



STATUTORY INSTRUMENTS.

S.I. No. 218 of 2022



RULES OF THE SUPERIOR COURTS (COMPANIES ACT 2014, PART
10A) 2022

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 28th day of February 2022.

Donal O'Donnell (Chairperson)

Mary Irvine

John A. Edwards

Richard Humphreys

Yvonne McNamara

Gráinne Larkin

Stuart Gilhooly

Liam Kennedy

James Finn

Mary Cummins

I concur in the making of the following Rules of Court.

Dated this 28th day of April 2022.

HELEN MCENTEE

Minister for Justice

S.I. No. 218 of 2022

RULES OF THE SUPERIOR COURTS (COMPANIES ACT 2014, PART
10A) 2022

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Companies Act 2014, Part 10A) 2022, shall come into operation on 9th day of May 2022.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2022.

2. The Rules of the Superior Courts are amended:

(i) by the insertion immediately following Order 74B of the Order set out in the Schedule as Order 74C;

(ii) by the substitution for paragraph (b) of sub-rule (1) of rule 3 of Order 75 of the following paragraph;

“(b) for which provision has been made in Order 74, Order 74A, Order 74B, or Order 74C, or”.

Schedule

“Order 74C - Proceedings under Part 10A of the Companies Act 2014 (Rescue Process for Small and Micro Companies)”

I. Definitions and Preliminary

1. In this Order, unless the context or subject matter otherwise requires:

the “Act” means the Companies Act 2014;

“record number” means the record number assigned in accordance with rule 3(2);

words and expressions contained in this Order shall have the same meaning as in section 558A of the Act.

2. All applications and proceedings under Part 10A of the Act shall be assigned to such Judge or Judges as the President of the High Court shall from time to time assign to hear such applications and proceedings, but if such Judge or Judges shall be unable to dispose of such applications or proceedings, any other Judge or Judges of the High Court may dispose of any such application.

II. Filing of notice of appointment of process adviser

3.(1) When a process adviser wishes to file in the Court, as the relevant court for the purposes of Part 10A of the Act in the case of an eligible company, the documents referred to in section 558J(2)(b) of the Act, such documents shall be filed in the Central Office, together with an affidavit of the process adviser verifying (i) the determination made under section 558C of the Act; (ii) the process adviser’s report under section 558D of the Act and (iii) the reasons for any determination under section 558H(2) of the Act that proceedings under Part 10A in relation to the eligible company should be brought in the High Court.

(2) Upon the filing of the documents mentioned in sub-rule (1), the matter shall be assigned a record number.

III. Applications by motion

4.(1) The following applications under Part 10A of the Act shall be made by notice of motion, entitled in the matter of the eligible company to which the documents relate and in the matter of Part 10A of the Act, and bearing the record number:

(i) an application by an eligible company or a process adviser under section 558M(3) of the Act in the circumstances specified in section 558M(2) of the Act for direction as to the effect of the appointment of the process adviser on the appointment of a receiver;

(ii) an application by an eligible company or a process adviser under section 558M(7) of the Act for direction as to the effect of the

appointment of the process adviser on the appointment of a provisional liquidator;

(iii) an application by any of the persons specified in section 558N(3) of the Act for relief under section 558N(2) of the Act in relation to staying or restraining proceedings;

(iv) an application by a process adviser pursuant to section 558P(4)(a) of the Act for an order under section 558P(5) of the Act in relation to repudiation of a contract;

(v) an application by a process adviser under section 558P(15) of the Act for relief under section 558P(15) of the Act in relation to affirmation of a contract;

(vi) an application for an order under section 558U(5) of the Act for an order determining that the proceedings at a meeting were not valid;

(vii) an application by a creditor under section 558ZI(6)(b) of the Act for leave of the Court as the relevant court to enforce the obligation of a third person in respect of a liability of the third person;

(viii) an application by an eligible company or an interested party under section 558ZL(1) of the Act for revocation of a rescue plan on the grounds that it was procured by fraud;

(ix) an application by a process adviser under section 558ZM(1) of the Act for an order under section 558ZM(2) of the Act (relating to the delivery, return or payment for an asset of the relevant company which has been disposed of);

(x) an application under section 558ZU(3) of the Act for an order that a process adviser shall not make a document or papers available for inspection by a receiver;

(xi) an application by a process adviser under section 558ZV(1) or (2) of the Act for an order under either of those provisions (relating to dealings with charged property);

(xii) an application by the company concerned or any other person who claims to be aggrieved under section 558ZW(5) of the Act for an order that a notice of resignation need not be given to the members and creditors of the company in the circumstances described in section 558ZW(5) of the Act, where the notice contains material which has been included to secure needless publicity for a defamatory matter;

(xiii) an application by a person mentioned in section 558ZAD(1) of the Act for an order under section 558ZAD(1) of the Act determining any question arising during the rescue period;

(xiv) an application under section 558ZAF of the Act to remit the matter to the Circuit Court.

(2) Where several of the applications referred to in sub-rule (1) are begun simultaneously by the same applicant or applicants concerning the same eligible company, all of the reliefs may be sought in a single notice of motion.

(3) Every application referred to in sub-rule (1) shall be grounded upon the affidavit of the party making the application and shall be heard and determined on affidavit unless the Court otherwise authorises or permits.

(4) Without prejudice to the right of any other interested person to apply for an order under section 558ZAE of the Act, where the moving party in any application mentioned in sub-rule (1) applies for an order under section 558ZAE of the Act for the hearing of the whole or any part of proceedings under Part 10A of the Act otherwise than in public, the reasons for such an application shall be specified in the notice of motion, and any facts relied upon verified in the grounding affidavit.

(5) Any person served with a notice of motion issued in accordance with sub-rule (1) shall be at liberty to deliver and file a replying affidavit.

5.(1) A notice of motion issued in accordance with rule 4 shall, subject to any direction of the Court, be served on the eligible company concerned and on the process adviser (unless either is the moving party) and, subject to the terms of any order made in accordance with section 558M of the Act, on any receiver or provisional liquidator, and additionally:

- (i) in an application under section 558M(3) of the Act, on the receiver;
- (ii) in an application under section 558M(7), on the provisional liquidator;
- (iii) in an application under section 558N(3) of the Act, stayed or restrained; on any party other than the eligible company concerned to any proceedings or threatened proceedings sought to be stayed or restrained;
- (iv) in an application under section 558P(5)(a) or section 558P(15) of the Act, on the relevant person (within the meaning of that section);
- (v) in an application under section 558ZI(6)(b) of the Act, on the third person concerned;
- (vi) in an application under section 558ZL(1) of the Act for revocation of a rescue plan on the grounds that it was procured by fraud, on any other person alleged to have been involved in the procurement of the particular rescue plan;
- (vii) in an application under section 558ZM(1) of the Act, on the person to whom it is alleged the relevant asset has been disposed of;
- (viii) in an application under section 558ZU(3) of the Act, on the receiver;
- (ix) in an application by the process adviser under section 558ZV(1) or (2) of the Act, on the person having the benefit of the charge or security concerned;

- (x) in an application under section 558ZAD(1) of the Act, on any person whose interests would be affected by the determination of the question.
- (2) Where the application is by the process adviser and he or she considers that a particular officer or member of the company, or a particular other person ought to be on notice of the application in the circumstances, he or she shall additionally serve such person.
- 6.(1) An application for an order under section 558ZA(5) of the Act directing the omission from any copy of a report given under section 558ZA(3)(e) of the Act to an interested party such parts of it as are specified in the direction shall be commenced by motion *ex parte*, entitled in the matter of the eligible company to which the documents relate and in the matter of Part 10A of the Act, and bearing the record number.
- (2) Such application shall be grounded upon an affidavit sworn by or on behalf of the process adviser.
- 7.(1) An application by a process adviser under section 558ZY(1) of the Act for orders for payment of the remuneration and costs of, and reasonable expenses properly incurred by, the process adviser shall be commenced by motion *ex parte* to the Court and upon an affidavit of the process adviser setting forth a full account of the work carried out to the date of the application and a full account of the costs and expenses incurred and shall vouch same, and of the basis for the proposed remuneration which it is sought to have paid. The affidavit of the process adviser shall specify what use, if any, he has made of the services of the staff and/or of the facilities of the company and the extent of such use.
- (2) The Court may, where it thinks fit, order that notice of the application be given to all such persons as the Court may direct, and may give directions as to the service of the said notice and fix a date for the hearing of the application.
8. On the return date of a motion issued in accordance with rule 4, rule 6 or rule 7, or on any date to which the hearing of the motion is adjourned, the Court may, if it does not hear and determine the motion, give directions and make orders for the determination of the application in a manner which is just, expeditious and likely to minimise the costs of the application which, where appropriate, may include:
- (a) directions as to the service of notice of the application on any other person, including mode of service and the time allowed for such service;
- (b) directions as to the hearing together or in sequence of any applications or other proceedings under Part 10A of the Act concerning the eligible company, and fixing dates of hearings, which may include provision for the mention of the matter from time to time;

(c) directions as to the filing and delivery of any further affidavits by any party or parties to any applications or other proceedings under Part 10A of the Act concerning the eligible company;

(d) directions as to the furnishing by the parties to the Court and delivery of written submissions;

(e) directions as to the publication or dissemination of notice of the hearing of applications or other proceedings under Part 10A of the Act concerning the eligible company.

9. Any application under section 558ZR(9) of the Act to compel compliance with the requirements of section 558ZR(6) of the Act shall be brought, heard and determined in accordance with Order 84B.

IV. Objections to approval of rescue plan

10.(1) Notice of the approval of a rescue plan in the case of an eligible company shall be filed in the Central Office, where the Court is the relevant court, in accordance with section 558Z(6) of the Act, by filing a copy of the notice sent in accordance with section 558Z(2) of the Act, with the record number endorsed thereon, together with copies of the documents required to be sent in accordance with section 558Z(4) of the Act and an affidavit of the process adviser verifying the approval of the rescue plan and the documents filed. The time of such filing shall be endorsed on the notice by the proper officer.

(2) A copy of the process adviser's report prepared in accordance with section 558ZA of the Act shall be filed in the Central Office and verified by affidavit of the process adviser.

11.(1) Notice of objection to the approval of a rescue plan in the case of an eligible company shall be filed together with a copy thereof in the Central Office, where the Court is the relevant court, in accordance with section 558ZC(2) of the Act. There shall be filed with every notice of objection an affidavit sworn by or on behalf of the objector verifying the facts relied on in support of the objection.

(2) The proper officer shall endorse on the copy notice of objection returned to the objector the date on which the objection is set down for hearing before the Court.

(3) The objector shall, promptly and in any event not later than seven days before the date on which the objection is set down for hearing, serve copies of the notice of objection with the set down date endorsed thereon, together with copy of the verifying affidavit, upon each of the persons mentioned in paragraphs (a) to (d) of section 558ZD(2) of the Act and upon any other person whose interests would be affected by the making of an order consequent on the upholding of the objection.

(4) Every person served with a copy of a notice of objection and verifying affidavit shall be at liberty to file a replying affidavit, verifying any facts relied on by such person in any submission which that person

intends to make in accordance with section 558ZD(3) of the Act, a copy of which shall also be delivered to the objector and to each other person served with the notice of objection.

(5) Where several notices of objection are filed, they shall, where and to the extent practicable, all be set down for hearing on the same occasion, and any person at liberty to file a replying affidavit may address each objection in the same affidavit.

(6) On the date on which objections are first set down for hearing, or on any date to which the hearing of the objections is adjourned, the Court may, if it does not hear and determine the objections, give directions and make orders for the determination of the objections in a manner which is just, expeditious and likely to minimise the costs of the application which, where appropriate, may include:

(a) directions as to the service of notice of the hearing on any other person, including mode of service and the time allowed for such service;

(b) directions as to the hearing together or in sequence of any applications or other proceedings under Part 10A of the Act concerning the eligible company, and fixing dates of hearings, which may include provision for the mention of the matter from time to time;

(c) directions as to the filing and delivery of any further affidavits by any party or parties to the objections or to other proceedings under Part 10A of the Act concerning the eligible company;

(d) directions as to the furnishing by the parties to the Court and delivery of written submissions;

(e) directions as to the publication or dissemination of notice of the hearing of the objections or other proceedings under Part 10A of the Act concerning the eligible company;

(f) a direction that the objections be determined on oral evidence, where it appears to the Court that the subject matter of the objections is likely to involve a substantial dispute of fact or it is otherwise necessary or desirable in the interests of justice (and the Court may for that purpose make further or consequential orders and give further or consequential directions in relation to the hearing, which may include directions as to the exchange of memoranda between or among the parties for the purpose of the agreeing by the parties or the fixing by the Court of any issues of fact or law to be determined.

(7) When on the determination of objections, the Court considers that an order for the winding up of the company in accordance with section 558ZE(5) of the Act should be made, the Court may order that the application for the winding up of the company be made by the process adviser or such other person as the Court may direct and the Court may order that the provisions of Order 74, either in whole or in part, shall apply to the winding up as ordered by the Court.

V. Refusal to comply with requirement of process adviser

12.(1) Any certificate of a process adviser pursuant to section 558ZT(6) of the Act shall be provided to the Court, where it is the relevant court, by filing the same together with a copy thereof in the Central Office, with the record number assigned in accordance with rule 3 endorsed thereon and an affidavit of the process adviser verifying the facts certified.

(2) The proper officer shall endorse on the copy certificate returned to the process adviser the date on which the matter set out in the certificate is listed for inquiry before the Court.

(3) The process adviser shall, promptly and in any event not later than seven days before the date on which the matter set out in the certificate is listed, serve a copy of the certificate with the return date of the inquiry endorsed thereon, together with a copy of the verifying affidavit, upon each person mentioned in the certificate.

(4) Every person served with a copy of a certificate and verifying affidavit shall be at liberty to file a replying affidavit by any person on whose evidence it is proposed to rely in accordance with section 558ZD(3) of the Act, a copy of which shall also be delivered to the process adviser.

VI. Notices of resignation and appointment of process adviser

13. Notice of resignation by a process adviser shall be sent to the Court, where it is the relevant court, in accordance with section 558ZW(4)(a) of the Act by filing a copy of same with the record number assigned in accordance with rule 3 endorsed thereon, in the Central Office.

14. Notice of appointment of a new process adviser shall be delivered to the Court, where it is the relevant court, in accordance with section 558ZX(2)(a)(ii) of the Act by filing a copy of same with the record number assigned in accordance with rule 3 endorsed thereon, in the Central Office.

VII. Review of costs of process adviser

15.(1) Notice of objection for the purposes of an application under section 558ZZ(2) of the Act to review the remuneration, costs and expenses, claimed by a process adviser shall be filed together with a copy thereof in the Central Office, where the Court is the relevant court. There shall be filed with every notice of objection an affidavit sworn by or on behalf of the objector verifying the facts relied on in support of the objection.

(2) The proper officer shall endorse on the copy notice of objection returned to the objector the date on which the application under section 558ZZ(2) of the Act is listed for hearing before the Court.

(3) The objector shall, promptly and in any event not later than seven days before the date on which the application is listed for hearing, serve copies of the notice of objection with the listing date endorsed thereon, together with copy of the verifying affidavit, upon the process adviser, who shall be at liberty to file a replying affidavit.

(4) Where a notice of objection to a rescue plan has been filed in any case in which an application under section 558ZZ(2) of the Act is made, the application under section 558ZZ(2) of the Act shall, where practicable, be listed for hearing immediately following the hearing of objections to the rescue plan.

(5) On the date on which the application under section 558ZZ(2) of the Act is first listed for hearing, or on any date to which the hearing of the application is adjourned, the Court may proceed in accordance with rule 11(6).”

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These rules amend the Rules of the Superior Courts by the insertion of a new Order 74C and amendment of Order 75 rule 3(1)(b) to facilitate the operation of the Companies (Rescue Process for Small and Micro Companies) Act 2021.

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