

Version No. 011
Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Version incorporating amendments as at 4 May 2009

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Version No. 011
Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Version incorporating amendments as at 4 May 2009

The Judges of the Supreme Court make the following Rules:

ORDER 1—PRELIMINARY

1.1 Citation

These Rules constitute Chapter V of the Rules of the Supreme Court and are entitled the Supreme Court (Corporations) Rules 2003.

1.1.1 Object and authorising provisions

- (1) The object of these Rules is to make new rules to constitute Chapter V of the Rules of the Supreme Court in harmony with like rules in all other States and Territories.
- (2) These Rules are made under section 25 of the **Supreme Court Act 1986**, section 23 of the **Corporations (Ancillary Provisions) Act 2001** and all other enabling powers.

1.2 Commencement and revocation

- (1) These Rules commence on 1 October 2003.
- (2) The Rules set out in the Table are **revoked**.

TABLE

<i>S.R. No.</i>	<i>Title</i>
134/1999	Supreme Court (Corporations Law) Rules 1999
121/2000	Supreme Court (Chapter V Amendment No. 1) Rules 2000
27/2001	Supreme Court (Chapter V Amendment No. 2) Rules 2001
49/2001	Supreme Court (Chapter V Amendment No. 3) Rules 2001
122/2002	Supreme Court (Chapter V Amendment No. 4) Rules 2002

1.3 Application of these Rules and other rules of the Court

Rule 1.3(1)
substituted by
S.R. No.
43/2009 rule 5.

- (1) Unless the Court otherwise orders—
- (a) these Rules apply to a proceeding in the Court under the Corporations Act or the ASIC Act; and
 - (b) Order 15A applies to a proceeding in the Court under the Cross-Border Insolvency Act.

Rule 1.3(2)
substituted by
S.R. No.
43/2009 rule 5.

- (2) The other rules of the Court apply, so far as they are relevant and not inconsistent with these Rules—
- (a) to a proceeding in the Court under the Corporations Act or the ASIC Act; and
 - (b) to a proceeding in the Court under the Cross-Border Insolvency Act that is commenced on or after the commencement of the Supreme Court (Chapter V Amendment No. 6) Rules 2009.

- (3) Unless the Court otherwise orders, the Supreme Court (Corporations) Rules 1999 continue to apply to a proceeding under the Corporations Law or the ASIC Law.

Note

By virtue of the definition of *this Act* in section 9 of the Corporations Act, a reference to the Corporations Act includes a reference to the Corporations Regulations.

1.4 Expressions used in the Corporations Act

Unless the contrary intention appears, an expression used in these Rules and in the Corporations Act has the same meaning in these Rules as it has in the Corporations Act.

Note

Expressions used in these Rules (including the notes to these Rules) that are defined in the Corporations Act include:

ABN (short for 'Australian Business Number')—see section 9;

ACN (short for 'Australian Company Number')—see section 9;

ARBAN (short for 'Australian Registered Body Number')—see section 9;

ASIC—see section 9;

body—see section 9;

body corporate—see section 9;

books—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;

**Note to
rule 1.4
amended by
S.R. Nos
104/2007
rule 4(1),
117/2008
rule 5.**

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.

1.5 Definitions for these Rules

In these Rules, unless the contrary intention appears—

applicant means a person claiming interlocutory relief in a proceeding;

ASIC Act means the Australian Securities and Investments Commission Act 2001 of the Commonwealth;

Corporations Act means the Corporations Act 2001 of the Commonwealth;

Corporations Regulations means the Corporations Regulations 2001 of the Commonwealth;

Cross-Border Insolvency Act means the Cross-Border Insolvency Act 2008 of the Commonwealth, including, unless the contrary intention appears, the Model Law;

Rule 1.5
def. of
*Cross-Border
Insolvency
Act*
inserted by
S.R. No.
43/2009
rule 6(1).

defendant means a person against whom relief (except interlocutory relief) is claimed under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not;

Rule 1.5
def. of
defendant
amended by
S.R. No.
43/2009
rule 6(2)(a).

interlocutory process means an interlocutory process in accordance with Form 3;

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in Schedule 1 to the Cross-Border Insolvency Act, with the modifications set out in Part 2 of that Act;

Rule 1.5
def. of
Model Law
inserted by
S.R. No.
43/2009
rule 6(1).

originating process means an originating process in accordance with Form 2;

plaintiff means a person claiming relief (except interlocutory relief) under the Corporations Act, the ASIC Act or the Cross-Border Insolvency Act, whether in the originating process or not;

Rule 1.5
def. of
plaintiff
amended by
S.R. No.
43/2009
rule 6(2)(b).

respondent means a person against whom interlocutory relief is claimed in a proceeding.

1.6 Reference to rules and forms

In these Rules, unless the contrary intention appears—

- (a) a reference to a Rule is a reference to a Rule in these Rules; and
- (b) a reference to a form followed by a number is a reference to the form so numbered in Schedule 1 to these Rules.

1.7 Substantial compliance with forms

- (1) It is sufficient compliance with these Rules in relation to a document that is required to be in accordance with a form in Schedule 1 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 Prothonotary 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.

1.8 Court's power to give directions

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) the provisions of the Corporations Act, the ASIC Act, or the rules of this 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.

1.9 Calculation of time

- (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.

1.10 Extension and abridgment of time

Unless the Corporations Act, the ASIC Act, or these Rules otherwise provide, the rules of this Court that provide for the extension or abridgment 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.

ORDER 2—PROCEEDINGS GENERALLY

2.1 Title of documents in a proceeding—Form 1

The title of a document filed in a proceeding must be in accordance with Form 1.

2.2 Originating process and interlocutory process—Forms 2 and 3

- (1) Unless these Rules otherwise provide, a person must make an application required or permitted by the Corporations Act 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 process; and
 - (b) in any other case, and whether interlocutory relief or final relief is claimed—by filing an interlocutory process.
- (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 process in that proceeding.

Rule 2.2(1)(b)
substituted by
S.R. No.
47/2005 rule 5.

- (3) An originating process must—
- (a) be in accordance with Form 2; and
 - (b) state—
 - (i) each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought; and
 - (ii) the relief sought.

Note

In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (Notes to these Rules).

- (4) An interlocutory process must—
- (a) be in accordance with Form 3; and
 - (b) state—
 - (i) if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of Court under which the application is made; and
 - (ii) the relief sought.

Rule 2.2
(4)(b)(i)
amended by
S.R. No.
44/2007
rule 5(1).

2.3 Fixing of hearing

On receiving an originating process or interlocutory process, the Prothonotary—

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

2.4 Supporting affidavits

- (1) Unless the Court otherwise directs, an originating process, or interlocutory process, must be supported by an affidavit stating the facts in support of the process.
- (2) Subject to rule 2.4A, an affidavit in support of an originating process must annex a record of a search of the records maintained by the ASIC, in relation to the company that is the subject of the application to which the originating process relates, carried out no earlier than 7 days before the originating process is filed.

Rule 2.4(2)
amended by
S.R. No.
117/2008
rule 19(1).

Note

An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).

2.4A Application for order setting aside statutory demand (s. 459G of the Corporations Act)

- (1) This Rule applies, and Rule 2.4(2) does not apply, to an application by a company under section 459G of the Corporations Act for an order setting aside a statutory demand served on the company.
- (2) The plaintiff may file with the originating process seeking the order a copy of the statutory demand and a copy of any affidavit that accompanied the statutory demand.
- (3) The plaintiff must—
 - (a) no earlier than 7 days before the originating process is filed, and no later than the day before the hearing of the application, carry out a search of the records maintained by the ASIC in relation to the plaintiff; and

Rule 2.4A
(3)(a)
amended by
S.R. No.
117/2008
rule 19(1).

-
- (b) either—
- (i) annex the record of the search to the affidavit in support of the originating process; or
 - (ii) file the record of the search before or tender it on the hearing of the application.

2.5 Affidavits made by creditors

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.

2.6 Form of affidavits

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.

2.7 Service of originating process or interlocutory process and supporting affidavit

- (1) As soon as practicable after filing an originating process and, in any case, at least 5 days before the date fixed for hearing, the plaintiff must serve a copy of the originating process and any supporting affidavit on—
 - (a) each defendant (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 process and, in any case, at least 3 days before the date fixed for hearing, the applicant must serve a copy of the interlocutory process and any supporting affidavit on—
 - (a) each respondent (if any) to the application in the interlocutory process; and
 - (b) if the corporation to which the application in the interlocutory process relates is not a party to the application in the interlocutory process—the corporation.

Rule 2.7(2)(a)
amended by
S.R. No.
44/2007
rule 5(2).

Rule 2.7(2)(b)
amended by
S.R. No.
44/2007
rule 5(2).

2.8 Notice of certain applications to be given to ASIC

Rule 2.8
(Heading)
amended by
S.R. No.
117/2008
rule 6(1).

- (1) This Rule has effect in addition to the requirements of the Corporations Act that, in relation to a proceeding, particular documents are to be served on the ASIC or notice of particular matters is to be given to the ASIC.

Rule 2.8(1)
amended by
S.R. No.
117/2008
rule 6(2).

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r. 2.8

Rule 2.8(2)
amended by
S.R. No.
117/2008
rule 6(2).

- (2) This Rule does not apply to a person making an application if the person is the ASIC or a person authorised by the ASIC.

Rule 2.8(3)
amended by
S.R. No.
117/2008
rule 6(2).

- (3) Unless the Court otherwise orders, if a person makes an application under a provision of the Corporations Act mentioned in column 2 of the item of the following Table, the person must serve on the ASIC, a reasonable time before the hearing of the application, a copy of the originating process, or interlocutory process, and supporting affidavit in respect of the application.

TABLE

Column 1	Column 2	Column 3
Item	Provision	Description of application
1.	Section 480	For the release of a liquidator of a company and the deregistration of the company
2.	Subsection 482(1)	For the stay or termination of a winding up
3.	Subsection 509(6)	For the deregistration of a company
4.	Subsection 536(1)	For an inquiry into the conduct of a liquidator
5.	Subsection 601AH(2)	To reinstate the registration of a company
6.	Subsection 601CC(8)	To restore the name of an Australian body to the register

Rule 2.8(3)
(Table)
amended by
S.R. No.
117/2008
rule 6(3).

Column 1	Column 2	Column 3
Item	Provision	Description of application
7.	Subsection 601CL(9)	To restore the name of a foreign company to the register
8.	Chapter 6, 6A, 6B, 6C, 6D or 7	Any application under these Chapters
9.	Subsections 1317S(2), (4) and (5)	For relief from liability for contravention of a civil penalty provision.

2.9 Notice of appearance (s. 465C of the Corporations Act)—Form 4

- (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 accordance with Form 4; and
 - (ii) if appropriate—an affidavit stating any facts on which the person intends to rely; and
- (b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than—
- (i) if the person is named in an originating process—3 days before the date fixed for hearing; or
 - (ii) if the person is named in an interlocutory process—1 day before the date fixed for hearing.

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

Note

Under section 465C of the Corporations Act, 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 plaintiff, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

Rule 2.10
(Heading)
amended by
S.R. No.
117/2008
rule 19(2)(a).

2.10 Intervention in proceeding by ASIC (s. 1330 of the Corporations Act)—Form 5

Rule 2.10(1)
amended by
S.R. No.
117/2008
rule 19(2)(b).

- (1) If the ASIC intends to intervene in a proceeding, the ASIC must file a notice of intervention in accordance with Form 5.

Rule 2.10(2)
amended by
S.R. No.
117/2008
rule 19(2)(b).

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

2.11 Publication of notices

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 Corporations Act, certain notices may also be required to be published in the Gazette. Nothing in this Rule is intended to affect the operation of any provision of the Corporations Act that requires publication of a notice in the Gazette.

2.12 Proof of publication

- (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 annexed 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.

2.13 Leave to creditor, contributory or officer to be heard

- (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; or
 - (c) any other interested person—

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, which 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 defendant to the proceeding.
- (4) The Court may grant leave to a person under subrule (1), or order that a person be added as a defendant 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.

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- (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.

2.14 Inquiry in relation to corporation's debts etc.

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.

2.15 Meetings ordered by the Court

Subject to the Corporations Act, these Rules and any direction of the Court to the contrary, regulations 5.6.11 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the Court.

Rule 2.15
amended by
S.R. No.
117/2008
rule 7.

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

3.1 Application of Order 3

This Order 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.

3.2 Nomination of chairperson for meeting

Before the hearing of an application under subsection 411(1), (1A) or (1B) of the Corporations Act, the plaintiff must file an affidavit stating—

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- (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 paragraphs 411(7)(a) to (f) of the Corporations Act, except as disclosed in the affidavit.

3.3 Order for meetings to identify proposed scheme

- (1) An order under subsection 411(1) or (1A) of the Corporations Act 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.
- (2) Unless the Court otherwise orders, a meeting of members ordered under section 411 of the Corporations Act must be convened, held and conducted in accordance with—

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- (a) the provisions of Part 2G.2 of the Corporations Act that apply to the members of a company; and
 - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with Part 2G.2 of the Corporations Act.
- (3) Unless the Court otherwise orders, a meeting of a class of holders of convertible securities ordered under section 411 of the Corporations Act must be convened, held and conducted as if—
- (a) the holders were a separate class of members; and
 - (b) the meeting were a meeting of members convened, held and conducted under subrule (2)—

but in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued.

3.4 Notice of hearing (ss 411(4), 413(1) of the Corporations Act)—Form 6

- (1) This Rule applies to—
 - (a) an application, under subsection 411(4) of the Corporations Act, for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and
 - (b) an application, under subsection 413(1) of the Corporations Act, 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 plaintiff must publish a notice of the hearing of the application.
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- (3) The notice must be—
- (a) in accordance with 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.

Rule 3.5
(Heading)
amended by
S.R. No.
117/2008
rule 19(2)(c).

3.5 Copy of order approving compromise or arrangement to be lodged with ASIC

If the Court makes an order under subsection 411(1), (1A) or (4), or 413(1) of the Corporations Act, the plaintiff must, as soon as practicable after the order is made—

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

Rule 3.5(b)
amended by
S.R. No.
117/2008
rule 19(2)(d).

ORDER 4—RECEIVERS AND OTHER CONTROLLERS OF CORPORATION PROPERTY (PART 5.2 OF THE CORPORATIONS ACT)

4.1 Inquiry into conduct of controller (s. 423 of the Corporations Act)

A complaint to the Court under paragraph 423(1)(b) of the Corporations Act about an act or omission of a receiver, or a controller appointed by the Court, must be made by an originating process seeking an inquiry in relation to the complaint.

**ORDER 5—WINDING UP PROCEEDINGS (INCLUDING
OPPRESSION PROCEEDINGS WHERE WINDING UP IS
SOUGHT)**

5.1 Application of Order 5

This Order applies to the following applications for the winding up of a company—

- (a) an application for an order under Part 2F.1 of the Corporations Act;
- (b) an application under Part 5.4 or Part 5.4A of the Corporations Act.

**5.2 Affidavit accompanying statutory demand
(s. 459E(3) of the Corporations Act)—Form 7**

For the purposes of subsection 459E(3) of the Corporations Act, the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

- (a) be in accordance with 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.

**5.3 Application for leave to apply for winding up in
insolvency (s. 459P(2) of the Corporations Act)**

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.

**5.4 Affidavit in support of application for winding up
(ss 459P, 462, 464 of the Corporations Act)**

- (1) The affidavit in support of an originating process seeking an order that a company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.
- (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.

Note

An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).

- (3) If the application is made in reliance on the ground mentioned in paragraph 461(1)(a) of the Corporations Act, 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 process is filed.

5.5 Consent of liquidator (s. 532(9) of the Corporations Act)—Form 8

(1) In this Rule—

liquidator does not include a provisional liquidator.

- (2) For the purposes of subsection 532(9) of the Corporations Act, the consent of an official liquidator to act as liquidator of a company must be in accordance with Form 8.
- (3) In an application for an order that a company be wound up, the plaintiff may, upon the filing of the originating process, file the consent mentioned in subrule (2) of an official liquidator who would be entitled to be appointed as liquidator of the company.
- (4) If the plaintiff does not file a consent in accordance with subrule (3), the Prothonotary shall nominate in writing the official liquidator who is entitled to be appointed as liquidator if an order for the winding up of the company is made.
- (5) If the application is for the winding up in insolvency of 2 or more companies as joint debtors, the Prothonotary shall nominate with respect to each such company successively the official liquidator who is entitled to be appointed as liquidator if an order for the winding up of that company is made.
- (6) The Prothonotary may from time to time as circumstances require make further nominations.
- (7) Before the hearing of the application the plaintiff must obtain and file the consent in writing of the official liquidator so nominated.

5.6 Notice of application for winding up—Form 9

- (1) Unless the Court otherwise orders, the plaintiff must publish a notice of the application for an order that a company be wound up.
- (2) The notice must be—
 - (a) in accordance with Form 9; and
 - (b) published in accordance with Rule 2.11—
 - (i) at least 3 days after the originating process is served on the company; and
 - (ii) at least 7 days before the date fixed for hearing of the application.

5.7 Applicant to make copies of documents available

A copy of any document filed in a proceeding to which this Order applies must be available at the plaintiff'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.

5.8 Discontinuance of application for winding up

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

5.9 Appearance before Associate Judge

After filing an originating process seeking an order that a company be wound up, the plaintiff must, if required—

- (a) appear before an Associate Judge on a date to be appointed by the Associate Judge; and

Rule 5.9
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(a).

Rule 5.9(a)
amended by
S.R. No.
100/2008
rule 21(1)(b).

- (b) satisfy the Associate Judge that the plaintiff has complied with the Corporations Act and these Rules in relation to applications for a winding up order.

Rule 5.9(b)
amended by
S.R. No.
100/2008
rule 21(1)
(b)(ii).

Note

See also Order 16 Part 3.

5.10 Order substituting plaintiff in application for winding up (s. 465B of the Corporations Act)—Form 10

- (1) If the Court makes an order under section 465B of the Corporations Act, the Court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.
- (2) The notice must be—
- (a) in accordance with Form 10; and
- (b) published—
- (i) in accordance with Rule 2.11 at least 7 days before the date fixed for the hearing of the application; or
- (ii) as otherwise directed by the Court.

Rule 5.10(2)(b)
substituted by
S.R. No.
47/2005 rule 6.

5.11 Notice of winding up order and appointment of liquidator—Form 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 plaintiff 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.

r. 6.1

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- (4) The notice must be—
- (a) in accordance with Form 11; and
 - (b) published in accordance with Rule 2.11.
- (5) In this Rule—
- liquidator* does not include a provisional liquidator.

ORDER 6—PROVISIONAL LIQUIDATORS (PART 5.4B OF THE CORPORATIONS ACT)

6.1 Appointment of provisional liquidator (s. 472 of the Corporations Act)—Form 8

Rule 6.1(1)
substituted by
S.R. No.
47/2005 rule 7.

- (1) An application for an official liquidator to be appointed, under section 472(2) of the Corporations Act, as a provisional liquidator of a company must be accompanied by the written consent of the official liquidator.
- (2) The consent must be in accordance with Form 8.
- (3) If—
- (a) an order is made appointing a provisional liquidator; and
 - (b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the property of the company—
- the order must include a short description of the part of the property of the company that the provisional liquidator may take into custody.
- (4) The Court may require the plaintiff to give an undertaking as to damages.

**6.2 Notice of appointment of provisional liquidator—
Form 12**

- (1) This Rule applies if the Court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must—
 - (a) except if the plaintiff is the ASIC—lodge an office copy of the order with the ASIC; and
 - (b) serve an office copy of the order on the company (except if the plaintiff 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 accordance with Form 12; and
 - (b) published in accordance with Rule 2.11.

Rule 6.2(2)(a)
amended by
S.R. No.
117/2008
rule 19(2)(e).

ORDER 7—LIQUIDATORS

**7.1 Resignation of liquidator (s. 473(1) of the
Corporations Act)**

- (1) A liquidator appointed by the Court who wishes to resign office must file with the Prothonotary, and lodge with the ASIC, a memorandum of resignation.

Rule 7.1(1)
amended by
S.R. No.
117/2008
rule 19(2)(f).

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

7.2 Filling vacancy in office of liquidator (ss 473(7), 502 of the Corporations Act)

- (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 accordance with Form 8 has been filed; and
 - (b) in the case of a voluntary winding up—appoint another registered liquidator whose written consent in accordance with Form 8 has been filed.
- (2) The Court may make the appointment—
- (a) in any case—on application by the ASIC, a creditor or a contributory; or
 - (b) in the case of a winding up by the Court—on its own initiative.

Rule 7.2(2)(a)
amended by
S.R. No.
117/2008
rule 19(2)(f).

7.3 Report to liquidator as to company's affairs (s. 475 of the Corporations Act)

- (1) If a person is required under section 475 of the Corporations Act 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—

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- (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 Corporations Act.
 - (4) In this Rule—

liquidator includes a provisional liquidator.

7.4 Liquidator to file certificate and copy of settled list of contributories (s. 478 of the Corporations Act)

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.

7.5 Release of liquidator and deregistration of company (ss 480(c) and (d) of the Corporations Act)

- (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 ASIC deregister the company.
- (2) The interlocutory process 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 the prescribed form, within 21 days after the date of service of the interlocutory process; and

Rule 7.5(1)(b)
amended by
S.R. No.
117/2008
rule 19(2)(g).

- (b) a statement setting out the terms of subsection 481(3) of the Corporations Act.

Note

Subsection 481(3) of the Corporations Act 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 ASIC has appointed an auditor to report on an account or statement of the position in the winding up under subsection 539(2) of the Corporations Act;
 - (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—

Rule 7.5(3)(e)
amended by
S.R. No.
117/2008
rule 19(2)(g).

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- (i) an auditor appointed by the ASIC or by the Court; or
- Rule 7.5(3)(g)(i)**
amended by
S.R. No.
117/2008
rule 19(2)(g).
- (ii) any creditor, contributory or other interested person;
- (h) whether any report has been submitted by the liquidator to the ASIC under section 533 of the Corporations Act;
- Rule 7.5(3)(h)**
amended by
S.R. No.
117/2008
rule 19(2)(g).
- (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 paragraph 480(c) of the Corporations Act—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

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- conduct as liquidator which 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 file with the supporting affidavit—
- (a) a statement of the financial position of the company at the date when the interlocutory process 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 process 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 process seeking release was filed.

7.6 Objection to release of liquidator—Form 13

- (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 process seeking release—

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- (a) file—
- (i) a notice of objection in accordance with 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 process.

7.7 Report on accounts of liquidator (s. 481 of the Corporations Act)

- (1) If the Court orders that a report on the accounts of a liquidator be prepared under subsection 481(1) of the Corporations Act, 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 subsection 481(1) of the Corporations Act 2001"; and
 - (b) serve a copy of the report on the liquidator; and
 - (c) lodge a copy of the report with the ASIC.

Rule 7.7(2)(c)
amended by
S.R. No.
117/2008
rule 19(2)(h).

Rule 7.7(3)
amended by
S.R. No.
117/2008
rule 19(2)(h).

- (3) Except with the leave of the Court, a report is not available for inspection by any person except the liquidator or the ASIC.

7.8 Application for payment of call (s. 483(3)(b) of the Corporations Act)—Form 14

The affidavit in support of an application by the liquidator of a company, under paragraph 483(3)(b) of the Corporations Act, for an order for the payment of a call must be in accordance with Form 14.

7.9 Distribution of surplus by liquidator with special leave of the Court (s. 488(2) of the Corporations Act)—Form 15

- (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 accordance with Form 15; and
 - (b) published in accordance with Rule 2.11.

7.10 Powers delegated to liquidator by the Court (s. 488 of the Corporations Act)

Subject to the Corporations Act, 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 Corporations Act in respect of the matters mentioned in subsection 488(1) of the Corporations Act 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.

7.11 Inquiry into conduct of liquidator (s. 536(1) and (2) of the Corporations Act)

- (1) A complaint to the Court under paragraph 536(1)(b) of the Corporations Act must be made—
 - (a) in the case of a winding up by the Court—by filing an interlocutory process seeking an inquiry; and
 - (b) in the case of a voluntary winding up—by filing an originating process seeking an inquiry.
- (2) A report to the Court by the ASIC under subsection 536(2) of the Corporations Act must be made—
 - (a) in the case of a winding up by the Court—by filing—
 - (i) an interlocutory process 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 process 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.

Rule 7.11(2)
amended by
S.R. No.
117/2008
rule 19(2)(h).

r. 8.1

Rule 7.11(4)
amended by
S.R. No.
117/2008
rule 19(2)(h).

- (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 subsection 536(2) of the Corporations Act is not available for inspection by any person except the liquidator or the ASIC.
- (5) In this Rule—
liquidator includes a provisional liquidator.

ORDER 8—SPECIAL MANAGERS (PART 5.4B OF THE CORPORATIONS ACT)

8.1 Application for appointment of special manager (s. 484 of the Corporations Act)

- (1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers which, 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.

8.2 Security given by special manager (s. 484 of the Corporations Act)

- (1) The Court may, from time to time, direct that the amount of security given by a special manager be varied.

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- (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.

8.3 Special manager's receipts and payments (s. 484 of the Corporations Act)

- (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.

ORDER 9—REMUNERATION OF OFFICE-HOLDERS

9.1 Remuneration of receiver (s. 425(1) of the Corporations Act)—Form 16

- (1) This Rule applies to an application by a receiver of property of a corporation for an order under subsection 425(1) of the Corporations Act fixing the receiver's remuneration.

Note 1

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

**Note to
rule 9.1(1)
substituted by
S.R. No.
117/2008
rule 8(1).**

Note 2

The amendment to section 425 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 of the Commonwealth applies in relation to a receiver appointed on or after 31 December 2007—see Corporations Act section 1480(5).

- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the receiver must serve a notice in accordance with 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 per cent 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 paragraph (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 process, or interlocutory process, 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 process, or interlocutory process, 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 process, or interlocutory process, 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 process, or interlocutory process, seeking the order must—
- (a) include evidence of the matters referred to in section 425(8) of the Corporations Act;
 - (b) state the nature of the work performed or likely to be performed by the receiver;

**Rule 9.1(6)
substituted by
S.R. No.
117/2008
rule 8(2).**

r. 9.2

- (c) state the amount of remuneration claimed;
- (d) include a summary of the receipts taken and payments made by the receiver;
- (e) state particulars of any objection of which the receiver has received notice; and
- (f) if the receivership is continuing, give details of any matters delaying the completion of the receivership.

Rule 9.2
substituted by
S.R. No.
117/2008
rule 9.

9.2 Determination by Court of remuneration of administrator (Corporations Act s. 449E(1)(c) and (1A)(c))—Form 16

- (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)(c) or (1A)(c) of the Corporations Act determining the administrator's remuneration.
- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice in accordance with 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 any meeting of creditors;
 - (b) each member of any committee of creditors or committee of inspection;
 - (c) if there is no committee of creditors or committee of inspection, and no meeting of creditors has been convened and held, each of the five largest (measured by amount of debt) creditors of the company;

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- (d) each member of the company whose shareholding represents at least 10 per cent of the issued capital of the company.
- (3) Within 21 days after the last service of the documents referred to in subrule (2), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the administrator does not receive a notice of objection within the period referred to in subrule (3)—
- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, 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 administrator has not received any notice of objection to the remuneration claimed within the period referred to in subrule (3);
- (b) the administrator may endorse the originating process, or interlocutory process, 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.
- (5) If the administrator receives a notice of objection within the period referred to in subrule (3), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.
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- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must—
- (a) include evidence of the matters referred to in section 449E(4) of the Corporations Act;
 - (b) state the nature of the work performed or likely to be performed by the administrator;
 - (c) state the amount of remuneration claimed;
 - (d) include a summary of the receipts taken and payments made by the administrator;
 - (e) state particulars of any objection of which the administrator has received notice; and
 - (f) if the administration is continuing, give details of any matters delaying the completion of the administration.

Rule 9.2A
inserted by
S.R. No.
117/2008
rule 9.

**9.2A Review of remuneration of administrator
(Corporations Act s. 449E(2))**

- (1) This Rule applies to an application for review of the amount of remuneration of an administrator under section 449E(2) of the Corporations Act.

Note

The amendment to section 449E of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 of the Commonwealth applies in relation to an administrator appointed on or after 31 December 2007—see Corporations Act section 1480(6).

- (2) The application may be made only after the remuneration has been determined under section 449E(1)(a) or (b) or (1A)(a) or (b) of the Corporations Act.
- (3) At least 21 days before filing the originating process, or the interlocutory process, applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review, and a copy of any affidavit on which the plaintiff or applicant

intends to rely (other than an affidavit required by subrule (9)), on the following persons—

- (a) if there is a committee of creditors or a committee of inspection, each member of the committee;
 - (b) if the remuneration of the administrator was determined by the creditors, each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined;
 - (c) each member of the company whose shareholding represents at least 10 per cent of the issued capital of the company.
- (4) Within 21 days after the last service of the documents referred to in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person referred to in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process, or interlocutory process, applying for review on each person who has served such a notice.

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- (7) The administrator must file an affidavit stating the following matters—
- (a) the matters referred to in section 449E(4) of the Corporations Act;
 - (b) the nature of the work performed or likely to be performed by the administrator;
 - (c) the amount of remuneration claimed by the administrator if that amount is different from the amount of remuneration that has been determined;
 - (d) a summary of the receipts taken and payments made by the administrator;
 - (e) particulars of any objection to the remuneration as determined, of which the administrator has received notice; and
 - (f) if the administration is continuing, details of any matters delaying the completion of the administration.
- (8) The affidavit referred to in subrule (7) must annex or exhibit a copy of the report that the administrator was required to prepare before remuneration was determined.
- (9) The plaintiff or applicant must—
- (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of any such notice.

9.3 Remuneration of provisional liquidator (s. 473(2) of the Corporations Act)—Form 16

- (1) This rule applies to an application by a provisional liquidator of a company for an order under subsection 473(2) of the Corporations Act

determining the provisional liquidator's remuneration.

- (2) The application must be made by interlocutory process in the winding up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice in accordance with 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 per cent 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 process seeking the order stating—

Rule 9.3(3)(b)
amended by
S.R. No.
117/2008
rule 10(1)(a).

r. 9.3

- (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 process 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 process 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 process seeking the order must—
- (a) state the nature of the work performed or likely to be performed 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; and

Rule 9.3(7)(a)
amended by
S.R. No.
117/2008
rule 10(1)(b).

Rule 9.3(7)(c)
amended by
S.R. No.
117/2008
rule 10(1)(c).

- (d) state particulars of any objection of which the provisional liquidator has received notice; and
- (e) 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.
- (8) The affidavit must also provide evidence of the matters referred to in section 473(10) of the Corporations Act—
 - (a) to the extent that they may be relevant to a provisional liquidator; and
 - (b) as if references in that subsection to "liquidator" were references to "provisional liquidator".

Rule 9.3(8)
inserted by
S.R. No.
117/2008
rule 10(2).

9.4 Determination by Court of liquidator's remuneration (Corporations Act s. 473(3)(b)(ii))

Rule 9.4
(Heading)
substituted by
S.R. No.
117/2008
rule 11(1).

- (1) This Rule applies to an application by a liquidator of a company for an order under section 473(3)(b)(ii) of the Corporations Act determining the liquidator's remuneration.

Rule 9.4(1)
amended by
S.R. No.
117/2008
rule 11(2).

Note

The amendment to section 473 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 of the Commonwealth applies in relation to a liquidator appointed on or after 31 December 2007—see Corporations Act, section 1480(7).

Note to
rule 9.4(1)
inserted by
S.R. No.
117/2008
rule 11(3).

r. 9.4

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- (2) The application—
- (a) must be made by interlocutory process in the winding up proceeding; and
 - (b) must not be made until after the date of the meeting of creditors mentioned in subsection 473(4) of the Corporations Act.
- (3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice in accordance with 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 any meeting of creditors at which the remuneration of the liquidator was considered;
 - (b) each member of any committee of inspection;
 - (c) if there is no committee of inspection, and no meeting of creditors has been convened and held, each of the five largest (measured by amount of debt) creditors of the company;
 - (d) each member of the company whose shareholding represents at least 10 per cent 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.

Rule 9.4(3)(a)
amended by
S.R. No.
117/2008
rule 11(4)(a).

Rule 9.4(3)(b)
amended by
S.R. No.
117/2008
rule 11(4)(b).

Rule 9.4(3)(c)
substituted by
S.R. No.
117/2008
rule 11(4)(c).

Rule 9.4(3)(d)
inserted by
S.R. No.
117/2008
rule 11(4)(c).

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- (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 process 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 process 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 process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the originating process seeking the order must—
- (a) include evidence of the matters referred to in section 473(10) of the Corporations Act;
 - (b) state the nature of the work performed or likely to be performed by the liquidator;
 - (c) state the amount of remuneration claimed;
 - (d) include a summary of the receipts taken and payments made by the liquidator;

**Rule 9.4(7)
substituted by
S.R. No.
117/2008
rule 11(5).**

r. 9.4A

- (e) state particulars of any objection of which the liquidator has received notice; and
- (f) if the winding up is continuing, give details of any matters delaying the completion of the winding up.

Rule 9.4A
inserted by
S.R. No.
117/2008
rule 12.

9.4A Review of remuneration of liquidator (Corporations Act s. 473(5) and (6) and s. 504(1))

- (1) This Rule applies to an application for review of the amount of remuneration of a liquidator under section 473(5) or (6) or section 504(1) of the Corporations Act.

Note

The amendment to section 504 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 of the Commonwealth applies in relation to a liquidator appointed on or after 31 December 2007—see Corporations Act section 1480(7).

- (2) The application may be made only after the remuneration has been determined under section 473(3)(a) or 473(3)(b)(i) or fixed under section 495(1) or 499(3) of the Corporations Act.
- (3) At least 21 days before filing the originating process, or the interlocutory process, applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review, and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons—
 - (a) if there is a committee of inspection, each member of the committee;
 - (b) if the remuneration of the liquidator was determined or fixed by the creditors, each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined or fixed;

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- (c) each member of the company whose shareholding represents at least 10 per cent of the issued capital of the company.
- (4) Within 21 days after the last service of the documents referred to in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice—
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person referred to in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process, or interlocutory process, applying for review on each person who has served such a notice.
- (7) The liquidator must file an affidavit stating the following matters—
- (a) for an application under section 473(5) or (6) of the Corporations Act, the matters referred to in section 473(10) of the Corporations Act;
 - (b) for an application under section 504(1) of the Corporations Act, the matters referred to in section 504(2) of the Corporations Act;
 - (c) the nature of the work performed or likely to be performed by the liquidator;
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- (d) the amount of remuneration claimed by the liquidator if that amount is different from the amount of remuneration that has been determined or fixed;
 - (e) a summary of the receipts taken and payments made by the liquidator;
 - (f) particulars of any objection to the remuneration as determined or fixed, of which the liquidator has received notice; and
 - (g) if the winding up is continuing, details of any matters delaying the completion of the winding up.
- (8) The affidavit referred to in subrule (7) must annex or exhibit a copy of the report that the liquidator was required to prepare before remuneration was determined or fixed.

Note

For the requirement to prepare a report, see sections 473(11) and (12), 495(5) and 499(6) and (7) of the Corporations Act.

- (9) The plaintiff or applicant must—
- (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of any such notice.

9.5 Remuneration of special manager (s. 484(2) of the Corporations Act)—Form 16

- (1) This Rule applies to an application by a special manager of the property or business of a company for an order under subsection 484(2) of the Corporations Act fixing the special manager's remuneration.
- (2) The application must be made by interlocutory process in the winding up proceeding.

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- (3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice in accordance with 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 creditors or committee of inspection or, if there is no committee of creditors or 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 per cent 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 process 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

Rule 9.5(3)(b)
amended by
S.R. No.
117/2008
rule 13(a).

r. 9.5

- (b) the special manager may endorse the interlocutory process 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 process 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 process seeking the order must—
- (a) state the nature of the work performed or likely to be performed 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; and
 - (d) state particulars of any objection of which the special manager has received notice; and
 - (e) if the special management is continuing, give details of any matters delaying the completion of the special management.

Rule 9.5(7)(a)
amended by
S.R. No.
117/2008
rule 13(b).

Rule 9.5(7)(c)
amended by
S.R. No.
117/2008
rule 13(c).

ORDER 10—WINDING UP GENERALLY

**10.1 Determination of value of debts or claims
(s. 554A(2) of the Corporations Act)**

A reference to the Court by a liquidator of a company under paragraph 554A(2)(b) of the Corporations Act must be made—

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

10.2 Disclaimer of contract (s. 568(1A) of the Corporations Act)

- (1) The affidavit in support of an application by a liquidator, under section 568(1A) of the Corporations Act, for leave to disclaim a contract in relation to a company must—
 - (a) specify the persons interested, and their interest, 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.

**10.3 Winding up Part 5.7 bodies (ss 583, 585 of the
Corporations Act) and registered schemes (s. 601ND
of the Corporations Act)**

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.

**ORDER 11—EXAMINATIONS AND ORDERS (PART 5.9,
DIVISIONS 1 AND 2 OF THE CORPORATIONS ACT)**

11.1 Definition for Order 11

In this Order—

examination summons means a summons under section 596A or 596B of the Corporations Act for the examination of a person about a corporation's examinable affairs.

**11.2 Application for examination or investigation under
ss 411(9)(b), 423 or 536(3) of the Corporations Act**

(1) An application for an order for the examination or investigation of a person under paragraph 411(9)(b), section 423 or subsection 536(3) of the Corporations Act may be made by—

(a) the ASIC; or

(b) a person authorised by the ASIC; or

(c) a creditor or contributory; or

Rule 11.2(1)(a)
amended by
S.R. No.
117/2008
rule 19(2)(i).

Rule 11.2(1)(b)
amended by
S.R. No.
117/2008
rule 19(2)(i).

- (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 without notice to any person.
- (3) The provisions of this Order that apply to an examination under Division 1 of Part 5.9 of the Corporations Act apply, with any necessary adaptations, to an examination or an investigation under paragraph 411(9)(b), section 423 or subsection 536(3) of the Corporations Act.

11.3 Application for examination summons (ss 596A, 596B of the Corporations Act)—Form 17

- (1) An application for the issue of an examination summons must be made by filing an interlocutory process or an originating process, as the case requires.
- (2) The application may be made without notice to any person.
- (3) The originating process, or interlocutory process, seeking the issue of the examination summons must be—
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft examination summons.

- (4) The originating process, or interlocutory process, 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 Act 2001"; or
 - (b) "Application and supporting affidavit for issue of summons for examination under section 596B of the Corporations Act 2001".
- (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 process, or interlocutory process, and the supporting affidavit.
- (6) If the application is not made by the ASIC, the ASIC must be given notice of the application and, if required by the ASIC, served with a copy of the originating process, or interlocutory process, 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 must be in accordance with Form 17.

Rule 11.3(6)
amended by
S.R. No.
117/2008
rule 19(2)(i).

11.4 Service of examination summons

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.

11.5 Discharge of examination summons

- (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 process seeking an order discharging the summons; and
 - (b) an affidavit stating the facts in support of the interlocutory process.
- (3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on—
 - (a) the person who applied for the examination; and
 - (b) unless that person is the ASIC or a person authorised by the ASIC—the ASIC.

Rule 11.5(3)(b)
amended by
S.R. No.
117/2008
rule 19(2)(i).

11.6 Filing of record of examination (s. 597(13) of the Corporations Act)

If the Court makes an order in relation to an examination under subsection 597(13) of the Corporations Act, the Court may give directions for the filing of the written record of the examination.

**11.7 Authentication of transcript of examination
(s. 597(14) of the Corporations Act)**

For the purposes of subsection 597(14) of the Corporations Act, 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.

11.8 Inspection of record or transcript of examination or investigation under ss 411, 423 or 536 of the Corporations Act

- (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 ASIC; or

- (b) by leave of the Court.

- (2) This Rule does not apply to the liquidator, the ASIC or any person authorised by the ASIC.

Rule 11.8(1)(a)
amended by
S.R. No.
117/2008
rule 19(2)(i).

Rule 11.8(2)
amended by
S.R. No.
117/2008
rule 19(2)(i).

11.9 Entitlement to record or transcript of examination held in public

- (1) This Rule applies if—
 - (a) an examination under section 597 of the Corporations Act 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 Prothonotary, 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 Prothonotary must give a copy of the record or transcript to the person.

11.10 Default in relation to examination

- (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.

11.11 Service of application for order in relation to breaches etc. by person concerned with corporation (s. 598 of the Corporations Act)

- (1) This Rule applies to a person applying for an order under section 598 of the Corporations Act.
- (2) In addition to complying with Rules 2.7 and 2.8, the person must serve a copy of the originating process, or interlocutory process, 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 to
rule 11.11(2)
amended by
S.R. No.
117/2008
rule 19(2)(j).

Note

Under Rule 2.7, a plaintiff must serve a copy of the originating process, and any supporting affidavit, on a defendant to the proceeding and, if necessary, on the corporation to which the proceeding relates; and an applicant must serve a copy of an interlocutory process, 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 ASIC—see Rule 2.8.

ORDER 11A—WARRANTS (CORPORATIONS ACT SECTION 486B AND PART 5.4B, DIVISION 3, SUBDIVISION B)

Order 11A
(Heading and
rule 11A.01)
inserted by
S.R. No.
117/2008
rule 14.

11A.01 Arrest of person (Corporations Act s. 486B)—Form 17A

Rule 11A.01
inserted by
S.R. No.
117/2008
rule 14.

- (1) An application for the issue of a warrant under section 486B(1) of the Corporations Act for the arrest of a person must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.
- (3) The warrant must be in accordance with Form 17A.
- (4) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to the Prothonotary or registrar in the office or registry from which the warrant was issued.

Note

Sections 489A to 489E of the Corporations Act, inserted by the Corporations Amendment (Insolvency) Act 2007 of the Commonwealth, apply in relation to a warrant issued on or after 31 December 2007—see Corporations Act, section 1481(3).

Order 12—Takeovers, Acquisition of Shares etc. (Chapters 6 to 6D of the Corporations Act) and Securities (Chapter 7 of the Corporations Act)

r. 12.1

**ORDER 12—TAKEOVERS, ACQUISITION OF SHARES ETC.
(CHAPTERS 6 TO 6D OF THE CORPORATIONS ACT) AND
SECURITIES (CHAPTER 7 OF THE CORPORATIONS ACT)**

Rule 12.1
(Heading)
amended by
S.R. No.
117/2008
rule 19(3)(a).
Rule 12.1
amended by
S.R. No.
117/2008
rule 19(3)(b).

**12.1 Service on ASIC in relation to proceedings under
Chapter 6, 6A, 6B, 6C, 6D or 7 of the Corporations
Act**

If the ASIC is not a party to an application made under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Corporations Act, the plaintiff must serve a copy of the originating process and the supporting affidavit on the ASIC as soon as practicable after filing the originating process.

**12.1A Reference to Court of question of law arising in a
proceeding before Takeovers Panel (s. 659A of the
Corporations Act)**

Order 6 of Chapter II of the Rules of the Supreme Court applies, with any necessary adaptations, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the Court under section 659A of the Corporations Act.

Rule 12.1B
inserted by
S.R. No.
44/2007 rule 6.

**12.1B Notification to Court where proceeding is
commenced before end of takeover bid period
(s. 659B of the Corporations Act)**

- (1) This Rule applies to a party to a proceeding who suspects or becomes aware that—
 - (a) the proceeding was commenced in relation to a takeover bid, or proposed takeover bid, before the end of the bid period; and
 - (b) the proceeding falls within the definition of *court proceedings in relation to a takeover bid or proposed takeover bid* in section 659B(4) of the Corporations Act.

- (2) The party identified in paragraph (1) must, immediately on suspecting or becoming aware of the matters mentioned in paragraph (1), notify any other party to the proceeding and the Court of that suspicion or knowledge.
- (3) A party must comply with paragraph (2) unless any other party to the proceeding has given a notice under this Rule to the party.

12.2 Application for summons for appearance of person (s. 1071D(4) of the Corporations Act)—Form 18

- (1) An application for the issue of a summons under subsection 1071D(4) of the Corporations Act must be made by filing an originating process or an interlocutory process.
- (2) The application may be made ex parte.
- (3) The originating process, or interlocutory process, seeking the issue of the summons must be—
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft summons.
- (4) Unless the Court otherwise orders, a summons issued under this Rule is to be in accordance with Form 18.

12.3 Application for orders relating to refusal to register transfer or transmission of securities etc. (s. 1071F of the Corporations Act)

As soon as practicable after filing an originating process seeking an order under section 1071F of the Corporations Act, the plaintiff must serve a copy of the originating process and the supporting affidavit on—

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

ORDER 13

* * * * *

**ORDER 14—POWERS OF COURTS (PART 9.5 OF THE
CORPORATIONS ACT)**

**14.1 Appeal from act, omission or decision of
administrator, receiver or liquidator etc. (ss 554A
and 1321 of the Corporations Act)**

- (1) All appeals to the Court authorised by the Corporations Act must be commenced by an originating process, or interlocutory process, 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 Corporations Act or the Corporations Regulations otherwise provide, the originating process, or interlocutory process, 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 process, or interlocutory process, 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 process, or interlocutory process, 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 originating process, or interlocutory process, 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 originating process, or interlocutory process, 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.

ORDER 15—PROCEEDINGS UNDER THE ASIC ACT

15.1 Reference to Court of question of law arising at hearing of ASIC (s. 61 of the ASIC Act)

Order 6 of Chapter II 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 ASIC to the Court under section 61 of the ASIC Act.

Rule 15.1
(Heading)
amended by
S.R. No.
117/2008
rule 19(4)(a).
Rule 15.1
amended by
S.R. No.
117/2008
rule 19(4)(b).

15.2 * * * * *

15.3 Application for inquiry (ss 70, 201, 219 of the ASIC Act)

An application for an inquiry under subsection 70(3), 201(3) or 219(7) of the ASIC Act must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

r. 15A.1

Order 15A
(Heading and
rules 15A.1–
15A.9)
inserted by
S.R. No.
43/2009 rule 7.

**ORDER 15A—PROCEEDINGS UNDER THE CROSS-BORDER
INSOLVENCY ACT**

Rule 15A.1
inserted by
S.R. No.
43/2009 rule 7.

**15A.1 Application of this Order and other rules of the
Court**

Unless the Court otherwise orders—

- (a) this Order applies to a proceeding in the Court under the Cross-Border Insolvency Act involving a debtor other than an individual; and
- (b) the rules in the other Orders of these Rules, and the other rules of the Court, apply to a proceeding in the Court under the Cross-Border Insolvency Act if they are relevant and not inconsistent with this Order.

Note

See rule 1.5 for definitions of *Cross-Border Insolvency Act* and *Model Law*.

Rule 15A.2
inserted by
S.R. No.
43/2009 rule 7.

**15A.2 Expressions used in the Cross-Border Insolvency
Act**

- (1) Unless the contrary intention appears, an expression that is used in this Order and in the Cross-Border Insolvency Act, whether or not a particular meaning is given to the expression by the Cross-Border Insolvency Act, has the same meaning in this Order as it has in the Cross-Border Insolvency Act.

Note

The following expressions used in this Order (including in the notes to this Order) are defined in the Model Law as having the following meanings—

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding;

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment;

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

foreign representative means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

- (2) This Order is to be interpreted in a manner that gives effect to the Cross-Border Insolvency Act.

15A.3 Application for recognition

- (1) An application by a foreign representative for recognition of a foreign proceeding under article 15 of the Model Law must be made by filing an originating process in accordance with Form 2.
- (2) The originating process must—
- (a) be accompanied by the statements referred to in article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act; and
 - (b) name the foreign representative as the plaintiff and the debtor as the defendant; and

Rule 15A.3
inserted by
S.R. No.
43/2009 rule 7.

-
- (c) be accompanied by an affidavit verifying the matters mentioned in paragraphs 2 and 3 of article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act.
 - (3) When filing the originating process—
 - (a) the foreign representative must file, but need not serve, an interlocutory process seeking directions as to service; and
 - (b) the Court may give any directions about service, and make any incidental orders, that it thinks just.
 - (4) The plaintiff must serve a copy of the originating process and the other documents referred to in subrule (2)—
 - (a) unless the Court otherwise orders, in accordance with rule 2.7(1); and
 - (b) on any other persons the Court may direct at the hearing of the interlocutory process.
 - (5) A person who intends to appear before the Court at the hearing of an application for recognition must file and serve the documents referred to in rule 2.9.

Rule 15A.4
inserted by
S.R. No.
43/2009 rule 7.

15A.4 Application for provisional relief under article 19 of the Model Law

- (1) Any application by the plaintiff for provisional relief under article 19 of the Model Law must be made by filing an interlocutory process in accordance with Form 3.
- (2) Unless the Court otherwise orders, the interlocutory process and any supporting affidavit must be served in accordance with rule 2.7(2).

15A.5 Official liquidator's consent to act

If the relief sought in an application under article 15 of the Model Law includes an application for an order under article 19 or 21 to entrust the distribution of the debtor's assets to a person designated by the Court (other than the foreign representative), unless the Court otherwise orders, that person must—

Rule 15A.5
inserted by
S.R. No.
43/2009 rule 7.

- (a) be an official liquidator; and
- (b) have filed a Consent to Act in accordance with Form 19 that specifies an address for service for the person within Australia.

15A.6 Notice of filing of application for recognition

- (1) Unless the Court otherwise orders, the plaintiff in a proceeding referred to in rule 15A.3 must—
 - (a) send a notice of the filing of the application in accordance with Form 20 to each person whose claim to be a creditor of the defendant is known to the plaintiff; and
 - (b) publish a notice of the filing of the application for recognition of a foreign proceeding in accordance with Form 20, in accordance with rule 2.11.
- (2) The Court may direct the plaintiff to publish a notice in accordance with Form 20 in a daily newspaper circulating generally in any State or Territory not referred to in rule 2.11.

Rule 15A.6
inserted by
S.R. No.
43/2009 rule 7.

15A.7 Notice of order for recognition, discontinuance etc.

- (1) If the Court makes an order for recognition of a foreign proceeding under article 17 of the Model Law, or makes any order under article 19 or 21 of the Model Law, the plaintiff must, as soon as practicable after the order is made, do all of the following—

Rule 15A.7
inserted by
S.R. No.
43/2009 rule 7.

-
- (a) have the order authenticated;
 - (b) serve a copy of the authenticated order on the defendant;
 - (c) send a notice of the making of the order in accordance with Form 21 to each person whose claim to be a creditor of the defendant is known to the plaintiff;
 - (d) publish a notice of the making of the order in accordance with Form 21, in accordance with rule 2.11.
- (2) The Court may direct the plaintiff to publish the notice in accordance with Form 21 in a daily newspaper circulating generally in any State or Territory not referred to in rule 2.11.
 - (3) If the application for recognition is discontinued or dismissed, the plaintiff must, as soon as practicable, do all of the following—
 - (a) for a dismissal, have the order of dismissal authenticated;
 - (b) serve a copy of the authenticated order of dismissal or notice of the discontinuance, on the defendant;
 - (c) send a notice of the dismissal or discontinuance in accordance with Form 22 to each person whose claim to be a creditor of the defendant is known to the plaintiff;
 - (d) publish a notice of the dismissal or discontinuance in accordance with Form 22, in accordance with rule 2.11.
 - (4) The Court may direct the plaintiff to publish the notice in accordance with Form 22 in a daily newspaper circulating generally in any State or Territory not referred to in rule 2.11.
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15A.8 Relief after recognition

Rule 15A.8
inserted by
S.R. No.
43/2009 rule 7.

- (1) If the Court has made an order for recognition of a foreign proceeding, any application by the plaintiff for relief under paragraph 1 of article 21 of the Model Law must be made by filing an interlocutory process, and any supporting affidavit, in accordance with Form 3.
- (2) Unless the Court otherwise orders, an interlocutory process under subrule (1) and any supporting affidavit must be served, in accordance with rule 2.7(2), but on the following persons—
 - (a) the defendant;
 - (b) any person that the Court directed be served with the originating process by which the application for recognition was made;
 - (c) any other person that the Court directs.
- (3) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents referred to in rule 2.9.

15A.9 Application to modify or terminate an order for recognition or other relief

Rule 15A.9
inserted by
S.R. No.
43/2009 rule 7.

- (1) This rule applies to—
 - (a) an application under paragraph 4 of article 17 of the Model Law for an order modifying or terminating an order for recognition of a foreign proceeding; and
 - (b) an application under paragraph 3 of article 22 of the Model Law for an order modifying or terminating relief granted under article 19 or 21 of the Model Law.
- (2) An application to which this rule applies must be made by filing an interlocutory process in accordance with Form 3.

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- (3) An interlocutory process for an application to which this rule applies and any supporting affidavit must be served on—
- (a) for an application referred to in paragraph (1)(a), the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for recognition; and
 - (b) for an application referred to in paragraph (1)(b), the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for relief under article 19 or 21.
- (4) Unless the Court otherwise orders, a plaintiff who applies for an order to which this rule applies must—
- (a) send a notice of the filing of the application in accordance with Form 23 to each person whose claim to be a creditor of the defendant is known to the plaintiff; and
 - (b) publish a notice of the filing of the application in accordance with Form 23, in accordance with rule 2.11.
- (5) The Court may direct the applicant to publish the notice in accordance with Form 23 in a daily newspaper circulating generally in any State or Territory not referred to in rule 2.11.
- (6) A person who intends to appear before the Court at the hearing of an application to which this rule applies must file and serve the documents referred to in rule 2.9.

ORDER 16—POWERS OF ASSOCIATE JUDGES

Order 16
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(c).

PART 1—GENERAL

16.1 Powers of Associate Judges

Rule 16.1
(Heading)
amended by
S.R. No.
44/2009
rule 14(a).

- (1) An Associate Judge may exercise any power conferred on the Court or a Judge of the Court by any provision listed in column 1 of Schedule 2, subject to any qualification set out in that column.
- (2) The descriptions in column 2 of Schedule 2 are inserted for convenience of reference only and do not affect the operation of this Rule.
- (3) An Associate Judge may also hear and determine any application referred to an Associate Judge by a Judge of the Court, subject to any directions contained in the order referring the application.

Rule 16.1(1)
amended by
S.R. No.
100/2008
rule 21(1)(d).

Rule 16.1(3)
amended by
S.R. No.
100/2008
rule 21(1)(e).

16.2 Reference by Associate Judge

Rule 16.2
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(f).

- (1) If a matter before an Associate Judge appears to the Associate Judge to be proper for the decision of a Judge of the Court, the Associate Judge may refer the matter to a Judge of the Court.
- (2) If an Associate Judge refers a matter to a Judge of the Court, the Judge of the Court may dispose of the matter or refer it back to the Associate Judge with any direction that the Judge of the Court considers appropriate.

Rule 16.2(1)
amended by
S.R. No.
100/2008
rule 21(1)(g).

Rule 16.2(2)
amended by
S.R. Nos
100/2008
rule 21(1)(g)
(i)(iii), 44/2009
rule 14(b).

r. 16.3

Rule 16.3
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(h).
Rule 16.3
amended by
S.R. No.
100/2008
rule 21(1)(i).

16.3 Matters within Associate Judge's jurisdiction not to be brought before Judge of the Court except in certain cases

If these Rules authorise a matter to be dealt with by an Associate Judge, the matter may only be brought before a Judge of the Court—

Rule 16.3(a)
amended by
S.R. No.
100/2008
rule 21(1)(i)(i).

(a) on a reference from an Associate Judge; or

Rule 16.3(b)
amended by
S.R. No.
100/2008
rule 21(1)(i)(i).

(b) on appeal from an Associate Judge; or

Rule 16.3(c)
amended by
S.R. No.
100/2008
rule 21(1)(i)(ii).

(c) by special leave of a Judge of the Court; or

(d) upon the trial of a proceeding.

Rule 16.4
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(j).
Rule 16.4
amended by
S.R. No.
100/2008
rule 21(1)(k).

16.4 Associate Judge not to hear complaint for offence

Nothing in these Rules confers jurisdiction on an Associate Judge to hear and determine a complaint for an offence.

16.5 Appeals

Rule 16.5(1)
amended by
S.R. No.
100/2008
rule 21(1)(l)(i).

(1) Subject to subrules (2) and (3), an appeal lies from the order of an Associate Judge made under these Rules as though it were an appellable order of an Associate Judge under Chapter I of the Rules of the Supreme Court.

-
- (2) No order of an Associate Judge made on an application referred to the Associate Judge by a Judge of the Court shall be subject to an appeal except by leave of a Judge of the Court. **Rule 16.5(2) amended by S.R. No. 100/2008 rule 21(1)(l).**
- (3) Without limiting the discretion to grant or refuse leave, leave may be granted if the Judge of the Court is satisfied, whether with or without oral argument, that the decision of the Associate Judge is arguably affected by error. **Rule 16.5(3) amended by S.R. No. 100/2008 rule 21(1)(l) (ii)(iii).**

PART 2—MEETINGS

16.6 Inquiry and order by Associate Judge as to meetings **Rule 16.6 (Heading) amended by S.R. No. 100/2008 rule 21(1)(m).**

- (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, after the meeting has been held, attend before an Associate Judge on a date to be appointed by the Associate Judge. **Rule 16.6(1) amended by S.R. No. 100/2008 rule 21(1)(n) (i)(ii).**
- (2) The Associate Judge shall inquire whether the meeting was duly convened and held and whether the resolution was duly passed at the meeting in accordance with the terms of the order. **Rule 16.6(2) amended by S.R. No. 100/2008 rule 21(1) (n)(ii).**
- (3) The Associate Judge shall by order declare—
- (a) whether the meeting was duly convened and held and whether the resolution was duly passed; and **Rule 16.6(3) amended by S.R. No. 100/2008 rule 21(1) (n)(ii).**
 - (b) if in the Associate Judge's opinion any irregularity occurred in the convening or holding of the meeting or in the passing of the resolution, the nature and extent of the irregularity. **Rule 16.6(3)(b) amended by S.R. No. 100/2008 rule 21(1) (n)(iii).**

r. 16.7

Rule 16.6(4)
amended by
S.R. No.
100/2008
rule 21(1)
(n)(ii).

- (4) No order based on any resolution mentioned in subrule (1) shall be made until an order of the Associate Judge in accordance with this Rule has been filed.

PART 3—WINDING UP AND OPPRESSION

16.7 Application of Part

- (1) Subject to subrule (2), this Part applies to any application for a winding up order.
- (2) This Part does not apply to—
- (a) an application for relief under section 232 of the Corporations Act, whether or not a winding up order is sought;

Rule 16.7
(2)(b)(c)
revoked by
S.R. No.
44/2006 rule 5.

* * * * *

- (d) an application under section 601ND of the Corporations Act for an order directing the responsible entity of a registered scheme to wind up the scheme.

16.8 Application to Associate Judge

Every application to which this Part applies must, unless the Court otherwise orders, be made in the first instance to an Associate Judge.

Rule 16.8
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(o).
Rule 16.8
amended by
S.R. No.
100/2008
rule 21(1)(p).

16.9 Consideration by Associate Judge

**Rule 16.9
(Heading)
amended by
S.R. No.
100/2008
rule 21(1)(q).**

(1) The Associate Judge at or before the hearing of an application to which this Part applies shall consider whether—

**Rule 16.9(1)
amended by
S.R. No.
100/2008
rule 21(1)(r)(i).**

- (a) the application has been duly advertised;
- (b) the affidavit in support of the application and any affidavit of service has been duly filed;
- (c) the consent in writing of the liquidator to be appointed if a winding up order is made has been obtained and filed;
- (d) the provisions of these Rules as to applications for a winding up order have been duly complied with; and
- (e) the notice required by section 470(1)(a) has been duly lodged.

(2) If the Associate Judge is satisfied—

**Rule 16.9(2)
amended by
S.R. No.
100/2008
rule 21(1)(r)(i).**

- (a) that the requirements referred to in subrule (1) have been substantially complied with; and

(b) that the application is unopposed—

the Associate Judge shall hear and determine the application.

(3) If not satisfied that the requirements referred to in subrule (1) have been substantially complied with, the Associate Judge may from time to time adjourn the hearing of the application upon appropriate terms or the Associate Judge may dismiss the application.

**Rule 16.9(3)
amended by
S.R. No.
100/2008
rule 21(1)(r)(i).**

r. 16.10

Rule 16.9(4)
amended by
S.R. No.
100/2008
rule 21(1)(r)
(i)(ii).

(4) If the Associate Judge is satisfied that the application is opposed on grounds appropriate for determination by a Judge of the Court, the Associate Judge shall refer the application for hearing and determination by a Judge of the Court, but otherwise the Associate Judge may hear and determine the application.

Rule 16.9(5)
amended by
S.R. No.
100/2008
rule 21(1)(r)(iii).

(5) An order of an Associate Judge declaring that the requirements referred to in subrule (1) have been complied with, or the extent to which those provisions have been complied with, is evidence of the facts so declared.

16.10 Filing of documents

All documents filed in support of an application to which this Part applies must be filed at least 7 days before the day appointed for the hearing.

ORDER 16A—PROCEEDINGS UNDER THE FEDERAL COURTS (STATE JURISDICTION) ACT 1999

16A.1 Form for initiating proceeding

- (1) Subject to subrule (2) and any direction of the Court, a proceeding for relief under section 7, 10 or 11 of the **Federal Courts (State Jurisdiction) Act 1999** must be initiated by filing an originating process.
- (2) If—
 - (a) in a proceeding, the Federal Court of Australia has made an order for the winding up of a company; and

(b) the order is an ineffective judgment within the meaning of the **Federal Courts (State Jurisdiction) Act 1999**—

an application under the **Federal Courts (State Jurisdiction) Act 1999** in relation to the winding up of the company may be made by filing an interlocutory process.

(3) An interlocutory process filed under subrule (2) must state the proceeding number of the Federal Court proceeding.

ORDER 17—COSTS

17.1 Submission of bill of costs to liquidator

A liquidator may request any solicitor, manager, auctioneer, broker or other person employed by the liquidator in a winding up by the Court to deliver to the liquidator a bill of costs, charges or expenses for the purposes of taxation.

17.2 Request for bill for taxation—Form 18A

Rule 17.2
(Heading)
amended by
S.R. No.
43/2009
rule 8(a).

(1) A request under Rule 17.1 may be in Form 18A and must be made a sufficient time before the declaration of a dividend in the winding up.

Rule 17.2(1)
amended by
S.R. No.
43/2009
rule 8(b).

(2) If the request is not met within the time stated in the request, or within any extended time allowed by an Associate Judge, the liquidator may declare and distribute the dividend without regard to the claim of the person to whom the request was made and, unless the Court otherwise orders, the claim is forfeit.

Rule 17.2(2)
amended by
S.R. No.
100/2008
rule 21(1)(s).

17.3 Lodgement of bill for taxation and appointment to tax

- (1) A liquidator may lodge with the Taxing Master for taxation a bill delivered in response to a request made under Rule 17.1.
- (2) The Taxing Master shall give notice of an appointment to tax to the liquidator and to any other person by whom, or to whom, the bill is to be paid.
- (3) Every person to whom notice is so given may attend or be represented on the taxation.

17.4 Liquidator's certificate as to special terms of remuneration

If a bill lodged for taxation under Rule 17.2 is to be paid out of the assets of a company, a certificate in writing signed by the liquidator must be produced to the Taxing Master on the taxation setting forth any special terms or remuneration that have been agreed to.

17.5 No allowance for performance by others of liquidator's or special manager's duties

- (1) In a winding up by the Court, a liquidator or special manager who receives remuneration for acting as such is not entitled to claim any payment in respect of the performance by any other person of the ordinary duties which are required by law to be performed by a liquidator or special manager.
- (2) A liquidator who is a solicitor may contract that the remuneration for his or her services as liquidator is to include all professional services.

17.6 Application for costs after proceeding concluded

If any party to, or person affected by, any proceeding desires to apply for an order for costs incident to the proceeding and the application is not made at the time of the proceeding—

-
- (a) the party or person must serve notice of the intended application on the company or, if the company is in liquidation, on the liquidator;
 - (b) the company or the liquidator may appear on the application; and
 - (c) no costs of, or incidental to, the application are to be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the hearing of the proceeding.

17.7 Costs of winding up application—short form bills

- (1) If a winding up order is made, the plaintiff may claim the following as costs of the application—
 - (a) the amount that, on the date the originating process was filed, is set out in item 11A of the Scale of Costs in Appendix A to Chapter I of the Rules of the Supreme Court; and
 - (b) proper disbursements incurred in relation to the application.
- (2) A plaintiff claiming costs under subrule (1) must serve on the liquidator—
 - (a) a bill of costs and disbursements, which need not include an itemised account of the work or services performed; and
 - (b) copies of receipts, vouchers or journals that evidence the disbursements claimed.
- (3) Within 14 days of service of a bill of costs and disbursements, the liquidator must give notice to the plaintiff in writing whether or not any, and, if so, which, of the costs or disbursements claimed are disputed by the liquidator.

-
- (4) Within 14 days of receipt of notice, the plaintiff must file with the Court—
- (a) copies of the documents referred to in subrule (2); and
 - (b) an affidavit of service of those documents; and
 - (c) a copy of the notice.
- (5) The plaintiff, the liquidator and their respective solicitors are not to attend on taxation of the bill of costs and disbursements, unless directed to do so by the Taxing Master.
- (6) This Rule does not limit a plaintiff's right to claim the taxed costs of the winding up application otherwise than under this rule, except that a plaintiff who claims the costs of a winding up application—
- (a) under this Rule—has no further claim to recover any or all of the taxed costs of the application; and
 - (b) otherwise than under this Rule—has no further claim to recover any or all of the taxed costs of the application under this Rule.
-

SCHEDULES

SCHEDULE 1

FORMS

Rule 2.1

FORM 1

Sch. 1 Form 1
amended by
S.R. No.
104/2007
rule 4(2)(a).

DOCUMENT TITLE

IN THE [*name of Court*] No. of [*year*]

AT

DIVISION: [*insert if appropriate*]

REGISTRY: [*insert if appropriate*]

IN THE MATTER OF [*full name of corporation to which the proceeding relates and, if applicable, the words "(in liquidation)", "(receiver appointed)", "(receiver and manager appointed)", "(controller acting)", or "(under administration)"*]

ABN or ACN or ARBN: [*insert ABN or ACN or ARBN*]

AB (and Others) Plaintiff(s)

[*list, in a schedule, any further plaintiffs*]

and

CD (and Others) Defendant(s)

[*list, in a schedule, any further defendants*]

Sch. 1

Sch. 1 Form 2
amended by
S.R. Nos
100/2008
rule 21(2)(a),
43/2009
rule 9(a)(b).

Rules 2.2 and 15A.3

FORM 2

ORIGINATING PROCESS

[*Title*]

A. DETAILS OF APPLICATION

This application is made under *section/*regulation [*number*] of the *Corporations Act/*ASIC Act/*Cross-Border Insolvency Act/*Corporations Regulations.

[*State briefly the nature of the proceeding, e.g. application for winding up on ground of insolvency; or complaint about a receiver.*]

On the facts stated in the supporting affidavit(s), the plaintiff claims—

1.

2.

etc.

AND

Date:

.....
*Signature of plaintiff or
plaintiff's legal practitioner*

This application will be heard by _____ at [*address of Court*] at
*am/*pm on [*insert date*].

B. NOTICE TO DEFENDANT(S)

TO: [*name and address of each defendant (if any)*]:

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen—

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the office of the Prothonotary and serve a copy of it on the plaintiff.

Note: Except with the leave of the Court, a defendant that is a corporation cannot appear at a hearing otherwise than by a legal practitioner.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

[Complete this section if this originating process is seeking an order that a company be wound up in insolvency on the ground that the company has failed to comply with a statutory demand (see section 459Q of the Corporations Act)]

[Set out particulars of service of the statutory demand on the company and of the failure to comply with the demand]

[Attach to this originating process a copy of the statutory demand and, if the demand has been varied by an order made under subsection 459H(4) of the Corporations Act because of a dispute or offsetting claim, a copy of the order made under that subsection.]

[The affidavit in support of this originating process must—

- (a) verify service of 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 at the date when the affidavit is made.]

Note 1: In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in the Notes in Schedule 3 to these Rules.

Note 2: An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is in the Notes in Schedule 3 to these Rules.

D. FILING

Date of filing: *[date of filing to be entered by Prothonotary]*

.....
Prothonotary

This originating process is filed by *[name]* for the plaintiff.

Sch. 1

E. SERVICE

The plaintiff's address for service is [*address of plaintiff's legal practitioner or of plaintiff*].

*It is not intended to serve a copy of this originating process on any person.

OR

*It is intended to serve a copy of this originating process on each defendant and on any person listed below:

[*name of defendant and any other person on whom a copy of the originating process is to be served*]

[*Complete the following section if the time for service has been abridged*]

The time by which a copy of this originating process is to be served has been abridged by order made by [*name of Judge of the Court or Associate Judge*] on [*date*] to [*time and date*].

* *Omit if not applicable.*

Rules 2.2, 15A.4,
15A.8 and 15A.9

FORM 3

Sch. 1 Form 3
substituted by
S.R. No.
44/2007 rule 7,
amended by
S.R. Nos
100/2008
rule 21(2)(a),
43/2009
rule 9(c)(d).

INTERLOCUTORY PROCESS

[*Title*]

A. DETAILS OF APPLICATION

*This application is made under *section/*regulation [*number*] of the
*Corporations Act/*ASIC Act/*Cross-Border Insolvency Act/*Corporations
Regulations.

On the facts stated in the supporting affidavit(s), the applicant, [*name*],
applies for the following relief—

1.

2.

etc.

AND

Date:

*Signature of applicant making this application or
applicant's legal practitioner*

This interlocutory application will be heard by _____ at [*address of Court*]
at _____*am/*pm on [*insert date*].

B. NOTICE TO RESPONDENT(S) (IF ANY)

TO: [*name and address of each respondent to this interlocutory process (if
any). If applicable, also state the respondent's address for service.*]

If you or your legal practitioner do not appear before the Court at the time
shown above, the application may be dealt with, and an order made, in your
absence.

Before appearing before the Court, you must, except if you have already done
so or you are the plaintiff in this proceeding, file a notice of appearance, in
the prescribed form, in the office of the Prothonotary and serve a copy of it
on the plaintiff in the originating process.

Note: Unless the Court otherwise orders, a respondent that is a
corporation must be represented at a hearing by a legal practitioner. It may
be represented at a hearing by a director of the corporation only if the
Court grants leave.

Sch. 1

C. FILING

This interlocutory process is filed by [*name*] for the applicant.

D. SERVICE

The applicant's address for service is [*address of applicant's legal practitioner or of applicant*].

*It is not intended to serve a copy of this interlocutory process on any person.

OR

*It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below:

[*name of respondent and any other person on whom a copy of the interlocutory process is to be served*]

[Complete the following section if the time for service has been abridged]

The time by which a copy of this interlocutory process is to be served has been abridged by order made by [*name of Judge of the Court or Associate Judge*] on [*date*] to [*time and date*].

* *Omit if not applicable.*

Rule 2.9

FORM 4

NOTICE OF APPEARANCE

[*Title*]

A. DETAILS OF PERSON INTENDING TO APPEAR

Notice is given that [*state full name and address*], [*briefly state your interest in the proceeding, e.g. a creditor for \$ (amount), or a contributory, of the corporation*] intends to appear before the Court at the hearing of the application to be heard at [*name of Court and address*] on [*date*] and, if applicable, to *oppose/*support the application.

Note: Except with the leave of the Court, a defendant that is a corporation cannot appear at a hearing otherwise than by a legal practitioner.

B. GROUNDS OF OPPOSITION TO WINDING UP

[*Complete this section only if you are opposing an application to wind up a company*]

The grounds on which I oppose the application for winding up are—

- 1.
 - 2.
- etc.

C. SERVICE

[*This section must be completed*]

The address for service of the person giving this notice is [*address of person's legal practitioner or of person*].

.....
*Signature of person giving notice
or of person's legal practitioner*

* Omit if not applicable.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

Sch. 1 Form 5
amended by
S.R. No.
117/2008
rule 19(5).

Rule 2.10

FORM 5

NOTICE OF INTERVENTION BY ASIC

[*Title*]

The Australian Securities and Investments Commission, whose address for service is [*address*], intervenes in this proceeding.

Date:

.....
Signed on behalf of ASIC

Name of signatory: [*name*]

Capacity of signatory: [*capacity*].

Rule 3.4

FORM 6

**NOTICE OF HEARING TO APPROVE COMPROMISE OR
ARRANGEMENT**

TO all the creditors and members of [*name of company*]

TAKE NOTICE that at *am/*pm on the
at [*address of Court*] will hear an application by [*name of plaintiff*] seeking
the approval of a compromise or arrangement between the above-named
company and its *members/*creditors as proposed by a resolution passed by
the meeting of the *members/*creditors of the company held on [*date*].

[*Complete this section if applicable*]

The proposed compromise or arrangement as passed by the meeting was
amended from the form of compromise or arrangement previously sent to
you in the following respects—

[*Set out the details of any amendment made at the meeting*]

If you wish to oppose the approval of the compromise or arrangement, you
must file and serve on the plaintiff a notice of appearance, in the prescribed
form, together with any affidavit on which you wish to rely at the hearing.
The notice of appearance and affidavit must be served on the plaintiff at its
address for service at least 1 day before the date fixed for the hearing of the
application.

[*This section must be completed*]

The address for service of the plaintiff is [*address of plaintiff's legal
practitioner or of plaintiff*].

Name of person giving notice or of person's legal practitioner [*name*]

* Omit if not applicable.

Rule 5.2

FORM 7

AFFIDAVIT ACCOMPANYING STATUTORY DEMAND

[*Name of creditor(s)*]

Creditor(s)

[*Name of debtor company*]

Debtor company

I, [*name*] of [*address and occupation*], *say on oath/*affirm [*or *make oath and say/*solemnly and sincerely declare and affirm*]—

1. I am [*state deponent's relationship to the creditor(s), e.g. "the creditor", "(name), one of the creditors"*] in respect of *a debt of \$ [*amount*]/*debts totalling \$ [*amount*] owed by [*name of debtor company*] to *it/*them relating to [*state nature of debt, or debts, ensuring that what is stated corresponds with the description of the debt, or debts, to be given in the proposed statutory demand, with which this affidavit is to be served on the debtor company*].
2. [*If the deponent is not the creditor, state the facts entitling the deponent to make the affidavit, e.g. "I am authorised by the creditor(s) to make this affidavit on its/their behalf"*].
3. [*State the source of the deponent's knowledge of the matters stated in the affidavit in relation to the debt or each of the debts, e.g. "I am the person who, on behalf of the creditor(s), had the dealings with the debtor company that gave rise to the debt", "I have inspected the business records of the creditor in relation to the debtor company's account with the creditor"*].
4. *The debt/*The total of the amounts of the debts, mentioned in paragraph 1 of this affidavit, is due and payable by the debtor company.
5. I believe that there is no genuine dispute about the existence or amount of the *debt/*any of the debts.

*Sworn/*affirmed at: [*place of swearing or affirmation*] on [*date*]

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

OR

*Sworn/*affirmed by the above-named deponent at: [*place of swearing or affirmation*] this date of [*month*] [*year*]

.....
Signature of deponent

Before me:

.....
*Signature and designation of person
before whom deponent swears or
affirms affidavit*

** Omit if not applicable*

Note: The form of the opening words and the jurat of this affidavit may be changed to conform to the form of affidavit used in a particular State or Territory—see Rule 2.6.

Sch. 1

Sch. 1 Form 8
substituted by
S.R. No.
117/2008
rule 15.

Rules 5.5, 6.1

FORM 8

**CONSENT OF LIQUIDATOR/PROVISIONAL LIQUIDATOR AND
DECLARATION OF RELEVANT RELATIONSHIPS**

[Title]

I, [*name*], of [*address*], an official liquidator, consent to be appointed by the Court and to act as the *liquidator/*provisional liquidator of [*name of company*].

I DECLARE under section 60(2) of the Corporations Act 2001 that I [*and if the liquidator's firm is a partnership*] *and any partner in the partnership conducting my firm [*or if the liquidator's firm is a body corporate*] *and the body corporate conducting my firm or an associate of that body corporate, *has or has had /*does not have or has not had, within the preceding 24 months a relationship with—

*the company; or

*an associate of the company; or

*a former liquidator, or former provisional liquidator, of the company; or

*a former administrator of the company; or

*a former administrator of a deed of company arrangement executed by the company.

[*If there is a relevant relationship, describe that relationship, and state the liquidator's reasons for believing that the relevant relationships does not result in the liquidator having a conflict of interest or duty*].

The hourly rates currently charged in respect of work done as *liquidator/*provisional liquidator by me, and by my partners and employees who may perform work in this administration, are set out in the Schedule which is attached to this Consent.

I acknowledge that my appointment by the Court does not constitute an express or implied approval by the Court of these hourly rates.

Note

The requirement to disclose hourly rates should not be taken to imply that remuneration on an hourly rate is the most desirable or appropriate arrangement in every case. The Corporations Act acknowledges that another method of calculating remuneration may be appropriate (see, for example, section 473(2) and (3)).

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

Date:

.....
Signature of official liquidator

* Omit if not applicable.

Sch. 1

Sch. 1 Form 9
amended by
S.R. No.
104/2007
rule 4(2)(b).

Rule 5.6

FORM 9

NOTICE OF APPLICATION FOR WINDING UP ORDER

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

1. A proceeding for the winding up of [*name of company*] was commenced by the plaintiff, [*name of plaintiff*], on [*date of filing of originating process*] and will be heard by _____ at [*address of Court*] at _____*am/*pm on _____
Copies of documents filed may be obtained from the plaintiff's address for service.
2. The plaintiff's address for service is [*address of plaintiff's legal practitioner or of plaintiff*].
3. Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the plaintiff at the plaintiff's address for service at least 3 days before the date fixed for the hearing.

Date:

Name of plaintiff or plaintiff's legal practitioner: [*name*]

* *Omit if not applicable.*

Rule 5.10

FORM 10

**NOTICE OF APPLICATION FOR WINDING UP ORDER BY
SUBSTITUTED PLAINTIFF**

Sch. 1
Form 10
amended by
S.R. No.
104/2007
rule 4(2)(c).

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

1. [*Name of substituted plaintiff*], who was, by order of the [*name of Court*], substituted as a plaintiff, will apply to the Court at *am/*pm on at [*address of Court*] for an order that the above company be wound up.
2. The address for service of the substituted plaintiff is [*address of substituted plaintiff's legal practitioner or of substituted plaintiff*].
3. Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the substituted plaintiff at its address for service at least 3 days before the date fixed for the hearing.

Date:

Name of substituted plaintiff or substituted plaintiff's
legal practitioner: [*name*].

* Omit if not applicable.

Sch. 1

Sch. 1
Form 11
amended by
S.R. No.
104/2007
rule 4(2)(d).

Rule 5.11

FORM 11

NOTICE OF WINDING UP ORDER AND OF APPOINTMENT OF LIQUIDATOR

IN THE [*name of Court*]

AT [*location of Court*]

IN THE MATTER OF [*name of company to which the proceeding relates*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

On [*date*], the [*name of Court*] in Proceeding No. _____ of [*year*], ordered the winding up of [*name of company*] and I was appointed as liquidator of the company.

Date:

Name and address of liquidator: [*name and address*].

Sch. 1
Form 12
amended by
S.R. No.
104/2007
rule 4(2)(e).

Rule 6.2

FORM 12

NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR

IN THE [*name of Court*]

AT [*location of Court*]

IN THE MATTER OF [*name of company to which the proceeding relates*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

On [*date*], in Proceeding No. _____ of [*year*], heard by the [*name of Court*], I was appointed as the provisional liquidator of the above company.

Date:

Name and address of provisional liquidator: [*name and address*].

Rule 7.6

FORM 13

**NOTICE BY CREDITOR OR CONTRIBUTORY OF OBJECTION TO
RELEASE OF LIQUIDATOR**

[*Title*]

[*Name of creditor/contributory*] of [*address of creditor/contributory*], a creditor of [*name of company*] for \$ [*amount*], or a contributory of [*name of company*] holding [*number*] shares in the company, objects to the grant of a release to [*name of liquidator*] of [*address of liquidator*], who is the liquidator of [*name of company*], on the following grounds—

[*set out the grounds upon which the objection is made*]

Date:

.....
*Signature of objector or
objector's legal practitioner*

Name of objector or objector's legal practitioner: [*name*].

The objector's address for service is [*address of objector or objector's legal practitioner*].

Sch. 1

Rule 7.8

FORM 14

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR
PAYMENT OF CALL**

[*Title*]

I, [*name*] of [*address*], liquidator, *make oath and say/*solemnly and sincerely declare and affirm—

1. I am the liquidator of [*name of company*] (the company).
2. On [*date*] I made a call of \$ [*amount*] per share on all the contributories of the company [*or specify the class of contributories on whom the call was made*]. *Exhibited and marked **A** is a copy of the notice of the call. Each contributory whose name is shown in the Schedule marked **B** was duly served with notice of the call in the form exhibited and marked **A**.
3. Each contributory of the company whose name is set out in column 2 of the Schedule marked **B** has not paid, or caused to be paid, to me the sum specified opposite the contributory's name in column 5 of the Schedule, which is due from that contributory under the call.
4. The amount set out opposite the name of each contributory in column 6 of the Schedule is an estimate of the amount due by that contributory in respect of the costs of applying for and giving effect to the order for payment of the call. The estimate of the amounts so due by the several contributories has been reached by apportioning the costs among the contributories who have not paid the call according to the liability of the respective contributories to contribute.
5. The amount set out opposite the name of each contributory in column 7 of the Schedule is the total of the amount due by that contributory in respect of the call as set out in column 5 and the amount due in respect of costs as set out in column 6.

*Sworn/*Affirmed at: [*place of swearing or affirmation*] on [*date*]

.....
Signature of deponent

Before me:

.....
*Signature and designation of
person before whom deponent
swears or affirms affidavit*

* Omit if not applicable.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

SCHEDULE B

<i>Number on list of contributories</i>	<i>Name</i>	<i>Address</i>	<i>Character in which included in the list</i>	<i>Unpaid amount of call</i>	<i>Proportion of costs of application</i>	<i>Total amount payable</i>
---	-------------	----------------	--	--------------------------------------	---	-------------------------------------

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

Sch. 1
Form 15
amended by
S.R. Nos
104/2007
rule 4(2)(f),
100/2008
rule 21(2)(b).

Rule 7.9

FORM 15

NOTICE OF APPLICATION FOR LEAVE TO DISTRIBUTE A
SURPLUS

IN THE [*name of Court*]

AT

APPLICATION NO.:

IN THE MATTER OF [*company name*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

On [*date*] at *am/*pm, the *Judge of the Court /*Associate Judge at
[*address of Court*] will hear an application by the liquidator of [*name of
company*] in Proceeding

No. of [*year*] for leave to distribute a surplus in respect of the
liquidation of the company.

Any person intending to appear at the hearing must file a notice of
appearance, in accordance with the prescribed form, together with any
affidavit on which the person intends to rely, and serve a copy of the notice
and affidavit on the liquidator at the address shown below at least 3 days
before the date fixed for the hearing.

Name of liquidator: [*name*].

The liquidator's address for service is [*address*].

.....
Signature of liquidator

* Omit if not applicable.

Rule 9.1–9.5

FORM 16

Sch. 1
Form 16
amended by
S.R. No.
104/2007
rule 4(2)(g).

NOTICE OF INTENTION TO APPLY FOR REMUNERATION

IN THE MATTER OF [*company name*]

ABN or ACN: [ABN or ACN of company to which proceeding relates]

TO: [*name and address of person to whom notice is given*]

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, [*name and address*], the *receiver/*administrator/*liquidator/*provisional liquidator/*special manager of the above company, intend to apply to the Court to determine my remuneration.

If you object to my application, you must, within 21 days after being served with this notice, serve on me a notice of objection stating the grounds of objection to the remuneration claimed.

Date:

.....
*Signature of *receiver/*administrator/*liquidator/
*provisional liquidator/*special manager*

* Omit if not applicable.

Sch. 1

Sch. 1
Form 16A
inserted by
S.R. No.
117/2008
rule 16.

Rule 9.2A and 9.4A

FORM 16A

**NOTICE OF INTENTION TO APPLY FOR REVIEW OF
REMUNERATION**

IN THE MATTER OF [*company name*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

TO: [*name and address of person to whom notice is given*]

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, [*name and address of plaintiff or applicant*], the *administrator/*liquidator/ of the above company, intend to apply to the Court to review *the remuneration of/*my remuneration as the *administrator/*liquidator/ of the above company.

The amount of the remuneration that has been determined or fixed is [*state the amount*]. The remuneration was determined or fixed by [*state who determined or fixed the remuneration*] on [*state the date when the remuneration was determined or fixed*].

I intend to apply for an order to *confirm/*increase/*reduce the remuneration.

[*Set out the grounds upon which an order or orders will be sought. If an order to increase or reduce the remuneration is sought, set out the amount by which the remuneration is sought to be increased or reduced.*]

If you wish to appear at the hearing of the application, in order to raise any issues before the court, you must, within 21 days after being served with this notice, serve on me a notice under Rule *9.2A(4)/9.4A(4) of the Supreme Court (Corporations) Rules 2003 stating your intention to appear at the hearing and setting out the issues that you seek to raise before the Court.

Date:

.....
Signature of plaintiff or applicant

* Omit if not applicable.

Rule 11.3

FORM 17

SUMMONS FOR EXAMINATION

[*Title*]

A. DETAILS OF SUMMONS

TO: [*name and address of person to be examined*]

You are summoned under *section 596A/*section 596B of the Corporations Act to—

- (a) attend before _____ at [*address of Court*] at
*am/*pm on _____ and from day to day until excused by
the Court, to be examined on oath or affirmation about the examinable
affairs of [*name of corporation*]; and
- (b) *to produce at the examination the following books [*specify books—
include in a schedule if necessary*].

Date:

.....
Prothonotary

B. NOTICE TO PERSON TO BE EXAMINED

The Court may order that the questions put to you and the answers given by you at the examination are to be recorded in writing and signed by you.

If you do not attend the examination in accordance with this summons, without reasonable cause, you may be arrested and imprisoned without further notice.

This summons is issued at the request of [*name*] whose address for service is [*address of person's legal practitioner or of person*].

* *Omit if not applicable.*

Sch. 1

Sch. 1
Form 17A
inserted by
S.R. No.
117/2008
rule 17.

Rule 11A.01

FORM 17A

ARREST WARRANT CORPORATIONS ACT 2001 SECTION 486B

[Title]

TO: All members and special members of the Australian Federal Police and to all officers of the police force of the State or Territory in which [*name of person*] is to be found, and to the Sheriff of that State or Territory and all of that Sheriff's officers:

WHEREAS:

- [*name of company*] (the Company) is being wound up in insolvency;
or
- [*name of company*] (the Company) is being wound up by the Court; or
- an application has been made for [*name of company*] (the Company) to be wound up

AND THE COURT IS SATISFIED THAT [*name of person*]

- (a) *is about to leave this jurisdiction or Australia in order to avoid—
- (i) *paying money payable to the Company; or
 - (ii) *being examined about the Company's affairs; or
 - (iii) *complying with an order of the Court, or some other obligation, under Chapter 5 of the Corporations Act 2001 of the Commonwealth in connection with the winding up; or
- (b) *has concealed or removed property of the Company in order to prevent or delay the taking of the property into the liquidator's custody or control; or
- (c) *has destroyed, concealed or removed books of the Company or is about to do so;

THIS WARRANT THEREFORE requires and authorises you to take [*name of person*] and bring *him/*her before the Court at [*address of Court*] and to keep *him/*her there pending the making of a further order by the Court.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

THIS WARRANT ALSO requires and authorises you to seize any property or books of the Company in the possession of [*name of person*] and to deliver them into the custody of the Prothonotary or registrar in the office or registry from which the warrant issued to be kept by the Prothonotary or registrar until the Court makes an order for their disposal.

Note

Section 489A of the Corporations Act 2001 provides that if the Court issues a warrant under section 486B for a person to be arrested and brought before the Court, and the person is not in prison, then the person named in the warrant may be arrested by an officer of the police force of the State or Territory in which the person is found, or the Sheriff of that State or Territory or any of the Sheriff's officers, or a member or special member of the Australian Federal Police.

Date:

Signature of Prothonotary

*Omit if not applicable

Sch. 1

Rule 12.2

FORM 18

**SUMMONS FOR APPEARANCE IN RELATION TO
REGISTRATION OF TRANSFER OF INTERESTS**

[*Title*]

TO: [*name and address*]

You are required to appear before the _____ at [*address of Court*]
at _____ *am/*pm on _____ and show cause why the
document(s) specified in the Schedule should not be *delivered up/*produced
at the office of [*name of company*] at [*address of company*] within [*period as
ordered*], as required by the attached notice.

The address for service of the person applying for this summons is [*address
of person's legal practitioner or of person*].

Date:

.....
Prothonotary

* Omit if not applicable.

SCHEDULE

[*description of document(s)*]

Rule 17.2

FORM 18A

REQUEST TO DELIVER BILL FOR TAXATION

[Title]

TO: [*name and address of person to whom request is made*]

I request that, within _____ days of delivery of this request, you deliver to me for taxation by the proper officer your bill of costs [*or charges*] [*or expenses*] as [*state nature of employment*] employed by me as liquidator in the winding up of the abovenamed company. If this request is not met within the time provided for above, or within any extended time allowed by an Associate Judge of the Supreme Court, I am entitled to declare and distribute a dividend without regard to any claim you may have against the assets of the company and your claim against the assets of the company will be liable to be forfeited.

Date:

Signature of liquidator

Sch. 1 Form 19
amended by
S.R. No.
100/2008
rule 21(2)(c),
substituted as
Sch. 1
Form 18A by
S.R. No.
43/2009 rule 10.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 1

Sch. 1 new
Form 19
inserted by
S.R. No.
43/2009 rule 11.

Rule 15A.5

FORM 19

CONSENT TO ACT AS DESIGNATED PERSON

[*Title*]

I, [*name*], of [*address*], an official liquidator, consent to be appointed by the Court and to act as the person designated by the Court under *article 19/*article 21 of the Model Law to distribute the assets of [*name of company*].

I am not aware of any conflict of interest or duty that would make it improper for me to act as the person designated by the Court.

The hourly rates currently charged in respect of work done as the person designated by the Court by me, and by my partners and employees who may perform work in this administration, are set out below or in the Schedule which is attached to this Consent.

I acknowledge that my appointment by the Court does not constitute an express or implied approval by the Court of these hourly rates.

Date:

Signature of official liquidator

**Omit if not applicable*

SCHEDULE

[*description of hourly rate(s)*]

Rule 15A.6

FORM 20

Sch. 1 Form 20
inserted by
S.R. No.
43/2009 rule 11.

**NOTICE OF FILING OF APPLICATION FOR RECOGNITION OF
FOREIGN PROCEEDING**

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

TO all the creditors of [*name of company*].

TAKE NOTICE that:

1. An application under the Cross-Border Insolvency Act 2008 for recognition of a foreign proceeding in relation to [*name of company*] was commenced by the plaintiff, [*name of plaintiff*], on [*date of filing of originating process*] and will be heard by _____ at [*address of Court*] at _____*am/*pm on _____. Copies of documents filed may be obtained from the plaintiff's address for service.
2. The plaintiff's address for service is [*name and address of plaintiff's legal practitioner or, if there is no legal practitioner, address of the plaintiff*].
3. Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the plaintiff at the plaintiff's address for service at least 3 days before the date fixed for the hearing.
4. If you are a foreign creditor you must file in the registry of the Court at the address mentioned in paragraph 1 an affidavit setting out the details of any claim, secured or unsecured, that you may have against the company above at least 3 days before the date fixed for the hearing.

Date:

Name of plaintiff or plaintiff's legal practitioner: [*name*]

**Omit if not applicable*

Sch. 1

Sch. 1 Form 21
inserted by
S.R. No.
43/2009 rule 11.

Rule 15A.7

FORM 21

**NOTICE OF MAKING OF ORDER UNDER THE CROSS-BORDER
INSOLVENCY ACT 2008**

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

TO all the creditors of [*name of company*].

TAKE NOTICE that:

1. On [*date*], the [*name of Court*] in Proceeding No. of [*year*], commenced by the plaintiff [*name of plaintiff*], made the following orders under the Cross-Border Insolvency Act 2008 in relation to [*name of company*]: [*insert details of order*].
2. The plaintiff's address for service is [*name and address of plaintiff's legal practitioner or, if there is no legal practitioner, address of the plaintiff*].
3. The name and address of the foreign representative is [*insert name and address*].
4. The name and address of the person entrusted with distribution of the company's assets is [*insert name and address*].*

Date:

Name of plaintiff or plaintiff's legal practitioner: [*name*]

**Omit if not applicable*

Rule 15A.7

FORM 22

Sch. 1 Form 22
inserted by
S.R. No.
43/2009 rule 11.

**NOTICE OF DISMISSAL OR DISCONTINUANCE OF
APPLICATION FOR RECOGNITION OF FOREIGN PROCEEDING**

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

TO all the creditors of [*name of company*].

TAKE NOTICE that the application under the Cross-Border Insolvency Act 2008 for recognition of a foreign proceeding in relation to [*name of company*] commenced by the plaintiff, [*name of plaintiff*], on [*date of filing of originating process*] was dismissed*/discontinued* on [*date of dismissal/discontinuance*].

Date:

Name of person giving notice or of person's legal practitioner [*name*]

**Omit if not applicable*

Sch. 1

Sch. 1 Form 23
inserted by
S.R. No.
43/2009 rule 11.

Rule 15A.9

FORM 23

**NOTICE OF FILING OF APPLICATION TO MODIFY OR
TERMINATE AN ORDER FOR RECOGNITION OR OTHER
RELIEF**

IN THE *[name of Court]* No. of *[year]*

[Name of company]

ABN or ACN: *[ABN or ACN of company to which proceeding relates]*

TO all the creditors of *[name of company]*.

TAKE NOTICE that:

- *1. An application under the Cross-Border Insolvency Act 2008 for an order **modifying/*terminating* an order for recognition of a foreign proceeding in relation to *[name of company]* was filed by the applicant, *[name of applicant]*, on *[date of filing of interlocutory process]* and will be heard by _____ at *[address of Court]* at _____ **am/*pm* on _____. Copies of documents filed may be obtained from the applicant's address for service.
- *1. An application under the Cross-Border Insolvency Act 2008 for an order **modifying/*terminating* relief granted under **article 19/ *article 21* of the Model Law in relation to *[name of company]* was filed by the applicant, *[name of applicant]*, on *[date of filing of interlocutory process]* and will be heard by _____ at *[address of Court]* at _____ **am/*pm* on _____. Copies of documents filed may be obtained from the applicant's address for service.
2. The applicant's address for service is *[name and address of applicant's legal practitioner or of applicant]*.
3. Any person intending to appear at the hearing must file a notice of appearance (if the person has not already done so), in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice (if applicable) and any affidavit on the applicant at the applicant's address for service at least 3 days before the date fixed for the hearing.

Date:

Name of applicant or applicant's legal practitioner: *[name]*

**Omit if not applicable*

SCHEDULE 2

Rule 16.1

**POWERS OF THE COURT THAT MAY BE EXERCISED BY
AN ASSOCIATE JUDGE**

Sch. 2
substituted by
S.R. No.
44/2006 rule 6,
amended by
S.R. Nos
100/2008
rule 22,
117/2008
reg. 18.

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
THE ASIC ACT	
s. 79(4)	To extend time for service of notice.
THE CORPORATIONS ACT	
s. 227	Declaration that conditions prescribed by Division 3 of Part 2E.1 have been satisfied.
s. 247A	To order inspection of books.
s. 247B	To make ancillary order about inspection of books.
s. 252E	To order meeting of members of registered scheme.
s. 266(4)	For extension of time for registration of charge.
s. 267(3)	To give leave to enforce charge.
s. 274	To rectify omission or misstatement.
s. 283AE(2)	For appointment of corporation to be trustee.
s. 283EC	To order meeting of debenture holders.
s. 283HA	To give directions and make declarations about trustee's functions or interests of debenture holders.
s. 411(16)	To restrain further proceedings.
s. 418A	Declaration as to validity of controller's appointment and in relation to control of property.
s. 420B	To authorise managing controller to dispose of property despite prior charge.
s. 420C	To authorise receiver to carry on corporation's business during the winding up.
s. 425	To fix remuneration of receiver.
s. 429(3)	To extend time for report.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 434	That receiver remedy default.
s. 438D(3)	To direct administrator to lodge a report.
s. 439A(6)	For extension of convening period.
THE CORPORATIONS ACT	
s. 440B	To grant leave to enforce a charge if an administrator has been appointed.
s. 440C	To grant leave to take possession of, or otherwise recover, property.
s. 440D(b)	For leave to begin or proceed with proceeding against company during administration.
s. 440F	For leave to begin or proceed with enforcement process re property of company during administration.
s. 440G(7)	To permit a court officer to take action or make a payment during administration.
s. 440J	To grant leave to take enforcement action under a guarantee.
s. 442C	To grant leave to administrator to dispose of encumbered property.
s. 443B(8)	To excuse administrator from personal liability for rent.
s. 444B(2)(b)	To extend time for company to execute deed.
s. 444E(3)(c)	For leave to person bound by deed to begin or proceed with proceeding against company etc. or enforcement process against company.
s. 447A(1) (where winding up order to be made by an Associate Judge)	To end administration of company.
s. 447C	To declare whether administrator is validly appointed.
s. 447E(2)	For order where office of administrator is vacant or no administrator is acting.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 449C(6)	For appointment of an administrator of company under administration when none is acting.
s. 449D(1)	To fill vacancy in office of administrator of deed.
THE CORPORATIONS ACT	
s. 449D(2)	For appointment of an administrator of deed where none is acting.
s. 449E(1)(c) and (1A)(c)	To determine the remuneration of an administrator.
s. 449E(2)	For review etc. of administrator's remuneration.
s. 459F(2)(a)	For order extending period for compliance with demand.
s. 459G	For order on application to set aside a demand.
s. 459P(2)	For leave to apply for winding up.
s. 459R	For extension of time for determination of application for winding up in insolvency.
s. 459S	For leave to company to oppose application.
s. 465B(1)	For order substituting applicant.
s. 465C (if the application is pending before an Associate Judge)	For leave to oppose application when there has been failure to file and serve notice of grounds of opposition and verifying affidavit.
s. 467(7)	For stay of proceedings.
s. 468	For validation of disposition of property, attachments etc.
s. 468A	For order authorising transfer of shares after commencement of winding up.
s. 470(2)(b)	To serve a copy order on another person.
s. 471A	For approval by the Court to perform or exercise a function or power as an officer of the company.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 471B	For leave to begin or proceed with a proceeding or begin or proceed with enforcement process against a company being wound up in insolvency or by the Court or in respect of which a provisional liquidator is acting.
s. 472(1) (where winding up order made by an Associate Judge)	For appointment of liquidator.
s. 472(2)	For appointment of provisional liquidator.
THE CORPORATIONS ACT	
s. 472(6)	For order on application with respect to the exercise or proposed exercise of a power of a provisional liquidator.
s. 473(2)	Determination of provisional liquidator's remuneration.
s. 473(3), (5), (6)	Determination or review of liquidator's remuneration.
s. 473(7)	To fill vacancy in office of liquidator.
s. 473(8)	To declare what may be done by liquidator, where more than one appointed.
s. 474(2)	To vest property in liquidator.
s. 477(2A)	For approval of liquidator's compromising a debt.
s. 477(2B)	For approval of liquidator's entering an agreement which may last or obligations which may be performable more than 3 months later.
s. 477(6)	For order on application with respect to the exercise or proposed exercise of a power by liquidator.
s. 480	To release liquidator and deregister company.
s. 481	To order auditor's report and liquidator to make good any loss.
s. 482(1)	To stay or terminate winding up.
s. 483(1)	For delivery of property etc. to liquidator.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 483(2)	To direct contributory to pay money.
s. 483(3)	To make calls for payment by contributories and order payment of calls made by court or liquidator.
s. 483(4)	To order payment to bank to the liquidator's account.
s. 484	To appoint or remove special manager, to fix security or remuneration.
s. 486	For inspection of books.
s. 488(2)	To grant special leave to distribute a surplus.
s. 490	For leave to company to resolve that it be wound up voluntarily.
s. 495(4)	As to manner of holding meeting.
s. 496(3)	For order that list of creditors be sent.
THE CORPORATIONS ACT	
s. 497(3)	For order that list of creditors be sent.
s. 500(2)	For leave to proceed.
s. 500(3)	For delivery of property etc. to liquidator.
s. 502	To appoint liquidator.
s. 504	To review liquidator's remuneration.
s. 507(6)	To sanction resolution.
s. 507(9)	For directions for initiation and conduct of arbitration.
s. 507(10)	For approval for exercise of powers.
s. 509(6)	To order deregistration on a specified day.
s. 510(3)	To settle dispute.
s. 511(1)(b)	For exercise of powers.
s. 532(2)	To grant leave for person to be appointed as liquidator.
s. 542(3)(a)	As to destruction of books.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 543(1)	As to investment of funds.
s. 544	As to accounts or payment of unclaimed funds.
s. 545(2)	To direct liquidator to incur a particular expense.
s. 547(1)	To direct meeting.
s. 551	Leave to member of Committee of Inspection to accept benefit.
s. 552	To give direction or permission.
s. 554A	To estimate, or determine method to be applied in working out, value of debts and claims of uncertain value in liquidation.
s. 554G	To grant leave to secured creditor to amend valuation of security in proof of debt.
THE CORPORATIONS ACT	
s. 564	To make an order in favour of certain creditors.
s. 568	For leave to disclaim.
s. 568B	To set aside disclaimer of property before disclaimer takes effect.
s. 568E	To set aside disclaimer of property after disclaimer has taken effect.
s. 568F	For orders re vesting of disclaimed property.
s. 583	To wind up Part 5.7 bodies.
s. 587	To stay proceedings or for leave to commence or proceed.
s. 588FF	To make order about voidable transactions.
s. 588T(2)(b)	For leave to creditor to begin proceeding.
s. 596A	For mandatory examination.
s. 596B	For discretionary examination.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 596F(1)(b) to (g) (if direction is given after commencement of examination before the Associate Judge)	For directions about examination.
s. 597(9) (if direction is given after commencement of examination before the Associate Judge)	For direction to produce books.
s. 597A	For mandatory affidavit.
s. 597B (if examination before the Associate Judge)	For costs of unnecessary examination.
THE CORPORATIONS ACT	
s. 600A	To make order setting aside creditors' resolution or in respect of consideration and voting on proposed resolution or entitlement to vote on proposed resolution or amendment or variation of proposed resolution.
s. 600B	To order setting aside or varying of creditors' resolution passed on casting vote of person presiding at meeting.
s. 600C	To order proposed creditors' resolution to be taken as passed at meeting.
s. 600D	To make interim order where application under section 600A(1), 600B(2) or 600C(2) not yet determined.
s. 601AH(2)	For reinstatement of the registration of a company.
s. 601BJ	To approve modification of constitution.
s. 601CC(8)	For restoration of name of registered Australian body.
s. 601CL(9)	For restoration of name of registered foreign company.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
s. 601FN	For appointment of a temporary responsible entity of a scheme.
s. 1071D	To issue summons and make consequential orders under section 1071D(5).
s. 1071F	For order following failure by directors to register etc.
s. 1071H	To remedy default in issuing certificate.
s. 1274(11)	For order to remedy default.
s. 1303	To order immediate inspection of books.
s. 1319	For direction with respect to meeting.
THE CORPORATIONS ACT	
s. 1321	To confirm, reverse or modify act or decision of receiver, receiver and manager, administrator or liquidator or remedy omission of receiver, receiver and manager, administrator or liquidator on appeal from aggrieved person.
s. 1322(4)	For order in relation to irregularities etc.
s. 1335	To order security for costs.
s. 1341(3)	For payment of money.
CORPORATIONS REGULATIONS	
5.6.06	For order not to open liquidator's general account.
5.6.09	For directions with respect to money or securities and authorisation of payments to special bank accounts.
5.6.15(2)	For repayment of costs of meeting.
5.6.16(7)	For declaration that adjourned meeting be taken to be incompetent to act.
5.6.18(3)	For order as to place of adjourned meeting.

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Sch. 2

<i>Column 1</i>	<i>Column 2</i>
<i>Provision</i>	<i>Description</i>
5.6.24(3)	To determine whether security surrendered.
5C.2.02	To appoint a temporary responsible entity of a scheme.

SCHEDULE 3

NOTES TO THESE RULES

Note 1—see Rule 2.2 (Form 2 Part C)

**C. APPLICATION FOR WINDING UP ON GROUND OF
INSOLVENCY**

1. The plaintiff relies on failure by the defendant to comply with a statutory demand. A copy of the demand, marked **A**, is attached to this originating process.
2. The demand was [or The demand and an accompanying affidavit were] served by X.Y. who delivered it [or them] to the registered office of the defendant at [insert address] on [insert date] [or, if service was by post, who posted it [or them] by ordinary prepaid post to the registered office of the defendant at [insert address] on [insert date]]. [If applicable, A copy of the accompanying affidavit, marked **B**, is attached to this originating process.]
3. The defendant failed to pay the amount of the debt demanded [or the total of the debts demanded] or to secure or compound for that amount [or that total] to the plaintiff's reasonable satisfaction within 21 days after the demand was served on the defendant [or within 7 days after [insert date] when an application by the defendant under section 459G of the Corporations Act was finally determined or otherwise disposed of] [or if the period for compliance with the demand was extended by order within the period specified in the order of the [insert name of Court] on [insert date of order or, if more than one order, the date of the last such order] as the period for compliance with the demand. A copy of the order, marked **C**, is attached to this originating process.]
[If the demand was varied by order under subsection 459H(4) of the Corporations Act—
4. The demand was varied by order of the [insert name of Court] on [insert date of order]. A copy of the order, marked **D** [or as the case may be], is attached to this originating process.]

Note 2—see Rules 2.4 and 5.4(2)

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR WINDING UP IN
INSOLVENCY**

I, *[name]* of *[address and occupation]*, *say on oath/*affirm [*or* *make oath and say/*solemnly and sincerely declare and affirm]—

1. I am the above-named plaintiff [*or if the applicant is a corporation, I am a [or the] director of the above-named plaintiff which is registered or taken to be registered in [specify State or Territory]. I am duly authorised to make this affidavit on its behalf]. Now produced and shown to me and marked A is a copy of the originating process to be filed in the proceeding.*
2. Annexed to this affidavit is a current and historical extract of the records maintained by the Australian Securities and Investments Commission with respect to the defendant.
3. [*Where the defendant is registered or taken to be registered in another State or a Territory, state any facts—apart from the defendant's principal place of business—which bear upon jurisdiction being exercised in Victoria rather than in another State or Territory.*]
4. The following facts are within my own personal knowledge save as otherwise stated.
5. The defendant was on [*state date of statutory demand or other relevant date*] indebted to the plaintiff in the sum of \$ for [*state concisely the consideration, for example, goods sold and delivered etc.*] which sum was then due and payable.
6. The demand, a copy of which is attached to the originating process, was signed by or on behalf of the plaintiff. I served the demand [*or the demand and the accompanying affidavit*] as referred to in the originating process [*or X.Y. has been instructed to make an affidavit of service of the demand [or the demand and the accompanying affidavit]*].
7. The matters stated in the originating process concerning the demand and failure of the defendant to comply with it are true and correct.
8. The sum demanded remains due and payable by the defendant to me [*or the plaintiff*].

Sworn, *etc.*

Sch. 3

Dated: 25 September 2003

J. H. PHILLIPS, *C.J.*

JOHN WINNEKE, *P.*

W. F. ORMISTON, *J.A.*

F. H. CALLAWAY, *J.A.*

J. M. BATT, *J.A.*

PETER BUCHANAN, *J.A.*

ALEX CHERNOV, *J.A.*

G. M. EAMES, *J.A.*

BERNARD G. TEAGUE, *J.*

P. D. CUMMINS, *J.*

T. H. SMITH, *J.*

DAVID BYRNE, *J.*

H. R. HANSEN, *J.*

PHILIP MANDIE, *J.*

D. J. HABERSBERGER, *J.*

R. S. OSBORN, *J.*

JULIE DODDS-STREETON, *J.*

R. F. REDLICH, *J.*

K. WILLIAMS, *J.*

ENDNOTES

1. General Information

The Supreme Court (Corporations) Rules 2003, S.R. No. 107/2003 were made on 25 September 2003 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986 and section 23 of the **Corporations (Ancillary Provisions) Act 2001**, No. 43/2001 and came into operation on 1 October 2003: rule 1.2(1).

The Supreme Court (Corporations) Rules 2003 will sunset 10 years after the day of making on 25 September 2013 (see section 5 of the **Subordinate Legislation Act 1994**).

Supreme Court (Corporations) Rules 2003
S.R. No. 107/2003

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Supreme Court (Corporations) Rules 2003 by statutory rules, subordinate instruments and Acts.

Supreme Court (Chapter V Amendment No. 1) Rules 2005, S.R. No. 47/2005

Date of Making: 26.5.05

Date of Commencement: 27.5.05: rule 3

Supreme Court (Chapter V Amendment No. 2) Rules 2006, S.R. No. 44/2006

Date of Making: 27.4.06

Date of Commencement: 8.5.06: rule 3

Supreme Court (Chapter V Amendment No. 3) Rules 2007, S.R. No. 44/2007

Date of Making: 31.5.07

Date of Commencement: 1.7.07: rule 3

Supreme Court (Chapter V Amendment No. 4) Rules 2007, S.R. No. 104/2007

Date of Making: 27.9.07

Date of Commencement: 1.10.07: rule 3

Supreme Court (Associate Judges Amendment) Rules 2008, S.R. No. 100/2008

Date of Making: 28.8.08

Date of Commencement: 17.12.08: rule 3

Supreme Court (Chapter V Amendment No. 5) Rules 2008, S.R. No. 117/2008

Date of Making: 1.10.08

Date of Commencement: 6.10.08: rule 3

Supreme Court (Chapter V Amendment No. 6) Rules 2009, S.R. No. 43/2009

Date of Making: 30.4.09

Date of Commencement: 4.5.09: rule 3

Supreme Court (Associate Judges Amendment) Rules 2009, S.R. No. 44/2009

Date of Making: 30.4.09

Date of Commencement: 4.5.09: rule 3

3. Explanatory Details

No entries at date of publication.