

Queensland



Subordinate Legislation 2000 No. 232

*Supreme Court of Queensland Act 1991*

**UNIFORM CIVIL PROCEDURE AMENDMENT  
RULE (No. 2) 2000**

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## **PART 1—PRELIMINARY**

### **Short title**

1. This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 2) 2000*.

## **PART 2—AMENDMENT OF UNIFORM CIVIL PROCEDURE RULES 1999**

### **Rules amended in pt 2**

2. This part amends the *Uniform Civil Procedure Rules 1999*.

### **Replacement of ch 23 (Proceedings under Corporations Law and ASC Law)**

3. Chapter 23—

*omit, insert—*

## **‘CHAPTER 23—PROCEEDINGS UNDER CORPORATIONS LAW AND ASC LAW**

### **‘Corporations law rules**

‘995. The rules in schedule 1A apply to a proceeding in the Supreme Court under the Corporations Law or the ASC Law, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

**‘SCHEDULE 1A****‘PROCEEDINGS UNDER CORPORATIONS LAW**

rule 995

**‘PART 1—PRELIMINARY****‘Short title**

**‘1.1** The rules in this schedule may be cited as the Corporations Law Rules.

**‘Notes in text**

**‘1.2** A note in the text of this schedule is part of the schedule.

**‘Application of these rules and other rules of the court**

**‘1.3(1)** Unless the court otherwise orders, these rules apply to a proceeding in the court under the Corporations Law, or the ASC Law, that is commenced on or after the commencement of these rules.

**‘(2)** The other rules of the court apply, so far as they are relevant and not inconsistent with these rules, to a proceeding in the court under the Corporations Law, or the ASC Law, that is commenced on or after the commencement of these rules.

**‘(3)** Unless the court otherwise orders, the rules applying to a proceeding in the court under the Corporations Law, or the ASC Law, as in force immediately before the commencement of these rules, continue to apply to a proceeding under the Corporations Law, or the ASC Law, that was commenced before the commencement of these rules.

*Note—*

Under section 8A of the Law, a reference to the Law includes a reference to the Corporations Regulations.

### ‘Expressions used in the Corporations Law

‘1.4 An expression used in these rules and in the Corporations Law has the same meaning in these rules as it has in the Corporations Law.

Notes—

1. Expressions used in these rules (including the notes to these rules) that are defined in the Corporations Law include—
  - ACN* (short for ‘Australian Company Number’)—see section 9
  - ARBN* (short for ‘Australian Registered Body Number’)—see section 9
  - body*—see section 9
  - body corporate*—see section 9
  - books*—see section 9
  - Commission*—see section 9
  - company*—see section 9
  - corporation*—see section 57A
  - daily newspaper*—see section 9
  - foreign country*—see section 9
  - futures broker*—see section 9
  - Gazette*—see section 9
  - officer*, in relation to a body corporate—see section 82A
  - official liquidator*—see section 9
  - Part 5.1 body*—see section 9
  - Part 5.7 body*—see section 9
  - register*—see section 9
  - registered liquidator*—see section 9
  - registered office*—see section 9
  - statutory demand*—see section 9.
2. This rule applies ‘except so far as the context or subject matter otherwise indicates or requires’: *Acts Interpretation Act 1954*, section 32A (Definitions to be read in context) and section 36, definition of “definition” as applied by the *Statutory Instruments Act 1992*, section 14(1).



**‘Definitions for these rules**

**‘1.5** In these rules—

**“applicant”** means a person claiming relief in a proceeding.

**“respondent”** means a person against whom relief is claimed.

**“interlocutory application”** means an application in a proceeding.

**“originating application”** means an application starting a proceeding in the court under the Corporations Law or the ASC law.

**“the court”** means the Supreme Court of Queensland.

**“the Law”** means the Corporations Law.

*Note—*

See note 2 to rule 1.4.

**‘References to rules and forms**

**‘1.6** In these rules—

(a) a reference to a rule is a reference to a rule in this schedule; and

(b) a reference to a form followed by a number is a reference to the approved form for these rules having that number.

*Note—*

See note 2 to rule 1.4.

**‘Substantial compliance with forms**

**‘1.7(1)** It is sufficient compliance with these rules in relation to a document that is required to be in accordance with a form if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.

**‘(2)** Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these rules.

**‘(3)** This rule does not limit the *Acts Interpretation Act 1954*, section 49.

**‘Court’s power to give directions**

**‘1.8** The court may give directions in relation to the practice and procedure to be followed in a proceeding if it is satisfied, in the circumstances of the proceeding, that—

- (a) provisions of the Corporations Law, the ASC Law, or the rules of the court do not adequately provide for the practice and procedure to be followed in the proceeding; or
- (b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

**‘Calculation of time**

**‘1.9(1)** If, for any purpose, these rules—

- (a) prohibit, permit or require an act or thing to be done within, by, or before the end of; or
- (b) otherwise prescribe, allow or provide for;

a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event, as the case may be.

**‘(2)** Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.

**‘(3)** If the last day of any period prescribed or allowed by these rules for an act or thing to be done falls on a day that is not a business day in the place where the act or thing is to be or may be done, the act or thing may be done on the first business day in the place after that day.

**‘(4)** In calculating a period of time for the purposes of these rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

**‘(5)** Subject to subrules (1) to (4), the *Acts Interpretation Act 1954*, section 38 applies in relation to these rules.

**‘Extension and abridgment of time**

**‘1.10** Unless the Corporations Law, the ASC Law, or these rules otherwise provide, the rules of the court that provide for the extension or shortening of a period of time fixed for the doing of any act or thing in relation to a proceeding apply to a proceeding to which these rules apply.

**‘PART 2—PROCEEDINGS GENERALLY****‘Title of documents in a proceeding—form 1**

**‘2.1** The title of a document filed in a proceeding must be in form 1.

**‘Originating application and interlocutory application—forms 2 and 3**

**‘2.2(1)** Unless these rules otherwise provide, a person must make an application required or permitted by the Law to be made to the court—

- (a) if the application is not made in a proceeding already commenced in the court—by filing an originating application; and
- (b) in any other case—by filing an interlocutory application.

**‘(2)** Unless the court otherwise directs, a person may make an application to the court in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory application in that proceeding.

**‘(3)** An originating application must—

- (a) be in form 2; and
- (b) state—
  - (i) each section of the Law or the ASC Law, or each regulation of the Corporations Regulations, under which the proceeding is brought; and
  - (ii) the relief sought.

**‘(4)** An interlocutory application must—

- (a) be in form 3; and

- (b) state—
  - (i) if appropriate, each section of the Law or the ASC Law, or each regulation of the Corporations Regulations, or each rule of court under which the interlocutory application is made; and
  - (ii) the relief sought.

### **‘Fixing of hearing**

**‘2.3** On receiving an originating application or interlocutory application, the registrar—

- (a) must fix a time, date and place for hearing and endorse those details on the originating application or interlocutory application; and
- (b) may seal a sufficient number of copies for service and proof of service.

### **‘Supporting affidavits**

**‘2.4(1)** Unless the court otherwise directs, an originating application, or interlocutory application, must be supported by an affidavit stating the facts in support of the relief claimed.

**‘(2)** An affidavit in support of an originating application must exhibit a record of a search of the records maintained by the Commission, in relation to the company that is the subject of the application carried out no earlier than 7 days before the application is filed.

### **‘Affidavits made by creditors**

**‘2.5** Subject to rule 5.4, an affidavit that is to be made by a creditor may be made—

- (a) if the creditor is a corporation—by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or

- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed—by that person; or
- (c) in any other case—by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

### **‘Form of affidavits**

**‘2.6** An affidavit must be in a form that complies with—

- (a) the rules of the court; or
- (b) the rules of the Supreme Court of the State (if any) or Territory (if any) where the affidavit was sworn or affirmed; or
- (c) the rules of the Federal Court of Australia.

### **‘Service of originating application or interlocutory application and supporting affidavit**

**‘2.7(1)** As soon as practicable after filing an originating application and, in any case, at least 5 days before the date fixed for hearing, the applicant must serve a copy of the application and any supporting affidavit on—

- (a) each respondent (if any) to the proceeding; and
- (b) if the corporation to which the proceeding relates is not a party to the proceeding—the corporation.

**‘(2)** As soon as practicable after filing an interlocutory application and, in any case, at least 3 days before the date fixed for hearing, the applicant must serve a copy of the interlocutory application and any supporting affidavit on—

- (a) each respondent (if any) to the interlocutory application and
- (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application—the corporation.

### **‘Notice of certain applications to be given to Commission**

**‘2.8(1)** This rule has effect in addition to the requirements of the Law that, in relation to a proceeding, particular documents are to be served on the

Commission or notice of particular matters is to be given to the Commission.

‘(2) This rule does not apply to a person making an application if the person is the Commission or a person authorised by the Commission.

‘(3) Unless the court otherwise orders, if a person makes an application under a provision of the Law mentioned in column 1 of the following table, the person must serve on the Commission, a reasonable time before the hearing of the application, a copy of the application and supporting affidavit in respect of the application.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Description of application</b>
Section 254E(1)	To validate an issue of shares or confirm its terms
Section 266(4)	To extend the time for registration of a charge
Section 445G(1), (2) and (3)	To avoid or validate a deed of company arrangement
Section 449B	To remove an administrator
Section 473(2) and (3)	To fix the remuneration of a provisional liquidator or liquidator
Section 480	For the release of a liquidator of a company and the deregistration of the company
Section 482(1)	For the stay of a compulsory winding-up
Section 509(6)	For the deregistration of a company
Section 511(1)(b)	If the application is for the exercise of the power that would be exercisable under section 482(1) of the Law if a company were being wound up by the court—for a stay of the voluntary winding up

Section 532(2)	For leave to be appointed or act as a liquidator
Section 536(1)	For an inquiry into the conduct of a liquidator
Section 598	In respect of fraud, negligence, etc. by a person concerned with a corporation
Section 601AH(2)	To reinstate the registration of a company
Section 601CC(8)	To restore the name of an Australian body to the register
Section 601CL(9)	To restore the name of a foreign company to the register
Sections 1224(1) and (4)	To restrain dealings with a futures broker's bank accounts
Section 1226	For a further order or directions following an order made under section 1224 of the Law
Section 1317JA(2), (4) and (5)	For relief from liability for contravention of a civil penalty provision
Section 1318(2)	For relief from liability for negligence, default or breach of trust or duty
Section 1322(4)	To overcome any irregularity in a proceeding

**‘Notice of appearance (s 465C of the Law)—form 4**

**‘2.9(1)** A person who intends to appear before the court at the hearing of an application must, before appearing—

(a) file—

(i) a notice of appearance in form 4; and

- (ii) if appropriate—an affidavit stating any facts on which the person intends to rely; and
- (b) serve on the applicant a copy of the notice of appearance and any affidavit not later than—
  - (i) if the person is named in an originating application—3 days before the date fixed for hearing; or
  - (ii) if the person is named in an interlocutory application—1 day before the date fixed for hearing.

‘(2) If the person intends to appear before the court to oppose an application for winding up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by section 465C of the Law.

‘(3) The period prescribed for filing and serving the notice and affidavit required by section 465C of the Law is the period mentioned in subparagraph (1)(b)(i).

*Note—*

Under section 465C of the Law, a person may not, without the leave of the court, oppose an application for winding up unless, within the period prescribed by the rules (see subrule (3) of this rule), the person has filed, and served on the applicant, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

### **‘Intervention in proceeding by Commission (s 1330 of the Law)—form 5**

‘**2.10(1)** If the Commission intends to intervene in a proceeding, the Commission must file a notice of intervention in form 5.

‘(2) Not later than 3 days before the date fixed for the hearing at which the Commission intends to appear in the proceeding, the Commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the applicant and on any other party to the proceeding.

### **‘Publication of notices**

‘**2.11** If a rule requires a notice in relation to a body to be published in accordance with this rule, the notice must be published once in a daily



newspaper circulating generally in the State or Territory where the body has its principal, or last known, place of business.

*Note—*

Under the Law, certain notices may also be required to be published in the Commonwealth Government Gazette. Nothing in this rule is intended to affect the operation of any provision of the Law that requires publication of a notice in that Gazette.

### **‘Proof of publication**

**‘2.12(1)** This rule applies in relation to any matter published in connection with a proceeding.

**‘(2)** Unless these rules otherwise provide, or the court otherwise orders, the person responsible for the publication of the matter, or the person’s legal practitioner, must file—

- (a) an affidavit made by the person, or the person’s legal practitioner, that states the date of publication and to which is exhibited a copy of the published matter; or
- (b) a memorandum signed by the person, or the person’s legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.

**‘(3)** The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

### **‘Leave to creditor, contributory or officer to be heard**

**‘2.13(1)** The court may grant leave to any person who is, or who claims to be—

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

to be heard in a proceeding without becoming a party to the proceeding.

**‘(2)** If the court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, that should be borne by the person to whom leave

was granted, the court may—

- (a) direct that the person pay the costs; and
- (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the court's satisfaction.

‘(3) The court may order that a person who is, or who claims to be, a creditor, contributory or officer of a corporation be added as a respondent to the proceeding.

‘(4) The court may grant leave to a person under subrule (1), or order that a person be added as a respondent to a proceeding under subrule (3)—

- (a) on application by the person or a party to the proceeding; or
- (b) on the court's own initiative.

‘(5) The court may—

- (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the court, at the expense of the corporation; and
- (b) remove any person so appointed.

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

‘2.14 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 a proceeding relates.

#### **‘Meetings ordered by the court**

‘2.15 Subject to the Law, these rules and any direction of the court to the contrary, regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the court.

## **‘PART 3—COMPROMISES AND ARRANGEMENTS IN RELATION TO PART 5.1 BODIES**

### **‘Application of pt 3**

**‘3.1** This part applies if an application is made to the court for approval of a compromise or arrangement between a part 5.1 body and its creditors or members, or any class of its creditors or members.

### **‘Nomination of chairperson for meeting**

**‘3.2** Before the hearing of an application under section 411(1), (1A) or (1B) of the Law, the applicant must file an affidavit stating—

- (a) the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting; and
- (b) that each person nominated—
  - (i) is willing to act as chairperson; and
  - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
  - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and
- (d) that the person does not fall within section 411(7)(a) to (f) of the Law, except as disclosed in the affidavit.

### **‘Order for meetings to identify proposed scheme**

**‘3.3** An order under section 411(1) or (1A) of the Law ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.

**‘Notice of hearing (s 411(4), s 413(1) of the Law)—form 6**

**‘3.4** This rule applies to—

- (a) an application, under section 411(4) of the Law, for an order approving a proposed compromise or arrangement in relation to a part 5.1 body; and
- (b) an application, under section 413(1) of the Law, for an order in relation to the reconstruction of a part 5.1 body, or part 5.1 bodies, or the amalgamation of 2 or more part 5.1 bodies.

**‘(2)** Unless the court otherwise orders, the applicant must publish a notice of the hearing of the application.

**‘(3)** The notice must be—

- (a) in form 6; and
- (b) published in accordance with rule 2.11 at least 5 days before the date fixed for the hearing of the application.

**‘Copy of order approving compromise or arrangement to be lodged with Commission**

**‘3.5** If the court makes an order under section 411(1), (1A) or (4), or 413(1) of the Law, the applicant must, as soon as practicable after the order is made—

- (a) have the order sealed; and
- (b) lodge a copy of the order with the Commission; and
- (c) serve a copy of the order on any person appointed to administer the compromise or arrangement.

**‘PART 4—RECEIVERS AND OTHER CONTROLLERS OF CORPORATION PROPERTY (PART 5.2 OF THE LAW)****‘Inquiry into conduct of controller (s 423 of the Law)**

**‘4.1** A complaint to the court under section 423(1)(b) of the Law about

an act or omission of a receiver, or a controller appointed by the court, must be made by an originating application seeking an inquiry in relation to the complaint.

## **‘PART 5—WINDING UP PROCEEDINGS (INCLUDING OPPRESSION PROCEEDINGS WHERE WINDING UP IS SOUGHT)**

### **‘Application of pt 5**

**‘5.1** This part applies to the following applications for the winding up of a company—

- (a) an application under section 246AA of the Law in a case of oppression or injustice;
- (b) an application under part 5.4 or part 5.4A of the Law.

### **‘Affidavit accompanying statutory demand (s 459E (3) of the Law)—form 7**

**‘5.2** For the purposes of section 459E(3) of the Law, the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

- (a) be in form 7 and state the matters mentioned in that form; and
- (b) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (c) not state a proceeding number, or refer to a court proceeding, in any heading or title to the affidavit.

### **‘Application for leave to apply for winding up in insolvency (s 459P(2) of the Law)**

**‘5.3** An application for leave to apply to the court for an order that a company be wound up in insolvency may be made at the same time as the

application for an order that the company be wound up in insolvency is made.

**‘Affidavit in support of application for winding up (s 459P, s 462, s 464 of the Law)**

‘5.4(1) The affidavit in support of an originating application seeking an order that a company be wound up must be made by the applicant or by a person with the authority of the applicant or applicants.

‘(2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must—

- (a) verify service of the demand on the company; and
- (b) verify the failure of the company to comply with the demand; and
- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.

‘(3) If the application is made in reliance on the ground mentioned in section 461(1)(a) of the Law, the affidavit must—

- (a) state whether the company is able to pay all its debts as and when they become due and payable; and
- (b) refer to the company’s most recent balance sheet and profit and loss statement as an exhibit to the affidavit, or explain their absence.

‘(4) The affidavit must be made within 7 days before the originating application is filed.

**‘Consent of liquidator (s 532(9) of the Law)—form 8**

‘5.5(1) In this rule—

“**liquidator**” does not include a provisional liquidator.

‘(2) For the purposes of section 532(9) of the Law, the consent of an official liquidator to act as liquidator of a company must be in form 8.

‘(3) In an application for an order that a company be wound up, the applicant must—

- (a) before the hearing of the application, file the consent mentioned in subrule (2) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
- (b) serve a copy of the consent on the company at least 1 day before the hearing.

### **‘Notice of application for winding up—form 9**

**‘5.6(1)** Unless the court otherwise orders, the applicant must publish a notice of the application for an order that a company be wound up.

**‘(2)** The notice must be—

- (a) in form 9; and
- (b) published in accordance with rule 2.11—
  - (i) at least 3 days after the originating application is served on the company; and
  - (ii) at least 7 days before the date fixed for hearing of the application.

### **‘Applicant to make copies of documents available**

**‘5.7** A copy of any document filed in a proceeding to which this part applies must be available at the applicant’s address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

### **‘Discontinuance of application for winding up**

**‘5.8** An application for an order that a company be wound up may not be discontinued except with the leave of the court.

### **‘Appearance before registrar**

**‘5.9** After filing an originating application seeking an order that a company be wound up, the applicant must, if required—

- (a) appear before the registrar on a date to be appointed by the registrar; and
- (b) satisfy the registrar that the applicant has complied with the Law and these rules in relation to applications for a winding up order.

**‘Order substituting applicant in application for winding up (s 465B of the Law)—form 10**

**‘5.10(1)** If the court makes an order under section 465B of the Law, the court may also order that the substituted applicant or applicants publish a notice stating that the substituted applicant or applicants intend to apply for an order that the company be wound up.

**‘(2)** The notice must be—

- (a) in form 10; and
- (b) published in accordance with rule 2.11 or as otherwise directed by the court.

**‘Notice of winding up order and appointment of liquidator—form 11**

**‘5.11(1)** This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.

**‘(2)** Not later than the day after the order is made, the applicant must inform the liquidator of the appointment.

**‘(3)** As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding up order and the liquidator’s appointment.

**‘(4)** The notice must be—

- (a) in form 11; and
- (b) published in accordance with rule 2.11.

**‘(5)** In this rule—

**“liquidator”** does not include a provisional liquidator.



## **‘PART 6—PROVISIONAL LIQUIDATORS (PART 5.4B OF THE LAW)**

### **‘Appointment of provisional liquidator (s 472 of the Law)—form 8**

**‘6.1(1)** An application by a company, a creditor or contributory of the company, or the Commission, under section 472(2) of the Law, for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.

**‘(2)** The consent must be in form 8.

**‘(3)** An order appointing a provisional liquidator of a company must include a short description of the property of the company that the provisional liquidator may take into the provisional liquidator’s custody.

**‘(4)** The court may require the applicant to give an undertaking as to damages.

### **‘Notice of appointment of provisional liquidator—form 12**

**‘6.2(1)** This rule applies if the court orders that an official liquidator be appointed as provisional liquidator of a company.

**‘(2)** Not later than the day after the order is made, the applicant must—

- (a) except if the applicant is the Commission—lodge an office copy of the order with the Commission; and
- (b) serve an office copy of the order on the company (except if the applicant is the company) and on any other person as directed by the court; and
- (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).

**‘(3)** As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator’s appointment.

**‘(4)** The notice must be—

- (a) in form 12; and
- (b) published in accordance with rule 2.11.

## **‘PART 7—LIQUIDATORS**

### **‘Resignation of liquidator (s 473(1) of the Law)**

‘7.1(1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and lodge with the Commission, a memorandum of resignation.

‘(2) The resignation takes effect on the filing and lodging of the memorandum.

### **‘Filling vacancy in office of liquidator (s 473(7), s 502 of the Law)**

‘7.2(1) If, for any reason, there is no liquidator acting in a winding up, the court may—

- (a) in the case of a winding up by the court—appoint another official liquidator whose written consent in form 8 has been filed; and
- (b) in the case of a voluntary winding up—appoint another registered liquidator whose written consent in form 8 has been filed.

‘(2) The court may make the appointment—

- (a) in any case—on application by the Commission, a creditor or a contributory; or
- (b) in the case of a winding up by the court—on its own initiative.

### **‘Report to liquidator as to company’s affairs (s 475 of the Law)**

‘7.3(1) If a person is required under section 475 of the Law to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.

‘(2) Except by order of the court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been—

- (a) sanctioned by the liquidator before being incurred; or
- (b) taxed or assessed.

‘(3) The liquidator must report to the court any default in complying with the requirements of section 475 of the Law.

‘(4) In this rule—

“**liquidator**” includes a provisional liquidator.

**‘Liquidator to file certificate and copy of settled list of contributories (s 478 of the Law)**

‘7.4 If, in a winding up by the court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, within 14 days after doing so, file the certificate and a copy of the list.

**‘Release of liquidator and deregistration of company (s 480(c) and (d) of the Law)**

‘7.5(1) This rule applies to an application by the liquidator of a company—

- (a) for an order that the liquidator be released; or
- (b) for an order that the liquidator be released and that the Commission deregister the company.

‘(2) The interlocutory application seeking the order must include—

- (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection, in form 13, within 21 days after the date of service of the interlocutory application; and
- (b) a statement setting out the terms of section 481(3) of the Law.

*Note—*

Subsection 481(3) of the Law provides that an order of the court releasing a liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator’s conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

‘(3) The supporting affidavit must include details of the following matters—

- (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding up;
- (b) any calls made on contributories in the course of the winding up;
- (c) any dividends paid in the course of the winding up;
- (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
- (e) whether the Commission has appointed an auditor to report on an account or statement of the position in the winding up under section 539(2) of the Law;
- (f) whether the court has ordered a report on the accounts of the liquidator to be prepared;
- (g) whether any objection to the release of the liquidator has been received by the liquidator from—
  - (i) an auditor appointed by the Commission or by the court; or
  - (ii) any creditor, contributory or other interested person;
- (h) whether any report has been submitted by the liquidator to the Commission under section 533 of the Law;
- (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
- (j) any property disclaimed in the course of the winding up;
- (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
- (l) any costs, charges or expenses payable by the liquidator if the court grants the liquidator's release;
- (m) if the application is made under section 480(c) of the Law—the facts and circumstances by reason of which it is submitted that the company should not be deregistered.

‘(4) The liquidator must include in the supporting affidavit the statements set out in paragraphs (a) and (b) of this subrule, including, if appropriate, the words in brackets—

- (a) ‘To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator that is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit]’;
- (b) ‘I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit]’.

‘(5) The liquidator must exhibit to the supporting affidavit—

- (a) a statement of the financial position of the company at the date when the interlocutory application seeking release was filed; and
- (b) a summary of the liquidator’s receipts and payments in winding up the company.

‘(6) Unless the court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding up, and on each contributory, a copy of the interlocutory application accompanied by—

- (a) a copy of the summary of the liquidator’s receipts and payments in winding up the company; and
- (b) a copy of the statement of the financial position of the company at the date when the interlocutory application seeking release was filed.

### **‘Objection to release of liquidator—form 13**

‘7.6(1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory application seeking release—

- (a) file—
  - (i) a notice of objection in form 13; and
  - (ii) if appropriate, an affidavit stating any facts relied on; and
- (b) serve a copy of the notice and the affidavit (if any) on the liquidator.

‘(2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory application.

**‘Report on accounts of liquidator (s 481 of the Law)**

‘7.7(1) If the court orders that a report on the accounts of a liquidator be prepared under section 481(1) of the Law, the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.

‘(2) On completing the report, the auditor must—

- (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words ‘Auditor’s report under section 481(1) of the Corporations Law’; and
- (b) serve a copy of the report on the liquidator; and
- (c) lodge a copy of the report with the Commission.

‘(3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or the Commission.

**‘Application for payment of call (s 483(3)(b) of the Law)—form 14**

‘7.8 The affidavit in support of an application by the liquidator of a company, under section 483(3)(b) of the Law, for an order for the payment of a call must be in form 14.

**‘Distribution of surplus by liquidator with special leave of the court (s 488(2) of the Law)—form 15**

‘7.9(1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.

‘(2) At least 14 days before the date fixed for hearing of the application, the liquidator must publish a notice of the application.

‘(3) The notice must be—

- (a) in form 15; and
- (b) published in accordance with rule 2.11.

**‘Powers delegated to liquidator by the court (s 488 of the Law)**

**‘7.10** Subject to the Corporations Law, the Corporations Regulations, these rules, and any order of the court, the powers and duties conferred or imposed on the court by part 5.4B of the Law in respect of the matters mentioned in section 488(1) of the Law may be exercised or performed by a liquidator appointed by the court as an officer of the court and subject to the control of the court.

**‘Inquiry into conduct of liquidator (s 536 of the Law)**

**‘7.11(1)** A complaint to the court under section 536(1)(b) of the Law must be made—

- (a) in the case of a winding up by the court—by an interlocutory application seeking an inquiry; and
- (b) in the case of a voluntary winding up—by an originating application seeking an inquiry.

**‘(2)** A report to the court by the Commission under section 536(2) of the Law must be made—

- (a) in the case of a winding up by the court, by filing—
  - (i) an interlocutory application seeking orders under the subsection; and
  - (ii) a written report in a sealed envelope that is marked with the title and number of the proceeding; and
- (b) in the case of a voluntary winding up, by filing—
  - (i) an originating application seeking orders under the subsection, and
  - (ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.

**‘(3)** The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.

‘(4) Except with the leave of the court, a report made under section 536(2) of the Law is not available for inspection by any person except the liquidator or the Commission.

‘(5) In this rule—

“**liquidator**” includes a provisional liquidator.

## **‘PART 8—SPECIAL MANAGERS (PART 5.4B OF THE LAW)**

### **‘Application for appointment of special manager (s 484 of the Law)**

‘**8.1(1)** An application by a liquidator for the appointment of a special manager in relation to a company must state the powers that, in the liquidator’s opinion, should be entrusted by the court to the special manager.

‘(2) The supporting affidavit must state—

- (a) the circumstances making it proper that a special manager be appointed; and
- (b) details of the remuneration proposed to be paid to the special manager; and
- (c) whether any committee of inspection in the winding up, or a meeting of creditors, has approved the appointment of a special manager.

### **‘Security given by special manager (s 484 of the Law)**

‘**8.2(1)** The court may, from time to time, direct that the amount of security given by a special manager be varied.

‘(2) Unless the court otherwise directs, the costs of furnishing the security given by a special manager in respect of a particular winding up—

- (a) are the personal expenses of the special manager; and
- (b) must not be charged against the property of the company as an expense incurred in the winding up.



**‘Special manager’s receipts and payments (s 484 of the Law)**

**‘8.3(1)** A special manager must give to the liquidator—

- (a) an account of the special manager’s receipts and payments; and
- (b) a statutory declaration verifying the account.

**‘(2)** If the liquidator approves the account, the liquidator must include the total amounts of the special manager’s receipts and payments in the liquidator’s accounts.

**‘PART 9—REMUNERATION OF OFFICE-HOLDERS****‘Remuneration of receiver (s 425(1) of the Law)—form 16**

**‘9.1(1)** This rule applies to an application by a receiver of property of a corporation for an order under section 425(1) of the Law fixing the receiver’s remuneration.

*Note—*

Under section 425(2)(b) of the Law, the court may exercise its power to make an order fixing the remuneration of a receiver even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

**‘(2)** At least 21 days before filing an originating application, or interlocutory application seeking the order, the receiver must serve a notice in form 16 of the receiver’s intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following persons—

- (a) the person who appointed the receiver;
- (b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);
- (c) any administrator, liquidator or provisional liquidator of the corporation;
- (d) any administrator of a deed of company arrangement executed by the corporation;

- (e) if there is no person of the kind mentioned in paragraph (c) or (d)—
  - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and
  - (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.

‘(3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or any person mentioned in subrule (2)(c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.

‘(4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—

- (a) the receiver may file an affidavit, made after the end of that period, in support of the originating application, or interlocutory application, seeking the order stating—
  - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
  - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
- (b) the receiver may endorse the originating application, or interlocutory application, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
- (c) the application may be so dealt with.

‘(5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating application, or interlocutory application, seeking the order on each creditor or contributory, or other person, who has given a notice of objection.

‘(6) An affidavit in support of the originating application, or interlocutory application, seeking the order must—

- (a) state the nature of the work carried out by the receiver; and

- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and
- (d) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

**‘Remuneration of administrator (s 449E(1) of the Law)—form 16**

**‘9.2(1)** This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under section 449E(1) of the Law fixing the administrator’s remuneration.

**‘(2)** The administrator must not apply for the order until after the end of 28 days after the date when a meeting of creditors mentioned in section 449E(1)(a) of the Law was held.

**‘(3)** At least 21 days before filing an originating application, or interlocutory application, seeking the order, the administrator must serve a notice in form 16 of the administrator’s intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons—

- (a) each creditor who was present, in person or by proxy at the meeting of creditors;
- (b) each member of any committee of inspection;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

**‘(4)** Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.

**‘(5)** If the administrator does not receive a notice of objection within the period mentioned in subrule (4)—

- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating application, or interlocutory application, seeking the order stating—

- (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
  - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
- (b) the administrator may endorse the originating application, or interlocutory application, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
- (c) the application may be so dealt with.

‘(6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating application, or interlocutory application, seeking the order on each creditor or contributory who has given a notice of objection.

‘(7) An affidavit in support of the originating application, or interlocutory application, seeking the order must—

- (a) state the nature of the work carried out by the administrator; and
- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
- (d) if the administration is continuing—give details of any matters delaying the completion of the administration.

**‘Remuneration of provisional liquidator (s 473(2) of the Law)—form 16**

‘9.3(1) This rule applies to an application by a provisional liquidator of a company for an order under section 473(2) of the Law determining the provisional liquidator’s remuneration.

‘(2) The application must be made by interlocutory application in the winding up proceeding.

‘(3) At least 21 days before filing the interlocutory application seeking the order, the provisional liquidator must serve a notice in form 16 of the

provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following persons—

- (a) any liquidator (except the provisional liquidator) of the company;
- (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

‘(4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

‘(5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—

- (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
  - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
  - (ii) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
- (b) the provisional liquidator may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
- (c) the application may be so dealt with.

‘(6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory application seeking the order—

- (a) on each creditor or contributory who has given a notice of objection; and

(b) on the liquidator (if any).

‘(7) An affidavit in support of the interlocutory application seeking the order must—

- (a) state the nature of the work carried out by the provisional liquidator; and
- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and
- (d) if the winding up proceeding has not been determined—give details of—
  - (i) any reasons known to the provisional liquidator why the winding up proceeding has not been determined; and
  - (ii) any reasons why the provisional liquidator’s remuneration should be determined before the determination of the winding up proceeding.

**‘Remuneration of liquidator (s 473(3) of the Law)—form 16**

‘9.4(1) This rule applies to an application by a liquidator of a company for an order under section 473(3) of the Law determining the liquidator’s remuneration.

‘(2) The application—

- (a) must be made by interlocutory application in the winding up proceeding; and
- (b) must not be made until after the end of 28 days after the date of the meeting of creditors mentioned in section 473(4) of the Law.

‘(3) At least 21 days before filing the interlocutory application seeking the order, the liquidator must serve a notice in form 16 of the liquidator’s intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following persons—

- (a) each creditor who was present, in person or by proxy, at the meeting of creditors;

- (b) each member of any committee of inspection;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

‘(4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

‘(5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—

- (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
  - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
  - (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
- (b) the liquidator may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
- (c) the application may be so dealt with.

‘(6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory application seeking the order on each creditor or contributory who has given a notice of objection.

‘(7) An affidavit in support of the interlocutory application seeking the order must—

- (a) state the nature of the work carried out by the liquidator; and
- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and

- (d) if the winding up is continuing—give details of any matters delaying the completion of the winding up.

**‘Remuneration of special manager (s 484(2) of the Law)—form 16**

**‘9.5(1)** This rule applies to an application by a special manager of the property or business of a company for an order under section 484(2) of the Law fixing the special manager’s remuneration.

**‘(2)** The application must be made by interlocutory application in the winding up proceeding.

**‘(3)** At least 21 days before filing the interlocutory application seeking the order, the special manager must serve a notice in form 16 of the special manager’s intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following persons—

- (a) the liquidator of the company;
- (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

**‘(4)** Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.

**‘(5)** If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—

- (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
  - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
  - (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and



(b) the special manager may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and

(c) the application may be so dealt with.

‘(6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory application seeking the order—

(a) on each creditor or contributory who has given a notice of objection; and

(b) on the liquidator.

‘(7) The affidavit in support of the interlocutory application seeking the order must—

(a) state the nature of the work carried out by the special manager; and

(b) state the amount of remuneration claimed; and

(c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and

(d) if the special management is continuing—give details of any matters delaying the completion of the special management.

## **‘PART 10—WINDING UP GENERALLY**

### **‘Determination of value of debts or claims (s 554A(2) of the Law)**

‘10.1 A reference to the court by a liquidator of a company under section 554A(2)(b) of the Law must be made—

(a) in the case of a winding up by the court—by filing an interlocutory application seeking an order estimating, or determining a method for working out, the value of the debt or claim; and

- (b) in the case of a voluntary winding up—by filing an originating application seeking an order estimating, or determining a method for working out, the value of the debt or claim.

**‘Disclaimer of contract (s 568(1A) of the Law)**

‘**10.2(1)** The affidavit in support of an application by a liquidator, under section 568(1A) of the Law, for leave to disclaim a contract in relation to a company must—

- (a) specify the persons interested, and their interests, under the contract; and
- (b) state the facts on which it is submitted that the contract should be disclaimed.

‘**(2)** The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

**‘Winding up part 5.7 bodies (s 583, s 585 of the Law) and registered schemes (s 601ND of the Law)**

‘**10.3** These rules apply, with any necessary adaptations, and in the same way as they apply to a company, in relation to the winding up of a part 5.7 body or a registered scheme.

**‘PART 11—EXAMINATIONS AND ORDERS  
(PART 5.9, DIVISIONS 1 AND 2 OF THE LAW)**

**‘Definition for pt 11**

‘**11.1** In this part—

“**examination summons**” means a summons under section 596A or 596B of the Law for the examination of a person about a corporation’s examinable affairs.

**‘Application for examination or investigation under s 411, s 423 or s 536(3) of the Law**

**‘11.2(1)** An application for an order for the examination or investigation of a person under section 411, 423 or 536(3) of the Law may be made by—

- (a) the Commission; or
- (b) a person authorised by the Commission, or
- (c) a creditor or contributory; or
- (d) any other person aggrieved by the conduct of—
  - (i) a person appointed to administer a compromise or arrangement; or
  - (ii) a controller; or
  - (iii) a liquidator or provisional liquidator.

**‘(2)** The application may be made ex parte.

**‘(3)** The provisions of this part that apply to an examination under Division 1 of part 5.9 of the Law apply, with any necessary adaptations, to an examination or an investigation under section 411, 423 or 536(3) of the Law.

**‘Application for examination summons (s 596A, s 596B of the Law)—form 17**

**‘11.3(1)** An application for the issue of an examination summons must be made by filing an interlocutory application or an originating application, as the case requires.

**‘(2)** The application may be made ex parte.

**‘(3)** The originating application, or interlocutory application, seeking the issue of the examination summons must be—

- (a) supported by an affidavit stating the facts in support of the application; and
- (b) accompanied by a draft examination summons.

‘(4) The originating application, or interlocutory application, and supporting affidavit must be filed in a sealed envelope marked, as appropriate—

- (a) ‘Application and supporting affidavit for issue of summons for examination under section 596A of the Corporations Law’; or
- (b) ‘Application and supporting affidavit for issue of summons for examination under section 596B of the Corporations Law’.

‘(5) 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 a copy of the originating application, or interlocutory application, and the supporting affidavit.

‘(6) 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 a copy of the originating application, or interlocutory application, and the supporting affidavit.

‘(7) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by any person.

‘(8) An examination summons is to be in form 17.

### **‘Service of examination summons**

‘11.4 An examination summons issued by the court must be personally served, or served in any other manner as the court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

### **‘Discharge of examination summons**

‘11.5(1) This rule applies if a person is served with an examination summons.

‘(2) Within 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—

- (a) an interlocutory application seeking an order discharging the summons; and
- (b) an affidavit stating the facts in support of the interlocutory application.

‘(3) As soon as practicable after filing the interlocutory application seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory application and the supporting affidavit on—

- (a) the person who applied for the examination; and
- (b) unless that person is the Commission or a person authorised by the Commission—the Commission.

**‘Filing of record of examination (s 597(13) of the Law)**

‘11.6 If the court makes an order in relation to an examination under section 597(13) of the Law, the court may give directions for the filing of the written record of the examination.

**‘Authentication of transcript of examination (s 597(14) of the Law)**

‘11.7 For the purposes of section 597(14) of the Law, a transcript of an 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 signed by the person or persons, 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.

**‘Inspection of record or transcript of examination or investigation under s 411, s 423 or s 536 of the Law**

‘11.8(1) A written record or transcript of an examination or investigation under section 411, 423 or 536 is not available for inspection by any person except—

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

‘(2) This rule does not apply to the liquidator, the Commission or any person authorised by the Commission.

#### **‘Entitlement to record or transcript of examination held in public**

‘11.9(1) This rule applies if—

- (a) an examination under section 597 of the Law is held wholly or partly in public; and
- (b) a written record or transcript of the examination is filed in the court.

‘(2) The person examined may apply to the registrar, within 3 years after the date of completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.

‘(3) On receiving an application from a person under subrule (2), and any applicable fee, the registrar must give a copy of the record or transcript to the person.

#### **‘Default in relation to examination**

‘11.10(1) This rule applies if a person is summoned or ordered by the court to attend for examination, and—

- (a) without reasonable cause, the person—
  - (i) fails to attend at the time and place appointed; or
  - (ii) fails to attend from day to day until the conclusion of the examination; or
  - (iii) refuses or fails to take an oath or make an affirmation; or
  - (iv) refuses or fails to answer a question that the court directs the person to answer; or
  - (v) refuses or fails to produce books that the summons requires the person to produce; or

- (vi) fails to comply with a requirement by the court to sign a written record of the examination; or
  - (b) before the day fixed for the examination, the person who applied for the summons or order satisfies the court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- ‘(2) The court may—
- (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
  - (b) make any other orders that the court thinks just or necessary.

**‘Service of application for order in relation to breaches etc by person concerned with corporation (s 598 of the Law)**

‘**11.11(1)** This rule applies to a person applying for an order under section 598 of the Law.

‘(2) In addition to complying with rules 2.7 and 2.8, the person must serve a copy of the originating application, or interlocutory application, as the case requires, and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

*Note—*

Under rule 2.7, an applicant must serve a copy of the originating application, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates, and must serve a copy of an interlocutory application, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on the Commission—see rule 2.8.

**‘PART 12—ACQUISITION OF SHARES (CHAPTER 6 OF THE LAW) AND SECURITIES (CHAPTER 7 OF THE LAW)**

**‘Service on Commission in relation to proceedings under chapter 6 or 7 of the Law**

‘12.1 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 originating application and the supporting affidavit on the Commission as soon as practicable after filing the originating application.

**‘Application for summons for appearance of person (s 1092(3) of the Law)—form 18**

‘12.2(1) An application for the issue of a summons under section 1092(3) of the Law must be made by filing an originating application or an interlocutory application.

‘(2) The application may be made ex parte.

‘(3) The originating application, or interlocutory application, seeking the issue of the summons must be—

- (a) supported by an affidavit stating the facts in support of the application; and
- (b) accompanied by a draft summons.

‘(4) Unless the court otherwise orders, a summons issued under this rule is to be in form 18.

**‘Application for orders relating to refusal to register transfer or transmission of shares etc. (s 1094 of the Law)**

‘12.3 As soon as practicable after filing an originating application seeking an order under section 1094 of the Law, the applicant must serve a copy of the originating application and the supporting affidavit on—

- (a) the company; and
- (b) any person against whom an order is sought.



## **‘PART 13—THE FUTURES INDUSTRY (CHAPTER 8 OF THE LAW)**

### **‘Appeal against decision of futures exchange or futures association (s 1135 of the Law)**

**‘13.1** For the purposes of section 1135(1) of the Law, a written notice of appeal against a decision of a futures exchange or futures association must—

- (a) be in the form of an originating application; and
- (b) state whether the whole, or part only, of the decision is complained of and, if part only, identify that part; and
- (c) state concisely the grounds of appeal.

### **‘Proceedings against futures organisation to establish claim against fidelity fund (s 1243 of the Law)**

**‘13.2** A person who has been given leave by the court, under section 1243(3) of the Law, to bring a proceeding to establish a claim against the fidelity fund of a futures organisation may bring the claim in the proceeding in which the leave was granted.

## **‘PART 14—POWERS OF COURTS (PART 9.5 OF THE LAW)**

### **‘Appeal from act, omission or decision of administrator, receiver or liquidator, etc. (s 554A, s 1321 of the Law)**

**‘14.1(1)** All appeals to the court authorised by the Law must be commenced by an originating application, or interlocutory application, stating—

- (a) the act, omission or decision complained of; and

- (b) in the case of an appeal against a decision—whether the whole or part only and, if part only, which part of the decision is complained of; and
- (c) the grounds on which the complaint is based.

‘(2) Unless the Law or the Corporations Regulations otherwise provide, the originating application, or interlocutory application, must be filed within—

- (a) 21 days after the date of the act, omission or decision appealed against; or
- (b) any further time allowed by the court.

‘(3) The court may extend the time for filing the originating application, or interlocutory application, either before or after the time for filing expires and whether or not the application for extension is made before the time expires.

‘(4) As soon as practicable after filing the originating application, or interlocutory application, and, in any case, at least 5 days before the date fixed for hearing, the person instituting the appeal must serve a copy of the application, and any supporting affidavit, on each person directly affected by the appeal.

‘(5) As soon as practicable after being served with a copy of the application, and any supporting affidavit, a person whose act, omission or decision is being appealed against must file an affidavit—

- (a) stating the basis on which the act, omission or decision was done or made; and
- (b) exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

## **‘PART 15—PROCEEDINGS UNDER THE ASC LAW**

### **‘Reference to court of question of law arising at hearing of Commission (s 61 of the ASC Law)**

**‘15.1** A reference of a question of law arising at a hearing by the Commission to the court under section 61 of the ASC Law is to be made by originating application which is to—

- (a) set out in clear terms the question of law to be decided; and
- (b) set out concisely all facts necessary for the decision; and
- (c) have attached to it all documents necessary to enable the court to decide the question.

### **‘Court may draw inferences**

**‘15.2** On the hearing of a reference under rule 15.1 the court may draw any inference from the facts stated and documents annexed to the application that might have been drawn from them if proved at a trial.

### **‘Application for inquiry (s 70, s 201, s 219 of the ASC Law)**

**‘15.3** An application for an inquiry under section 70(3), 201(3) or 219(7) of the ASC Law must be made by filing an originating application seeking an inquiry and orders under the relevant subsection.

## **‘PART 16—POWERS OF REGISTRARS**

### **‘Powers of registrars**

**‘16.1(1)** Unless the court otherwise orders, a registrar may exercise a power of the court under a provision of the Law or the rules mentioned in schedule 1B.

‘(2) The Chief Justice may direct the registrar either generally or in a particular matter to hear and decide an application made under the Law or the ASC Law.

‘(3) A decision, direction or act of a registrar made, given or done under this part, may be reviewed by the court.

‘(4) An application for the review of a decision, direction or act of a registrar made, given or done under this part, must be made within—

- (c) 21 days after the decision, direction or act complained of; or
- (b) any further time allowed by the court.

#### **‘Reference by registrar**

‘16.2(1) If a proceeding before a registrar appears to the registrar to be proper for the decision of the court, the registrar may or, if required by a party to the proceeding, must, refer the matter to the court.

‘(2) If the registrar refers a matter to the court, the court may dispose of the matter or refer it back to the registrar with any direction that the court considers appropriate.

**‘SCHEDULE 1B****‘POWERS OF THE COURT THAT MAY BE  
EXERCISED BY A REGISTRAR**

rule 16.1 of sch 1A

<b>Provision of the Law or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 164	Power to make order with respect to change of status of company (if uncontested)
section 247A	Power to order inspection of books of company or registered managed investment scheme
section 247B	Power to make ancillary orders relating to inspection of books
section 254E	Power to make order validating purported issue of shares
section 266(4)	Power to extend period of lodgement of notice in relation to charge or variation in terms of charge
section 267(3)	Power to give leave to enforce charge (if uncontested)
section 274	Power to rectify register of charges
section 411(1), (4), (6)	For sanction of compromise or arrangement (if uncontested)
section 425	Power to fix amount of receiver’s remuneration
section 429(3)	Power to extend time for report to controller
section 449E	Power to fix remuneration of administrator

section 459A	Court's power to order winding up in insolvency (if uncontested)
section 459B	Court's power to order winding up in an insolvency (if uncontested)
section 459P(2)	Court's power to give leave to make winding up application (if uncontested)
section 461	Court's general power to order winding up on other grounds (if uncontested)
section 464	Court's power to order winding up in connection with investigation under ASC Law (if uncontested)
section 465B	Substitution of applicants
section 467	Powers on hearing winding up application
section 470(2)(b)	Service of copy of order
section 471B	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
section 483(3)	Calls on contributories

section 484(2)(b)	Power to fix remuneration of special manager
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 meetings in member's voluntary winding up
section 496(3)	List of creditors in member's voluntary winding up
section 497(3)	List of creditors in creditor's voluntary winding up
section 499	Direction where different liquidators chosen
section 500	Execution of 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 creditor's 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 investment of surplus funds

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 meetings of creditors or contributories be held
section 568	Disclaim of onerous property (if uncontested)
section 583	Powers under part 5.7 in winding up bodies other than companies (if uncontested)
section 585	Power to stay or restrain proceeding (if uncontested)
section 596A	Summons for examination
section 596B	Summons for discretionary examination
section 596F	Directions about examination
section 597(9)	Directions as to production of books
section 597(13)	Orders about recording testimony
section 597(15)	Direction as to other court
section 597A	To require the filing of an affidavit
section 597B	Costs of unnecessary examination
section 600A	Court's powers in relation to meetings
section 600B	Court's power to set aside or vary resolution
section 600C	Order about passing of proposed resolution
section 600D	Interim order on application under section 600A, 600B or 600C
section 601AH(2), (3)	Reinstatement of company
section 601BJ	Power to approve modification of constitution



section 601CC(9)	Order for restoration of name of registered Australian body to the register
section 601CL(10)	Order for restoration of name of registered foreign company to the register
sections 601ND	Order winding up schemes
section 601NE	Winding up of scheme
section 601NF	Other orders about winding up
section 743	Court's power as to contravention due to inadvertence
section 1053(5)	Power to appoint body corporate as trustee for debenture holders
section 1092	Summons for appearance of a person
section 1094	Order 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(11)	Order the document be lodged
section 1303	Order that books be available for inspection
section 1319	Power to give directions in relation to meetings ordered by court
section 1322	Irregularities
rule 1.8	Power to give directions
rule 2.8	Notice of application to commission
rule 2.12	Proof of publication
rule 2.13	Power to give leave to creditor, contributory or officer to be heard in proceeding or be added as defendant, etc.
rule 2.14	Power to direct an inquiry in relation to corporation's debts, etc.
rule 3.4	Notice of hearing

rule 5.6	Notice of application for winding up
rule 5.10	Order substituting applicant in application for winding up
rule 6.1	Power to require undertaking as to damages on appointment of provisional liquidator
rule 7.2	Filling vacancy in office of liquidator
rule 7.5(6)	Service of application for release of liquidator
rule 7.7	Inspection of report of accounts of liquidator
rule 7.11(4)	Inspection of report of inquiry into conduct of liquidator
rule 8.2	Security given by special manager
rule 11.3(7)	Inspection of affidavit in support of application for examination summons
rule 11.4	Service of examination summons
rule 11.5	Discharge of examination summons
rule 11.6	Directions for filing of written record of examination
rule 11.8	Inspection of record or transcript of examination or investigation
rule 12.2(4)	Form of summons
rule 14.1(2), (3)	Extension of time for filing application starting an appeal’.

### **PART 3—REPEAL OF CORPORATIONS (QUEENSLAND) RULES 1993**

#### **Rule repealed**

- 4.** *The Corporations (Queensland) Rules 1993* are repealed.

## ENDNOTES

1. Made by the Governor in Council on 7 September 2000.
2. Notified in the gazette on 8 September 2000.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and the Attorney-General.