

2006 No. 197

SHERIFF COURT

**Act of Sederunt (Sheriff Court Bankruptcy Rules 1996)
Amendment (UNCITRAL Model Law on Cross-Border
Insolvency) 2006**

Made - - - - *3rd April 2006*

Coming into force - - *6th April 2006*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(a), and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Sheriff Court Bankruptcy Rules Rules 1996) Amendment (UNCITRAL Model Law on Cross-Border Insolvency) 2006 and shall come into force on 6th April 2006.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendment of the Sheriff Court Bankruptcy Rules

2.—(1) The Sheriff Court Bankruptcy Rules(b) shall be amended in accordance with the following sub-paragraphs.

(2) In rule 1 (citation and interpretation) at the end of paragraph (2) there shall be inserted “and “the Model Law” means the Model Law on Cross-Border Insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006(c).”.

(3) In rule 3 (petitions for sequestration) after paragraph (2) (petition by qualified creditor) there shall be inserted the following:—

“(2A) A petition—

- (i) under section 5(2)(ba) of the Act of 1985 by a temporary administrator;
- (ii) under section 5(2)(bb) of the Act of 1985 by a member State liquidator appointed in main proceedings; or
- (iii) under article 11 of the Model Law by a foreign representative,

shall be in Form 3A.”.

(a) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.

(b) S.I. 1996/2507, amended by S.S.I. 2002/560 and 2004/534.

(c) S.I. 2006/1030.

(4) After rule 18 (debt payment programme) there shall be inserted the following:—

“UNCITRAL Model Law on Cross-Border Insolvency

19.—(1) An application under article 12 of the Model Law shall be made by note in the process of the petition to which the application relates.

(2) On receipt of a certified copy interlocutor of a Lord Ordinary ordering proceedings under these rules to be transferred to the Court of Session under paragraph 11 of Schedule 3 to the Cross-Border Insolvency Regulations 2006, the sheriff clerk shall within four days transmit the process to the deputy principal clerk of session.”.

(5) In Appendix 1 after Form 3 there shall be inserted the Form set out in the Schedule to this Act of Sederunt.

BRIAN GILL
Lord Justice Clerk,
I.P.D.

Edinburgh
3rd April 2006

SCHEDULE

Paragraph 2(5)

Form 3A

Form of petition by a temporary administrator, a member State liquidator in main proceedings or a foreign representative

Rule 3(2A)

SHERIFFDOM OF

AT

Court Reference No.

PETITION of (insert name and
address of petitioner)

Petitioner(s)

against

(insert name and address of debtor)

*trading as

(insert name and address of business)

Respondent

The petitioner(s) crave(s) the court:—

1. To grant warrant to cite the respondent to appear before the court on such date as shall be specified in the warrant, being a date not less than 6 nor more than 14 days after the date of citation to show cause why sequestration of his estate should not be granted.

2. To award sequestration of the estate of the respondent.

3. To declare that the said estate belongs to the creditors of the respondent.

4. To appoint (insert name, designation and address of interim trustee) *[or alternatively the Accountant in Bankruptcy] as interim trustee [where applicable*forthwith].

5. To make such other and further orders as may seem appropriate to the court.

6. To find the petitioner(s) entitled to the expenses of this application out of the respondent's estate.

STATEMENT OF FACTS

1. The petitioner(s) is as designed in the instance. The respondent habitually resides *and/or had an established place of business within the Sheriffdom in the year immediately preceding the date of presentation of this petition, and the court accordingly has jurisdiction.

2. As far as is within the knowledge of the petitioner:

*(a) the debtor has his main centre of interests or an establishment in the United Kingdom as defined in the EC Regulation on insolvency proceedings;

*(b) the debtor has his centre of main interests or an establishment as defined above in a Member state other than the United Kingdom;

*(c) the debtor has neither his centre of main interests nor an establishment in the United Kingdom nor in a Member state other than the United Kingdom.

3. The petitioner(s) is *a temporary administrator of the respondent/a member State liquidator appointed in main proceedings/a foreign representative within the meaning of the Model Law on Cross-Border Insolvency as set out in Schedule 1 to the Cross-Border Insolvency Rules 2006 as evidenced in the supporting documentation attached.

4. The respondent has been rendered apparently insolvent by virtue of (narrate appropriate ground founded on in terms of section 7 of the Bankruptcy (Scotland) Act 1985 or article 31 of the Model Law referred to above) and that within four months of the presentation of this petition.

5. In order to realise the estate of the respondent for the benefit of his creditors, the petitioner(s) is/are under the necessity of applying to the court for the sequestration of the respondent's estate in terms of the Bankruptcy (Scotland) Act 1985.

6. *(Insert name of interim trustee)* satisfies the conditions specified in section 2(3) of the Bankruptcy (Scotland) Act 1985 and his undertaking as required by section 2(3)(c) of that Act is attached. **[or alternatively if no nomination of interim trustee The petitioner(s) accept that the Accountant in Bankruptcy will be interim trustee in the sequestration.]*

(If interim trustee to be appointed forthwith, the circumstances rendering this necessary should also be narrated).

7. A copy of this petition has been sent today to the Accountant in Bankruptcy.

PLEA[S] IN LAW

[Here set out the plea(s) in law]

Date *(insert date of petition)*

Signed

(signature of Petitioner(s))

**or Solicitor for Petitioner(s)*

(insert designation and address)

**(delete as appropriate)*

EXPLANATORY NOTE

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

This Act of Sederunt makes minor amendments to the Sheriff Court Bankruptcy Rules 1996 to make provision in respect of the initiation of, and participation in bankruptcy cases by foreign administrators under article 11 of the Model Law on Cross-Border Insolvency set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006. It also makes provision for the transfer of bankruptcy proceedings to the Court of Session where foreign insolvency proceedings have been recognised by that court.

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£3.00

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