
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 385

**Act of Sederunt (Rules of the Court of Session
Amendment No. 6) (Miscellaneous) 2011**

Investment Bank Special Administration procedure

3.—(1) The Rules are amended in accordance with the following subparagraphs.

(2) In rule 74.1 (application and interpretation of Chapter 74), in paragraph (2), after the definition of “the Insolvency Rules” insert—

““the Investment Bank Regulations” means the Investment Bank Special Administration Regulations 2011(1);

“the Investment Bank Rules” means the Investment Bank Special Administration (Scotland) Rules 2011(2);”.

(3) In Chapter 74, after Part X (building society insolvency procedure)(3) insert—

“PART XI

INVESTMENT BANK SPECIAL ADMINISTRATION PROCEDURE

Interpretation and application of other rules

74.53.—(1) Unless the context otherwise requires, words and expressions used in this Part which are also used in the Investment Bank Rules have the same meaning as in those Rules.

(2) The following rules shall, with the necessary modifications, apply in relation to an application mentioned in rule 74.54 as they apply in relation to bank insolvency procedure or 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),

rule 74.9 (form of other applications).

Application for special administration order, special administration (bank insolvency) order and special administration (bank administration) order

74.54.—(1) An application for any of the following orders shall be made by petition—

(1) [S.I. 2011/245](#).

(2) [S.I. 2011/2262](#).

(3) Part X of Chapter 74 was inserted by [S.S.I. 2010/417](#).

- (a) a special administration order under regulation 5 of the Investment Bank Regulations;
 - (b) a special administration (bank insolvency) order under section 95 of the Act of 2009, as applied by Schedule 1 to the Investment Bank Regulations;
 - (c) a special administration (bank administration) order under section 142 of the Act of 2009, as applied by Schedule 2 to the Investment Bank Regulations.
- (2) A petition referred to in paragraph (1) shall include averments on the following matters—
- (a) the name and address of the person whom it is proposed should be appointed as administrator and his or her qualification to act;
 - (b) the grounds upon which the petition is made, and the reasons why the petitioner considers that those grounds are satisfied;
 - (c) in the case of an application for a special administration (bank administration) order, confirmation that the conditions for applying for such an order, as set out in section 143 of the Act of 2009, as applied by paragraph 6 of Schedule 2 to the Investment Bank Regulations) are met in respect of the investment bank;
 - (d) to the best of the petitioner’s knowledge and belief, the investment bank’s current financial position, including actual, contingent and prospective assets and liabilities;
 - (e) any security known or believed to be held by the creditors of the investment bank;
 - (f) in the case of an application for a special administration (bank administration) order, details of the property transfer instrument which the Bank of England has made or intends to make in respect of the investment bank;
 - (g) in the case of an application for a special administration (bank administration) order, where the property transfer instrument has not yet been made, an explanation of what effect the instrument is likely to have on the investment bank’s financial position;
 - (h) to the best of the petitioner’s knowledge and belief, the amount of any client assets held by the investment bank;
 - (i) how functions are to be apportioned where more than one person is to be appointed as administrator and, in particular, whether functions are to be exercised jointly or by any or all the persons appointed;
 - (j) any other matters which the petitioner considers will assist the court in deciding whether to make a special administration order, a special administration (bank administration) order or a special administration (bank insolvency) order; and
 - (k) any insolvency proceedings which have been instituted in respect of the investment bank, including any process notified to the Financial Services Authority under section 120 of the Act of 2009, as applied by paragraph 7 of Schedule 1 to the Investment Bank Regulations.
- (3) Averments referred to in paragraph (2)(b) shall refer to one or more of the grounds set out in regulation 6 of the Investment Bank Regulations or section 96(4) or section 143(5) of the Act of 2009, as the case may be.

(4) Section 96 of the Act of 2009 is applied by paragraph 6 of Schedule 1 to the Investment Bank Regulations.

(5) Section 143 of the Act of 2009 is applied by paragraph 6 of Schedule 2 to the Investment Bank Regulations.

Intimation, service and advertisement under this Part

74.55.—(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of the petition shall include a requirement—

- (a) where the investment bank is not the petitioner or one of the petitioners, to serve the petition on the investment bank;
- (b) to advertise the petition immediately—
 - (i) once in the Edinburgh Gazette; and
 - (ii) once in one or more such newspapers as the court shall direct.

(2) Subject to rule 14.6(2) (application to shorten or extend the period of notice), the period of notice for lodging answers to the petition shall be eight days.

(3) An advertisement under paragraph (1) shall include—

- (a) the name and address of the petitioner and, where the petitioner is the investment bank, its registered office;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) the nature of the order sought;
- (e) where a person has been appointed by the court under section 135 of the Act of 1986, as applied by paragraph 8 of Schedule 1 or paragraph 6 of Schedule 2 to the Investment Bank Regulations, his or her name and address and the date of his or her appointment;
- (f) the period of notice for lodging answers;
- (g) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

Person appointed under section 135 of the Act of 1986, as applied

74.56.—(1) An application to appoint a person under section 135 of the Act of 1986, as applied by paragraph 8 of Schedule 1 or paragraph 6 of Schedule 2 to the Investment Bank Regulations, may be made in the prayer of the petition referred to in rule 74.54 or, if made after the petition has been presented, by note.

(2) The application mentioned in paragraph (1) shall include averments on the following matters—

- (a) the grounds upon which it is proposed that the person should be appointed;
- (b) the name and address of the person whom it is proposed should be appointed;
- (c) confirmation that the person whom it is proposed should be appointed has consented to that appointment;
- (d) confirmation that the person whom it is proposed should be appointed is qualified to act as a person under section 135 of the Act of 1986, as relevantly applied;
- (e) whether to the applicant's knowledge there has been proposed or is in force for the investment bank a company voluntary arrangement under Part 1 of the Act of 1986;
- (f) the applicant's estimate of the value of the assets in respect of which the person is to be appointed;
- (g) the functions the applicant wishes to be carried out by the person to be appointed in relation to the investment bank's affairs.

(3) An order appointing any person as referred to in paragraph (1) shall specify the functions to be carried out in relation to the investment bank's affairs and how those functions are to be apportioned where more than one person is to be so appointed and, in particular, shall specify whether functions are to be exercised jointly or by any or all the persons appointed.

(4) Where the court decides to appoint a person as referred to in paragraph (1)—

(a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by the appointed person in relation to the affairs of the investment bank; and

(b) it shall forthwith send a copy of the interlocutor to the person appointed.

(5) On receiving a certified copy of an interlocutor pronounced under paragraph (4)(a), the person appointed shall intimate his appointment forthwith—

(a) once in the Edinburgh Gazette; and

(b) once in one or more such newspapers as the court has directed.

(6) An application for the discharge of a person appointed in accordance with this rule shall be made by note.

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

74.57.—(1) Paragraph (2) shall apply where a report under paragraphs 53(2) or 54(6) of Schedule B1 to the Act of 1986 (report at conclusion of creditors' meeting), as those provisions are applied and modified by regulation 15 of, or paragraphs 10(4) or 11(8) of Schedule 2 to, the Investment Bank Regulations, 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, as that provision is applied and modified by regulation 15 of the Investment Bank Regulations or by section 145 of the Act of 2009 and paragraph 6 of Schedule 2 to the Investment Bank Regulations.

Time and date of lodging in special administration etc.

74.58.—(1) The time and date of lodging of a notice or document relating to a special administration, special administration (bank insolvency) or special administration (bank administration) shall be noted by the Deputy Principal Clerk upon the notice or document.

(2) Subject to any provision in the Investment Bank 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 have been lodged at 10 a.m. on the date of lodging;

(b) where a notice or document under paragraph (1) is delivered on any day other than a business day but is not lodged on that day, the date of lodging shall be the first business day after such delivery.

Appeals against adjudication of claims

74.59.—(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985(6), as applied by rule 127 of the Investment Bank Rules (appeal by a creditor or contributory of the investment bank against a decision of the administrator) shall be made by note.

(2) A note under paragraph (1) shall be served on the administrator.

(3) On such a note being served on the administrator, the administrator shall send the claim in question, and a copy of his or her adjudication, forthwith to the Deputy Principal Clerk who shall cause them to be lodged in process.

(4) After the note has been disposed of, the Deputy Principal Clerk shall return the claim and the adjudication to the administrator with a copy of the interlocutor disposing of the note.

Applications under section 176A of the Act of 1986

74.60.—(1) An application by an administrator under section 176A of the Act of 1986 (share of assets for unsecured creditors), as applied by Table 2 in regulation 15 of, or paragraph 6 of Schedule 2 to, the Investment Bank Regulations, shall be made by note in the existing special administration process.

(2) The Deputy Principal Clerk shall—

(a) after the lodging of any 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 noter.

(3) The 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.

Applications during a special administration etc.

74.61.—(1) An application or appeal under any provision of the Act 1986 as applied by the Act of 2009, the Investment Bank Regulations or the Investment Bank Rules during a special administration, special administration (bank insolvency) or special administration (bank administration) shall be made—

(a) where no previous application or appeal has been made, by petition; or

(b) where a petition for an order in respect of a special administration, special administration (bank insolvency) or special administration (bank administration) has been lodged, by note in the process of that petition.”.