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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 81**

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2019**

**Amendment of the Rules of the Court of Session 1994**

2.—(1) Chapter 74 (companies) of the Rules of the Court of Session 1994(1) is amended in accordance with this paragraph.

(2) In rule 74.1 (application and interpretation of this Chapter)(2)—

(a) in paragraph (2), after the definition of “the Insolvency Rules” insert—

““the Insolvency (CVAA) Rules” means the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018(3);

“the Insolvency (RWU) Rules” means the Insolvency (Scotland) (Receivership and Winding up) Rules 2018(4);” and

(b) in paragraph (3), after “the Insolvency Rules,” insert “the Insolvency (CVAA) Rules, the Insolvency (RWU) Rules,”.

(3) In rule 74.3 (notices and reports, etc., sent to the court)(5), after “the Insolvency Rules,” insert “the Insolvency (CVAA) Rules, the Insolvency (RWU) Rules,”.

(4) After rule 74.3 insert—

**“Replacement office-holders and liquidators: block transfer orders**

**74.3A.**—(1) This rule applies to an application under—

(a) rule 4.2(1) of the Insolvency (CVAA) Rules (application for a block transfer order);

(b) rule 6.2(1) of the Insolvency (RWU) Rules (application for block transfer order); and

(c) both of those rules.

(2) An application mentioned in paragraph (1) must be made by petition.

(3) Paragraph (4) applies where an application includes the name of one or more sheriff court petition.

(4) The Deputy Principal Clerk must notify the sheriff clerk of every sheriff court listed in the application that an application has been made.

(5) Where the court grants an application, it may order the replacement office-holder or the replacement liquidator, as the case may be, to be appointed in any or all of the cases listed in the application.

(6) Where the court pronounces an interlocutor granting a block transfer order—

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(1) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2019/74.

(2) Rule 74.1 was relevantly amended by S.S.I. 2009/63 and S.S.I. 2011/385.

(3) S.I. 2018/1082.

(4) S.S.I. 2018/347.

(5) Rule 74.3 was substituted by S.S.I. 2006/83 and amended by S.S.I. 2009/63, S.S.I. 2013/162 and S.S.I. 2016/318.

- (a) the Deputy Principal Clerk must send a certified copy of that interlocutor to the replacement office-holder or, as the case may be, the replacement liquidator;
  - (b) the court may direct that a copy of the interlocutor is—
    - (i) to be put in the process of every Court of Session petition where the replacement office-holder or, as the case may be, the replacement liquidator has been appointed;
    - (ii) to be sent to the sheriff clerk to be put in the process of every sheriff court petition where the replacement office-holder or, as the case may be, the replacement liquidator has been appointed; and
  - (c) the court may make such orders as it thinks fit for the intimation and advertisement of the appointment of the replacement office-holder or, as the case may be, the replacement liquidator.
- (7) In this rule the “office-holder” means a supervisor, nominee or administrator.

### **Decision making**

#### **74.3B.—(1) An application—**

- (a) for an order under rule 5.12(1) of the Insolvency (CVAA) Rules or rule 8.12(1) of the Insolvency (RWU) Rules (notice of decision procedure by advertisement only);
- (b) for directions under rule 8.18(4) of the Insolvency (RWU) Rules (application for directions about decision procedure);
- (c) for a direction under rule 5.22 of the Insolvency (CVAA) Rules or rule 8.23 of the Insolvency (RWU) Rules (adjournment by chair);
- (d) for a direction under rule 5.33(3)(b) or 5.40(3)(b) of the Insolvency (CVAA) Rules or rule 8.36(3)(b) or 8.44(3)(b) of the Insolvency (RWU) Rules (direction as to validity of meeting with excluded person present);
- (e) for directions under rule 5.35(9) or 5.42(9) of the Insolvency (CVAA) Rules or rule 8.38(9) or 8.46(9) of the Insolvency (RWU) Rules (application to court for directions about action of appropriate person),

must be made by petition or, where a previous application or appeal to the court in relation to any company voluntary arrangement, liquidation, administration or receivership of the company has been made, by note in the process of that petition.

(2) An appeal under rule 5.32 of the Insolvency (CVAA) Rules or rule 8.35 of the Insolvency (RWU) Rules (appeals against decisions about creditors’ voting rights and majorities) must be made by petition or, where a previous application or appeal to the court in relation to any company voluntary arrangement, liquidation, administration or receivership of the company has been made, by note in the process of that petition.”.

- (5) In rule 74.7 (report of meetings to approve arrangement)—
  - (a) in the cross-heading, after “**meetings**” insert “**and decisions**”; and
  - (b) after “section 4(6)” insert “and a decision of the company’s creditors to be reported to the court under section 4(6A)(a)(6)”.
- (6) For rule 74.8 (abstracts of supervisor’s receipts and payments and notices of completion of arrangement) substitute—

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(6) Section 4(6A) is prospectively inserted by the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 9, paragraph 4(7).

**“Notice of termination or implementation of arrangement**

**74.8.** A notice and copy of the supervisor’s report to be lodged with the court under rule 2.43(3) of the Insolvency (CVAA) Rules (termination or full implementation of CVA) must be sent to the Deputy Principal Clerk who must lodge it—

- (a) in a case to which rule 74.4 (lodging of nominee’s report (company not in liquidation etc.))(7) applies, with the nominee’s report lodged under that rule; or
- (b) in a case to which rule 74.5 (lodging of nominee’s report (company in liquidation etc.)) applies, in process as defined by paragraph (2) of that rule.”.

(7) In rule 74.9(2) (form of other applications)(8)—

- (a) for sub-paragraph (f) substitute—
  - “(f) rule 2.40(10) of the Insolvency (CVAA) Rules (to dispense with delivery of reports or summaries);”;
- (b) omit sub-paragraph (g); and
- (c) in sub-paragraph (h), for “the Insolvency Rules” substitute “the Insolvency (CVAA) Rules”.

(8) In rule 74.11 (notice of petition)(9) omit paragraphs (a) and (b).

(9) In rules 74.14 (time and date of lodging in administration, energy administration or postal administration)(10) and 74.15 (applications during an administration, energy administration or postal administration), for “the Insolvency Rules” where it occurs substitute “the Insolvency (CVAA) Rules”.

(10) In rule 74.19 (form of other applications and appeals)—

- (a) in paragraph (1)(e), for “the Insolvency Rules” substitute “the Insolvency (RWU) Rules”;
- (b) in paragraph (2), for “submitting a statement of affairs under rule 3.3(2) of the Insolvency Rules” substitute “making a statement of affairs and statutory declaration or a statement of concurrence under rule 2.10(2) of the Insolvency (RWU) Rules (statement of affairs: expenses)”;
- (c) for paragraph (3)(b) substitute—
  - “(b) under rule 2.16(3) of the Insolvency (RWU) Rules (to extend the time for sending a summary of receipts and payments).”.

(11) In rule 74.25 (provisional liquidator)(11)—

- (a) in paragraph (1)(b), after “company, the company” insert “or its directors”;
- (b) in paragraph (3)(b), for “the applicant shall forthwith send” substitute “it must direct the Deputy Principal Clerk to send forthwith”; and
- (c) omit paragraph (4).

(12) In rule 74.26(1)(b) (advertisement of appointment of liquidator), for “rule 4.18(4) of the Insolvency Rules” substitute “rules 4.22(4)(b), 5.21(4)(b)(ii) and 5.26(4)(b)(ii) of the Insolvency (RWU) Rules”.

(13) In rule 74.27 (applications and appeals in relation to a statement of affairs)—

- (a) at the end of the cross-heading insert “**or accounts**”; and
- (b) for paragraph (5) substitute—

(7) Rules 74.4 and 74.5 were amended by [S.S.I. 2003/385](#).

(8) Rule 74.9(2) was amended by [S.S.I. 2009/63](#).

(9) Rule 74.11 was relevantly amended by [S.S.I. 2003/385](#).

(10) Rules 74.14 and 74.15 were substituted by [S.S.I. 2006/83](#) and amended by [S.S.I. 2016/318](#).

(11) Rule 74.25 was amended by [S.S.I. 2003/385](#) and [S.S.I. 2017/202](#).

“(5) An appeal under—

- (a) rule 5.15(6) of the Insolvency (RWU) Rules (appeal against refusal by liquidator of allowances towards expenses of preparing statement of affairs);
- (b) rule 5.15(6) as applied by rule 5.17(4) of the Insolvency (RWU) Rules (appeal against refusal by liquidator of allowances towards expenses of preparing accounts),

must be made by note.

(6) A note under paragraph (5) must be served on the liquidator or provisional liquidator, as the case may be.”.

(14) In rule 74.28 (appeals against adjudication of claims)(12)—

(a) in paragraph (1)—

- (i) for “rule 4.16B(6) of the Insolvency Rules)” substitute “rule 7.19(5) of the Insolvency (RWU) Rules”; and
- (ii) after “process” insert “or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition”;

(b) in paragraph (3), after “note” insert “or petition”; and

(c) in paragraph (4), after “note” where it occurs insert “or petition”.

(15) After rule 74.28 insert—

**“Appeals against valuation of debts**

**74.28A.**—(1) An appeal under rule 7.23(4) of the Insolvency (RWU) Rules (appeal against valuation of debt by liquidator) against a valuation under paragraph (2)(a) of that rule must be made by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

(2) A note under paragraph (1) must be served on the liquidator.”.

(16) For rule 74.29 (removal of liquidator) substitute—

**“Removal of liquidator**

**74.29.**—(1) An application by a creditor of the company for an order—

- (a) under section 171(3)(b) of the Act of 1986 (order directing the summoning of a meeting to replace the liquidator);
- (b) under section 171(3A)(b) of that Act (order directing the instigation of qualifying decision procedure); or
- (c) under section 172 of that Act (order for removal of a liquidator),

must be made by note.

(2) Where the court orders the removal of a liquidator, the Deputy Principal Clerk must send two copies of the interlocutor to the former liquidator.”.

(17) For rule 74.30 (application in relation to remuneration of liquidator) substitute—

**“Appeals and applications in relation to outlays and remuneration of liquidator**

**74.30.**—(1) An appeal by a liquidator, any creditor or any contributory under rule 7.12(1) of the Insolvency (RWU) Rules (appeal against fixing of outlays and remuneration: creditors’

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(12) Rule 74.28(1) was substituted by [S.S.I. 2014/119](#).

voluntary winding up and winding up by the court) must be made by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

(2) An application—

- (a) by a liquidator under rule 7.14 of the Insolvency (RWU) Rules (recourse to the court: creditors' voluntary winding up and winding up by the court); or
- (b) by a creditor of the company under rule 7.15 of the Insolvency (RWU) Rules (creditors' claim that remuneration is excessive: creditors' voluntary winding up and winding up by the court),

must be made by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

(3) A note under—

- (a) paragraph (1) where the appeal is by a creditor or contributory;
- (b) paragraph (2)(b),

must be served on the liquidator.”.

(18) In rule 74.31 (application to appoint a special manager), for paragraph (2) substitute—

“(2) A bond of caution together with a certificate as to the adequacy of the caution by the noter under rule 3.19(4), 4.38(4) or 5.42(4) of the Insolvency (RWU) Rules (caution) must be sent to the Petition Department by the noter.”.

(19) After rule 74.31 insert—

#### **“Determinations of accounting periods**

**74.31A.** An application for a determination of the court under rule 7.31(2)(c)(ii) of the Insolvency (RWU) Rules (determination of accounting period by the court) must be made by the liquidator by note or, in a voluntary winding up where no previous application or appeal to the court has been made, by petition.

#### **Specific applications – voluntary winding up**

**74.31B.** An application to the court for—

- (a) the appointment or removal and appointment of a liquidator under section 108 of the Act of 1986 (appointment or removal of liquidator by the court);
- (b) sanction under section 110(3)(b) of the Act of 1986 (sanction for payment of compensation to liquidator);
- (c) sanction under section 114(2) of the Act of 1986 (sanction for directors to exercise power)(**13**);
- (d) an order under rule 3.5(6) or 4.23(7) of the Insolvency (RWU) Rules (order of court to change liquidator's default date of release);
- (e) authorisation under rule 3.15(4) or 4.33(4) of the Insolvency (RWU) Rules (realisation of the company's heritable property);
- (f) approval under rule 4.7(5) of the Insolvency (RWU) Rules (approval for payment to liquidator of expenses of statement of affairs),

must be made by petition or, where a previous application to the court in relation to a voluntary winding up has been made, by note in the process of that petition.

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(13) Section 114(2) is prospectively amended by the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 9, paragraph 30.

**Other applications – voluntary winding up**

**74.31C.** An application under the Act of 1986 or any subordinate legislation made under that Act in relation to a voluntary winding up not mentioned in this Part must be—

- (a) where no previous application to the court in relation to a voluntary winding up has been made, by petition; or
- (b) where a petition for such an application has been lodged, by note in the process of that petition.”.

(20) In rule 74.32 (other applications), in the cross-heading after “**applications**” insert “ – **winding up by the court**”.

(21) Omit rule 74.32A (replacement liquidators: block transfer orders)(**14**).