
STATUTORY INSTRUMENTS

2011 No. 1301

The Investment Bank Special Administration
(England and Wales) Rules 2011

PART 6

Distributions to creditors

CHAPTER 2

Proofs of debts

Proving a debt

152.—(1) A person claiming to be a creditor of the investment bank and wishing to recover their debt in whole or in part must (subject to any order of the court to the contrary) submit their claim in writing to the administrator.

(2) A creditor who claims is referred to as “proving” for their debt and a document by which that creditor seeks to establish their claim is their “proof”.

(3) Subject to the next paragraph, a proof must—

(a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf; and

(b) state the following matters—

(i) the creditor’s name and address,

(ii) if the creditor is a company, its registered number;

(iii) the total amount of the creditor’s claim (including value added tax) as at the date on which the investment bank entered special administration, less any payments made after that date in respect of the claim, any deduction under rule 163 and any adjustment by way of set-off in accordance with rule 164 or, as the case may be, rule 165;

(iv) whether or not the claim includes outstanding uncapitalised interest,

(v) particulars of how and when the debt was incurred by the investment bank,

(vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it,

(vii) details of any reservation of title in respect of goods to which the debt refers, and

(viii) the name, address and authority of the person authenticating the proof (if not the creditor).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced, where the administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Costs of proving

153. Unless the court otherwise orders—

- (a) every creditor bears the cost of proving their own debt, including costs incurred in providing documents or evidence under rule 152; and
- (b) costs incurred by the administrator in estimating the quantum of a debt under rule 160 are payable out of the assets as an expense of the administration.

Administrator to allow inspection of proofs

154.—(1) The administrator shall, so long as proofs lodged are in the administrator’s hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a proof of debt (unless that proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company; and
- (c) any person acting on behalf of either of the above.

New administrator appointed

155.—(1) If a new administrator is appointed in place of another, the former administrator must as soon as reasonably practicable, transmit to the new administrator all proofs received, together with an itemised list of them.

(2) The new administrator shall authenticate the list by way of receipt for the proofs, and return it to the former administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new administrator.

Admission and rejection of proofs for dividend

156.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the administrator rejects a proof in whole or in part, the administrator shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the creditor.

Appeal against decision on proof

157.—(1) If a creditor is dissatisfied with the administrator’s decision with respect to their proof (including any decision on the question of preference), that creditor may apply to the court for the decision to be reversed or varied and the application must be made within 21 days of the creditor receiving the statement sent under rule 156.

(2) A member or any other creditor may, if dissatisfied with the administrator’s decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the administrator’s decision.

(3) Notice of an application under paragraph (1) or (2) shall be given by the applicant to—

- (a) the FSA, and
- (b) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(4) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to—

- (a) the creditor who lodged the proof in question (if the applicant is not that creditor);
- (b) the administrator;
- (c) the FSA; and
- (d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(5) The administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under rule 156.

(6) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the investment bank would be entitled.

(7) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the administrator.

(8) The administrator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court otherwise orders.

Withdrawal or variation of proof

158. A creditor's proof may at any time, by agreement with the administrator, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

159.—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the administrator's application, where the administrator thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if the applicant is not the same creditor).