

2003 No. 385

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No.5) (Insolvency Proceedings) 2003**

Made - - - - *8th August 2003*

Coming into force - - *15th September 2003*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 5 of the Court of Session Act 1988(a) and of all other powers enabling them in that behalf, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Insolvency Proceedings) 2003 and shall come into force on 15th September 2003.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session

2.—(1) Chapter 74 of the Rules of the Court of Session 1994(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 74.1 (application and interpretation of this Chapter), in paragraph (2) after the definition of “the Insolvency Rules” there shall be inserted the following:—

“the EC Regulation” means Council Regulation (EC) 1346/2000 of 29th May 2000 on insolvency proceedings(c);”.

(3) In rule 74.4 (lodging of nominee’s report – company not in liquidation), in paragraph (1) for the words “an administration order is not in force in respect of it pronounced by the court” there shall be substituted the words “is not in administration”.

(4) In rule 74.5 (lodging of nominee’s report – company in liquidation), in paragraph (1) for the words “there is an administration order in force in respect of it pronounced by the court” there shall be substituted the words “is in administration”.

(5) In rule 74.9 (form of other applications)–

(a) in paragraph (1)(a) for the words “an administration order is not in force in respect of it pronounced by the court” there shall be substituted the words “is not in administration”; and

(b) in paragraph (1)(b) for the words “there is an administration order in force in respect of it pronounced by the court” there shall be substituted the words “is in administration”.

(a) 1988 c.36; section 5 was amended by section 2(3) of the Civil Evidence (Scotland) Act 1988 (c.32) and by paragraph 45 of Schedule 4 to the Children (Scotland) Act 1995 (c.36).

(b) S.I. 1994/1443, to which there are amendments not relevant to this Act of Sederunt.

(c) O.J. L 160, 30/06/2000 P. 0001-0018.

(6) In the heading beneath “PART III”, for “ORDERS” there shall be substituted “PROCEDURE”.

(7) In rule 74.10 (form of petition for administration order)–

(a) in the heading, for the words “for administration order” there shall be substituted the words “in administration procedure”; and

(b) in paragraph (2)–

(i) for sub-paragraph (c) there shall be substituted–

“(c) how the making of that order will achieve–

(i) any of the purposes specified in section 8(3) of the Act of 1986(a); or

(ii) an objective specified in paragraph 3 of Schedule B1 to the Act of 1986(b);”;

(ii) in sub-paragraph (g) for the words “administration order” there shall be substituted the words “order in respect of an administration”;

(iii) at the end of sub-paragraph (h) there shall be omitted “;”;

(iv) after sub-paragraph (i) there shall be inserted the following:–

“; and

(j) whether–

(i) the EC Regulation applies; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings.”.

(8) In rule 74.11 (notice of petition), in paragraph (a) for “2.2” there shall be substituted “2.3”.

(9) For rules 74.13 (abstracts of administrator’s receipts and payments), 74.14 (extension of time for accounts of receipts and payments) and 74.15 (forms of certain applications and appeals) there shall be substituted the following–

“Report of administrator’s proposals: Schedule B1 to the Act of 1986

74.13.—(1) Paragraph (2) shall apply where a report under paragraphs 53(2) or 54(6) of Schedule B1 to the Act of 1986 discloses a failure to approve, or to approve a revision of, an administrator’s proposals.

(2) The Deputy Principal Clerk shall fix a hearing for determination by the insolvency judge of any order that may be made under paragraph 55(2) of Schedule B1 to the Act of 1986.

Time and date of lodging in an administration

74.14.—(1) The time and date of lodging of a notice or document relating to an administration under the Act of 1986 or the Insolvency Rules shall be noted by the Deputy Principal Clerk upon the notice or document.

(2) Subject to any provision of the Insolvency Rules–

(a) where the time of lodging of a notice or document cannot be ascertained by the Deputy Principal Clerk, the notice or document shall be deemed to be lodged at 10 a.m. on the date of lodging; and

(b) where a notice or document under paragraph (1) is delivered on any day other than a business day, the date of lodging shall be the first business day after such delivery.

(a) The Insolvency Act 1986 (c.45) is defined in rule 74.1 of the Rules of the Court of Session as “the Act of 1986”, and section 8 was amended by the Financial Services and Markets Act 2000 (c.8), section 359, and by S.I. 2001/3649 and 2002/1240 and 1555, and applied with modifications by the Building Societies Act 1986 (c.53), Schedule 15, the Building Societies Act 1997 (c.32), Schedule 6, and S.I. 2001/1090.

(b) Schedule B1 was inserted into the Act of 1986 by the Enterprise Act 2002 (c.40), section 248.

Applications during an administration

74.15. An application on appeal under any provision of the Act of 1986 or the Insolvency Rules during an administration shall be—

- (a) where no previous application or appeal has been made, by petition; or
- (b) where a petition for an order in respect of an administration has been lodged, by note in the process of that petition.”.

(10) In rule 74.17 (petition to appoint a receiver), in paragraph (b)—

- (a) for the words “an administration order” there shall be substituted the words “an order in respect of an administration”; and
- (b) after the word “made” there shall be inserted “, or an administrator has been appointed.”.

(11) In rule 74.24 (substitution of creditor or contributory for petitioner), after paragraph (1) there shall be inserted the following:—

“(1A) Where a member State liquidator has been appointed in main proceedings in relation to the company, without prejudice to paragraph (1) the court may, on such terms as it thinks fit, substitute the member State liquidator as petitioner, where he is desirous of prosecuting the petition.”.

(12) In rule 74.25 (provisional liquidator), in paragraph (b) after the words “Secretary of State” there shall be inserted “, a member State liquidator appointed in main proceedings”.

(13) After rule 74.30 (application in relation to remuneration of liquidator) there shall be inserted the following:—

“Applications under section 176A of the Act of 1986

74.30A.—(1) An application by a liquidator, administrator or receiver under section 176A of the Act of 1986(a) shall be—

- (a) where there is no existing process in relation to any liquidation, administration or receivership, by petition; or
- (b) where a process exists in relation to any liquidation, administration or receivership, by note in that process.

(2) The Deputy Principal Clerk shall—

- (a) after the lodging of any petition or note fix a hearing for the insolvency judge to consider an application under paragraph (1); and
- (b) give notice of the hearing fixed under paragraph (2)(a) to the petitioner or noter.

(3) The petitioner or noter shall not be required to give notice to any person of the hearing fixed under paragraph (2)(a), unless the insolvency judge directs otherwise.”.

CULLEN OF WHITEKIRK
Lord President,
I.P.D.

Edinburgh
8th August 2003

(a) Section 176A was inserted into the Act of 1986 by the Enterprise Act 2002 (c.40), section 252.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes changes to Chapter 74 of the Act of Sederunt (Rules of the Court of Session) 1994 to support changes made to the Insolvency (Scotland) Rules 1986 by the Insolvency (Scotland) Amendment Rules 2003, and changes made to the Insolvency (Scotland) Act 1986 by the Enterprise Act 2002.

The Act of Sederunt also makes certain consequential changes in support of Council Regulation (EC) 1346/2000 of 29th May 2000 on insolvency proceedings.

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