

# Supreme Court (Corporations) Rules 1999

[1999-703]



New South Wales

## Status Information

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### Notes—

- **Previously named**  
Corporations Law Rules

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# Supreme Court (Corporations) Rules 1999



New South Wales

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# Supreme Court (Corporations) Rules 1999



New South Wales

## Division 1 Preliminary

### 1.1 Name of Rules

These Rules may be cited as the *Supreme Court (Corporations) Rules 1999*.

### 1.2 Commencement

These Rules commence on 1 March 2000.

### 1.3 Application of these Rules and other rules of the Court

- (1) Unless the Court otherwise orders:
  - (a) these Rules apply to a proceeding in the Court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these Rules, and
  - (b) Division 15A applies to a proceeding in the Court under the Cross-Border Insolvency Act.
- (2) The other rules of the Court apply, to the extent that they are relevant and not inconsistent with these Rules:
  - (a) to a proceeding in the Court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these Rules, and
  - (b) to a proceeding in the Court under the Cross-Border Insolvency Act that is commenced on or after the commencement of Division 15A.
- (3) Unless the Court otherwise orders, the rules applying to a proceeding in the Court under the Corporations Act, or the ASIC Act, as in force immediately before the commencement of these Rules, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was commenced before the commencement of these Rules.

#### **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

- (1) 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 company**—see section 9

**Part 5.1 body**—see section 9

**Part 5.7 body**—see section 9

**register**—see section 9

**registered liquidator**—see section 9

**registered office**—see section 9

**statutory demand**—see section 9.

- (2) Unless the contrary intention appears, an expression used in these Rules and in the Insolvency Practice Schedule (Corporations) has the same meaning in these Rules as it has in that Schedule.

**Note—**

Definitions of expressions used in the Insolvency Practice Schedule (Corporations) are set out in Division 5 of that Schedule.

#### 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.

**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.

**Insolvency Practice Schedule (Corporations)** means Schedule 2 to the Corporations Act.

**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.

**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.

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

## 1.6 References 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 Court or the Court officer 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.

## **Division 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.
- (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.
- (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.

#### **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 2 (Notes to these Rules).

### **2.3 Fixing of hearing**

On receiving an originating process or interlocutory process, the Registrar:

- (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 or exhibit a record of a search of the records maintained by 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.

**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 2 (Notes to these Rules).

#### **2.4A Application for order setting aside statutory demand (Corporations Act s 459G)**

- (1) This rule applies, and subrule 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 not later than the day before the hearing of the application, carry out a search of the records maintained by ASIC in relation to the plaintiff, and
  - (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.

## **2.8 Notice of certain applications to be given to ASIC**

- (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 ASIC or notice of particular matters is to be given to ASIC.
- (2) This rule does not apply to a person making an application if the person is ASIC or a person authorised by ASIC.
- (3) Unless the Court otherwise orders, if a person makes an application under a provision

of the Corporations Act mentioned in column 2 of an item of the following table, the person must serve on 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.

<b>Item</b>	<b>Provision</b>	<b>Description of application</b>
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 (2)	For the deregistration of a company
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
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
10	Subsection 45-1 (3) of the Insolvency Practice Schedule (Corporations)	For an order under subsection 45-1 (1) of the Insolvency Practice Schedule (Corporations) in relation to a registered liquidator
11	Subsection 90-10 (1) of the Insolvency Practice Schedule (Corporations)	For an inquiry into the external administration of a company
12	Section 90-20 of the Insolvency Practice Schedule (Corporations)	For an order under section 90-15 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of a company

## **2.9 Notice of appearance (Corporations Act s 465C)—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.
- (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.

**2.10 Intervention in proceeding by ASIC (Corporations Act s 1330)—Form 5**

- (1) If ASIC intends to intervene in a proceeding, ASIC must file a notice of intervention in accordance with Form 5.
- (2) Not later than 3 days before the date fixed for the hearing at which ASIC intends to appear in the proceeding, 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 (Repealed)**

**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 or exhibited a copy of the published matter, or



(b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.

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

### **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.

(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.

## **Division 3 Compromises and arrangements in relation to Part 5.1 bodies**

### **3.1 Application of Division 3**

This Division 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:

- (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:
  - (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 (Corporations Act s 411 (4), s 413 (1))—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:
  - (a) for an application in relation to Part 5.1 body—in a daily newspaper circulating generally in the State or Territory where the Part 5.1 body has its principal, or last known, place of business, or
  - (b) for an application in relation to 2 or more Part 5.1 bodies—in a daily newspaper circulating generally in each State or Territory where any of the Part 5.1 bodies has its principal, or last known, place of business.
- (3) The notice must be:
  - (a) in accordance with Form 6, and
  - (b) published at least 5 days before the date fixed for the hearing of the application.

### **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 sealed, and
- (b) lodge an office copy of the order with ASIC, and
- (c) serve an office copy of the order on any person appointed to administer the compromise or arrangement.

## **Division 4 Process for seeking an inquiry or order in relation to controller, registered liquidator or external administration**

### **4.1 Inquiry into conduct of controller (Corporations Act s 423)**

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. The complaint may be made by a person mentioned in any of paragraphs 11.2 (1) (a) to (d).

### **4.2 Order or inquiry in relation to registered liquidator or external administration of a company**

An application to the Court:

- (a) under section 45-1 of the Insolvency Practice Schedule (Corporations) for an order in relation to a registered liquidator, or
- (b) under section 90-10 of that Schedule for an inquiry into the external administration of a company, or
- (c) under section 90-20 of that Schedule for an order in relation to the external administration of a company,

must be made:

- (d) in the case of a winding up by the Court—by an interlocutory process seeking the inquiry or order, or
- (e) in any other case—by an originating process seeking the inquiry or order.

#### **Note—**

An application for an order or inquiry in relation to the external administration of a company ordered to be wound up by a Court is normally made to the Court that made the winding up order.

## **Division 5 Winding up proceedings (including oppression proceedings)**

## **where winding up is sought)**

### **5.1 Application of Division 5**

This Division 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 (Corporations Act s 459E (3))—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 (Corporations Act s 459P (2))**

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 (Corporations Act s 459P, s 462, s 464)**

- (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 2 (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 annexure or 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 (Corporations Act s 532 (9))—Form 8**

(1A) (Repealed)

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

#### **Editorial note—**

Date of commencement for subrules (1), (2) and (3): 3.3.2000—see Gazette No 32 of 3.3.2000, p 1585.

### **5.6 Notice of application for winding up**

- (1) If a person applies for a company to be wound up and the application is not made under section 459P, 462 or 464 of the Corporations Act, the person must, unless the Court otherwise orders, cause a notice of the application to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 9.

#### **Note—**

If a person applies under section 459P, 462 or 464 of the Corporations Act for a company to be wound up, the person must cause a notice, setting out the information prescribed by regulation 5.4.01A of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (1) of the Corporations Act.

(2) A notice under subrule (1), or under paragraph 465A (1) (c) of the Corporations Act, of an application for a company to be wound up must be published:

- (a) at least 3 days after the originating process is served on the company, and
- (b) at least 7 days before the date fixed for the 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 Division 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 Registrar**

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

- (a) appear before the Registrar on a date to be appointed by the Registrar, and
- (b) satisfy the Registrar that the plaintiff has complied with the Corporations Act and these Rules in relation to applications for a winding up order.

#### **5.10 Order substituting plaintiff in application for winding up (Corporations Act s 465B)—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 in accordance with Form 10.
- (3) Unless otherwise directed by the Court, the notice must be published:
  - (a) at least 7 days before the date fixed for the hearing of the application, and
  - (b) in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

#### **5.11 Notice of winding up order and appointment of liquidator**

- (1) This rule applies if the Court orders that a company be wound up and a registered 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) If the winding up order results from an application other than an application under section 459P, 462 or 464 of the Corporations Act, the liquidator must cause a notice of the winding up order and the liquidator's appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 11.

**Note—**

If the winding up order results from an application under section 459P, 462 or 464 of the Corporations Act, the liquidator must cause a notice, setting out the information prescribed by regulation 5.4.01B of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (2) of the Corporations Act.

- (4) A notice under subrule (3), or under subsection 465A (2) of the Corporations Act, of a winding up order must be published as soon as practicable after the liquidator is informed of the appointment.
- (5) In this rule:  
**liquidator** does not include a provisional liquidator.

## **Division 6 Provisional liquidators (Corporations Act Part 5.4B)**

**Note—**

See also rule 7.3 (report to provisional liquidator as to company's affairs under section 475 of the Corporations Act).

### **6.1 Appointment of provisional liquidator (Corporations Act s 472)—Form 8**

- (1) An application for a registered liquidator to be appointed, under subsection 472 (2) of the Corporations Act, as a provisional liquidator of a company must be accompanied by the written consent of the registered 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**

- (1) This rule applies if the Court orders that a registered 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 ASIC—lodge an office copy of the order with 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) If the order results from an application other than an application under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must cause a notice of the provisional liquidator's appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 12.

### **Note—**

If the order results from an application under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must cause a notice, setting out the information prescribed by regulation 5.4.01B of the Corporations Regulations, to be published in the manner provided by section 1367A of the Corporations Act and regulation 5.6.75 of the Corporations Regulations: see subsection 465A (2) of the Corporations Act.

- (4) A notice under subrule (3), or under subsection 465A (2) of the Corporations Act, of a provisional liquidator's appointment must be published as soon as practicable after the relevant order is made.

## **Division 7 Liquidators**

### **7.1 (Repealed)**

### **7.2 Vacancy in office of liquidator (Corporations Act s 473A and s 499 (3) and Insolvency Practice Schedule (Corporations) s 90-15)**

If, for any reason, there is no liquidator of a company under external administration, the Court may appoint a registered liquidator whose written consent in accordance with Form 8 has been filed.

### **Note—**

The Court may make the appointment:

- (a) on its own initiative, during proceedings before the Court, or
- (b) on application under section 90-20 of the Insolvency Practice Schedule (Corporations).

See subsection 90-15 (2) of that Schedule.

### **7.3 Report to liquidator as to company's affairs (Corporations Act s 475)**

(1A) In this rule:

**liquidator** includes a provisional liquidator.

- (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:
  - (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) Unless the Court otherwise orders, a report filed by a liquidator under subsection 475 (7) of the Corporations Act is not available for inspection by any person.

**Note—**

A report filed by a liquidator under subsection 475 (7) of the Corporations Act may include commercial-in-confidence information that may not be inspected: see subsection 1274 (4G) of the Corporations Act.

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

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 (Corporations Act s 480 (c) and (d))**

- (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 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
  - (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 ASIC has caused books in relation to the company to be audited under section 70-15 of the Insolvency Practice Schedule (Corporations),
- (f) whether the Court has ordered a report on the accounts of the liquidator to be prepared,
- (g) whether any objection to the release of the liquidator has been received by the liquidator from:
  - (i) an auditor appointed by ASIC or by the Court, or
  - (ii) any creditor, contributory or other interested person,
- (h) whether any report has been submitted by the liquidator to ASIC under section 533 of the Corporations Act,
- (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 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, or annex to, 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:
  - (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 (Corporations Act s 481)**

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

#### **7.8 Application for payment of call (Corporations Act s 483 (3) (b))—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 (Corporations Act s 488 (2))—Form 15**

- (1) The affidavit in support of an application for special leave to distribute a surplus in relation to a company 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 in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.
- (3) The notice must be in accordance with Form 15.

#### **7.10 Powers delegated to liquidator by the Court (Corporations Act s 488)**

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 Appointment of reviewing liquidator (Insolvency Practice Schedule (Corporations) s 90-23 (8))**

- (1) An application to the Court under subsection 90-23 (8) of the Insolvency Practice Schedule (Corporations) to appoint a registered liquidator to carry out a review into a matter relating to the external administration of a company must be made:
  - (a) in the case of a winding up by the Court—by filing an interlocutory process seeking the relevant orders, or
  - (b) in the case of a voluntary winding up—by filing an originating process seeking the relevant orders.
- (2) The application must be accompanied by the written declaration made by the proposed reviewing liquidator under section 90-18 of the *Insolvency Practice Rules (Corporations) 2016* of the Commonwealth.

## **Division 8 Special managers (Corporations Act Part 5.4B)**

### **8.1 Application for appointment of special manager (Corporations Act s 484)**

- (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 (Corporations Act s 484)**

- (1) The Court may, from time to time, direct that the amount of security given by a special manager be varied.
- (2) Unless the Court otherwise directs, the costs of furnishing the security given by a special manager in respect of a particular winding up:
  - (a) are the personal expenses of the special manager, and
  - (b) must not be charged against the property of the company as an expense incurred in the winding up.

### **8.3 Special manager's receipts and payments (Corporations Act s 484)**

- (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.

## **Division 9 Remuneration of office-holders**

### **9.1 Remuneration of receiver (Corporations Act s 425 (1))—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 paragraph 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 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 s 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 mentioned in subsection 425 (8) of the Corporations Act, and
  - (b) state the nature of the work performed or likely to be performed by the receiver, and
  - (c) state the amount of remuneration claimed, and
  - (d) include a summary of the receipts taken and payments made by the receiver, and
  - (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.

## **9.2 Determination of remuneration of external administrator (Insolvency Practice Schedule (Corporations) s 60-10 (1) (c) and (2) (b))—Form 16**

- (1) This rule applies in relation to an application for a determination under paragraph 60-10 (1) (c) or (2) (b) of the Insolvency Practice Schedule (Corporations) specifying remuneration that an external administrator of a company is entitled to receive for



necessary work properly performed by the external administrator in relation to the external administration.

**Note—**

Section 60-10 of the Insolvency Practice Schedule (Corporations) does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act: see section 60-2 of the Insolvency Practice Schedule (Corporations).

- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the determination, the external administrator must serve a notice in accordance with Form 16 of the external administrator's intention to apply for the determination, and a copy of any affidavit on which the external 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 inspection,
  - (c) if there is no committee of inspection, and no meeting of creditors has been convened and held—each of the 5 largest (measured by amount of debt) creditors of the company,
  - (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the external administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the external administrator does not receive a notice of objection within the period mentioned in subrule (3):
  - (a) the external administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the determination stating:
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served, and
    - (ii) that the external administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3), and
  - (b) the external 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 external administrator, and
  - (c) the application may be so dealt with.

- (5) If the external administrator receives a notice of objection within the period mentioned in subrule (3), the external administrator must serve a copy of the originating process, or interlocutory process, seeking the determination on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the determination must:
  - (a) include evidence of the matters mentioned in section 60-12 of the Insolvency Practice Schedule (Corporations), and
  - (b) state the nature of the work performed or likely to be performed by the external administrator, and
  - (c) state the amount of remuneration claimed, and
  - (d) include a summary of the receipts taken and payments made by the external administrator, and
  - (e) state particulars of any objection of which the external administrator has received notice, and
  - (f) if the external administration is continuing—give details of any matters delaying the completion of the external administration.

**9.2A Review of remuneration determination for external administrator (Insolvency Practice Schedule (Corporations) s 60-11 (1))**

- (1) This rule applies in relation to an application under subsection 60-11 (1) of the Insolvency Practice Schedule (Corporations) for a review of a remuneration determination for an external administrator of a company.

**Note 1—**

Section 60-11 of the Insolvency Practice Schedule (Corporations) does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act: see section 60-2 of the Insolvency Practice Schedule (Corporations).

**Note 2—**

An application may not be made under subsection 60-11 (1) of the Insolvency Practice Schedule (Corporations) for a review of a remuneration determination made by the Court under paragraph 60-10 (1) (c) or (2) (b) of that Schedule: see subsection 60-11 (5) of that Schedule.

- (2) (Repealed)
- (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 external 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% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned 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 applicant for review, and
  - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person mentioned 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 the review on each person who has served such a notice.
- (7) The external administrator must file an affidavit stating the following matters:
- (a) the matters mentioned in section 60-12 of the Insolvency Practice Schedule (Corporations),
  - (b) the nature of the work performed or likely to be performed by the external administrator,
  - (c) the amount of remuneration claimed by the external 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 external administrator,
  - (e) particulars of any objection to the remuneration as determined, of which the external administrator has received notice,
  - (f) if the external administration is continuing—details of any matters delaying the completion of the external administration.
- (8) (Repealed)
- (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 (Insolvency Practice Schedule (Corporations) s 60-16)—Form 16**

- (1) This rule applies in relation to an application by a provisional liquidator of a company for a determination under subsection 60-16 (1) of the Insolvency Practice Schedule (Corporations) of the remuneration the provisional liquidator is entitled to receive.
- (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 determination, the provisional liquidator must serve a notice in accordance with Form 16 of the provisional liquidator's intention to apply for the determination, 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 determination stating:
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served, and
    - (ii) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4), and
  - (b) the provisional liquidator may endorse the interlocutory 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 determination:
  - (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 determination 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
  - (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 mentioned in section 60–12 of the Insolvency Practice Schedule (Corporations):
  - (a) to the extent that they may be relevant to a provisional liquidator, and
  - (b) as if references in that section to “external administrator” were references to “provisional liquidator”.

**9.4, 9.4A (Repealed)**

**9.5 Remuneration of special manager (Corporations Act s 484 (2))—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.
- (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 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 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
  - (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.

## **Division 10 Winding up generally**

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

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 (Corporations Act s 568 (1A))**

- (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 interests, under the contract, and
  - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

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

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.

## **Division 11 Inquiries, examinations, investigations, and orders against person concerned with corporation**

### **11.1 Definition for Division 11**

In this Division:

***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 Inquiries, examinations and investigations under paragraph 411 (9) (b) or subsection**

**423 (3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)**

- (1) An application for an order for an examination or investigation under subsection 423 (3) of the Corporations Act in relation to a controller of property of a corporation may be made by any of the following:
- (a) a person with a financial interest in the administration of the corporation,
  - (b) an officer of the corporation,
  - (c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee,
  - (d) ASIC.

**Note—**

An application:

- (a) under paragraph 411 (9) (b) of the Corporations Act for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry, or
- (b) under Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations) for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry,

may be made by a person mentioned in subsection 90-10 (2) of the Insolvency Practice Schedule (Corporations): see paragraph 411 (9) (b) of the Corporations Act and subsection 90-10 (1) of the Insolvency Practice Schedule (Corporations).

- (2) The following applications may be made without notice to any person:
- (a) an application under paragraph 411 (9) (b) of the Corporations Act for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry,
  - (b) an application for an order for an examination or investigation under subsection 423 (3) of the Corporations Act,
  - (c) an application under Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations) for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry.
- (3) The provisions of this Division that apply to an examination under Division 1 of Part 5.9 of the Corporations Act apply, with any necessary adaptations, to an inquiry, examination or investigation under paragraph 411 (9) (b) or subsection 423 (3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations).

**11.3 Application for examination summons (Corporations Act s 596A, s 596B)—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*'.
- (4A) If the originating process or interlocutory process, and supporting affidavit, are sent by electronic communication to a Registry for filing, the originating process or interlocutory process, and supporting affidavit:
  - (a) must be marked 'Confidential', and
  - (b) must be accompanied by a statement that the originating process or interlocutory process, and supporting affidavit, are, as appropriate:
    - (i) 'Application and supporting affidavit for issue of summons for examination under section 596A of the *Corporations Act 2001*', or
    - (ii) '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 ASIC, ASIC must be given notice of the application and, if required by 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.

#### **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 ASIC or a person authorised by ASIC—ASIC.

#### **11.6 Filing of record of examination (Corporations Act s 597 (13))**

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 (Corporations Act s 597 (14))**

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 s 411 or s 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)**

- (1) A written record or transcript of an examination or investigation under section 411 or 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice

Schedule (Corporations) is not available for inspection by any person except:

- (a) with the consent of the liquidator (if any) or ASIC, or
- (b) by leave of the Court.

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

#### **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 Registrar, within 3 years after the date of completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.

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

#### **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 (Corporations Act s 598)**

- (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—**

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 ASIC—see rule 2.8.

**Division 11A Warrants (Corporations Act s 486B and Part 5.4B, Division 3, Subdivision B)**

**11A.1 Arrest of person (Corporations Act s 486B)—Form 17A**

- (1) An application for the issue of a warrant under subsection 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 Registrar.

**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 s 1481 (3).

**Division 12 Takeovers, acquisitions of shares etc (Corporations Act**

## **Chapters 6 to 6D) and securities (Corporations Act Chapter 7)**

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

If 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 ASIC as soon as practicable after filing the originating process.

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

Part 6 Division 8 of the *Uniform Civil Procedure Rules 2005* 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.

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

- (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 subsection 659B (4) of the Corporations Act.
- (2) The party identified in subrule (1) must, immediately on suspecting or becoming aware of the matters mentioned in subrule (1), notify any other party to the proceeding and the Court of that suspicion or knowledge.
- (3) The party must comply with subrule (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 (Corporations Act s 1071D (4))—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 (Corporations Act s 1071F)**

As soon as practicable after filing an originating process 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.

## **Division 13**

### **13.1, 13.2 (Repealed)**

## **Division 14 Appeals authorised by the Corporations Act**

### **14.1 Appeals against acts, omissions or decisions**

(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) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

## **Division 15 Proceedings under the ASIC Act**

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

Part 6 Division 8 of the *Uniform Civil Procedure Rules 2005* applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by ASIC to the Court under section 61 of the ASIC Act.

### **15.2 (Repealed)**

### **15.3 Application for inquiry (ASIC Act s 70, s 201, s 219)**

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.

## **Division 15A Proceedings under the Cross-Border Insolvency Act**

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

Unless the Court otherwise orders:

- (a) this Division 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 Divisions 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 Division.

#### **Note—**

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

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

- (1) Unless the contrary intention appears, an expression that is used in this Division 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 Division as it has in the Cross-Border Insolvency Act.

#### **Note—**

The following expressions used in this Division (including in the notes to this Division) 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 within the meaning of subparagraph (f) of the present article.

**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 Division 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
  - (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, the foreign representative must file, but need not serve, an interlocutory process seeking directions as to service, and the Court may give any directions about service, and make any incidental order, that it thinks just.
- (4) The plaintiff must serve a copy of the originating process and the other documents mentioned in subrule (2):



- (a) unless the Court otherwise orders, in accordance with subrule 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 mentioned in rule 2.9.

#### **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 subrule 2.7 (2).

#### **15A.5 Registered liquidator's consent to act**

If an application is made for an order:

- (a) under article 19 or 21 of the Model Law to entrust the administration or realisation of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative), or
- (b) under article 21 to entrust the distribution of all or part of the debtor's assets to a person designated by the Court (other than the foreign representative),

then, unless the Court otherwise orders, the person must:

- (c) be a registered liquidator, and
- (d) 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 mentioned 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 a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (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 described in subrule (1) (b).

**15A.7 Notice of order for recognition, withdrawal 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:
  - (a) have the order entered,
  - (b) serve a copy of the entered 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 a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (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 described in subrule (1) (d).
- (3) If the application for recognition is withdrawn or dismissed, the plaintiff must, as soon as practicable, do all of the following:
  - (a) for a dismissal, have the order of dismissal entered,
  - (b) serve a copy of the entered order of dismissal or notice of the withdrawal, on the defendant,
  - (c) send a notice of the dismissal or withdrawal 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 withdrawal in accordance with Form 22 in a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (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 described in subrule (3) (d).

**15A.8 Relief after recognition**

- (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 subrule 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 mentioned in rule 2.9.

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

- (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 mentioned in subrule (1) must be made by filing an interlocutory process in accordance with Form 3.

- (3) An interlocutory process for an application under subrule (1) and any supporting affidavit must be served on:

- (a) for an applicant under subrule (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 under subrule (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 of the Model Law.

- (4) Unless the Court otherwise orders, a plaintiff who applies for an order under subrule (1) 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 a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.

- (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 described in subrule (4) (b)

- (6) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

## Division 16 Appeals from Registrars

### 16.1 Appeal from registrar: winding up order

- (1) An appeal shall lie to the Court from a winding up order made under the Corporations Act by a Registrar.
- (2) Part 49 Division 3 of the *Uniform Civil Procedure Rules 2005* shall apply, making such changes as it is necessary to make, to an appeal under subrule (1).
- (3) For the purpose of the application of subrule (2), Part 49 Division 3 of the *Uniform Civil Procedure Rules 2005* shall be read as if:
- (a) “registrar” were substituted for “Associate Judge” wherever occurring, and
  - (b) except in rule 49.11 (3), “rule 16.1 of the *Supreme Court (Corporations) Rules 1999*” were substituted for “this Division” wherever occurring, and
  - (c) in rule 49.8 (1), “rule 16.1 of the *Supreme Court (Corporations) Rules 1999*” were substituted for “rule 49.4”, and
  - (d) there were no reference to the District Court in rule 49.10 (2).

## Division 17

### 17.1 (Repealed)

## Schedule 1 Forms

(rule 1.6)

### Form 1 Document title

(rule 2.1)

IN THE SUPREME COURT OF NEW SOUTH WALES No. of [year]

DIVISION: [insert]

REGISTRY: [insert]

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 ‘(administrator appointed)’]

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

AB (and Others)

Plaintiff(s)

[list, in a schedule, any further plaintiffs]

CD (and Others)

Defendant(s)

[list, in a schedule, any further defendants]

## Form 2 Originating process

(rules 2.2 and 15A.3)

[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, eg 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 .....

### B. NOTICE TO DEFENDANT(S) (IF ANY)

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 Registry and serve a copy of it on the plaintiff.

#### Note—

Unless the Court otherwise orders, a defendant 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.

### 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 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 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 Schedule 2 (Notes 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 shown in Schedule 2 (Notes to these Rules).

**D. FILING**

Date of filing: [date of filing to be entered by Court officer]

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

**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 or other Court officer] on [date] to [time and date].

\* Omit if not applicable

**Form 3 Interlocutory process**

(rules 2.2, 15A.4, 15A.8 and 15A.9)

[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 application will be heard by ..... at [address of Court] at .....\*am/\*pm on .....

**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 Registry 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.

**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 or other Court officer]* on *[date]* to *[time and date]*.

\* Omit if not applicable

**Form 4 Notice of appearance**

(rule 2.9)

*[Title]*

**A. DETAILS OF PERSON INTENDING TO APPEAR**

Notice is given that *[state full name and address]*, *[briefly state your interest in the proceeding, eg 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 the Supreme Court of New South Wales *[address]* on *[date]* and, if applicable, to \*oppose/\*support the application.

**Note—**

Unless the Court otherwise orders, a company may not appear in or defend proceedings otherwise than by a solicitor or by a director authorised in accordance with rules 7.1 and 7.2 of the [Uniform Civil Procedure Rules 2005](#).

**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

**Form 5 Notice of intervention by ASIC**

(rule 2.10)

[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].

**Form 6 Notice of hearing to approve compromise or arrangement**

(rule 3.4)

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

TAKE NOTICE that at .....\*am/\*pm on ....., the Supreme Court of New South Wales 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

**Form 7 Affidavit accompanying statutory demand**

(rule 5.2)

[Name of creditor(s)]

Creditor(s)

[Name of debtor company]

Debtor company



I, [name] of [address and occupation], \*say on oath/\*affirm:

- 1 I am [state deponent's relationship to the creditor(s), eg, 'the creditor', '(name), one of the creditors', 'a director of the creditor', 'a director of (name), one of the creditors'] in respect of \*a debt of \$ [amount]/\*debts totalling \$ [amount] owed by [name of debtor company] to \*me/\*us/\*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, eg '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, eg '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]

.....Signature of deponent

Before me:

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

\* Omit if not applicable

### **Form 8 Consent of liquidator/provisional liquidator**

(rules 5.5, 6.1, 7.2)

[Title]

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

EITHER

I am not aware of any relevant relationship mentioned in subsection 60 (2) of the *Corporations Act 2001* of the Commonwealth.

OR

I have, or have had within the preceding 24 months, the following relevant relationships mentioned in subsection 60 (2) of the *Corporations Act 2001* of the Commonwealth.

[Set out all relevant relationships.]

The time-cost 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 external 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 time-cost rates.

**Note—**

The remuneration that an external administrator is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration of a company is regulated by Division 60 of the Insolvency Practice Schedule (Corporations).

Date:

.....Signature of registered liquidator

\* Omit if not applicable

**Schedule**

[Description of time-cost rate(s)]

**Form 9 Notice of application for winding up order**

(rule 5.6)

IN THE SUPREME COURT OF NEW SOUTH WALES 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 and, if applicable, the words 'trading as' and any trading name or names of the company] was commenced by the plaintiff, [name of plaintiff], on [date of filing of originating process] and will be heard by the Supreme Court of New South Wales 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

**Form 10 Notice of application for winding up order by substituted plaintiff**

(rule 5.10)

IN THE SUPREME COURT OF NEW SOUTH WALES 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 Supreme Court of New South Wales, 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

**Form 11 Notice of winding up order and of appointment of liquidator**

(rule 5.11)

IN THE SUPREME COURT OF NEW SOUTH WALES

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 Supreme Court of New South Wales, in Proceeding No. [name of company] 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]

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

(rule 6.2)

IN THE SUPREME COURT OF NEW SOUTH WALES

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. [name of company] of [year], heard by the Supreme Court of New South Wales I was appointed as the provisional liquidator of the above company.

Date:

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

**Form 13 Notice by creditor or contributory of objection to release of liquidator**

(rule 7.6)

[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].

**Form 14 Affidavit in support of application for order for payment of call**

(rule 7.8)

[Title]

I, [name] of [address], liquidator, \*say on oath/\*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]. \*Annexed/\*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 annexed or 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

**Schedule B**

<b>Number on list of contributories</b>	<b>Name</b>	<b>Address</b>	<b>Character in which included in the list</b>	<b>Unpaid amount of call</b>	<b>Proportion of costs of application</b>	<b>Total amount payable</b>
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**Form 15 Notice of application for leave to distribute a surplus**

(rule 7.9)

IN THE SUPREME COURT OF NEW SOUTH WALES

APPLICATION NO:

IN THE MATTER OF [company name]

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

On ..... at ....., the Supreme Court of New South Wales 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

**Form 16 Notice of intention to apply for remuneration**

(rules 9.1, 9.2, 9.3, 9.5)

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/\*external 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/\*external administrator/\*liquidator/  
\*provisional liquidator/\*special manager

\* Omit if not applicable

**Form 16A Notice of intention to apply for review of remuneration**

(rule 9.2A)

IN THE MATTER OF [company name]

ACN or ABN: [ACN or ABN 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 proposed plaintiff or applicant], \*[the \*external administrator/\*liquidator of the above company,] intend to apply to the Court to review \*the remuneration of/\*my remuneration as the \*external administrator/\*liquidator of the 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 subrule 9.2A (4) of the [Supreme Court \(Corporations\) Rules 1999](#), stating your intention to appear at the hearing and setting out the issues that you seek to raise before the Court.

Date:

.....Signature of proposed plaintiff or applicant

\* Omit if not applicable

**Form 17 Summons for examination**

(rule 11.3)

[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 the Supreme Court of New South Wales 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:

.....Registrar [or other Court officer]

**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

**Form 17A Arrest warrant**

(Corporations Act 2001 (Cth) s 486B and Supreme Court (Corporations) Rules 1999 rule 11A.1)

[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 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 Australia in order to avoid:

(i) paying money 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* (Cth) 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 to 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.

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 Registrar of the Court to be kept by that Registrar until the Court makes an order for their disposal.

**Note—**

Section 489A of the *Corporations Act 2001* of the Commonwealth 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:

.....[signed]  
Judge/Registrar

*\* Omit if inapplicable*

**Form 18 Summons for appearance in relation to registration of transfer of interests**

(rule 12.2)

[Title]

TO: [name and address]

You are required to appear before the Supreme Court of New South Wales 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:

.....Registrar [or other Court officer]

*\* Omit if not applicable*

**Schedule**

[description of document(s)]

**Form 19 Consent to act as designated person**

(rule 15A.5)

[Title]

I, [name], of [address], a registered 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 \*administer/\*realise/\*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 time-cost 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 time-cost rates.

Date:

.....  
Signature of registered liquidator

*\* Omit if not applicable*

**Schedule**

[description of time-cost rate(s)]

## Form 20 Notice of filing of application for recognition of foreign proceeding

(rule 15A.6)

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

## Form 21 Notice of making of order under the [Cross-Border Insolvency Act 2008](#)

(rule 15A.7)

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



**Form 22 Notice of dismissal or withdrawal of application for recognition of foreign proceeding**

(rule 15A.7)

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\*/withdrawn\* on [date of dismissal/withdrawal].

Date:

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

\* Omit if not applicable

**Form 23 Notice of filing of application to modify or terminate an order for recognition or other relief**

(rule 15A.9)

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 Notes to these Rules

(rules 2.2, 2.4 and 5.4)

**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/\*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/\*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.

\* Omit if not applicable

**Note 2—see rule 2.4 and rule 5.4 (2) (Affidavit in support)**

### **\*AFFIDAVIT IN SUPPORT/\*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/\*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 New South Wales 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 \$[amount] 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*

\* *Omit if not applicable*