

Queensland



Subordinate Legislation 1993 No. 201

*Supreme Court Act 1921*

*Corporations (Queensland) Act 1990*

**CORPORATIONS (QUEENSLAND) RULES  
ORDER 1993**

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**CORPORATIONS (QUEENSLAND) RULES 1993**

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**REGISTRAR'S JURISDICTION**

**Short title**

1. This order in council may be cited as the *Corporations (Queensland) Rules Order 1993*.

**Corporations (Queensland) Rules 1993**

2. The Schedule has effect.

## SCHEDULE

### CORPORATIONS (QUEENSLAND) RULES 1993

section 2

#### PART 1—PRELIMINARY

##### Short title

1. These rules may be cited as the *Corporations (Queensland) Rules 1993*.

##### Commencement

2. These rules commence on the day on which Part 4 of the *Corporate Law Reform Act 1992* of the Commonwealth commences.

##### Application of rules

3.(1) These rules apply to all civil proceedings under the Law or the ASC Law that are started on or after the commencement of these rules.

(2) The Court may direct that these rules, or provisions of these rules, apply to civil proceedings under the Law or the ASC Law that were started before the commencement of these rules.

(3) If the Court makes a direction under subrule (2), these rules, or the provisions of these rules, apply to the proceedings.

##### Dispensation from compliance with these rules

4. The Court may dispense with compliance with all or any of the provisions of these rules.



## SCHEDULE (continued)

**Application of Supreme Court Rules and practices**

5. Except as otherwise provided in the Law and these rules, the Rules of the Supreme Court and the general practice of the Court (including the practices and procedures in Chambers), apply with any necessary modifications to the matters to which these rules apply.

**Direction on procedure**

6.(1) This section applies if any circumstances arise for which—

- (a) no procedure is provided by the Law or these rules; or
- (b) there is doubt in relation to the correct procedure to be adopted.

(2) The Court may direct—

- (a) what is to be done in the circumstances; or
- (b) that the adopted procedure is the proper procedure.

(3) The direction may be given *ex parte* if the Court thinks fit.

(4) The direction is as valid as if it were specifically included in these rules.

**Interpretation**

7.(1) In these rules—

“**A.C.N.**” means Australian Company Number;

“**ASC Law**” has the meaning given by Part 11 of the *Corporations (Queensland) Act 1990*;

“**Australian Company Number**” means the registration number allotted to a company under Part 2.2 or 4.1 of the Corporations Law;

“**Commission**” means the Australian Securities Commission;

“**Corporations Law**” has the meaning given by Part 3 of the *Corporations (Queensland) Act 1990*;

“**Corporations Regulations**” has the meaning given by Part 3 of the *Corporations (Queensland) Act 1990*;

## SCHEDULE (continued)

“**Court**” means the Supreme Court of Queensland, and includes a Judge or the registrar of the Court;

“**file**” means file in the Court registry;

“**Government Gazette**” means the Commonwealth of Australia Gazette;

“**Law**” means the Corporations Law;

“**liquidator**” includes a provisional liquidator;

“**prescribed newspaper**” means—

- (a) a newspaper circulating generally in the State or Territory where the body corporate to which the relevant proceedings relate has its principal place of business or last known place of business; and
- (b) if the relevant proceedings relate to a body corporate that has a prescribed office—a newspaper circulating generally in the State or Territory in which the prescribed office is located;

“**prescribed office**” of a body corporate means—

- (a) if the body corporate is a company—its registered office for the purposes of section 217; or
- (b) if the body corporate is registered under Division 1 or 2 of Part 4.1 of the Law—its registered office for the purposes of section 359;

“**receiver**” of the property of a corporation includes a receiver and manager;

“**registrar**” means the registrar of the Court, and includes a deputy registrar of the Court;

“**section**” means section of the Law;

“**solicitor**” for a party to proceedings under these rules, includes—

- (a) a solicitor acting as agent for the solicitor in the proceedings; and
- (b) the solicitor’s town agent acting in the proceedings.

(2) Words defined in section 9 of the Law have the same meanings in these rules as they have in the Law.

## SCHEDULE (continued)

**Forms**

**8.(1)** The forms in Schedule 1 must be used for the purposes for which they are respectively applicable.

**(2)** A form in Schedule 1 must be completed in accordance with any directions specified in, or relating to, the form.

**(3)** Despite section 49(1) of the *Acts Interpretation Act 1954*, the Court may order strict compliance with the style or substance of a form in Schedule 1.

**(4)** Without prejudice to rules 17 to 20 of Order 93 of the Rules of the Supreme Court, a failure to use, or a defect, irregularity or deficiency in, a form does not affect prejudice or invalidate proceedings, a step in proceedings or a document unless the Court, on the application of a person concerned, by order so declares.

**(5)** In these rules, a reference to a form by number is a reference to the form that bears that number in Schedule 1.

**Fees**

**9.** The fees set out in Schedule 2 are the prescribed fees for the purposes mentioned in the Schedule.

**Title to forms (form 1)**

**10.(1)** An application, notice, affidavit or other document in proceedings under the Law (other than a notice in form 4, 14, 17 or 18 or a summons in form 19) must be entitled in form 1.

**(2)** A document filed in proceedings under the Law must specify the name and (if applicable) the Australian Company Number of the corporation the subject of the proceedings.

**(3)** The words ‘(in liquidation)’, ‘(mortgagee in possession)’, ‘(administrator appointed)’, ‘(subject to deed of company arrangement)’, ‘(receiver appointed)’, ‘(receiver and manager appointed)’, or ‘(under official management)’ must be added to the name of the corporation if applicable.

## SCHEDULE (continued)

**Form of proceedings (form 2)**

**11.(1)** Unless otherwise provided in the Law or these rules—

- (a) proceedings (including an appeal) under these rules; and
- (b) an application authorised by any provision of the Law; and
- (c) an application for any order, including an order for any of the following—
  - (i) the granting of leave or an approval or permission;
  - (ii) the extending of time;
  - (iii) the making of any appointment;
  - (iv) the excusing of liability;
  - (v) any other act authorised by the Law; and
- (d) an application for a direction or inquiry;

must be started by an application.

**(2)** The application must be in form 2.

**(3)** The application may be described as an ‘originating application’ and the parties to the application may be described as the ‘originating applicant’ and the ‘originating respondent’ respectively.

**(4)** The application must specify—

- (a) the capacity in which the applicant makes the application, unless the company to which the proceedings relate is the applicant; and
- (b) the relief sought.

**(5)** The number assigned to proceedings relating to an application to wind up a company must be shown on every document filed in the proceedings after the winding up order is made.

**Application to be supported by affidavit**

**12.(1)** An application (other than an application referred to in rule 20(2)) must be supported by affidavit.

## SCHEDULE (continued)

(2) An affidavit in support of an ex parte application must specify the parties interested and their interests.

**Service of application and notice of proceedings**

**13.(1)** Subject to a Court order to the contrary, an application and affidavit supporting it must be served on every person against whom an order or other relief is sought.

(2) The Court may at any time direct—

- (a) that service be effected on, or notice of the proceedings be given to, any person who might be affected by the order or other relief sought; and
- (b) the way in which the service is to be effected or the notice is to be given.

(3) The persons served or given notice are entitled to be heard in the proceedings.

**Service**

**14.(1)** Subject to rules 13 and 56 and an order of the Court to the contrary, if a document is required or permitted under these rules to be served on a person (whether the expression ‘give’, ‘send’ or ‘serve’ or another expression is used), the document may be served—

- (a) on an individual—
  - (i) by delivering it to the person personally; or
  - (ii) by leaving it at, or by sending it by prepaid post to, the last known address of the person or the address (if any) at which the person has authorised service on the person to be effected; or
  - (iii) by facsimile transmission directed and sent to the facsimile transmission number operated at the address of the place of residence or business of the person last known to the person serving the document; or

## SCHEDULE (continued)

- (b) on a company—
  - (i) by leaving it at, or by sending it by prepaid post to, the company's registered office; or
  - (ii) by facsimile transmission directed and sent to the facsimile transmission number operated at the company's registered office.

(2) Service of the document is not taken to be invalid merely because—

- (a) if the person is an individual—the name or any of the names of the person (other than the surname) has been omitted from the document; or
- (b) if the person is a company—the name of the company has been misspelt or some other error appears in the document;

if the Court is satisfied that—

- (c) in all other respects the service of the document has been sufficient; and
- (d) no substantial injustice has been caused to any person.

(3) If the document is served personally, the service must be effected between 9.00 a.m. and 5.00 p.m. on a business day.

(4) If the document is served by sending it by prepaid post, it is taken to have been served at the time it would have been delivered in the ordinary course of post, even though it may be returned by Australia Post to the sender.

(5) If the document is served by facsimile transmission, it is taken to have been served the day following the day the copy is transmitted excluding Saturdays, Sundays and public holidays.

(6) In this rule—

**“registered office”** of a company includes the office that is deemed to be the company's registered office under section 220(2).

## SCHEDULE (continued)

**Advertisement and gazettal**

**15.** Unless otherwise provided by these rules or the Court otherwise orders—

- (a) all matters that are required under these rules to be gazetted must be published once in the Government Gazette; and
- (b) all matters that are required under these rules to be advertised must be published once in a prescribed newspaper; and
- (c) if—
  - (i) a winding up order is amended after gazettal or advertisement; or
  - (ii) a matter that has been gazetted or advertised has been amended or altered; or
  - (iii) a matter has been wrongly or inaccurately gazetted or advertised;

the matter must be re-gazetted or re-advertised with the necessary amendments and alterations.

**Notice of intention to appear (form 3)**

**16.(1)** A person who intends to appear on the hearing of an application must serve on the applicant or the applicant's solicitor notice in form 3 of the person's intention.

**(2)** The notice must—

- (a) be signed by the person or by the person's solicitor; and
- (b) give the address of the person signing it.

**(3)** If the notice is served by post, service must be effected not later than 4.00 p.m. on the business day immediately before the day appointed for the hearing.

**(4)** A person who has failed to comply with this rule may not appear on the hearing of the application or any adjournment of the application without special leave of the Court.

## SCHEDULE (continued)

(5) This rule does not require service of the notice—

- (a) by the applicant; or
- (b) by a person who is served with the application.

(6) Notice of intention to appear need not be given in relation to an adjourned hearing of the application.

**Leave to creditor etc. to be heard, addition of creditors etc. as respondents and representation of creditors etc.**

**17.(1)** In proceedings under the Law or the ASC Law, the Court may grant leave to a person who is, or claims to be—

- (a) a creditor, contributory or officer of the corporation; or
- (b) an officer of a creditor or contributory of the corporation;

to be heard in the proceedings without becoming a party.

(2) The Court may—

- (a) grant the leave on terms it thinks fit; and
- (b) revoke the leave at any time.

(3) In proceedings under the Law or the ASC Law, the Court may—

- (a) order that a person who is, or claims to be, a creditor, contributory or officer of the corporation be added as a respondent to the proceedings; and
- (b) make orders for the further conduct of the proceedings.

(4) The Court may make the order on terms it thinks fit.

(5) Leave may be granted to a person under subrule (1) and an order may be made adding a person under subrule (3)—

- (a) on application by the person or a party to the proceedings; or
- (b) of the Court's own motion.

(6) The Court may appoint any 1 or more of the creditors or contributories to represent all or any class of the creditors or contributories before the Court on any question, or in relation to proceedings, before the



## SCHEDULE (continued)

Court, at the expense of the corporation.

(7) If more than 1 person is appointed under subrule (6) to represent a class of creditors or contributories, the persons appointed must employ the same solicitor to represent them.

**Inquiry in relation to corporation's debts etc.**

**18.(1)** The Court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which proceedings under the Law relate.

(2) Rules 32 to 36 apply to the inquiry, with any necessary modifications, as they apply if the Court directs that a list of creditors be settled.

**Reports to be filed**

**19.(1)** If a report, or a copy of a report, is required to be made or furnished and no other method of making it is specified, the report or copy must be made or furnished by filing it.

(2) A report made under section 411(9), 423(2), 452(4), or 536(2) must not be inspected or used by any person other than by leave of the Court.

**Proceedings in open Court**

**20.(1)** Subject to the Law, the ASC Law, these rules, the Corporations Regulations and any other Act, proceedings to which these rules apply must be heard and determined in open court.

(2) Unless otherwise ordered by the Court, the following proceedings must be heard and determined in Chambers—

- (a) an application for directions in relation to a particular matter arising in the course of the duties of a liquidator, controller, administrator, official manager or trustee or other person administering a compromise or arrangement;

## SCHEDULE (continued)

- (b) an application made under rule 76 or 77 for an order that a person attend for examination or be examined.

**Meetings ordered by the Court**

**21.** Subject to the Law, these rules and a direction of the Court to the contrary, regulations 5.6.12 to 5.6.36A of the Corporations Regulations, so far as they govern the convening and conduct of meetings to which the regulations apply (other than meetings convened or conducted under Part 5.3A of the Law), apply to meetings ordered by the Court.

**Inquiry and certificate by registrar in relation to meetings ordered by the Court**

**22.(1)** If an order has been made for the convening of a meeting to consider a resolution, the party obtaining the order or the party's solicitor, must attend before the registrar after the meeting has been held on a day appointed by the registrar.

**(2)** The registrar must enquire in relation to whether—

- (a) the meeting was properly convened; and
- (b) the resolution was properly passed at the meeting in accordance with the terms of the order under which it was held.

**(3)** The registrar must certify to the Court—

- (a) whether the meeting was properly convened and the resolution was properly passed; and
- (b) if in the registrar's opinion any irregularities occurred in the convening of the meeting or in the passing of the resolution; and
- (c) the nature and extent of any irregularities mentioned in paragraph (b).

**(4)** An order based on the resolution must not be made by the Court unless the registrar's certificate under subrule (3) has been filed.

## SCHEDULE (continued)

**PART 2—JURISDICTION AND APPEALS****Jurisdiction in general**

**23.(1)** The jurisdiction conferred on the Court by the Law and the ASC Law must be exercised in accordance with this Part.

**(2)** This Part does not confer jurisdiction on the registrar to hear and determine a complaint for an offence.

**Registrar's jurisdiction**

**24.(1)** Subject to subrules (2) and (5), in addition to any other jurisdiction conferred on the registrar by these rules, the registrar may hear and determine—

- (a) an application under, or arising out of, the provisions referred to in column 1 of Schedule 3; and
- (b) any other applications the Chief Justice, either generally or in a particular matter, directs to be heard and determined by the registrar.

**(2)** The registrar may not hear or determine a contested application under section 167, 168, 195, 267(3), 411(4) or (6), 459B, 461, 464, 471B, 472, 568, 583 or 585.

**(3)** The description of the matters in column 2 of Schedule 3 are inserted for convenience only and do not affect the operation of these rules.

**(4)** An application that, under this rule, may be heard and determined by the registrar—

- (a) must not be made to a Judge without good reason; and
- (b) may be determined by a Judge or may be referred by a Judge for hearing and determination by the registrar.

**(5)** If proceedings before the registrar appear to the registrar to be proper for the decision of a Judge, the registrar may or, if required by a party, the registrar must, refer the matter to a Judge.

## SCHEDULE (continued)

(6) The Judge may dispose of the matter or refer it back to the registrar with any directions that the Judge thinks fit.

**Appeals from registrar**

**25.(1)** Any person affected by an order or decision of the registrar may appeal to a Judge.

(2) The appeal must be made by application within 5 days of the day of the order or decision or the further time allowed by a Judge or the registrar.

(3) Unless a Judge or the registrar otherwise orders—

- (a) there must be at least 1 clear day between service of the application and the day of the hearing of the appeal; and
- (b) the appeal does not operate as a stay of the proceedings.

(4) The appeal is to be by way of rehearing de novo.

**Transfer of proceedings**

**26.(1)** On the transfer of proceedings under the Law by another court to the Court, the registrar must enter and number the documents received in relation to the proceedings to identify the proceedings by year of filing and number.

(2) The plaintiff or applicant must, within 28 days of the day on which the order of another court was made transferring the proceedings to the Court—

- (a) file an application in the proceedings seeking directions in relation to the subsequent conduct of proceedings; and
- (b) serve the application on each other party to the proceedings.

(3) If the Court makes an order in relation to the costs of proceedings transferred to the Court by another court, the Court may—

- (a) specify the amount of the costs to be allowed; or
- (b) order that the costs be taxed; or

## SCHEDULE (continued)

- (c) make orders that the costs be ascertained by taxation or otherwise in the other court.

**PART 3—SPECIFIED APPLICATIONS****Application of Part**

**27.** This Part applies to applications under the Law in relation to the following matters—

- (a) the change of status of a company under Division 2 of Part 2.3 of the Law;
- (b) the alteration of a company's memorandum;
- (c) the issue of shares at a discount;
- (d) the validation of shares improperly issued;
- (e) the cancellation, variation or abrogation of rights attaching to a share or class of shares;
- (f) the approval of the payment of interest out of capital;
- (g) the approval of a compromise or arrangement under Part 5.1 of the Law;
- (h) the confirmation of a resolution to wind up a scheme under Part 7.12 of the Law.

**Notification of specified applications (form 4)**

**28.** Unless the Court otherwise orders, notice in form 4 of an application to which this Part applies must be gazetted and advertised not less than 7 days before the day appointed for hearing the application.

## SCHEDULE (continued)

**PART 4—REDUCTION OF CAPITAL****Application of Part**

**29.** This Part applies to an application by a company to the Court for the confirmation of a resolution to reduce its share capital.

**Application for directions**

**30.** An application must be made to the registrar for directions in relation to the proceedings to be taken after the application has been presented.

**Registrar's powers**

**31.(1)** On the hearing of the application for directions, the registrar may make the orders and give the directions that the registrar thinks fit in relation to proceedings to be taken.

**(2)** Without limiting subrule (1), the registrar may—

- (a) make an order—
  - (i) in relation to the publication of notices; or
  - (ii) if a settlement of a list of creditors is ordered—fixing the day with reference to which the list of creditors is to be made out and generally fixing a time for, and giving directions in relation to, all other necessary or proper steps in the matter (whether or not expressly mentioned in these rules); or
- (b) direct that—
  - (i) the application for the confirmation of the resolution to be heard by the Court on a day to be fixed by the registrar; or
  - (ii) having regard to any special circumstances, all or any of the provisions of section 195(3) do not apply in relation to creditors included in any specified class.

## SCHEDULE (continued)

**List of creditors, matters to be stated in, and affidavit verifying, list (form 5)**

**32.(1)** The company must file an affidavit in form 5 made by an officer or officers of the company verifying a list containing, so far as possible, the names and addresses of the creditors of the company to whom the enquiry extends.

**(2)** The affidavit must be filed within 7 days of the day with reference to which the list of creditors is to be made out or within another time that the registrar orders.

**(3)** The list must contain the amounts due to the creditors in relation to any debts or claims to which the enquiry extends.

**Inspection etc. of list of creditors**

**33.(1)** A copy of the list of creditors mentioned in rule 32, must be kept at the registered office of the company.

**(2)** A person may, at any time during the ordinary hours of business and on payment of the prescribed fee, inspect and take extracts from the list.

**Notice of application (forms 6 and 7)**

**34.(1)** The company must, within 14 days of filing the affidavit mentioned in rule 32, gazette and advertise notice of the application in form 6.

**(2)** The company must send to each creditor whose name is entered on the list a notice in form 7.

**Barring of late claims**

**35.(1)** A person may not claim to be a creditor, or to be a creditor for an amount larger than that for which the person is entered on the list, after the time fixed to send in particulars of debts or claims unless the registrar gives the person special leave.

## SCHEDULE (continued)

(2) The leave may be given on the terms and conditions that the registrar thinks fit.

**Affidavits verifying list of consenting creditors, creditors whose claims are rejected and creditors whose claims not fully admitted (form 8)**

**36.(1)** The company must, within—

- (a) 7 days of the expiration of the time fixed by the registrar for creditors to send in particulars of their debts or claims; or
- (b) another time that the registrar directs;

file with the registrar an affidavit in form 8.

(2) A competent officer or officers of the company must—

- (a) join in the affidavit; and
- (b) identify which (if any) of the debts and claims—
  - (i) are wholly or partly admitted by the company; and
  - (ii) are wholly or partly disputed by the company; and
  - (iii) are alleged by the company to be wholly or partially excluded from the enquiry.

(3) The company must file with the registrar the following lists—

- (a) a list of all creditors who have been paid or who have consented to the proposed reduction of the company's capital;
- (b) a list of all creditors whose debts or claims the company does not admit at their full amounts but is willing to provide for in the way that the registrar directs.

(4) The lists must—

- (a) be made out in alphabetical order; and
- (b) specify the address of each creditor; and
- (c) specify the amount or estimated value of each creditor's debt or claim.

(5) The list mentioned in subrule (3)(a) must be verified by an affidavit



## SCHEDULE (continued)

made by a competent officer or officers of the company exhibiting—

- (a) the receipts for the payments; or
- (b) the written consents.

**Settlement of list of creditors (form 9)**

**37.(1)** The company must apply *ex parte* to the registrar for directions if—

- (a) the company has filed a list of creditors—
  - (i) consenting to the proposed reduction; or
  - (ii) whose debts or claims the company is willing to provide for as directed by the registrar; or
- (b) a debt or claim is not admitted by the company at its full amount and the company is not willing to provide for the full amount as directed by the registrar; or
- (c) a debt or claim is alleged by the company to be not included in the enquiry.

**(2)** On the application being made, the registrar may—

- (a) order that the affidavit verifying consent is sufficient proof of the consent or require further proof; and
- (b) give the directions that the registrar thinks proper for securing, in the way mentioned in section 195(3), the payment of the debt or claim of a creditor who does not consent to the proposed reduction.

**(3)** For the purpose of securing payment, the registrar may require the evidence and give the directions that the registrar considers necessary or desirable.

**(4)** If—

- (a) the company contends that a person is not entitled to be entered on the list of creditors in relation to a debt or claim (whether admitted or not) or

## SCHEDULE (continued)

- (b) a debt or claim, the particulars of which have been sent in, are not admitted by the company at its full amount;

then, unless the company is willing to provide for the full amount of the debt or claim in the way that the registrar directs, the registrar may direct the company to serve a notice in form 9 on the creditor.

- (5) The company must comply with the registrar's direction.

**Creditor to prove debt**

**38.** A creditor who has received notice that the creditor is required to prove the creditor's debt or claim must—

- (a) file an affidavit verifying the debt or claim; and
- (b) on the day fixed by the registrar, appear before the registrar and produce all documents necessary to prove or substantiate the debt or claim.

**Investigation and further particulars**

**39.** On the appearance of a creditor before the registrar under rule 38, the registrar may do any 1 or more of the following—

- (a) direct investigation of all or any of the debts or claims;
- (b) require the further particulars information or evidence that the registrar thinks fit;
- (c) hear evidence;
- (d) disallow a debt or claim in whole or part;
- (e) fix the amount at which a debt or claim is to be allowed.

**Creditor's costs**

**40.(1)** A creditor who has established a debt or claim is entitled to the costs of establishing the debt or claim unless the registrar is of the opinion that the costs should not be allowed in the circumstances.

## SCHEDULE (continued)

(2) The registrar must fix the costs and the amount of the fixed costs must be added to the established debt or claim.

**Registrar's certificate**

**41.(1)** The result of the settlement of the list of creditors must be stated in a certificate to be settled and signed by the registrar and filed.

(2) The certificate must state—

- (a) the debts or claims admitted at their full amount by the company; and
- (b) the debts or claims the full amount of which the company is willing to provide for; and
- (c) the debts or claims the full amount of which the company does not admit or is not willing to provide for; and
- (d) the debts or claims that have been disallowed; and
- (e) the debts or claims the amounts of which have not been fixed by the registrar; and
- (f) the total amount of the debts or claims the payment of which has been secured in the way provided by section 195(3) and the persons to or by whom they are due or claimed; and
- (g) the names of the creditors who under rule 37 have sought to establish their right to be entered on the list of creditors—
  - (i) identifying creditors whose debts or claims have been disallowed by the registrar; and
  - (ii) identifying creditors whose debts or claims have been fixed by the registrar at the amounts specified; and
- (h) the names of the creditors appearing on the list filed by the company as consenting to the proposed reduction of capital and the total amount of the debts or claims due to them.

(3) A reference need not be made in the certificate to debts or claims to which the enquiry does not extend.

## SCHEDULE (continued)

**Day for application and notice of day fixed (form 10)**

**42.(1)** If a list of creditors has been settled, the registrar must on signing the certificate, fix the day, time and place for the hearing of the application.

**(2)** The day must not be less than 14 days of the filing of the certificate.

**(3)** The company must gazette and advertise a notice in form 10 of the day fixed for the hearing not less than 5 days before the day.

**Dissenting creditor may appear to oppose**

**43.(1)** This rule applies to a person—

- (a) who appears on the registrar's certificate as a creditor of the company who has not consented to the proposed reduction of capital; and
- (b) whose debt or claim has not been secured in full.

**(2)** Subject to rule 16, the person may appear on the hearing of the application and oppose the application unless—

- (a) the company is willing to provide for the debt or claim in the way that the Court directs; or
- (b) the debt or claim has been discharged or determined.

**Directions as to payment of claims of dissenting creditors**

**44.** On the hearing of the application, the Court may—

- (a) give the directions that it thinks proper for securing the payment of the debts or claims of creditors who do not consent to the proposed reduction; and
- (b) require the evidence and give the further directions that the Court thinks necessary.

**Order confirming reduction (s.195(6))**

**45.** An order confirming a reduction must—

## SCHEDULE (continued)

- (a) specify the particulars required to be shown by section 195(6); and
- (b) contain directions in relation to—
  - (i) the time within which an office copy of the order is to be lodged with the Commission;
  - (ii) the way in which notice of the order is to be gazetted and advertised after the office copy of the order has been lodged with the Commission.

## **PART 5—COMPROMISES OR SCHEMES OF ARRANGEMENT**

### **Particular requirements**

**46.(1)** An application under section 411(1), (1A) or (1B) must be supported by an affidavit exhibiting a copy of the proposed compromise or arrangement.

**(2)** A copy of the affidavit must be served on the Commission immediately after the application is filed.

**(3)** Application for the approval of a compromise or arrangement must not be made until the registrar's certificate under rule 22 has been filed.

**(4)** On the application of a person whose rights are affected by a compromise or arrangement approved under section 411(4) or (6), the Court may fix or review the remuneration of the person appointed to administer the compromise or arrangement.

### **Application for directions**

**47.** A trustee or manager under a compromise or arrangement, or a member or creditor bound by the compromise or arrangement, may apply

## SCHEDULE (continued)

to the Court for directions in relation to any particular matter arising in the course of administration of the compromise or arrangement.

## **PART 6—WINDING UP AND OPPRESSION PROCEEDINGS**

### **Definition**

**48.** In this Part—

“**special application**” means an application mentioned in rule 49(1)(a) or (b).

### **Application of Part**

**49.(1)** This Part applies to the following applications—

- (a) an application by a member of a company or by the Commission for relief under section 260;
- (b) an application by a contributory for a winding up order;
- (c) an application by another person for a winding up order.

**(2)** This Part applies, with any necessary adaptations, to a body to which Part 5.7 of the Law applies, as it applies to a company.

### **Filing of application**

**50.(1)** An application must be filed.

**(2)** The registrar must—

- (a) endorse the day and time of filing on the application; and
- (b) if the application is not a special application—appoint a day, time and place for the hearing.

## SCHEDULE (continued)

**Form of application (forms 11, 12)**

**51.(1)** An application must state the nature of the relief sought.

**(2)** An application must be in form 11 or, if it is a special application, in form 12.

**Affidavit verifying statutory demand**

**52.** The affidavit verifying the statutory demand under section 459E(3) must be sworn by a person having knowledge of the facts.

**Verification of application by statutory affidavit (form 13)**

**53.(1)** Subject to rule 62, an application must be supported by a statutory affidavit verifying the application.

**(2)** The affidavit must—

(a) be made in form 13; and

(b) be made by—

(i) the applicant; or

(ii) if more than 1 applicant—1 of them; or

(iii) if the application is made by a corporation—a person having knowledge of the facts; and

(c) be filed with the application.

**(3)** The affidavit is prima facie evidence of the facts stated in it.

**(4)** If an application is required to be served, a copy of the affidavit must be served with the application.

**Contents of statutory affidavit**

**54.(1)** A statutory affidavit must set out the facts that are material to, and justify the making of, a winding up order in terms of the application in support of which the affidavit is filed.

**(2)** If the application relies on section 461(a), the notice and minutes of

## SCHEDULE (continued)

the meeting at which the special resolution was passed must be exhibited to the statutory affidavit.

**Time and place of hearing to be endorsed on application**

**55.(1)** On appointing a time for the hearing of an application that is not a special application, the registrar must endorse the time and place appointed for hearing the application on the application and copies of the application.

**(2)** The registrar may alter the time appointed, and fix another time, at any time before the application has been advertised.

**Service of application**

**56.(1)** Subject to this Part, an application must be served on the company unless it is made by the company.

**(2)** If there is no registered office of the company, the application may be served on the company at the principal or last known principal place of business of the company—

- (a) by leaving a copy with a member or officer of the company at the place; or
- (b) if no member or officer of the company can be found at the place—by leaving a copy at the place; or
- (c) by serving it on the member or officer of the company that the Court directs.

**(3)** If the application is made by a person other than the liquidator of the company in relation to a company that is in the course of a voluntary winding up, the application must be served personally on the liquidator.

**(4)** The application must be served not later than 2 days before it is advertised or gazetted.

**Advertisement and gazettal of notice of application (form 14)**

**57.(1)** Subject to rule 62, notice of an application must be advertised in a prescribed newspaper and gazetted not less than 14 days before the hearing.



## SCHEDULE (continued)

(2) The notice must—

- (a) be in form 14; and
- (b) specify the day on which the application was made; and
- (c) specify the day and place appointed for the hearing of the application; and
- (d) specify the name and address of—
  - (i) the applicant; and
  - (ii) the applicant's solicitor and town agent (if any); and
- (e) contain a note at the foot of the advertisement stating that any person who intends to appear at the hearing of the application must send notice of the person's intention to the applicant or to the applicant's solicitor within the time and in the way prescribed by rule 16.

**Copy of application for contributory or creditor**

**58.(1)** A contributory, member or creditor of the company may request a copy of the application and statutory affidavit (if any) from the applicant or applicant's solicitor.

(2) The request must be accompanied by the prescribed fee.

(3) The applicant or applicant's solicitor must provide the copy within 48 hours of the request being made.

**List of persons intending to appear (form 15)**

**59.(1)** The applicant or the applicant's solicitor must prepare a list in form 15 of the names and addresses of—

- (a) the persons who have given notice of their intention to appear on the hearing of the application; and
- (b) the persons' respective solicitors.

(2) On the day appointed for hearing the application, the applicant or the applicant's solicitor must, before the hearing, file a copy of the list or, if no

## SCHEDULE (continued)

notice of intention to appear has been given, a statement to that effect.

(3) Unless the Court otherwise orders, a further notice of intention to appear need not be given by the applicant or the applicant's solicitor on any adjournment of the hearing of the application.

**Affidavits and notices opposing the application and affidavits in reply (form 16)**

**60.(1)** On the hearing of an application under section 459P, 462 or 464, a person may not, without the leave of the Court, oppose the application unless the person has, not less than 7 clear days before the time appointed for the hearing—

- (a) filed an affidavit in opposition to the application; and
- (b) served on the applicant or the applicant's solicitor—
  - (i) a notice in form 16 of the grounds on which the person opposes the application; and
  - (ii) a copy of the affidavit.

(2) An affidavit in reply to an affidavit filed in opposition to an application (including a further affidavit in support of any of the facts alleged in the statutory affidavit) must be filed within 3 days of the day of service on the applicant of the affidavit in opposition.

(3) A copy of the affidavit in reply must be immediately served on the person by whom the affidavit in opposition was filed or the person's solicitor.

**Substituted applicant in winding up application**

**61.(1)** This rule applies if an applicant for a winding up order—

- (a) fails to take all the steps prescribed by these rules preliminary to the hearing; or
- (b) seeks the leave of the Court to discontinue the application; or
- (c) consents to the application being dismissed; or

## SCHEDULE (continued)

- (d) does not appear when the application is called on for hearing; or
- (e) does not seek the order at the hearing; or
- (f) does not obtain the order at the hearing.

(2) On application of a person who proves on affidavit that the person falls within a class of person mentioned in section 459P or 462(2), the Court may make any 1 or more of the following orders—

- (a) an order substituting the person (the **“substituted applicant”**) as the applicant;
- (b) an order that the substituted applicant serve on the respondent a copy of the order substituting the applicant;
- (c) an order adjourning the application;
- (d) an order regulating the further conduct of the application.

(3) The order may be made on the conditions that the Court thinks fit.

(4) The substituted applicant is not required to comply with the requirements of the Law or these rules to the extent that the originating applicant has already complied with them, unless the Court otherwise orders.

(5) It is not necessary for the substituted applicant to amend the application and the substituted applicant is taken for the purposes of these rules to have been the originating applicant.

(6) Nothing in this rule relieves the originating applicant or the originating applicant’s solicitor from the obligation to comply with the requirements of rule 59.

**Procedure on special application**

**62.(1)** Rules 53, 57 and 64 do not apply to a special application unless the Court otherwise orders.

(2) The applicant in a special application must, and the company or any contributory may, within 7 days of the filing of the application, apply to the Court for directions.

## SCHEDULE (continued)

(3) On the hearing of an application for directions, the Court may, by order, give directions with respect to any of the following matters—

- (a) the applicant refraining from advertising the making of the application but instead notifying members and creditors of the company of the making of the application and of the right of members and creditors to support or oppose the application;
- (b) service of the application on any person in addition to the company;
- (c) the filing, or dispensing with the filing, of affidavits in support of or in opposition to the application;
- (d) the delivery of pleadings or particulars by the applicant, the company or any party to the application;
- (e) the filing and exchange of affidavits, the inspection of documents, and the administering of interrogatories;
- (f) any other steps under the Rules of the Supreme Court that may be necessary or desirable for the purpose of bringing the special application to trial and having it determined;
- (g) dispensing with any attendances before the Registrar.

(4) The Court may, by subsequent order, vary the order.

**Consent of official liquidator**

**63.** Before the hearing of the application for a winding up order, the applicant or the applicant's solicitor must file the written consent of an official liquidator who would be entitled to be appointed as liquidator if an order for the winding up of the company is made by the Court.

**Attendance before registrar**

**64.(1)** Subject to rule 62, after an application for a winding up order has been filed, the applicant or the applicant's solicitor must attend before the registrar on a day to be appointed by the registrar and satisfy the registrar that—

## SCHEDULE (continued)

- (a) the application has been properly gazetted and advertised; and
- (b) the statutory affidavit and the affidavit of service (if any) has been properly filed; and
- (c) the written consent of an official liquidator has been filed; and
- (d) the applicant has properly complied with these rules in relation to applications for a winding up order.

(2) A certificate signed by the registrar is evidence—

- (a) that this rule has been complied with; or
- (b) of the extent to which this rule has been complied with.

(3) An order (other than an order for the dismissal or adjournment of the application for winding up) must not be made on the application of an applicant who has not, before the hearing of the application, attended before the registrar at the time appointed and satisfied the registrar in the way required by subrule (1).

**Adjournment of winding up application**

**65.(1)** An application to wind up a company must not be adjourned (whether by consent or otherwise) for a period longer than 1 month at a time.

(2) A person seeking to adjourn a winding up application must direct the attention of the Court to—

- (a) the fact that the application is for the winding up of a company; and
- (b) section 468(1); and
- (c) whether the application has been adjourned previously.

(3) If—

- (a) a person has been granted more than 2 adjournments of a winding up application; and
- (b) the person seeks a further adjournment of the application;

## SCHEDULE (continued)

the person must file an affidavit deposing to the reasons for seeking the further adjournment.

**No affidavit of debt required**

**66.** On the hearing of a winding up application, an affidavit of indebtedness of the company to the applicant on or about the day of hearing is not required to be filed.

**No affidavit of solvency required**

**67.** On application for dismissal of an application to wind up a company, an affidavit of solvency of the company is not required to be filed.

**Notice of winding up order, service of copy and notice at foot (s.470(2)) (form 17)**

**68.(1)** If an order is made for the winding up of a company, the applicant must—

- (a) immediately inform the liquidator; and
- (b) within 7 days of the passing and entering of the order—
  - (i) gazette and advertise a notice in form 17 of the making of the order; and
  - (ii) serve on the liquidator an office copy of the order together with a statement that section 470(2)(b) has been complied with.

**(2)** The copy of the winding up order required by section 470(2) to be served on the company may be served on any officer of the company.

**(3)** Unless the Court otherwise directs, a winding up order must contain a notice at the foot of the order that complies with subrule (4).

**(4)** The notice must state that it will be the duty of such of the persons who are liable to make out or concur in making out the report as to the affairs of the company as the liquidator may require to—

## SCHEDULE (continued)

- (a) attend on the liquidator at the time and place as the liquidator appoints; and
- (b) give the liquidator all the information that the liquidator requires.

**Appointment and removal of liquidators**

**69.** The Commission or a contributory, creditor or officer of the company may make an application for—

- (a) the filling of a vacancy in the office of a liquidator under section 473; or
- (b) the appointment of a liquidator under section 502; or
- (c) the removal of a liquidator and the appointment of another liquidator under section 503.

**PART 7—PROVISIONAL LIQUIDATORS****Order appointing provisional liquidator**

**70.(1)** At any time after the filing of an application for a winding up order, the Court may appoint a provisional liquidator—

- (a) on the application of the Commission or a creditor or contributory of the company; and
- (b) on proof by affidavit of sufficient grounds for the appointment of a provisional liquidator.

**(2)** The appointment may be made on the terms that the Court thinks just or necessary.

**(3)** Application for appointment of a provisional liquidator must be served on the company before it is heard unless—

- (a) the application is made by the company; or

## SCHEDULE (continued)

- (b) it appears that there are circumstances making it impracticable to serve the company before the application is heard.

**Powers of provisional liquidator**

**71.(1)** Subject to the Law, these rules and any directions of the Court, a liquidator appointed provisionally under section 472(2) has—

- (a) power to carry on the business of the company; and  
(b) the powers specified in sections 477(1)(d), 477(2) (other than section 477(2)(m)) and 477(3).

**(2)** For the purpose of enabling the provisional liquidator to take out letters of administration or recover money as mentioned in section 477(2)(h), the money due is taken to be due to the provisional liquidator.

**(3)** The exercise by the provisional liquidator of the powers conferred by this rule is subject to the control of the Court.

**(4)** A creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers.

**Lodgment with Commission and giving notice of appointment on pronouncement of order (form 18)**

**72.(1)** On the making of an order appointing a provisional liquidator, the party obtaining the order must immediately—

- (a) lodge a notice in the prescribed form with the Commission; and  
(b) cause a notice in form 18 to be gazetted and advertised.

**(2)** If, on the hearing of an application for the appointment of a provisional liquidator, the applicant tenders to the Court a draft order in the appropriate form, the Court may, if it thinks fit, direct that the order be passed and entered immediately.

**(3)** In this rule—

**“prescribed form”** means the form of notice of appointment and address



## SCHEDULE (continued)

of a provisional liquidator prescribed by the Corporations Regulations for the purposes of section 537(1) of the Law.

**Expenses of complying with rule 72(1)**

**73.** The expenses of complying with rule 72(1) are expenses in relation to the application for the winding up order under section 556(1)(a).

**Service of order**

**74.(1)** On the order appointing a provisional liquidator being passed and entered, the party obtaining the order must, within 7 days of the order being entered, serve a copy of the order on the company and on any other person on whom the Court directs service to be made.

**(2)** Subrule (1) does not apply if the company was the applicant for the order.

**Provisional liquidator's remuneration**

**75.** Subject to the Law and an order of the Court, a provisional liquidator is entitled to be paid and retain out of the company's property—

- (a) all costs, charges and expenses properly incurred by the provisional liquidator; and
- (b) the remuneration that is authorised by the order appointing the provisional liquidator or any subsequent order.

**PART 8—EXAMINATIONS****Examinations under ss.596A and 596B**

**76.(1)** An application for the issue of a summons that a person attend for examination under section 596A or 596B must be made ex parte.

## SCHEDULE (continued)

(2) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with the application.

(3) If the application is not made by the Commission, the Commission must be given notice of the application and, if required by the Commission, served with the application.

(4) An affidavit in support of an application for a summons under section 596A or 596B must not be open for inspection by any person except so far as the Court orders.

**Examination or investigation under ss.411, 423, 452 and 536**

**77.(1)** An application for an order for the examination or investigation of a person under section 411, 423, 452 or 536 may be made by—

- (a) the Commission; or
- (b) a person authorised by the Commission; or
- (c) a creditor or contributory; or
- (d) another person aggrieved by the conduct of a manager or trustee of a compromise or arrangement, controller, official manager or liquidator.

(2) The provisions of this Part that apply to an examination under Part 5.9 of the Law apply, with any necessary adaptations, to an examination or an investigation under sections 411, 423, 452 and 536.

**Right to be represented**

**78.** The applicant for an order for examination and the Commission may—

- (a) attend in person or by counsel or solicitor at an examination or investigation of a person; and
- (b) take notes of the examination or investigation; and
- (c) put any questions to the persons examined that the Court, or court directed to hear the examination or investigation, allows.

## SCHEDULE (continued)

**Summons and directions (form 19)**

**79.(1)** An applicant for a summons under section 596A or 596B must, at the same time as making the application, seek the Court's directions in relation to the conduct of the examination that the applicant considers desirable or convenient for its proper conduct.

**(2)** The Court may direct the person ordered to be examined to produce to the court directed to hear the examination, on the day before the day appointed for examination, any books in the person's possession or under the person's control that are relevant to the matters to which the examination relates.

**(3)** A summons issued by the Court under section 596A or 596B must be in form 19.

**Notice of examination**

**80.** The notice of the examination required by section 596E may be given by gazetting and advertising a notice of the time and place appointed for holding the examination.

**Record of examination**

**81.(1)** If the Court makes an order under section 597(13) the written record of examination must be filed.

**(2)** For the purposes of section 597(14), a written record of the examination may be authenticated—

- (a)** by the person or persons who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing that the record is a true transcript of the record of examination; or
- (b)** by any person present at the examination or any part of the examination signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

**(3)** Despite rule 15 of Order 87 of the Rules of the Supreme Court, a

## SCHEDULE (continued)

written record of transcript of an examination or investigation under section 411, 423, 452 or 536 must not be open to inspection by any person other than—

- (a) with the consent of the liquidator or the Commission; or
- (b) by leave of the Court.

(4) Subrule (3) does not apply to the liquidator, the Commission or any person authorised by the Commission.

**Appeal from court hearing examination**

**82.(1)** An appeal lies to a Judge from any decision or order made or given by a court directed to hear the examination.

(2) Unless otherwise ordered by the Judge—

- (a) a notice of appeal in form 2 must be served and a copy filed within 5 days of the making or giving of the decision or order appealed against; and
- (b) there must be at least 2 clear days between service of the notice of appeal and the day of the hearing of the appeal.

(3) The notice of appeal must—

- (a) set out brief particulars of the decision or order; and
- (b) give particulars of the grounds of the appeal; and
- (c) specify the order sought by the appellant.

(4) The appeal is to be by way of a hearing de novo and further evidence may be received.

(5) The Judge may exercise the Judge's discretion without regard to the way in which the discretion has been exercised by the court directed to hear the examination.

(6) Except by leave of a Judge, an appeal does not lie from the decision of a Judge under this rule.

## SCHEDULE (continued)

**Failure to attend or absconding—warrant for arrest (form 20)**

**83.(1)** This rule applies if—

- (a) a person who is ordered by the Court to attend for examination fails to attend at the time and place appointed and no good cause is shown for the failure; or
- (b) before the day appointed for the examination of a person who has been ordered to attend for examination, the applicant for the order satisfies the Court, or the court directed to hear the examination, that there is reason to believe that the person has absconded or is about to abscond.

**(2)** The Court, or the court directed to hear the examination, may—

- (a) issue a warrant in form 20 for the arrest of the person; and
- (b) make any other orders that the Court or court directed to hear the examination thinks just or necessary.

**PART 9—PROCEEDINGS IN WINDING UP BY THE COURT****Official liquidators are officers of Court, judicial notice of registration (s.1283)**

**84.(1)** All official liquidators registered by the Commission under the Law are officers of the Court.

**(2)** Judicial notice must be taken of the registration of a person as an official liquidator.

**Liquidator's attendance at proceedings**

**85.** If the attendance of the liquidator's solicitor is required in any proceedings, the liquidator need not attend in person other than if the

## SCHEDULE (continued)

liquidator's presence is required by a party to the proceedings or the Court directs the liquidator to attend.

**Report as to affairs, personal interview and extension of time**

**86.(1)** A person who, by section 475, is required to submit and verify a report as to the affairs of the company must be furnished by the liquidator with forms and instructions for the preparation of the report.

**(2)** The liquidator may hold personal interviews with a person mentioned in section 475(1) or (2) (the “**interviewee**”) for the purpose of investigating the company's affairs.

**(3)** The interviewee must—

- (a) attend at the time and place appointed by the liquidator; and
- (b) give the liquidator the information that the liquidator requires.

**(4)** The liquidator may, on written application made by a person requiring an extension of time for submitting the report as to the affairs of the company, grant an extension by giving a written certificate extending the time.

**(5)** The liquidator must file a copy of the certificate with the proceedings in the winding up.

**(6)** The copy of the report required to be filed under section 475(7)(a) must be certified in writing by the liquidator of the company to be a true copy of the original report.

**Costs of preparing report as to affairs**

**87.(1)** A person who is required to make or concur in making a report as to the affairs of a company must apply to the liquidator for the liquidator's sanction.

**(2)** The application must—

- (a) be made before any costs or expenses are incurred by the person in the preparation and making of the report; and
- (b) be accompanied by a statement of the estimated costs and

## SCHEDULE (continued)

expenses that it is intended to incur.

(3) A person must not be allowed any costs or expenses that have not been sanctioned by the liquidator other than by order of the Court.

**Possession by liquidator**

**88.(1)** In the discharge of the liquidator's duties under section 478, the liquidator is, for the purpose of acquiring or retaining possession of the property of the company, in the same position as if the liquidator were a receiver of the property appointed by the Court.

(2) On the liquidator's application, the registrar may enforce the acquisition or retention accordingly.

**Delivery of property (form 21)**

**89.(1)** A liquidator may, by written notice, require a contributory, trustee, receiver, banker or agent or officer of a company that is being wound up to pay, deliver, convey, surrender or transfer to the liquidator, as soon as practicable or within a specified period, any money, property or books that are in the person's possession and to which the company is prima facie entitled.

(2) The notice must be in form 21.

(3) On the application of the liquidator, the Court may order the payment, delivery, conveyance, surrender or transfer.

**Filing document making the call and service of notice on contributories (form 22)**

**90.** If a call has been made by a liquidator, the liquidator must immediately serve on each of the contributories included in the call, a notice in form 22 specifying the amount or balance due by the contributory.

## SCHEDULE (continued)

**Enforcement of call**

**91.** On application by a liquidator, the Court may, by order, enforce the payment of the amount due by a contributory on a call.

**Disclaimer (s. 568(1A))**

**92.** A liquidator who applies for leave to disclaim a contract under section 568(1A) must file an affidavit specifying the persons interested, and their interests, under the contract.

**Notice of liquidator's intention to apply for release (ss.480–481)  
(form 23)**

**93.(1)** A liquidator must, before making application to be released, give notice in form 23 of the liquidator's intention to apply for release to—

- (a) all creditors who have proved their debts; and
- (b) all the contributories.

**(2)** The notice must be accompanied by a statement—

- (a) summarising the liquidator's receipts and payments; and
- (b) showing the financial position of the company at the day of the notice.

**(3)** The application for release must be supported by an affidavit that states—

- (a) whether the whole of the property of the company has been realised or whether so much of the property of the company has been realised as can be realised without needlessly prolonging the liquidation; and
- (b) details of any calls made on contributories in the course of the winding up; and
- (c) details of any dividends paid in the course of the winding up; and
- (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release; and



## SCHEDULE (continued)

- (e) whether the Commission has appointed an auditor to report on an account or a statement of the position in the winding up under section 539(2); and
- (f) whether the Court has ordered a report on the accounts of the liquidator to be prepared; and
- (g) whether any objection has been received by the liquidator to the release from an auditor appointed by the Commission or by the Court, or from a creditor, contributory or other person interested; and
- (h) whether any report has been submitted by the liquidator to the Commission under section 533; and
- (i) whether the liquidator considers it necessary to report on the affairs of the company or its officers; and
- (j) details of any property disclaimed in the course of the winding up; and
- (k) details of any remuneration paid or payable to the liquidator and how such remuneration was approved; and
- (l) details of any costs, charges or expenses payable by the liquidator if the Court grants the release.

**Resignation of liquidator**

**94.(1)** A liquidator who desires to resign office must summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation should be accepted.

**(2)** If the creditors and contributories agree to accept the liquidator's resignation, the liquidator must file with the registrar, and lodge with the Commission, a memorandum of resignation.

**(3)** The resignation takes effect on the filing and lodging of the memorandum.

**(4)** If the creditors and contributories do not agree to accept the liquidator's resignation, the liquidator must report to the Court the result of the meetings.

## SCHEDULE (continued)

(5) On the liquidator's application, the Court may—

- (a) determine whether or not the resignation should be accepted; and
- (b) give the directions and make the orders that the Court considers necessary or desirable.

(6) On the Court making a determination that the resignation is accepted, the liquidator must immediately lodge a notice of the determination with the Commission.

**Dispensation with rules 93 and 94**

95. The Court may dispense with all or any of the requirements of rules 93 or 94.

**PART 10—COSTS****Liquidator not personally liable**

96. Unless the Court otherwise orders, the liquidator is not personally liable to pay any costs of—

- (a) an appeal from the liquidator's decision rejecting a proof of debt or claim, in whole or part; or
- (b) an application to set aside or vary the liquidator's act or decision settling the name of a person on a list of contributories.

**Submission of bill of costs by persons engaged by the liquidator for taxation (form 24)**

97.(1) A liquidator may, and in all proper cases must, require a solicitor, auctioneer, broker or other person engaged by the liquidator in a winding up by the Court, to deliver the person's bill of costs, charges or expenses to the liquidator for the purpose of taxation.

## SCHEDULE (continued)

(2) The request must—

- (a) be in form 24; and
- (b) be made a sufficient time before the declaration of a dividend in the winding up.

(3) If the person requested fails to deliver the person's bill within the time stated in the request, or the extended time that the registrar allows—

- (a) the liquidator must declare and distribute the dividend without regard to the person's claim; and
- (b) the claim is forfeited, unless the registrar orders otherwise.

(4) If after considering the bill, the liquidator considers that it should be taxed, the liquidator must lodge it with the taxing officer for taxation.

(5) When taxing the bill, the taxing officer must have regard to any guidelines or scales of fees or charges that may be recommended from time to time by the professional body or organisation with which the person is associated.

**Notice of appointment to tax**

**98.** If a bill of costs, charges or expenses in a winding up has been lodged with the taxing officer, the taxing officer must give notice of an appointment to tax to the liquidator and any person to or by whom the costs, charges or expenses are to be paid.

**Applicant's costs in winding up**

**99.(1)** If a winding up order has been made, the professional fees of the applicant for the order allowable on taxation and recoverable as a priority under section 556 are, at the election of the applicant, \$2 000.

(2) The fees mentioned in subrule (1) are in addition to the applicant's proper disbursements.

(3) If an applicant makes an election under subrule (1), the applicant is not obliged to itemise details of any work performed by the applicant's solicitor in any bill of costs.

## SCHEDULE (continued)

**Attendance at taxation**

**100.** The liquidator may attend or be represented on the taxation of a bill under rule 97 or a bill relating to the applicant's costs in a winding up payable under section 466.

**Issue of certificate of taxation**

**101.** On the completion of taxation of a bill of costs, charges or expenses, the taxing officer must issue to the person presenting the bill a certificate of taxation.

**Liquidator's certificate as to special terms of remuneration**

**102.(1)** If the bill of costs, charges or expenses of a solicitor, accountant, auctioneer, broker or other person engaged by a liquidator is payable out of the assets of the company, a written certificate signed by the liquidator must be produced to the taxing officer on the taxation.

**(2)** The certificate must set out any special terms of remuneration that have been agreed.

**(3)** In considering the special terms of remuneration, the taxing officer must take into account written statements by persons independent of the liquidator and persons engaged by the liquidator, who because of their experience or otherwise, are capable of commenting on the reasonableness or otherwise of the special terms of remuneration.

**No allowance for performance by other person of liquidator's and special manager's duties**

**103.** If a liquidator or special manager in a winding up by the Court receives remuneration for services as liquidator or special manager, a payment must not be allowed in the accounts of the liquidator or special manager in relation to the performance by another person of the ordinary duties that are required by law to be performed personally by the liquidator or special manager.

## SCHEDULE (continued)

**Application for costs after proceedings ended**

**104.(1)** This rule applies if—

- (a) a party to, or person affected by, proceedings desires to make an application for an order that the party or person be allowed costs, or any part of costs, incident to the proceedings; and
- (b) the application is not made at the time of the proceedings.

(2) The party or person must serve notice of the intended application on the company or, if the company is in liquidation, on the liquidator.

(3) The company or the liquidator may appear on, and object to, the application.

(4) Costs of or incidental to the application must be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceedings.

## **PART 11—ACQUISITION OF SHARES—SECURITIES**

**Proceedings under Chapter 6 or 7 of the Law**

**105.** If the Commission is not a party to an application made under Chapter 6 or 7 of the Law, the applicant must serve a copy of the application and any supporting affidavit on the Commission as soon as practicable after filing the application.

**Orders in relation to agreement, payment or benefit (s.740)**

**106.** An applicant must serve an application under section 740 and any supporting affidavit on—

- (a) the body corporate concerned; and
- (b) the person said to have been party to the agreement or to have

## SCHEDULE (continued)

received the payment or benefit; and

- (c) other persons against whom orders are sought.

**Orders in relation to contravention by substantial shareholder (s.741)**

**107.** An applicant must serve an application under section 741 and any supporting affidavit on—

- (a) the company; and  
(b) the person said to have been a substantial shareholder; and  
(c) other persons against whom orders are sought.

**Application for order of Court declaring that an act, document or matter is not invalid (s.743)**

**108.** An applicant must serve an application under section 743 and any supporting affidavit on—

- (a) the Commission; and  
(b) any person who, to the knowledge of the applicant, has an interest that is, or may be, affected by the contravention.

**Application for order varying an agreement with a non-licensee (s.799A)**

**109.** An applicant must serve an application under section 799A and any supporting affidavit on—

- (a) the non-licensee; and  
(b) any person who, to the knowledge of the applicant, has or may have acquired a right or an estate in property in the way specified in section 799.

**Orders and directions under section 877**

**110.** An applicant must serve an application under section 877 and any

## SCHEDULE (continued)

supporting affidavit on—

- (a) the Commission; and
- (b) the person whose bank accounts were subject to the order under section 874.

**Proceedings against securities exchange to establish claim against fidelity fund (s.911)**

**111.(1)** An applicant who has been given leave by the Court to bring proceedings to establish a claim against the fidelity fund of a securities exchange under subsection 911(3) may bring the claim in the proceedings in which leave was granted.

**(2)** At the time of granting leave, the Court may give further directions in relation to—

- (a) any further documents to be filed by the applicant in support of the claim; and
- (b) the subsequent conduct of the proceedings.

**PART 12—THE FUTURES INDUSTRY****Appeal against a decision of a futures exchange or futures association (s.1135)**

**112.(1)** An appeal against a decision of a futures exchange or futures association under section 1135 may be brought by application that—

- (a) states whether the whole or part only of the decision is appealed against and, if part only, identifies the part; and
- (b) concisely sets out the grounds of appeal.

**(2)** The application must be served on the futures exchange or futures organisation concerned.

## SCHEDULE (continued)

**Application for order varying agreement with a non-licensee (s.1165A)**

**113.** An applicant must serve an application under section 1165A and any supporting affidavit on—

- (a) the non-licensee; and
- (b) any person who, to the knowledge of the applicant, has or may have acquired a right or an estate in property in the way specified in section 1165.

**Application for an order under s.1224 or 1226**

**114.** An application under section 1224 or 1226 and any supporting affidavit must be served on—

- (a) the person whose bank accounts would be subject to the order sought; and
- (b) if the Commission is not the applicant—the Commission; and
- (c) if the futures organisation concerned is not the applicant—the futures organisation.

**Proceedings against futures organisation to establish claim against fidelity fund (s.1243)**

**115.(1)** An applicant who has been given leave by the Court to bring proceedings to establish a claim against the fidelity fund of a futures organisation under subsection 1243(3) may bring the claim in the proceedings in which leave was granted.

**(2)** At the time of granting leave, the Court may give further directions in relation to—

- (a) any further documents to be filed by the applicant in support of the claim; and
- (b) the subsequent conduct of the proceedings.



## SCHEDULE (continued)

**PART 13—COURT'S POWERS****Appeals from decision of receivers, liquidators etc. (s.1321)**

**116.(1)** An appeal under section 1321 must be brought by application.

**(2)** Unless the Court grants an extension of time, the appeal must be started by filing the application within 21 days of the act, omission or decision from which the appeal is brought.

**Intervention by Commission in proceedings (s.1330)**

**117.** If the Commission intervenes in any proceedings under section 1330, the Court may give the directions that it thinks fit in relation to the subsequent conduct of the proceedings.

**PART 14—AUSTRALIAN SECURITIES  
COMMISSION LAW****Reference of question of law arising at a hearing on the Commission to the Court (s.61 of ASC Law)**

**118.** Order 38 of the Rules of the Supreme Court applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by the Commission to the Court under section 61 of the ASC Law.

**Proceedings under ss.70, 201 and 219 of ASC Law**

**119.(1)** Proceedings under section 70, 201 or 219 of the ASC Law must be started by application claiming an inquiry and order under the section.

**(2)** The application, relevant certificate and any affidavits in support of the application must be personally served on the person to whom the certificate relates.

## SCHEDULE (continued)

**Reference of question of law arising at a hearing of the Corporations and Securities Panel to the Court (s.196 of ASC Law)**

**120.** Order 38 of the Rules of the Supreme Court applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by the Corporations and Securities Panel to the Court under section 196 of the ASC Law.

**PART 15—REPEALS AND TRANSITIONAL PROVISIONS****Repeals**

**121.** The *Companies (Queensland) Rules 1985* and the *Corporations (Interim) Rules 1991* are repealed.

**Transitional provisions**

**122.** Despite their repeal, the *Companies (Queensland) Rules 1985* and the *Corporations (Interim) Rules 1991* continue to apply to—

- (a) proceedings started before the commencement of these rules (other than proceedings in respect of which a direction is given under rule 3(2)); and
- (b) proceedings that arise under the sections of the Law that (although amended or repealed by the *Corporate Law Reform Act 1992* of the Commonwealth) continue to apply for the purposes mentioned in Part 7 of that Act.

SCHEDULE (continued)

**SCHEDULE 1**

**FORMS**

rule 8

**Form 1 (rule 10)**

**TITLE OF PROCEEDINGS**

In the Supreme Court  
of Queensland

No.

In the matter of the Corporations Law

and

In the matter of [*full name of corporation and Australian Company  
Number*]

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 2 (rule 11)**

**APPLICATION**

*(Title)*

Take notice that [*name of applicant and capacity in which the application is made, e.g. "the liquidator of (name of corporation)"*] will apply to the Supreme Court of Queensland at Brisbane [*or as the case may be*] on [*day*] at    a.m. for the following orders—

1. That ...
2. That the respondent pay the costs of this application,  
and for such further or other order as may be just.

To: [*name and address of respondent*]

Dated this                    day of                    , 19    .

A.B.

Solicitor for the applicant

The address for service of the applicant is [*address*].

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 3 (rule 16)**

**NOTICE OF INTENTION TO APPEAR ON APPLICATION**

*(Title)*

Take notice that A.B. [*name of corporation or firm or, if individual, full name*]

a creditor of the company for \$

*or*

a contributory of the company holding [*number of shares*]

*or as the case may be*

intends to appear on the hearing of the application advertised to be heard at Brisbane [*or as the case may be*] on [*day*], and to

object to the application.

*or*

support the application.

Signed: [*A.B. or A.B's solicitor*]

Address:

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 4 (rule 28)**

*(No title)*

**NOTICE OF APPLICATION**

*[name of corporation in capital letters]*

Application will be made by *[name of applicant or substituted applicant]* to the Supreme Court of Queensland at Brisbane *[or as the case may be]* at a.m. on *[day]* for an order that *[state concisely the principal relief sought in the application]*.

A person intending to appear at the hearing must serve a notice in the prescribed form to reach the address below not later than *[specify day in accordance with rule 16]*.

*[Name of applicant]*

The address for service of the applicant is *[address]*.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 5 (rule 32)****AFFIDAVIT VERIFYING LIST OF CREDITORS***(Title)*

I, A.B., of \_\_\_\_\_, make oath and say as follows—

1. I am the [secretary *or specify other capacity*] of the applicant.

2. The document now produced and shown to me and marked with the letter “A” is

a list of the creditors of, and persons having claims on, the company

*or*

a list of the creditors of, and persons having claims on, the company, other than a person of the following class or classes [*specify class or classes*]

on [*day fixed by the Court*] together with their respective addresses and the nature and amount of their respective debts or claims.

3. The list is to the best of my knowledge, information, and belief, a true and accurate list of the creditors and of the nature and amount, or estimated value, of their debts or claims.

4. To the best of my knowledge, information and belief there was not, at the day mentioned in paragraph 2, any debt or claim that, if the day were the commencement of the winding up of the company, would be admissible against the company (other than the debts and claims set out in the list).

5. I am able to make this statement from facts within my knowledge as the [secretary *or specify other capacity*] of the company, and from information derived on investigation of the affairs, and the books and documents, of the company.

Sworn ...

SCHEDULE (continued)  
SCHEDULE 1 (continued)

“A”

Names and addresses of the creditors	Nature of debt, claim of liability	Amount of estimated value of debt or claim
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This list of creditors marked “A” was produced and shown to A.B., and is the list of creditors referred to in A.B.’s affidavit sworn before me this day of \_\_\_\_\_, 19 .

X.Y., a Justice of the Peace.



## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 6 (rule 34)****ADVERTISEMENT OF APPLICATION AND LIST OF CREDITORS**

(Title)

Notice is given that an application has been made to the Supreme Court of Queensland at Brisbane [*or as the case may be*] to confirm a resolution of the company for reducing its capital from \$     to \$     .

A list of the persons admitted to have been creditors of the company on [*day*] may be inspected at the company's office at [*address*], at any time during business hours, on payment of \$ [*prescribed fee*].

A person who—

- (a) claims to have been, on the last mentioned day, and still to be, a creditor of the company (other than a person who belongs to the following class or classes [*specify class or classes*]); and
- (b) is not entered on the list; and
- (c) claims to be entitled to be entered on the list;

must, on or before [*day*] send the person's name and address, and the particulars of the person's claim, and the name and address of the person's solicitor (if any) to the undersigned at [*address*].

A person who does not do so will be precluded from objecting to the proposed reduction of capital.

A creditor who does not consent to the reduction of capital will be entitled to object.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

A creditor who has not received notice that the person's name is entered on the list of creditors must send particulars of the person's name and address to the solicitor for the company.

Dated this                    day of                    , 19   .

A.B.  
Solicitor for the company.

SCHEDULE (continued)  
 SCHEDULE 1 (continued)

**Form 7 (rule 34)**

**NOTICE TO CREDITORS**

*(Title)*

To:

Take notice that—

- (a) an application has been made to the Supreme Court of Queensland to confirm a special resolution of the company for reducing its capital from \$        to \$        ; and
- (b) in the list of persons admitted by the company to have been, on [*day*], creditors of the company [*if necessary, add “other than ...” as may have been directed*] your name is entered as a creditor for [*nature and amount or estimated value of the debt or claim*].

If you claim to have been, on the last mentioned day, a creditor for a larger amount stated, you must, on or before [*day*], send the particulars of your claim, your name and address and the name and address of your solicitor (if any) to the undersigned at [*address*].

If you do not do so, the entry on the list of creditors in the application to reduce the capital of the company will be treated as correct.

Dated this                      day of                      , 19       .

A.B.  
 Solicitor for the company.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 8 (rule 36)****AFFIDAVIT AS TO CLAIMS**

(Title)

We, C.D., of [address] (the secretary of the above company), E.F. of [address] (the solicitor for the company), and A.B., of [address] (the managing director of the company), do severally make oath and say as follows—

I, C.D. say on oath—

1. I did, on [day], in the way mentioned in paragraph 2, serve a true copy of the notice now produced and shown to me and marked “B” on each of the persons whose names and addresses appear in column 1 of the list of creditors marked “A” mentioned in the affidavit of [name] filed on [day].

2. I served the notices by putting them, properly addressed to the persons according to their respective names and addresses appearing in the list (being the last known addresses or places of residence of the persons) and with the proper postage stamps affixed, as prepaid letters into the post office at [address] between a.m./p.m. and a.m./p.m. on [day].

And I, E.F. say on oath—

3. A true copy of the notice now produced and shown to me and marked “C”, was published in the Government Gazette and in [name of newspaper] on [day].

4. I have, in the document now produced and shown to me and marked “D”, set out a list of all claims, the particulars of which have been sent to me in response to the notice marked “B” now produced and shown to me, by persons claiming to be creditors of the company for larger amounts than are stated in the list of creditors marked “A” mentioned in the affidavit of [name] filed on [day].

or

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

No person has sent to me in response to the notice marked “B” a claim to be entered in the list for a larger amount than in respect of which the person is entered on the list marked “A”.

5. I have, in the document now produced and shown to me marked “E”, set out a list of all claims, the particulars of which have been sent to me in response to the notice mentioned in paragraph 3 of this affidavit by persons who—

- (a) claim to be creditors of the company on [*day*]; and
- (b) do not appear on the list of creditors marked “A”; and
- (c) claimed to be entered on the list.

*or*

No claims have been sent to me in response to the notice mentioned in paragraph 3 by persons not entered on the list marked “A” and claiming to be so entered.

And we, C.D. and A.B. say on oath—

6. We have, in the first part of the document now produced and shown to us and marked “D”, and also in the first part of the document now produced and shown to us and marked “E”, respectively set out—

- (a) debts and claims that are admitted by the company to be due wholly or in part; and
- (b) the amount that the company admits to be due in relation to the debts and claims respectively that are not wholly admitted; and
- (c) the debts and claims that the company contends are wholly, or as to any and what part, not included in the enquiry in this matter.

7. We have, in the second part of each of the documents, marked “D” and “E”, set out the debts and claims that—

- (a) are wholly disputed by the company; and
- (b) the company contends would, even if admitted, be not included in the enquiry in this matter.

And I, C.D., further say on oath—

SCHEDULE (continued)  
SCHEDULE 1 (continued)

8. All rents, rates, taxes, salaries and wages other incidental expenses current on [*day*] and that have since become due have been paid and discharged by the company.

Sworn ...

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**EXHIBIT D**

**“D”**

In the matter etc.

LIST OF DEBTS AND CLAIMS of which the particulars have been sent to \_\_\_\_\_ by persons claiming to be creditors of the company for larger amounts than are stated in the list of creditors made out by the company.

This document, marked “D” was produced and shown to C.D., E.F., and A.B., respectively, and is the document mentioned in their affidavit sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ .

X.Y., A Justice of the Peace

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SCHEDULE (continued)  
SCHEDULE 1 (continued)

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**FIRST PART**

*Debts and claims wholly or partly admitted by the company*

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Name and address of creditor	Particulars of debt or claim	Amount claimed	Amount admitted by the company to be owing to the creditor	Amounts admitted by the company to be owing but which it is contended are not within the enquiry
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**SECOND PART**

*Debts and claims wholly disputed by the company*

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Name and address of creditor or claimant	Particulars of debt or claim	Amount claimed	Amounts which, even if admitted, it is contended would not be within the enquiry
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SCHEDULE (continued)  
SCHEDULE 1 (continued)

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**EXHIBIT E**

**“E”**

In the matter etc.

LIST OF DEBTS AND CLAIMS of which the particulars have been sent to \_\_\_\_\_ by persons claiming to be creditors of the company and to be entered on the list of the creditors made out by the company.

This document, marked “E”, was produced and shown to C.D., E.F., and A.B., respectively, and is the document mentioned in their affidavit sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

XY., a Justice of the Peace.

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**FIRST PART**

*(Same as in Exhibit D)*

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**SECOND PART**

*(Same as in Exhibit D)*

NOTE—The names are to be inserted alphabetically.



## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 9 (rule 37)****NOTICE TO CREDITORS TO PROVE DEBT**

(Title)

To:

You are required to prove the debt claimed by you against the above company by filing your affidavit and giving notice to \_\_\_\_\_, the solicitor for the company, on or before [day].

You are also required—

- (a) to attend personally or by your solicitor at the office of the registrar of the Supreme Court of Queensland at Brisbane [*or as the case may be*] on [day], at \_\_\_\_\_ a.m./p.m., being the time appointed for hearing and adjudicating your claim; and
- (b) produce to the registrar any securities or documents relating to your claim.

If you do not comply with this notice, you will be precluded from objecting to the proposed reduction of the capital of the company.

*or*

in all proceedings relative to the proposed reduction of the capital of the company, you will be treated as a creditor only for the amount that is set against your name in the list of creditors.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

A.B.  
Solicitor for the company.

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 10 (rule 42)**

**ADVERTISEMENT OF HEARING OF APPLICATION**

*(Title)*

Notice is given that an application to the Supreme Court of Queensland for an order confirming a resolution reducing the capital of the above company from \$        to \$        is directed to be heard before the Supreme Court at Brisbane [*or as the case may be*] at        a.m. on [*day*].

A creditor who has not consented to the proposed reduction of capital and whose debt or claim has not been secured in full may, unless the company is willing to provide for the debt or claim in the way that the Court directs, appear on the hearing of the application and oppose it.

A.B.  
Solicitor for the company.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 11 (rule 51)****APPLICATION FOR WINDING UP**

(Title)

Take notice that [*state name of applicant and capacity in which the application is made, e.g. "a creditor of (name of respondent corporation)"*] will apply to the Supreme Court of Queensland at Brisbane [*or as the case may be*] on [*day*] at     a.m. for the following orders—

1. that [*name of respondent corporation*] be wound up under the provisions of the Corporations Law;
  2. that a liquidator be appointed to conduct the winding up;
- and for such further or other order as may be just.

To: [*name and address of respondent*]

A.B. *or*  
Solicitor for the applicant

The address for service of the applicant is [*address*].

I appoint [*day*] at     a.m./p.m. for the purpose of complying with rule 64 of the *Corporations (Queensland) Rules 1993*.

Registrar

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 12 (rule 51)****APPLICATION FOR RELIEF FROM OPPRESSION**

(Title)

Take notice that [*name of applicant*] will apply, under section 260 of the Corporations Law, to the Supreme Court of Queensland at Brisbane [*or as the case may be*] on [*day*] at a.m. for an order—

1. that A.B. be removed from office as a director of the company; or
  2. that A.B. purchase all the shares held by the applicant in the capital of the company at a price of \$ per share or at another price that the Court determines; or
  3. that the company be wound up under the Corporations Law;
- and for such further or other order as may be just, including an order that the respondent pay the costs of and incidental to this application.

To: A.B.  
[*address*]

And to: [*name and address  
of company*]

Solicitor for the applicant

The address for service of the applicant is [*address*].

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 13 (rule 54)**

**AFFIDAVIT VERIFYING APPLICATION FOR WINDING UP  
(Statutory Affidavit)**

*(Title)*

I, A.B. of [*address and occupation*] make oath and say as follows—

1. I am a director [*or secretary or as the case may be*] of [*state name of corporation*], the applicant in the above matter.

2. The applicant is a creditor of [*the respondent company*] (“the Company”) [*or as the case may be, i.e. specify the standing of the applicant*].

3. The Company was on [*day*] incorporated in Queensland [*or as the case may be*] as a company having a share capital.

4. The registered office of the Company is [*state the full name and address of the registered office*].

5. On [*day*] the Company was indebted to the applicant for the amount of \$            for [*state briefly the consideration, e.g. “for goods sold and delivered”*], which sum was then due and payable.

6. On [*day of service*], the applicant served on the Company a demand signed by the applicant requiring the Company to pay the amount mentioned in paragraph 5. Now produced and shown to me and marked with the letter “A” is a true copy of the demand for \$    [*if the demand has been varied under section 459H, a copy of the order should also be exhibited*].

7. The Company failed for 3 weeks after service of the demand to pay the amount or to secure or compound for it to the reasonable satisfaction of the applicant.

8. The Company is unable to pay its debts.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

9. I am aware of my own knowledge of the facts and matters set out in paragraphs 1, 2, 5, 6 and 7 [*or as the case may be*]. Other than as mentioned, I believe the facts and matters in this affidavit to be true.

Sworn ...

SCHEDULE (continued)

SCHEDULE 1 (continued)

**Form 14 (rule 57)****NOTICE OF WINDING UP APPLICATION***(No title)**[name of corporation]*

A.C.N.:

Supreme Court: *[e.g. Brisbane]*

Application No:

An application for the winding up of *[name of corporation]* was made by *[name of applicant]* on *[day of filing of application]* and will be heard by the Supreme Court of Queensland at a.m. on *[day of hearing]*. Copies of documents filed may be obtained from the applicant.

Any person intending to appear at the hearing must serve a notice in the prescribed form to reach the address below no later than 4.00 p.m. on *[the business day immediately before the day appointed for the hearing of the application]*.

*[Name and address of applicant's solicitor]*.

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 15 (rule 59)**

**LIST OF PERSONS ATTENDING THE HEARING OF AN APPLICATION**

*(Title)*

The following are the names of the persons who have given notice of intention to attend the hearing of the application.

Name and address of person	Name and address of person's solicitor	Creditor's amount of debt	Contributory's No. of shares	Opposing/ Supporting

*[Solicitor for the applicant]*



SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 16 (rule 60)**

**NOTICE OF GROUNDS OF OPPOSITION**

*(Title)*

Take notice that [*name of person opposing the application*] opposes the application for winding up on the following grounds:

[*set out concisely the grounds of opposition*].

Dated this            day of            , 19 .

Solicitor for [*person  
opposing application*]

The address for service of [*person opposing the application*] is [*address*].

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 17 (rule 68)**

**NOTICE OF WINDING UP ORDER**

*(No title)*

*[name of corporation]*

A.C.N.:

Supreme Court: *[e.g. Brisbane]*

Application No:

Date of order:

Name of liquidator:

Firm name and address of liquidator:

*[Solicitor for applicant]*

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 18 (rule 72)**

**NOTICE OF APPOINTMENT OF PROVISIONAL  
LIQUIDATOR**

*(No title)*

*[name of corporation]*

A.C.N.:

Supreme Court: [e.g. *Brisbane*]

Application No:

Date of order:

Name of provisional liquidator:

Firm name and address of provisional liquidator:

*[Solicitor for applicant]*

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 19 (rule 79)****SUMMONS FOR PUBLIC EXAMINATION**

(No title)

[name of corporation]

To: [person to be examined  
and address]

You are summonsed under section 596A [or 596B] of the Corporations Law to attend before [specify court directed to hear the examination and address] at a.m./p.m. on [day] and from day to day until excused by the court, to be examined on oath about the examinable affairs of [name of corporation].

You are directed to produce to the registrar of the court on or before [day] the following documents: [specify documents].

[specify any other relevant directions].

Dated this                      day of    , 19 .

Registrar

Note: (1) The Court has ordered that the questions put to you and the answers given by you are to be recorded in writing and signed by you.

(2) Should you without good cause fail to attend the examination in accordance with this summons, you may be arrested and imprisoned without further notice.

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 20 (rule 83)****WARRANT AGAINST PERSON WHO FAILS TO ATTEND  
EXAMINATION**

(Title)

To X.Y., an officer of the Court, and all police officers, and to the general manager of [*name of prison*].

Whereas by evidence taken on oath, it has been made to appear to the satisfaction of the Court that—

- (a) [*name of person required to attend*] was, by Court summons dated [*day of summons*], directed to attend personally at [*place of examination*] and be examined before [*name of court conducting the examination*]; and
- (b) the summons was properly served on [*name of person required to attend*];

And whereas

[*name of person required to attend*] did without good cause fail to attend on [*day*] for the purpose of being examined;

*or*

there is reason to believe that [*name of person required to attend*] has absconded *or* is about to abscond, with a view to avoiding the examination.

This warrant authorises and requires—

- (a) you, X.Y., and all police officers, to take [*name of person required to attend*] and deliver her/him to the general manager of the prison; and

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

- (b) you, the general manager, to receive [*name of person required to attend*] and to keep her/him safely in the prison until the time that the Court orders.

Dated this                      day of                      , 19 .

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

**Form 21 (rule 89)****NOTICE TO PAY MONEY, ETC. TO LIQUIDATOR**

(Title)

To: *[name and address]*

1. I am the liquidator of *[name of company]*.

2. Under section 483(1) of the *Corporations Law*, I require you to pay \$ ,

or

deliver, convey, surrender or transfer *[describe the property or books]*,

to which the company is prima facie entitled, to me at my office situated at *[address of liquidator's office or other place as specified]*

as soon as practicable.

or

within    days of this notice.

3. In this notice—

**“accounting records”** includes—

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

**“books”** includes—

(a) a register; and

## SCHEDULE (continued)

## SCHEDULE 1 (continued)

- (b) any other record of information; and
- (c) accounts or accounting records, however compiled, recorded or stored; and
- (d) a document;

**“document”** includes—

- (a) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape or other article from which sounds, images or messages are capable of being reproduced;
- (c) a disc, tape or other article, or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid or any other device);

and without limiting paragraphs (a) to (c), includes any summons, order and other legal process and any notice.

**“printed”** includes typewritten, lithographed or reproduced by any mechanical means;

**“property”** means any legal or equitable interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action;

**“writing”** shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form.

Dated this                      day of                      , 19   .

Liquidator  
[Name]  
[Address]



SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 22 (rule 90)**

**NOTICE OF CALL**

*(Title)*

To: *[name and address]*

The amount due from you, A.B., in relation to the call made by me is \$ . The amount must be paid by you to me as the liquidator of the company at my office *[address]* on or before *[day]*.

Dated this            day of            , 19 .

Liquidator.

SCHEDULE (continued)  
SCHEDULE 1 (continued)**Form 23 (rule 93)****NOTICE TO CREDITORS AND CONTRIBUTORIES OF  
INTENTION TO APPLY FOR RELEASE**

(Title)

Take notice that I, [*name and address of liquidator*] the liquidator of the company, intend to apply to the Supreme Court of Queensland, Brisbane [*or as the case may be*], at                    a.m./p.m. on [*day*] for my release.

And further take notice that any objection you may have to the granting of my release should be notified to the registrar and to me within 21 days of this notice.

A summary of my receipts and payments as liquidator is annexed.

Dated this            day of            , 19   .

Liquidator

NOTE:—Section 481(3) of the Corporations Law provides that “An order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.”.

SCHEDULE (continued)  
SCHEDULE 1 (continued)

**Form 24 (rule 97)**

**REQUEST TO DELIVER BILL FOR TAXATION**

*(Title)*

I request that, within            days of this request, you deliver to me for taxation, your bill of costs *or* charges *or* expenses as [*nature of engagement*].

If you fail to comply with this request, I will proceed, under the Corporations Law and *Corporations (Queensland) Rules 1993*, to declare and distribute a dividend without regard to any claim that you may have and your claim may be forfeited.

Dated this            day of            , 19   .

Liquidator.

## SCHEDULE (continued)

**SCHEDULE 2****FEEES**

	rule 9
	\$
Inspection of list of creditors (rule 33(2)) . . . . .	10.00
Copy of application and statutory affidavit (rule 58(2)) . . . . .	5.00
	per page

## SCHEDULE (continued)

**SCHEDULE 3****REGISTRAR'S JURISDICTION**

rule 24

<b>Column 1</b> <b>Provision of the Law or of these Rules</b>	<b>Column 2</b> <b>Description of application or power</b>
section 140(4)	Power to approve alteration in constituent document of registered foreign company
section 167	Order with respect to change of status of company (if uncontested)
section 168	Order with respect to change of status from public to proprietary company or vice versa (if uncontested)
section 170(5)	Leave to convert to proprietary company
section 172	Order in respect of alteration of memorandum
section 190	Order confirming issue of shares at a discount
section 194	Order validating issue or allotment of shares
section 195	Court's power as to reduction of capital (if uncontested)
section 250(4)	Leave to member of proprietary company to appoint proxy
section 266(4)	Power to extend period of lodgement of notice in respect of charge or variation in terms of charge
section 267(3)	Leave to enforce charge (if uncontested)
section 274	Power to rectify register of charges

## SCHEDULE (continued)

## SCHEDULE 3 (continued)

section 319	Order for inspection of records
section 342(9)	Order for restoration of name of registered Australian body to the register
section 350(10)	Order for restoration of name of registered foreign company to the register
section 411(4) and (6)	For sanction of compromise or arrangement (if uncontested)
section 425	Power to fix remuneration of receiver
section 429(3)	Power to extend time for report
section 459B	Court's power to order winding up in insolvency (if uncontested)
sections 461 and 464	Court's power to order winding up on other grounds (if uncontested)
section 467	Powers on hearing winding up application
section 470(2)(b)	Service of copy of order
section 471(B)	For leave to proceed (if uncontested)
section 472	Appointment of liquidator or provisional liquidator (if uncontested)
section 473(2)	Determination of provisional liquidator's remuneration
section 473(3)	Determination of liquidator's remuneration
section 473(7)	To fill vacancy in office of liquidator
section 473(8)	Power to declare what may be done by liquidator
section 474(2)	Order that property vests in liquidator
section 481	Report on accounts of liquidator
section 483(1)	Power to require property to be delivered to liquidator

## SCHEDULE (continued)

## SCHEDULE 3 (continued)

section 483(3)	Calls on contributories
section 486	Order for inspection of books by creditors or contributories
section 490	Leave of Court to wind up voluntarily
section 495(4)	Conduct of meeting in members' voluntary winding up
section 496(3)	List of creditors in members' voluntary winding up
section 497(3)	List of creditors in creditors' voluntary winding up
section 499	Direction where different liquidators chosen
section 500	Execution and civil proceedings
section 502	Appointment of liquidator in voluntary winding up
section 504	Review of liquidator's remuneration in voluntary winding up
section 507(6)	Power to sanction resolution to accept shares as consideration for sale of property of company
section 507(10)	Approval to liquidator's exercise of powers in creditors' voluntary winding up
section 509(6)	Power to declare date of dissolution
section 511	Application to exercise powers or determine questions in voluntary winding up
section 532(2)	Leave of Court for person to be appointed as liquidator
section 542(3)(a)	Directions as to destruction of books
section 543(1)	Order as to the investment of surplus funds

## SCHEDULE (continued)

## SCHEDULE 3 (continued)

section 544(2)	Court's power to order account of funds in hands of liquidator, audit or payment of money by liquidator
section 545	Direction to liquidator to incur a particular expense
section 547	Power to direct that meeting of creditors or contributories be held
section 568	Disclaimer of onerous property (if uncontested)
section 571	Court's power to declare dissolution of company void
section 574(3), (5)	Reinstatement of company on application of persons aggrieved
sections 583, 585	Powers under Part 5.7 in winding up bodies other than companies (if uncontested)
sections 596A, 596B	Summons for examination
section 596F	Directions about examination
section 597(9)	Directions as to production of books
section 597(15)	Direction as to other court
section 597A	To require the filing of an affidavit
section 597B	Costs of unnecessary examination
sections 600A, 600B, 600C, 600D	Court's powers in respect of meetings
section 743	Court's power if contravention due to inadvertence
section 1053(5)	Power to appoint body corporate as trustee for debenture holders



## SCHEDULE (continued)

## SCHEDULE 3 (continued)

section 1074	Order confirming resolution that undertaking or scheme be wound up
section 1092	Summons for appearance of a person
section 1093	Orders relating to company's refusal to register a share transfer
section 1096(4)	Court's power to make order to remedy default in issuing certificate
section 1274	Order that document be lodged
section 1303	Order that books be available for inspection
section 1319	Power to give directions with respect to meetings
section 1322	Irregularities
rule 13(2)	Power to direct notice to be given
rule 17(1)	Leave to be heard
rule 18(1)	Inquiry as to creditors
rule 62(3)	Directions on special application

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ENDNOTES

1. Made by the Governor in Council on 10 June 1993.
2. Notified in the Gazette on 11 June 1993.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.