a) the place which is specified, in the bank's statement delivered under section 9 of the 2006 Act or, before that section comes into force, Article 21 of the Companies Order(**11**), as the intended situation of its registered office on incorporation; or

(b) if notice has been given by the bank to the registrar of companies under section 87 of the 2006 Act or, before that section comes into force, Article 295 of the Companies Order(**12**) (change of registered office), the place specified in that notice or, as the case may be, in the last such notice.

(4) Service of the application at the registered office may be effected in any of the following ways—

(a) it may be handed to a person who there and then acknowledges that they are , or to the best of the server's knowledge, information and belief are, a director or other officer, or employee, of the bank; or

(b) it may be handed to a person who there and then acknowledges that they are authorised to accept service documents on the company's behalf; or

(c) in the absence of such person as is mentioned in sub-paragraphs (a) and (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending the office.

(5) If for any reason it is impracticable to effect service as provided by paragraph (2) or (4), the application may be served in such other manner as the court may approve or direct.

(6) Application for permission of the court under paragraph (5) may be made without notice to the bank, stating in a witness statement what steps have been taken to comply with paragraph (2) or (4), and the reasons why it is impracticable to effect service as there provided.

(7) If the bank or its legal representatives fail to attend the hearing the court may make the bank insolvency order in its absence if satisfied that the application has been served in accordance with this rule.

(11) Article 21 of the Companies Order is repealed on 1 October 2009

(12) Article 295 is repealed on 1 October 2009.

Commencement Information

18 Rule 8 in operation at 1.4.2009, see [rule 1\(1\)](#)

Proof of service

9. Apply rule 4.009 of the 1991 Rules.

Commencement Information

19 Rule 9 in operation at 1.4.2009, see [rule 1\(1\)](#)

Other persons to receive copy of application

10.—(1) The applicant shall send a sealed copy of the application to—

- (a) the proposed bank liquidator;
- (b) the Bank of England, (if it is not the applicant,);
- [^{F3}(c) the Financial Conduct Authority, (if it is not the applicant);
- (ca) if the bank is a PRA-authorized person (within the meaning of the Financial Services and Markets Act 2000) and the applicant is not the Prudential Regulation Authority, that Authority;]
- (d) the FSCS;
- (e) any person who has given notice to the [^{F4}Financial Conduct Authority or the Prudential Regulation Authority] in respect of the bank under section 120 of the Banking Act 2009;
- (f) if there is in force for the bank a voluntary arrangement under Part II of the Order, the supervisor of that arrangement; and
- (g) if an administrative receiver has been appointed in relation to the bank, that receiver in accordance with paragraph (2).

(2) One copy shall be sent electronically as soon as practicable and the other shall be sent by first class post on the business day on which the application is served on the bank.

(3) Any of the persons in sub-paragraph (1) will have the right to attend and be heard at the hearing of the application.

Textual Amendments

F3 Rule 10(1)(c)(ca) substituted for rule 10(1)(c) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(b\)](#)

F4 Words in rule 10(1)(e) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(c\)](#)

Commencement Information

110 Rule 10 in operation at 1.4.2009, see [rule 1\(1\)](#)

Verification of application

11.—(1) This rule applies where an application has been filed at the court under rule 7.

(2) A witness statement shall be attached to the application to state that the statements in the application are true, or are true to the best of the applicant’s knowledge, information and belief.

(3) The witness statement shall identify the person making the statement and shall include the capacity in which that person makes the statement and the basis for that person’s knowledge of the matters set out in the application.

(4) The witness statement is, unless proved otherwise, evidence of the statements in the application.

Commencement Information

I11 Rule 11 in operation at 1.4.2009, see [rule 1\(1\)](#)

Persons entitled to copy of application

12.—(1) Every contributory or creditor of the bank is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

Commencement Information

I12 Rule 12 in operation at 1.4.2009, see [rule 1\(1\)](#)

Certificate of compliance

13.—(1) Apply rule 4.014 of the 1991 Rules.

(2) In paragraph (1) the period for filing shall be as soon as reasonably practicable before the hearing of the application.

(3) In paragraph (2), leave out the words “a copy of the advertisement” to the end, and insert—
“A witness statement made by the proposed bank liquidator to the effect that—

(a) the person is qualified to act as an insolvency practitioner in accordance with Article 349 of the Order, and

(b) the person consents to act as the bank liquidator,

shall be filed in court with the certificate.”.

Commencement Information

I13 Rule 13 in operation at 1.4.2009, see [rule 1\(1\)](#)

Leave for the applicant to withdraw

14.—(1) Apply rule 4.015 of the 1991 Rules.

(2) In paragraph (1) delete “at least 5 days”.

(3) Delete sub paragraph (a).

Commencement Information

I14 Rule 14 in operation at 1.4.2009, see [rule 1\(1\)](#)

Witness Statement in opposition

15.—(1) If the bank intends to oppose an application, the bank or a director of the bank may (but need not) file a witness statement in opposition in court.

(2) A statement under paragraph (1) must be filed before the hearing of the application and a copy must be served on the applicant, before the hearing.

(3) The statement may be served on the applicant by personal service or by electronic means.

(4) The statement shall also be sent to the persons in rule 10(1) before the hearing by personal service or by electronic means.

(5) The fact that the neither the bank nor its directors have filed a statement under this rule shall not prevent any of those persons or their legal representatives from being heard at the hearing.

Commencement Information

I15 Rule 15 in operation at 1.4.2009, see [rule 1\(1\)](#)

Making, transmission and advertisement of order

16.—(1) The court shall not make a bank insolvency order unless the person nominated to be appointed as the bank liquidator in the application for the order has filed in court a witness statement under rule 13.

(2) When the bank insolvency order has been made the court shall immediately send 5 sealed copies (or such larger number as the bank liquidator may have requested) to the bank liquidator.

(3) The court shall also, if practicable, immediately send a sealed copy of the order to the bank liquidator electronically.

(4) The bank liquidator shall serve a sealed copy of the order on the bank at its registered office and, where the bank liquidator knows the bank's email address, will send an electronic copy to the bank.

(5) The bank liquidator shall send a sealed copy of the order—

(a) to the Bank of England, the FSA and the FSCS (electronically or otherwise); and

(b) to the registrar of companies in accordance with Article 110(1) of the Order (as applied by the 2009 Act).

(6) The bank liquidator shall as soon as reasonably practicable—

(a) cause the order to be gazetted; and

(b) advertise the order in such other manner as the bank liquidator thinks fit.

Commencement Information

I16 Rule 16 in operation at 1.4.2009, see [rule 1\(1\)](#)

Authentication of bank liquidator's appointment

17. A sealed copy of the court's order may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the bank liquidator in the bank insolvency.

Commencement Information

I17 Rule 17 in operation at 1.4.2009, see [rule 1\(1\)](#)

Initial duties of bank liquidation committee

18.—(1) As soon as reasonably practicable after the making of a bank insolvency order, the liquidation committee shall meet the bank liquidator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the 2009 Act the committee should recommend the bank liquidator to pursue.

(2) If the bank liquidator and every individual on the liquidation committee agree the meeting may be held by audio or video conference.

(3) The liquidation committee shall make its recommendation to the bank liquidator at the meeting.

(4) The liquidation committee's recommendation shall be confirmed in writing as soon as practicable after the meeting.

(5) As soon as practicable after the making of a bank insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 98 the bank liquidator is to be remunerated.

(6) Until a full payment resolution has been passed the bank liquidation committee—

- (a) shall take decisions and pass resolutions by a simply majority; and
- (b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Commencement Information

I18 Rule 18 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expenses of voluntary arrangement

19. Apply rule 4.022 of the 1991 Rules.

Commencement Information

I19 Rule 19 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 3

PROVISIONAL BANK LIQUIDATOR

Appointment of provisional bank liquidator

20.—(1) This rule applies after an application for a bank insolvency order has been filed under rule 7 and before that order is made.

(2) An application to the court for the appointment of a provisional bank liquidator under Article 115 of the Order may be made—

- (a) by the Bank of England;
 - [^{F5}(b) by the Financial Conduct Authority, with the consent of the Bank of England;
 - (ba) if the bank is a PRA-authorised person (within the meaning of the Financial Services and Markets Act 2000), by the Prudential Regulation Authority, with the consent of the Bank of England; or]
 - (c) by the Department.
- (3) The application must be supported by a witness statement stating—
- (a) the grounds upon which it is proposed that the provisional bank liquidator should be appointed;
 - (b) that the person to be appointed has consented to act,
 - (c) that the person to be appointed is qualified to act as an insolvency practitioner,
 - (d) whether to the applicant’s knowledge—
 - (i) there has been proposed or is in force for the bank a company voluntary arrangement under Part II of the Order; or
 - (ii) an administrative receiver is acting in relation to the bank.
 - (e) the applicant’s estimate of the value of the assets in respect of which the provisional bank liquidator is to be appointed; and
 - (f) the functions the applicant wishes to be carried out by the provisional bank liquidator in relation to the bank’s affairs.
- (4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

Textual Amendments

F5 Rule 20(2)(b)(ba) substituted for rule 20(2)(b) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 154(d)**

Commencement Information

I20 Rule 20 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of appointment

21. Where a provisional bank liquidator has been appointed, the court shall notify the applicant and the person appointed.

Commencement Information

I21 Rule 21 in operation at 1.4.2009, see [rule 1\(1\)](#)

Order of appointment

22.—(1) The order of appointment shall specify the functions to be carried out by the provisional bank liquidator in relation to the bank’s affairs.

(2) The court shall, immediately after the order is made, send 4 sealed copies of the order (or such larger number as the provisional bank liquidator may have requested), to the provisional bank liquidator.

(3) The court shall also, if practicable, immediately send a copy of the sealed order to the bank liquidator electronically.

(4) The provisional bank liquidator shall serve a sealed copy of the order on the bank at its registered office and, where the provisional bank liquidator knows the bank’s email address, will send an electronic copy to the bank.

(5) The bank liquidator shall send a sealed copy of the order—

- (a) to the Bank of England, the FSA, and the FSCS (electronically or otherwise); and
- (b) to the registrar of companies;
- (c) (if applicable) to any administrative receiver of the bank.

Commencement Information

I22 Rule 22 in operation at 1.4.2009, see [rule 1\(1\)](#)

Security

23. Apply rule 4.031 of the 1991 Rules.

Commencement Information

I23 Rule 23 in operation at 1.4.2009, see [rule 1\(1\)](#)

Failure to give or keep up security

24. Apply rule 4.032 of the 1991 Rules.

Commencement Information

I24 Rule 24 in operation at 1.4.2009, see [rule 1\(1\)](#)

Remuneration

25.—(1) Apply rule 4.033 of the 1991 Rules.

(2) Delete paragraph (5).

Commencement Information

I25 Rule 25 in operation at 1.4.2009, see [rule 1\(1\)](#)

Termination of appointment

26.—(1) Apply rule 4.034 of the 1991 Rules.

(2) After paragraph (2) insert—

“(3) On the making of a bank insolvency order the appointment of the provisional bank liquidator shall terminate.”.

Commencement Information

I26 Rule 26 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 4

STATEMENT OF AFFAIRS AND OTHER INFORMATION

Notice requiring statement of affairs

27.—(1) Apply rule 4.035 of the 1991 Rules. For “official receiver”, substitute “Bank of England”.

(2) In paragraph (3), for “Chapter” substitute “Part”.

Commencement Information

I27 Rule 27 in operation at 1.4.2009, see [rule 1\(1\)](#)

Verification and filing

28.—(1) Apply rule 4.036 of the 1991 Rules. For “the official receiver” substitute “the bank liquidator”.

(2) For paragraph (6), substitute—

“(6) The bank liquidator shall file the statement of affairs in court and shall send a copy of it to the registrar of companies.”.

(3) Delete paragraph (7).

Commencement Information

I28 Rule 28 in operation at 1.4.2009, see [rule 1\(1\)](#)

Limited disclosure

29.—(1) Apply rule 4.039 of the 1991 Rules. In paragraph (1), for “official receiver”, substitute “Bank of England”.

(2) After paragraph (1), insert—

“(1A) The Bank of England may also apply to the court for an order of limited disclosure in respect of those depositors of the bank who, at the time of the making of the statement of affairs, still have a claim against the bank in respect of their deposits.”.

Commencement Information

I29 Rule 29 in operation at 1.4.2009, see [rule 1\(1\)](#)

Release from duty to submit statement of affairs; extension of time

30.—(1) Apply rule 4.040 of the 1991 Rules.

(2) For “official receiver” substitute “bank liquidator.”

Commencement Information

I30 Rule 30 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expenses of statement of affairs

31.—(1) Apply rule 4.041 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

Commencement Information

I31 Rule 31 in operation at 1.4.2009, see [rule 1\(1\)](#)

Submission of accounts

32.—(1) Apply rule 4.043 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

Commencement Information

I32 Rule 32 in operation at 1.4.2009, see [rule 1\(1\)](#)

Further disclosure

33.—(1) Apply rule 4.046 of the 1991 Rules.

(2) For “official receiver”, substitute “Bank of England”.

Commencement Information

I33 Rule 33 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 5

INFORMATION TO CREDITORS AND CONTRIBUTORIES

Report by bank liquidator

34.—(1) The bank liquidator shall, at least once after the making of the bank insolvency order, make a report with respect to the proceedings in the bank insolvency and the state of the bank's affairs.

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within 8 weeks of the commencement of the bank insolvency, made publicly available on the bank's website.

(3) The bank liquidator shall include in the report under paragraph (1)—

- (a) a statement that the proceedings are being held in the High Court and the relevant court reference number;
- (b) the full name, registered office address, registered companies house number and any other trading names of the bank;
- (c) details relating to the bank liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
 - (i) which functions (if any) are to be exercised by the persons appointed acting jointly; and
 - (ii) which functions (if any) are to be exercised by any of all of the persons appointed;
- (d) the names of the directors and secretary of the bank and details of any shareholdings in the bank that they have;
- (e) an account of the circumstances giving rise to the bank insolvency;
- (f) if a statement of affairs has been submitted, a copy of that statement;
- (g) if a statement of affairs has yet to be submitted—
 - (i) subject to sub paragraph (ii), the names, addresses and details of any debts of the creditors, including details of any security held (or, in the case of depositors who still are creditors of the bank at the time the report is made, a single statement of their aggregate debt),
 - (ii) details of the financial position of the bank at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of bank insolvency);
- (h) the basis upon which it has been proposed under rule 41, or, if the full payment resolution has yet to be passed, rule 18, that the bank liquidator's remuneration has been fixed;
- (i) to the best of the bank liquidator's knowledge and belief—
 - (i) an estimate of the value of the prescribed part (within the meaning of Article 150A of the Order) regardless of whether—
 - (aa) the bank liquidator proposes to make an application to the court under Article 150A(5) of that Order, or
 - (bb) Article 150A(3) applies;
 - (ii) an estimate of the value of the company's net property;
- (j) whether, and if so, why, the bank liquidator proposes to make an application to court under Article 150A(5) of the Order; and
- (k) a summary of—

- (i) how Objective 1 is being or has been achieved and an estimate of the costs to the bank liquidator of achieving it;
 - (ii) the manner in which the affairs and business of the bank not involved in the achievement of Objective 1 have, since the commencement of the bank insolvency, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made;
 - (iii) how the affairs and business of the bank will continue to be managed and financed; and
- (l) an explanation of how it is envisaged the purpose of the bank liquidation will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the bank liquidation shall end.
- (4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3) to include any information the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.
- (5) The bank liquidator shall file with the court a copy of any report sent under this rule.

Commencement Information

I34 Rule 34 in operation at 1.4.2009, see [rule 1\(1\)](#)

Meaning of “creditors”

35. Apply rule 4.048 of the 1991 Rules.

Commencement Information

I35 Rule 35 in operation at 1.4.2009, see [rule 1\(1\)](#)

Report where statement of affairs lodged

- 36.—**(1) Apply rule 4.049 of the 1991 Rules.
- (2) For “official receiver”, substitute “Bank of England”.

Commencement Information

I36 Rule 36 in operation at 1.4.2009, see [rule 1\(1\)](#)

Statement of affairs dispensed with

37. Apply rule 4.050 of the 1991 Rules.

Commencement Information

I37 Rule 37 in operation at 1.4.2009, see [rule 1\(1\)](#)

General rule as to reporting

- 38.**—(1) Apply rule 4.051 of the 1991 Rules.
(2) In paragraph (1), for “Chapter” substitute “Part”.
(3) In paragraph (2) for “official receiver”, substitute “Bank of England”.

Commencement Information

I38 Rule 38 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank insolvency stayed

- 39.**—(1) Apply rule 4.052 of the 1991 Rules.
(2) In paragraph (1), for “Chapter” substitute “Part”; and
(3) In paragraph (2), for “official receiver”, substitute “Bank of England”.

Commencement Information

I39 Rule 39 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 6

MEETINGS OF CREDITORS AND CONTRIBUTORIES

RULES OF GENERAL APPLICATION

First meeting

40.—(1) Once the liquidation committee passes a full payment resolution the bank liquidator shall—

- (a) immediately summon a meeting of the bank’s creditors and a meeting of the bank’s contributories, and
- (b) fix a venue, date and time for the meetings,

and the date must be within 3 months of the date on which the full payment resolution was passed.

(2) When the venue, date and time of the meetings have been fixed the bank liquidator shall give notice of the meetings to—

- (a) the court;
- (b) every creditor who is known to the bank liquidator or is identified in the bank’s statement of affairs;
- (c) every person appearing (by the bank’s books or otherwise) to be a contributory of the bank; and
- (d) each member of the liquidation committee;

and shall advertise the venue, date and time of the meetings in such manner as the bank liquidator thinks fit.

(3) In giving the notice mentioned in paragraph (2) the bank liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(4) Notice to the court and the members of the liquidation committee shall be given immediately; notice to creditors and contributories shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(5) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(6) The FSCS is entitled to be represented at the meeting and Schedule 1 to the 1991 Rules, as applied by rule 288, has effect with respect to its voting rights at such a meeting.

(7) Meetings summoned under this Rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the bank liquidation.”

Commencement Information

I40 Rule 40 in operation at 1.4.2009, see [rule 1\(1\)](#)

Business at first meetings of creditors and contributories

41.—(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At the meeting those creditors present (or represented by proxy) may—

- (a) where the FSCS has not resigned, elect 2 or 4 individuals as new members of the liquidation committee;
- (b) where the FSCS has resigned, elect 3 or 5 individuals as new members of the liquidation committee;

in place of the members nominated by the Bank of England and the FSA.

(3) In accordance with section 100(6)(e) of the 2009 Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee would have fewer than 3 members or an even number of members. The maximum number of committee members will be 5.

(4) At the first meeting of creditors, no resolutions shall be taken other than the following—

- (a) if an application has been made to the court by the creditors under rule 94 for the court to direct the bank liquidator to summon a meeting of creditors for the purpose of removing him, and the court has directed that a resolution may be passed to that effect at the first meeting of creditors—
 - (i) a resolution to remove the bank liquidator (or a resolution to remove one or more of the bank liquidators if joint liquidators were originally appointed), and
 - (ii) a resolution to appoint a named insolvency practitioner to be bank liquidator or two or more insolvency practitioners as joint liquidators;
- (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
- (c) where two or more persons are appointed jointly to act as bank liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one;
- (d) a resolution to adjourn the meeting for not more than 3 weeks;
- (e) any other resolutions which the chair thinks it right to allow for special reasons.

(5) At the first meeting of contributories, no resolutions shall be taken other than the following—

- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 117 shall then apply);
- (b) a resolution to adjourn the meeting for not more than 3 weeks;
- (c) any other resolutions which the chair thinks it right to allow for special reasons.

Commencement Information

I41 Rule 41 in operation at 1.4.2009, see [rule 1\(1\)](#)

General power to call meetings

42.—(1) Apply rule 4.061 of the 1991 Rules.

(2) Where the bank liquidator has been directed to summon a meeting of creditors under Article 164 of the Order (as applied by section 109 of the 2009 Act) for the purpose of removing the bank liquidator, the bank liquidator shall give notice of the meeting to the Bank of England and the FSA.

Commencement Information

I42 Rule 42 in operation at 1.4.2009, see [rule 1\(1\)](#)

The chair at meetings

43.—(1) Meetings shall be chaired by the bank liquidator or a person nominated in writing by the bank liquidator.

(2) A person nominated under paragraph (1) must be—

- (a) qualified to act as an insolvency practitioner in accordance with Article 349 of the Order; or
- (b) an employee of the bank liquidator or of the bank liquidator’s firm who is experienced in insolvency matters.

Commencement Information

I43 Rule 43 in operation at 1.4.2009, see [rule 1\(1\)](#)

Requisitioned meetings general

44. Apply rule 4.064 of the 1991 Rules.

Commencement Information

I44 Rule 44 in operation at 1.4.2009, see [rule 1\(1\)](#)

Requisitioned meetings reforming the liquidation committee

45.—(1) Rule 4.064 of the 1991 Rule also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 41 and no further steps have been taken to re establish that committee; and

(b) the bank liquidator has been requested, by no less than one-tenth in value of the bank's creditors, to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to reform the liquidation committee, the time periods set out in Rule 4.064 of the 1991 Rules may be expedited by the bank liquidator on the request of the bank's creditors.

(3) The bank liquidator shall give notice of the meeting to the FSA and Bank of England.

(4) Rule 41(1) and (2) shall then apply at this meeting as if it were the first meeting of creditors.

Commencement Information

I45 Rule 45 in operation at 1.4.2009, see [rule 1\(1\)](#)

Attendance at meetings of bank's personnel

46. Apply rule 4.065 of the 1991 Rules.

Commencement Information

I46 Rule 46 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of meetings by advertisement only

47. Apply rule 4.066 of the 1991 Rules.

Commencement Information

I47 Rule 47 in operation at 1.4.2009, see [rule 1\(1\)](#)

Venue

48. Apply rule 4.067 of the 1991 Rules.

Commencement Information

I48 Rule 48 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expenses of summoning meetings

49. Apply rule 4.068 of the 1991 Rules.

Commencement Information

I49 Rule 49 in operation at 1.4.2009, see [rule 1\(1\)](#)

Resolutions

50. Apply rule 4.070 of the 1991 Rules.

Commencement Information

I50 Rule 50 in operation at 1.4.2009, see [rule 1\(1\)](#)

Chairman of meeting as proxy-holder

51. Apply rule 4.071 of the 1991 Rules.

Commencement Information

I51 Rule 51 in operation at 1.4.2009, see [rule 1\(1\)](#)

Suspension and adjournment

52.—(1) Apply rule 4.072 of the 1991 Rules.

(2) In paragraph (4) delete “or, as the case may be, 4.121-CVL(3),”.

Commencement Information

I52 Rule 52 in operation at 1.4.2009, see [rule 1\(1\)](#)

Entitlement to vote (creditors)

53.—(1) Apply rule 4.073 of the 1991 Rules.

(2) Delete paragraph (ii) of paragraph (1)(a).

(3) Delete paragraph (9).

(4) In paragraph (10), delete the reference to paragraph (9).

Commencement Information

I53 Rule 53 in operation at 1.4.2009, see [rule 1\(1\)](#)

Entitlement to vote (contributories)

54. Apply rule 4.075 of the 1991 Rules.

Commencement Information

I54 Rule 54 in operation at 1.4.2009, see [rule 1\(1\)](#)

Admission and rejection of proof (creditors’ meetings)

55. Apply rule 4.076 of the 1991 Rules.

Commencement Information

I55 Rule 55 in operation at 1.4.2009, see [rule 1\(1\)](#)

Record of proceedings

56. Apply rule 4.077 of the 1991 Rules. For paragraph (6) substitute—

“(6) The chair is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an application to that effect.”.

Commencement Information

I56 Rule 56 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 7

PROOF OF DEBTS

Meaning of “prove”

57.—(1) Apply rule 4.079 of the 1991 Rules.

(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.

(3) Delete paragraphs (2), (6) and (8).

Commencement Information

I57 Rule 57 in operation at 1.4.2009, see [rule 1\(1\)](#)

Supply of forms

58. Apply rule 4.080 of the 1991 Rules.

Commencement Information

I58 Rule 58 in operation at 1.4.2009, see [rule 1\(1\)](#)

Contents of proof

59. Apply rule 4.081 of the 1991 Rules.

Commencement Information

I59 Rule 59 in operation at 1.4.2009, see [rule 1\(1\)](#)

Claim established by affidavit

60.—(1) Apply rule 4.083 of the 1991 Rules.

(2) Delete paragraph (3).

Commencement Information

I60 Rule 60 in operation at 1.4.2009, see [rule 1\(1\)](#)

Cost of proving

- 61.**—(1) Apply rule 4.084 of the 1991 Rules.
(2) In paragraph (1) delete “or 4.082-CVL”.

Commencement Information

I61 Rule 61 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank Liquidator to allow inspection of proofs

- 62.** Apply rule 4.085 of the 1991 Rules.

Commencement Information

I62 Rule 62 in operation at 1.4.2009, see [rule 1\(1\)](#)

New bank liquidator appointed

- 63.** Apply rule 4.087 of the 1991 Rules.

Commencement Information

I63 Rule 63 in operation at 1.4.2009, see [rule 1\(1\)](#)

Admission and rejection of proofs for dividend

- 64.** Apply rule 4.088 of the 1991 Rules.

Commencement Information

I64 Rule 64 in operation at 1.4.2009, see [rule 1\(1\)](#)

Appeal against decision on proof

- 65.**—(1) Apply rule 4.089 of the 1991 Rules
(2) For paragraph (7) substitute—
“(7) The bank liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

Commencement Information

I65 Rule 65 in operation at 1.4.2009, see [rule 1\(1\)](#)

Withdrawal or variation of proof

66. Apply rule 4.090 of the 1991 Rules.

Commencement Information

I66 Rule 66 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expunging of proof by the court

67. Apply rule 4.091 of the 1991 Rules.

Commencement Information

I67 Rule 67 in operation at 1.4.2009, see [rule 1\(1\)](#)

Estimate of quantum

68. Apply rule 4.092 of the 1991 Rules.

Commencement Information

I68 Rule 68 in operation at 1.4.2009, see [rule 1\(1\)](#)

Negotiable instruments, etc.

69. Apply rule 4.093 of the 1991 Rules.

Commencement Information

I69 Rule 69 in operation at 1.4.2009, see [rule 1\(1\)](#)

Secured creditors

70. Apply rule 4.094 of the 1991 Rules.

Commencement Information

I70 Rule 70 in operation at 1.4.2009, see [rule 1\(1\)](#)

Discounts

71. Apply rule 4.095 of the 1991 Rules.

Commencement Information

I71 Rule 71 in operation at 1.4.2009, see [rule 1\(1\)](#)

Mutual credits and set-off

72.—(1) This Rule applies where, before the bank goes into bank insolvency, there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the bank proving or claiming to prove for a debt in the bank insolvency.

(2) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under Article 84 of the Order,
 - (ii) a petition for the winding up of the bank was pending, or
 - (iii) an application for a bank insolvency order in respect of the bank was pending;
- (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the commencement of bank insolvency,
 - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under Article 84 ,
 - (iii) at a time when the creditor had notice that a winding up petition was pending, or
 - (iv) at a time when the creditor had notice that an application for a bank insolvency order in respect of the bank was pending.

(3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the bank for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 4.084 of the 1991 Rules shall apply for the purposes of this Rule to any obligation to or from the bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 74 to 76 shall apply in relation to any sums due to the bank which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 259 shall apply to any sum due to or from the bank which is payable in the future.

(8) Subject to Rule 73 only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the bank liquidator as part of the assets except where all or part of the balance result from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Commencement Information

I72 Rule 72 in operation at 1.4.2009, see [rule 1\(1\)](#)

Disapplication of set off for eligible depositors

73.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation⁽¹³⁾.

(2) Rule 71 shall apply but, for the purpose of determining the sums due from the bank to an eligible depositor and from an eligible depositor to the bank for the purpose of paragraph (2)—

- (a) where the total of the sums held by the bank for the eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000, then paragraph (3) applies; and
- (b) where the sums held exceeds that limit, then paragraph (4) applies.

(3) Where paragraph (2)(a) applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the bank, and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that depositor in respect of the protected deposits.

(4) Where paragraph (2)(b) applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which that total exceeds that limit; and
- (b) the sums due from the bank to the eligible depositor will be—
 - (i) the amount by which that total exceeds that limit, set off in accordance with rule 71(2); and
 - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit of the amount prescribed as the maximum compensation payable.

(5) Any arrangements with regard to set off between the bank and the eligible depositor in existence before the commencement of bank insolvency shall be subject to this rule.

[^{F6}(6) In this rule—

“appropriate regulator rules” means the rules, as amended from time to time, made by the Financial Conduct Authority or the Prudential Regulation Authority under section 213 of the Financial Services and Markets Act 2000;

“protected deposit” means a protected deposit within the meaning given by appropriate regulator rules.]

Textual Amendments

F6 Rule 73(6) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(e\)](#)

Commencement Information

I73 Rule 73 in operation at 1.4.2009, see [rule 1\(1\)](#)

(13) The reference to FSA Rules are to the FSA's Compensation Sourcebook (made under section 213 of the Financial Services and Markets Act 2000) (2000 c. 8).

Debt in foreign Currency

- 74.—(1) Apply rule 4.097 of the 1991 Rules.
(2) In paragraph (1), leave out from “or, if” to the end.

Commencement Information

I74 Rule 74 in operation at 1.4.2009, see [rule 1\(1\)](#)

Payments of a periodical nature

- 75.—(1) Apply rule 4.098 of the 1991 Rules.
(2) In paragraph (1), leave out from “or, if” to the end.

Commencement Information

I75 Rule 75 in operation at 1.4.2009, see [rule 1\(1\)](#)

Interest

- 76.—(1) Apply rule 4.099 of the 1991 Rules.
(2) In paragraph (1), leave out from “or, if” to the end.

Commencement Information

I76 Rule 76 in operation at 1.4.2009, see [rule 1\(1\)](#)

Debt payable at future time

- 77.—(1) Apply rule 4.100 of the 1991 Rules.
(2) Leave out from “or, if” to “entered administration”.

Commencement Information

I77 Rule 77 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 8

SECURED CREDITORS

Value of security

78. Apply rule 4.101 of the 1991 Rules.

Commencement Information

I78 Rule 78 in operation at 1.4.2009, see [rule 1\(1\)](#)

Surrender for non-disclosure

- 79.**—(1) Apply rule 4.102 of the 1991 Rules.
 (2) Delete paragraph (3).

Commencement Information

179 Rule 79 in operation at 1.4.2009, see [rule 1\(1\)](#)

Redemption by liquidator

- 80.** Apply rule 4.103 of the 1991 Rules.

Commencement Information

180 Rule 80 in operation at 1.4.2009, see [rule 1\(1\)](#)

Test of security's value

- 81.** Apply rule 4.104 of the 1991 Rules.

Commencement Information

181 Rule 81 in operation at 1.4.2009, see [rule 1\(1\)](#)

Realisation of security by creditor

- 82.** Apply rule 4.105 of the 1991 Rules.

Commencement Information

182 Rule 82 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 9**THE BANK LIQUIDATOR***SECTION A**GENERAL***Remuneration of bank liquidator**

- 83.**—(1) This rule applies where—
- (a) the liquidation committee has ceased to exist as under rule 41(3);
 - (b) the committee has not been reformed at a meeting of creditors held under either rule 41 or rules 44 and 45; and
 - (c) the committee has not been reformed at a meeting of contributors held under rule 117.

(2) Where this rule applies the creditors may, at the first or any subsequent meeting of creditors pass a resolution as to the terms on which, in accordance with rule 98, the bank liquidator is to be remunerated.

(3) Where such a resolution is passed—

- (a) it supersedes any resolution as to the remuneration of the bank liquidator passed by the liquidation committee before the first meeting of creditors; and
- (b) the bank liquidator shall be paid under the resolution passed by the bank liquidation committee under rule 18(5) in respect of the performance of his functions before the day on which the creditors' resolution is passed and under the creditors' resolution in respect of the performance of his functions on and after that day.

Commencement Information

I83 Rule 83 in operation at 1.4.2009, see [rule 1\(1\)](#)

Replacement of bank liquidator by creditors

84.—(1) Apply rule 4.106 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) This Rule applies where a person is appointed as bank liquidator by a meeting of creditors.”.

(3) For paragraph (4) substitute—

“(4) The chairman of the meeting shall—

- (a) send the certificate to the new bank liquidator,
- (b) send a copy of the certificate to the Bank of England and the FSA, and
- (c) file a copy of the certificate in court.”.

Commencement Information

I84 Rule 84 in operation at 1.4.2009, see [rule 1\(1\)](#)

Authentication of bank liquidator's appointment

85.—(1) Apply rule 4.112 of the 1991 Rules.

(2) Delete from “or (as the case may be)...to the Order,”.

Commencement Information

I85 Rule 85 in operation at 1.4.2009, see [rule 1\(1\)](#)

Appointment to be advertised and registered

86.—(1) This Rule applies where the bank liquidator is appointed by a meeting of the creditors or by the Bank of England under rule 106.

(2) The bank liquidator shall, after receiving the certificate of appointment, give notice of his appointment in such manner as the bank liquidator thinks fit for ensuring that it comes to the notice of the bank's creditors and contributories.

(3) The expense of giving notice under this Rule shall be borne in the first instance by the bank liquidator, but he is entitled to be reimbursed as an expense of the bank insolvency.

(4) The bank liquidator shall forthwith notify his appointment to the registrar of companies.

Commencement Information

186 Rule 86 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION B

RESIGNATION AND REMOVAL

Creditors' meeting to be notified of bank liquidator's resignation

87.—(1) Apply rule 4.115 of the 1991 Rules.

(2) For paragraph (1), substitute—

“(1) Before resigning office, the bank liquidator shall obtain the consent of the Bank of England and shall call a meeting of creditors to notify them of this.

(1A) The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of the meeting and shall draw the attention of the creditors to rule 95 with respect to the bank liquidator's release.

(1B) The notice in (1A) shall enclose a copy of the Bank of England's consent.”.

(3) For paragraph (2) substitute—

“(2) Copies of the notice and of the account mentioned in paragraph (3) shall be sent to the court, the Bank of England and the FSA.”.

Commencement Information

187 Rule 87 in operation at 1.4.2009, see [rule 1\(1\)](#)

Action following acceptance of resignation

88.—(1) This rule applies where a meeting is summoned to notify the creditors of the bank liquidator's resignation

(2) The meeting shall resolve whether to give the bank liquidator their release.

(3) If the meeting decides to not give the bank liquidator his release, the bank liquidator shall be given a copy of that resolution and rule 95 applies.

(4) After the meeting the bank liquidator shall file the notice of his resignation in court and shall send copies of the notice to the Bank of England, the FSA and the registrar of companies.

(5) The bank liquidator's resignation is effective as from the date on which the court receives the notice of his resignation, and the court shall endorse that date on the notice.

Commencement Information

188 Rule 88 in operation at 1.4.2009, see [rule 1\(1\)](#)

Advertisement of resignation

89. Apply rule 4.119 of the 1991 Rules.

Commencement Information

189 Rule 89 in operation at 1.4.2009, see [rule 1\(1\)](#)

Meeting of creditors to remove bank liquidator

90.—(1) Apply rule 4.120 of the 1991 Rules.

(2) In paragraph (1), for “Article 148(4)”, substitute “section 109 of the 2009 Act”.

(3) In paragraph (2), for “official receiver” substitute “Bank of England and the FSA”.

(4) In paragraph (4) substitute—

“(4) Where the meeting passes a resolution that—

- (a) the bank liquidator be removed;
- (b) a new bank liquidator be appointed, or
- (c) the bank liquidator not to be given their release

the bank liquidator shall be given a copy of that resolution and if it has been resolved to remove the bank liquidator, the bank liquidator shall be given a certificate to that effect.”.

(5) For paragraph (5) substitute—

“(5) If the creditors have resolved to appoint a new bank liquidator, the certificate of his appointment shall also be sent to the registrar of companies within that time and rule 4.106 shall apply.”.

Commencement Information

190 Rule 90 in operation at 1.4.2009, see [rule 1\(1\)](#)

Court’s power to regulate meetings under rule 90

91.—(1) Apply rule 4.122 of the 1991 Rules.

(2) Delete “or 4.121-CVL”.

Commencement Information

191 Rule 91 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure on removal

92.—(1) Apply rule 4.123 of the 1991 Rules.

(2) For “official receiver”, wherever it appears, substitute “out-going bank liquidator”.

(3) For paragraph (3) substitute—

“(3) A copy of the certificate so endorsed shall be sent by the court to the outgoing bank liquidator and, if a new liquidator has been appointed, to him.”.

(4) Delete paragraph (4).

Commencement Information

I92 Rule 92 in operation at 1.4.2009, see [rule 1\(1\)](#)

Advertisement of removal

93. Apply rule 4.125 of the 1991 Rules.

Commencement Information

I93 Rule 93 in operation at 1.4.2009, see [rule 1\(1\)](#)

Removal of bank liquidator by the court

94.—(1) Apply rule 4.126 of the 1991 Rules.

(2) After paragraph (1) insert—

“(2A) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by someone other than the Bank of England, the [^{F7}Financial Conduct Authority, the Prudential Regulation Authority] or the liquidation committee.”.

(3) In paragraph (2), for “at least 7 days’ notice” substitute—

- “(a) if the application is made before the passing of a full payment resolution, such notice as is reasonable in all the circumstances, and
(b) if the application is made after the passing of a full payment resolution, at least 7 days’ notice.”.

(4) In paragraph (4), leave out “, at least 14 days before the hearing,”.

(5) After paragraph (4) insert—

“(4A) The notice and copies mentioned in paragraph (4) shall be sent—

- (a) if the application is made before the passing of a full payment resolution, within such time so as to give the bank liquidator notice of the hearing as is reasonable in all the circumstances, and
(b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.”.

(6) In paragraph (6)—

- (a) in sub-paragraph (a), for “official receiver” substitute “Bank of England and [^{F8}the appropriate regulator] ” and at the end insert “and”, and
(b) leave out “and” at the end of sub-paragraph (b), and sub-paragraph (c).

Textual Amendments

F7 Words in [rule 94\(2\)](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(f\)](#)

F8 Words in [rule 94\(6\)\(a\)](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 154\(g\)](#)

Commencement Information

I94 Rule 94 in operation at 1.4.2009, see [rule 1\(1\)](#)

Release of resigning or removed bank liquidator

95.—(1) Apply rule 4.128 of the 1991 Rules.

(2) In paragraph (1)—

- (a) for “accepted by” substitute “notified to”;
- (b) for rule 4.116 substitute “rule 88 of the Bank Insolvency (No.2) Rules (Northern Ireland) 2009”.

(3) In paragraph (3)—

- (a) in sub-paragraph (a) for “receive his resignation” substitute “be notified of his resignation”; and delete “or” at the end;
- (b) at the end of sub-paragraph (b) insert—
“, or
(c) the bank liquidator resigns, and the Bank of England has refused his release.”.

(4) For paragraph (4) substitute—

“(4) When the Department gives the release it shall certify it accordingly, file the certificate in court and send a copy to the registrar of companies.”.

Commencement Information

I95 Rule 95 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION C

RELEASE ON COMPLETION OF WINDING UP

Final meeting

96.—(1) The bank liquidator shall give at least 14 days’ notice of the final meeting of the liquidation committee to be held under section 115 of the 2009 Act to the following—

- (a) the FSA;
- (b) the FSCS;
- (c) the Bank of England;
- (d) the Treasury;
- (e) the registrar of companies; and
- (f) the members of the liquidation committee.

(2) The bank liquidator’s final report to be laid before the meeting under that section shall contain an account of the liquidator’s administration of the winding up, including—

- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the bank liquidator in connection with that Objective;
- (b) a summary of the bank liquidator’s receipt and payments;
- (c) a statement that the bank liquidator has reconciled his account with that which is held by the Department in respect of the winding up; and

- (d) a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A of the Order (prescribed part)(14).
- (3) At the same time that notice of the final meeting is sent out, the bank liquidator shall file the final report in court and send it to the registrar of companies.
- (4) The bank liquidator shall give notice that the final report is available to all creditors and contributories either on request to the bank liquidator or at Companies House and, shall cause that notice to be gazetted at least 14 days before the final meeting is held.
- (5) At the final meeting, the liquidation committee may question the bank liquidator with respect to any matter contained in the final report, and may resolve against the bank liquidator being released.
- (6) The bank liquidator shall give notice to the court that the final meeting has been held and the notice shall state whether or not he has been given his release.
- (7) Where the liquidation committee does not resolve against the bank liquidator's release, the bank liquidator vacates office at the end of the meeting and has his release when the notice in paragraph (6) is filed in court.
- (8) If there is no quorum present at the final meeting, the bank liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the 2009 Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the bank liquidator being released.
- (9) If the liquidation committee resolves against the bank liquidator having his release then Rule 95 applies.

Commencement Information

196 Rule 96 in operation at 1.4.2009, see [rule 1\(1\)](#)

Rule as to reporting

- 97.**—(1) Apply rule 4.132A(15) of the 1991 Rules.
- (2) Delete the reference to Rule 4.131.

Commencement Information

197 Rule 97 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION D
REMUNERATION

Fixing of remuneration

- 98.**—(1) Apply rule 4.134 of the 1991 Rules.
- (2) In paragraph (3), delete from “Where” to “receiver,”.
- (3) For paragraph (5) substitute—
- “(5) If under rule 41(3), the liquidation ceases to exist at the end of the first meeting of creditors, the remuneration of the bank liquidator fixed by the initial liquidation

(14) Article 150A was inserted by the (Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order [S.R. 2006 No. 25](#).

(15) Rule 4.132A was inserted by the Insolvency (Amendment) Rules (Northern Ireland) 2006 ([S.R. 2006 No. 47](#)), rule 33.

committee under rule 18 can be re-determined by a resolution of a meeting of creditors and paragraph (4) applies to the determination of the creditors as it does to the determination of the liquidation committee.”

(4) In paragraph (6), for “Where” to “his” substitute “Where the bank liquidator’s”.

Commencement Information

I98 Rule 98 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank liquidator’s entitlement to remuneration where it is not fixed under rule 98

99.—(1) Apply rule 4.134A of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “his” substitute “bank liquidator’s”.

(3) In paragraph (2), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009”.

Commencement Information

I99 Rule 99 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank liquidator’s remuneration where he realises assets on behalf of chargeholder

100.—(1) Apply rule 4.134B of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “and” substitute “bank liquidator”.

(3) In paragraphs (2), (3) and (3), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the Bank Insolvency (No.2) Rules (Northern Ireland) 2009”.

Commencement Information

I100 Rule 100 in operation at 1.4.2009, see [rule 1\(1\)](#)

Other matters affecting remuneration

101. Apply rule 4.135 of the 1991 Rules.

Commencement Information

I101 Rule 101 in operation at 1.4.2009, see [rule 1\(1\)](#)

Recourse of bank liquidator to meeting of creditors

102. Apply rule 4.136 of the 1991 Rules.

Commencement Information

I102 Rule 102 in operation at 1.4.2009, see [rule 1\(1\)](#)

Recourse to the court

103. Apply rule 4.137 of the 1991 Rules.

Commencement Information

I103 Rule 103 in operation at 1.4.2009, see [rule 1\(1\)](#)

Creditors' claim that remuneration is excessive

104. Apply rule 4.138 of the 1991 Rules.

Commencement Information

I104 Rule 104 in operation at 1.4.2009, see [rule 1\(1\)](#)

Primacy of Objective 1

105. Nothing done under a rule in this chapter may prejudice the achievement of Objective 1.

Commencement Information

I105 Rule 105 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION E

SUPPLEMENTARY PROVISIONS

Replacement Bank liquidator

106.—(1) Where the bank liquidator vacates his office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 90, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(2) Where a bank liquidator has been removed by a meeting of creditors but one month has passed and there has been no resolution passed by a meeting of creditors to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(3) The Bank of England shall file in court the document appointing the new bank liquidator (“the appointment document”) together with statements to the effect that the new bank liquidator—

- (a) is qualified to act as an insolvency practitioner in accordance with Article 349 of the Order; and
- (b) consents to act as the bank liquidator.

(4) The bank liquidator shall send a copy of the appointment document to the FSA and registrar of companies.

(5) The bank liquidator shall as soon as reasonably practicable—

- (a) cause the appointment to be gazetted; and
- (b) advertise the appointment in such manner as the bank liquidator thinks fit.

Commencement Information

I106 Rule 106 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank liquidator deceased

107.—(1) Unless notice of the death of the bank liquidator has been given under paragraphs (2) or (3), it is the duty of the bank liquidator’s personal representatives, where the bank liquidator has died, to give notice of the fact to the Bank of England and the liquidation committee, specifying the date of the death.

(2) If the deceased bank liquidator was a partner in a firm, notice may be given to the Bank of England, the FSA and liquidation committee 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 Department for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing the relevant death certificate or a copy of it to the Bank of England and the liquidation committee.

(4) The Bank of England shall give notice to the court, for the purpose of fixing the date of the deceased bank liquidator’s release.

Commencement Information

I107 Rule 107 in operation at 1.4.2009, see [rule 1\(1\)](#)

Loss of qualification as insolvency practitioner

108.—(1) Apply rule 4.141 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) The bank liquidator shall immediately give notice of his doing to the Bank of England.

(3) The Bank of England shall file a copy of this notice in court.”.

Commencement Information

I108 Rule 108 in operation at 1.4.2009, see [rule 1\(1\)](#)

Resignation of the bank liquidator

109.—(1) This rule applies where the bank liquidator was appointed by the bank insolvency order, or by the Bank of England.

(2) The bank liquidator can only resign—

(a) after the liquidation committee has passed a full payment resolution, and

(b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 87 to receive notice of the bank liquidator’s resignation, the bank liquidator shall write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify in writing the bank liquidator within 21 days as to whether it consents to the resignation. If the Bank of England does not consent to the resignation, it shall set out its reasons in writing.

(5) The bank liquidator, if not content with the Bank of England’s response above, may apply to the Court for directions under Article 143(3) of the Order.

Commencement Information

I109 Rule 109 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice to Bank of England of intention to vacate office

110.—(1) This rule applies where the bank liquidator was appointed by a meeting of creditors.

(2) Apply rule 4.144 of the 1991 Rules.

(3) In paragraphs (1), (2) and (3) for “official receiver” substitute “Bank of England”.

(4) In Paragraph (1) for “receive his resignation” substitute “be notified of his resignation”.

Commencement Information

I110 Rule 110 in operation at 1.4.2009, see [rule 1\(1\)](#)

Bank liquidator’s duties on vacating office

111.—(1) Apply rule 4.145 of the 1991 Rules.

(2) Delete paragraph (3).

Commencement Information

I111 Rule 111 in operation at 1.4.2009, see [rule 1\(1\)](#)

Power of court to set aside certain transactions

112.—(1) Apply rule 4.157 of the 1991 Rules.

(2) In paragraph (2)—

(a) delete “either”;

(b) delete “or” at the end of sub-paragraph (a), and after sub-paragraph (b) insert—
“, or

(c) it is shown to the court’s satisfaction that the transaction was entered into by the liquidator for the purpose of achieving Objective 1.”.

Commencement Information

I112 Rule 112 in operation at 1.4.2009, see [rule 1\(1\)](#)

Rule against solicitation

113. Apply rule 4.158 of the 1991 Rules.

Commencement Information

I113 Rule 113 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 10

THE LIQUIDATION COMMITTEE

Application of rules in this Part

114. The rules in this Part apply only in relation to the liquidation committee established under Rule 41 after a full payment resolution has been passed.

Commencement Information

I114 Rule 114 in operation at 1.4.2009, see [rule 1\(1\)](#)

Membership of committee

115.—(1) Apply rule 4.160 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) Subject to rule 4.162 of the 1991 Rules as applied by rule 117, the liquidation committee shall consist of either 3 or 5 creditors of the company, elected by the meeting of creditors held under rule 40.”

(3) Delete paragraphs (2), (4) and (7).

(4) In paragraph (6) delete from “; and those elected” to ““contributory members””.

Commencement Information

I115 Rule 115 in operation at 1.4.2009, see [rule 1\(1\)](#)

Formalities of establishment

116.—(1) Apply rule 4.161 of the 1991 Rules.

(2) In paragraph (3), the reference to Article 383 of the Companies Order, shall, after that Article is repealed, be to section 323 of the 2006 Act.**(16)**

Commencement Information

I116 Rule 116 in operation at 1.4.2009, see [rule 1\(1\)](#)

Committee established by contributories

117.—(1) Apply rule 4.162 of the 1991 Rules.

(2) For paragraph (1) substitute—

(16) Article 383 is repealed on 1 October 2009

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the bank liquidator under rule 40 is (by virtue of rule 41(3)) that the liquidation committee ceased to exist at the end of the meeting.”.

(3) In paragraph (2), for “that Article” substitute “Article 120 of the Order”.

(4) In paragraph (4) for “at least 3 and not more than 5”, substitute “3 or 5”.

Commencement Information

I117 Rule 117 in operation at 1.4.2009, see [rule 1\(1\)](#)

Obligations of liquidator to committee

118. Apply rule 4.163 of the 1991 Rules.

Commencement Information

I118 Rule 118 in operation at 1.4.2009, see [rule 1\(1\)](#)

Meetings of the committee

119. Apply rule 4.164 of the 1991 Rules.

Commencement Information

I119 Rule 119 in operation at 1.4.2009, see [rule 1\(1\)](#)

The Chair at meetings

120. Apply rule 4.165 of the 1991 Rules.

Commencement Information

I120 Rule 120 in operation at 1.4.2009, see [rule 1\(1\)](#)

Quorum

121. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Commencement Information

I121 Rule 121 in operation at 1.4.2009, see [rule 1\(1\)](#)

Committee-members’ representatives

122.—(1) Apply rule 4.167 of the 1991 Rules.

(2) In paragraph (2), the reference to Article 383 of the Companies Order, shall, after that Article is repealed, be to section 323 of the 2006 Act.(17).

Commencement Information

I122 Rule 122 in operation at 1.4.2009, see [rule 1\(1\)](#)

Resignation

123. Apply rule 4.168 of the 1991 Rules.

Commencement Information

I123 Rule 123 in operation at 1.4.2009, see [rule 1\(1\)](#)

Termination of membership

124. Apply rule 4.169 of the 1991 Rules.

Commencement Information

I124 Rule 124 in operation at 1.4.2009, see [rule 1\(1\)](#)

Removal

125. Apply rule 4.170 of the 1991 Rules.

Commencement Information

I125 Rule 125 in operation at 1.4.2009, see [rule 1\(1\)](#)

Vacancy (creditor members)

126. Apply rule 4.171 of the 1991 Rules.

Commencement Information

I126 Rule 126 in operation at 1.4.2009, see [rule 1\(1\)](#)

Vacancy (contributory members)

127. Apply rule 4.172 of the 1991 Rules.

Commencement Information

I127 Rule 127 in operation at 1.4.2009, see [rule 1\(1\)](#)

Voting rights and resolutions

128. Apply rule 4.173 of the 1991 Rules.

Commencement Information

I128 Rule 128 in operation at 1.4.2009, see [rule 1\(1\)](#)

Resolutions by post

129. Apply rule 4.175 of the 1991 Rules.

Commencement Information

I129 Rule 129 in operation at 1.4.2009, see [rule 1\(1\)](#)

Liquidator's reports

130. Apply rule 4.176 of the 1991 Rules.

Commencement Information

I130 Rule 130 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expenses of members etc.

131. Apply rule 4.177 of the 1991 Rules.

Commencement Information

I131 Rule 131 in operation at 1.4.2009, see [rule 1\(1\)](#)

Dealings by committee-members and others

132. Apply rule 4.178 of the 1991 Rules.

Commencement Information

I132 Rule 132 in operation at 1.4.2009, see [rule 1\(1\)](#)

Composition of committee when creditors paid in full

133.—(1) Apply rule 4.179 of the 1991 Rules.

(2) For paragraph (4) substitute—

“(4) The members of the liquidation committee will cease to be members at the end of the final meeting held under rule 96.”.

Commencement Information

I133 Rule 133 in operation at 1.4.2009, see [rule 1\(1\)](#)

Committee's functions vested in the Department

134.—(1) Apply rule 4.180 of the 1991 Rules.

(2) Delete paragraph (2).

Commencement Information

I134 Rule 134 in operation at 1.4.2009, see [rule 1\(1\)](#)

Formal defects

135. Apply rule 4.181 of the 1991 Rules.

Commencement Information

I135 Rule 135 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 11

COLLECTION AND DISTRIBUTION OF BANK'S ASSETS BY BANK LIQUIDATOR

General duties of bank liquidator

136. Apply rule 4.188 of the 1991 Rules.

Commencement Information

I136 Rule 136 in operation at 1.4.2009, see [rule 1\(1\)](#)

General qualification on powers

137. In exercising any power conferred on the bank liquidator by this Part before a full payment resolution has been passed, the bank liquidator shall exercise it consistently with Objective 1.

Commencement Information

I137 Rule 137 in operation at 1.4.2009, see [rule 1\(1\)](#)

Manner of distributing assets

138. Apply rule 4.189 of the 1991 Rules.

Commencement Information

I138 Rule 138 in operation at 1.4.2009, see [rule 1\(1\)](#)

Debts of insolvent company to rank equally

139. Apply rule 4.190 of the 1991 Rules.

Commencement Information

I139 Rule 139 in operation at 1.4.2009, see [rule 1\(1\)](#)

Supplementary provisions as to dividend

140. Apply rule 4.191 of the 1991 Rules.

Commencement Information

I140 Rule 140 in operation at 1.4.2009, see [rule 1\(1\)](#)

Division of unsold assets

141. Apply rule 4.193 of the 1991 Rules.

Commencement Information

I141 Rule 141 in operation at 1.4.2009, see [rule 1\(1\)](#)

General powers of the liquidator

142.—(1) Apply rule 4.194 of the 1991 Rules.
(2) In paragraph (1) delete “under Article 142(1)(a), or”.

Commencement Information

I142 Rule 142 in operation at 1.4.2009, see [rule 1\(1\)](#)

Enforced delivery up of company’s property

143. Apply rule 4.195 of the 1991 Rules.

Commencement Information

I143 Rule 143 in operation at 1.4.2009, see [rule 1\(1\)](#)

Final distribution

144.—(1) Apply rule 4.196 of the 1991 Rules.

(2) In paragraphs (1) and (2) for “Part 11”, substitute “Part 21”.

Commencement Information

I144 Rule 144 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 12 DISCLAIMER

Liquidator’s notice of disclaimer

145. Apply rule 4.197 of the 1991 Rules.

Commencement Information

I145 Rule 145 in operation at 1.4.2009, see [rule 1\(1\)](#)

Communication of disclaimer to persons interested

146. Apply rule 4.198 of the 1991 Rules.

Commencement Information

I146 Rule 146 in operation at 1.4.2009, see [rule 1\(1\)](#)

Additional notices

147. Apply rule 4.199 of the 1991 Rules.

Commencement Information

I147 Rule 147 in operation at 1.4.2009, see [rule 1\(1\)](#)

Duty to keep court informed

148. Apply rule 4.200 of the 1991 Rules.

Commencement Information

I148 Rule 148 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application by interested party under Article 152(4)

149. Apply rule 4.201 of the 1991 Rules.

Commencement Information

I149 Rule 149 in operation at 1.4.2009, see [rule 1\(1\)](#)

Interest in property to be declared on request

150. Apply rule 4.202 of the 1991 Rules.

Commencement Information

I150 Rule 150 in operation at 1.4.2009, see [rule 1\(1\)](#)

Disclaimer presumed valid and effective

151. Apply rule 4.203 of the 1991 Rules.

Commencement Information

I151 Rule 151 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application for exercise of court's powers under Article 155

152. Apply rule 4.204 of the 1991 Rules.

Commencement Information

I152 Rule 152 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 13

SETTLEMENT OF LIST OF CONTRIBUTORIES

Preliminary

153. Apply rule 4.205 of the 1991 Rules.

Commencement Information

I153 Rule 153 in operation at 1.4.2009, see [rule 1\(1\)](#)

Primacy of Objective 1

154. Where the bank liquidator considers that the carrying out of a duty imposed by a rule in this Part would prejudice the achievement of Objective 1, the bank liquidator shall postpone the carrying out of that duty until he considers that the carrying out of the duty would no longer be likely to prejudice the achievement of that Objective.

Commencement Information

I154 Rule 154 in operation at 1.4.2009, see [rule 1\(1\)](#)

Duty of liquidator to settle list

155. Apply rule 4.206 of the 1991 Rules.

Commencement Information

I155 Rule 155 in operation at 1.4.2009, see [rule 1\(1\)](#)

Form of list

156. Apply rule 4.207 of the 1991 Rules.

Commencement Information

I156 Rule 156 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure for settling list

157. Apply rule 4.208 of the 1991 Rules.

Commencement Information

I157 Rule 157 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application to court for variation of the list

158.—(1) Apply rule 4.209 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) A person may only apply under paragraph (1) before a full payment resolution has been passed with the consent of the bank liquidator.

(3) The application must be made within 21 days of—

(a) the service on the applicant of the bank liquidator’s notice under rule 157 (in its application of rule 4.208(4) of the 1991 Rules), or

(b) where the bank liquidator has consented under paragraph (2), the giving of the consent.”.

Commencement Information

I158 Rule 158 in operation at 1.4.2009, see [rule 1\(1\)](#)

Variation of, or addition to, the list

159.—(1) Apply rule 4.210 of the 1991 Rules.

(2) For “Chapter”, substitute “Part”.

Commencement Information

I159 Rule 159 in operation at 1.4.2009, see [rule 1\(1\)](#)

Costs not to fall on bank liquidator

160. The bank liquidator is not personally liable for any costs incurred by a person in respect of an application to set aside or vary the bank liquidator’s act or decision in settling the list of contributories, or varying or adding to the list, unless the court makes an order to that effect.

Commencement Information

I160 Rule 160 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 14

CALLS

Calls by liquidator

161. Apply rule 4.212 of the 1991 Rules.

Commencement Information

I161 Rule 161 in operation at 1.4.2009, see [rule 1\(1\)](#)

Control by bank liquidation committee

162. Apply rule 4.213 of the 1991 Rules.

Commencement Information

I162 Rule 162 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application to court for leave to make a call

163. Apply rule 4.214 of the 1991 Rules.

Commencement Information

I163 Rule 163 in operation at 1.4.2009, see [rule 1\(1\)](#)

Making and enforcement of the call

164. Apply rule 4.215 of the 1991 Rules.

Commencement Information

I164 Rule 164 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 15 SPECIAL MANAGER

Appointment and remuneration

165. Apply rule 4.216 of the 1991 Rules.

Commencement Information

I165 Rule 165 in operation at 1.4.2009, see [rule 1\(1\)](#)

Security

166. Apply rule 4.217 of the 1991 Rules.

Commencement Information

I166 Rule 166 in operation at 1.4.2009, see [rule 1\(1\)](#)

Failure to give or keep up security

167. Apply rule 4.218 of the 1991 Rules.

Commencement Information

I167 Rule 167 in operation at 1.4.2009, see [rule 1\(1\)](#)

Accounting

168. Apply rule 4.219 of the 1986 Rule.

Commencement Information

I168 Rule 168 in operation at 1.4.2009, see [rule 1\(1\)](#)

Termination of appointment

169.—(1) Apply rule 4.220 of the 1991 Rules.

(2) Delete paragraph (1).

Commencement Information

I169 Rule 169 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 16

ORDER OF PAYMENT AS TO COSTS, ETC. OUT OF ASSETS

General rule as to priority

170.—(1) Apply rule 4.228(**18**) of the 1991 Rules.

(2) In paragraph (3)—

- (a) Delete sub-paragraphs (a)(iii) and (iv), (b), and (d);
- (b) in sub-paragraph (c) delete the words from “or Article 361A” to “regulations”; and
- (c) in sub-paragraph (la), delete the words from “in any case” to “examination”.

Commencement Information

I170 Rule 170 in operation at 1.4.2009, see [rule 1\(1\)](#)

Litigation expenses and property subject to a floating charge-general application

171. Apply rule 4.228A(**19**) of the 1991 Rules.

Commencement Information

I171 Rule 171 in operation at 1.4.2009, see [rule 1\(1\)](#)

Litigation expenses and property subject to a floating charge-requirement for approval or authorisation

172. Apply rule 4.228B of the 1991 Rules.

Commencement Information

I172 Rule 172 in operation at 1.4.2009, see [rule 1\(1\)](#)

Litigation expenses and property subject to a floating charge-request for approval or authorisation

173. Apply rule 4.228C of the 1991 Rules.

(18) Rule 4.228 was amended by the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118).

(19) Rules 4.228A to E were inserted by the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118).

Commencement Information

I173 Rule 173 in operation at 1.4.2009, see [rule 1\(1\)](#)

Litigation expenses and property subject to a floating charge-grant of approval or authorisation

174. Apply rule 4.228D of the 1991 Rules.

Commencement Information

I174 Rule 174 in operation at 1.4.2009, see [rule 1\(1\)](#)

Litigation expenses and property subject to a floating charge-application to court by the bank liquidator

175. Apply rule 4.228E of the 1991 Rules.

Commencement Information

I175 Rule 175 in operation at 1.4.2009, see [rule 1\(1\)](#)

Saving for powers of the court

176. Apply rule 4.230 of the 1991 Rules.

Commencement Information

I176 Rule 176 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 17

MISCELLANEOUS RULES

SECTION A

RETURN OF CAPITAL

Application to court for order authorising return of capital

177. Apply rule 4.231 of the 1991 Rules.

Commencement Information

I177 Rule 177 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure for return of capital

178. Apply rule 4.232 of the 1991 Rules.

Commencement Information

I178 Rule 178 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION B

CONCLUSION OF BANK INSOLVENCY

Department's directions under section 116 of the 2009 Act

179.—(1) Where the Department gives a direction under section 116 of the 2009 Act (application by an interested person for postponement of dissolution) it shall send two copies of the direction to the applicant.

(2) Of those copies, one shall be sent by the applicant to the registrar of companies to comply with section 116(4) of the 2009 Act.

Commencement Information

I179 Rule 179 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure following appeal under section 116 of the 2009 Act

180. Following an appeal under section 116(2) of the 2009 Act (against a decision of the Department under the applicable section) the court shall send two sealed copies of its order to the person in whose favour the appeal was determined and that party shall send one of the copies to the registrar of companies.

Commencement Information

I180 Rule 180 in operation at 1.4.2009, see [rule 1\(1\)](#)

SECTION C

LEAVE TO ACT AS DIRECTOR, ETC. OF BANK WITH PROHIBITED NAME (ARTICLE 180 OF THE ORDER)

Preliminary

181. Apply rule 4.236 of the 1991 Rules.

Commencement Information

I181 Rule 181 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application for leave under Article 180(3) before passing of full payment resolution

182. Where an application for leave under Article 180(3) is made before a full payment resolution has been passed, it may only be made with the consent of the bank liquidator.

Commencement Information

I182 Rule 182 in operation at 1.4.2009, see [rule 1\(1\)](#)

Consideration of application for leave under Article 180(3)

183. Apply rule 4.237 of the 1991 Rules.

Commencement Information

I183 Rule 183 in operation at 1.4.2009, see [rule 1\(1\)](#)

First excepted case

- 184.**—(1) Apply rule 4.238 of the 1991 Rules.
(2) In paragraph (3)(b)(ii) ignore the reference to administrator.

Commencement Information

I184 Rule 184 in operation at 1.4.2009, see [rule 1\(1\)](#)

Second excepted case

- 185.**—(1) Apply rule 4.239 of the 1991 Rules.
(2) In paragraph (b), the reference to Article 180(3) of the Companies Order should, after that Article is repealed, be to section 451 of the 2006 Act.**(20)**.

Commencement Information

I185 Rule 185 in operation at 1.4.2009, see [rule 1\(1\)](#)

Third excepted case

- 186.**—(1) Apply rule 4.240 of the 1991 Rules.
(2) In paragraph (a), for “liquidating company went into liquidation” substitute “bank went into bank insolvency”.

Commencement Information

I186 Rule 186 in operation at 1.4.2009, see [rule 1\(1\)](#)

(20) Article 180 is repealed on 1 October 2009.

Further exception

187. The court’s leave under Article 180(3) of the Companies Order is not required in respect of anything done by a person in connection with the exercise of a stabilisation power under Part 1 of the 2009 Act.

Commencement Information

I187 Rule 187 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 18**COURT PROCEDURE AND PRACTICE****CHAPTER 1****APPLICATIONS (GENERAL)****Preliminary**

188. This Part applies to any application made to the court under the 2009 Act or these Rules except an application under section 95 of the 2009 Act for a bank insolvency order.

Commencement Information

I188 Rule 188 in operation at 1.4.2009, see [rule 1\(1\)](#)

Interpretation

189. Apply rule 7.06 of the 1991 Rules.

Commencement Information

I189 Rule 189 in operation at 1.4.2009, see [rule 1\(1\)](#)

Form and contents of application

190. Apply rule 7.07 of the 1991 Rules.

Commencement Information

I190 Rule 190 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application under Article 150A(5) to disapply Article 150A

- 191.**—(1) Apply rule 7.07A(21) of the 1991 Rules.
- (2) In paragraph (1), delete “administrator or receiver”.
- (3) Delete paragraph (2)(a).

Commencement Information

I191 Rule 191 in operation at 1.4.2009, see [rule 1\(1\)](#)

Filing and service of application

192. Apply rule 7.08 of the 1991 Rules.

Commencement Information

I192 Rule 192 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of application under Article 150A(5)

193.—(1) Apply rule 7.08A(22) of the 1991 Rules.

(2) Delete from “save that notice” to “State liquidator”.

Commencement Information

I193 Rule 193 in operation at 1.4.2009, see [rule 1\(1\)](#)

Other hearings without notice

194. Apply rule 7.09 of the 1991 Rules.

Commencement Information

I194 Rule 194 in operation at 1.4.2009, see [rule 1\(1\)](#)

Hearing of application

195. Apply rule 7.03 of the 1991 Rules.

Commencement Information

I195 Rule 195 in operation at 1.4.2009, see [rule 1\(1\)](#)

Use of affidavit evidence

196. Apply rule 7.10 of the 1991 Rules.

Commencement Information

I196 Rule 196 in operation at 1.4.2009, see [rule 1\(1\)](#)

Filing and service of affidavits

- 197.**—(1) Apply rule 7.11 of the 1991 Rules.
(2) Delete paragraph (2).

Commencement Information

I197 Rule 197 in operation at 1.4.2009, see [rule 1\(1\)](#)

Use of reports

198.—(1) Unless the application involves other parties, or the court orders otherwise, a report may be filed in court instead of a witness statement by—

- (a) the bank liquidator;
- (b) the provisional bank liquidator; or
- (c) the special manager.

(2) In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of rule 197 and any hearing before the court as if it were a witness statement.

Commencement Information

I198 Rule 198 in operation at 1.4.2009, see [rule 1\(1\)](#)

Adjournment of hearing: directions

- 199.** Apply rule 7.13 of the 1991 Rules.

Commencement Information

I199 Rule 199 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 3

SHORTHAND WRITERS

Nomination and appointment of shorthand writers

- 200.**—(1) Apply rule 7.14 of the 1991 Rules.
(2) In paragraph (2) delete “113” and “263 or 337”.
(3) Delete paragraph (3).

Commencement Information

I200 Rule 200 in operation at 1.4.2009, see [rule 1\(1\)](#)

Remuneration

- 201.** Apply rule 7.16 of the 1991 Rules.

Commencement Information

I201 Rule 201 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 4

ENFORCEMENT PROCEDURES

Enforcement of court orders

202.—(1) Apply rule 7.19 of the 1991 Rules.

(2) Delete paragraph (2).

Commencement Information

I202 Rule 202 in operation at 1.4.2009, see [rule 1\(1\)](#)

Orders enforcing compliance with the rules

203.—(1) The court may on application of the bank liquidator, or the provisional liquidator as the case may be, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) Article 121(2) of the Order (liquidator to furnish information, books, papers etc.); or
- (b) Article 199 of the Order (duty to cooperate with liquidator).

(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.

Commencement Information

I203 Rule 203 in operation at 1.4.2009, see [rule 1\(1\)](#)

Warrants (general provisions)

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

(2) The person described in Article 199(3) of the Order as the prescribed officer of the court is the tipstaff and his assistants of the court.

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

Commencement Information

I204 Rule 204 in operation at 1.4.2009, see [rule 1\(1\)](#)

Warrants under Article 200

205.—(1) Apply rule 7.22 of the 1991 Rules.

(2) In paragraph (1), delete “or 337 (the equivalent in bankruptcy),”.

Commencement Information

I205 Rule 205 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 5

COURT RECORDS AND RETURNS

Title of proceedings

206. Every proceeding under Part 2 of the 2009 Act shall, with any necessary additions, be titled “IN THE MATTER OF (naming the bank to which the proceedings relate) AND IN THE MATTER OF THE BANKING ACT 2009”.

Commencement Information

I206 Rule 206 in operation at 1.4.2009, see [rule 1\(1\)](#)

Court records

207. Apply rule 7.24 of the 1991 Rules.

Commencement Information

I207 Rule 207 in operation at 1.4.2009, see [rule 1\(1\)](#)

Inspection of records

208. Apply rule 7.25 of the 1991 Rules.

Commencement Information

I208 Rule 208 in operation at 1.4.2009, see [rule 1\(1\)](#)

File of court proceedings and inspection

209.—(1) The Court shall open and maintain a file for each bank insolvency and (subject to the direction of the registrar) all documents relating to that bank insolvency shall be placed on that file.

(2) Where a file has been opened under paragraph (1), the following have the right, at all reasonable times, to inspect that file—

- (a) the bank liquidator;
- (b) any person stating in writing that they are a creditor of the bank to which the bank insolvency relates; and
- (c) a member of the bank;
- (d) any person who is, or at any time has been, a director or officer of the bank to which the bank insolvency relates;
- (e) any person who is a contributory of the bank to which the bank insolvency relates; and
- (f) the Bank of England, the FSA and the FSCS.

(3) The right of inspection conferred on any person by paragraph (2) may be exercised on their behalf by a person properly authorised by them.

(4) Any person may, with special leave of the court, inspect the file.

(5) The right of inspection conferred by this rule is not exercisable in respect of documents, or parts of documents, which the court has directed (either generally or specially) are not to be open to inspection without the court's permission.

(6) An application for a direction of the court under paragraph (5) may be made by the bank liquidator or by any party appearing to the court to have an interest in the bank insolvency.

(7) If for the purposes of powers conferred by the Order, the 2009 Act or these Rules the Department requires to inspect the file on a bank insolvency and requests the court to transmit the file to it, the court shall comply with the request or, if the file is for the time being in use for the court's own purposes, as soon as the file is no longer in such use.

(8) Rule 208 applies in respect of the court's records on any bank insolvency as they apply in respect of court records of general insolvency proceedings.

Commencement Information

I209 Rule 209 in operation at 1.4.2009, see [rule 1\(1\)](#)

Filing of Gazette notices and advertisements

210.—(1) Apply rule 7.28 of the 1991 Rules.

(2) In paragraph (3) for “An officer of the court” substitute “The bank liquidator”.

(3) In paragraph (4) for “The officer's” substitute “the bank liquidator's”.

Commencement Information

I210 Rule 210 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 6

COSTS AND DETAILED ASSESSMENT

Application of the Supreme Court Rules

211. Apply rule 7.29 of the 1991 Rules.

Commencement Information

I211 Rule 211 in operation at 1.4.2009, see [rule 1\(1\)](#)

Requirement to assess costs by the detailed procedure

212.—(1) Apply rule 7.30 of the 1991 Rules.

(2) In paragraph (1)—

(a) for “company insolvency” and “liquidation”, substitute “bank insolvency”; and

(b) delete sub-paragraph (b).

(3) In paragraph (2) delete “or creditors”.

- (4) In paragraph (3) for “insolvency proceedings” substitute “a bank insolvency”;
- (5) In paragraph (5) for “trustee in bankruptcy or a liquidator ” substitute “bank liquidator”;
- (6) Delete paragraph (6).

Commencement Information

I212 Rule 212 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure where detailed assessment required

213. Apply rule 7.32 of the 1991 Rules.

Commencement Information

I213 Rule 213 in operation at 1.4.2009, see [rule 1\(1\)](#)

Cost of officers charged with executions of writs or other process

- 214.**—(1) Apply rule 7.31 of the 1991 Rules.
- (2) In Paragraph (1) for “insolvency proceedings” substitute “a bank insolvency”.
- (3) Delete paragraph (9)

Commencement Information

I214 Rule 214 in operation at 1.4.2009, see [rule 1\(1\)](#)

Costs paid otherwise than out of the insolvent estate

215. Apply rule 7.34 of the 1991 Rules.

Commencement Information

I215 Rule 215 in operation at 1.4.2009, see [rule 1\(1\)](#)

Award of costs against responsible insolvency practitioner

- 216.**—(1) Apply rule 7.35 of the 1991 Rules.
- (2) For “Without prejudice” to “the official receiver or” substitute “Where”.

Commencement Information

I216 Rule 216 in operation at 1.4.2009, see [rule 1\(1\)](#)

Application for costs

- 217.**—(1) Apply rule 7.36 of the 1991 Rules.
- (2) In paragraph (1) for “insolvency” substitute “bank insolvency”.

(3) In paragraph (2), delete “, and, in a winding up by the court or bankruptcy, on the official receiver”;

(4) In paragraph (3), delete “and, where appropriate, the official receiver”.

Commencement Information

I217 Rule 217 in operation at 1.4.2009, see [rule 1\(1\)](#)

Costs and expenses of witnesses

218.—(1) Apply rule 7.37 of the 1991 Rules.

(2) In paragraph (1), delete “the bankrupt or”.

(3) Delete paragraph (2).

Commencement Information

I218 Rule 218 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 7

PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS

Introductory

219. Apply rule 7.38 of the 1991 Rules.

Commencement Information

I219 Rule 219 in operation at 1.4.2009, see [rule 1\(1\)](#)

Appointment of another person to act

220.—(1) Apply rule 7.39 of the 1991 Rules.

(2) Delete paragraph (3)(c).

Commencement Information

I220 Rule 220 in operation at 1.4.2009, see [rule 1\(1\)](#)

Affidavit in support of application

221.—(1) Apply rule 7.40 of the 1991 Rules.

(2) In paragraph (1) delete from the beginning to “receiver”.

(3) Delete paragraph (2).

Commencement Information

I221 Rule 221 in operation at 1.4.2009, see [rule 1\(1\)](#)

Service of notices following appointment

222. Apply rule 7.41 of the 1991 Rules.

Commencement Information

I222 Rule 222 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 8

APPEALS IN BANK INSOLVENCY PROCEEDINGS

Appeals and review of court orders

223.—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction under Part 2 of the 2009 Act.

(2) An appeal from a decision of a registrar of the High Court lies, with the permission of the registrar or a judge of the High Court, to a single judge of the High Court, and a second appeal lies, with the permission of the Court of Appeal to the Court of Appeal.

(3) An appeal of a decision of first instance of a judge of the High Court lies, with the permission of the judge or the Court of Appeal, to the Court of Appeal.

(4) A bank insolvency order made under rule 16 cannot be appealed under this rule.

Commencement Information

I223 Rule 223 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure on appeal

224. Apply rule 7.42 of the 1991 Rules.

Commencement Information

I224 Rule 224 in operation at 1.4.2009, see [rule 1\(1\)](#)

Appeal against a decision of the Department

225.—(1) Apply rule 7.44 of the 1991 Rules.

(2) In paragraph (1) delete “or the official receiver”.

(3) Delete paragraph (2).

Commencement Information

I225 Rule 225 in operation at 1.4.2009, see [rule 1\(1\)](#)

CHAPTER 9

GENERAL

Principal court rules and practice to apply

226. The Rules of the Supreme Court (Northern Ireland) 1980⁽²³⁾ and the practice and procedure of the High Court (including any practice direction) apply to bank insolvency proceedings in the High Court, with any necessary modifications, except so far as is inconsistent with these Rules.

Commencement Information

I226 Rule 226 in operation at 1.4.2009, see [rule 1\(1\)](#)

Right of attendance

227.—(1) Apply rule 7.47 of the 1991 Rules.

(2) For “company” substitute “bank”.

Commencement Information

I227 Rule 227 in operation at 1.4.2009, see [rule 1\(1\)](#)

Restriction on concurrent proceedings and remedies

228. Where in a bank insolvency, the court makes an order staying any action, execution or legal process against the property of the bank, service of the order may be effected by delivering a sealed copy by personal service to the applicant for the bank insolvency order.

Commencement Information

I228 Rule 228 in operation at 1.4.2009, see [rule 1\(1\)](#)

Security in court

229. Apply rule 7.53 of the 1991 Rules.

Commencement Information

I229 Rule 229 in operation at 1.4.2009, see [rule 1\(1\)](#)

Further information and disclosure

230.—(1) Apply rule 7.54 of the 1991 Rules.

(2) After paragraph (2) insert—

“(3) Before the passing of a full payment resolution the court shall only grant an order on an application under paragraph (1)(b) if satisfied that granting the order is unlikely to prejudice the achievement of Objective 1.”.

Commencement Information

I230 Rule 230 in operation at 1.4.2009, see [rule 1\(1\)](#)

Office copies of documents

231. Apply rule 7.55 of the 1991 Rules.

Commencement Information

I231 Rule 231 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 19

PROXIES AND COMPANY REPRESENTATION

Definition of “proxy”

232.—(1) Apply rule 8.1 of the 1991 Rules.

(2) In paragraph (2) delete “, company”.

(3) In paragraph (4), for “chairman of the meeting” to “official receiver” substitute: “chair of the meeting or the bank liquidator”.

Commencement Information

I232 Rule 232 in operation at 1.4.2009, see [rule 1\(1\)](#)

Issue and use of forms

233. Apply rule 8.2 of the 1991 Rules.

Commencement Information

I233 Rule 233 in operation at 1.4.2009, see [rule 1\(1\)](#)

Use of proxies at meetings

234.—(1) Apply rule 8.3 of the 1991 Rules.

(2) Delete paragraph (2).

Commencement Information

I234 Rule 234 in operation at 1.4.2009, see [rule 1\(1\)](#)

Retention of proxies

235. Apply rule 8.4 of the 1991 Rules.

Commencement Information

I235 Rule 235 in operation at 1.4.2009, see [rule 1\(1\)](#)

Right of inspection

236.—(1) Apply rule 8.5 of the 1991 Rules.

(2) in paragraph (1)(b) for “company” substitute “bank”.

(3) For paragraph (2) substitute—

“(2) The reference in paragraph (1) to creditors is to those creditors who have proved their debts but does not include a person whose proof has been wholly rejected for purposes of voting, dividend or otherwise.”.

(4) In paragraph (3)(a) delete “, and” and insert a full stop.

(5) Delete paragraph (3)(b).

Commencement Information

I236 Rule 236 in operation at 1.4.2009, see [rule 1\(1\)](#)

Proxy-holder with financial interest

237. Apply rule 8.6 of the 1991 Rules.

Commencement Information

I237 Rule 237 in operation at 1.4.2009, see [rule 1\(1\)](#)

Company representation

238.—(1) Apply rule 8.7 of the 1991 Rules.

(2) In paragraph (1), the reference to Article 383 of the Companies Order should, after that Article is repealed, be to section 323 of the 2006 Act.

Commencement Information

I238 Rule 238 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 20

EXAMINATION OF PERSONS CONCERNED IN BANK INSOLVENCY

Preliminary

239.—(1) The rules in this Part relates to applications to the court for an order under Article 220 of the Order (inquiry into company’s dealings when it is, or is alleged to be, insolvent).

(2) The following definitions apply—

- (a) the person in respect of whom an order is applied for is “the respondent”;
- (b) “the applicable Article” is Article 200 of the Order; and
- (c) the bank is “the insolvent”.

Commencement Information

I239 Rule 239 in operation at 1.4.2009, see [rule 1\(1\)](#)

Form and contents of application

240. Apply rule 9.2 of the 1991 Rules.

Commencement Information

I240 Rule 240 in operation at 1.4.2009, see [rule 1\(1\)](#)

Order for examination, etc

241. Apply rule 9.3 of the 1991 Rules.

Commencement Information

I241 Rule 241 in operation at 1.4.2009, see [rule 1\(1\)](#)

Procedure for examination

242. Apply rule 9.4 of the 1991 Rules.

Commencement Information

I242 Rule 242 in operation at 1.4.2009, see [rule 1\(1\)](#)

Record of examination

243. Apply rule 9.5 of the 1991 Rules.

Commencement Information

I243 Rule 243 in operation at 1.4.2009, see [rule 1\(1\)](#)

Cost of proceedings

- 244.**—(1) Apply rule 9.6 of the 1991 Rules.
- (2) In paragraph (2)(a) delete “or 338(1)” and in paragraph (2)(b) delete “or 338(2)”.
 - (3) In paragraph (3)(a), for “company insolvency” substitute “bank insolvency”.
 - (4) Delete sub-paragraph (3)(b).
 - (5) Delete paragraph (5).

Commencement Information

I244 Rule 244 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 21

DECLARATION AND PAYMENT OF DIVIDEND

Preliminary

245.—(1) The rules in this Part relate to the declaration and payment of dividends in a bank insolvency.

(2) In this part—

- (a) “creditors” means those creditors of the bank of whom the bank liquidator is aware, or who are identified in the bank’s statement of affairs; and
- (b) “the insolvent” means the bank.

Commencement Information

I245 Rule 245 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of intended dividend

246.—(1) Apply rule 11.02 of the 1991 Rules.

(2) Delete paragraph (1)(b) .

Commencement Information

I246 Rule 246 in operation at 1.4.2009, see [rule 1\(1\)](#)

Final admission/rejection of proofs

247.—(1) Apply rule 11.03 of the 1991 Rules.

(2) Delete paragraph (4).

Commencement Information

I247 Rule 247 in operation at 1.4.2009, see [rule 1\(1\)](#)

Postponement or cancellation of dividend

248. Apply rule 11.04 of the 1991 Rules.

Commencement Information

I248 Rule 248 in operation at 1.4.2009, see [rule 1\(1\)](#)

Decision to declare dividend

249. Apply rule 11.05 of the 1991 Rules.

Commencement Information

I249 Rule 249 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of declaration

250.—(1) Apply rule 11.06 of the 1991 Rules.

(2) Delete paragraph (1)(b).

(3) In paragraph (2), after (b) add—

“(ba) expenses incurred by the bank liquidator in the achievement of objective 1 under section 99 of the Banking Act 2009;”.

Commencement Information

I250 Rule 250 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of no, or no further, dividend

251. Apply rule 11.07 of the 1991 Rules.

Commencement Information

I251 Rule 251 in operation at 1.4.2009, see [rule 1\(1\)](#)

Proof altered after payment of dividend

252. Apply rule 11.08 of the 1991 Rules.

Commencement Information

I252 Rule 252 in operation at 1.4.2009, see [rule 1\(1\)](#)

Secured creditors

253. Apply rule 11.09 of the 1991 Rules.

Commencement Information

I253 Rule 253 in operation at 1.4.2009, see [rule 1\(1\)](#)

Disqualification from dividend

254.—(1) Apply rule 11.10 of the 1991 Rules.

(2) For “the Order” substitute “the Order as applied by the 2009 Act”.

Commencement Information

I254 Rule 254 in operation at 1.4.2009, see [rule 1\(1\)](#)

Assignment of right to dividend

255. Apply rule 11.11 of the 1991 Rules.

Commencement Information

I255 Rule 255 in operation at 1.4.2009, see [rule 1\(1\)](#)

Preferential creditors

256. Apply rule 11.12 of the 1991 Rules.

Commencement Information

I256 Rule 256 in operation at 1.4.2009, see [rule 1\(1\)](#)

Debt payable at future time

257.—(1) Apply rule 11.13 of the 1991 Rules.

(2) For paragraph (3) substitute—

“(3) In paragraph (2) “relevant date” means the date of the commencement of the bank insolvency.”.

Commencement Information

I257 Rule 257 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 22

MISCELLANEOUS AND GENERAL

Power of Department to regulate certain matters

258.—(1) As provided for in paragraph 27 of Schedule 5 to the Order and paragraph 28 of Schedule 6 to the Order⁽²⁴⁾, the Department may, subject to the Order and to these Rules, make regulations with respect to any matter provided for in these Rules relating to the carrying out of the functions of a bank liquidator or provisional bank liquidator, including, without prejudice to the generality of the above, provision with respect to the following matters arising in bank insolvency—

- (a) the preparation and keeping by bank liquidator and provisional bank liquidators of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;

⁽²⁴⁾ Article 359 of the Order, which introduces Schedule 5, was amended by section 134 of the 2009 Act to extend the powers in the Schedule to rules made under Part 2 of that Act

- (b) the auditing of bank liquidators' accounts;
 - (c) the manner in which bank liquidators are to act in relation to the bank's books, papers and other records, and the manner of their disposal by the bank liquidator or others;
 - (d) the supply by the bank liquidator to creditors and contributories and to the liquidation committee of copies of documents relating to the bank insolvency and the affairs of the bank (on payment, in such cases as may be specified in the regulations, of a fee.);
 - (e) the manner in which insolvent estates are to be distributed by the bank liquidator, including provision with respect to unclaimed funds and dividends;
 - (f) the manner in which monies coming into the hands of the bank liquidator are to be handled and invested and the payment of interest on sums which, in pursuance of regulations made under this sub-paragraph, have been paid into the Insolvency Account.
- (2) Regulations made under paragraph (1) may—
- (a) confer a discretion on the court;
 - (b) make non-compliance with any of the regulations a criminal offence;
 - (c) make different provision for different cases, including different provision for different areas; and
 - (d) contain such incidental, supplemental and transitional provisions as may appear to the Department as necessary or expedient.

Commencement Information

I258 Rule 258 in operation at 1.4.2009, see [rule 1\(1\)](#)

Costs, expenses, etc

259.—(1) All fees, costs, charges and other expenses incurred in the course of bank insolvency, except for any money paid by the FSCS to eligible depositors in pursuance of objective 1, and any expense incurred by the FSCS in this process, are to be regarded as expenses of the bank insolvency.

(2) The costs associated with the prescribed part shall be paid out of that prescribed part.

Commencement Information

I259 Rule 259 in operation at 1.4.2009, see [rule 1\(1\)](#)

Provable debts

260.—(1) Subject to paragraphs (2) and (3), in a bank insolvency all claims by creditors are provable as debts against the bank, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Articles 4 or 5 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(25) or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002 is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the bank insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Article 160(2) of the Order—

- (a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim also arising by virtue of section 382(1)(b) of that Act;
 - (b) any claim which by virtue of the Order or any other enactment is a claim the payment of which is to be postponed.
- (4) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Commencement Information

I260 Rule 260 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notices

261.—(1) Apply rule 12.04 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) Where in any proceedings a notice is required to be sent or given by the bank liquidator the sending or giving of it may be provided by means of a certificate by the bank liquidator or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.”

(3) For paragraph (3) substitute—

“(3) In the case of a notice to be sent or given by a person other than the bank liquidator the sending or giving of it may be provided by means of a certificate by that person that they posted the notice, or instructed another person (naming them) to do so.”

Commencement Information

I261 Rule 261 in operation at 1.4.2009, see [rule 1\(1\)](#)

Quorum at meeting of creditors or contributories

262.—(1) Apply rule 12.05 of the 1991 Rules.

(2) In paragraph (1), for “insolvency proceedings” read “a bank insolvency”.

(3) For paragraph (3) substitute—

“(3) For the purposes of this rule, the reference to the creditors or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) under Article 383 of the Order or, after that Article is repealed, by section 323 of the 2006 Act.”

Commencement Information

I262 Rule 262 in operation at 1.4.2009, see [rule 1\(1\)](#)

Evidence of proceedings at meetings

263.—(1) Apply rule 12.06 of the 1991 Rules.

Commencement Information

I263 Rule 263 in operation at 1.4.2009, see [rule 1\(1\)](#)

Documents issuing from the Department

264. Apply rule 12.07 of the 1991 Rules.

Commencement Information

I264 Rule 264 in operation at 1.4.2009, see [rule 1\(1\)](#)

Insolvency practitioner’s security

265.—(1) Apply rule 12.09 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) It is the duty of the liquidation committee in a bank insolvency to review from time to time the adequacy of the bank liquidator’s security.”.

Commencement Information

I265 Rule 265 in operation at 1.4.2009, see [rule 1\(1\)](#)

Time

266. Apply rule 12.10 of the 1991 Rules as regards time limits for anything required or authorised to be done by these Rules.

Commencement Information

I266 Rule 266 in operation at 1.4.2009, see [rule 1\(1\)](#)

Service by post

267. Apply rule 12.11 of the 1991 Rules.

Commencement Information

I267 Rule 267 in operation at 1.4.2009, see [rule 1\(1\)](#)

General provisions as to service

268. Order 65 of The Rules of the Supreme Court (Northern Ireland) 1980 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in bank insolvency proceedings except in cases where a rule makes provision as to the service of a document or the giving of a notice.

Commencement Information

I268 Rule 268 in operation at 1.4.2009, see [rule 1\(1\)](#)

Service outside the jurisdiction

269. Apply rule 12.13 of the 1991 Rules.

Commencement Information

I269 Rule 269 in operation at 1.4.2009, see [rule 1\(1\)](#)

Confidentiality of documents

270.—(1) Apply rule 12.14 of the 1991 Rules.

(2) In paragraph (2) delete “or a creditors’ committee”.

Commencement Information

I270 Rule 270 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notices sent simultaneously to the same person

271. Apply rule 12.15 of the 1991 Rules.

Commencement Information

I271 Rule 271 in operation at 1.4.2009, see [rule 1\(1\)](#)

Right to copy documents

272. Apply rule 12.16 of the 1991 Rules.

Commencement Information

I272 Rule 272 in operation at 1.4.2009, see [rule 1\(1\)](#)

Charge for copy documents

273. Apply rule 12.17 of the 1991 Rules.

Commencement Information

I273 Rule 273 in operation at 1.4.2009, see [rule 1\(1\)](#)

Non-receipt of notice of meeting

274. Apply rule 12.18 of the 1991 Rules.

Commencement Information

I274 Rule 274 in operation at 1.4.2009, see [rule 1\(1\)](#)

Right to have list of creditors

275.—(1) Where a creditor has the right under these Rules to inspect documents on the court file, the creditor may require the bank liquidator to send them a list of the bank’s creditors and the amounts of their respective debts.

(2) Paragraph (1) does not apply if a statement of the bank’s affairs has been filed in court or filed with the registrar of companies.

(3) The bank liquidator must respond to a request in paragraph (1) but may charge the appropriate fee for doing so.

Commencement Information

I275 Rule 275 in operation at 1.4.2009, see [rule 1\(1\)](#)

False claim of status as creditors

276. Apply rule 12.20 of the 1991 Rules.

Commencement Information

I276 Rule 276 in operation at 1.4.2009, see [rule 1\(1\)](#)

Execution overtaken by judgement debtor’s insolvency

277.—(1) This rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution under Article 115 of the Order (that a bank insolvency order has been made against the debtor, or that a provisional bank liquidator has been appointed).

(2) The notice shall be in writing and be delivered by personal service at, or sent by recorded delivery to, the office of the enforcement officer or (as the case may be) of the officer charged with the execution.

Commencement Information

I277 Rule 277 in operation at 1.4.2009, see [rule 1\(1\)](#)

The Gazette

278. Apply rule 12.21 of the 1991 Rules.

Commencement Information

I278 Rule 278 in operation at 1.4.2009, see [rule 1\(1\)](#)

Punishment of offences

279. Apply rule 12.22 of the 1991 Rules.

Commencement Information

I279 Rule 279 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice of order under Article 150A(5)

280.—(1) Apply rule 12.23 of the 1991 Rules.

(2) In paragraphs (2), (3) and (5) for “the liquidator, administrator or receiver, as the case may be”, substitute “the bank liquidator”.

(3) In paragraph (6), for “The liquidator, administrator or receiver” substitute “The bank liquidator”.

Commencement Information

I280 Rule 280 in operation at 1.4.2009, see [rule 1\(1\)](#)

PART 23

INTERPRETATION

Introductory

281. This Part of the Rules has effect for their interpretation and application; and any definition given in this Part (and in any provision of the 1991 Rules applied by this Part) applies except, and in so far as, the context requires otherwise.

Commencement Information

I281 Rule 281 in operation at 1.4.2009, see [rule 1\(1\)](#)

Expressions used generally

282.—(1) Apply rule 0.2 of the 1991 Rules.

(2) For the definition “insolvency proceedings” after “the Order” insert “, the 2009 Act”.

Commencement Information

I282 Rule 282 in operation at 1.4.2009, see [rule 1\(1\)](#)

“Give notice”, etc

283. Apply rule 0.3 of the 1991 Rules. In paragraph (3) after “personal service of a document”, add “which means the same as service by hand”.

.....

Commencement Information

I283 Rule 283 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice, etc to solicitors

284. Apply rule 0.4 of the 1991 Rules.

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Commencement Information

I284 Rule 284 in operation at 1.4.2009, see [rule 1\(1\)](#)

Notice to joint bank liquidators

285. Where two or more persons are acting jointly as the bank liquidator, delivery of a document to one of them is to be treated as delivery to them all.

.....

Commencement Information

I285 Rule 285 in operation at 1.4.2009, see [rule 1\(1\)](#)

“Insolvent estate”

286. References to “the insolvent estate” are to the assets of a bank which is subject to a bank insolvency order.

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Commencement Information

I286 Rule 286 in operation at 1.4.2009, see [rule 1\(1\)](#)

“Responsible insolvency practitioner”, etc

287. In relation to a bank insolvency, “the responsible insolvency practitioner” means the person acting in the bank insolvency as bank liquidator or provisional bank liquidator.

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Commencement Information

I287 Rule 287 in operation at 1.4.2009, see [rule 1\(1\)](#)

The Schedule

288. The Schedule, which applies relevant schedules to the 1991 Rules, has effect.

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Commencement Information

I288 Rule 288 in operation at 1.4.2009, see [rule 1\(1\)](#)

Signed by authority of the Lord Chancellor

Dated 18th March 2009

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

I concur

Dated 19th March 2009

Brian Kerr
The Lord Chief Justice of Northern Ireland

We concur

Dated 19th March 2009

Frank Roy
Dave Watts
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE

Rule 288

Commencement Information**I289** Sch. in operation at 1.4.2009, see [rule 1\(1\)](#)

The following schedules of the 1991 Rules are applied to these Rules.

- (a) Schedule 1. For “Rule 4.078”, wherever it appears, substitute “rule 40”;
- (b) Schedule 2;
- (c) Schedule 3; and
- (d) Schedule 4.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules revoke and replace the Bank Insolvency Rules (Northern Ireland) 2009 to correct drafting errors in that instrument. They set out the procedure for the bank insolvency process under Part 2 of the Banking Act 2009 (c.1).

The main features of Bank Insolvency are that, in the event of a deposit-taking bank becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (FSCS) to either—

- (a) receive compensation for their lost deposits as soon as possible after the bank goes into bank insolvency; or
- (b) have their account transferred to a different bank.

This is the first objective of the insolvency process.

The procedure can only be initiated by the Bank of England, the Financial Services Authority or the Department by application to the court. The court then makes a bank insolvency order, appointing a bank liquidator. In the initial stages, the bank liquidator is accountable to a liquidation committee formed of the FSA, the Bank of England and the FSCS.

Once the bank liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the bank insolvency will move to the second objective which is to wind up the affairs of the bank so as to achieve the best results for the creditors as a whole.

The Rules are based and follow the same order as the Insolvency Rules (Northern Ireland) 1991 (“the 1991 Rules”) and certain provisions of the 1991 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 2 of the Rules sets out the application process for a bank insolvency order.

Part 3 sets out the procedure for appointing a provisional bank liquidator.

Parts 4 to 8 set out the procedure concerning the creditors and contributories.

Part 9 sets out provisions concerning the bank liquidator.

Part 10 sets out provisions concerning the liquidation committee.

Parts 11- 17 set out provisions relating to the bank's assets and other miscellaneous provisions.

Part 18 sets out court procedure and practice.

Part 19 sets out provisions re proxies and company representation.

Part 20 sets out provisions concerning the examination of persons concerned in bank insolvency.

Part 21 sets out provisions relating to the declaration of dividend,

Parts 22 and 23 set out miscellaneous and general provisions relating to the procedure.

An Impact Assessment of the effect of the Banking Act 2009 is available on HM Treasury's website (www.hm-treasury.gov.uk).

Changes to legislation:

There are currently no known outstanding effects for the The Bank Insolvency (No. 2) Rules (Northern Ireland) 2009.