

## CHAPTER 74

### COMPANIES

#### PART I

##### GENERAL PROVISIONS

#### **Application and interpretation of this Chapter**

**74.1.**-(1) This Chapter applies to causes under-

- (a) the Insolvency Act 1986(a); and
- (b) the Company Directors Disqualification Act 1986(b). and
- (c) Chapter 3 of Part 3 of the Energy Act 2004(c); and
- (d) Parts 2 or 3 of the Banking Act 2009(d)

(2) In this Chapter-

“the Act of 1986” means the Insolvency Act 1986;

“the Act of 2004” means the Energy Act 2004;

“the Act of 2009” means the Banking Act 2009(e);

“the Bank Administration Rules” means the Bank Administration (Scotland) Rules 2009(f);

the Bank Insolvency Rules” means the Bank Insolvency (Scotland) Rules 2009(g);

“the Insolvency Rules” means the Insolvency (Scotland) Rules 1986(h);

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

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

“the Energy Administration Rules” means the Energy Administration (Scotland) Rules 2006(k)

“the Council Regulation” means Council Regulation (E.C.) No. 1346/2000 of 29th May 2000 on insolvency proceedings as it may be amended from time to time;

“centre of main interests” has the same meaning as in the Council Regulation;

“establishment” has the same meaning as in Article 2(h) of the Council Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and-

- (a) in relation to England and Wales and Scotland, set out in Annex A to the Council Regulation under the heading “United Kingdom”; and
- (b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State;

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(a) 1986 c.46

(b) 1986 c.45.

(c) 2004 c.20.

(d) 2009 c.1.

(e) 2009 c.1

(f) S.I. 2009/350

(g) S.I. 2009/351

(h) S.I. 2006/

(i) S.I. 2011/245.

(j) S.I. 2011/2262.

(k) S.I. 1986/1915, amended by S.I.1987/1921.

“Member State” means a Member State of the European Community that has adopted the Council Regulation;

“non GB Company” shall have the meaning assigned in section 171 of the Act of 2004;

“registered office” means-

- (i) the place specified in the statement of the company delivered to the register of companies under section 9 of the Companies Act 2006<sup>(a)</sup> as the intended place of its registered office on incorporation, or
- (ii) where notice has been given by the company to the registrar of companies under section 87 of the Companies Act 2006 of a change of registered office, the place specified in the last such notice.

“territorial proceedings” means proceedings opened in accordance with Article 3(2) and 3(4) of the Council Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the Council Regulation and-

- (a) in relation to England and Wales and Scotland, set out in Annex A to the Council regulation under the heading “United Kingdom”; and
- (b) in relation to another Member State, set out in Annex A to the Council Regulation under the heading relating to that Member State;

(3) Unless the context otherwise requires, words and expressions used in this Chapter which are also used in the Act of 1986, Chapter 3 of Part 3 of the Act of 2004 Parts 2 or 3 of the Act of 2009, the Insolvency Rules, the Bank Insolvency Rules, the Bank Administration Rules or the Energy Administration Rules have the same meaning as in those Acts or Rules, as the case may be.

#### **Proceedings before insolvency judge**

**74.2.** All proceedings in the Outer House in a cause under or by virtue of the Act of 1986, the Company Directors Disqualification Act 1986, Chapter 3 of Part 3 of the Act of 2004 or Parts 2 or 3 of the Act of 2009 of 2004, shall be brought before a judge of the court nominated by the Lord President as the insolvency judge or, where the insolvency judge is not available, any other judge of the court (including the vacation judge): and “insolvency judge” shall be construed accordingly.

#### **Notices and reports, etc., sent to the court**

**74.3.** Where, under the Act of 1986, the Act of 2004, the Act of 2009, the Insolvency Rules, the Bank Insolvency Rules, the Bank Administration Rules or the Energy Administration Rules -

- (a) notice of a fact is to be given to the court,
- (b) a report is to be made, or sent, to the court, or
- (c) any other document is to be sent to the court. , it shall be sent to the Deputy Principal Clerk who shall cause it to be lodged in the process to which it relates.

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<sup>(a)</sup> 2006 c.46.

## PART II

### COMPANY VOLUNTARY ARRANGEMENTS

#### **Lodging of nominee's report (company not in liquidation etc.)**

**74.4.**-(1) This rule applies where the company is not being wound up by the court and is not in administration.

(2) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be-

- (a) lodged, with a covering letter, in the Petition Department;
- (b) marked by the clerk of session receiving it with the date on which it is received; and
- (c) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act (which relates to the summoning of meetings).

(3) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall-

- (a) place the letter before the insolvency judge for determination;
- (b) intimate that determination by a written reply; and
- (c) attach the letter, and a copy of the reply, to the nominee's report when it is subsequently lodged.

#### **Lodging of nominee's report (company in liquidation etc.)**

**74.5.**-(1) This rule applies where the company is being wound up by the court or is in administration.

(2) In this rule, "process" means the process of the petition under section 9(a) (petition for administration order), or section 124(b) (petition to wind up a company), of the Act of 1986, as the case may be.

(3) A report of a nominee submitted to the court under section 2(2) of the Act of 1986 (procedure where nominee is not the liquidator or administrator) shall be-

- (a) lodged in process; and
- (b) placed before the insolvency judge for consideration of any direction which he may make under section 3(1) of that Act.

(4) An application by a nominee to extend the time within which he may submit his report under section 2(2) of the Act of 1986 shall be made by letter addressed to the Deputy Principal Clerk who shall-

- (a) place the letter before the insolvency judge for determination;
- (b) intimate that determination by a written reply; and
- (c) lodge the letter, and a copy of the reply, in the process of the petition to which it relates.

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(a) Section 9 was amended by the Criminal Justice Act 1988 (c.33), section 62(2) and by the Companies Act 1989 (c.40), Schedule 16, paragraph 3(2).

(b) Section 124 was amended by the said Act of 1988, section 62(2) and by the said Act of 1989, section 60(2).

### **Inspection of nominee's report**

**74.6.** A person who states in a letter addressed to the Deputy Principal Clerk that he is a creditor, member or director of the company or his agent, may, on payment of the appropriate fee, inspect the nominee's report lodged under rule 74.4(2) (company not in liquidation etc.) 74.5(3) (company in liquidation etc.), as the case may be.

### **Report of meetings to approve arrangement**

**74.7.** The report of the result of a meeting to be sent to the court under section 4(6) of the Act of 1986 shall be sent to the Deputy Principal Clerk who shall lodge it-

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) 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.

### **Abstracts of supervisor's receipts and payments and notices of completion of arrangement**

**74.8.** An abstract of receipts and payments prepared by a supervisor and sent to the court under rule 1.21(2) of the Insolvency Rules or a notice of completion of the arrangement (and a copy of the supervisor's report) to be sent to the court under rule 1.23(3) of those Rules shall be sent to the Deputy Principal Clerk who shall cause it to be lodged-

- (a) in a case to which rule 74.4 (lodging of nominee's report (company not in liquidation etc.)) 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.

### **Form of other applications**

**74.9.-(1)** An application to which this rule applies shall be made-

- (a) where the company is not being wound up by the court and is not in administration, by petition; or
- (b) where the company is being wound up by the court or is in administration by note in the process to which it relates.

(1A) In the case of a bank, an application to which this rule applies shall be made—

- (a) where the bank is not subject to a bank insolvency order and is not in bank administration, by petition; or
- (b) where the bank is subject to a bank insolvency order by the court or is in bank administration, by note in the process to which it relates.

(2) This rule applies to an application under-

- (a) section 2(4) of the Act of 1986 (for the replacement of a nominee);
- (b) section 6 of that Act (to challenge a decision made in relation to an arrangement);
- (c) section 7(3) of that Act (to challenge the actings of a supervisor);
- (d) section 7(4)(a) of that Act (by a supervisor for directions);
- (e) section 7(5) of that Act (for the appointment of a supervisor);
- (f) rule 1.21(5) of the Insolvency Rules (to dispense with sending abstracts or reports or to vary the dates on which the obligation to send abstracts or reports arises);
- (g) rule 1.23(4) of those Rules (to extend the period for sending a notice of implementation of arrangement or report); or
- (h) any other provision in the Act of 1986 or the Insolvency Rules relating to company voluntary arrangements not mentioned in this Part; or
- (i) any provision in the Act of 1986, as applied by the Act of 2009, relating to voluntary arrangements,

## PART III

### ADMINISTRATION PROCEDURE

#### Form of petition in administration procedure

**74.10.-** (1) In this Part, “the petition” means a petition under section 9 of, or section 8 of and Schedule B1 to, the Act of 1986 (petition for an administration order), or section 156 of the Act of 2004 (petition for energy administration order).

- (2) The petition shall include averments in relation to-
- (a) the petitioner and the capacity in which he presents the petition, if other than the company;
  - (b) whether it is believed that the company is, or is likely to become, unable to pay its debts and the grounds of that belief;
  - (c) in the case of a petition under the Act of 1986, how the making of that order will achieve-
    - (i) any of the purposes specified in section 8(3) of the Act of 1986; or
    - (ii) an objective specified in paragraph 3 of Schedule B1 to the Act of 1986;
  - (d) the company's financial position specifying, so far as known, assets and liabilities, including contingent and prospective liabilities;
  - (e) any security known or believed to be held by creditors of the company, whether in any case the security confers power on the holder to appoint a receiver or an administrator, and whether a or an administrator has been appointed;
  - (f) so far as known to the petitioner, whether any steps have been taken for the winding up of the company;
  - (g) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to grant an order in respect of an administration or an energy administration, as the case may be;
  - (i) the name and address of the person proposed to be appointed, and his qualification to act, as administrator or energy administrator as the case may be; and
  - (j) in the case of a petition under the Act of 1986 **(a)**, jurisdiction under the Council Regulation, in particular stating, so far as known to the petitioner-
    - (i) where the centre of main interests of the company is and whether the company has any other establishments in another Member State; and
    - (ii) whether there are insolvency proceedings elsewhere in respect of the company and whether those proceedings are main or territorial proceedings;
  - (k) whether the Secretary of State has certified the case as one in which he considers it would be appropriate for him to petition under section 124A of the Act of 1986 (petition for winding up on grounds of public interest **(b)**);
  - (l) so far as known to the petitioner in a petition for an energy administration order, whether any steps have been taken for an administration order under Schedule B1 to the Act 1986;
  - (m) whether a protected energy company in a petition for an energy administration order is a non GB company.

#### Interim orders

**74.10A.-**(1) On making an interim order under paragraph 13(1)(d) of Schedule B1 to the Act of 1986 or section 157(1)(d) of the Act of 2005 the Lord Ordinary shall fix a hearing on the By Order Roll for a date after the expiry of the period of notice mentioned in rule 14.6 (period of notice for lodging answers).

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**(a)** Insolvency Act 1986 c.45

**(b)** Section 124A was inserted by sections 60(3) and 213(2) of the Companies Act 1989 (c.40) and amended by sections 5.7(2) and paragraph 56(2) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) and article 305 of S.I. 2001/3649.

(2) At the hearing under paragraph (1) the Lord Ordinary shall make such order as to further procedure as he thinks fit.

### **Notice of petition**

**74.11.** Where-

- (a) the petition is to be served on a person mentioned in rule 2.3 of the Insolvency Rules, and
- (b) by virtue of paragraph (2) of that rule, notice requires to be given to that person, it shall be sufficient for the petitioner, where such notice and service is to be executed by post, to enclose the statutory notice and a copy of the petition in one envelope and to certify the giving of such notice and the execution of such service by one certificate; or
- (c) the petition and a notice are to be served on a person mentioned in section 156(2)(a) to (c) of the Act of 2004 (notice of application for energy administration order) or rule 5(1) of the Energy Administration Rules.

### **Report of proposals of administrator**

**74.12.-** (1) A report of the meeting to approve the proposals of the administrator to be sent to the court under section 24(4) of the Act of 1986 shall be sent to the Deputy Principal Clerk of Session, who shall-

- (a) cause it to be lodged in the process of the petition to which it relates; and
- (b) give written intimation to the parties of the receipt and lodging of the report.

(2) Where a report under section 24(4) of the Act of 1986 discloses that the meeting has declined to approve the proposals of the administrator, the Keeper of the Rolls shall put the cause out on the By Order Roll for determination by the insolvency judge for any order he may make under section 24(5) of that Act.

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

**74.13.-** (1) Paragraph (2) shall apply where a report under paragraphs 53(2) or 54(6) of Schedule B1 to the Act of 1986 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.

### **Time and date of lodging in an administration**

**74.14.-** (1) The time and date of lodging of a notice or document relating to an administration under the Act of 1986 or the Insolvency Rules, or an energy administration under the Act of 2004 or the Energy Administration Rules, shall be noted by the Deputy Principal Clerk upon the notice or document.

(2) Subject to any provision of the Insolvency Rules or the Energy Administration Rules, as the case may be-

- (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 be lodged at 10 a.m. on the date of lodging; and
- (b) where a notice or document under paragraph (1) is delivered on any day other than a business day, the date of lodging shall be the first business day after such delivery.

### **Applications during an administration or energy administration**

**75.15.** An application or appeal under any provision of the Act of 1986, the Insolvency Rules, the Act of 2004 or the Energy Administration Rules during an administration or energy administration, as the case may be, shall be-

- (a) where no previous application or appeal has been made, by petition; or
- (b) where a petition for an order in respect of an administration, or energy administration, as the case may be, has been lodged, by note in the process of that petition.

**74.15A** An application by a bank liquidator for an administration order under section 114 of the Act of 2009 shall be made by note in the existing process of the bank insolvency petition.

PART IV  
RECEIVERS

**Interpretation of this Part**

**74.16.** In this Part, “the petition” means a petition under section 54(1) of the Act of 1986 (petition to appoint a receiver).

**Petition to appoint a receiver**

**74.17.** The petition shall include averments in relation to-

- (a) any floating charge and the property over which it is secured;
- (b) so far as known to the petitioner, whether any application for an order in respect of an administration has been made, or an administrator has been appointed in respect of the company;
- (c) other matters which, in the opinion of the petitioner, will assist the court in deciding whether to appoint a receiver; and
- (d) the name and address of the person proposed to be appointed, and his qualification to act, as receiver.

**Intimation, service and advertisement under this Part**

**74.18.-** (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) to serve the petition-
  - (i) on the company; and
  - (ii) where an application for an administration order has been presented, on that applicant and any respondent to that application; and
- (b) to advertise the petition forthwith-
  - (i) once in the Edinburgh Gazette; and
  - (ii) once in one or more of 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 8 days.

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

- (a) the name and address of the petitioner;
- (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) the period of notice for lodging answers; and
- (f) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

**Form of other applications and appeals**

**74.19.-** (1) An application under-

- (a) section 61(1) of the Act of 1986 (by a receiver for authority to dispose of property or an interest in property),

- (b) section 62 of that Act<sup>(a)</sup> (for removal of a receiver),
- (c) section 63(1) of that Act (by a receiver for directions),
- (d) section 69(1) of that Act (to enforce the receiver's duty to make returns etc.), or
- (e) any other provision of that Act or the Insolvency Rules relating to receivers not mentioned in this Part, shall, where the court has appointed the receiver, be made by note or, in any other case, by petition.

(2) An appeal against a decision of a receiver as to expenses of submitting a statement of affairs under rule 3.3(2) of the Insolvency Rules shall, where the receiver was appointed by the court, be made by note or, in any other case, by petition.

(3) An application by a receiver-

- (a) under section 67(1) or (2) of the Act of 1986 (to extend the time for sending a report),
- (b) under rule 3.9(2) of the Insolvency Rules (to extend the time for sending an abstract of his receipts and payments), shall, where the court has appointed the receiver, be made by motion or, in any other case, by petition.

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<sup>(a)</sup> Section 62 was amended by the Companies Act 1989 (c.40), Schedule 16, paragraph 3(3) and Schedule 24.

## PART V

### WINDING UP OF COMPANIES

#### **Interpretation of this Part**

**74.20.** In this Part, “the petition” means a petition under section 124 of the Act of 1986 (petition to wind up a company).

#### **Petition to wind up a company**

**74.21.**-(1) The petition shall include averments in relation to-

- (a) the petitioner, if other than the company, and his title to present the petition;
- (b) in respect of the company-
  - (i) its current and any previous registered name;
  - (ii) the address of its registered office, and any previous such address within six months immediately before the presentation of the petition so far as known to the petitioner;
  - (iii) a statement of the nature of its business and objects, the amount of its capital (nominal and issued) indicating what part is called up, paid up or credited as paid up, and the amount of the assets of the company so far as known to the petitioner;
  - (iv) where the centre of main interests of the company is and whether the company has any other establishments in another Member State;
- (c) whether, to the knowledge of the petitioner, a receiver has been appointed in respect of any part of the property of the company or a liquidator has been appointed for the voluntary winding up of the company;
- (d) the grounds on which the petition proceeds; and
- (e) the name and address of the person proposed to be appointed, and his qualification to act, as interim liquidator;
- (f) whether there are insolvency proceedings elsewhere in respect of the company and whether those proceedings are main or territorial proceedings.

#### **Intimation, service and advertisement under this Part**

**74.22.**-(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) to serve the petition-
  - (i) where the petitioner is not the company, on the company;
  - (ii) where the company is being wound up voluntarily and a liquidator has been appointed, on the liquidator; and
  - (iii) where a receiver or administrator has been appointed, on the receiver or administrator, as the case may be;
- (b) where the company is an authorised institution or former authorised institution within the meaning assigned in section 106(1) of the Banking Act 1987(a) and the petitioner is not the Bank of England, to serve the petition on the Bank of England; and
- (c) to advertise the petition forthwith-
  - (i) once in the Edinburgh Gazette; and
  - (ii) once in one or more of 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 8 days.

- (3) An advertisement under paragraph (1) shall include-
- (a) the name and address of the petitioner and, where the petitioner is the company, 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 provisional liquidator has been appointed by the court, his name, address and the date of his appointment;
  - (f) the period of notice for lodging answers; and
  - (g) a statement that any person who intends to appear in the petition must lodge answers within the period of notice.

#### **Remits from one court to another**

**74.23.-** (1) An application under section 120(3)(a)(i) of the Act of 1986(a) (application for remit of petition to a sheriff court) shall be made by motion.

- (2) An application under-
- (a) section 120(3)(a)(ii) of the Act of 1986 (application for remit of petition from a sheriff court to the court), or
  - (b) section 120(3)(b) of that Act (application for remit of petition from one sheriff court to another), shall be made by petition.

#### **Substitution of creditor or contributory for petitioner**

**74.24.-** (1) Where a petitioner in the petition-

- (a) is subsequently found not entitled to present the petition,
- (b) fails to make intimation, service and advertisement as directed by the court,
- (c) moves or consents to withdraw the petition or to allow it to be dismissed or refused,
- (d) fails to appear when the petition is called for hearing, or
- (e) appears, but does not move for an order in terms of the prayer of the petition, the court may, on such terms as it thinks fit, sist as petitioner in place of the original petitioner any creditor or contributory who, in the opinion of the court, is entitled to present the petition.

(1A) Where a member State liquidator has been appointed in main proceedings in relation to the company, without prejudice to paragraph (1) the court may, on such terms as it thinks fit, substitute the member State liquidator as petitioner, where he is desirous of prosecuting the petition.

- (2) An application by a creditor or a contributory to be sisted under paragraph (1)-
- (a) may be made at any time before the petition is dismissed or refused, and
  - (b) shall be made by note; and, if necessary, the court may continue the petition for a specified period to allow a note to be presented.

#### **Provisional liquidator**

**74.25.-** (1) An application to appoint a provisional liquidator under section 135 of the Act of 1986 may be made-

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(a) 1986 c.46.

- (a) by the petitioner, in the prayer of the petition or, if made after the petition has been presented, by note; or
  - (b) by a creditor or contributory of the company, the company, the Secretary of State, a member State liquidator appointed in main proceedings or a person entitled under any enactment to present a petition, by note.
- (2) The application mentioned in paragraph (1) shall include averments in relation to-
- (a) the grounds for the appointment of the provisional liquidator;
  - (b) the name and address of the person proposed to be appointed, and his qualification to act, as provisional liquidator; and
  - (c) whether, to the knowledge of the applicant, an administrator has been appointed to the company or a receiver has been appointed in respect of any part of its property or a liquidator has been appointed voluntarily to wind it up.
- (3) Where the court decides to appoint a provisional liquidator-
- (a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by him in relation to the affairs of the company; and
  - (b) the applicant shall forthwith send a certified copy of such interlocutor to the person appointed.
- (4) On receiving a certified copy of an interlocutor pronounced under paragraph (3), the provisional liquidator shall intimate his appointment forthwith-
- (a) once in the Edinburgh Gazette; and
  - (b) once in one or more of such newspapers as the court has directed.
- (5) An application for the discharge of a provisional liquidator shall be made by note.

#### **Appointment of a liquidator**

- 74.26.-** (1) Where the court pronounces an interlocutor appointing a liquidator-
- (a) the Deputy Principal Clerk shall send a certified copy of that interlocutor to the liquidator;
  - (b) the court may, for the purposes of rule 4.18(4) of the Insolvency Rules (liquidator to give notice of appointment), give such direction as it thinks fit as to advertisement of such appointment.
- (2) An application to appoint a liquidator under section 139(4) of the Act of 1986 shall be made by note.

#### **Applications and appeals in relation to a statement of affairs**

- 74.27.-**(1) An application under section 131(5) of the Act of 1986 for-
- (a) release from an obligation imposed under section 131(1) or (2) of that Act, or
  - (b) an extension of time for the submission of a statement of affairs, shall be made by note.
- (2) A note under paragraph (1) shall be served on the liquidator or provisional liquidator, as the case may be, who may lodge-
- (a) answers to the note; or
  - (b) a report on any matters which he considers should be drawn to the attention of the court.
- (3) Where the liquidator or provisional liquidator lodges a report under paragraph (2), he shall forthwith send a copy of it to the noter.

(4) Where the liquidator or the provisional liquidator does not appear at any hearing on the note, a certified copy of the interlocutor disposing of the note shall be sent to him forthwith by the noter.

(5) An appeal under rule 4.9(6) of the Insolvency Rules (appeal against refusal by liquidator of allowance towards expenses of preparing statement of affairs) shall be made by note.

#### **Appeals against adjudication of claims**

**74.28.**-(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985(a) as applied by rule 4.16 of the Insolvency Rules (appeal by a creditor or contributory of the company against a decision of the liquidator), shall be made by note.

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

(3) On such a note being served on him, the liquidator shall send the claim in question, and a copy of his 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 liquidator with a copy of the interlocutor disposing of the note.

#### **Removal of liquidator**

**74.29.** An application by a creditor of the company for an order-

- (a) under section 171(3) of the Act of 1986 (order directing a liquidator to summon a meeting of creditors for the purpose of removing him), or
- (b) under section 172 of that Act (order for removal of a liquidator), shall be made by note.

#### **Application in relation to remuneration of liquidator**

**74.30.**-(1) An application-

- (a) by a liquidator under rule 4.34 of the Insolvency Rules (application to increase remuneration), or
- (b) by a creditor of the company under rule 4.35 of those Rules (application to reduce liquidator's remuneration), shall be made by note.

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

#### **Applications under section 176A of the Act of 1986**

**74.30A.**-(1) An application by a liquidator, administrator or receiver under section 176A of the Act of 1986 shall be-

- (a) where there is no existing process in relation to any liquidation, administration or receivership, by petition; or
- (b) where a process exists in relation to any liquidation, administration or receivership, by note in that process.

(2) The Deputy Principal Clerk shall -

- (a) after the lodging of any petition or 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 petitioner or noter.

(3) The petitioner or 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.

#### **Application to appoint a special manager**

**74.31.-** (1) An application under section 177 of the Act of 1986 (application for the appointment of a special manager) shall be made by note.

(2) A bond of caution certified by the noter under rule 4.70(4) of the Insolvency Rules shall be sent to the Petition Department by the noter.

(3) After the Deputy Principal Clerk has satisfied himself as to the sufficiency of caution under rule 33.7(1) of these Rules, the clerk of session shall issue to the person appointed to be special manager a certified copy of the interlocutor appointing him.

(4) A special manager may, before the expiry of the period for finding caution, apply to the insolvency judge for an extension of that period.

#### **Other applications**

**74.32.-** (1) An application under the Act of 1986 or any subordinate legislation made under that Act, or Part VII of the Companies Act 1989, in relation to a winding up by the court not mentioned in this Part shall-

- (a) if made by a party to the petition, be made by motion; or
- (b) in any other case, be made by note.

(2) at the hearing of a motion under paragraph (1)(a), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as it thinks fit.

**74.32A.-(1)** This rule applies where -

- (a) a person has been appointed by the court as a liquidator in respect of a petition; and
- (b) that person dies or otherwise ceases to be able to act as liquidator; and
- (c) an application is made to the court for the appointment of a replacement liquidator.

(2) An application mentioned in paragraph 1(c) may include a list of other petitions in which the liquidator has been appointed by the court and in respect of a which the appointment of the same replacement liquidator is sought.

(3) In an interlocutor appointing a replacement liquidator in respect of an application under paragraph (2), the court may -

- (a) or order the replacement liquidator to be appointed in any or all of the petitions listed;
- (b) direct that a copy of the interlocutor be put in the process or processes of that petition or those petitions, as the case may be; and
- (c) make such orders as it thinks fit for the intimation and advertisement of such appointment.

**Approval of the voluntary winding up of a bank or building society**

**74.32B.**—(1) An application for the prior approval of a resolution for voluntary winding up of a Bank under section 84 of the Act of 1986 or voluntary winding up of a building society under section 88 of the Building Societies Act 1986 shall be made to the Deputy Principle Clerk by letter.

- (2) An application under paragraph (1) shall be marked as having been made on the date on which the letter is received by the court.
- (3) The letter shall be placed before the insolvency judge forthwith for consideration.
- (4) The court shall approve such a resolution by pronouncing an interlocutor to that effect.

## PART VI

### DISQUALIFICATION OF COMPANY DIRECTORS

#### **Applications in relation to disqualification orders or undertakings**

**74.33.** An application-

- (a) under section 3(2) of the Company Directors Disqualification Act 1986 (for disqualification for persistent breaches of companies legislation);
- (b) under section 6(1) of that Act (to disqualify unfit directors of insolvent companies);
- (c) under section 8 of that Act<sup>(a)</sup> (for disqualification of unfit director after investigation of a company);
- (ca) under section 8A of that Act (variation or cessation of disqualification undertaking)<sup>(b)</sup>
- (d) under section 11(1) of that Act (for leave by an undischarged bankrupt to be concerned in a company),
- (e) for leave under that Act; or
- (f) by the Secretary of State under rule 4(2) of the Insolvent Companies (Reports on Conduct of Directors) (No.2) (Scotland) Rules 1986<sup>(c)</sup> (application for direction to comply with requirements to furnish information etc.),

shall be made by petition.

#### **Intimation, service and advertisement under this Part**

**74.34.**-(1) Rule 74.22, except paragraphs (1)(c) and (2) of that rule, shall apply to the intimation, service and advertisement of a petition referred to in rule 74.33 (applications in relation to disqualification orders) as it applies to a petition under that rule.

(2) A petition presented under rule 74.33 shall be intimated -

- (a) to the Secretary of State for Business, Enterprise and Regulatory Reform; or
- (b) where a petition is presented under rule 74.33(ca) and the disqualification undertaking was given under section 9B of the Company Directors Disqualification Act 1986 (petition undertaking)<sup>(d)</sup>, to the Office of Fair Trading or any specified regulator which has accepted the undertaking, as the case may be;

unless the petition is presented by that person or body.

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<sup>(a)</sup> Section 8 was amended by the Financial Services Act 1986 (c.60), section 198(2) and by the Companies Act 1989, (c.40), section 79.

<sup>(b)</sup> Section 8A was inserted by section 6(5) of the Insolvency Act 2000 (c.39) and amended by section 204(4) and (5) of the Enterprise Act 2002 (c.40.)

<sup>(c)</sup> S.I. 1986/1916

<sup>(d)</sup> Section 9B was inserted by section 204(1) of the Enterprise Act 2002 (c.40),.

## PART VII

### BANK INSOLVENCY PROCEDURE

#### **Petition for bank insolvency**

**74.35.**—(1) An application for a bank insolvency order under section 95 of the Act of 2009 shall be made by petition.

(2) A petition under paragraph (1) shall include averments in relation to—

- (a) the name and address of the person to be appointed as the bank liquidator, and his qualification to act;
- (b) the current name and any other trading names of the bank;
- (c) the address of the bank's registered office, and any previous such address within six months immediately before the presentation of the petition so far as known to the petitioner;
- (d) a home address for each director of the bank;
- (e) a statement of the amount of the bank's capital (nominal and issued) indicating what part is called up, paid up or credited as paid up, and the amount of the assets of the bank so far as known to the petitioner;
- (f) whether, to the knowledge of the petitioner, a bank administrator has been appointed in respect of the bank or a supervisor has been appointed in respect of the bank under a voluntary arrangement under Part 1 of the Act of 1986; and
- (g) the grounds on which the petition proceeds.

#### **Intimation, service and advertisement under this Part**

**74.36.**—(1) Unless the court otherwise directs, the order under rule 14.5 (first order in petitions) for intimation, service and advertisement of a petition referred to in rule 74.35 shall include—

- (a) a requirement to serve two copies of the petition—
  - (i) on the bank and each director of the bank;
  - (ii) on the Bank of England, if it is not the petitioner;
  - (iii) on the Financial Services Authority, if it is not the petitioner;
  - (iv) on the Secretary of State, if he is not the petitioner;
  - (v) on the proposed bank liquidator;
  - (vi) on the Financial Services Compensation Scheme;
  - (vii) on any person who has given notice to the Financial Services Authority in respect of the bank under section 120 of the Act of 2009;
  - (viii) if there is in force for the bank a voluntary arrangement under Part 1 of the Act of 1986, the supervisor of that arrangement; and
  - (ix) where a bank administrator has been appointed in relation to the bank, on that bank administrator;
- (b) a requirement to advertise the petition forthwith—
  - (i) once in the Edinburgh Gazette; and
  - (ii) once in one or more of such newspapers as the court shall direct; and
- (c) the time and date fixed by the court for the hearing of the petition.

(2) In fixing the time and date for the hearing of the petition mentioned in paragraph (1)(c), the court shall ensure that the date and time is as soon as reasonably practicable, having regard to the need to give the directors of the bank a reasonable opportunity to attend.

(3) Unless the court otherwise directs, where the petition is served under paragraph (1), one copy of the petition shall be sent electronically as soon as practicable to each of the persons named in the order and the other copy shall be served on those persons in accordance with Chapter 16 of these Rules.

(4) Any answers to the petition must be lodged 24 hours before the date fixed by the court under this rule and a copy of the answers must be served on the petitioner before that date.

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

- (a) the identity of the petitioner;
- (b) the name and address of the agent for the petitioner;
- (c) the date on which the petition was presented;
- (d) where a provisional bank liquidator has been appointed by the court, his name, address and the date of his appointment; and
- (e) a statement that any person who intends to appear in the petition must lodge answers no later than 24 hours prior to the date set down for a hearing in terms of paragraph (1)(c).

### **Provisional bank liquidator**

**74.37.**—(1) An application to appoint a provisional bank liquidator under section 135 of the Act of 1986, as that provision is applied and modified by section 103 of the Act of 2009, may be made—

- (a) by the petitioner, in the prayer of the petition or, if made after the petition has been presented, by note; or
- (b) by any other person entitled to make an application under section 95 of the Act of 2009, by note.

(2) The application mentioned in paragraph (1) shall include averments in relation to—

- (a) the grounds for appointment of the provisional bank liquidator;
- (b) the name and address of the person proposed to be appointed, and his qualification to act, as provisional bank liquidator; and
- (c) confirmation that the person to be appointed has consented to act as provisional bank liquidator.

(3) Where the court decides to appoint a provisional bank liquidator—

- (a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by him in relation to the affairs of the bank; and
- (b) the applicant shall forthwith send a certified copy of such interlocutor to the person appointed and to such other persons as are specified under rule 12 of the Bank Insolvency Rules (order of appointment of provisional bank liquidator).

(4) On receiving a certified copy of an interlocutor pronounced under paragraph (3), the provisional bank liquidator 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.

(5) An application for the discharge of a provisional bank liquidator shall be made by note.

### **Applications and appeals in relation to a statement of affairs**

**74.38.**—(1) An application under section 131(5) of the Act of 1986, as applied and modified by section 103 of the Act of 2009, for—

- (a) release from an obligation imposed under section 131(1) or (2) of the Act of 1986, as so applied and modified; or
- (b) an extension of time for the submission of a statement of affairs, shall be made by note.

(2) A note under paragraph (1) shall be served on the bank liquidator or provisional bank liquidator, as the case may be, who may lodge—

- (a) answers to the note; or
- (b) a report on any matters which he considers should be drawn to the attention of the court.

(3) Where the bank liquidator or provisional bank liquidator lodges a report under paragraph (2), he shall forthwith send a copy of it to the noter.

(4) Where the bank liquidator or provisional bank liquidator does not appear at any hearing on the note, a certified copy of the interlocutor disposing of the note shall be sent to him forthwith by the noter.

(5) Where a certified copy of the interlocutor is sent to the bank liquidator or provisional bank liquidator in accordance with paragraph (4), the noter shall forthwith provide notice of that fact to the court.

(6) An appeal under rule 4.9(6) of the Insolvency Rules (appeal against refusal by liquidator of allowance towards expenses of preparing statement of affairs), as applied by rule 19 of the Bank Insolvency Rules, shall be made by note.

### **Appeals against adjudication of claims**

**74.39.**—(1) An appeal under section 49(6) of the Bankruptcy (Scotland) Act 1985<sup>(a)</sup>, as applied by rule 4.16 of the Insolvency Rules (appeal by a creditor or contributory of the company against a decision of the liquidator), as that rule is in turn applied by rule 28 of the Bank Insolvency Rules, shall be made by note.

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

(3) On such a note being served on him, the bank liquidator shall send the claim in question, and a copy of his 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 bank liquidator with a copy of the interlocutor disposing of the note.

### **Removal of bank liquidator**

**74.40.** An application for an order under section 108 of the Act of 2009 (removal of bank liquidator by the court) shall be made by note.

### **Application in relation to remuneration of bank liquidator**

**74.41.**—(1) An application—

- (a) by a bank liquidator under rule 4.34 of the Insolvency Rules (application to increase remuneration), as that rule is applied by rule 47 of the Bank Insolvency Rules; or
- (b) by a creditor of the bank under rule 4.35 of the Insolvency Rules (application to reduce liquidator's remuneration), as that rule is applied by rule 48 of the Bank Insolvency Rules, shall be made by note.

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<sup>(a)</sup> 1985 c.66; section 49 was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 31(1).

### **Applications under section 176A of the Act of 1986**

**74.42.**—(1) An application by a bank liquidator or bank administrator under section 176A of the Act of 1986 (share of assets for unsecured creditors), as applied and modified by section 103 of the Act of 2009, shall be made by note in the existing bank liquidation or bank 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 to appoint a special manager**

**74.43.**—(1) An application under section 177 of the Act of 1986 (application for the appointment of a special manager), as applied and modified by section 103 of the Act of 2009, shall be made by note.

(2) A bond of caution certified by the noter under rule 4.70(4) of the Insolvency Rules, as that rule is applied by rule 82 of the Bank Insolvency Rules, shall be sent to the Petition Department by the noter.

(3) After the Deputy Principal Clerk has satisfied himself as to the sufficiency of caution under rule 33.7(1) of these Rules, the clerk of session shall issue to the person appointed to be special manager a certified copy of the interlocutor appointing him.

(4) A special manager may, before the expiry of the period for finding caution, apply to the insolvency judge for an extension of that period.

### **Other applications**

**74.44.**—(1) An application under the Act of 1986 as applied by the Act of 2009, under the Act of 2009 or under any subordinate legislation made under those Acts, in relation to a bank insolvency not mentioned in this Part shall—

- (a) if made by a party to the petition, be made by motion; or
- (b) in any other case, be made by note.

(2) At the hearing of a motion under paragraph (1)(a), the court may order that the application be made by note; and, in such a case, shall make an order for the lodging of answers to the note in process within such period as it thinks fit.

## PART VIII

### BANK ADMINISTRATION PROCEDURE

#### **Petition for bank administration**

**74.45.**—(1) An application by the Bank of England for a bank administration order under section 142 of the Act of 2009 shall be made by petition.

- (2) A petition under paragraph (1) shall include averments on the following matters—
- (a) the name and address of the person to be appointed as the bank administrator, and his qualification to act;
  - (b) confirmation that the conditions for applying for a bank administration order, set out in section 143 of the Act of 2009, are met in respect of the bank;
  - (c) the bank's current financial position to the best of the Bank of England's knowledge and belief, including actual, contingent and prospective assets and liabilities;
  - (d) any security which the Bank of England knows or believes to be held by the creditors of the bank;
  - (e) whether any security confers power to appoint an administrator under paragraph 14 of Schedule B1 to the Act of 1986 (holder of qualifying floating charge) or a receiver of the whole (or substantially the whole) of the bank's property, and whether such an administrator or receiver has been appointed;
  - (f) any insolvency proceedings which have been instituted in respect of the bank, including any process notified to the Financial Services Authority under section 120 of the Act of 2009;
  - (g) details of any property transfer instrument which the Bank of England has made or intends to make under section 11(2)(b) or 12(2) of the Act of 2009 in respect of the bank;
  - (h) where the property transfer instrument has not yet been made, an explanation of what effect it is likely to have on the bank's financial position;
  - (i) how the making of a bank administration order will achieve the objectives specified in section 137 of the Act of 2009;
  - (j) how functions are to be apportioned where more than one person is to be appointed as bank administrator and, in particular, whether functions are to be exercisable jointly or individually; and
  - (k) other matters which the Bank of England considers will assist the court in deciding whether to grant a bank administration order.

#### **Hearing of petition**

**74.46.**—(1) Where a petition is lodged under rule 74.45, the court shall fix a time and date for the hearing of the petition and in doing so shall ensure that the date and time is as soon as is reasonably practicable, having regard to the need to give the directors of the bank a reasonable opportunity to attend.

- (2) At the hearing of a petition, each of the following may appear or be represented—
- (a) the Bank of England;
  - (b) the Financial Services Authority;
  - (c) the bank;
  - (d) any director of the bank;
  - (e) any person nominated for appointment as bank administrator of the bank;
  - (f) any person who holds a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Act of 1986; and
  - (g) with the permission of the court, any other person who appears to have an interest.

### **Provisional bank administrator**

**74.47.**—(1) An application to appoint a provisional bank administrator under section 135 of the Act of 1986, as that provision is applied and modified by section 145 of the Act of 2009, may be made by the Bank of England in the prayer of the petition 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 for appointment of the provisional bank administrator;
- (b) the name and address of the person proposed to be appointed, and his qualification to act, as provisional bank administrator;
- (c) confirmation that the person to be appointed has consented to act as provisional bank administrator; and
- (d) the Bank of England's estimate of the value of the assets in respect of which the provisional bank administrator is entitled to be appointed.

(3) An order appointing any provisional bank administrator shall specify the functions to be carried out in relation to the bank's affairs and how those functions are to be apportioned where more than one person is to be appointed as provisional bank administrator and, in particular, shall specify whether functions are to be exercisable jointly or individually.

(4) Where the court decides to appoint a provisional bank administrator—

- (a) it shall pronounce an interlocutor making the appointment and specifying the functions to be carried out by him in relation to the affairs of the bank; and
- (b) it shall forthwith send a certified copy of the interlocutor to the person appointed

(5) On receiving a certified copy of an interlocutor pronounced under paragraph (4)(a), the provisional bank administrator 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 provisional bank administrator shall be made by note.

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

**74.48.**—(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 section 145 of the Act of 2009, discloses a failure to approve, or to approve a revision of, a bank 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 section 145 of the Act of 2009.

### **Time and date of lodging in a bank administration**

**74.49.**—(1) The time and date of lodging of a notice or document relating to a bank administration under—

- (a) the Act of 2009;
- (b) the Act of 1986, as applied by the Act of 2009;
- (c) the Bank Administration Rules; or
- (d) the Insolvency Rules, as applied by the Bank Administration Rules, shall be noted by the Deputy Principal Clerk upon the notice or document.

(2) Subject to any provision of the Bank Administration Rules, or the Insolvency Rules as applied by the Bank Administration 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; and
- (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.

**Applications during a bank administration**

**74.50.** An application or appeal under any provision of the Act of 1986 as applied by the Act of 2009, the Insolvency Rules as applied by the Bank Administration Rules, the Act of 2009 or the Bank Administration Rules, during a bank administration shall be–

- (a) where no previous application or appeal has been made, by petition; or
- (b) where a petition for an order in respect of a bank administration has been lodged, by note in the process of that petition.”.

## 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 sections 84 and 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 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 applications).

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(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.

## PART X

### BUILDING SOCIETY INSOLVENCY PROCEDURE

#### Application of rules to building society insolvency

**74.52.**—(1) Subject to paragraph (3), Part VII of this Chapter applies to an application mentioned in paragraph (2) as it applies to an application for a bank insolvency order.

(2) An application referred to in paragraph (1) is an application for a building society insolvency 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 VII of this Chapter under paragraph (1)—

- (a) references to the Bank Insolvency Rules shall be read as references to the Building Society Insolvency (Scotland) Rules 2010 (c);
- (b) references to a rule in the Building Society Insolvency (Scotland) Rules shall be read as references to the corresponding rule in the Building Society Insolvency (Scotland) Rules 2010;
- (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 any Part or provision of the Act of 1986 that is not applied by Part 2 of the Act of 2009 shall be read as references to that Part or provision as applied and modified by section 90A of, and Schedule 15A to, the Building Societies Act 1986 (d);
- (e) references to “bank” shall be read as references to “building society”;
- (f) references to “bank administration” shall be read as references to “building society special administration”;
- (g) references to “bank administrator” shall be read as references to “building society special administrator”;
- (h) references to “bank insolvency order” shall be read as references to “building society insolvency order”;
- (i) references to “bank liquidator” shall be read as references to “building society liquidator”;
- (j) rule 74.36(1)(a)(iv) (intimation, service and advertisement) shall be disregarded; and
- (k) in rule 74.36(1)(a)(vii), the reference to “section 120 of the Act of 2009” shall be read as a reference to “section 90D of the Building Societies Act 1986 (e)

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

- 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).

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

(b) S.I. 2009/805, as amended by S.I. 2010/1189.

(c) S.I. 2010/2584

(d) Section 90A and Schedule 15A were inserted by the Building Societies Act 1997 c.32, section 39.

(e) Section 90D was inserted by S.I. 209/805

## 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—

- (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<sup>(a)</sup> or section 143<sup>(b)</sup> of the Act of 2009, as the case may be.

### **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;

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

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

- (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<sup>(a)</sup>, 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.

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(a) 1985 c.66.