SCOTTISH STATUTORY INSTRUMENTS

2019 No. 247

COURT OF SESSION

SHERIFF COURT

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2019

Made - - - -	*17th July 2019*
Laid before the Scottish Parliament	*19th July 2019*
Coming into force - -	*16th August 2019*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**a**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(**b**) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2019.

(2) It comes into force on 16th August 2019.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

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

(2) In rule 74.30A (applications under section 176A of the Act of 1986)(**d**), after paragraph (1) insert—

"(1A) The petition or note, as the case may be, must include averments in relation to—

(**a**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(**b**) 2014 asp 18.
(**c**) 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. 2019/227.
(**d**) Rule 74.30A was inserted by S.S.I. 2003/385.

(a) the type of insolvency proceedings in which the application arises;

(b) the financial position of the company;

(c) the basis for the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and

(d) whether any other insolvency practitioner is acting in relation to the company and, if so, that insolvency practitioner's name and address.".

Amendment of Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986

3.—(1) The Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986(**a**) is amended in accordance with this paragraph.

(2) In rule 26(2) (appointment of liquidator by the court)(**b**), for "108 or 138(5)" substitute "108, 138(1), 138(5), 139(4) or 140(1) or (2)".

(3) In rule 31A (applications under section 176A of the Act of 1986)(**c**), after paragraph (1) insert—

"(1A) The petition or note, as the case may be, must include averments in relation to—

(a) the type of insolvency proceedings in which the application arises;

(b) the financial position of the company;

(c) the basis for the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and

(d) whether any other insolvency practitioner is acting in relation to the company and, if so, that insolvency practitioner's name and address.".

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
17th July 2019

(**a**) S.I. 1986/2297, last amended by S.S.I. 2019/81.
(**b**) Rule 26 was amended by S.S.I. 2019/81.
(**c**) Rule 31A was inserted by S.S.I. 2003/388.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt makes three amendments to the court rules on corporate insolvency.

Paragraph 2(2) inserts a new paragraph (1A) into rule 74.30A of the Rules of the Court of Session 1994 to set out what must be contained in an application under section 176A of the Insolvency Act 1986 (c.45). This was previously prescribed by rule 7.13A of the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) but was omitted when those Rules were replaced.

Paragraph 3(2) inserts into the Sheriff Court Company Insolvency Rules 1986 references to additional sections in the Insolvency Act 1986 so as to impose an obligation on the sheriff clerk to send to the liquidator a certified copy of the interlocutor appointing the liquidator in those cases. Paragraph 3(3) inserts equivalent provision into Rule 31A of those Rules to that inserted by paragraph 2(2) of this Act of Sederunt into the Rules of the Court of Session 1994.

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