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STATUTORY INSTRUMENTS

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**2009 No. 356**

**The Bank Insolvency (England and Wales) Rules 2009**

**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 1986 Rules, as applied by rule 293, 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.”

### **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 that 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. In accordance with section 100(6)(d) 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.

- (3) 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 1 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 2 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 2 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 1;
  - (d) a resolution to adjourn the meeting for not more than 3 weeks; and
  - (e) any other resolutions which the chair thinks it right to allow for special reasons.
- (4) 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.

### **General power to call meetings**

**42.**—(1) Apply rule 4.54 of the 1986 Rules.

(2) Where the bank liquidator has been directed to summon a meeting of creditors under section 195 of the Act (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.

### **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 section 390 of the 1986 Act, or
- (b) an employee of the bank liquidator or of the bank liquidator's firm who is experienced in insolvency matters.

#### **Requisitioned meetings: general**

44.—(1) Apply rule 4.57 of the 1986 Rules.

#### **Requisitioned meetings: reforming the liquidation committee**

45.—(1) Rule 4.57 of the 1986 Rules 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 re-establish the liquidation committee, the time periods set out in rule 4.57 of the 1986 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 apply at this meeting as if it were the first meeting of creditors.

#### **Attendance at meetings of bank's personnel**

46. Apply rule 4.58 of the 1986 Rules.

#### **Notice of meetings by advertisement only**

47. Apply rule 4.59 of the 1986 Rules.

#### **Venue**

48. Apply rule 4.60 of the 1986 Rules.

#### **Expenses of summoning meetings**

49. Apply rule 4.61 of the 1986 Rules.(1)

#### **Resolutions**

50. Apply rule 4.63 of the 1986 Rules(2).

#### **Chair of meeting as proxy-holder**

51. Apply rule 4.64 of the 1986 Rules.

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(1) Paragraphs (3) and (4) were amended by [S.I. 2008/737](#).

(2) Rule 4.63 was by [S.I. 1987/1919](#).

### **Suspension and adjournment**

- 52.**—(1) Apply rule 4.65 of the 1986 Rules.**(3)**  
(2) In paragraph (3), leave out “or, as the case may be, 4.114–CVL(3)”.

### **Entitlement to vote (creditors)**

- 53.**—(1) Apply rule 4.67 of the 1986 Rules**(4)**.  
(2) Ignore paragraph (ii) of paragraph (1)(a) and paragraph (8).  
(3) In paragraph (9), ignore the reference to paragraph (8).

### **Entitlement to vote (contributories)**

- 54.** Apply rule 4.69 of the 1986 Rules.

### **Admission and rejection of proof (creditors’ meetings)**

- 55.** Apply rule 4.70 of the 1986 Rules. For paragraph (5) substitute—  
“(5) 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.”.

### **Record of proceedings**

- 56.** Apply rule 4.71 of the 1986 Rules.

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**(3)** Paragraphs (3) and (4) were amended by S.I. 1987/1919.  
**(4)** Rule 4.67) was amended by S.I. 2002/1307.