
STATUTORY INSTRUMENTS

2009 No. 357

The Bank Administration (England and Wales) Rules 2009

PART 2

Application for Bank Administration Order

Introduction

8. This Part makes specific provision for a number of aspects of applications for bank administration orders; Part 5 applies a number of provisions of the Insolvency Rules 1986 to applications for bank administration orders (with specified modifications).

Content of application

9. An application by the Bank of England for a bank administration order in respect of a bank must specify—

- (a) the full name of the bank,
- (b) any other trading names,
- (c) the address of the bank's registered office,
- (d) an email address for the bank,
- (e) the address of the Bank of England, and
- (f) the identity of the person (or persons) nominated for appointment as bank administrator.

10. If the bank has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the registered office, that address shall be specified under Rule 9(c).

Statement of proposed bank administrator

11. An application must be accompanied by a statement by the proposed bank administrator—

- (a) specifying the name and address of the person (or of each person) proposed to be appointed,
- (b) giving that person's (or each person's) consent to act,
- (c) giving details of the person's (or each person's) qualification to act as an insolvency practitioner, and
- (d) giving details of any prior professional relationship that the person (or any of them) has had with the bank.

Bank of England witness statement

12.—(1) An application for a bank administration order in respect of a bank must be accompanied by a witness statement made on behalf of the Bank of England—

- (a) certifying that the conditions for applying for a bank administration order, set out in section 143 of the Banking Act 2009, are met in respect of the bank,
 - (b) stating the bank's current financial position to the best of the Bank of England's knowledge and belief (including actual, contingent and prospective assets and liabilities),
 - (c) specifying any security which the Bank of England knows or believes to be held by a creditor of the bank,
 - (d) specifying whether any security confers power to appoint an administrator under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (holder of qualifying floating charge) or an administrative receiver (and whether an administrative receiver has been appointed),
 - (e) specifying any insolvency proceedings which have been instituted in respect of the bank (including any process notified to the FSA under section 120 of the Banking Act 2009),
 - (f) giving details of the property transfer instrument which the Bank of England has made or intends to make in respect of the bank,
 - (g) where the property transfer instrument has not yet been made, explaining what effect it is likely to have on the bank's financial position,
 - (h) specifying how functions are to be apportioned where more than one person is to be appointed as bank administrator (stating, in particular, whether functions are to be exercisable jointly or concurrently), and
 - (i) including any other material which the Bank of England thinks may help the court to decide whether to make the bank administration order.
- (2) The statement should identify the person maker 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 statement.

Filing

13. The application, and its accompanying documents, must be filed with the court, together with enough copies of the application and accompanying documents for service under Rule 15.

14. Each filed copy—

- (a) shall have the seal of the court applied to it,
- (b) shall be endorsed with the date and time of filing,
- (c) shall be endorsed with the venue for the hearing of the application (fixed by the court under Rule 21), and
- (d) shall be issued to the Bank of England.

Service

15. The Bank of England shall serve the application—

- (a) on the bank,
- (b) on the person (or each of the persons) nominated for appointment as bank administrator,
- (c) on any person whom the Bank of England knows to be entitled to appoint an administrator under paragraph 14 of Schedule B1 to the Insolvency Act 1986 or an administrative receiver,
- (d) on any person who has given notice to the FSA in respect of the bank under section 120 of the Banking Act 2009 (bank insolvency: notice of preliminary steps of other insolvency procedures), and

- (e) if the property transfer instrument was made or is to be made under section 11(2)(b) of the Banking Act 2009 (transfer to commercial purchaser), on each transferee.

16. Service under rule 15 must be service of a sealed and endorsed copy of the application and its accompanying documents issued under Rule 14.

17. Service must be effected as soon as is reasonably practicable, having regard in particular to the need to give the bank's representatives a reasonable opportunity to attend the hearing.

18.—(1) Service must be effected—

- (a) by personal service to an address that the person has notified to the Bank of England as an address for service,
- (b) by personal service to the person's registered office (where no address for service has been notified),
- (c) by personal service to the person's usual or last known principal place of business in England and Wales (where there is no registered office and no address for service has been notified), or
- (d) in such other manner and at such a place as the court may direct.

(2) If the Bank of England knows of an email address that is habitually used for business purposes by a person on whom service is required, the Bank must (in addition to personal service) as soon as is reasonably practicable send by email an electronic copy of a sealed and endorsed copy of the application and its accompanying documents.

19.—(1) Service of the application shall be verified by a witness statement specifying the date on which, and the manner in which, service was effected.

(2) The witness statement, with a sealed copy of the application exhibited to it, shall be filed with the court—

- (a) as soon as is reasonably practicable, and
- (b) in any event, before the hearing of the application.

Other notification

20. As soon as is reasonably practicable after filing the application the Bank of England must notify—

- (a) any enforcement officer or other officer whom the Bank of England knows to be charged with effecting an execution or other legal process against the bank or its property,
- (b) any person whom the Bank of England knows to have distrained against the bank or its property, and
- (c) the FSA.

Venue

21.—(1) The court shall fix the venue for the hearing when the application is filed.

(2) In fixing the venue the court shall have regard to—

- (a) the desirability of the application being heard as soon as is reasonably practicable, and
- (b) the need for the bank's representatives to be able to reach the venue in time for the hearing.

Hearing

22. At the hearing of the application, any of the following may appear or be represented—

- (a) the Bank of England,
- (b) the FSA,
- (c) the bank,
- (d) a director of the bank,
- (e) the person (or a person) nominated for appointment as bank administrator,
- (f) any person who has given notice to the FSA in respect of the bank under section 120 of the Banking Act 2009 (bank insolvency: notice of preliminary steps of other insolvency procedures), and
- (g) with the permission of the court, any other person who appears to have an interest.

The order

23. A bank administration order must be in the form specified in Rule 2.12(2) of the Insolvency Rules 1986, with such variations, if any, as the circumstances may require.

Notice of order

24. If the court makes a bank administration order, it shall send 4 sealed copies to the Bank of England.

25. The Bank of England shall as soon as is reasonably practicable send—

- (a) one sealed copy to the bank administrator,
- (b) one sealed copy to the FSA, and
- (c) one sealed copy to the FSCS.

Costs

26. If the court makes a bank administration order, the following are payable as an expense of the bank administration—

- (a) the Bank of England’s costs of making the application, and
- (b) any other costs allowed by the court.