
STATUTORY INSTRUMENTS

2011 No. 2262

**The Investment Bank Special
Administration (Scotland) Rules 2011**

PART 3

Process of Special Administration

CHAPTER 2

Statement of proposals

Statement of proposals

39.—(1) The administrator shall under paragraph 49 (or in the case of a special administration (bank administration) paragraph 7 of Schedule 2 to the Regulations) make a statement of proposals, which shall be sent to the registrar of companies.

(2) In addition to the information required by that paragraph, the statement of proposals must include—

- (a) a statement that the proceedings are being held in the court and the court reference number;
- (b) the full name, any other trading names, the registered address and registered number of the investment bank;
- (c) details of the administrator's appointment (including the date of appointment);
- (d) in the case of joint administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary of the investment bank and details of any shareholdings in the investment bank they have;
- (f) an account of the circumstances giving rise to the application for the appointment of the administrator;
- (g) if a statement of the investment bank's affairs has been submitted, a copy or summary of it with the administrator's comments, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 36, a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs,
 - (ii) the date of the order for limited disclosure, and
 - (iii) the details or a summary of the details that are not subject to that order;
- (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or in case of any depositors of the investment bank, a single statement of their aggregate debt);
- (j) if a full statement of affairs is not provided, or if no statement of affairs is provided, the names and addresses of clients of the investment bank together with a description of the amount and type of client assets held, the type of ownership the clients have in respect of

those assets and details as to any security interest held by the investment bank or another person in respect of those assets, but where those clients are individuals, their names and addresses are not to be disclosed;

- (k) if no statement of affairs is provided, details of the financial position of the investment bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the investment bank entered special administration), a list of the investment bank's creditors including their names, addresses and details of their debts, including any security held (or in case of any depositors of the investment bank, a single statement of their aggregate debt) and an explanation as to why there is no statement of affairs;
- (l) the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 135, and, if this basis has already been set by the Objective A committee or by the Bank of England in respect of the relevant Objective A, or in respect of Objectives 2 and 3 of the special administration objectives, details as to what has been set and any proposals for this to be changed;
- (m) a statement complying with paragraph (4) of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner;
- (n) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the 1986 Act⁽¹⁾ (share of assets for unsecured creditors) as applied by regulation 15 (unless the administrator intends to propose a company voluntary arrangement);
- (o) an estimate of the value of the prescribed part for the purposes of section 176A (unless the bank intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;
- (p) an estimate of the value of the investment bank's net property (unless the administrator intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief;
- (q) in—
 - (i) a special administration, an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective), and
 - (ii) a special administration (bank insolvency) or a special administration (bank administration)—
 - (aa) a summary of how the relevant Objective A is being or has been achieved and the resources devoted to the pursuit of the relevant Objective A; and
 - (bb) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FSA has given a direction under regulation 16, an explanation as to how this has dictated the priority given to a particular objective);
- (r) the manner in which the affairs and business of the investment bank have been managed and financed since the date of the administrator's appointment (including the reasons for and terms of any disposal of assets);
- (s) details as to the order in which the administrator aims to pursue the special administration objectives and the manner in which the affairs and business of the investment bank will be managed and financed if the administrator's proposals are approved;

(1) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c. 40) and amended by S.I. 2008/948.

- (t) whether the administrator expects a dividend to be paid to creditors and an estimate of the amount of this dividend;
 - (u) how it is proposed that the special administration shall end (winding-up or voluntary arrangement), in accordance with Objective 3; and
 - (v) any other information which the administrator thinks necessary to enable creditors and clients to vote for the approval of the statement of proposals.
- (3) In this Part—
- (a) “pre-administration costs” are—
 - (i) fees charged, and
 - (ii) expenses incurred,by the administrator, or another person qualified to act as an insolvency practitioner, before the investment bank entered special administration but with a view to its doing so; and
 - (b) “unpaid pre-administration costs” are pre-administration costs which had not been paid when the investment bank entered special administration.
- (4) A statement of pre-administration costs complies with this paragraph if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
 - (b) details of the work done for which the fees were charged and expenses incurred;
 - (c) an explanation of why the work was done before the investment bank entered special administration and how it would further the achievement of the special administration objectives;
 - (d) a statement of the amount of the pre-administration costs, setting out separately—
 - (i) the fees charged by the administrator,
 - (ii) the expenses incurred by the administrator,
 - (iii) the fees charged (to the administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and
 - (iv) the expenses incurred (to the administrator’s knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately);
 - (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
 - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d);
 - (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)); and
 - (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under rule 112; and
 - (ii) not part of the proposals subject to approval under paragraph 53.
- (5) The statement of proposals—
- (a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the investment bank; and
 - (b) must include a statement of any exclusion.

(6) In the case of special administration (bank administration) following transfer to a bridge bank under section 12(2) of the 2009 Act—

- (a) the statement of proposals must state whether any payment is to be made to the investment bank from a scheme under a resolution fund order; or
- (b) if that information is unavailable when the statement of proposals is made, the administrator must issue a supplemental statement when the information is available.

(7) Following an application by the administrator under paragraph 107, where the court orders an extension of the period of time in paragraph 49(5), the administrator shall notify—

- (a) every creditor of the investment bank of whose address the administrator is aware;
- (b) every client of the investment bank of whose claim the administrator is aware and whom the administrator has a means of contacting; and
- (c) the FSA,

as soon as possible after the order is made.

(8) Where the administrator wishes to publish a notice under paragraph 49(6) or gives notice that the statement of proposals is to be provided free of charge to a market infrastructure body, the notice must be published once in a newspaper which the administrator considers to be suitable.

(9) A notice under paragraph (7) must include the standard content and must state—

- (a) that persons can write for a copy of the statement of proposals for achieving the purpose of administration; and
- (b) the address to which to write.

(10) This notice must be published as soon as reasonably practicable after the administrator sends out the statement of proposals in accordance with paragraph 49(4) (or in the case of a special administration (bank administration) under paragraph 9 of Schedule 2 to the Regulations), but no later than 8 weeks (or such other period as may be agreed by the creditors and clients or as the court may order) from the date that the investment bank entered special administration.