
STATUTORY INSTRUMENTS

2011 No. 245

The Investment Bank Special Administration Regulations 2011

General powers, duties and effect

15.—(1) Without prejudice to any specific powers conferred on an administrator by these Regulations, an administrator may do anything necessary or expedient for the pursuit of the special administration objectives.

(2) The administrator is an officer of the court.

(3) The following provisions of this regulation provide for —

- (a) general powers and duties of administrators (by application of provisions about administrators in Schedule B1 administration); and
- (b) the general process and effect of special administration (by application of provisions about Schedule B1 administration).

(4) The provisions of Schedule B1 and other provisions of the Insolvency Act set out in the Tables apply in relation to special administration as in relation to other insolvency proceedings with the modifications set out—

- (a) in paragraph (5) (in respect of the provisions listed in Table 1);
- (b) in paragraph (6) (in respect of the provisions listed in Table 2),

and any other modification specified in the Tables.

(5) The modifications in respect of the provisions referred to in Table 1 are that—

- (a) a reference to the administrator is a reference to the administrator appointed under a special administration order;
- (b) a reference to administration is a reference to special administration;
- (c) a reference to an administration order is a reference to a special administration order;
- (d) a reference to a company is a reference to an investment bank;
- (e) a reference to the purpose of administration is a reference to the special administration objectives; and
- (f) a reference to a provision of the Insolvency Act is a reference to that provision as applied by this regulation.

(6) The modifications in respect of the provisions referred to in Table 2 are that—

- (a) a reference to the liquidator is a reference to the administrator appointed under a special administration order;
- (b) a reference to winding up is a reference to special administration;
- (c) a reference to winding up by the court is a reference to the imposition of special administration by order of the court;
- (d) a reference to being wound up under Part 4 or 5 of the Insolvency Act is a reference to an investment bank being in special administration;
- (e) a reference to the commencement of winding up is a reference to the commencement of special administration;

- (f) a reference to going into liquidation is a reference to entering special administration;
- (g) a reference to liquidation or to insolvent liquidation is a reference to special administration;
- (h) a reference to a winding up order is a reference to a special administration order;
- (i) a reference to a company is a reference to an investment bank; and
- (j) a reference to a provision of the Insolvency Act is a reference to that provision as applied by this regulation.

Table 1: Applied provisions: Schedule B1

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 40(1)(a)	Dismissal of pending winding up petition	
Para 42	Moratorium on insolvency proceedings	Sub-paragraphs (4)(a) and (4)(aa) are not applied.
Para 43	Moratorium on other legal processes	
Para 44(1) and (5)	Interim moratorium	
Para 45	Publicity	
Para 46	Announcement of administrator's appointment	<ul style="list-style-type: none"> (a) In sub-paragraph (3)(a), in addition to obtaining the list of creditors, the administrator shall also obtain as complete a list as possible of the clients of the investment bank. (b) In sub-paragraph (3)(b), the administrator shall send a notice of their appointment to each client of whose claim and address the administrator is aware. (c) Where the special administration application has not been made by the FSA, notice of the administrator's appointment shall also be sent under sub-paragraph (5) to the FSA. (d) Sub-paragraphs (6)(b) and (c) are not applied.
Para 47	Statement of company's affairs	In sub-paragraph (2), the statement must also include particulars (to the extent prescribed) of the client assets held by the investment bank.
Para 48	Statement of company's affairs	
Para 49	Statement of proposals	<i>Paragraphs 49(1) to (3), 51, 53, 54 and 55 do not apply where the FSA gives a direction under regulation 16 and the</i>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<i>direction has not been withdrawn: see regulations 16 - 19.</i>
Para 49		<ul style="list-style-type: none"> (a) Sub-paragraph (2)(b) is not applied. (b) Under sub-paragraph (4), the administrator shall also send a copy of the statement of proposals to— <ul style="list-style-type: none"> (i) every client of whose claim the administrator is aware and has a means of contacting; and (ii) the FSA. (c) The administrator shall also give notice in the prescribed manner that the statement of proposals is to be provided free of charge to a market infrastructure body who applies in writing to a specified address.
Para 50	Creditors' meeting	<ul style="list-style-type: none"> (a) In sub-paragraph (1), the administrator shall also summon the clients referred to in paragraph 49(4) to the meeting of creditors and such clients shall be given the prescribed period of notice under sub-paragraph (1)(b). (b) The FSA may appoint a person to attend a meeting of creditors and make representations as to any matter for decision.
Para 51	Requirement for initial creditors' meeting	<ul style="list-style-type: none"> (a) Each copy of an administrator's proposals sent to a client under paragraph 49 shall be accompanied by an invitation to the initial creditors' meeting. (b) The administrator's proposals sent to the FSA must also be accompanied by an invitation to the initial creditors' meeting.
Para 53	Business and result of initial creditors' meeting	<ul style="list-style-type: none"> (a) Insolvency rules shall prescribe how clients shall vote at meetings of creditors. (b) Under sub-paragraph (2), if the FSA has not appointed a person to attend the meeting, the administrator must also report any decision taken to the FSA.
Para 54	Revision of administrator's proposals	<ul style="list-style-type: none"> (a) If the revision proposed by the administrator affects both creditors and clients, then every reference in

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>paragraph 54 to creditors includes clients.</p> <p>(b) If the administrator thinks that the revision proposed only affects either creditors or clients, then this paragraph only applies to the affected party, however the party not affected must be informed of the revision in a manner prescribed in insolvency rules.</p> <p>(c) The FSA must be invited to the creditors' meeting mentioned in sub-paragraph (2)(a).</p> <p>(d) The statement of the proposed revision mentioned in sub-paragraph (2)(b) must also be sent to the FSA.</p>
Para 55	Failure to obtain approval of administrator's proposals	<p>(a) In making an order under sub-paragraph (2) the court must have regard to the special administration objectives.</p> <p>(b) Sub-paragraph (2)(d) is not applied.</p>
Para 56	Further creditors' meetings	The FSA must be invited to any meeting summoned under this paragraph.
Para 57	Creditors' committee	<p>(a) A creditors' committee can only be established by a creditors' meeting to which creditors and clients have both been given notice.</p> <p>(b) The FSA may appoint a person to attend a meeting of the creditors' committee and make representations as to any matter for decision.</p> <p>(c) Insolvency rules shall ensure that, where a meeting of creditors resolves to establish a creditors' committee, the makeup of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives.</p>
Para 58	Correspondence instead of creditors' meeting	
Para 59	Functions of an administrator	
Para 60 (and Schedule to the Insolvency Act)	General powers	<i>Certain powers in Schedule 4 of the Insolvency Act are also applied (see Table 2).</i>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 61	Directors	
Para 62	Power to call meetings	The administrator may also call a meeting of clients or contributories.
Para 63	Application to court for directions	
Para 64	Management powers	
Para 65	Distribution to creditors	Sub-paragraph (3) is not applied.
Para 66	Payments	
Para 67	Property	
Para 68	Management	<p>In this paragraph, references to proposals approved under paragraphs 53 or 54 include—</p> <ul style="list-style-type: none"> (a) proposals agreed with the FSA under regulations 17 or 18; or (b) proposals in respect of which the court has made an order dispensing with the need for agreement in accordance with those regulations, without need for approval.
Para 69	Agency	
Para 70	Floating charge	
Para 71	Fixed charge	
Para 72	Hire purchase property	
Para 73	Protection for secured or preferential creditors	Sub-paragraph (2)(d) is not applied.
Para 74	Challenge to administrator's conduct	<ul style="list-style-type: none"> (a) The FSA may also make an application under this paragraph on the grounds that— <ul style="list-style-type: none"> (i) the administrator is acting or has acted so as unfairly to harm the interests of some or all of the members, creditors or clients; or (ii) the administrator is proposing to act in a way which would unfairly harm the interests of some or all of the members, creditors or clients. (b) A client may also make an application under sub-paragraph (1) or (2). (c) Where the FSA has given a direction under regulation 16 which has not been withdrawn, an order may not be made under this paragraph if it would

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>impede or prevent compliance with the direction.</p> <p>(d) Any of the following persons may make an application under this paragraph on the grounds that the administrator is not taking any action in response to a request from that person under regulation 13(2) and that the person is of the opinion that the action requested would not lead to a material reduction in the value of the property of the investment bank—</p> <ul style="list-style-type: none"> (i) the Bank of England, (ii) the Treasury, (iii) the FSA, or (iv) a market infrastructure body.
Para 75	Misfeasance	A client and the FSA shall be included in the list of persons who may make an application under sub-paragraph (2).
Para 79	Court ending administration on application of administrator	<p>Sub-paragraph (2) is not applied.</p> <p><i>See regulation 20</i></p>
Para 81	Court ending administration on application of a creditor	This paragraph is not applied where the administrator was appointed by the court on the application of the FSA or the Secretary of State.
Para 84	Termination: no more assets for distribution	<p>(a) The administrator shall only send a notice under sub-paragraph (1) if the investment bank no longer holds client assets.</p> <p>(b) In sub-paragraph (5), a copy of the notice should also be sent to every client of the investment bank of whom the administrator is aware and the FSA.</p> <p><i>See regulation 21</i></p>
Para 85	Discharge of administration order	
Para 86	Notice to Companies Registrar at the end of administration	
Para 87	Resignation	<p>(a) Where the administrator was appointed by the court on the application of the FSA or the Secretary of State, the notice of the resignation given in accordance with</p>

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>sub-paragraph (2)(a) must be also given to the applicant.</p> <p>(b) Sub-paragraphs (2)(b) to (d) are not applied.</p>
Para 88	Removal	
Para 89	Disqualification	<p>(a) Where the administrator was appointed by the court on the application of the FSA or the Secretary of State, the notice given in accordance with sub-paragraph (2)(a) must be also given to the applicant.</p> <p>(b) Sub-paragraphs (2)(b) to (d) are not applied.</p>
Para 90	Replacement	The reference to paragraphs 91 to 95 is to paragraph 91.
Para 91	Replacement	The FSA is added to the list of persons who may make an application to appoint an administrator but to whom the restrictions in sub-paragraph (2) apply.
Para 98	Discharge	Sub-paragraphs (2)(b) and (3) are not applied.
Para 99	Vacation of office: charges and liabilities	<p>(a) In sub-paragraph (3), the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 will be charged on and payable out of the client assets.</p> <p>(b) In sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) does not include a charge on client assets.</p>
Para 100	Joint administrators	
Para 101	Joint administrators	In sub-paragraph (3), the reference to paragraphs 87 to 99 is to paragraphs 87 to 91 and 98 to 99.
Para 102	Joint administrators	
Para 103	Joint administrators	<p>(a) In sub-paragraph (2), the reference to paragraph 12(1)(a) to (e) is to regulation 5(1).</p> <p>(b) Sub-paragraphs (3) to (5) are not applied.</p>
Para 104	Presumption of validity	
Para 105	Majority decision of directors	

<i>Schedule B1</i>	<i>Subject</i>	<i>Modification or comment</i>
Para 106 (and section 430 of and Schedule 10 to the Insolvency Act)	Fines	Sub-paragraphs (2)(a), (2)(b) and (2)(l) to (2)(n) are not applied.
Para 107	Extension of time limit	In considering an application under paragraph 107, the court must have regard to the special administration objectives.
Para 108	Extension of time limit	(a) To obtain consent under this paragraph, the administrator must also obtain consent of those clients whose claims amount to more than 50% of the total amount of claims for client assets, disregarding the claims of those clients who were sent a copy of the statement of proposals but who did not respond to an invitation to give or withhold consent. (b) Sub-paragraph (3) is not applied.
Para 109	Extension of time limit	
Para 111	Interpretation	The definition of “administrator” and sub-paragraph (1A)(b) and (c) and sub-paragraph (1B) are not applied.
Paras 112- 116	Scotland	

Table 2: Applied provisions: other provisions of the Insolvency Act(1)

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Sections 74 and 76-83	Contributories	

- (1) Relevant amendments to the provisions of the Insolvency Act included in Table 2 are as follows: sections 74, 76 to 78, 80 and 83 were amended by [S.I. 2009/1941](#); section 176A was inserted by the Enterprise Act 2002, section 252 and amended by [S.I. 2008/948](#); sections 183 and 184 were amended by the Courts Act 2003 (c. 39), section 109(1), Schedule 8, paragraphs 295 and 296 and section 184 was amended by [S.I. 1986/1996](#); section 185 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 226, Schedule 5, paragraph 14; section 187 was amended by [S.I. 2007/2194](#) and by [S.I. 2009/1941](#); section 193 was amended by [S.I. 2009/1941](#); section 196 was amended by [S.I. 2009/1941](#); section 206 was amended by [S.I. 1986/1996](#); section 212 was amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9 and 18; section 215 was amended by the Civil Partnerships Act 2004 (c. 33), section 261(1), Schedule 27, paragraph 112; sections 218(1)(a) and (b) were inserted by the [Insolvency Act 2000 \(c. 39\)](#), sections 10(1), (2), (5) and section 218(5) was substituted by section 10(1) and (5), and amended by [S.I. 2009/1941](#); section 218(2) was repealed by sections 10(1) and (3), 15(1) and Schedule 5; section 219(2A) and (2B) were inserted by the Insolvency Act 2000, section 11, while section 219(1), (3) and (4) were amended by sections 10(1) and (7) of the Insolvency Act 2000 and by [S.I. 2009/1941](#); section 233 was amended

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 167 (and Schedule 4)	Powers of the liquidator	<p>(a) In subsections (1) and (2), references to “liquidation committee” is to “creditors’ committee”.</p> <p>(b) A client may also apply to the court under subsection (3).</p> <p>(c) In Schedule 4, paragraphs 4 to 10 and 12 shall not apply, and in paragraph 13, the reference to “winding up the company’s affairs and distributing its assets” is to “pursuing the special administration objectives”.</p>
Section 168(4)	Discretion in managing and distributing assets	
Section 176	Preferential charges on goods distrained	
Section 176A	Unsecured creditors	
Section 178	Disclaimer of onerous property	
Section 179	Disclaimer of leaseholds	
Section 180	Land subject to rent charge	
Section 181	Disclaimer: powers of court	

by the Water Act 1989 (c. 15), section 190, Schedule 25, paragraph 78, the Gas Act 1995 (c. 45), section 16(1), Schedule 4, paragraph 14, the Utilities Act 2000 (c. 27), section 108, Schedule 6, paragraph 47, the Insolvency Act 2000, section 1, Schedule 1, paragraphs 1, 8, the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 22, the Communications Act 2003 (c. 21), section 406(1), Schedule 17, paragraph 82 and by S.I. 2004/1822; sections 234 and 235 were amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 23, 24; section 236 was amended by S.I. 2010/18; section 238 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 25; section 240 was amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9, 26 and Schedule 26 and by S.I. 2002/1240; section 241 was amended by the Insolvency (No. 2) Act 1994 (c. 12), section 1 and by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 27; sections 242 to 246 were amended by the Enterprise Act 2002, sections 248(3), 278(2), Schedule 17, paragraphs 9, 28 to 32 and Schedule 26; sections 246A and 246B were inserted by S.I. 2010/18; section 386 was amended by the Pension Schemes Act 1993 (c. 48), section 190, Schedule 8, paragraph 18 and by the Enterprise Act 2002, section 251(3); section 387 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 34; section 389 was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 11(2); section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18, by the Enterprise Act 2002, section 257, Schedule 21, paragraph 4, by the Mental Capacity Act 2005 (c. 9), section 67(1), (2), Schedule 6, paragraph 31, Schedule 7, by the Tribunal Courts and Enforcement Act 2007 (c. 15), section 108(3), Schedule 20, paragraphs 1, 6, by S.I. 2005/2078, by S.S.I. 2005/465, by S.I. 2009/3081 and by S.I. 2009/1941; section 411 was amended by the Constitutional Reform Act 2005 (c.4), section 15(1), Schedule 4, paragraphs 185, 188, by the Banking Act 2009, sections 125 and 160, by S.I. 2007/2194 and by S.I. 2009/1941; section 414 was amended by S.I. 2007/2194; section 423 was amended by the Civil Partnerships Act 2004, section 261(1), Schedule 27, paragraph 121; section 424 was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 36; section 426 was amended by the Insolvency Act 2000, section 8, Schedule 4, paragraph 16; by S.I. 1989/2404, S.I. 1989/2405 and by S.I. 2002/3150; section 431 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), section 5, Schedule 4, paragraph 61; section 433 was amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), section 48, 59, Schedule 3, paragraph 7; sections 434B and 434C were inserted by S.I. 2008/948; and section 434D was inserted by S.I. 2009/1941.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 182	Powers of court (leaseholds)	
Section 183	Effect of execution or attachment (England and Wales)	Subsection (2)(a) is not applied.
Section 184	Duties of officers	In subsection (1), ignore the reference to a resolution having been passed for voluntary winding up.
Section 185	Effect of diligence (Scotland)	In the application of section 37(1) of the Bankruptcy (Scotland) Act 1985 (c. 66), the reference to an order of the court awarding winding up is a reference to the making of the special administration order.
Section 186	Rescission of contracts by the court	
Section 187	Power to make over assets to employees	
Section 193	Unclaimed dividends (Scotland)	
Section 194	Resolutions passed at adjourned meetings	
Section 196	Judicial notice of court documents	
Section 197	Commission for receiving evidence	
Section 198	Court order for examination of persons in Scotland	
Section 199	Costs of application for leave to proceed (Scottish companies)	
Section 206	Fraud in anticipation of winding up	In subsection (1), omit the reference to passing a resolution for voluntary winding up.
Section 207	Transactions in fraud of creditors	In subsection (1), omit the reference to passing a resolution for voluntary winding up.
Section 208	Misconduct in course of winding up	In subsection (1), omit “whether by the court or voluntarily”.
Section 209	Falsification of company’s books	

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 210	Material omissions from statement	(a) In subsection (1) omit “whether by the court or voluntarily”. (b) In subsection (2), omit “or has passed a resolution for voluntary winding up”.
Section 211	False representation to creditors	In subsection (1)— (a) omit “whether by the court or voluntarily”; and (b) a reference to the company’s creditors includes a reference to clients of the investment bank.
Section 212	Summary remedy	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	Subsection (6) is not applied.
Section 215	Proceedings under section 213 or 214	
Section 216	Restriction on re-use of company names	(a) The reference to “liquidating company” shall be to “company in special administration”. (b) Subsections (7) and (8) are not applied.
Section 217	Personal liability for debts following contravention of section 216	Subsection (6) is not applied.
Section 218	Prosecution of delinquent officers and members of company	(a) In subsection (3), ignore the first reference to the official receiver and treat the second reference as a reference to the Secretary of State. (b) In subsection (5) treat the reference to subsection (4) as a reference to subsection (3). (c) Subsections (4) and (6) are not applied.
Section 219	Obligations arising under section 218	Treat the reference to section 218(4) in subsection (1) as a reference to section 218(3).
Section 233	Utilities	
Section 234	Getting in the company’s property	(a) Subsection (1) is not applied. (b) “Office holder” means the administrator.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 235	Co-operation with the administrator	(a) Subsections (1) and (4)(b) to (d) are not applied. (b) “Office holder” means the administrator.
Section 236	Inquiry into company’s dealings	(a) Subsection (1) is not applied. (b) “Office holder” means the administrator.
Section 237	Enforcement by the court	
Section 238	Transactions at an undervalue (England and Wales)	
Section 239	Preferences (England and Wales)	
Section 240	Sections 238 and 239: relevant time	(a) In subsection (2)(a), the reference to being unable to pay its debts has the meaning given by regulation 2. (b) Sub-paragraphs (1)(d) and (3)(a) to (d) are not applied.
Section 241	Orders under sections 238 and 239	Subsections (3A) and (3B) are not applied.
Section 242	Gratuitous alienations (Scotland)	
Section 243	Unfair preferences (Scotland)	
Section 244	Extortionate credit transactions	
Section 245	Avoidance of floating charges	(a) In subsection (3)(c), the reference to— (i) administration application is to be read as an application for special administration, and (ii) administration order is to a special administration order. (b) In subsection (4)(a) and (b), the reference to being unable to pay its debts has the meaning given by regulation 2. (c) Subsections (3)(d) and (5)(a) to (c) are not applied.
Section 246	Unenforceability of liens	(a) Subsection (1) is not applied. (b) “Office holder” means the administrator.

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 246A	Remote attendance at meetings	Treat every reference to creditors as including clients.
Section 246B	Use of websites	
Section 386 (and Schedule 6 as read with Schedule 4 to the Pensions Schemes Act 1993)	Preferential debts	
Section 387, subsections (1) and (3A).	“The relevant date”	Treat the reference to “administration” as a reference to special administration.
Section 389	Offence of acting without being qualified	(a) Treat the reference to acting as an insolvency practitioner as a reference to acting as the administrator. (b) Subsections (1A) and (2) are not applied.
Section 390	Persons not qualified to act	Treat references to acting as insolvency practitioner as references to acting as the administrator.
Section 391	Recognised professional bodies	An order under section 391 has effect in relation to any provision applied for the purposes of special administration.
Section 411	Insolvency rules	The reference in subsections (1A), (2C) and (3) to Part 2 of the Banking Act 2009 includes a reference to these Regulations.
Section 414	Fees orders	(a) The reference in subsection (1) to “Parts I to VII of this Act” includes these Regulations. (b) Ignore the reference to the official receiver.
Section 423	Transactions defrauding creditors	Subsection (4) is not applied.
Sections 424 and 425	Transactions defrauding creditors	

<i>Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 426	Co-operation between courts	References to “insolvency law” includes provisions made by or under these Regulations.
Sections 430 and 431 (and Schedule 10)	Offences	
Section 432	Offences by bodies corporate	In subsection (4) ignore all the provisions of the Insolvency Act listed there except for sections 206 to 211.
Section 433	Statements: admissibility	In subsection (1)(a), a statement of affairs prepared “for the purposes of any provision of this Act” includes any statement made for the purposes of a provision of that Act as applied by these Regulations.
Sections 434B – 434D	Supplementary provisions	