

SCHEDULE 3

Regulation 24

Application of these Regulations to limited liability partnerships

1. In this Schedule, “the 2001 Regulations” means the Limited Liability Partnerships Regulations 2001(1).

2. These Regulations apply where the investment bank is a limited liability partnership subject to the following modifications.

3.—(1) Those provisions of the Insolvency Act, as applied and modified by regulation 15 of these Regulations, shall apply in respect of an investment bank formed as a limited liability partnership subject to sub-paragraph (2).

(2) Those provisions of the Insolvency Act set out in the Table in sub-paragraph (3) shall also apply with the modifications set out in sub-paragraph (3).

(3) The modifications are—

- (a) those contained in regulation 5(2) of the 2001 Regulations (not including those in regulation 5(2)(f)); and
- (b) any other modification set out in the Table.

Table: Applied provisions of the Insolvency Act (General provisions and Schedule B1)

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Section 74	Liability as contributories of present and past members	<p>The following is substituted for section 74—</p> <p>(1) This section applies when a limited liability partnership goes into special administration, every present and past member of the limited liability partnership is liable to contribute to its assets as follows.</p> <p>(2) Where a member has agreed with the other members or with the limited liability partnership, that that member be liable to contribute to the assets of the limited liability partnership in the event that that body goes into liquidation or special administration, that member is liable, to the extent that they have so agreed, to contribute—</p> <ul style="list-style-type: none"> (a) to its assets to any amount sufficient for payment of its debts and liabilities; (b) to the expenses of the special administration; (c) for the adjustment of the rights of the contributories among themselves.

(1) [S.I. 2001/1090](#).

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<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		(3) A past member shall only be liable under this section if the obligation arising from such agreement in subsection (2) survived them ceasing to be a member of the limited liability partnership.”.
Sections 76-78	Contributories	These sections are not applied.
Section 79	Meaning of “contributory”	<p>(a) In subsection (1) for “every person” substitute— “every past and present member of the limited liability partnership”.</p> <p>(b) At the end of subsection (2), insert “or section 214A (adjustment of withdrawals)”.</p> <p>(c) Subsection (3) is not applied.</p>
Section 83	Companies registered under the Companies Act Part XXII, Chapter II	Section 83 is not applied.
Section 183	Effect of execution or attachment	Subsection (2)(a) is not applied.
Section 187	Power to make over assets to employees	Section 187 is not applied.
Section 194	Resolutions passed at meetings	After “contributories” insert “or of the members of a limited liability partnership”.
Section 214	Wrongful trading	In subsection (2), omit from “but the court shall not” to the end of the subsection.
After section 214	Adjustment of withdrawals	<p>Insert—</p> <p>(1) This section has effect in relation to a person, “P”, who is or has been a member of a limited liability partnership where, in the course of the special administration of that limited liability partnership, it appears that subsection (2) of this section applies in relation to P.</p> <p>(2) This subsection applies in relation to P if—</p> <p>(a) within the period of two years ending with the commencement of the special administration, P was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits,</p>

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property; and</p> <p>(b) it is proved by the administrator to the satisfaction of the court that at the time of the withdrawal P knew or had reasonable ground for believing that the limited liability partnership—</p> <p>(i) was at the time of the withdrawal unable to pay its debts, or</p> <p>(ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made.</p> <p>(3) Where this section has effect in relation to P, the court, on the application of the administrator, may declare that P is to be liable to make such contribution (if any) to the limited liability partnership's assets as the court thinks proper.</p> <p>(4) The court shall not make a declaration in relation to P the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by P within the period of two years referred to in that subsection.</p> <p>(5) The court shall not make a declaration under this section with respect to P unless P knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the limited liability partnership would avoid going into an insolvency procedure under the Insolvency Act or special administration.</p>

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<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
		<p>(6) For the purposes of subsection (5) the facts which P ought to know or ascertain and the conclusions which P ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both:</p> <p>(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by P in relation to the limited liability partnership; and</p> <p>(b) the general knowledge, skill and experience that P has.</p> <p>(8) In this section “member” includes a shadow member.</p> <p>(9) This section is without prejudice to section 214.”.</p>
Section 215	Proceedings under section 213 or 214	<p>(a) In subsection (1) omit the word “or” between the words “213” and “214” and insert after “214” “or 214A”.</p> <p>(b) In subsection (2) substitute “any of those sections” for “either section”.</p> <p>(c) In subsection (4) substitute “any of those sections” for “either section”.</p> <p>(d) In subsection (5) substitute “sections 213, 214 or 214A” for “sections 213 and 214”.</p>
Section 218	Prosecution of delinquent officers and members of company	<p>(a) In subsection (1), for “officer, or any member, of the company” substitute “member of the limited liability partnership”.</p> <p>(b) In subsection (3) for “officer of the company, or any member of it,” substitute “member of the limited liability partnership”.</p>
Section 386 of and Schedule 6 (and Schedule 4 to the Pension Schemes Act 1993)	Preferential debts	<p>(a) In subsection (1) omit the words “or an individual”.</p> <p>(b) In subsection (2) omit the words “or the individual”.</p>
Section 387	“The relevant date”	Subsections (5) and (6) are not applied.
Section 432	Offences by bodies corporate	In subsection (2) omit the words “secretary or”.

<i>Provision of the Insolvency Act</i>	<i>Subject</i>	<i>Modification or comment</i>
Schedule B1 Paragraph 42	Moratorium on insolvency proceedings	For sub-paragraph (2) substitute— “(2) No determination to wind up the limited liability partnership voluntarily may be made”.
Schedule B1 Paragraph 61	Directors	For paragraph 61 substitute— “61. The administrator has power to prevent any person from taking part in the management of the business of the limited liability partnership and to appoint any person to be a manager of that business.”.
Schedule B1 Paragraph 62	Power to call meetings	At the end of the paragraph add— “The meeting shall be held in a manner provided by the Investment Bank Special Administration Regulations 2011 or by the limited liability partnership agreement or by insolvency rules (as defined in regulation 2 of those Regulations). The quorum required for a meeting of the members of the limited liability partnership shall be any quorum required by the limited liability partnership agreement for meetings of the members of the limited liability partnership and if no requirement for a quorum has been agreed upon, the quorum shall be 2 members.”.
Schedule B1 Paragraph 91	Replacement	Sub-paragraph (1)(c) is not applied.
Schedule B1 Paragraph 105	Majority decision of directors	Paragraph 105 is not applied.

4.—(1) The provisions of the Disqualification Act shall apply with the modifications set out in sub-paragraph (2).

(2) The modifications are—

- (a) those contained in regulation 23 of these Regulations;
- (b) those contained in regulation 4(2) of the 2001 Regulations; and
- (c) that contained in Part 2 of Schedule 2 to the 2001 Regulations.

Application to Scotland

5. The provisions of the Insolvency Act listed in this paragraph are not applied to Scotland—

- (a) section 167 (and Schedule 4);
- (b) sections 185 to 187;

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- (c) sections 193 to 194;
- (d) section 196 to the extent that that section applies to the specified devolved functions of Part 4 of the Insolvency Act;
- (e) section 199;
- (f) sections 206 to 215;
- (g) sections 218, subsection (1);
- (h) sections 242 to 243; and
- (i) section 245.

Subordinate legislation

6.—(1) The following subordinate legislation shall apply as from time to time in force to investment banks that are limited liability partnerships in special administration and—

- (a) in case of the legislation listed in sub-paragraph (2), with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act as applied by these Regulations; and
 - (b) in case of the legislation listed in sub-paragraph (3), with such modifications as the context requires for the purpose of giving effect to the provisions of the Companies Act 2006 and the Disqualification Act.
- (2) The legislation referred to in sub-paragraph (1)(a) is—
- (a) The Insolvency Practitioners Regulations 2005⁽²⁾;
 - (b) The Insolvency Practitioners (Recognised Professional Bodies) Order 1986⁽³⁾;
 - (c) The Insolvency Proceedings Fees Order 2004⁽⁴⁾;
 - (d) The Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986⁽⁵⁾; and
 - (e) insolvency rules.
- (3) The legislation referred to in sub-paragraph (1)(b) is—
- (a) The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987⁽⁶⁾;
 - (b) The Uncertificated Securities Regulations 2001⁽⁷⁾;
 - (c) The Insolvent Companies (Reports on Conduct of Directors) Rules 1996⁽⁸⁾; and
 - (d) The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996⁽⁹⁾.

(2) [S.I. 2005/524](#).
 (3) [S.I. 1986/1764](#).
 (4) [S.I. 2004/593](#).
 (5) [S.I. 1986/952](#).
 (6) [S.I. 1987/ 2023](#).
 (7) [S.I. 2001/3755](#).
 (8) [S.I. 1996/ 1909](#).
 (9) [S.I. 1996/1910](#).