
STATUTORY INSTRUMENTS

2009 No. 356

The Bank Insolvency (England and Wales) Rules 2009

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) 1 copy for service on the bank,
- (b) 1 copy to be attached to the proof of service, and
- (c) further copies to be sent to those 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 1 of the 1986 Act 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 section 2 of the 1986 Act was submitted, if that is not the same court.

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, section 10 of the 1985 Act⁽¹⁾ 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, section 287 of the 1985 Act⁽²⁾, the place specified in that notice or, as the case may be, in the last such notice.

(1) Section 10 is repealed on 1 October 2009.

(2) Section 287 of the 1985 Act is repealed on 1 October 2009.

(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.

Proof of service

9. Apply rule 4.9 of the 1986 Rules.

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,)
- (c) the FSA, (if it is not the applicant,)
- (d) the FSCS,
- (e) on any person who has given notice to the FSA 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 1 of the 1986 Act, 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) 1 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.

Verification of application

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

(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 should identify the person making the statement and should 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.

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.

Certificate of compliance

13.—(1) Apply rule 4.14 of the 1986 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—

(c) the person is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act, and

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

shall be filed in court with the certificate.”

Leave for the applicant to withdraw

14. Apply rule 4.15 of the 1986 Rules. Leave out “at least 5 days” and ignore sub-paragraph (a).

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 should 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.

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 section 130(1) of the 1986 Act (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.

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.

Initial duties of bank liquidation committee

18.—(1) As soon as reasonably practicable after the making of a bank insolvency order, the liquidation committee will 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 will make its recommendation to the bank liquidator at the meeting.

(4) The Bank of England will confirm the liquidation committee's recommendation 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 simple majority, and
- (b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Expenses of voluntary arrangement

19. Apply rule 4.21A of the 1986 Rules(3).

(3) Rule 4.21A was inserted by [S.I. 1987/1919](#).