SCOTTISH STATUTORY INSTRUMENTS

2021 No. 324

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2021

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 74.3B (decision making)(**2**), in paragraph (1)(c), for "rule 5.22" substitute "rules 5.22 or 5.22A(**3**)".

(3) For rule 74.3C (moratoriums – general)(**4**) substitute—

"**Moratoriums — general**

74.3C.—(1) A moratorium to be obtained by lodging the relevant documents in court must be—

    (a) lodged in the Petition Department;

    (b) marked by the clerk of session receiving them with the time and date on which they are lodged and a certified copy of them so marked provided to the directors.

(2) An application to the court for a moratorium must be made—

    (a) where the eligible company is subject to an outstanding winding-up petition, by note in the process of that petition; or

    (b) in all other cases, by petition.

(3) Where the court grants an application mentioned in paragraphs (2), (6)(c) or (d), the Deputy Principal Clerk must provide forthwith a certified copy of the interlocutor to the applicant.

(4) An extension of a moratorium under section A10 (extension by directors without creditor consent)(**5**) or A11 (extension by directors with creditor consent) of the Act of 1986, to be obtained by lodging the documents mentioned in section A10(1) or A11(1), respectively, and a notice of extension, must be—

    (a) lodged in the Petition Department;

    (b) marked by the clerk of session receiving them with the time and date on which they are lodged and a certified copy of them so marked provided to the directors.

(**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. 2021/226. Chapter 74 was last amended by S.S.I. 2020/440.
(**2**)   Rule 74.3B was inserted by S.S.I. 2019/81 and amended by S.S.I. 2020/198.
(**3**)   Rule 5.22A was inserted by S.I. 2021/1026.
(**4**)   Rules 74.3C to 74.3E were inserted by S.S.I. 2020/198.
(**5**)   Sections A1 to A53 of the Insolvency Act 1986 (c.45) were inserted as a new Part A1 of that Act by section 1(1) of the Corporate Insolvency and Governance Act 2020 (c.12).

(5)   Termination of a moratorium by the monitor under section A38(1) (termination of moratorium by monitor) of the Act of 1986, to be obtained by lodging the notice mentioned in that subsection and copy notice mentioned in rule 1A.20(2)(a)(i) of the Insolvency (CVAA) Rules (notice bringing the moratorium to an end (section A28))(**6**), must be—

- (a)   lodged in the Petition Department;
- (b)   marked by the clerk of session receiving them with the time and date on which they are lodged and a certified copy of them so marked provided to the monitor.

(6)   Paragraph (7) applies to an application to the court under—

- (a)   section A13(1) (extension by court on application of directors);
- (b)   section A21(1) (restrictions on enforcement and legal proceedings);
- (c)   section A31(1) (disposal of charged property free from charge);
- (d)   section A32(1) (disposal of hire-purchase property);
- (e)   section A37 (application by monitor for directions);
- (f)   section A39(1) or (2) (replacement of monitor or appointment of additional monitor);
- (g)   section A42(1) (challenge to monitor's actions);
- (h)   rules under section A43(1) (challenges to monitor remuneration in insolvency proceedings);
- (i)   section A44(1) (challenge to directors' actions),

of the Act of 1986.

(7)   Where this paragraph applies, an application to the court must be made—

- (a)   where the eligible company is subject to an outstanding winding-up petition, by note in the process of that petition;
- (b)   where the application for the moratorium was made by petition, by note in the process of that petition; or
- (c)   in all other cases, by petition.

(8)   An application to the court under section A13(1) of the Act of 1986 must be marked by the clerk of session receiving it with the time and date on which it is lodged and a certified copy of the application so marked provided to the directors.

Moratoriums — service

74.3CA. Unless the court otherwise directs, the order under rule 14.5 (first order in petitions), or rule 15.2(3) (applications by note), for intimation, service and advertisement must include a requirement to serve the petition or, as the case may be, note—

- (a)   on the company and the monitor, where the application is made under section A21(1) or A42(1);
- (b)   on the holder of the security interest and the monitor, where the application is made under section A31(1);
- (c)   on the owner of the property and the monitor, where the application is made under section A32(1);
- (d)   on the company, where the application is made under section A37;
- (e)   on the monitor where the application is made by the directors, or on the directors where the application is made by the monitor, under section A39(1) or (2);

(**6**)   Rule 1A.20 was inserted by S.I. 2021/1026.

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    (f) on the directors and the monitor, where the application is made under section A43(1) or A44(1),

of the Act of 1986.".

(4) In rule 74.3E (moratoriums – challenge to monitor's remuneration), for "paragraph 80 of schedule 4 of the Act of 2020 (challenge to monitor's remuneration)" substitute "rule 1A.24 of the Insolvency (CVAA) Rules (challenges to monitor's remuneration in subsequent insolvency proceedings)(**7**)".

(5) After rule 74.20 (interpretation of this Part), insert—

"Application to disapply restrictions on winding-up petitions

74.20A. An application under paragraph 1(9) of schedule 10 of the Act of 2020 (restriction on winding-up petitions)(**8**) must be made by petition.".

(6) In rule 74.22 (intimation, service and advertisement under this Part)(**9**), omit paragraph (A1).

(**7**) Rule 1A.24 was inserted by S.I. 2021/1026.
(**8**) Schedule 10 of the Corporate Insolvency and Governance Act 2020 (c.12) was substituted by S.I. 2021/1029.
(**9**) Rule 74.22(A1) was inserted by S.S.I. 2020/198.