



# Banking Act 2009

## 2009 CHAPTER 1

### PART 3

#### BANK ADMINISTRATION

##### *Introduction*

### 136 Overview

- (1) This Part provides for a procedure to be known as bank administration.
- (2) The main features of bank administration are that—
  - (a) it is used where part of the business of a bank is sold to a commercial purchaser in accordance with section 11 or transferred to a bridge bank in accordance with section 12 (and it can also be used in certain cases of multiple transfers under Part 1),
  - (b) the court appoints a bank administrator on the application of the Bank of England,
  - (c) the bank administrator is able and required to ensure that the non-sold or non-transferred part of the bank (“the residual bank”) provides services or facilities required to enable the commercial purchaser (“the private sector purchaser”) or the transferee (“the bridge bank”) to operate effectively, and
  - (d) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.
- (3) The Table describes the provisions of this Part.

<i>Sections</i>	<i>Topic</i>
Sections 136 to 140	Introduction
Sections 141 to 148	Process
Sections 149 to 152	Multiple transfers

*Status: This is the original version (as it was originally enacted).*

<i>Sections</i>	<i>Topic</i>
Sections 153 and 154	Termination
Sections 155 to 168	Miscellaneous

### **137 Objectives**

- (1) A bank administrator has two objectives—
  - (a) Objective 1: support for commercial purchaser or bridge bank (see section 138), and
  - (b) Objective 2: “normal” administration (see section 140).
- (2) Objective 1 takes priority over Objective 2 (but a bank administrator is obliged to begin working towards both objectives immediately upon appointment).

### **138 Objective 1: supporting private sector purchaser or bridge bank**

- (1) Objective 1 is to ensure the supply to the private sector purchaser or bridge bank of such services and facilities as are required to enable it, in the opinion of the Bank of England, to operate effectively.
- (2) For the purposes of Objective 1—
  - (a) the reference to services and facilities includes a reference to acting as transferor or transferee under a supplemental or reverse property transfer instrument, and
  - (b) the reference to “supply” includes a reference to supply by persons other than the residual bank.
- (3) In the case of bank administration following a private sector purchase the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the private sector purchaser; and—
  - (a) in pursuing Objective 1 the bank administrator must have regard to the terms of that or any other agreement entered into between the residual bank and the private sector purchaser,
  - (b) in particular, the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with those terms,
  - (c) if in doubt about the effect of those terms the bank administrator may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below), and
  - (d) the private sector purchaser may refer to the court a dispute about any agreement with the residual bank, by applying for directions under paragraph 63 of Schedule B1.
- (4) In the case of bank administration following transfer to a bridge bank, the bank administrator must co-operate with any request of the Bank of England to enter into an agreement for the residual bank to provide services or facilities to the bridge bank; and—
  - (a) the bank administrator must avoid action that is likely to prejudice performance by the residual bank of its obligations in accordance with an agreement,

- (b) the bank administrator must ensure that so far as is reasonably practicable an agreement entered into includes provision for consideration at market rate,
  - (c) paragraph (b) does not prevent the bank administrator from entering into an agreement on any terms that the bank administrator thinks necessary in pursuit of Objective 1, and
  - (d) this subsection does not apply after Objective 1 ceases.
- (5) Where a bank administrator requires the Bank of England’s consent or approval to any action in accordance with this Part, the Bank may withhold consent or approval only on the grounds that the action might prejudice the achievement of Objective 1.

### **139 Objective 1: duration**

- (1) Objective 1 ceases if the Bank of England notifies the bank administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank.
- (2) A bank administrator who thinks that Objective 1 is no longer required may apply to the court for directions under paragraph 63 of Schedule B1 to the Insolvency Act 1986 (applied by section 145 below); and the court may direct the Bank of England to consider whether to give notice under subsection (1) above.
- (3) If immediately upon the making of a bank administration order the Bank of England thinks that the residual bank is not required in connection with the private sector purchaser or bridge bank, the Bank of England may give a notice under subsection (1).
- (4) A notice under subsection (1) is referred to in this Part as an “Objective 1 Achievement Notice”.

### **140 Objective 2: “normal” administration**

- (1) Objective 2 is to—
  - (a) rescue the residual bank as a going concern (“Objective 2(a)”), or
  - (b) achieve a better result for the residual bank’s creditors as a whole than would be likely if the residual bank were wound up without first being in bank administration (“Objective 2(b)").
- (2) In pursuing Objective 2 a bank administrator must aim to achieve Objective 2(a) unless of the opinion either—
  - (a) that it is not reasonably practicable to achieve it, or
  - (b) that Objective 2(b) would achieve a better result for the residual bank’s creditors as a whole.
- (3) In pursuing Objective 2(b) in bank administration following transfer to a bridge bank, the bank administrator may not realise any asset unless—
  - (a) the asset is on a list of realisable assets agreed between the bank administrator and the Bank of England, or
  - (b) the Bank of England has given an Objective 1 Achievement Notice.