HM TREASURY

Special administration regime for investment firms

September 2010

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1 Introduction

1.1 Investment firms are a core part of the national and international financial system and, among other things, play a critical role in providing market liquidity. A freezing of credit markets and a substantial strain on financial stability have followed the recent failures of investment firms.

1.2 The Government takes the view that it is essential for financial stability to have in place insolvency arrangements for investment firms, as well as for deposit-taking banks, to ensure that an investment firm can be resolved in an orderly manner. The failure of Lehman Brothers (Lehmans) and more than 240 entities trading under its holding company, Lehman Brothers Holding Inc, in September 2008 posed serious challenges for insolvency regimes the world over.

1.3 In the UK, the Lehmans failure highlighted a number of areas for further work, including identifying ways to:

- clarify the protections already available to clients, creditors and counterparties of a failing investment firm under the existing UK regime;
- ensure more precautionary action by a failing investment firm, prior to its entry into insolvency, to smooth the wind-down process;
- improve continuity of an investment firm's infrastructure, services and staffing to enable a more orderly, efficient wind-down;.
- improve administrators' abilities to access and control client assets post-insolvency, and distribute them once control is established; and
- reduce negative impacts on counterparties, by improving clarity and certainty at trading, clearing and settlement stages.

1.4 As a key part of this work, the Government takes the view that there is a strong case for introducing a special administration regime (SAR) for investment firms, to ensure that there is minimum disruption to financial markets as a result of their failure.

1.5 Current insolvency legislation under the Insolvency Act 1986, while generally robust and flexible, presents specific legal constraints for the effective resolution of large and complex investment firms. This is a consequence of the complexity of investment firms' business, with substantial money and assets held on trust for clients, complex counterparty and financing positions, and collateral assets and liabilities. A single external party can have multiple types of claim on the assets of the investment firm at any given time. In many cases, rights of set-off and netting will pose particular difficulties for reconciliation.

1.6 In a normal insolvency procedure the company's assets are distributed between the creditors according to a statutory ranking, with the assets being distributed first to the firm's secured creditors, then to preferential creditors (employees and occupational pension schemes), unsecured creditors, subordinated creditors and finally to the company's common equity holders. However, in the case of investment firms, there are obstacles to the reconciliation of this ranking, as administrators face substantial difficulties in:

- determining the nature of the investment firm's liabilities (for example, whether they relate to trust property, and so are not company assets, or are secured or unsecured claims);
- determining the value of the liabilities (for example, whether the close-out value for a complicated derivatives transaction claimed by a counterparty is valid);
- recovering assets (for example, client and house assets held by custodians); and
- returning client assets. Under the current insolvency regime, the administrators may be required to achieve a high degree of confidence over the overall value of claims before they can take key decisions on the management of the estate, including the return of client assets.

1.7 The failure of Lehmans highlighted many of the particular practical difficulties that make resolving an investment firm so difficult, for example:

- reconciling books and records in large, and highly complex, institutions - especially where documentation is unsigned, incomplete or inconsistent;
- ascertaining what are client assets and house assets;
- interpreting the effect of, and the interrelationship between, contracts and master agreements such as Prime Brokerage Agreements, Futures Agreements, Stock Lending Agreements, ISDA Master Agreements and Cross Margining and Netting Agreements, which can be in several forms and individually modified;
- understanding complex intra-group arrangements, for example where security has been granted by a client to the failed firm and to all of its affiliates to secure the client's obligations owed to any affiliate;
- establishing the extent of any right of use and verifying that it is compliant with agreements;
- calculating clients' net claims where there are margin lending arrangements in place; and
- determining and allocating shortfalls in client asset and client money omnibus accounts.

1.8 These difficulties exacerbate the problems facing the clients, counterparties and creditors of a failed investment firm. Reform is therefore needed to provide clarity around the insolvency process for administrators and market participants so that the resolution process can be expedited.

1.9 Extensive consultation has been undertaken with the industry on possible new resolution arrangements for investment firms. A summary of consultation responses to the most recent consultation paper, *Establishing resolution arrangements for investment banks* (the December paper) has been published and is available on HM Treasury's website.[1]

1.10 The present paper sets out the Government's proposals for a SAR for investment firms, taking forward the outline proposals in Chapter 2 of the December paper. The SAR will take the form of an administration procedure with special administration objectives (SAOs).

1.11 There are two main aims for the SAR. The first aim is to provide administrators with clarity and direction to conduct the administration, without the need to make frequent applications to

[1] www.hm-treasury.gov.uk/consult_investment_banks2.htm

the court for directions. The adjustments to current insolvency law should make the process less expensive and less disruptive for all concerned. The second aim is to give clients and counterparties greater confidence in the administration process and therefore reduce the impacts of an investment firm insolvency on the stability of the UK's financial systems.

1.12 The SAR is to be introduced under the powers in sections 233 and 234 of the Banking Act 2009. These powers must be exercised by 11 February 2011 or they will lapse.[2]

1.13 A draft statutory instrument is at Annex C. Given the restricted time frame for making amendments to the statutory instrument, the Government would welcome specific responses to the questions asked by 16 November 2010. This paper will be of interest to investment firms, insolvency practitioners, legal advisors and market participants that hold client assets and money.

Encouraging cross-border cooperation

1.14 The business and operations of a large investment firm will generally be part of an international group, which may or may not be headquartered in the UK. Where a group is based in an overseas jurisdiction, it may be subject to different regulatory and insolvency laws. It is therefore necessary to consider UK proposals for a failing investment firm in an international context, and in particular to seek to ensure:

- the recognition (or otherwise) of any UK solutions in other jurisdictions;
- the interrelationship between UK insolvency or pre-insolvency proceedings and those in other jurisdictions; and
- mechanisms that may be used on a cross-border basis.

1.15 The Government therefore supports the work of the European Commission to develop a crisis management framework and agrees that further consideration should be given as to how the framework might apply to investment firms. It should be noted, however, that tools that have been developed for banking institutions, which will have a special emphasis on preserving deposits, may not be appropriate for investment firms. The Government will continue to assess the need for a special resolution regime for investment firms in conjunction with the Financial Services Authority (FSA), the Bank of England, industry experts and international partners. The Government also notes ongoing work by the Financial Stability Board on creditor recapitalisation ("bail in") tools.

1.16 The Government supports the work by UNCITRAL[3] on the feasibility of an international instrument regarding cross-border resolution of large and complex financial institutions.[4] Such a study would outline the options available to improve cross-border coordination, including:

- the recognition of measures taken by the home authority in host states;
- the coordination through parallel proceedings in home and host states;
- coordination by means of cross-border insolvency agreements; and
- other methods to improve coordination.

1.17 The study will also take into consideration cross-border effects of resolution tools generally used in the resolution of financial institutions, for example the transfer of assets to a bridge

[2] The timetable for making the statutory instrument is restricted by the "sunset clause" in section 235(4) of the Banking Act 2009.

[3] United Nations Commission on International Trade Law

[4] United Nations Commission on International Trade Law Working Group V (Insolvency Law), thirty-eighth session, New York,19-23 April 2010

bank, a temporary stay of default clauses in financial contracts, and the conversion of debt into equity.

1.18 The Cross-Border Resolution Working Group (CBRG) of the Basel Committee has also carried out a considerable amount of work comparing the national policies, legal frameworks and the allocation of responsibilities for the resolution of banks with significant cross-border operations. The Government supports the findings of the CBRG in its September 2009 consultation paper *Report and Recommendations of the Cross-border Bank Resolution Group*,[5] which recommends that all national authorities should have appropriate tools to resolve all types of financial institutions.

[5] www.bis.org/publ/bcbs162.pdf?noframes=1

2 Special administration regime

2.1 In drawing up these proposals, the Government has recognised the need to maintain the existing framework of insolvency law and practice as far as possible. This includes the overarching principle of equal treatment of creditors, which ensures that foreign creditors are treated the same as domestic creditors. The Government has taken an approach similar to the one taken in Parts 2 and 3 of the Banking Act 2009, modelling the new regime closely on the existing regime under the Insolvency Act 1986, only making modifications where necessary.

2.2 Consistent with this approach, it is proposed that a significant number of existing insolvency provisions will be applied to the SAR in full, or with only minor modifications. The table at draft regulation 15 sets out the application of provisions from Schedule B1 of the Insolvency Act 1986 to the SAR.

2.3 Other aspects of the SAR also closely follow existing insolvency law and practice and will be familiar to companies and their professional advisors. The remainder of this chapter sets out the main features of the new regime, highlighting those new features required to ensure that the new procedure achieves its objectives, and identifying the main areas of consistency with, or departure from, existing insolvency legislation.

2.4 As with the current insolvency regime, the SAR will be supplemented by a set of specific insolvency rules (see Chapter 3). Where possible, the new insolvency rules will be modelled on existing insolvency rules (with necessary modifications). The Government recognises, however, that some new rules will be required to accommodate the proposed SAR. These will include, for example, rules setting out:

- procedural matters, including court procedure for applications made under the SAR;
- the process by which the administrators release client assets after the imposition of a bar date;
- the arrangements for meetings of creditors and clients, mechanisms by which creditors and clients shall vote at these meetings and the constitution of the creditors committee; and
- how the costs of the administration relating to the return of client assets are to be dealt with.

2.5 Every effort has been made, and will continue to be made, to ensure that unsecured creditors are not disadvantaged by the proposed SAR. Unsecured creditors should generally benefit from the SAR, because it will:

- speed up the reconciliation of the unsecured claims of clients, because the ability to set a bar date for claims to client assets will enable the administrators to identify and calculate any unsecured claims of clients;
- expedite the distribution process for unsecured creditors on the basis that their unsecured claims can be determined more quickly; and

- reduce the level of unsecured claims overall because certain claims of clients for consequential and indirect losses are netted off through the bar date and the distribution of client assets process.

Scope

2.6 The scope for the SAR for investment firms is prescribed by section 232 of the Banking Act 2009. The Banking Act 2009 brings an investment firm (referred to as an "investment bank" under section 232) within the scope of the SAR if it satisfies the following three conditions:

- it has permission under Part 4 of the Financial Services and Markets Act 2000 (FSMA) to carry on at least one of the following regulated activities:

1 safeguarding and administering investments;

2 dealing in investments as principal; or

3 dealing in investments as agent;

- it holds client assets; and
- it is incorporated in, or formed under, the law of any part of the UK (which would include UK-based partnerships and limited liability partnerships (LLPs).

2.7 The definition of "client assets" is given in section 232(4) of the Banking Act 2009 as "assets which an institution has undertaken to hold for a client (whether or not on trust and whether or not the undertaking has been complied with)". This definition can be amended by order so as to include or exclude certain assets. Prior to the making of these Regulations, the Government intends to make an order (under section 232 of the Banking Act) clarifying that "assets" in this respect includes client money (as defined in the glossary of the FSA's *Client Assets Sourcebook*).

2.8 The order will also clarify that the term "client assets" means any assets held by the institution over which the client, when handing over the assets, intended that they should be able to exert a proprietary claim. Therefore client assets intended to be held on trust or on a bailment are included (whether or not the undertaking has been complied with). However, assets due to a client only on a contractual basis are not.

2.9 The Government is aware that insurance intermediaries which hold client money, but not client assets, may be within the scope of the SAR. The Government will therefore draft the amending order to section 232 of the Banking Act 2009 to make it clear that the regime applies only to investment firms and not insurance intermediaries which hold client money.

2.10 As it is based on the administration regime set out in Schedule B1 of the Insolvency Act 1986, the proposed SAR applies only to investment firms which are companies. A schedule to the Regulations will adapt the provisions of the SAR to apply in respect of those investment firms which are LLPs, and potentially to those which are partnerships or Scottish partnerships. The Government would welcome views as to whether adapting the provisions of the SAR to apply in respect of LLPs or partnerships could raise any unforeseen consequences.

2.11 The new proposed Special Administration (Bank Insolvency) and Special Administration (Bank Administration) procedures (see paragraphs 2.52 and 2.58 respectively), which deal with the interaction with the administration regime for deposit-takers, will not apply to LLPs nor to partnerships or Scottish partnerships, as all UK deposit-taking banks are companies.

2.12 The definition of an "investment bank" as set out in section 232 of the Banking Act is independent of the scope of any of the regulatory proposals which were also set out in the December paper. The FSA will be responsible for determining the scope of those regulatory proposals if they are taken forward.

Question 1

Do you agree with the Government's proposal to clarify the scope of the SAR through an amending order to make it clear that "client assets" includes client money? Will amending the order as described cover all the ways in which an investment firm can hold client assets? Would adapting the provisions of the SAR to apply in respect of LLPs or partnerships raise any significant consequences?

Initiation of the SAR

2.13 Entry into the SAR will be through the normal process of a court appointing an administrator. As the SAR is the default regime for all investment firms, application for the SAR could be made by anyone who would otherwise be able to apply for an administrator to be appointed by the court under Schedule B1, or to petition for a winding-up order under sections 124 or 124A of the Insolvency Act (see draft regulation 5).

2.14 All applicants (save the Secretary of State) can apply for the SAR on insolvency or fairness grounds as set out in draft regulation 6. Insolvency means that the firm is unable to pay its debts. Fairness means that it would be just and equitable to put the company into insolvency. The Secretary of State can apply on fairness grounds alone when it would be necessary in the public interest. The provisions referred to in section 124A of the Insolvency Act set out the sources of information on which the Secretary of State can rely in determining whether it would be in the public interest to put the investment firm into special administration.

2.15 Draft regulation 8 sets out conditions that must be fulfilled before an investment firm can be put into normal insolvency. Notable among these is the requirement for the FSA's consent. If the FSA is notified of an application for normal insolvency, the FSA must indicate whether it consents or not to the proposed procedure and whether it intends instead to put the firm into the SAR. Alternatively, the FSA can use its discretion and apply to the court to put a firm into the normal insolvency process, if it considers normal insolvency to be more appropriate given the circumstances of the particular firm. This flexibility will ensure that a firm which is inadvertently within the scope of the SAR, for example an insurance intermediary holding client money, can be wound down through normal insolvency procedures. The Government expects, however, that the SAR would be used for the vast majority of eligible firms.

2.16 The Government does not propose that there should be any additional entry criteria that the FSA would have to satisfy before an investment firm can be placed into the SAR, as was proposed in the December paper.

Question 2

Do you agree with the proposals for initiation of the SAR, as set out above and in draft regulations 4 to 8?

Appointment

2.17 Where the court makes a special administration order, an appropriately qualified and suitably experienced insolvency practitioner (see draft regulation 4(2)), nominated by the body making the administration application and who has confirmed they are willing to accept the position, would be appointed as the administrator. The insolvency practitioner would be an officer of the court (see draft regulation 15(2)) and the proceedings would therefore be subject

to the general supervision of the court. In addition, in keeping with general insolvency practice, the office-holder would be expected to adhere to all applicable general professional and ethical standards.

Special administration objectives for administrators

2.18 The Government is proposing that the SAR will be based on SAOs for administrators to pursue in unwinding the investment firm's business. The Government's Investment Banking Advisory Panel indicated that it is important for any special objectives to be:

- clear and to indicate explicitly that they do not aim to change ordinary creditor rankings;
- specific, to prevent litigation against the administrator for actions taken to meet the objectives and to provide a degree of confidence to the market as to their likely actions;
- interrelated, giving the administrator clarity as to priority where they potentially conflict;
- comprehensive but to an extent that does not complicate their interpretation; and
- flexible, so that they remain relevant over time.

2.19 As set out in regulation 10, the Government is proposing three SAOs:

- Objective 1 is for the administrator to ensure the return of client assets as soon as reasonably practicable;
- Objective 2 is for the administrator to ensure timely engagement with market infrastructure bodies and the Authorities (pursuant to regulation 13); and
- Objective 3 is for the administrator to either rescue the investment firm as a going concern, or wind it up in the best interests of the creditors.

2.20 The Government has dropped the previous proposal for an objective (Objective 2 as set out in the December paper) designed to enable the directors or the administrator to facilitate a sale of part of the investment firm's business pre- or post-insolvency by removing uncertainty for a purchaser regarding the support it will receive from the insolvent institution.

2.21 This reflects the balance of views expressed by respondents that, unlike the special resolution regime under the Banking Act 2009, where a transfer may need to be made overnight or over a weekend without the ability of the management of both parties to negotiate its terms, a transfer of business to a purchaser either before or during the SAR must be by means of a commercial agreement. Necessarily, this commercial agreement would need to address issues regarding the supply of services and facilities. Therefore, to impose a duty on the administrator over and above the terms they may agree commercially could undermine their bargaining power and could be an unnecessary complication and a source of uncertainty.

Objective 1 – ensuring the return of client assets and money

2.22 The purpose of Objective 1 is to allow the administrator to start returning client assets and money as soon as is reasonable. To help the administrators achieve this, the Government is proposing to allow the administrator to set a bar date (see below) for claims to client assets and to allocate shortfalls in client assets held in omnibus accounts on a pro rata basis. This is to help address some of the practical issues that may hinder the ability of an administrator to distribute client money and assets promptly, as referred to in the introduction.

2.23 The Government takes the view that Objective 1 will expedite the return of client assets and money but understands that where segregation of client assets has not occurred and there is an ambiguity as to whether a client can assert a proprietary claim over the assets held, this could potentially lead to litigation and could delay the return of client assets. Therefore there is an option to either narrow the scope of Objective 1 to segregated client assets or split the objective into two parts. Part (a) would be for the administrator to ensure the return of segregated client assets in priority to those not segregated, and part (b) would be to return all client assets, whether or not segregation has taken place. The Government would welcome views as to whether the scope of Objective 1 should be amended as described.

2.24 It should be noted that "return of client assets" refers to the client receiving back their net equity entitlement of assets once any rights that the investment firm has over the assets held for the client are netted off, and once any security interest or other entitlement of a third party over those assets has been relinquished.

Setting bar dates

2.25 To accelerate the process of returning client assets and money, the Government proposes that the administrator should be able to set a bar date for the submission of:

- claims to the beneficial ownership of the client assets; or
- claims of persons in relation to a security interest asserted over those assets.

2.26 This would include claims that are contingent or disputed, but would not cover claims only for client money, as the distribution of client money in the event of insolvency is set out in Part 7 of the FSA's *Client Assets Sourcebook.*

2.27 In setting a bar date, the administrator would have to allow a reasonable time period after notice of the bar date has been published for the calculation and submission of claims. The administrator would then make a distribution of client assets in accordance with the procedure set out in insolvency rules (see Chapter 3). If the administrator sets a bar date, he or she would need the consent of the court to distribute client assets.

2.28 Where the administrator made a distribution after setting a bar date, but then received a claim to client assets (see paragraph 2.25) in respect of assets that had already been distributed, there would be no disruption to the distribution that had already taken place, and the claimant would not be able to take any action to pursue those assets against the recipient of those assets or against any future recipient. However, this restriction would not apply where the distribution had been made by the administrator in bad faith in which the recipient was complicit, or as a result of bad faith on the part of the recipient.

Shortfall in client assets

2.29 Where there is a shortfall in securities of a particular description held as client assets in a client omnibus account, the Government takes the view that to speed up the distribution of these securities, administrators should be able to allocate shortfalls pro rata among the clients. Shortfalls would therefore be apportioned among each client for whom the account holds assets according to their beneficial interest in the securities. (Note that these provisions relating to shortfall do not apply to any shortfall in client money, as shortfalls in client money are dealt with under Part 7 of the FSA's *Client Assets Sourcebook* and under general trust law.)

2.30 For these purposes, "securities of a particular description" is defined as securities issued by the same issuer and being of the same class of shares or stock; or in the case of securities other than shares or stock, being of the same currency and denomination and treated as forming part of the same issue.

2.31 The shortfall borne by a client becomes that client's asset shortfall claim, subject to anything that the client owes the investment firm. The administrators would calculate the value of a client's shortfall claim against the estate based on the value of the relevant stockline as of the last business day prior to the date of administration.

2.32 Administrators, when valuing client assets, should take the middle price of the security published by the *Financial Times* (or an equivalent pricing source) in respect of the day in question; or, if this is not possible to ascertain, the administrators would be required to determine a fair market value for the security based on:

- historic trading prices for comparable security for the day in question, as published by the *Financial Times* or equivalent;
- market data in respect of the relevant market on which the security is traded; or
- the result of the operation of any models or pricing methodologies performed by the investment firm or a third party.

Question 3

Should the scope of Objective 1 be amended in either of the ways set out in paragraph 2.23?

Question 4

Do you agree with the bar dates proposal as set out in draft regulation 11?

Question 5

Do you agree with the allocation of shortfalls proposal as set out in draft regulation 12?

Objective 2 – engaging with market infrastructure bodies and Authorities

2.33 The purpose of this objective is to ensure that that there is cooperation between the administrator, market infrastructure bodies and the Authorities to resolve any issues arising from the investment firm going into the SAR and to facilitate actions to be taken as a consequence.

2.34 The administrator should work with market infrastructure bodies to:

- facilitate the operation of the default rules of the bodies and to resolve any issues arising from the operation of those rules; and
- facilitate the settlement or prompt cancellation of non-settled trades.

2.35 The administrator should also work with the Authorities to facilitate any actions that the Authorities propose to take to minimise the disruption of businesses and the markets.

2.36 For these purposes, "work with" is defined by regulation 13(2) to mean: comply, as soon as is reasonably practicable, with a request for the provision of information or the production of documents relating to the investment firm and to allow that body or authority (on reasonable request) access to the facilities and premises of the investment firm.

2.37 Where a market infrastructure body makes such a request, then the administrator would be entitled to receive from it such information as the administrator might reasonably require in pursuit of Objective 2.

Question 6

Do you agree with Objective 2 as set out in draft regulation 13?

Objective 3 – winding up or rescuing the firm

2.38 The third objective is based on the first two objectives of Schedule B1 administration (either rescuing the firm or winding it up in the best interests of the creditors). It also allows for the administrator to wind up the firm at the end of the administration without having to convert to a liquidation.

2.39 As with a normal administration, the administrator may therefore consider whether it would be possible to continue the investment firm as a going concern, although the Government would expect this only to be possible in the rarest of cases. More likely, the administrator will work to the second part of the objective, which is to realise the business of the investment firm to the best extent possible, so as to maximise the amount of dividends that can be paid to creditors before dissolving the company. Alternatively, the administrator may enter into a company voluntary arrangement to allow for the final funds of the investment firm to be distributed over time (see draft regulations 21 and 22).

Question 7

Do you agree with Objective 3 as set out in draft regulation 10?

The FSA's power of direction

2.40 The Government is proposing to give the FSA the power, after consulting HM Treasury and the Bank of England, to direct the administrators to prioritise one or more of the SAOs if the prioritisation of the objective(s) is in the interests of financial stability or the maintenance of public confidence in the stability of the financial markets. This will, in times of financial crisis, allow the administrators to be directed to pursue one objective over the others, which otherwise they would not be able to do without the creditors' backing due to concerns that they would be personally accountable if the court found that they had acted in error.

2.41 Where the FSA did give a direction, the administrator would be required to make a statement setting out proposals for achieving the SAOs in accordance with the direction. The statement would have to be agreed with the FSA but, although the statement would be put to the meeting of creditors and clients, if they did not approve it, the administrator may apply to court for an order dispensing with the need for the approval.

2.42 Where the administrator's statement of proposals made in consequence of a direction from the FSA was revised by the administrator, the administrator would need to agree the revised statement with the FSA. If the meeting of creditors did not approve the revised statement, the administrator could apply to court for an order dispensing with the need for the approval of the meeting of creditors.

2.43 If and when the FSA considered that the circumstances that gave rise to the need for the direction have passed, it would withdraw it.

Question 8

Do you agree with giving the FSA a power of direction as set out above and in draft regulations 16 to 20?

Continuity of supply

2.44 Regulation 14 adapts the provisions of section 233 of the Insolvency Act 1986 to require continuity of supply of IT and other key services. Therefore when an investment firm goes into administration, the administrator may request the continuation of a utilities contract. The supplier cannot make it a condition of the supply, nor do anything that would have the effect of imposing that condition, that any outstanding charges owed by the firm to the supplier and incurred before the date of administration are paid.

2.45 By proposing to extend the continuity of supply provisions as set out above, the Government is seeking to ensure that suppliers of services key to the effective administration of the firm and meeting of the SAOs cannot withdraw their services until the administrator has had time to make suitable alternative arrangements.[1] The continuity of supply provisions could be expanded to include:

- computer software used by the investment firm in connection with:
  - the reception and transmission of orders in relation to securities; or
  - the trading of securities;
- financial data;
- broadband and electronic mail;
- data processing; and
- commercial bank services (but not including any settlement bank services or supply of uncommitted credit).

2.46 The supplier can stop providing a supply if:

- any charges in respect of the supply, being charges for a supply given after the commencement of special administration, remain unpaid for more than 28 days;
- the administrator consents to the termination; or
- the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply shall cause the supplier to suffer hardship.

[1] It is worth noting that section 233 was originally included in the Insolvency Act 1986 to remedy a similar issue – to ensure that utilities companies were not able to exploit the advantage resulting from the essential nature of the services supplied so as to impose terms enhancing the supplier's rights or status in respect of the outstanding charges for previous supplies to the firm. Therefore the imposition of any specially increased tariff or surcharge for the resumption of supplies would contravene section 233.

Question 9

Do you agree that the continuity of service provisions should be extended as set out above and in draft regulation 14?

Administrator's liability

2.47 Administrators generally act as agents for the entity in administration, so any actions taken would be in the company's name and paid for through the company's funds. Administrators' personal liability stems from paragraphs 74 and 75 of Schedule B1 of the Insolvency Act 1986[2] and under common law.

2.48 The level of complexity and the scale of the insolvency in the case of investment firms is likely to be significantly larger than for other types of firms (as the insolvency of Lehmans has demonstrated), leading potentially to substantial personal liability accruing. The risk of exposures of open house and client positions can be very large for an insolvent investment firm and, in dealing with these, the administrators could be exposed personally to much greater sums than they would be in the administration of a non-investment firm.

2.49 In the SAR the administrator would be required to work quickly and efficiently to achieve each of the SAOs in accordance with the administrator's statement of proposals agreed with the creditors and clients. The administrator is unlikely to be successfully challenged if they are working to fulfil those objectives. There is currently no duty on administrators to, among other things, return client assets. The Government takes the view that the new objectives and the FSA's power of direction go a long way towards enabling the administrators to take the necessary actions in the most efficient and timely manner without undue fear of legal challenge.

Main modifications to Schedule B1 administration

2.50 Regulation 15 applies and modifies the provisions in Schedule B1 administration of the Insolvency Act 1986. The following list sets outs the main modifications to Schedule B1:

- paragraphs 49 to 57 have been modified: currently clients for whom assets or money is held do not sit on the creditors committee nor do they have any say at the meeting of creditors held to approve the statement of proposals. The Government proposes that in recognition of the importance of returning client assets and money, the clients should vote alongside the creditors to approve the statement of proposals and should also sit on the creditors committee (see Chapter 3). It would be left to the administrators to ensure that the compilation of the creditors committee fairly represents the different interests in the SAR.
- paragraph 65(3) has not been applied - as in a liquidation, the administrator in the SAR can make a distribution to creditors without the approval of the court;
- paragraphs 74 and 75 have been modified – clients can now bring an action against an administrator's conduct (in the same way as creditors or members can)

[2] Under these provisions, a creditor can bring an action against an administrator, claiming that: (a) the administrator is acting or proposes to act in a way that unfairly will harm the interests of that creditor (paragraph 74); or (b) the administrator has misapplied or retained money or other property of the administration, has become accountable for money or other property of the company, has breached a fiduciary or other duty in relation to the company or has been guilty of misfeasance (has performed a lawful act, but wrongly) (paragraph 75).

and the FSA can also bring an action complaining of harm to creditors, members and clients;

- paragraph 91 has been modified – the FSA can now appoint a replacement administrator; and
- paragraph 99 has been modified – the administrator's remuneration and expenses incurred in pursuit of the return of client assets are to be paid out of the client assets (see Chapter 3).

2.51 In addition, the administrators will have access to certain powers under the Insolvency Act 1986 that are usually available to liquidators, for example, section 213 (relating to fraudulent trading) and section 214 (relating to wrongful trading). This is to give the administrator access to those powers to take action where there is evidence of fraud or wrongful trading without having to put the company into liquidation at the end of the administration.

Question 10

Do you agree with the modifications to Schedule B1 administration as set out above and in draft regulation 15?

Interaction of the SAR with the Banking Act 2009

2.52 For deposit-taking banks which are also within the scope of the SAR, careful consideration has been given to ensure that there is the appropriate interoperability between the SAR and the Bank Insolvency Procedure and Bank Administration Procedure as set out in the Banking Act 2009.

SAR and the Bank Insolvency Procedure

2.53 The Authorities would decide whether the bank should be put into the Bank Insolvency Procedure. However, where that bank has an investment business in scope of the SAR, the bank could instead be put into a new Special Administration (Bank Insolvency) procedure as set out in Schedule 1 to the regulations. An application to the court for a Special Administration (Bank Insolvency) order could only be made by the Bank of England, or by the FSA with the consent of the Bank of England.

2.54 As with the Bank Insolvency Procedure, an application for a Special Administration (Bank Insolvency) order could only be made if the FSA was satisfied that conditions 1 and 2 in section 7 of the Banking Act 2009 were met. The court would need to be satisfied that the institution is an investment bank with eligible depositors:

- that is unable, or likely to become unable, to pay its debts; or
- that it would be fair to put it into special administration (bank insolvency).

2.55 An administrator appointed under a Special Administration (Bank Insolvency) order would have the following objectives:

- Objective A is to work with the Financial Services Compensation Scheme (FSCS) to ensure that as soon as is reasonably practicable each eligible depositor:

  - has the relevant account transferred to another financial institution, or

- receives payments for (or on behalf of) the FSCS; and

- Objective B is to pursue the SAOs.

2.56 Objective A would take precedence over the SAOs until a full payment resolution was passed (but the administrator would begin working on the SAOs immediately on appointment). Any FSA direction as set out under paragraph 2.40 above would not prejudice achievement of Objective A.

2.57 Once the administrator considers that the payout had been achieved, the "Objective A Committee" (i.e. the liquidation committee formed of the Bank of England, the FSA and the FSCS) would pass a resolution to that effect and step down. The procedure then follows the SAR, the only difference being that (as a major unsecured creditor) the FSCS would have the automatic right to sit on the creditors committee and the administrator would continue to be required to work with the FSCS to ensure that any remaining depositors receive their compensation.

Question 11

Do you agree with the interaction of the SAR and Bank Insolvency Procedure as set out above and in Schedule 1 to the draft regulations?

SAR and the Bank Administration Procedure

2.58 Where a partial property transfer was made by the Authorities to transfer part of the deposit business of an investment firm to a purchaser or a bridge bank, the residual company, if it fell within the scope of the SAR (i.e. it was an investment bank within the meaning of section 232 of the Banking Act 2009), could instead go into a new Special Administration (Bank Administration) procedure.

2.59 The administrator appointed under the Special Administration (Bank Administration) order has the following objectives:

- Objective A is to provide support for a private sector purchaser or bridge bank (see section 138 of the Banking Act 2009); and

- Objective B is to pursue the SAOs.

2.60 Objective A would take precedence over the SAOs until the Bank of England notified the administrator that the residual bank was no longer required to provide services in connection with the private sector purchaser or bridge bank, but the administrator would begin working on the SAOs immediately on appointment. An FSA direction (as set out in paragraph 2.40) to the administrator to prioritise one or more of the SAOs would not prejudice the achievement of Objective A.

2.61 Paragraphs 7 to 13 of Schedule 2 set out how the statement of proposals drawn up by the administrator, to set out how they intend to pursue Objective A and the SAOs, would be approved.

2.62 Under the Bank Administration Procedure, until the Bank of England notifies the administrator that the residual bank is no longer required to provide services, the Bank alone approves the statement and takes over the role of the creditors committee. The Government considers that this approach is not appropriate for the Special Administration (Bank Administration), as it would be important for the creditors and clients to be involved in the

agreement of the statement in order to provide the administrators with the backing to pursue the SAOs in the way agreed in the statement. It is also necessary to prescribe how the statement would be approved when the FSA had given a direction.

2.63 Therefore as soon as the residual bank entered Special Administration (Bank Administration), the administrator would be required to draw up a statement of proposals as to how they intended to pursue Objective A and the SAOs. This statement would first be agreed with the Bank of England and a meeting of creditors and clients would then be summoned to approve the statement. If the meeting failed to approve the statement, the administrator could apply to court for an order to dispense with the need for approval. The court would make the order if it considers that the proposals set out in the statement are reasonably likely to achieve Objective A – having regard to the achievement of the SAOs.

2.64 Where the FSA had given a direction, the statement would also need to be agreed with the FSA before being sent to the creditors and the clients for their approval at the meeting. Where the administrator applied to court for an order to dispense with the need for approval in these circumstances, the court would need to be satisfied that the proposals set out in the statement were reasonably likely to address the concerns that necessitated the FSA giving a direction, and that the FSA direction is not likely to prejudice the achievement of Objective A.

Question 12

Do you agree with the interaction of the SAR and the Bank Administration Procedure as set out above and in Schedule 2 to the draft regulations?

Operational reserve

2.65 The Government considers the operational reserve requirement proposed in the December paper to be of central importance to ensure continuity of service from staff and suppliers in administration. In the event of insolvency, an investment firm may well have insufficient liquid resources immediately available to be able to pay key staff and suppliers. In such circumstances, the administrators would find it difficult to provide reassurance to staff and suppliers that they would be paid, without which reassurance there is likely to be disruption of their services to the firm. Administrators therefore need access to sufficient funds to be able to meet the terms of employment and supply contracts, including any incentive payments that employees have vested with the firm or that would be needed to motivate staff to perform effectively in administration.

2.66 In order to meet this objective, the Government is proposing that the FSA should consider requiring firms to ring-fence adequate liquid funds in an "operational reserve" on an ongoing basis, to meet operational expenses in an administration (taking account of the new liquidity rules the FSA is introducing that will apply to many investment firms[3]). However, the December paper asked whether it would be necessary to accompany such a requirement with legislative changes to require administrators to use the operational reserve only for operational expenses and not for any other use under the administration in order to provide staff and suppliers with legal certainty that the funds would be used to pay them for their services.

2.67 Although views were divided on whether legislative changes were necessary, the Government considers it desirable to provide a high level of legal certainty to staff and suppliers regarding payment for their services in administration, without which the risk of disruption to business continuity would persist. Legislative changes to require administrators to use the

[3] http://fsahandbook.info/FSA/html/handbook/BIPRU/12

operational reserve only for operational expenses might also assist with the calculation of the reserve itself, making it more likely that there will be sufficient resources available for key staff and supplier payments.

2.68 The Government is therefore considering specifying the types of operational expenses for which the reserve should be used in administration, to allow the Authorities to direct the use of the operational reserve to pay key staff and suppliers if required. The final form of any legislation on the operational reserve would depend on the FSA's regulations. The Government will therefore continue to work closely with the FSA in developing this proposal and will legislate if appropriate to ensure that the operational reserve is ring-fenced for certain expenses in administration.

Question 13

Do you agree that the Government should ring-fence the operational reserve in legislation so that it can only be used to pay certain suppliers of key services?

3 Insolvency rules

3.1 The Government considers it appropriate for the detailed procedural aspects of the special administration regime for investment firms (SAR) to be brought into effect through specific insolvency rules for the new regime. This is done through the application of section 411 of the Insolvency Act 1986 to the SAR. This chapter summarises the key provisions that these rules will contain.

Client voting procedure and establishment of creditors committee

3.2 The statement of proposals drawn up by the administrator sets out the priority to be given to the three objectives. The statement of proposals must be approved by the meeting of creditors and clients. The rules will set out how such approval is to be achieved.

3.3 In normal administration proceedings, creditors must be given notice of the meeting of creditors and then, in order to be able to vote at the meeting, must give the administrator details of their claim.[1] The administrator can admit the claim, reject it or mark it as "objected to". (If "objected to", the supposed creditor may vote, but his vote will be declared invalid if the objection is sustained.)

3.4 The creditor's vote is calculated according to the amount of their claim as of the date the company went into administration, making adjustments for any amounts already paid and for any amounts set off. If the claim is for an unliquidated debt, mechanisms exist for giving this debt an estimated value for the purpose of establishing a value for the creditor's vote.

3.5 Under the SAR the Government proposes that:

- clients are to be notified of meetings in the same way as creditors;
- a client must submit his claim for client assets to the administrator prior to the meeting in the same time frame in which a creditor would have to submit his claim (note that this submission would be in a much shorter form than the submission made in response to a bar date - see paragraph 3.7 below);
- the administrator has the same powers to reject/ admit /object to a claim;
- if the claim is for client assets, the value of a client's vote will be calculated as a proportion in value of the total amount of client asset claims submitted for the meeting;
- if the claim is for client assets (not money), the chair will put on the assets an estimated value based on the value of the assets as of the date of the meeting in order to work out the value of that client's vote;
- the creditors and the clients will vote separately to approve the statement of proposals (this is because the total amount of debt owed by the bank and the total

[1] Note that this process is different to the creditor submitting their claim in order to participate in a distribution. It requires much less detail.

amount of client assets due to be returned are different types of liability and should not be combined). The statement must be approved by both groups – on a simple majority basis in each case; and

- a client who is also a creditor has the right to vote in both groups provided that they have submitted their proof/claim correctly.

3.6 The meeting of creditors and clients will also be able to appoint a creditors committee. In order to ensure that this committee is a reasonable reflection of the interests of creditors and clients, the administrator will be required to determine the appropriate make-up of the committee and to direct that nominees are made and then voted on by the meeting in a manner that achieves that make-up.

Bar dates

3.7 If the administrator decides to set a bar date, the rules will set out how claims are to be made and the process leading up to the distribution following the bar date. The decision as to what can be distributed and at what stage will be left to the administrator's discretion, but rules will set out the process by which this is achieved. These rules will include details as to:

- what the claim must contain (this will apply both to clients claiming a beneficial interest or other interest in the assets held, and also to third parties claiming security interests over those assets);
- how claims that are disputed or contingent are to be treated;
- the process by which the administrator "flushes out" late claimants (i.e. those who have not submitted their claim before the bar date). It is intended that the administrator would contact the client to put them on notice that they believe that the client has assets with the firm and that they propose to calculate the client's claim according to the information they have unless they hear otherwise from the client; and
- the approval of a distribution plan by the creditors committee as to the distribution of both encumbered and unencumbered assets. This will enable the administrator to set out their plan for the distribution - the amount of distributions to be made, when those distributions are to be made, the size of any buffer of assets kept back from the initial distributions, and how contingent claims or disputed claims are to be dealt with. Court approval will then be sought for the distribution of assets.

Note that the above applies only where the administrator sets a bar date. There is nothing to stop the administrator releasing unencumbered client assets, before setting a bar date for the more complicated claims.

3.8 As regards the treatment of a claimant who makes a late claim, the Regulations already provide that if a distribution has taken place, then this claimant cannot pursue any assets that have already been distributed:

- if there are sufficient assets remaining to cover what the claimant should have received in the distribution, then these will be paid out before the administrator makes another distribution, and the late claimant will participate fully in subsequent distributions; or
- if there are insufficient assets, then the claimant becomes an unsecured claimant against the estate for the value of the shortfall of their claim.

Costs of the realisation of client assets

3.9 In the application of paragraph 99 of Schedule B1 of the Insolvency Act 1986, the costs of the administrator in realising the client assets shall be borne by the clients. This follows the rule laid down in case law[2] that liquidators who dealt with trust assets are entitled to be paid out of those assets for the work which had been carried out. The rules will provide that the administrator's costs in pursing Objective 1 of the SAR will be borne by the clients in proportion to the size of their asset holding in the assets distributed.

[2] See Re Sports Betting Media Ltd [2007] All ER (D) 123 (Jul) and Berkeley Applegate (Investment Consultants) Ltd, Re, Harris v Conway [1989] Ch 32, [1988] 3 All ER 71.

4 How to respond to this consultation

4.1 The Government welcomes the views of all stakeholders on issues raised in this document. The consultation period begins with the publication of this document and will run until 16 November 2010. Please ensure that responses to this consultation arrive by 16 November 2010. The Government cannot guarantee to consider responses received after this date. Responses should be sent to:

Daniel Okubo
Financial Regulation Strategy Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Telephone: +44 207 270 6376

E-mail: daniel.okubo@hmtreasury.gsi.gov.uk

4.2 This document can be found on HM Treasury's website: www.hm-treasury.gov.uk

4.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a large organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Consultation disclosure

4.4 All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

4.5 Information provided in response to this consultation, including personal information, might be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2003 and the Environmental Information Regulations 2004.

4.6 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of information, we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

4.7 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

4.8 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions: one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

Freedom of information

4.9 Any FOIA queries should be directed to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Telephone: +44 207 270 4558

Fax: +44 207 270 4681

E-mail: public.enquiries@hmtreasury.gsi.gov.uk

Code of practice for written consultation

4.10 This consultation is being conducted in line with the Code of Practice for written consultation, which sets down the following criteria:

- formal consultation should take place at a stage when there is scope to influence the policy outcome;
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation; and
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

4.11 If you feel that this consultation does not fulfil these criteria, please contact:

Isabel Summers
Better Regulation Unit
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Email: Isabel.Summers@hmtreasury.gsi.gov.uk

A List of consultation questions

Table 4.A: List of consultation questions

Question 1	Do you agree with the Government's proposal to clarify the scope of the SAR through an amending order to make it clear that "client asset" includes client money? Will amending the order as described cover all the ways in which an investment firm can hold client assets? Would adapting the provisions of the SAR to apply in respect of limited liability partnerships (LLPS) or partnerships raise any significant consequences?
Question 2	Do you agree with the proposals for initiation of the SAR, as set out above and in draft regulations 4 to 8?
Question 3	Should the scope of Objective 1 be amended in either of the ways as set out in paragraph 2.23?
Question 4	Do you agree with the bar dates proposal as set out in draft regulation 11?
Question 5	Do you agree with the allocation of shortfalls proposal as set out in draft regulation 12?
Question 6	Do you agree with Objective 2 as set out in draft regulation 13?
Question 7	Do you agree with Objective 3 as set out in draft regulation 10?
Question 8	Do you agree with giving the FSA a power of direction as set out above and in draft regulations 16 to 20?
Question 9	Do you agree that the continuity of service provisions should be extended as set out above and in draft regulation 14?
Question 10	Do you agree with the modifications to Schedule B1 administration as set out above and in draft regulation 15?
Question 11	Do you agree with the interaction of the SAR and the Bank Insolvency Procedure as set out above and in Schedule 1 to the draft regulations?
Question 12	Do you agree with the interaction of the SAR and the Bank Administration Procedure as set out above and in Schedule 2 to the draft regulations?
Question 13	Do you agree that the Government should ring-fence the operational reserve in legislation so that it can only be used to pay certain suppliers of key services?
Source: HM Treasury	

B Consultation stage impact assessment

Impact assessment below.

Title: **Special administration regime for investment firms** **Lead department or agency:** HM Treasury **Other departments or agencies:**	**Impact Assessment (IA)** **IA No:** **Date:** 16/09/2010 **Stage:** Consultation **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Daniel Okubo 02072706376

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The failure of Lehman Brothers undermined confidence in the banking system as a whole, requiring governments around the world to provide exceptional levels of financial assistance to the global financial system. Specifically, the failure of Lehman Brothers International Europe (LBIE) raised concerns that the UK's insolvency regime could not handle an investment bank default, which clearly has impacts on financial stability. The Government is committed to improving the UK's legal framework where the LBIE experience has highlighted the need for reform in order to enhance financial stability.

What are the policy objectives and the intended effects?

The policy objective is to improve financial stability by increasing the confidence of market participants in the effectiveness of the UK's insolvency regime. This is to be achieved by the introduction of a new special administration regime (SAR) for investment firms, with special administration objectives for administrators. These special administration objectives should help ensure that client assets and money held on trust by an investment firm can be returned as quickly as possible and that trades that the failed firm has entered into can be resolved effectively to ensure clarity for affected counterparties. It is also important that creditors remain sufficiently protected.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The Government is proposing a special administration regime. The SAR has been extensively consulted on - with the responses to two consultation papers taken into account. The Government has also worked closely with an Investment Banking Advisory Panel of industry experts to develop the legislation. The option to do nothing has been considered; however, the failure of Lehman Brothers clearly demonstrated areas where the UK's insolvency regime could be strengthened in respect of investment firms.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 02/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ..... Date: 13/9/10

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Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		0	**0**
High	0		0	**0**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

No costs to market participants as a result of this proposal. These are legislative changes that will aim to provide greater legal clarity to help overcome specific obstacles to the effective resolution of investment firms as discussed in the evidence base. There are no anticipated costs to the Authorities as a result of these measures, as there are existing processes in place.

Other key non-monetised costs by 'main affected groups'

No other key non-monetised costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		n/a	**n/a**
High	n/a		n/a	**n/a**
Best Estimate	n/a		n/a	**n/a**

Description and scale of key monetised benefits by 'main affected groups'

It is not possible to quantify the monetised benefits, but improved resolution arrangements for investment firms will benefit clients, counterparties and creditors of the failed firm by lessening the length of the administration. Clients should receive their trust property back sooner. Cooperation between the administrators and market infrastructure bodies to resolve failed trades or open positions should be improved, which will benefit counterparties and unsecured creditors.

Other key non-monetised benefits by 'main affected groups'

The aim is to provide administrators with clarity and direction to resolve the firm, without needing to approach the court on a frequent basis. These adjustments to current insolvency law will aim to make the process less expensive and less disruptive for an investment firm, its clients, creditors and the market. In addition to the above benefits there are unquantifiable benefits associated with a financial sector with a better resolution process, such as improved investor confidence.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

The most significant risk of the SAR is that it might not be in the best interests of all creditors of the investment firm. This is because the SAR has additional objectives for the administrator, including returning client assets. However, the Government expects that no creditor will be materially affected by the SAR, as provisions such as the setting of bar dates should allow for a shorter administration period . These savings in administration expenses will ultimately benefit all the creditors. Similarly, in the event of a large and complex investment firm insolvency, the Government expects several administrators to be appointed to focus on each of the special administration objectives. This should mean that there will be no deterioration of focus on the needs of creditors.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: n/a	**AB savings:** n/a	**Net:** n/a	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			11/02/2011		
Which organisation(s) will enforce the policy?			Not applicable		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** n/a	**Non-traded:** n/a	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** n/a	**Benefits:** n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** n/a	**< 20** n/a	**Small** n/a	**Medium** n/a	**Large** n/a
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Developing Effective Resolution Arrangements for Investment Banks, HM Treasury, May 2009
2	Establishing Resolution Arrangements for Investments Banks, HM Treasury, December 2009
3	Resolution of Investment Banks: Summary of Consultation Responses, HM Treasury, July 2010
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Annual recurring benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total annual benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Special administration regime for investment firms

Introduction

This section sets out the assumptions supporting this impact assessment. The impact assessment should be read in conjunction with the rest of the consultation paper. The Government would welcome any comments on the costs and benefits of the policy proposals discussed in this impact assessment. The Government would also welcome any views on whether there are other costs and benefits not discussed in this impact assessment that the Government should consider.

Problem under consideration

The failure of Lehman Brothers undermined confidence in the banking system as a whole, requiring governments around the world to provide exceptional levels of financial assistance to the global financial system. While this action has led to stabilisation in the short term, governments must now enact substantive reforms to ensure that, in future, a similar failure does not have the same impact on financial stability.

Rationale for intervention

Investment firms are a core part of financial markets, and among other things, play a critical role in providing market liquidity. A freezing of credit markets and a substantial strain on financial stability have followed the recent failures of investment firms, along with the failure of retail banks.

The Government believes that there is a strong case for a SAR for investment firms, to ensure that there is minimum disruption to financial markets as a result of their insolvency. The Government believes that current insolvency legislation under the Insolvency Act 1986, while generally robust and flexible, presents specific legal constraints for the effective resolution of large and complex investment firms. To leave the insolvency regime for investment firms unchanged would mean that an administration of an investment firm would be conducted under the Insolvency Act 1986 and would leave unresolved the issues which have been demonstrated in the Lehman Brothers insolvency.

Policy objective

The policy objective is to create a SAR in the form of an administration procedure. The aim is to provide administrators with clarity and direction to resolve the firm, without needing to approach the court on a frequent basis. These adjustments to current insolvency law will aim to make the process less expensive and less disruptive for an investment firm, its clients, creditors and the market.

Costs/benefits

There are no significant ongoing or one-off direct costs associated with the SAR. The December 2009 consultation paper, *"Establishing resolution arrangements for investment banks",* set out the assumption that the costs of introducing a SAR were negligible. There has been no serious contention of this assumption apart from the highlighting by some respondents of the potential costs resulting from planning for or risk assessing the new administration regime. This might occur where market participants have to obtain new legal opinions. However, responses to the December consultation paper did not give any indication of the scale of these costs.

This impact assessment will now assess the respective costs and benefits of each of the main aspects of the SAR including:

- special administration objectives;
- bar date for claims to client assets;
- allocating shortfalls pro rata;
- the FSA's power of direction; and
- continuity of service arrangements.

Special administration objectives

The SAR will create three special administration objectives which administrators will have a duty to follow:

- Objective 1 is for the administrator to ensure the return of client money or assets as soon as is reasonably practicable;

- Objective 2 is for the administrator to ensure timely engagement with market infrastructure bodies and the Authorities; and
- Objective 3 is for the administrator to either rescue the investment bank as a going concern, or wind it up in the best interest of the creditors.

Costs

None of these statutory objectives entail any direct costs. It is possible that unsecured creditors may be indirectly affected by the new special administration objectives 1 and 2. However, the Government believes that this is unlikely because the SAR will:

- speed up the agreement of unsecured claims, because unsecured claims of clients will be clarified through the imposition of a bar date;
- expedite the distribution process for unsecured creditors on the basis that the unsecured claims can be determined more quickly; and
- reduce the level of unsecured claims as certain claims of clients for consequential and indirect losses are netted off through the bar date and distribution of client assets process.

Benefits

The benefits of the special administration objectives include:

- greater certainty and clarity for administrators over the objectives against which they are liable;
- increased focus on the return of client assets, which is not currently a statutory requirement on administrators;
- increased focus on communicating with the authorities and market infrastructure providers; and
- a cut-off date for client, affiliate and third party claims to client assets through the imposition of a bar date. Objective 1 also allows the administrator to allocate any shortfalls which are revealed by the bar date pro rata on a stock line basis among the affected clients.

These benefits are not quantifiable, as it would depend on the specific circumstances of the administration. For example, if a firm that held significant amounts of client assets entered administration, then it is likely that the benefits of the SAR in reducing the length of the administration and ensuring that clients receive their assets back quicker are more substantial then if a firm held fewer client assets.

Where respondents have commented on the benefits of such a regime it has generally been felt that in the case of LBIE the existence of such a regime for administrators would have reduced the time spent on identifying and returning client assets, thereby benefiting the estate in terms of cost savings (albeit unquantifiable).

Establish bar dates for claims to client assets

It is hard for an administrator to start returning client assets until they have complete information on all claims to the assets. Not having a cut-off bar date after which the administrator can start reconciling claims causes there potentially to be a severe delay in the return of client assets.

The Government is proposing to give an administrator within the SAR the option of setting a bar date if the records of the insolvent firm do not give a clear indication of what clients and third parties are owed.

The bar date should allow for:

- sufficient time for the fact of administration to be publicised;
- sufficient time for affected clients to calculate and submit their claims; and
- practical difficulties in establishing claims, particularly where arrangements are complex.

Costs

The cost of the bar date would be on the client or third party to submit a claim for the assets. However, this is a process that is usually undertaken in complex insolvencies anyway, so the Government considers the costs to be negligible. The Government consulted in the December paper on the costs of the bar date proposal, and the claim that costs would be negligible was not challenged.

Benefit

The benefits of the bar date proposal would be that the administrator should be able to reconcile and return client assets much faster than the current insolvency regime allows. However, this is unquantifiable as it depends on the circumstances of the administration.

Increase clarity over the allocation of shortfalls in an omnibus account

There is currently a lack of clarity in insolvency law over how shortfalls in client securities held in an omnibus account should be allocated to clients. This uncertainty can delay the return of client assets, and increase the costs of administration.

The Government understands that it would be beneficial if there were certainty for clients and administrators as to how shortfalls should be allocated post-insolvency by an administrator. By providing clarity, it is believed that the length of administration can be reduced and clients can have their securities returned to them quicker, which will result in a less costly administration for creditors.

Costs

The cost of this proposal is that clients may be prevented from putting in tracing claims to their assets, as the SAR would allow the administrator to allocate shortfalls pro rata if they felt it was necessary to meet their first special administration objective of returning client assets as soon as is reasonably practicable.

This could lead to clients bearing shortfalls which actually belong to another client. This cost is mitigated by the fact that the administrator will not necessarily allocate any shortfall pro rata. If it were a fairly simple administration, with clear records which allow the shortfall to be traced to a particular client, then the administrator would be expected to do so. The cost of this proposal is not quantifiable, as it depends on the circumstances of the administration. For example, if there are shortfalls in many stock lines, then the cost is potentially greater than if the shortfall is only in one stock line. It also depends on how large the shortfall is, and the amount of assets held.

Benefits

The benefit of this option is that it potentially speeds up the return of client assets and reduces the cost of the administration. Again this is unquantifiable.

It is expected that the wider impact of allowing administrators to allocate shortfalls pro rata would be greater confidence in the UK insolvency regime for managing the return of client assets. The faster return of client assets will also help the clients of a failed investment firm remain solvent.

The FSA's power of direction

One aspect of the SAR is that the FSA (after consultation with HM Treasury and the Bank of England) has the power to direct the administrator to prioritise certain objectives over others. This direction from the FSA would give administrators an additional defence to undertake certain actions which otherwise they may be reluctant to do, due to concerns over their personal liability.

Costs

In the event of an extremely complex insolvency, there is a possibility that the Authorities may be more involved in the administration than usual, and this could add some additional burden. However, this is unquantifiable. It would be expected that any additional costs to the Authorities would be mitigated against by the improvement in market conditions and a more managed wind-up of the firm following their intervention.

Benefits

The FSA's power of direction could prevent a "log jam" situation whereby the administrators are unable to take the necessary actions to wind-up the firm. This benefit is unquantifiable, as it depends on the circumstances of the administration.

Continuity of service arrangements

The Government is seeking to ensure that suppliers of services which are key to the effective administration of the firm and to the meeting of the special administration objectives cannot withdraw their services until the administrator has had time to make suitable alternative arrangements. The SAR adapts the provisions of section 233 of the Insolvency Act 1986 to require continuity of supply of IT and

other key services. When an investment firm goes into administration, the administrator may request the continuation of a utilities contract, and the supplier cannot make it a condition of the supply, or do anything that would have the effect of imposing that condition, that any outstanding charges owed by the firm to the supplier and incurred before the date of administration are paid.

The continuity of supply provisions could be expanded to include:

- computer software used by the investment firm;
- financial data;
- broadband and electronic mail;
- data processing; and
- commercial bank services (however, this would not include any settlement bank services).

Costs

The Government believes that there will be negligible costs to this proposal because the supplier can stop providing a supply if:

- any charges in respect of the supply, being charges for a supply given after the commencement of special administration remain unpaid for more than 28 days;
- the administrator consents to the termination; or
- the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply shall cause the supplier to suffer hardship.

Benefits

The benefits of this proposal are significant, as it is essential that the core operational services that the administrator requires to resolve the firm are accessible and are not withdrawn at the start of the administration. However, this benefit is unquantifiable as it depends on the circumstances of the administration.

Risks and assumptions

The most significant risk of the SAR is that it might not be in the best interests of all creditors of the investment firm. This is because the SAR has additional objectives for the administrator, including returning client assets. However, the Government expects that no creditor will be materially affected by the SAR, as provisions such as the setting of bar dates should allow for a shorter administration period. These savings in the expenses related to administration will ultimately benefit all the creditors of the firm.

Similarly, in the event of a large and complex investment firm insolvency, the Government expects several administrators to be appointed to focus on each of the special administration objectives. This should mean that there will be no deterioration of focus on the needs of creditors.

Impact on small firms and competition

The Government believes that there will be no impact on small firms and competition, as the main feature of the SAR is new special administration objectives for insolvency practitioners which do not impose any burdens on firms.

Summary and preferred option with description of implementation plan

The preferred option is establishing a special administration regime for investment firms. This would be passed under the secondary legislation power of the Banking Act 2009. This power expires on 11 February 2011 and therefore the SAR should be implemented by then through an Order modifying the Insolvency Act 1986. The SAR regulations will be subject to affirmative draft procedures. Once the responses to the consultation have been considered and, where appropriate, the Order is amended, the final Order, subject to Ministerial approval, will be made and laid before Parliament. This measure will be for HM Treasury to take forward.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review]; For legislative measures, section 236 of the Banking Act 2009 provides for HM Treasury to review the special administration regime insolvency regulations within two years of them coming into force. The review must consider how far the regulations are achieving the objectives specified in section 233(3) and whether the regulations should continue to have effect
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?] See Basis of Review section above
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach] See Basis of the review section above
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] See Basis of the review section above
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives] See Basis of the review section above
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review] See Basis of the review section above
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] n/a

C Draft Regulations

Draft Regulations below.

Draft Regulations laid before Parliament under section 235(2) of the Banking Act 2009, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

FINANCIAL SERVICES AND MARKETS

The Investment Bank Special Administration Regulations 2011

Made - - - - ***

Coming into force in accordance with regulation 1.

The Treasury make the following Regulations in exercise of the powers conferred by sections 233 and 259 of the Banking Act 2009(**a**) (the power in section 233 having not yet lapsed under section 235(4)).

Before making these Regulations the Treasury have consulted in accordance with section 235(3) of the Act.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 235(2) of the Act.

Citation and commencement

1. These Regulations may be cited as the Investment Bank Special Administration Regulations 2011 and shall come into force on the day after the day they are made.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Banking Act 2009;

"administrator" has the meaning set out in regulation 4;

"Authorities" means the Bank of England, the Treasury and the FSA;

"client" means a person for whom the investment bank has undertaken to hold client assets (whether or not on trust and whether or not that undertaking has been complied with);

"contributory" has the meaning set out in section 79 of the Insolvency Act(**b**);

"court" means—

(a) in England and Wales, the High Court,

(b) in Scotland, the Court of Session, and

(c) in Northern Ireland, the High Court;

(**a**) 2009 c. 1.
(**b**) Section 79 was amended by S.I. 2009/1941.

"deposit-taking bank" means an investment bank to which either the definition set out in section 2 or in section 91 of the Act applies;

"fair" has the meaning set out in section 93(8) of the Act;

"FSA" means the Financial Services Authority;

"FSCS" means the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of FSMA);

"FSMA" means the Financial Services and Markets Act 2000(**a**);

"the Insolvency Act" means the Insolvency Act 1986(**b**);

"insolvency rules" means rules made under section 411 of the Insolvency Act as applied and modified by regulation 15;

"market charge" means a charge to which Part 7 of the Companies Act 1989(**c**) applies as a result of the operation of section 173 of that Act(**d**);

"market contract" means a contract to which Part 7 of the Companies Act 1989 applies as a result of the operation of section 155 of that Act(**e**);

"market infrastructure body" means a recognised clearing house, recognised investment exchange, recognised overseas clearing house or recognised overseas investment exchange in relation to which the investment bank is a counterparty in a market contract or to a market charge;

"Objective 1" has the meaning set out in regulation 10;

"Objective 2" has the meaning set out in regulation 10;

"Objective 3" has the meaning set out in regulation 10;

"prescribed" means prescribed by insolvency rules;

"recognised clearing house" has the meaning set out in section 285 of FSMA;

"recognised investment exchange" has the meaning set out in section 285 of FSMA;

"recognised overseas clearing house" means an overseas person in respect of whom the FSA has made a recognition order under section 292 of FSMA(**f**) declaring them to be as such;

"recognised overseas investment exchange" means an overseas person in respect of whom the FSA has made a recognition order under section 292 of FSMA declaring them to be as such;

"regulated activity" has the meaning set out in section 22 of FSMA;

"return of client assets" or where the client assets are "returned" to the client means that the investment bank relinquishes full control over the assets for the benefit of the client to the extent of—

(a) the client's beneficial entitlement to those assets (where the assets in question have been held on trust by the investment bank); or

(b) the client's right to those assets as bailor or otherwise (where the investment bank has been holding those assets as bailee (or by some other means) to the order of the client);

having taken into account any entitlement the investment bank might have, or a third party might have, in respect of those assets, of which the administrator is aware at the time the assets are returned to the client;

"Schedule B1" means Schedule B1 to the Insolvency Act(**g**);

"Schedule B1 administration" means the administration procedure set out in Schedule B1;

(**a**) 2000 c.8.
(**b**) 1986 c.45.
(**c**) 1989 c.40.
(**d**) Section 173 was amended by S.I. 1991/880 and by S.I. 1992/1315.
(**e**) Section 155 was amended by S.I. 1991/880, S.I. 1998/1748 and by S.I. 2009/853.
(**f**) Section 292 was amended by S.I. 2006/2975.
(**g**) Relevant amendments to Schedule B1 were made by S.I. 2003/2096, S.I. 2005/879, S.I. 2007/2974, S.I. 2008/948, S.I. 2008/1897, S.I. 2009/1941 and S.I. 2010/18.

"securities" means financial instruments as defined in regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003(**a**);

"security interest" means any legal or equitable interest or any other right in security (other than a title transfer financial collateral arrangement) created or otherwise arising by way of security including—

(a) a pledge,

(b) a mortgage,

(c) a fixed charge,

(d) a charge created as a floating charge, or

(e) a lien;

"special administration" has the meaning set out in regulation 3;

"special administration (bank insolvency)" has the meaning set out in paragraph 1 of Schedule 1;

"special administration (bank administration)" has the meaning set out in paragraph 1 of Schedule 2;

"special administration objectives" has the meaning set out in regulation 10;

"special administration order" has the meaning set out in regulation 4;

"statement of proposals" means those proposals drawn up by the administrator in accordance with—

(a) paragraph 49 of Schedule B1 (as applied by regulation 15);

(b) where the FSA has given a direction, regulation 17; or

(c) in relation to Schedule 2, paragraph 7 of that schedule; and

"title transfer financial collateral arrangement" has the meaning set out in regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003.

(2) For the purposes of a reference in these Regulations to inability to pay debts—

(a) an investment bank that is in default on an obligation to pay a sum due and payable under an agreement is to be treated as unable to pay its debts; and

(b) section 123 of the Insolvency Act (inability to pay debts) also applies,

and for the purposes of sub-paragraph (a), "agreement" means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the investment bank.

(3) Expressions used in these Regulations and in the Insolvency Act have the same meaning as in that Act.

(4) Expressions used in these Regulations and in the Companies Act 2006(**b**) have the same meaning as in that Act.

(5) In the application of these Regulations to Northern Ireland—

(a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland; and

(b) where these Regulations amend or modify an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland,

and the table in Schedule 3 sets out the enactments referred to in these Regulations together with the equivalent enactments having effect in Northern Ireland.

(**a**) S.I. 2003/3226.
(**b**) 2006 c.46.

Overview

3.—(1) These Regulations provide for a procedure to be known as investment bank special administration ("special administration").

(2) The main features of special administration are that—

(a) an investment bank enters the procedure by court order;

(b) the order appoints an administrator;

(c) the administrator is to pursue the special administration objectives in accordance with the statement of proposals approved by the meeting of creditors and clients and, in certain circumstances, the FSA; and

(d) in other respects the procedure is the same as for normal administration under the Insolvency Act, subject to specific modifications.

(3) Where the investment bank is a deposit-taking bank, then, in addition to the insolvency procedures established under Parts 2 and 3 of the Act, the Bank of England or, as the case may be, the FSA, may apply for an order to put the bank into—

(a) special administration;

(b) special administration (bank insolvency) as set out in Schedule 1 (as applied by regulation 9); or

(c) special administration (bank administration) as set out in Schedule 2 (as applied by regulation 9).

Special administration order

4.—(1) An investment bank special administration order ("special administration order") is an order appointing a person as the investment bank administrator ("administrator") of an investment bank.

(2) A person is eligible for appointment as administrator under a special administration order if qualified to act as an insolvency practitioner.

(3) An appointment may be made only if the person has consented to act.

(4) For the purpose of these Regulations—

(a) an investment bank is "in special administration" while the appointment of the administrator has effect;

(b) an investment bank "enters special administration" when the appointment of the administrator takes effect;

(c) an investment bank ceases to be in special administration when the appointment of the administrator ceases to have effect in accordance with these Regulations; and

(d) an investment bank does not cease to be in special administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

Application

5.—(1) An application to the court for a special administration order may be made to the court by—

(a) the investment bank;

(b) the directors of the investment bank;

(c) one or more creditors of the investment bank;

(d) the designated officer for a magistrates court in the exercise of the power conferred by section 87A of the Magistrates Courts Act 1980(**a**) (fine imposed on company);

(e) a contributory of the investment bank (subject to the conditions set out in section 124(2) of the Insolvency Act, restricting the right of a contributory to present a winding up petition);

(f) a combination of persons listed in sub-paragraphs (a) to (e);

(g) the Secretary of State; or

(h) the FSA.

(2) Where an application is made by a person other than the FSA, the FSA is entitled to be heard at—

(a) the hearing of the application for special administration; and

(b) any other hearing of the court in relation to the investment bank under these Regulations.

(3) An application must nominate a person to be appointed as the administrator.

(4) As soon as is reasonably practicable after making the application, the applicant shall notify—

(a) a person who gave notice to the FSA in accordance with Condition 1 of regulation 8; and

(b) such other persons as may be prescribed.

(5) An application may not be withdrawn without the permission of the court.

(6) In sub-paragraph (1)(c), "creditor" includes a contingent creditor and a prospective creditor.

Grounds for applying

6.—(1) In this regulation—

(a) Ground A is that the investment bank is, or is likely to become, unable to pay its debts;

(b) Ground B is that it would be fair to put the investment bank into special administration; and

(c) Ground C is that it is expedient in the public interest to put the investment bank into special administration.

(2) The FSA or the persons listed in regulation 5(1)(a) to (e) may apply for a special administration order only if Ground A or Ground B is satisfied.

(3) The Secretary of State may apply for a special administration order only if Grounds B and C are satisfied.

(4) The sources of information on the basis of which the Secretary of State may be satisfied as to Ground C include those listed in section 124A(1)(**b**) of the Insolvency Act (petition for winding up on grounds of public interest).

Powers of the court

7.—(1) On an application for a special administration order the court may—

(a) grant the application in accordance with paragraph (2);

(b) dismiss the application;

(c) adjourn the hearing (generally or to a specified date);

(d) make an interim order;

(e) on the application of the FSA, treat the application as an administration application by the FSA under Schedule B1 in accordance with section 359(1) of FSMA(**c**); or

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(**a**) 1980 c.43: section 87A was inserted by the Criminal Justice Act 1988 (c. 33) and amended by the Enterprise Act 2002 (c. 40), section 248(3) and Schedule 17 paragraph 2.

(**b**) Section 124A was inserted by Companies Act 1989 section 60(3) and amended by S.I. 2001/3649.

(**c**) Section 359 was substituted by the Enterprise Act 2002 (c.40), section 248(3), Schedule 17, paragraphs 53, 55.

(f) make any other order which the court thinks appropriate.

(2) The court may make a special administration order if it is satisfied that the company is an investment bank and—

(a) (on the application of persons listed in regulation 5(1)(a) to (e) or the FSA) that Ground A or Ground B in regulation 6 is satisfied;

(b) (on the application of the Secretary of State) if satisfied that Grounds B and C in regulation 6 are satisfied.

(3) Where the application for a special administration order is made by members of the investment bank as contributories on the basis that Ground B in regulation 6 is satisfied, the court, if it is of the opinion that—

(a) the applicants are entitled to relief either by a special administration order being made in respect of the investment bank or by some other means; and

(b) in the absence of any other remedy it would be fair that the special administration order be made in respect of the investment bank,

shall make a special administration order; but this does not apply if the court is also of the opinion that an alternative remedy is available to the applicants and that they are acting unreasonably in applying for a special administration order instead of pursuing that other remedy.

(4) A special administration order takes effect in accordance with its terms.

Notice to FSA of preliminary steps to other insolvency proceedings

8.—(1) An application for an administration order in respect of an investment bank may not be made unless the conditions below are satisfied.

(2) A petition for a winding up order in respect of an investment bank may not be made unless the conditions below are satisfied.

(3) A resolution for the voluntary winding up of an investment bank may not be made unless the conditions below are satisfied.

(4) An administrator of an investment bank may not be appointed unless the conditions below are satisfied.

(5) Condition 1 is that the FSA has been notified of the preliminary steps taken in respect of an insolvency procedure.

(6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).

(7) Condition 3 is that —

(a) the period of 2 weeks, beginning with the day on which the notice is received, has ended; or

(b) the FSA has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.

(8) Condition 4 is that no application for a special administration order is pending.

(9) Where the FSA receives notice under Condition 1, it shall inform the person who gave the notice, within the period in Condition 3—

(a) whether or not it consents to the insolvency procedure to which the notice relates going ahead;

(b) whether or not it intends to apply for that (or an alternative) insolvency procedure itself, or

(c) whether it intends to apply for a special administration order.

(10) Arranging for the giving of the notice in order to satisfy Condition 1 may be treated as a step with a view to minimising the potential loss to the investment bank's creditors for the purpose of section 214 of the Insolvency Act (as applied by regulation 15).

(11) In this regulation—

"investment bank" does not include an investment bank that is a deposit-taking bank; and

"preliminary steps taken in respect of an insolvency procedure" means that—

(a) an application for an administration order has been made;

(b) a petition for a winding up order has been presented;

(c) a resolution for voluntary winding up has been proposed by the investment bank; or

(d) a resolution for the appointment of an administrator has been proposed.

Application where investment bank is a deposit-taking bank

9.Where the investment bank is a deposit-taking bank then Schedule 1 (special administration (bank insolvency)) and Schedule 2 (special administration (bank administration)) apply.

Special administration objectives

10.—(1) The administrator has three special administration objectives ("the special administration objectives")—

(a) Objective 1 is to ensure the return of client assets as soon as is reasonably practicable;

(b) Objective 2 is to ensure timely engagement with market infrastructure bodies and the Authorities pursuant to regulation 13; and

(c) Objective 3 is to either—

(i) rescue the investment bank as a going concern, or

(ii) wind it up in the best interest of the creditors.

(2) The order in which the special administration objectives are listed in this regulation is not significant: subject to regulation 16, the administrator must—

(a) commence work on each objective immediately after appointment, prioritising the order of work on each objective as the administrator thinks fit, in order to achieve the best result overall for clients and creditors; and

(b) set out in the statement of proposals made under paragraph 49 of Schedule B1 (as applied by regulation 15), the order in which the administrator intends to pursue the objectives once the statement has been approved.

(3) The administrator must work to achieve each objective, in accordance with the priority afforded to the objective as provided in paragraph (2), as quickly and efficiently as is reasonably practicable.

Objective 1 – distribution of client assets

11.—(1) If the administrator thinks it necessary in order to expedite the return of client assets, the administrator may set a bar date for the submission of—

(a) claims to the beneficial ownership, or other form of ownership, of the client assets; or

(b) claims of persons in relation to a security interest asserted over, or other entitlement to, those assets.

(2) Claims under paragraph (1) include claims that are contingent or disputed.

(3) In setting a bar date, the administrator must allow a reasonable time after notice of the special administration has been published (in accordance with insolvency rules) for persons to be able to calculate and submit their claims.

(4) Where the administrator sets a bar date—

(a) the administrator shall make a distribution of client assets in accordance with the procedure set down by insolvency rules; and

(b) no distribution of client assets may be made after the bar date without the approval of the court.

(5) Where the administrator has made a distribution after setting a bar date, if the administrator then receives a late claim of a type described in paragraph (1) in respect of assets that have been distributed—

(a) there shall be no disruption to the distribution that has already taken place;

(b) the late-claiming claimant shall not be able to take any action to pursue those assets against the person to whom the assets have been returned or against any future recipient of those assets,

and insolvency rules shall prescribe how the late claim is to be treated by the administrator.

(6) The restrictions in paragraph (5) shall not apply where—

(a) the distribution was made by the administrator in bad faith in which the person to whom the assets were returned was complicit; or

(b) the person to whom the assets were returned is later found to have made a false claim to those assets.

(7) In this regulation, "bar date" means a date by which claims as described in paragraph (1) must be submitted.

(8) This regulation does not apply to client assets which should have been held by the investment bank in accordance with rules made under section 139 of FSMA (clients' money).

Objective 1- shortfall in client assets held in omnibus account

12.—(1) This regulation applies if—

(a) the administrator becomes aware that there is a shortfall in the amount available for distribution of securities of a particular description held by the investment bank as client assets in a client omnibus account; and

(b) the assets in question are not ones which should have been held by the investment bank in accordance with rules made under section 139 of FSMA (clients' money).

(2) The administrator, in making the distribution, shall ensure that the shortfall be borne pro rata by all clients for whom the investment bank holds securities of that particular description in that same account in proportion to their beneficial interest in those securities.

(3) Where a client's beneficial interest in securities held in the account is subject to a security interest of a third party or the investment bank, any reduction of the client's beneficial interest as a result of the application of paragraph (2) shall reduce correspondingly the amount of assets to which the security interest is subject.

(4) The shortfall borne by a client under paragraph (2) is that client's shortfall claim against the investment bank ("shortfall claim").

(5) The value of a client's shortfall claim shall be based on the market price for those securities to which the shortfall claim relates on the date the investment bank entered special administration or, if that is not a business day, on the last business day prior to the investment bank entering administration.

(6) In this regulation—

"business day" has the meaning set out in section 251 of the Insolvency Act;

"client omnibus account" means an account held by another institution in the name of the investment bank, made up of multiple accounts of clients of the investment bank;

"market price" means—

(a) the middle price of the security on the day in question published by the Financial Times or an equivalent pricing source; or, if this is not possible to ascertain,

(b) a fair market value for the security as determined by the administrator based on—

(i) historic trading prices for comparable securities for the day in question as published by the Financial Times or an equivalent pricing source,

(ii) market data in respect of the relevant market on which the security is traded, or

(iii) the result of the operation of any models or pricing methodologies performed by the investment bank or a third party; and

"securities of a particular description" means securities issued by the same issuer which are of the same class of shares or stock; or in the case of securities other than shares or stock, which are of the same currency and denomination and treated as forming part of the same issue.

Objective 2 – engaging with market infrastructure bodies and the Authorities

13.—(1) The administrator shall work with—

(a) a market infrastructure body to—

(i) facilitate the operation of that body's default rules,

(ii) resolve issues arising from the operation of those default rules, and

(iii) facilitate the settlement or prompt cancellation of non-settled market contracts; and

(b) the Authorities to facilitate any actions the Authorities propose to take to minimise the disruption of businesses and the markets as a consequence of a special administration order being made in respect of the investment bank.

(2) In paragraph (1), "work with" means—

(a) comply, as soon as reasonably practicable, with a written request from such a body or from the Authorities for the provision of information or the production of documents (in hard copy or in electronic format) relating to the investment bank;

(b) allow that body or the Authorities, on reasonable request, access to the facilities, staff and premises of the investment bank for the purposes set out in paragraph (1),

but no action need to be taken in accordance with this paragraph to the extent that, in the opinion of the administrator, such action would lead to a material reduction in the value of the property of the investment bank.

(3) Where a market infrastructure body has made a request of the type referred to in paragraph (2), that body shall provide the administrator with such information as the administrator may reasonably require in pursuit of Objective 2.

(4) Under this regulation a person shall not be required to provide any information—

(a) which they would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality between client and professional legal advisor in the Court of Session; or

(b) if such provision by the body holding it would be prohibited by or under any enactment.

(5) In this regulation—

"default rules" has the meaning set out in section 188 of the Companies Act 1989(**a**); and

"enactment" includes—

(a) an enactment comprised in or in an instrument made under an Act of the Scottish Parliament;

(b) Acts and Measures of the National Assembly for Wales and subordinate legislation;

(c) Northern Ireland legislation,

and any regulation, directive or decision of the European Union.

Continuity of supply

14.—(1) This regulation applies where, before the commencement of special administration, the investment bank had entered into arrangements with a supplier for the provision of a supply to the investment bank.

(**a**) Section 188 was amended by SI 2009/853.

(2) After the commencement of special administration, the supplier—

(a) shall not terminate a supply unless—

(i) any charges in respect of the supply, being charges for a supply given after the commencement of special administration remain unpaid for more than 28 days,

(ii) the administrator consents to the termination, or

(iii) the supplier has the permission of the court, which may be given if the supplier can show that the continued provision of the supply shall cause the supplier to suffer hardship; and

(b) shall not make it a condition of a supply, or do anything which has the effect of making it a condition of the giving of a supply, that any outstanding charges in respect of the supply, being charges for a supply given before the commencement of special administration, are paid.

(3) Where, before the commencement of special administration, a contractual right to terminate a supply has arisen but has not been exercised, then, for the purposes of this regulation, the commencement of special administration shall cause that right to lapse and the supply shall only be terminated if a ground in paragraph (2)(a) applies.

(4) Any expenses incurred by the investment bank by the provision of a supply after the commencement of special administration in accordance with this regulation are to be treated as necessary disbursements in the course of the administration.

(5) In this regulation—

"commencement of special administration" means the making of the special administration order;

"supplier" means the person controlling the provision of a supply to the investment bank under a licence, sub-licence or other arrangement, and includes a company that is a group undertaking (within the meaning of section 1161(5) of the Companies Act 2006) in respect of the investment bank; and

"supply" means a supply of—

(a) computer software used by the investment bank in connection with—

(i) the reception, and transmission of orders in relation to securities, or

(ii) the trading of securities;

(b) financial data;

(c) broadband and electronic mail;

(d) data processing; or

(e) commercial bank services (but excluding the supply of services in respect of settlement facilities and the supply of uncommitted credit).

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 set out in the Tables apply in relation to special administration as in relation to Schedule B1 administration or winding up with the modifications set out—

(a) in paragraph (5) (in respect of Table 1);

(b) in paragraph (6) (in respect of Table 2),

and any other modification specified in the Tables.

(5) The modifications in respect of 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 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

Schedule B1	*Subject*	*Modification or comment*
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	(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, the notice of the administrator's appointment shall also be sent 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	Paragraphs 49(1) to (3), 53(1)(b), 54(1) and 55 do not apply where FSA gives a direction under regulation 16 and the direction has not been withdrawn: see regulations 16 - 20.
Para 49		(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— (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	(a) In sub-paragraph (1), the administrator may, if they think it appropriate, 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	(a) Each copy of an administrator's proposals sent to a client under paragraph 49 must 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	(a) Insolvency rules will 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	(a) If the revision proposed by the administrator affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients. (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 the insolvency rules. (c) The FSA must be invited to the creditors' meeting mentioned in sub-paragraph (2)(a). (d) The statement of the proposed revision mentioned in sub-paragraph (2)(b) must also be sent to the FSA.
Para 55	Failure to obtain approval of administrator's proposals	(a) In making an order under sub-paragraph (2) the court must have regard to the special administration objectives. (b) Sub-paragraph (2)(d) is not applied.
Para 56	Further creditors' meetings	The FSA must be invited to any meeting summoned under this paragraph.
Para 57	Creditors' committee	(a) A creditors' committee can only be established by a creditors' meeting to which creditors and clients have both been given notice. (b) The FSA may appoint a person to attend a meeting of the creditors' committee and make representations as to any matter for decision. (c) Insolvency rules shall prescribe that the make up of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives. (d) Where the meeting of creditors fails to establish a creditors' committee, insolvency rules shall prescribe that a meeting of contributories may establish a creditors' committee in accordance with those rules.
Para 58	Correspondence instead of	

	creditors' meeting	
Para 59	Functions of an administrator	
Para 60 (and Schedule 1 to the Insolvency Act)	General powers	*Certain powers under Schedule 4 of the Insolvency Act are also applied (see Table 2).*
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	In this paragraph, the reference to proposals approved under paragraphs 53 or 54 includes proposals where a court order has been obtained dispensing with the need for approval in accordance with regulation 17(5) or 18(5).
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	(a) The FSA may also make an application under this paragraph and, where it does, its claim will be that— (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 impede or prevent the administrator addressing the concerns that necessitated the FSA making a direction.
Para 75	Misfeasance	A client may also make an application under sub-paragraph (2).
Para 79	Court ending administration on application of administrator	Sub-paragraph (2) is not applied. *See regulation 21*

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	(a) The administrator shall only send a notice under sub-paragraph (1) if the investment bank no longer holds client assets. (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. *See regulation 22*
Para 85	Discharge of administration order	
Para 86	Notice to Companies Registrar at the end of administration	
Para 87	Resignation	(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 sub-paragraph (2)(a) must be also given to the applicant. (b) Sub-paragraphs (2)(b) to (d) are not applied.
Para 88	Removal	
Para 89	Disqualification	(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. (b) Sub-paragraphs (2)(b) to (d) are not applied.
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	(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. (b) In sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) does not include a charge on client assets.
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	(a) In sub-paragraph (2), the reference to paragraph

		12(1)(a) to (e) is to regulation 5(1). (b) Sub-paragraphs (3) to (5) are not applied.
Para 104	Presumption of validity	
Para 105	Majority decision of directors	
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 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(a)

(**a**) Relevant amendments to the provisions of the Insolvency Act included in Table 2 are as follows—
section 233 was amended by the Water Act 1989 (c.15) s190, Sch. 25, para 78;
section 389 was amended by the Bankruptcy (Scotland) Act 1993 (c.6) s11(2);
section 386 was amended by the Pension Schemes Act 1993 (c.48) s190, Sch 8, para 18;
section 241 was amended by the Insolvency (No. 2) Act 1994 (c.12) s1;
section 431 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) s5, Sch. 4, para 61;
section 233 was amended by the Gas Act 1995 (c.45) ss16(1), 17(5), 248(3), Sch. 4, para 14;
section 433 was amended by the Youth Justice and Criminal Evidence Act 1999 (c.23) s48, Sch. 3, para 7;
section 233 was amended by the Utilities Act 2000 (c.27) s108, Sch. 6, para 47, Sch. 8;
sections 218(1)(a),(b) and (4), 219(2A) and (2B) were inserted by the Insolvency Act 2000 (c.39) ss10(1), (2), (4) and 11, and section 218(2) and (6), 219(1), (3) and (4), 233, 387, 389, 390 and 426 were amended by ss1, 3, 4, 8, 10(1), (3), (6), (7), 15(1), Sch. 1, paras 1, 8, Sch. 3 paras 1, 15, Sch. 4, para 16, Sch. 5 of that Act;
section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4) s88(2) Sch. 5, para 18;
section 176A was inserted by and sections 212, 233 to 235, 238, 240 to 246, 386, 387, 390 and 424 were amended by the Enterprise Act 2002 ss 248(3), 251(3), 252, 278(2), Sch. 17, paras 9, 18, 22 to 32, 34, 36, Sch. 21 para 4, and Sch. 26;
section 233 was amended by the Communications Act 2003, s406(1), Sch. 17, para 82;
sections 183 and 184 were amended by the Courts Act 2003 (c.39) s109(1), Sch. 8, paras 295 and 296;
section 411 was amended by the Constitutional Reform Act 2005 (c.4) s15(1), Sch. 4, paras 185 and 188;
section 390 was amended by the Mental Capacity Act 2005 (c.9) s67(1), (2), Sch 6 para 31, Sch 7;
section 390 was amended by the Tribunal Courts and Enforcement Act 2007 (c.15) s108(3), Sch.20, paras 1 and 6;
section 185 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp.3) s227(3);
sections 184 and 206 were amended by S.I. 1986/1996; section 426 was amended by S.I. 1989/2404 and S.I. 1989/2405; section 240 was amended by S.I. 2002/1240; section 426 was amended by S.I. 2002/3150; section 233 was amended by S.I. 2004/1822; section 390 was amended by S.I. 2005/ 2078; section 390 was amended by S.S.I. 2005/465; sections 187, 411 and 414 were amended by S.I. 2007/2194; sections 434B and 434C were inserted by, and section 176A was amended by,

Insolvency Act	*Subject*	*Modification or comment*
Sections 74 and 76- 83	Contributories	
Section 167 (and Schedule 4 to the Insolvency Act)	Powers of the liquidator	(a) In subsections (1) and (2), references to "liquidation committee" is to "creditors' committee". (b) A client may also apply to the court under subsection (3). (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".
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	
Section 182	Powers of court (leaseholds)	
Section 183	Effect of execution or attachment	
Section 184	Duties of officers	
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	
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	

S.I. 2008/948; section 434D was inserted by and sections 74, 76–78, 80, 83, 187, 193, 196, 218, 219(2), 390 and 411 were amended by S.I. 2009/1941; section 390 was amended by S.I. 2009/3081; and sections 246A and 246B were inserted by, and section 236 was amended by, S.I. 2010/18.

	evidence	
Section 198	Court order for examination of persons in Scotland	
Section 199	Costs of application for leave to proceed (Scotland)	
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	
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), omit "whether by the court or voluntarily".
Section 212	Summary remedy	
Section 213	Fraudulent trading	
Section 214	Wrongful trading	Subsection (6) is not applied.
Section 215	Proceedings under s213 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 s.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.
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)(b) to (e) are not applied.
Section 241	Orders under sections 238 and 239	Subsection (3A)(c) and (d) and subsections (3B) and (3C) 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 (4)(a) the reference to being unable to pay its debts has the meaning given by regulation 2. (b) Subsections (3)(d) and (5)(b) to (d) are not applied.
Section 246	Unenforceability of liens	(a) Subsection (1) is not applied. (b) "Office holder" means the administrator.
Section 246A	Remote attendance at meetings	Treat every reference to creditor as including client.
Section 246B	Use of websites	
Section 386 (and Schedule 6 to the Insolvency Act as read with Schedule 4 to the Pensions Schemes Act 1993)	Preferential debts	
Section 387	"The relevant date"	Subsections (2)(b), (2A), (3), (4) to (6) are not applied.
Section 389	Offence of acting without being qualified	(a) Treat references to acting as insolvency practitioner as references to acting as the administrator. (b) Subsection (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	(a) The reference in subsection (1) and (3) to "Parts 1 to VII of this Act" includes these Regulations. (b) In subsection (2), a reference in Schedule 8 to the Insolvency Act to doing anything under or for the purpose of a provision in this Act includes a reference to doing anything under or for the purposes of these Regulations.
Section 414	Fees orders	(a) The reference in subsection (1) to "Parts 1 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 424-425	Transactions defrauding creditors	
Section 426	Co-operation between courts	In subsection (10), the reference to "insolvency law" includes provisions made under these Regulations.
Sections 430 and 431 (and Schedule 10 to the Insolvency Act)	Offences	
Section 432	Offences by bodies corporate	In subsection (3) 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 by a provision of that Act as applied by these Regulations.
Sections 434B – 434D	Supplementary provisions	

FSA direction

16.—(1) The FSA may direct the administrator to prioritise one or more special administration objectives.

(2) A direction under paragraph (1) may only be given if the FSA is satisfied that the giving of the direction is necessary, having regard to the public interest in—

(a) the stability of the financial systems of the United Kingdom; or

(b) the maintenance of public confidence in the stability of the financial markets of the United Kingdom.

(3) A direction under paragraph (1) must be given in writing and should set out reasons for giving the direction.

(4) Before giving such a direction the FSA must consult the Treasury and the Bank of England.

(5) If the FSA thinks that the circumstances that gave rise to the need for it to give a direction have passed, it shall withdraw its direction.

Administrator's proposals in the event of FSA direction

17.—(1) Where the FSA has given a direction under regulation 16, the administrator shall make a statement setting out proposals for achieving the special administration objectives in accordance with the FSA's direction.

(2) The statement under paragraph (1) must deal with such matters as may be prescribed by insolvency rules and may include—

(a) a proposal for a voluntary arrangement under Part 1 of the Insolvency Act (although this regulation is without prejudice to section 4(3) of that Act); or

(b) a proposal for a compromise or arrangement to be sanctioned under Part 26 of the Companies Act 2006 (arrangements and reconstructions).

(3) The statement shall be agreed with the FSA.

(4) Paragraphs 49(4) to (8), 50, 51, 53(1)(a), (2) and (3) of Schedule B1 (as applied by regulation 15) shall then apply to the statement, but the administrator need not send the FSA a copy of the statement of proposals.

(5) If the meeting of creditors is unable to approve the statement, the administrator may apply to court for an order dispensing with the need for the approval of the meeting of creditors.

(6) Where before the FSA gives its direction under regulation 16, a meeting of creditors has approved the statement of proposals in accordance with paragraph 52 of Schedule B1 (as applied by regulation 15), that statement of proposals shall be ignored for the purposes of regulations 16 and 17.

Revision of proposals in the event of FSA direction

18.—(1) This regulation applies where—

(a) the administrator's statement of proposals under regulation 17 has been agreed with the FSA and approved by the meeting of creditors (or the court has made an order dispensing with the need for that approval);

(b) the administrator proposes a revision to the proposals;

(c) the administrator thinks the revision is substantial; and

(d) the FSA has not withdrawn its direction given under regulation 16.

(2) The administrator shall agree the revised statement with the FSA.

(3) Paragraph 54(2) to (5)(a) of Schedule B1 (as applied by regulation 15) shall then apply to the statement.

(4) If the meeting of creditors is able to approve the revised statement, paragraphs 54(6) and (7) of Schedule B1 (as applied by regulation 15) shall then apply.

(5) If the meeting of creditors is unable to approve the revised statement, the administrator may apply to the court for an order dispensing with the need for the approval of the meeting of creditors.

Failure to obtain approval of the administrator's proposals

19.—(1) Where the administrator makes an application to the court under regulation 17(5) or 18(5), the court may—

(a) make the order if it considers that the proposals set out in the statement are reasonably likely to address the concerns that necessitated the FSA giving a direction under regulation 16;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any other order that the court thinks appropriate.

(2) Where the court makes an order, the administrator shall as soon as reasonably practicable send the order to the registrar of companies and to such other persons as may be prescribed.

(3) Paragraph 54(7) of Schedule B1 (as applied by regulation 15) applies as if the reference in that paragraph to sub-paragraph (6) were a reference to paragraph (2) of this regulation.

FSA direction withdrawn

20.—(1) This regulation applies if after the administrator's statement of proposals has been agreed with the FSA under regulation 17, the FSA's direction is then withdrawn.

(2) If the administrator proposes a revision to the statement of proposals and the administrator thinks that the proposed revision is substantial, then paragraph 54 of Schedule B1 (as applied by regulation 15) applies.

Successful rescue

21.—(1) This regulation applies if the administrator has pursued the first part of Objective 3 (as set out in regulation 10(1)(c)(i)) and thinks that it has been sufficiently achieved.

(2) The administrator shall make an application under paragraph 79 of Schedule B1 (as applied by regulation 15).

(3) An administrator who makes an application in accordance with paragraph (2) must send a copy to the FSA.

Dissolution or voluntary arrangement

22.—(1) This section applies if—

(a) the administrator believes that Objectives 1 and 2 have been sufficiently achieved, and

(b) the administrator pursues the second part of Objective 3 (as set out in regulation 10(1)(c)(ii)).

(2) The administrator may—

(a) give a notice under paragraph 84 of Schedule B1 (as applied by regulation 15); or

(b) make a proposal in accordance with Part 1 of the Insolvency Act (company voluntary arrangement).

(3) Part 1 of the Insolvency Act shall apply to a proposal made by an administrator with the following modification.

(4) In section 3 (summoning of meetings), subsection (2) (and not (1)) applies.

(5) The action that may be taken by a court under section 5(3)(**a**) (effect of approval) includes suspension of the special administration order.

(6) On the termination of a company voluntary arrangement the administrator may apply to the court to lift the suspension of the special administration order.

(**a**) Section 5(3) was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 9, 11(a) and (b) and by the Insolvency Act 2000 (c.39) section 2(a), Schedule 2, Part I, paragraphs 1, 6(b), section 15(1), Schedule 5.

Provisions of Parts 2 and 3 of the Act to apply to special administration

23.—(1) The provisions of the Act set out in Table 3 apply in relation to special administration as in relation to bank insolvency or bank administration, with—

(a) the modifications set out in paragraph (2); and

(b) any other modification set out in Table 3.

(2) The modifications referred to in paragraph (1) are—

(a) a reference to the bank is a reference to the investment bank;

(b) a reference to a bank insolvency order is a reference to a special administration order; and

(c) a reference to "this Part" is a reference to these Regulations.

Table 3: Applied provisions: Parts 2 and 3 of the Act

Provision	*Subject*	*Modification or comment*
Section 117	Alternative order	(a) The FSA may make an application under subsection (1) without the consent of the Bank of England. (b) Ignore subsection (2)(b).
Section 163	Partnerships	
Section 164	Scottish partnerships	

Disqualification of directors

24.—(1) In this regulation "the Disqualification Act" means the Company Directors Disqualification Act 1986(**a**).

(2) In the Disqualification Act—

(a) a reference to liquidation includes a reference to special administration;

(b) a reference to winding up includes a reference to making or being subject to a special administration order;

(c) a reference to becoming insolvent includes a reference to becoming subject to a special administration order; and

(d) a reference to a liquidator includes a reference to an administrator.

(3) For the purpose of the application of section 7(3)(**b**) of the Disqualification Act (disqualification order or undertaking) to an investment bank which is subject to a special administration order, the responsible office-holder is the administrator.

(4) In section 21 of the Disqualification Act(**c**) (interaction with the Insolvency Act), the references to the provisions of the Insolvency Act include those provisions as applied by these regulations.

Northern Irish equivalent enactments

25. Schedule 3 (Table setting out enactments referred to in these Regulations together with their Northern Irish equivalents) has effect.

Limited liability partnerships

26. Schedule 4 (Application of the provisions of these Regulations to limited liability partnerships) has effect.

(**a**) 1986 c. 46.
(**b**) Section 7(3) was amended by the Enterprise Act 2002, section 248(3), Schedule 17, paragraphs 40, 42.
(**c**) Section 21 was amended by the Companies Act 1989, section 212, Schedule 24, the Insolvency Act 2000 (c. 39) section 8, paragraphs 1, 14(1) to (3)(a) and S.I. 2009/1941.

Consequential modifications to legislation

27. Schedule 5 (Consequential modifications to legislation) has effect.

Name
Name
[Date] Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 9

Special administration (bank insolvency)

1. This Schedule provides for a procedure known as special administration (bank insolvency) to be used as an alternative to special administration where the investment bank is a deposit-taking bank.

2. A special administration (bank insolvency) order is an order appointing a person as the administrator for the purpose of this Schedule.

3. A special administration (bank insolvency) order is to be treated as a special administration order save that—

(a) regulations 4 to 8 do not apply in respect of special administration (bank insolvency);

(b) the modifications set out in this Schedule shall apply; and

(c) in regulation 23, in the application of section 117 of the Act, the modifications set out in column 3 do not apply.

4.—(1) An administrator appointed under a special administration (bank insolvency) order has the following objectives—

(a) Objective A is to work with the FSCS so as to ensure that as soon as is reasonably practicable each eligible depositor—

(i) has the relevant account transferred to another financial institution, or

(ii) receives payments from (or on behalf of) the FSCS; and

(b) the special administration objectives as set out in regulation 10.

(2) Objective A takes precedence over the special administration objectives until a full payment resolution is passed (but the administrator is to begin working towards the special administration objectives immediately on appointment, in accordance with regulation 10).

(3) The administrator must ensure that an FSA direction given under regulation 16 does not prejudice the achievement of Objective A.

5.—(1) An administrator appointed under a special administration (bank insolvency) order is to be treated as if they were appointed under a special administration order, subject to the following modifications.

(2) As regards Schedule B1 (as applied by regulation 15)—

(a) the FSCS shall be appointed as a member of the creditors' committee referred to in paragraph 57 unless it informs the administrator that it does not wish to be appointed;

(b) the Objective A Committee may also make an application under paragraph 74(2));

(c) disregard paragraph 81;

(d) in the application of paragraph 87, the administrator may only resign—

(i) after the Objective A committee has passed a full payment resolution, and,

(ii) with the consent of the Bank of England,

and the notice of resignation shall be copied to the Bank of England;

(e) before the Objective A committee has passed a full payment resolution, only the Bank of England or the Objective A committee may make an application to remove the administrator from office under paragraph 88;

(f) the notice given under paragraph 89(2)(a) must also be copied to the Bank of England;

(g) for the purposes of paragraphs 90 and 91, before the passing of the full payment resolution, if there is any vacancy in the office of administrator, the Bank of England must appoint a replacement administrator as soon as is reasonably practicable; and

(h) the Bank of England may also make an application under paragraph 103(2).

(3) If any application is made to the court under these Regulations before the Objective A committee has passed a full payment resolution, the court, in giving directions, must have regard to the achievement of Objective A.

6.—(1) The provisions of Part 2 of the Act (bank insolvency) set out in the Table apply in relation to special administration (bank insolvency) with the following modifications—

(a) the modifications set out in sub-paragraph (2); and

(b) any other modification specified in the Table.

(2) The modifications are that a reference to—

(a) a bank is to the deposit-taking bank;

(b) bank insolvency is to special administration (bank insolvency);

(c) a bank insolvency order is to a special administration (bank insolvency) order;

(d) the bank liquidator is to the administrator;

(e) Objective 1 in section 99 of the Act or Objective 1 is to Objective A in paragraph 4;

(f) the liquidation committee is to the Objective A committee;

(g) rules made under section 411 of the Insolvency Act 1986 is to insolvency rules; and

(h) section 168(5) of the Insolvency Act is to paragraph 74(2) of Schedule B1 (as applied by regulation 15).

TABLE OF APPLIED PROVISIONS

Provision of Part 2 of the Act	*Subject*	*Modification or comment*
Section 94(2) to (4)	The order	
Section 95	Application	Ignore subsection (1)(c)
Section 96	Grounds for applying	
Section 97	Grounds for making	In making a special administration (bank insolvency) order, the court must also be satisfied that the company is an investment bank.
Section 98	Commencement	
Section 100	Liquidation committee	(a) This committee is established only to oversee the achievement of Objective A under paragraph 4. (b) Ignore subsections (6) and (7).
Section 101	Liquidation committee: supplemental	(a) The references in subsection (5)(b) to sections 168(3) or 169(2) of the Insolvency Act are to paragraph 63 of Schedule B1 (as applied by regulation 15).

		(b) On the passing of the full payment resolution, the Objective A committee ceases to exist. (c) Ignore subsections (7) to (9).
Section 102	Objective 1: (a) or (b)	The reference to Objective 2 is a reference to the special administration objectives.
Section 123	Role of the FSCS	Ignore subsection (3).
Section 124	Transfer of accounts	

7. Section 120 of the Act is applied with the following modifications—

(a) in subsection (7)(b), the reference to a bank insolvency order includes a special administration order;

(b) in subsection (8), the reference to bank insolvency order includes a special administration order or a special administration (bank insolvency) order;

(c) in subsection (10)(b), the reference to bank insolvency order includes a special administration order or a special administration (bank insolvency) order; and

(d) in subsection (10)(c), the reference to bank insolvency order includes a special administration (bank insolvency) order.

8.—(1) Section 135 of the Insolvency Act is applied with the following modifications—

(a) in subsection (1), the reference to the presentation of a winding up petition is to the application for a special administration (bank insolvency) order;

(b) in subsection (2)—

(i) the reference to England and Wales includes Scotland,

(ii) "other fit person" means a person qualified to act as an insolvency practitioner and who consents to act, and

(iii) ignore the reference to the official receiver; and

(c) subsection (3) is not applied.

(2) A person appointed under section 135 (as applied by this paragraph)—

(a) must not pay dividends to creditors;

(b) may only be removed by order of the court; and

(c) shall vacate office if they cease to be qualified to act as a insolvency practitioner.

(3) The appointment of the person appointed under section 135 (as applied by this paragraph) lapses on the appointment of an administrator under a special administration (bank insolvency) order.

9. In this Schedule—

"eligible depositor" has the meaning set out in section 93(3) of the Act;

"full payment resolution" has the meaning set out in section 100(5) of the Act as applied by paragraph 6;

"Objective A" has the meaning set out in paragraph 4; and

"Objective A committee" means the committee set up to oversee the achievement of Objective A in paragraph 4.

SCHEDULE 2

Regulation 9

Special administration (bank administration)

General provisions

1. This Schedule provides for a procedure known as special administration (bank administration) to be used as an alternative to special administration where part of the business of the deposit-taking bank is sold to a commercial purchaser in accordance with section 11 of the Act, or transferred to a bridge bank in accordance with section 12 (and it can also be used in certain cases of multiple transfers under Part 1 of the Act).

2.A special administration (bank administration) order is an order appointing a person as an administrator for the purposes of this Schedule.

3.—(1) An administrator appointed under a special administration (bank administration) order has the following objectives—

(a) Objective A: to provide support for a private sector purchaser or bridge bank (see section 138 of the Act as applied by paragraph 6), and

(b) the special administration objectives as set out in regulation 10.

(2) Objective A takes precedence over the special administration objectives until the Bank of England notifies the administrator that the residual bank is no longer required in connection with the private sector purchaser or bridge bank, but the administrator is to begin working on the special administration objectives immediately on appointment in accordance with regulation 10.

(3) A notice under sub-paragraph (2) is referred to as an "Objective A Achievement Notice".

(4) The administrator shall ensure that an FSA direction given under regulation 16 shall not prejudice the achievement of Objective A.

(5) In pursuing the special administration objectives following transfer to a bridge bank, the administrator may not realise any asset unless—

(a) the asset is on a list of realisable assets agreed between the administrator and the Bank of England; or

(b) the Bank of England has given an Objective A Achievement Notice.

(6) The reference to 'asset' in sub-paragraph (5) does not include client assets.

4. An administrator appointed under a special administration (bank administration) order is to be treated as if they were appointed under a special administration order subject to any modification made by this Schedule.

5. A special administration (bank administration) order is to be treated as a special administration order save that—

(a) regulations 4 to 8, 21 and 22 do not apply;

(b) regulation 15 does not apply except where otherwise stated;

(c) the modifications set out in this Schedule shall apply.

Application of Part 3 of the Act and the Insolvency Act

6.—(1) The provisions of Part 3 of the Act (bank administration) set out in the table apply in relation to a special administration (bank administration) with the following modifications—

(a) the modifications set out in sub-paragraph (2); and

(b) any other modification specified in the Table.

(2) The modifications are that a reference to—

(a) a bank is to a deposit-taking bank;

(b) bank administration is to special administration (bank administration);

(c) a bank administration order is to a special administration (bank administration) order;

(d) the bank administrator is to the administrator;

(e) Objective 1, or Objective 1 in section 137 or 138, is to Objective A in paragraph 4;

(f) the Objectives in section 137 is to Objective A and the special administration objectives;

(g) an Objective 1 Achievement Notice is to an Objective A Achievement Notice;

(h) an Objective 1 Interim Achievement Notice is to an Objective A Interim Achievement Notice; and

(i) rules made under section 411 of the Insolvency Act 1986 is to insolvency rules.

(3) Where the provisions of Part 3 of the Act applied below apply a provision of the Insolvency Act with a modification, that modification is applied in relation to a special administration (bank administration) unless otherwise stated.

TABLE OF APPLIED PROVISIONS

Provision of Part 3 of the Act	*Subject*	*Modification or comment*
Section 138	Objective 1: supporting private sector purchaser or bridge bank	
Section 139(2)	Objective A: duration	The reference to section 145 is to that section as applied by this paragraph.
Section 141(2)-(4)	Bank administration order	
Section 142	Application	
Section 143	Grounds for applying	
Section 144	Grounds for making	In making a special administration (bank administration) order, the court must also be satisfied that the company is an investment bank.
Section 145	General powers etc	(a) In subsection (1), the administrator may not rely on this subsection for the purpose of recovering property transferred by a property transfer instrument. (b) Subsection (3)(c), (5) and (6) are not applied.
Section 145	General powers Table 1: Applied Provisions: Insolvency Act 1986, Schedule B1	In Table 1 after subsection (6)— (a) Paragraph 41 is not applied. (b) In paragraph 46 — (i) in sub-paragraph (3)(a), in addition to obtaining the list of creditors, the administrator shall obtain as complete a list as possible of the clients of the investment bank, (ii) 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, and (iii) where the special administration application has not been made by the FSA, the notice of the administrator's appointment shall also be sent to the FSA. (c) In paragraph 47, in sub-paragraph (2), the statement must also include particulars (to the extent prescribed) of

		the client assets held by the investment bank. *(Paragraphs 49 to 54 (and section 147 of the Act) are not applied; instead see paragraphs 7 to 13 of this Schedule.)* (d) Paragraph 55 is only applied where the Bank of England has given the Objective A Achievement Notice and— (i) in making an order under sub-paragraph (2) the court must have regard to the special administration objectives, and. (ii) sub-paragraph (2)(d) is not applied. (e) In paragraph 56— (i) before the Bank of England has given an Objective A Achievement Notice, the administrator may comply with a request under sub-paragraph (1)(a) only if satisfied that it will not prejudice the achievement of Objective A, and (ii) the FSA must be invited to any meeting under this paragraph. (f) In paragraph 57— (i) a creditors' committee can only be established by a creditors' meeting of which creditors and clients have been both given notice, (ii) before the Bank of England has given an Objective A Achievement Notice, the creditors' committee, when considering any matter, must comply with any directions given to it by the Bank of England, (ii) the FSA may appoint a person to attend a meeting of the creditors' committee and make representations as to any matter for decision, (iii) the FSCS shall be appointed as a member of the creditors' committee unless it indicates to the administrator that it does not wish to be appointed. (iv) the administrator must ensure that the make up of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives, and (v) where the meeting of creditors fails to establish a creditors' committee, insolvency rules shall prescribe that a meeting of contributories may establish a creditors' committee. (g) In paragraph 60 (and Schedule 1) the exercise of powers is subject to the need to prioritise Objective A. (h) In paragraph 62, the administrator may also call a meeting of clients or contributories. (i) In paragraph 68— (i) sub-paragraph (1) includes proposals where a court order has been obtained dispensing with the need for approval in accordance with paragraph 8 or 13 of this Schedule, and (ii) the references to paragraphs 53 and 54 are to

		paragraphs 7 and 8 of this Schedule. (j) In paragraph 73, sub-paragraph (2)(d) is not applied. (k) In paragraph 74— (i) the FSA may also make an application under sub-paragraph (1) and, where it does, its claim will be that— (aa) 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 (bb) 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, (ii) clients may also make an application under sub-paragraphs (1) and (2), but, until the Bank of England has given an Objective A Achievement Notice, an order may be made on the application of a client only if the court is satisfied that it would not prejudice pursuit of Objective A, and (iii) where the FSA have given a direction under regulation 16, an order may not be made on an application (by persons other than the Bank of England or the FSA) under this paragraph before the direction is withdrawn if it would impede or prevent the administrator addressing the concerns that necessitated the FSA giving a direction. (l) A client is included in the list of those who may make an application under paragraph 75(2). (m) Paragraphs 79 and 84 are not applied: *see paragraphs 14 and 15 of this Schedule*. (n) In paragraph 91, after the Bank of England has given an Objective A Achievement Notice, the FSA may make an application to appoint an administrator but the restrictions in sub-paragraph (2) apply. (o) Paragraph 96 is not applied. (p) In paragraph 98, sub-paragraph (2)(b) does not apply. (q) In paragraph 99— (i) 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 client assets, and (ii) in sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) does not include a charge on client assets. (r) In paragraph 101, the reference to paragraphs 87 to 99 is to paragraphs 87 to 91, 98 and 99. (s) In paragraph 103(2), after the Bank of England has given the Objective A Achievement Notice, in sub-

		paragraph (2)(a), an application to the court under sub-paragraph (1) shall be made by a person listed in regulation 5(1). (t) In paragraph 106, sub-paragraphs (2)(a), (2)(b) and (2)(l) to (n) are not applied. (u) In paragraph 107, in considering an application the court must have regard to Objective A and the special administration objectives. (v) In paragraph 108— (i) the references in sub-paragraph (1) are to paragraphs 7 and 8 of this Schedule, and (ii) sub-paragraph (3) is not applied. (w) In paragraph 111, the definition of "administrator" and sub-paragraph (1A)(b) and (c) are not applied, and the reference to paragraph 50 is to paragraph 50 as applied by paragraph 7 of this Schedule.
	General powers etc Table 2: Applied Provisions: Other Provisions of the Insolvency Act 1986	In Table 2 after subsection (6)— (a) In section 135— (i) the reference in (e) to section 138(2)(a) is to that section as applied by this paragraph, and (ii) the reference in (f) to Objective 2 should be to the special administration objectives. (b) In section 234— (i) subsection (1) is not applied, and (ii) "office holder" means the administrator. (c) In section 235— (i) subsections (1) and (4)(b) to (d) are not applied, and (ii) "office holder" means the administrator. (d) In section 236— (i) subsection (1) is not applied, and (ii) "office holder" means the administrator. (e) In section 240— (i) in subsection (2)(a), the reference to being unable to pay its debts has the meaning given by regulation 2, and (ii) subsections (1)(d) and (3)(b) to (e) are not applied. (f) In section 245— (i) in subsection (4)(a) the reference to being unable to pay its debts has the meaning given by regulation 2, and (ii) subsections (3)(d) and (5)(b) to (d) are not applied. (g) In section 246— (i) subsection (1) is not applied, and (ii) "office holder" means the administrator.

		(h) In section 387, subsections (2)(b), (2A), (3) and (4) to (6) are not applied. (i) In section 423, subsection (4) is not applied. (j) In section 432, in subsection (3) ignore all the provisions of the Insolvency Act listed there except for sections 206 to 211. (k) In section 433, subsection (4) is not applied.
Section 146	Status of administrator	
Section 148	Sharing information	
Section 149	Multiple transfer-general application	
Section 150	Bridge bank to private sector purchaser	In subsection (5), the reference to section 139 is to paragraph 4(2) above.
Section 151	Property transfer from bridge bank	
Section 157	Other processes	The definition of an insolvency power includes regulation 6 (application for a special administration order)

(4) The provisions of the Insolvency Act set out in regulation 15(6) and not included in the table in sub-paragraph (3) are also applied by this Schedule, with the modifications set out in that regulation and in sub-paragraph (2).

Statement of proposals

7.—(1) In a special administration (bank administration), the proposals setting out how the purpose of the administration is to be achieved ("the statement") shall be drawn up as follows.

(2) The administrator must, as soon as is reasonably practicable after the deposit-taking bank enters special administration (bank administration), make a statement setting out proposals for achieving Objective A and the special administration objectives.

(3) In a case of special administration (bank administration) following transfer to a bridge bank, before making the statement the administrator must consult the Bank of England about the likelihood of a payment to the residual bank from a scheme established by a resolution fund order under section 49(3) of the Act.

8.—(1) The statement is to be agreed with the Bank of England and, where the FSA has given a direction under regulation 16, with the FSA.

(2) If the FSA have not given a direction under regulation 16 and the administrator is unable to agree a statement with the Bank of England—

(a) the administrator may apply to the court for directions under paragraph 63 of Schedule B1 (as applied by this Schedule); and

(b) the court may make any order it considers appropriate, including dispensing with the need for the Bank of England's agreement.

(3) If the FSA have given a direction under regulation 16 which has not been withdrawn and the administrator is unable to agree a statement with either the Bank of England or the FSA, the administrator may apply to the court for directions under paragraph 63 of Schedule B1 (as applied by this Schedule).

(4) Following an application under sub-paragraph (3), the court may—

(a) make an order dispensing with the need for agreement;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any other order that the court thinks appropriate.

(5) The court may make an order in sub-paragraph (4)(a) only if it considers that—

(i) the proposals set out in the statement are reasonably likely to address the concerns that necessitated the FSA giving a direction under regulation 16, and

(ii) the FSA direction is not likely to prejudice the achievement of Objective A.

(6) Where the court makes an order, the administrator shall as soon as reasonably practicable send the order to the registrar of companies and to such other persons as may be prescribed by insolvency rules.

9.—(1) The administrator shall send the statement to—

(a) the FSA,

(b) the registrar of companies,

(c) every creditor of the deposit-taking bank of whose claim and address the administrator is aware,

(d) every member of the deposit-taking bank of whose address the administrator is aware, and

(e) every client of the deposit-taking bank of whose claim the administrator is aware and of whom the administrator has a means of contacting.

(2) The administrator shall comply with sub-paragraph (1) as soon as reasonably practicable after—

(a) obtaining the agreement of the Bank of England (and where the FSA has given a direction, the FSA); or

(b) the court has made an order dispensing with the need for this agreement,

but in any event the statement is to be sent to the persons listed in sub-paragraph (1) before the end of the period of eight weeks beginning with the day on which the residual bank enters special administration (bank administration).

(3) The administrator shall be taken to comply with sub-paragraph (1)(d) if they publish in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the deposit-taking bank who applies in writing to a specified address.

(4) 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 which applies in writing to a specified address.

(5) Paragraphs 49(7) and (8) of Schedule B1 apply, and the reference in paragraph 49(7) to sub-paragraph (5) shall be a reference to sub-paragraph (2) of this paragraph.

Meeting of creditors to approve statement

10.—(1) Paragraph 50 of Schedule B1 applies save that—

(a) in sub-paragraph (1), the administrator may, if they think it appropriate, also invite the clients to the meeting of creditors and the clients shall be given the prescribed period of notice under sub-paragraph (1)(b); and

(b) the FSA may appoint a person to attend a meeting of creditors and make representations as to any matter for decision.

(2) Paragraph 51 of Schedule B1 to the Insolvency Act applies save that—

(a) the reference to paragraph 49(4)(b) is to paragraph 9(1) of this Schedule; and

(b) each copy of an administrator's proposals sent to a client or to the FSA under paragraph 9(1) of this Schedule must be accompanied by an invitation to the initial creditor's meeting.

(3) Paragraph 53 of Schedule B1 applies save that—

(a) sub-paragraph (1)(b) shall not apply; and

(b) in 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, and insolvency rules will prescribe how clients shall vote at the meeting of creditors.

(4) If the meeting of creditors is unable to approve the statement of proposals, the administrator may apply to court for an order dispensing with the need for the approval of the meeting of creditors and paragraph 13 applies.

(5) Where, before the FSA gives a direction under regulation 16, a meeting of creditors has already approved the statement of proposals under this paragraph, when the FSA gives its direction a new statement of proposals shall be drawn up in accordance with paragraph 7 and this paragraph to replace the statement that has already been approved.

Revision to the statement of proposals (Objective A not yet achieved)

11.—(1) This paragraph applies where—

(a) the administrator's statement of proposals under paragraph 7 has been agreed with the Bank of England (and, as the case may be, the FSA) and approved by the meeting of creditors (or if the court has made an order dispensing with the need for those approvals);

(b) the administrator proposes a revision to the statement;

(c) the administrator thinks the revision is substantial; and

(d) the Bank of England has not given the Objective A Achievement Notice.

(2) The administrator shall agree the revised statement with the Bank of England and, where the FSA has given a direction and it has not been withdrawn, with the FSA.

(3) Paragraphs 8(2) to (6) shall apply where the administrator is unable to agree a statement with the Bank of England or (as the case may be) the FSA.

(4) Once the revision has been approved by the Bank of England (and, as the case may be, the FSA) or, if the court has made an order dispensing with the need for those approvals, paragraph 54(2) to (5)(a) of Schedule B1 applies in respect of the revised statement save that—

(a) if the administrator thinks that the proposed revision affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients;

(b) if the administrator thinks that the proposed revision only affects either creditors or clients, then paragraph 54 only applies in respect of the affected party,

and where sub-paragraph (b) applies, the party not affected must be informed of the proposed revision in a manner prescribed in the rules;

(5) In sub-paragraph (2) of paragraph 54 the FSA must be invited to the creditors' meeting and sent a copy of the statement of the proposed revision.

(6) If the meeting of creditors is unable to approve the statement, the administrator may apply to court for an order dispensing with the need for the approval of the meeting of creditors and paragraph 13 applies.

Revision to the statement of proposals (Objective A achieved)

12.—(1) This paragraph applies where —

(a) the events in paragraphs 11(1)(a) to (c) apply and—

(b) the Bank of England has given the Objective A Achievement Notice.

(2) Paragraph 54 of Schedule B1 applies in respect of that statement save that—

(a) if the revision proposed by the administrator affects both creditors and clients, then every reference in paragraph 54 to creditors includes clients;

(b) if the administrator thinks that the revision proposed only affects either creditors or clients, then paragraph 54 only applies in respect of the affected party,

and where sub-paragraph (b) applies, the party not affected must be informed of the proposed revision in a manner prescribed in the rules.

(3) In sub-paragraph (2) of paragraph 54 the FSA must be invited to the creditors' meeting and be sent a copy of the statement of the proposed revision.

Powers of the court

13. —(1) Where the administrator makes an application to the court under paragraphs 10(4) or 11(5), the court may—

(a) make the order, if it considers that the proposals set out in the statement are likely to achieve Objective A, having regard to the achievement of the special administration objectives;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any other order that the court thinks appropriate.

(2) Where the FSA has given an direction under regulation 16 and the direction has not been withdrawn, the court may make an order in sub-paragraph (1)(a) only if it considers that—

(a) the proposals set out in the statement are reasonably likely to address the concerns that necessitated the FSA giving a direction; and

(b) the FSA direction is not likely to prejudice the achievement of Objective A.

(3) Where the court makes an order, the administrator shall as soon as reasonably practicable send the order to the registrar of companies and to such other persons as may be prescribed.

(4) Paragraph 54(7) of Schedule B1 applies as if the reference in that paragraph to sub-paragraph (6) were a reference to sub-paragraph (3) in this paragraph.

Ending of special administration (bank administration) (rescue)

14.—(1) This regulation applies if—

(a) the Bank of England has given an Objective A Achievement Notice; and

(b) the administrator has pursued the first part of Objective 3 (as set out in regulation 10(1)(c)(i)) and thinks that it has been sufficiently achieved.

(2) The administrator shall make an application under paragraph 79 of Schedule B1 (as applied by regulation 15).

(3) An administrator who makes an application in accordance with sub-paragraph (2) must send a copy to the FSA.

Ending of special administration (bank administration) (dissolution or voluntary arrangement

15.—(1) This section applies if—

(a) the Bank of England has given an Objective A Achievement Notice;

(b) the administrator believes that Objectives 1 and 2 have been sufficiently achieved; and

(c) the administrator pursues the second part of Objective 3 (as set out in regulation 10(1)(c)(ii)).

(2) The administrator may—

(a) give a notice under paragraph 84 of Schedule B1 (as applied by regulation 15); or

(b) make a proposal in accordance with Part 1 of the Insolvency Act (company voluntary arrangement).

(3) Part 1 of the Insolvency Act shall apply to a proposal made by an administrator with the following modifications—

(a) in section 3 (summoning of meetings), subsection (2) (and not (1)) applies;

(b) the action that may be taken by a court under section 5(3) (effect of approval) includes suspension of the special administration order; and

(c) on the termination of a company voluntary arrangement the administrator may apply to the court to lift the suspension of the special administration order.

Interpretation

16. In this Schedule—

"bridge bank" is a company wholly owned by the Bank of England to which all or part of the business of a deposit-taking bank may be transferred in accordance with section 12 of the Act;

"residual bank" means the non-sold or non-transferred part of the deposit-taking bank which remains after a power under section 11 (sale to private sector purchaser) or section 12 (transfer to bridge bank) of the Act has been exercised in respect of that bank;

"Objective A" has the meaning set out in paragraph 3(1)(a);

"Objective A Achievement Notice" has the meaning set out in paragraph 3(3);

"private sector purchaser" means a commercial purchaser to whom part of the business of the deposit-taking bank is sold to in accordance with section 11 of the Act; and

"statement" means the statement of proposals drawn up in accordance with paragraph 7.

SCHEDULE 3

Regulation 25

Table showing enactments referred to in these Regulations together with the equivalent enactment having effect in relation to Northern Ireland

Enactment	*Equivalent enactment in N. Ireland*	*Modifications to the N. Ireland enactment*
Insolvency Act	Insolvency (Northern Ireland) Order 1989(**a**) ("the Insolvency Order");	
The following provisions are of the Insolvency Act	*The following provisions are of the Insolvency Order*	
Part 1	Part 2	
Part 4 or 5	Part 5 or 6	
Section 3	Article 16	
Section 4	Article 17	
Section 5	Article 18	
Sections 74 - 83	Articles 61 – 69	
Section 79	Article 13	
Section 84	Article 70	
Section 123	Article 103	
Section 124(2)	Article 104	
Section 124A(1)	Article 104A	
Section 125	Article 105	
Section 135	Article 115	
Section 167 (and Schedule 4)	Article 142 (and Schedule 2)	
Section 168	Article 143	
Section 176	Article 150	

Section 176A	Article 150A	
Section 178	Article 152	
Section 179	Article 153	
Section 180	Article 154	
Section 181	Article 155	
Section 182	Article 156	
Section 186	Article 157	
Section 187	Article 158	
Section 194	Article 163	
Section 206	Article 170	
Section 207	Article 171	
Section 208	Article 172	
Section 209	Article 173	
Section 210	Article 174	
Section 211	Article 175	
Section 212	Article 176	
Section 213	Article 177	
Section 214	Article 178	
Section 215	Article 179	
Section 216	Article 180	
Section 217	Article 181	
Section 218	Article 182	The reference to the Secretary of State is to be treated as a reference to the Department of Enterprise, Trade and Investment.
Section 219	Article 183	
Section 233	Article 197	

Section 234	Article 198	
Section 235	Article 199	
Section 236	Article 200	
Section 237	Article 201	
Section 238	Article 202	
Section 239	Article 203	
Section 240	Article 204	
Section 241	Article 205	
Section 244	Article 206	
Section 245	Article 207	
Section 246	Article 208	
section 247	Article 6	
Section 386 (and Schedule 6 and Schedule 4 to the Pensions Schemes Act 1993)	Article 346 (and Schedule 4 and Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975	
Section 387	Article 347	
Section 388	Article 349	
Section 389	Article 348	
Section 390	Article 349	
Section 391	Article 350	
Section 411	Article 359	(a) Ignore the modifications to section 411 set out in column 3 of Table 2 in Regulation 15. (b) Rules shall be made by the Department of Justice with the concurrence of— (i) the Department of Finance and Personnel; and (ii) in the case of rules that affect court procedure, the Lord Chief Justice of Northern Ireland. (c) The reference to "this

		Order" in paragraph (1) includes these Regulations. (d) In paragraph (2), a reference in Schedule 5 to the Insolvency Order 1989 to doing anything under or for the purpose of a provision in this Order includes a reference to doing anything under or for the purposes of a provision in these Regulations.
Section 414	Article 361	(a) Ignore the modifications to section 414 set out in column 3 of Table 2 in Regulation 15. (b) The reference in paragraph (1)(a) to "this Order" includes these Regulations. (c) Ignore the reference to the official receiver.
Section 423	Article 367	
Sections 424-425	Article 368 -369	
Sections 430 and 431 (and Schedule 10)	Articles 373 and 374 and Schedule 7	
Section 432	Article 374	
Section 433	Article 375	(a) Ignore the modifications to section 433 set out in column 3 of Table 2 in Regulation 15. (b) In paragraph (1)(a) a statement of affairs prepared "for the purposes of any provision of this Order" includes any statement made by a provision of that Order as applied by these regulations.
Sections 434B – 434D	Articles 384 - 386	
Schedule B1	Schedule B1	
The following provisions are of Schedule B1	*The following provisions are of Schedule B1*	
Para 40(1)(a)	Para 41(1)(a)	
Para 42	Para 43	
Para 43	Para 44	

Para 44	Para 45	
Para 45	Para 46	
Para 46	Para 47	
Para 47	Para 48	
Para 48	Para 49	
Para 49	Para 50	
Para 50	Para 51	
Para 51	Para 52	
Para 53	Para 54	
Para 54	Para 55	
Para 55	Para 56	
Para 56	Para 57	
Para 57	Para 58	
Para 58	Para 59	
Para 59	Para 60	
Para 60 (and Schedule 1 to the Insolvency Act)	Para 61 (and Schedule 1 to the 1989 Order)	
Para 61	Para 62	
Para 62	Para 63	
Para 63	Para 64	
Para 64	Para 65	
Para 65	Para 66	
Para 66	Para 67	
Para 67	Para 68	
Para 68	Para 69	
Para 69	Para 70	

Para 70	Para 71	
Para 71	Para 72	
Para 72	Para 73	
Para 73	Para 74	
Para 74	Para 75	
Para 75	Para 76	
Para 79	Para 80	
Para 81	Para 82	
Para 84	Para 85	
Para 85	Para 86	
Para 86	Para 87	
Para 87	Para 88	
Para 88	Para 89	
Para 89	Para 90	
Para 90	Para 91	
Para 91	Para 92	
Para 98	Para 99	
Para 99	Para 100	
Para 100	Para 101	
Para 101	Para 102	
Para 102	Para 103	
Para 103	Para 104	
Para 104	Para 105	
Para 105	Para 106	
Para 106 (and section 430 and Schedule 10)	Para 107 (and Article 373 and Schedule 7)	
Para 107	Para 108	

Para 108	Para 109	
Paras 109	Para 110	
Para 111	Para 1	
Part 7 of the Companies Act 1989	Part 5 of the Companies (No 2) (Northern Ireland) Order 1990(**a**)	
Section 173 of the Companies Act 1989	Article 95 of the Companies (No 2) (Northern Ireland) Order 1990	
Section 188 of the Companies Act 1989	Article 109 of the Companies (No. 2) (Northern Ireland) Order 1990	
Section 155 Companies Act 1989	Article 80 of the Companies (No 2) (Northern Ireland) Order 1990	
Section 87A of the Magistrates Courts Act 1980	Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981(**b**)	
Company Directors Disqualification Act 1986	Company Directors Disqualification (Northern Ireland) Order 2002(**c**)	
Section 7 of the Company Directors Disqualification Act 1986	Article 10 of the Company Directors Disqualification (Northern Ireland) Order 2002	

SCHEDULE 4

Regulation 26

Application of these Regulations to Limited Liability Partnerships

SCHEDULE 5

Regulation 27

Part 1

General modifications to legislation

(b) S.I. 2002/3150 (N.I. 4)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a new administration regime for investment banks (as defined in section 232 of the Banking Act 2009 (c. 1)).

Regulation 3 gives an overview of the new regime.

Regulation 4 provides for the appointment of an administrator for the new regime by special administration order.

Regulation 5 prescribes those who may apply to the court for a special administration order.

Regulation 6 sets out the grounds under which an application for a special administration order may be made.

Regulation 7 sets out the powers of the court when faced with an application for a special administration order.

Regulation 8 sets out 4 conditions that must be fulfilled before an investment bank can be put into other insolvency proceedings.

Regulation 9 provides that Schedules 1 and 2 apply where the investment bank is also a deposit-taker.

Regulation 10 sets out the 3 special administration objectives and the duty on the administrator to achieve the objectives.

Regulation 11 (in respect of the first special administration objective) gives the administrator a power to set a bar date for the submission of claims over the client assets held by the investment bank, and provides for the treatment of claims received after the bar date and after a distribution of assets has taken place.

Regulation 12 (also in respect of the first special administration objective) prescribes how the administrator is to deal with a shortfall in the amount of client assets held by the investment bank in a client omnibus account.

Regulation 13 sets out details of the second special administration objective: that the administrator is to work with market infrastructure bodies to facilitate the operation of default rules and settlement of trades, and with the Authorities to facilitate any actions the Authorities might take as a result of the special administration.

Regulation 14 provides for the continuation of certain supply contracts on the commencement of special administration.

Regulation 15 applies relevant provisions of the Insolvency Act 1986 (c. 45) with modification where necessary.

Regulation 16 provides a power for the Financial Services Authority (FSA) to direct the administrator to prioritise one or more of the special administration objectives where the FSA think it necessary to protect the stability of the financial systems of the United Kingdom or public confidence in the financial markets.

Regulation 17 provides for the drawing up of the statement of proposals in the event of the FSA having given a direction.

Regulation 18 provides for the revision of the statement of proposals in the event of the FSA having given a direction.

Regulation 19 provides for the court to make an order dispensing with the need for the statement of proposals to be approved.

Regulation 20 provides for the revision of the statement of proposals in the event of the FSA having withdrawn its direction.

Regulations 21and 22 provide for the ending of special administration.

Regulation 23 provides for certain provisions of the Banking Act 2009 to apply to special administration.

Regulation 24 modifies the Company Director's Disqualification Act 1986 (c.46) to apply in respect of special administration.

Regulations 25 to 27 provide that Schedules 3 to 5 have effect.

Schedule 1 modifies the new regime for use alongside bank insolvency as set out in Part 2 of the Banking Act 2009.

Schedule 2 modifies the new regime for use alongside bank administration as set out in Part 3 of the Banking Act 2009.

Schedule 3 lists the enactments referred to in the Regulations with their Northern Irish equivalents.

Schedule 4 modifies the new regime for limited liability partnerships.

Schedule 5 sets out consequential amendments.

An Impact Assessment on the effect of the introduction of the new special administration regime has been prepared and may be obtained from the Financial Regulatory Strategy team , HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury's website (www.hm-treasury.gov.uk).

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This document can be found in full on our website at:
hm-treasury.gov.uk

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