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STATUTORY INSTRUMENTS

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**2011 No. 1301**

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

PART 6

Distributions to creditors

CHAPTER 3

Quantification of claims

**Estimate of quantum**

**160.**—(1) The administrator shall estimate the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value; and a previous estimation may be revised, if the administrator thinks fit, by reference to any change of circumstances or to information becoming available to the administrator.

(2) The creditors shall be informed of the estimation and any revision of it.

(3) Where the value of a debt is estimated under this rule, the amount provable in the administration in the case of that debt is that of the estimate for the time being.

**Negotiable instruments**

**161.** Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

**Secured creditors**

**162.**—(1) If a secured creditor realises their security, the creditor may prove for the balance of their debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders their security for the general benefit of creditors, they may prove for their whole debt, as if it were unsecured.

**Discounts**

**163.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the investment bank but for it going into special administration, except any discount for immediate, early or cash settlement.

### **Mutual credit and set-off**

**164.**—(1) This rule applies where the administrator, being authorised to make the distribution in question, has, pursuant to rule 175, given notice of a proposal to make the distribution.

(2) In this rule, “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the investment bank and a creditor of the investment bank proving or claiming to prove for a debt in the special administration, but does not include any of the following—

- (a) any debt arising out of an obligation incurred after the investment bank entered special administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for a special administration order was pending;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
  - (i) after the investment bank entered administration, or
  - (ii) at a time when the creditor had notice that an application for a special administration order was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the investment bank for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 160 shall apply for the purposes of this rule to any obligation to or from the investment bank which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 166 to 168 shall apply for the purposes of this rule in relation to any sums due to the investment bank which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 186 shall apply for the purposes of this rule to any sum due to or from the investment bank which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the special administration. Alternatively the balance (if any) owed to the investment bank shall be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

### **Application of rule 164 in a special administration (bank administration) and special administration (bank insolvency)**

**165.**—(1) This rule applies—

- (a) in a special administration (bank insolvency); and
- (b) in a special administration (bank administration) if all or part of a creditor’s claim against the investment bank is in respect of protected deposits.

(2) Rule 164 shall apply, but for the purpose of determining the sums due from the investment bank to an eligible depositor in respect of protected deposits under rule 164(3)—

- (a) where the total of the sums held by the investment bank for the depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000 (“the limit”), then paragraph (3) applies; and
- (b) where the sums held exceed the limit, then paragraph (4) applies.

(3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the investment bank, and the sum due to the depositor from the investment bank will be the total of the sums held by the investment bank for that depositor in respect of the protected deposits.

(4) Where this paragraph applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which the total of the sums due to the depositor exceeds the limit, and
- (b) the sums due from the investment bank to the depositor in respect of the protected deposits will be—
  - (i) the amount by which that total exceeds the limit, set off against the amounts due to the investment bank from the depositor in accordance with rule 164(3); and
  - (ii) the sums held by the investment bank for the depositor in respect of protected deposits up to the limit.

(5) Any arrangements with regard to set-off between the investment bank and the eligible depositor in existence before the date of the notice referred to in rule 164(1) shall be subject to this rule in so far as they relate to protected deposits.

(6) In this rule—

“eligible depositor” has the meaning given to it by section 93(3) of the 2009 Act;

“FSA Rules” means the FSA’s Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(1); and

“protected deposit” means a protected deposit within the meaning given by the FSA Rules held by the investment bank at the date of the notice referred to in rule 164(1).

### **Debt in a foreign currency**

**166.**—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the investment bank entered special administration.

(2) “The official exchange rate” means the mean of the buying and selling spot rates prevailing in the London market as published at the close of business for the date in question. In the absence of any such published rate, it is such rate as the court determines.

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(1) 2000 c.8: section 215 was amended by sections 169 and 170(2) of the 2009 Act.

### **Payments of a periodical nature**

**167.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the investment bank entered special administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

### **Interest**

**168.**—(1) In this Rule, “the relevant date” means the date on which the investment bank entered special administration.

(2) Where a debt proved in the special administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(3) In the following circumstances the creditor’s claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.

(4) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.

(5) If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(6) Interest under paragraph (5) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Regulations and these Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (7).

(7) The rate of interest to be claimed under paragraphs (4) and (5) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

(8) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date.

(9) All interest payable under paragraph (8) ranks equally whether or not the debts on which it is payable rank equally.

(10) The rate of interest payable under paragraph (8) is whichever is the greater of the rate specified under paragraph (7) and the rate applicable to the debt apart from the special administration.

### **Debt payable at a future time**

**169.** A creditor may prove for a debt of which payment was not yet due on the date when the investment bank entered special administration, subject to rule 186.

### **Value of security**

**170.**—(1) A secured creditor may, with the agreement of the administrator or the permission of the court, at any time alter the value which that creditor has, in their proof of debt, put upon their security.

(2) However, if a secured creditor—

(a) being the applicant for an special administration order, has in the application put a value on their security; or

(b) has voted in respect of the unsecured balance of their debt,

that creditor may re-value their security only with permission of the court.

### **Surrender for non-disclosure**

**171.**—(1) If a secured creditor omits to disclose their security in their proof of debt, the creditor shall surrender their security for the general benefit of creditors, unless the court, on application by that creditor, relieves them from the effect of this rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

### **Redemption by administrator**

**172.**—(1) The administrator may at any time give notice to a creditor whose debt is secured that it is proposed, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the administrator may allow) in which, if the creditor so wishes, to exercise their right to revalue their security (with the permission of the court, where rule 170 applies). If the creditor re-values their security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether the administrator will or will not exercise their power to redeem the security at the value then placed on it; and the administrator then has 3 months in which to exercise the power or determine not to exercise it.

### **Test of security's value**

**173.**—(1) Subject as follows, the administrator, if dissatisfied with the value which a secured creditor puts on their security (whether in their proof or by way of re-valuation under rule 170), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the administrator on behalf of the investment bank, and the creditor on their own behalf, may appear and bid.

(3) This rule does not apply if the security has been revalued and the revaluation has been approved by the court.

### **Realisation of security by creditor**

**174.** If a creditor who has valued their security subsequently realises it (whether or not at the instance of the administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by the creditor.

### **Notice of proposed distribution**

**175.**—(1) Where an administrator is proposing to make a distribution to creditors, the administrator shall give notice of that fact.

(2) The notice in paragraph (1) shall—

- (a) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and

- (b) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act.
- (3) The notice in paragraph (1) shall be given to—
  - (a) all creditors whose addresses are known to the administrator;
  - (b) the FSA;
  - (c) in a special administration (bank administration), the FSCS; and
  - (d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.
- (4) Subject to paragraph (5)(b), before declaring a dividend the administrator shall by notice invite the creditors to prove their debts. Such notice—
  - (a) shall be gazetted; and
  - (b) may be advertised in such other manner as the administrator thinks fit.
- (5) A notice pursuant to paragraph (1) must, in addition to the standard contents—
  - (a) state that it is the intention of the administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
  - (b) specify whether the proposed dividend is interim or final;
  - (c) specify a date up to which proofs may be lodged being a date which—
    - (i) is the same date for all creditors; and
    - (ii) is not less than 21 days from that of the notice.
- (6) Where a dividend is to be declared for preferential creditors—
  - (a) the notice pursuant to paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential; and
  - (b) the notice pursuant to paragraph (3) need only be given if the administrator thinks fit.

#### **Admission or rejection of proofs**

- 176.**—(1) Unless the administrator has already dealt with them, within 5 business days of the last date for proving, the administrator shall—
- (a) admit or reject (in whole or in part) proofs that have been submitted; or
  - (b) make such provision in respect of them as the administrator thinks fit.
- (2) The administrator is not obliged to deal with proofs lodged after the last date for proving, but may do so, if the administrator thinks fit.
- (3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

#### **Postponement or cancellation of dividend**

- 177.**—(1) If in the period of 2 months referred to in rule 175(5)(a)—
- (a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied; or
  - (b) an application is made to the court for the administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,
- the administrator may postpone or cancel the dividend.

(2) Where in that same period the administrator considers that, due to the nature of the business of the investment bank, there is real complexity in admitting or rejecting proofs of claims submitted, or that the quantum of claims may be affected by any shortfalls in claims for client assets, the administrator may postpone the dividend.

### **Declaration of a dividend**

**178.**—(1) Where rule 177(2) does not apply and subject to paragraph (2), within the 2 month period referred to in rule 175(5)(a) the administrator shall proceed to declare the dividend to one or more classes of creditor who have been given notice under that rule.

(2) Except with the permission of the court, the administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary the administrator's decision on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the administrator must make such provision in respect of the proof in question as the court directs.

### **Notice of declaration of a dividend**

**179.**—(1) Where the administrator declares a dividend, notice of this shall be given to—

- (a) all creditors who have proved their debts;
- (b) the FSA;
- (c) in a special administration (bank administration), the FSCS; and
- (d) in a special administration (bank administration), before the Bank of England has given an Objective A Achievement Notice, the Bank of England.

(2) The notice shall include the following particulars relating to the special administration—

- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the administrator when acting as such;
- (c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;
- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (e) the total amount of dividend and the rate of dividend; and
- (f) whether, and if so when, any further dividend is expected to be declared.

(3) In a special administration (bank administration) where property of the investment bank has been transferred to a bridge bank under section 12 of the 2009 Act, if the administrator declares a dividend before the Bank of England has given an Objective A Achievement Notice, the notice shall also include details of any payment made from a scheme under a resolution fund order.

### **Payments of dividend and related matters**

**180.**—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid in another way, or held for collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

### **Notice of no dividend or no further dividend**

**181.**—(1) If the administrator gives notice to creditors that no dividend (or as the case may be, no further dividend) can be declared, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised; or
  - (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.
- (2) The notice to creditors in paragraph (1) shall also be given to—
- (a) the FSA;
  - (b) in a special administration (bank administration), the FSCS; and
  - (c) in a special administration (bank administration), in a case where the Bank of England consented to a distribution, to the Bank of England.

### **Proof altered after payment of dividend**

**182.**—(1) If after payment of dividend the amount claimed by a creditor in their proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which that creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

### **Secured creditors**

**183.**—(1) The following applies where a creditor re-values their security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as reasonably practicable, repay to the administrator, for the credit of the administration, any amount received by the creditor as dividend in excess of that to which that creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security.

(4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

### **Disqualification from dividend**

**184.**—(1) If a creditor contravenes any provision of the Regulations or these Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

(2) Notice of an application under paragraph (1) shall be given by the administrator to the FSA and the FSA shall have the right to appear and be heard at the hearing of the application.



### **Assignment of right to dividend**

**185.**—(1) If a person, entitled to a dividend, gives notice to the administrator that they wish the dividend to be paid to another person, or that they have assigned that entitlement to another person, the administrator shall pay the dividend to that other accordingly.

(2) A notice given under this rule must specify the name and address of the person to whom payment is to be made.

### **Debt payable at a future time**

**186.**—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, that creditor is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor’s admitted proof (or, if a distribution has previously been made to that creditor, the amount remaining outstanding in respect of their admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor’s debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2), “relevant date” means the date that the investment bank entered special administration.