

SCHEDULE 3

PROCEDURAL MATTERS IN SCOTLAND

PART 2

THE FOREIGN REPRESENTATIVE

Application for confirmation of status of replacement foreign representative

2.—(1) This paragraph applies where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceedings in relation to the debtor.

(2) In this paragraph “the former foreign representative” means the foreign representative referred to in sub-paragraph (1).

(3) If a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, that person may apply to the court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Regulations.

(4) If the court dismisses an application under sub-paragraph (3) then it may also, if it thinks fit, make an order terminating recognition of the foreign proceeding and—

- (a) such an order may include such provision as the court thinks fit with respect to matters arising in connection with the termination; and
- (b) paragraph 5 shall not apply to such an order.

Misfeasance by a foreign representative

3.—(1) The court may examine the conduct of a person who—

- (a) is or purports to be the foreign representative in relation to a debtor, or
- (b) has been or has purported to be the foreign representative in relation to a debtor.

(2) An examination under this paragraph may be held only on the application of—

- (a) a British insolvency officeholder acting in relation to the debtor,
- (b) a creditor of the debtor, or
- (c) with the permission of the court, any other person who appears to have an interest justifying an application.

(3) An application under sub-paragraph (2) must allege that the foreign representative—

- (a) has misapplied or retained money or other property of the debtor,
- (b) has become accountable for money or other property of the debtor,
- (c) has breached a fiduciary duty or other duty in relation to the debtor, or
- (d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person’s conduct the court may order him—

- (a) to repay, restore or account for money or property;
- (b) to pay interest;
- (c) to contribute a sum to the debtor’s property by way of compensation for breach of duty or misfeasance.

Status: *This is the original version (as it was originally made).*

(5) In sub-paragraph (3), “foreign representative” includes a person who purports or has purported to be a foreign representative in relation to a debtor.