

2009 No. 135

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session Amendment
No. 6) (Building Society Special Administration etc.) 2009**

Made - - - - at 4.50 p.m. on 29th March 2009

Coming into force - - at 5.50 p.m. on 29th March 2009

The Lords of Council and Session, under and by virtue of the powers conferred 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. 6) (Building Society Special Administration etc.) 2009 and comes into force at 5.50 p.m. on 29th March 2009.

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

Amendment of the Rules of the Court of Session

2.—(1) The Rules of the Court of Session 1994(b) are amended in accordance with subparagraphs (2) to (5).

(2) In rule 74.32B (approval of the voluntary winding up of a bank)(c), after “the Act of 1986” insert “or voluntary winding up of a building society under section 88 of the Building Societies Act 1986”.

(3) The heading of rule 74.32B becomes “**Approval of the voluntary winding up of a bank or building society**”.

(4) In rule 74.49 (time and date of lodging in a bank administration)(d), in paragraph (2)(b), after “business day” where it first appears insert “but is not lodged on that day”.

(5) After Part VIII of Chapter 74 (bank administration procedure)(e), insert—

(a) 1988 c.36; section 5 was amended by the Civil Evidence (Scotland) Act 1988 (c.32), section 2(3), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 45 and by the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(1).

(b) S.I. 1994/1443, last amended by S.S.I. 2009/114.

(c) Rule 74.32B was inserted by S.S.I. 2009/63.

(d) Rule 74.49 was inserted by S.S.I. 2009/63.

(e) Part VIII of Chapter 74 was inserted by S.S.I. 2009/63.

“PART IX

BUILDING SOCIETY SPECIAL ADMINISTRATION PROCEDURE

Application of rules to building society special administration

74.51.—(1) Subject to paragraph (3), Part VIII of this Chapter applies to an application mentioned in paragraph (2) as it applies to an application for a bank administration order.

(2) An application referred to in paragraph (1) is an application for a building society special administration order under the Act of 2009, as that Act is applied and modified by section 90C of the Building Societies Act 1986(a) and the Building Societies (Insolvency and Special Administration) Order 2009(b).

(3) In the application of Part VIII of this Chapter under paragraph (1)—

- (a) references to the Bank Administration Rules shall be read as references to the Building Society Special Administration (Scotland) Rules 2009(c);
- (b) references to a rule in the Bank Administration Rules shall be read as references to the corresponding rule in the Building Society Special Administration (Scotland) Rules 2009;
- (c) references to the Act of 2009 shall be read as references to the Act of 2009, as applied and modified by section 90C of the Building Societies Act 1986 and the Building Societies (Insolvency and Special Administration) Order 2009; and references to specific provisions in the Act of 2009 shall be read accordingly;
- (d) references to “bank” shall be read as references to “building society”;
- (e) references to “bank administration” shall be read as references to “building society special administration”;
- (f) references to “bank administration order” shall be read as references to “building society special administration order”;
- (g) references to “bank administrator” shall be read as references to “building society special administrator”;
- (h) in rule 74.45(2)(e) (averments on power to appoint administrator or receiver), the words “an administrator under paragraph 14 of Schedule B1 to the Act of 1986 (holder of qualifying floating charge) or” and “an administrator or” shall be omitted;
- (i) in rule 74.45(2)(f) (averments on insolvency proceedings), for “section 120 of the Act of 2009” substitute “section 90D of the Building Societies Act 1986(d)”; and
- (j) in rule 74.46(2) (representation at hearing of petition), subparagraph (f) shall be omitted.

(4) The following rules shall, with the necessary modifications, apply in relation to building society special administration procedure as they apply in relation to bank administration procedure:—

- rule 5.1A (further restriction as to caveats),
- rule 33.9 (insolvency or death of cautioner or grantor),
- rule 74.1 (application and interpretation of Chapter 74),
- rule 74.2 (proceedings before insolvency judge),
- rule 74.3 (notices and reports etc. sent to the court),

(a) 1986 c.53. Section 90C was inserted by S.I. 2009/805.

(b) S.I. 2009/805.

(c) S.I. 2009/806.

(d) 1986 s.53. Section 90D was inserted by S.I. 2009/805.

rule 74.9 (form of applications).”.

Edinburgh
29th March 2009 at 4.50 p.m.

A.C. Hamilton
Lord President
I.P.D.

EXPLANATORY NOTE

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

This Act of Sederunt makes amendments to the Rules of the Court of Session 1994 in consequence of the establishment of a procedure for building society special administration under the Banking Act 2009.

Paragraph 2(2) amends rule 74.32B so as to set down a procedure for making an application to the Court for the prior approval of a resolution for the voluntary winding up of a building society under section 88 of the Building Societies Act 1986. As a consequence, the heading to rule 74.32B is changed (paragraph 2(3)).

Paragraph 2(4) amends rule 74.49(2)(b) in relation to the time when a notice or document is delivered but not lodged with the Court on a non-business day.

Paragraph 2(5) inserts a new Part IX into Chapter 74 of the Rules. Paragraphs (1) to (3) of inserted rule 74.51 provide for the application, with appropriate modification, of Part VIII of Chapter 74 (bank administration procedure) to applications for a building society special administration order. Paragraph (4) of inserted rule 74.51 provides for a number of other rules to apply, with the necessary modifications, in relation to building society special administration procedure as they apply in relation to bank administration procedure.

© Crown Copyright 2009

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£4.00