

SCHEDULE 4

Modified application of insolvency rules in relation to relevant societies

PART 3

Modified application of the Insolvency (Scotland) Rules 1986

36. This Part modifies the Parts of the Insolvency (Scotland) Rules 1986 which are applied by article 11(2) and (4) in relation to a relevant society which a sheriff court in Scotland has jurisdiction to wind up.

37. Unless the context otherwise requires and subject to any further modification in this Part, the applied provisions have effect with the general modifications set out in paragraphs 4 and 5 (read as if set out in this paragraph), except that—

- (a) sub-paragraph (c) of paragraph 4 is omitted for this purpose; and
- (b) a reference to a floating charge is a reference to a floating charge within the meaning given in Schedule A1(1) in relation to a relevant society whose registered office is situated in Scotland.

38. The applied provisions have effect with the further modifications set out in this Part and with any other necessary modification.

Proposal by directors for company voluntary arrangement

39. In Rule 1.6 (additional disclosure for assistance of nominee), in paragraph (2)(a) the reference to any other company is a reference to any company or any other relevant society.

Consideration of proposals where moratorium obtained

40. In Rule 1.40 (summoning of meetings; procedure at meetings etc.), in paragraph (3) the reference to all persons who are, to the best of the nominee's belief, members of the company is a reference to every member of the society.

Appointment of administrator by holder of floating charge

41. In Rule 2.10 (notice of appointment), in paragraph (5)(b) the reference to the date on which the floating charge was registered is a reference to the date—

- (a) stated in the FCA's acknowledgement issued under section 4(3) of the 1967 Act (filing of information relating to charges)(2) on which the delivery of a copy of the instrument creating the charge was effected; or
- (b) on which the charge was registered under Part 2 of the Agricultural Credits (Scotland) Act 1929(3).

(1) For the meaning of "floating charge" see the modification of Schedule A1 made by paragraph 7 of Schedule 1 to this Order.

(2) Section 4 was amended by the Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67), section 10(iv), by the Companies Consolidation (Consequential Provisions) Act 1985 (c.9), section 26(4), and by S.I. 1996/1738, 2001/2617, 2001/3649 and 2013/496.

(3) 1929 c. 13.

Process of administration

42. Rule 2.22 (limited disclosure) has effect as if it provided that on an application for disclosure under paragraph (4) a person appointed for the purpose by the FCA may appear and be heard, or make written representations.

43. Rule 2.23 (release from duty to submit statement of affairs; extension of time) has effect as if it provided that on an application under paragraph (2) for release or extension of time a person appointed for the purpose by the FCA may appear and be heard, or make written representations.

Meetings

44. In the following Rules a reference to a creditors' meeting includes a reference to a members' meeting—

- (a) Rule 2.27 (meetings to consider administrator's proposals);
- (b) Rule 2.27A (suspension and adjournment);
- (c) Rule 2.28 (correspondence instead of creditors' meetings), except paragraph (9); and
- (d) Rule 2.35 (notices to creditors).

45. Rule 2.27 has effect as if in paragraph (3) the reference to the creditors included a reference to the members of the society.

46. In Rule 2.28—

- (a) in paragraphs (3), (4) and (10), in the case of a members' resolution, a reference to the creditors is a reference to the members of the society; and
- (b) in paragraph (6), in relation to correspondence with the members ignore the reference to the statement of claim and account or voucher referred to in Rule 2.26C.

47. In Rule 2.29 (applicable law (company meetings)) ignore paragraph (a).

48. In Rule 2.34 (revision of the administrator's proposals)—

- (a) in paragraph (2) ignore the words "Subject to paragraph 54(3),"; and
- (b) ignore paragraphs (3) and (4).

49. In Rule 2.35, in paragraph (1)(a), in the case of a members' meeting the reference to every creditor who received notice of the meeting is a reference to every member of the society.

Distributions to creditors

50. In Rules 2.40 (distributions to creditors: introduction) and Rule 2.41A (payments of dividends) a reference to creditors includes a reference to member-depositors, but only in so far as the member-depositors are owed amounts in respect of deposits.

51. Rule 2.41 (distributions to creditors) has effect in relation to a proposal to make a distribution to member-depositors as if—

- (a) for paragraph (1) there were substituted—

“(1) Subject to the modifications set out below and to any other necessary modifications, Chapter 9 of Part 4 (distribution of company's assets by liquidator), except Rule 4.67 (order of priority of expenses of liquidation), applies with regard to a proposal to make a distribution to the member-depositors of a relevant society as it applies with regard to claims to a dividend out of the assets of a company in liquidation.”

- (b) for paragraph (2) there were substituted—

“(2) Subject to paragraphs (2A), (2B) and (5) below, in the application in relation to a relevant society of Chapter 9 of Part 4 or of any provision of the Bankruptcy Act as applied by Rule 4.16 or Rule 4.68 (application of the Bankruptcy Act)—

- (a) a reference to the articles of a company is a reference to the rules of the society;
- (b) a reference to a company is a reference to the society;
- (c) a reference to a creditor does not include a reference to a member of the society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member’s shares;
- (d) a reference to the date of commencement of winding up is a reference to the date on which the society entered administration;
- (e) a reference to the liquidation is a reference to the administration;
- (f) a reference to the liquidation committee is a reference to the creditors’ committee in the administration; and
- (g) a reference to the liquidator is a reference to the administrator of the society.

(2A) In Rule 4.66 (order of priority in distribution)—

- (a) in paragraph (1) a reference to ordinary debts includes a reference to any amount owed by the society in respect of a member’s shares where—
 - (i) the society is an authorised deposit taker; and
 - (ii) the amount concerned is owed in respect of a deposit; and
- (b) in paragraph (2) the reference to section 242 (gratuitous alienations (Scotland)) is a reference to that section as applied in relation to a relevant society by an order made under section 255 of the Enterprise Act 2002(4).

(2B) In section 52 of the Bankruptcy Act (estate to be distributed in respect of accounting periods)(5), in subsection (3) a reference to a creditor includes a reference to a member-depositor of a relevant society, but only in so far as the member is owed an amount in respect of deposits.”;

- (c) in paragraph (4) the reference to the administrator’s statement of proposals, as approved by the creditors, is a reference to that statement, as approved by the creditors and members of the society; and
- (d) at the end there were added—

“(6) In this Rule—

“member-depositor”, in relation to a relevant society, means any member of the society to whom an amount is owed in respect of the member’s shares where—

- (a) the society is an authorised deposit taker; and
- (b) the amount concerned is owed in respect of a deposit; and

“relevant society” has the meaning given in section 74(1) of the Industrial and Provident Societies Act 1965(6).”.

(4) 2002 c. 40.

(5) Section 52 applies with regard to a proposal to make a distribution to member-depositors by virtue of the application of paragraph (3) of Rule 2.41. Section 52 was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 11(3) and Schedule 1, paragraph 21, and section 11(4) and Schedule 2; by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), Schedule 1, paragraphs 1 and 44, and section 226(2) and Schedule 6; and by S.I. 2003/2109.

(6) The definition of “relevant society” is inserted by article 17(5) of this Order.

Ending administration

52. In Rule 2.45 (notice of end of administration), in paragraph (4)(d) the reference to a creditor includes a reference to a member of the society.

Replacing administrator

53. Rule 2.50 (notice of intention to resign) has effect as if the persons who are entitled to receive notice of the administrator's intention to resign included the FCA, the society's regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

54.—(1) Rule 2.53 (application to replace administrator) and Rule 2.56 (application to court to remove administrator from office) have effect as if the persons who are entitled to receive notice of the matter concerned included the FCA, the society's regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

(2) Sub-paragraph (1) does not apply in relation to—

- (a) the FCA, if the FCA made the application for the administration order; or
- (b) the society's regulator, if the society's regulator made the application.

Quorum at meetings

55. Rule 7.6 (meetings requisitioned) has effect as if it required the expenses of summoning and holding a members' meeting requested under paragraph 52(2) or 56(1) of Schedule B1 to be paid out of the assets of the society as an expense of the administration.

56. Rule 7.7 (quorum) has effect in relation to a relevant society as if—

- (a) paragraph (1) provided that a quorum, in the case of a meeting of members of the society—
 - (i) is to be determined according to the rules of the society which lay down a quorum for a general meeting of the society; or
 - (ii) if there are no such rules, is at least two members who are entitled to vote, or both of them if their number does not exceed two; and
- (b) in paragraph (3) the reference to any meeting of creditors included a reference to any meeting of members of the society.

57. Rule 7.12 (resolutions) has effect in relation to a meeting of members of the society as if the words "in value" were omitted.

Forms

58. In Rule 7.30 (forms for use in insolvency proceedings)—

- (a) any form prescribed for use by this Rule which is used for the purposes of Part 1 or 2 of the 1986 Act is to be read with the modifications set out in this Order (so far as applicable for the form concerned); and
- (b) the reference to the use of a form with such variations as circumstances require includes a reference to its use with such variations as are necessary to take account of applicable modifications.