



Australian Capital Territory

# Supreme Court (Corporations) Rules 2003

**Statutory Rules 2003 No 284 and Subordinate Law SL2003-40**

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We, Judges of the Supreme Court of the Australian Capital Territory, make the following rules of court under the *Corporations Act 2001* (Cwlth).

Dated 31 October 2003.

T J HIGGINS  
Chief Justice

D RYAN  
Judge

K J CRISPIN  
Judge

R COOPER  
Judge

M F GRAY  
Judge

A WHITLAM  
Judge

T CONNOLLY  
Judge

R MADGWICK  
Judge

M WILCOX  
Judge

M WEINBERG  
Judge

J SPENDER  
Judge

R GYLES  
Judge





Australian Capital Territory

# Supreme Court (Corporations) Rules 2003

made under the

*Corporations Act 2001 (Cwlth)*

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## Division 1      Preliminary

### 1.1 Name of rules

These rules are the *Supreme Court (Corporations) Rules 2003*.

### 1.2 Commencement

These rules commence on the day after the day that the making of the rules is notified in the ACT Legislation Register.

### 1.3 Application of these rules and other rules of the court

- (1) Unless the court otherwise orders, these rules apply to a proceeding in the court under the Corporations Act, or the ASIC Act, begun on or after 16 July 2001.
- (2) The other rules of the court apply, so far as they are relevant and not inconsistent with these rules, to a proceeding in the court under the Corporations Act, or the ASIC Act, begun on or after 16 July 2001.
- (3) Unless the court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, that were in force immediately before 16 July 2001, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was begun before that date.

*Note 1* Because of the definition of *this Act* in the Corporations Act, s 9, a reference to the Corporations Act includes a reference to the Corporations Regulations.

*Note 2* 16 July 2001 is the date the *Corporations Rules 2001* made under the Corporations Act commenced.

## 1.4 Expressions used in Corporations Act

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

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

*ACN* (short for ‘Australian Company Number’)—see s 9

*ARBN* (short for ‘Australian Registered Body Number’)—see s 9

*body*—see s 9

*body corporate*—see s 9

*books*—see s 9

*company*—see s 9

*corporation*—see s 57A

*daily newspaper*—see s 9

*foreign country*—see s 9

*officer*, in relation to a body corporate—see s 82A

*official liquidator*—see s 9

*Part 5.1 body*—see s 9

*Part 5.7 body*—see s 9

*register*—see s 9

*registered liquidator*—see s 9

*registered office*—see s 9

*statutory demand*—see s 9

## 1.5 Definitions for these rules

In these rules, unless the contrary intention appears:

*applicant* means a person claiming interlocutory relief in a proceeding.

*ASIC Act* means the *Australian Securities and Investments Commission Act 2001* (Cwlth).

**commission** means the Australian Securities and Investments Commission.

**Corporations Act** means the *Corporations Act 2001* (Cwlth).

**Corporations Regulations** means the *Corporations Regulations 2001* (Cwlth).

**court** means the Supreme Court.

**defendant** means a person against whom relief (except interlocutory relief) is claimed under the Corporations Act or the ASIC Act, whether in the originating process or not.

**interlocutory process** means an interlocutory process in accordance with form 3.

**judge** means a resident judge, additional judge or acting judge of the court.

**originating process** means an originating process in accordance with form 2.

**plaintiff** means a person claiming relief (except interlocutory relief) under the Corporations Act or the ASIC Act, whether in the originating process or not.

**registrar** means the registrar of the court.

**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.

### **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 registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these rules.

### **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 satisfied, in the circumstances of the proceeding, that—

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

### **1.9 Calculation of time**

- (1) If, for any purpose, these rules—
  - (a) prohibit, permit or require anything 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.

- (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 a period prescribed or allowed by these rules for anything to be done falls on a day that is not a business day where it is to be or may be done, it is to be or may be done on the first business day at the place after that day.
- (4) In calculating a period of time for 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 Extending and shortening of time**

Unless the Corporations Act, the ASIC Act or these rules otherwise provide, the rules of the court that provide for the extending or shortening of a period of time fixed for doing anything 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—form 2 and form 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 begun in the court—by filing an originating process; and
  - (b) in any other case—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 relation to which final relief has been granted by filing an interlocutory process in the 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 interlocutory 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 form 2, pt C as shown in sch 3 (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 or interlocutory process must be supported by an affidavit stating the facts in support of the process.

- (2) An affidavit in support of an originating process must annex a record of a search of the records maintained by the commission, 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 sch 3 (Notes to these rules).

- (3) This rule does not apply to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.

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

- (1) This rule applies to an application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.
- (2) The plaintiff may file a copy of the statutory demand, and a copy of any affidavit that accompanied the statutory demand, with the originating process seeking the order.
- (3) The plaintiff must—
- (a) carry out a search of the records maintained by the commission in relation to the plaintiff not earlier than 7 days before the originating process is filed, and not later than the day before the hearing of the application; 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 (Affidavit in support of application for winding-up), 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 or Territory (if any) where the affidavit was sworn or affirmed.

## **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 interlocutory application; and
  - (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application—the corporation.

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

- (1) This rule has effect in addition to the requirements of the Corporations Act that, in relation to a proceeding, particular documents are to be served on the commission or notice of particular matters is to be given to the commission.
- (2) This rule does not apply to a person making an application if the person is the commission or a person authorised by the commission.
- (3) Unless the court otherwise orders, if a person makes an application under a provision of the Corporations Act mentioned in the following table, column 2, the person must serve on the commission, a reasonable time before the hearing of the application, a copy of the originating or interlocutory process and supporting affidavit in relation to the application.

#### **Table of applications of which notice must be given to commission**

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of application</b>
1	section 480	for the release of a liquidator of a company and the deregistration of the company
2	section 482 (1)	for the stay of a compulsory winding-up
3	section 509 (6)	for the deregistration of a company

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of application</b>
4	section 536 (1)	for an inquiry into the conduct of a liquidator
5	section 601AH (2)	to reinstate the registration of a company
6	section 601CC (8)	to restore the name of an Australian body to the register
7	section 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	section 1317S (2) and (4)	for relief from liability for contravention of a civil penalty provision

## **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 the following:
    - (i) a notice of appearance in accordance with form 4;
    - (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 the Corporations Act, section 465C.
- (3) The period prescribed for filing and serving the notice and affidavit required by the Corporations Act, section 465C is the period mentioned in subrule (1) (b) (i).

*Note* Under the Corporations Act, s 465C, 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 r (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 commission (Corporations Act, s 1330)—form 5**

- (1) If the commission intends to intervene in a proceeding, the commission 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 the commission intends to appear in the proceeding, the commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

### **2.11 Publication of notices**

If a rule requires a notice in relation to a body to be published in accordance with this rule, the notice must be published once in a daily newspaper circulating generally in the State or Territory where the body has its principal, or last-known, place of business.

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

**2.12 Proof of publication**

- (1) This rule applies in relation to any matter published in relation to 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 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, and that the costs 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 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, the Corporations Regulations, regulations 5.6.12 to 5.6.36A apply to meetings ordered by the court.



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

### **3.1    Application of div 3**

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

### **3.2    Nomination of chairperson for meeting**

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

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

**3.3 Order for meetings to identify proposed scheme**

- (1) An order under the Corporations Act, section 411 (1) or (1A) 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 the Corporations Act, section 411 must be convened, held and conducted in accordance with—
  - (a) the provisions of the Corporations Act, part 2G.2 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 the Corporations Act, part 2G.2.
- (3) Unless the court otherwise orders, a meeting of a class of holders of convertible securities ordered under the Corporations Act, section 411 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).
- (4) However, subrule (3) only applies to a meeting of a class of holders of convertible securities to the extent that the subrule is not inconsistent with 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 the Corporations Act, section 411 (4), for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and

- (b) an application, under the Corporations Act, section 413 (1), 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.
- (3) The notice must be—
  - (a) in accordance with form 6; and
  - (b) published in accordance with rule 2.11 (Publication of notices) 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 commission**

If the court makes an order under the Corporations Act, section 411 (1), (1A) or (4) or 413 (1), 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 the commission; and
- (c) serve an office copy of the order on anyone appointed to administer the compromise or arrangement.

**Division 4**                    **Receivers and other  
controllers of corporation  
property (Corporations Act,  
pt 5.2)**

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

A complaint to the court under the Corporations Act, section 423 (1) (b) 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.

## **Division 5                    Winding-up proceedings (including oppression proceedings where winding-up is sought)**

### **5.1    Application of div 5**

This part applies to the following applications for the winding-up of a company:

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

### **5.2    Affidavit accompanying statutory demand (Corporations Act, s 459E (3))—form 7**

For the Corporations Act, section 459E (3), 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 sch 3 (Notes to these rules).

- (3) If the application is made in reliance on the ground mentioned in the Corporations Act, section 461 (1) (a), 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**

- (1) For the Corporations Act, section 532 (9), the consent of an official liquidator to act as liquidator of a company must be in accordance with form 8.
- (2) 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 (1) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
  - (b) serve a copy of the consent on the company at least 1 day before the hearing.
- (3) In this rule:
- liquidator* does not include a provisional liquidator.

**5.6 Notice of application for winding-up—form 9**

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

**5.7 Applicant to make copies of documents available**

A copy of any document filed in a proceeding to which this part 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 the Corporations Act, section 465B, the court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.
- (2) The notice must be—
  - (a) in accordance with form 10; and
  - (b) published in accordance with rule 2.11 (Publication of notices) or as otherwise directed by the court.



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

- (1) This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.
- (3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment.
- (4) The notice must be—
  - (a) in accordance with form 11; and
  - (b) published in accordance with rule 2.11 (Publication of notices).
- (5) In this rule:

*liquidator* does not include a provisional liquidator.

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

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

- (1) An application by a company, a creditor or contributory of the company, or the commission, under the Corporations Act, section 472 (2), for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.
- (2) The consent must be in 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 company's property;the order must include a short description of the part of the company's property that the provisional liquidator may take into custody.
- (4) The court may require the plaintiff to give an undertaking as to damages.

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

- (1) This rule applies if the court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must—
  - (a) except if the plaintiff is the commission—lodge an office copy of the order with the commission; and

- (b) serve an office copy of the order on the company (except if the plaintiff is the company) and on anyone else as directed by the court; and
  - (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).
- (3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment.
- (4) The notice must be—
- (a) in accordance with form 12; and
  - (b) published in accordance with rule 2.11 (Publication of notices).

## **Division 7 Liquidators**

### **7.1 Resignation of liquidator (Corporations Act, s 473 (1))**

- (1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and give to the commission, a memorandum of resignation.
- (2) The resignation takes effect on the filing and giving of the memorandum.

### **7.2 Filling vacancy in office of liquidator (Corporations Act, s 473 (7), s 502)**

- (1) If, for any reason, there is no liquidator acting in a winding-up, the court may—
  - (a) for a winding-up by the court—appoint another official liquidator whose written consent in accordance with form 8 has been filed; and
  - (b) for a voluntary winding-up—appoint another registered liquidator whose written consent in accordance with form 8 has been filed.
- (2) The court may make the appointment—
  - (a) in any case—on application by the commission, a creditor or a contributory; or
  - (b) for a winding-up by the court—on its own initiative.

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

- (1) If a person is required under the Corporations Act, section 475 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 the Corporations Act, section 475.
- (4) In this rule:

*liquidator* includes a provisional liquidator.

### **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 the commission 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 the Corporations Act, section 481 (3).

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

- (3) The supporting affidavit must include details of the following matters:
- (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;
  - (b) any calls made on contributories in the course of the winding-up;
  - (c) any dividends paid in the course of the winding-up;
  - (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
  - (e) whether the commission has appointed an auditor to report on an account or statement of the position in the winding-up under the Corporations Act, section 539 (2);
  - (f) whether the court has ordered a report on the accounts of the liquidator to be prepared;

- (g) whether any objection to the release of the liquidator has been received by the liquidator from—
    - (i) an auditor appointed by the commission or by the court;  
or
    - (ii) any creditor, contributory or other interested person;
  - (h) whether any report has been submitted by the liquidator to the commission under the Corporations Act, section 533;
  - (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 the Corporations Act, section 480 (c)—the facts and circumstances because of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the following statements, 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 the Corporations Act, section 481 (1), the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must—
  - (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words ‘Auditor’s report under section 481 (1) of the *Corporations Act 2001*’; and
  - (b) serve a copy of the report on the liquidator; and
  - (c) give a copy of the report to the commission.
- (3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or the commission.

**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 the Corporations Act, section 483 (3) (b), 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 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 the hearing of the application, the liquidator must publish a notice of the application.

- (3) The notice must be—
  - (a) in accordance with form 15; and
  - (b) published in accordance with rule 2.11 (Publication of notices).

**7.10 Powers delegated to liquidator by the court (Corporations Act, s 488)**

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

**7.11 Inquiry into conduct of liquidator (Corporations Act, s 536 (1) and (2))**

- (1) A complaint to the court under the Corporations Act, section 536 (1) (b) must be made—
  - (a) for a winding-up by the court—by an interlocutory process seeking an inquiry; and
  - (b) for a voluntary winding-up—by an originating process seeking an inquiry.
- (2) A report to the court by the commission under the Corporations Act, section 536 (2) must be made—
  - (a) for a winding-up by the court—by filing—
    - (i) an interlocutory process seeking orders under the subsection; and
    - (ii) a written report in a sealed envelope that is marked with the title and number of the proceeding; and

- (b) for a voluntary winding-up—by filing—
  - (i) an originating process seeking orders under the subsection; and
  - (ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.
- (3) The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.
- (4) Except with the leave of the court, a report made under the Corporations Act, section 536 (2) is not available for inspection by anyone except the liquidator or the commission.
- (5) In this rule:  
*liquidator* includes a provisional liquidator.

## **Division 8 Special managers (Corporations Act, pt 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 that, in the liquidator's opinion, should be entrusted by the court to the special manager.
- (2) The supporting affidavit must state—
  - (a) the circumstances making it proper that a special manager be appointed; and
  - (b) details of the remuneration proposed to be paid to the special manager; and
  - (c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

### **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 providing the security given by a special manager in relation to 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 the Corporations Act, section 425 (1) fixing the receiver's remuneration.

*Note* Under the Corporations Act, s 425 (2) (b), 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.

- (2) At least 21 days before filing an originating 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:
- (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-one of the kind mentioned in paragraph (c) or (d):
    - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and

- (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or anyone mentioned in subrule (2) (c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—
  - (a) the receiver may file an affidavit, made after the end of that period, in support of the originating 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 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 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 or interlocutory process seeking the order must—
  - (a) state the nature of the work carried out by the receiver; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and
  - (d) state particulars of any objection of which the receiver has received notice; and
  - (e) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

**9.2 Remuneration of administrator (Corporations Act, s 449E (1))—form 16**

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under the Corporations Act, section 449E (1) fixing the administrator’s remuneration.
- (2) The administrator must not apply for the order until after the date of the meeting of creditors mentioned in the Corporations Act, section 449E (1) (a).
- (3) At least 21 days before filing an originating or interlocutory process seeking the order, the administrator must serve a notice in accordance with form 16 of the administrator’s intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following:
  - (a) each creditor who was present, in person or by proxy at the meeting of creditors;
  - (b) each member of any committee of creditors;



- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the administrator does not receive a notice of objection within the period mentioned in subrule (4)—
  - (a) the administrator may file an affidavit, made after the end of that period, in support of the originating or 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 administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the administrator may endorse the originating or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
  - (c) the application may be so dealt with.
- (6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating or interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the originating or interlocutory process seeking the order must—
  - (a) state the nature of the work carried out by the administrator; and
  - (b) state the amount of remuneration claimed; and

- (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
- (d) state particulars of any objection of which the administrator has received notice; and
- (e) if the administration is continuing—give details of any matters delaying the completion of the administration.

**9.3 Remuneration of provisional liquidator (Corporations Act, s 473 (2))—form 16**

- (1) This rule applies to an application by a provisional liquidator of a company for an order under the Corporations Act, section 473 (2) determining the provisional liquidator's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice in accordance with form 16 of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following:
  - (a) any liquidator (except the provisional liquidator) of the company;
  - (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
  - (c) each member of the company whose shareholding represents at least 10 % of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.

- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory 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 provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
  - (c) the application may be so dealt with.
- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the order—
- (a) on each creditor or contributory who has given a notice of objection; and
  - (b) on the liquidator (if any).
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the provisional liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and

- (d) state particulars of any objection of which the provisional liquidator has received notice; and
- (e) if the winding-up proceeding has not been completed—give details of—
  - (i) any reasons known to the provisional liquidator why the winding-up proceeding has not been completed; and
  - (ii) any reasons why the provisional liquidator’s remuneration should be determined before the completion of the winding-up proceeding.

**9.4 Remuneration of liquidator (Corporations Act, s 473 (3))—form 16**

- (1) This rule applies to an application by a liquidator of a company for an order under the Corporations Act, section 473 (3) determining the liquidator’s remuneration.
- (2) The application—
  - (a) must be made by interlocutory process in the winding-up proceeding; and
  - (b) must not be made until after the date of the meeting of creditors mentioned in the Corporations Act, section 473 (4).
- (3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice in accordance with form 16 of the liquidator’s intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following:
  - (a) each creditor who was present, in person or by proxy, at the meeting of creditors;
  - (b) each member of any committee of creditors;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

- 
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
  - (c) the application may be so dealt with.
- (6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the interlocutory process seeking the order must—
- (a) state the nature of the work carried out by the liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and

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

**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 the Corporations Act, section 484 (2) 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:
  - (a) the liquidator of the company;
  - (b) each member of any committee of creditors or, if there is no committee of creditors, each of the 5 largest (measured by amount of debt) creditors of the company;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.

- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—
- (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory 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 carried out by the special manager; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and

**Division 9**      Remuneration of office-holders

Rule 9.5

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- (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 the Corporations Act, section 554A (2) (b) must be made—

- (a) for 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) for 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 the Corporations Act, section 568 (1A), for leave to disclaim a contract in relation to a company must—
  - (a) specify the people 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 anyone 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 changes, 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 Examinations and orders (Corporations Act, pt 5.9, divs 1 and 2)**

### **11.1 Meaning of *examination summons* in div 11**

In this part:

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

### **11.2 Application for examination or investigation under Corporations Act, s 411 (9) (b), s 423 or s 536 (3)**

- (1) An application for an order for the examination or investigation of a person under the Corporations Act, section 411 (9) (b), 423 or 536 (3) may be made by—
  - (a) the commission; or
  - (b) a person authorised by the commission; or
  - (c) a creditor or contributory; or
  - (d) anyone else aggrieved by the conduct of—
    - (i) a person appointed to administer a compromise or arrangement; or
    - (ii) a controller; or
    - (iii) a liquidator or provisional liquidator.
- (2) The application may be made without notice to anyone.

- 
- (3) The provisions of this part that apply to an examination under the Corporations Act, part 5.9, division 1 apply, with any necessary changes, to an examination or an investigation under the Corporations Act, section 411 (9) (b), 423 or 536 (3).

**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 or originating process.
- (2) The application may be made without notice to anyone.
- (3) The originating 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 or interlocutory process and supporting affidavit must be filed in a sealed envelope marked, as appropriate—
- (a) ‘Application and supporting affidavit for issue of summons for examination under section 596A of the *Corporations Act 2001*’; or
  - (b) ‘Application and supporting affidavit for issue of summons for examination under section 596B of the *Corporations Act 2001*’.
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating or interlocutory process and the supporting affidavit.

- (6) If the application is not made by the commission, the commission must be given notice of the application and, if required by the commission, served with a copy of the originating 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 anyone.
- (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 way that as the court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

#### **11.5 Discharge of examination summons**

- (1) This rule applies if a person is served with an examination summons.
- (2) Within 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—
  - (a) an interlocutory process seeking an order discharging the summons; and
  - (b) an affidavit stating the facts in support of the interlocutory process.

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

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

If the court makes an order in relation to an examination under the Corporations Act, section 597 (13), 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 Corporations Act, section 597 (14), a transcript of an examination may be authenticated—

- (a) by the person, or people, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or people, that the record is a true transcript of the record of examination; or
- (b) by anyone 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 Corporations Act, s 411, s 423 or s 536**

- (1) A written record or transcript of an examination or investigation under the Corporations Act, section 411, 423 or 536 is not available for inspection by anyone except—
  - (a) with the consent of the liquidator (if any) or the commission; or
  - (b) by leave of the court.
- (2) This rule does not apply to the liquidator, the commission or anyone authorised by the commission.

**11.9 Entitlement to record or transcript of examination held in public**

- (1) This rule applies if—
  - (a) an examination under the Corporations Act, section 597 is held completely 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 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 completion 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 considers 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 the Corporations Act, section 598.
- (2) In addition to complying with rule 2.7 (Service of originating process or interlocutory process and supporting affidavit) and rule 2.8 (Notice of certain applications to be given to commission), the person must serve a copy of the originating or interlocutory process and the supporting affidavit on any liquidator or provisional

**Division 11** Examinations and orders (Corporations Act, pt 5.9, divs 1 and 2)

Rule 11.11

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liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

*Note* Under r 2.7, a plaintiff must serve a copy of the originating process, and any supporting affidavit, on a defendant to the proceeding and, if necessary, on the corporation to which the proceeding relates; and an applicant must serve a copy of an interlocutory process, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on the commission—see r 2.8.



## **Division 12      Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C 6D and 7) and securities (Corporations Act, ch 7)**

### **12.1 Service on commission in relation to proceedings under Corporations Act, ch 6, 6A, 6B, 6C, 6D or 7**

If the commission is not a party to an application made under the Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7, the plaintiff must serve a copy of the originating process and the supporting affidavit on the commission 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)**

The procedures in the *Federal Court Rules*, order 50 (Case stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the court under the Corporations Act, section 659A.

### **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 the Corporations Act, section 1071D (4) must be made by filing an originating or interlocutory process.
- (2) The applicant may be the only party to the application.

**Division 12** Takeovers, acquisitions of shares and other matters (Corporations Act, chs 6, 6A, 6B, 6C 6D and 7) and securities (Corporations Act, ch 7)

Rule 12.3

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- (3) The originating 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 the Corporations Act, section 1071F, the plaintiff must serve a copy of the originating process and the supporting affidavit on—

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

## Division 13

*Note* These rules do not include a div 13.

The division number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

## **Division 14 Powers of courts (Corporations Act, pt 9.5)**

### **14.1 Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act, s 554A, s 1321)**

- (1) All appeals to the court authorised by the Corporations Act must be begun by an originating or interlocutory process that states—
  - (a) the act, omission or decision complained of; and
  - (b) for an appeal against a decision—whether all or part only of the decision is complained of 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 otherwise provides, the originating 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 or interlocutory process either before or after the time for filing ends and whether or not the application for extension is made before the time ends.
- (4) As soon as practicable after filing the originating 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 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 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 ASIC Act

### 15.1 Reference to court of question of law arising at hearing of commission (ASIC Act, s 61)

The procedures in the *Federal Court Rules*, order 50 (Case stated and questions reserved) apply, with any necessary changes, to a reference of a question of law arising at a hearing by the commission to the court under the ASIC Act, section 61.

### 15.2

*Note* These rules do not include a r 15.2.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the uniform corporations rules.

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

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

## Division 16

*Note* This division of the uniform corporations rules has not been included.

The *Supreme Court Rules (ACT)* deal with the powers of the court that may be exercised by the master or registrar of the court (see o 61, o 61A and sch 2). The rules are made under the *Supreme Court Act 1933 (ACT)*, s 36.

**Division 17**      Repeal

Rule 17.1

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## **Division 17**      **Repeal**

### **17.1 Repeal of Corporations Rules 2001**

The *Corporations Rules 2001* No 22 are repealed.



## **Schedule 1                      Forms**

(see r 1.6)

### **Form 1                      Document title**

(see r 2.1)

In the Supreme Court  
of the Australian Capital Territory

No        of [year]

In the matter of [*full name of corporation to which the proceeding relates and, if applicable, the words ‘(in liquidation)’, ‘(receiver appointed)’, ‘(receiver and manager appointed)’, ‘(controller acting)’, or ‘(under administration)’*]

ACN or ARBN: [*insert 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*]

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<b>Schedule 1</b>	Forms
<b>Form 2</b>	Originating process

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## **Form 2**    **Originating process**

(see r 2.2)

[*Title*]

### **A            DETAILS OF APPLICATION**

This application is made under \*section/\*regulation [*number*] of the \*Corporations Act/\*ASIC 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 the Supreme Court at Knowles Place, Canberra  
City 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 that time, 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.

<i>Note</i>	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 gives leave.
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## **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 Corporations Act, section 459Q.)]***

*[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 the Corporations Act, section 459H (4) 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***

<b>Schedule 1</b>	Forms
<b>Form 2</b>	Originating process

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**(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 form 2, pt C as shown in sch 3 (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 sch 3 (Notes to these rules).

## **D FILING**

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

Registrar

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 shortened]**

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

*\*Omit if not applicable*

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Schedule 1 Forms

Form 3 Interlocutory process

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## Form 3 Interlocutory process

(see r 2.2)

[Title]

### A DETAILS OF INTERLOCUTORY APPLICATION

\*This interlocutory application is made under \*section/\*regulation [number] of the \*Corporations Act/\*ASIC Act/\*Corporations Regulations.

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

1

2

etc

AND

Date:

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

This interlocutory application will be heard by the Supreme Court at Knowles Place, Canberra City 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 that time, 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.

<i>Note</i>	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.
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### **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 shortened]**

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

\**Omit if not applicable*

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<b>Schedule 1</b>	Forms
<b>Form 4</b>	Notice of appearance

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## **Form 4** **Notice of appearance**

(see r 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 on [*date*] and, if applicable, to *\*oppose/\*support* the application.

<i>Note</i>	Unless the Court otherwise orders, a defendant or 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.
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### **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 the  
commission**

(see r 2.10)

[*Title*]

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

Date:

Signed on behalf of the Commission

Name of signatory: [*name*].

Capacity of signatory: [*capacity*].  
\_\_\_\_\_

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

(see r 3.4)

To all the creditors and members of [*name of company*].

Take notice that at 10 am (or as soon after that time as the business of the Court will allow) on \_\_\_\_\_, the Supreme Court at Knowles Place, Canberra City will hear an application by [*name of plaintiff*] seeking the approval of a compromise or arrangement between the 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*

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**Form 7****Affidavit accompanying statutory demand**

(see r 5.2)

[Name of creditor(s)]

Creditor(s)

[Name of debtor company]

Debtor company

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

- 1 I am [state deponent's relationship to the creditor(s), eg, 'the creditor', '(name), one of the creditors', 'a director of the creditor', 'a director of (name), one of the creditors'] in relation to \*a debt of \$[amount]/\*debts totalling \$[amount] owed by [name of debtor company] to \*it/\*them relating to [state nature of debt, or debts, ensuring that what is stated corresponds with the description of the debt, or debts, to be given in the proposed statutory demand, with which this affidavit is to be served on the debtor company].
- 2 [If the deponent is not the creditor, state the facts entitling the deponent to make the affidavit, 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.

**Schedule 1**      Forms

**Form 7**            Affidavit accompanying statutory demand

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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*]

*OR*

\*Sworn/\*affirmed by the deponent at: [*place of swearing or affirmation*]  
this                            day of [*month*] [*year*]

Signature of deponent

Before me:

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

*\*Omit if not applicable*

<i>Note</i> The form of this affidavit may be changed to comply with the form of affidavit used in a particular State or Territory—see r 2.6.
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**Form 8****Consent of liquidator/provisional liquidator**

(see r 5.5, r 6.1)

[*Title*]

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

I 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.

The hourly rates currently charged in relation to work done as the \*liquidator/\*provisional liquidator by me, and by my partners and employees who may perform work in this administration, are set out below or in the schedule attached to this consent.

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

Date:

Signature of official liquidator

*\*Omit if not applicable*

**Schedule**

[*description of hourly rate(s)*]

\_\_\_\_\_

## Form 9 Notice of application for winding-up order

(see r 5.6)

In the Supreme Court  
of the Australian Capital Territory

No of [year]

[Name of company]

ACN: [ACN of company to which proceeding relates]

- 1 A proceeding for the winding-up of [name of company] was commenced by the plaintiff, [name of plaintiff], on [date of filing of originating process] and will be heard by the Supreme Court at Knowles Place, Canberra City at 10 am (or as soon after that time as the business of the Court will allow) 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

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

(see r 5.10)

In the Supreme Court  
of the Australian Capital Territory

No of [year]

[Name of company]

ACN: [ACN of company to which proceeding relates]

- 1 [Name of substituted plaintiff], who was, by order of the Supreme Court, substituted as a plaintiff, will apply to the Court at 10 am (or as soon after that time as the business of the Court will allow) on at Knowles Place, Canberra City for an order that the 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*

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**Schedule 1**      Forms

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

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

(see r 5.11)

In the Supreme Court  
of the Australian Capital Territory

No of [year]

In the matter of [*name of company to which the proceeding relates*]

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

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

Date:

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

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

(see r 6.2)

In the Supreme Court  
of the Australian Capital Territory

No      of [year]

In the matter of [*name of company to which the proceeding relates*]

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

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

Date:

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

\_\_\_\_\_

Schedule 1      Forms

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

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

(see r 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 on 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**

(see r 7.8)

[*Title*]

I, [*name*] of [*address*], liquidator, \*say on oath/\*affirm [*or* \*make oath and say/\*solemnly and sincerely declare and affirm]:

- 1 I am the liquidator of [*name of company*] (the *company*).
- 2 On [*date*] I made a call of \$ [*amount*] per share on all the contributories of the company [*or specify the class of contributories on whom the call was made*]. \*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 amount 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 relation to 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 relation to the call as set out in column 5 and the amount due in relation to costs as set out in column 6.

**Schedule 1**      Forms

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

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

OR

\*Sworn/\*affirmed by the deponent at: [*place of swearing or affirmation*]  
this                      day of [*month*] [*year*]

Signature of deponent

Before me:

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

*\*Omit if not applicable*

<i>Note</i>	The form of this affidavit may be changed to comply with the form of affidavit used in a particular State or Territory—see r 2.6.
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**Schedule B**

column 1	column 2	column 3	column 4	column 5	column 6	column 7
number on list of contributors	name	address	character in which included in the list	unpaid amount of call	proportion of costs of application	total amount payable

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**Form 15****Notice of application for leave to  
distribute a surplus**

(see r 7.9)

In the Supreme Court  
of the Australian Capital Territory

No of [year]

In the matter of [*name of company to which the proceeding relates*]

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

On at , the will  
hear an application by the liquidator of [*name of company*] in Proceeding  
No of [year] for leave to distribute a surplus in relation to 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 \_\_\_\_\_

Schedule 1      Forms

Form 16      Notice of intention to apply for remuneration

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

(see rr 9.1-9.5)

IN THE MATTER OF [*company name*]

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

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

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

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

Date:

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

*\*Omit if not applicable*

\_\_\_\_\_

**Form 17****Summons for examination**

(see r 11.3)

[Title]

**A DETAILS OF SUMMONS**

To: [name and address of person to be examined]

You are summoned under the Corporations Act, \*section 596A/  
\*section 596B to:

- (a) attend before \_\_\_\_\_ at Knowles Place,  
Canberra City at 10 am 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

**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*  

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**Schedule 1**      Forms

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

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

(see r 12.2)

[*Title*]

To: [*name and address*]

You are required to appear before the Supreme Court at Knowles Place,  
Canberra City at 10 am 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

*\*Omit if not applicable*

**Schedule**

[*description of document(s)*]

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## **Schedule 2**

*Note* This schedule of the uniform corporations rules has not been included.

The *Supreme Court Rules (ACT)* made under the *Supreme Court Act 1933 (ACT)*, s 36 deal with the powers of the court that may be exercised by the master or registrar of the court (see o 61, o 61A and sch 2).

## Schedule 3 Notes to these rules

(see r 2.2, r 2.4 and r 5.4)

### Note 1—see rule 2.4 (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 *XY* who delivered it [*or* them] to the registered office of the defendant at [*insert address*] or [*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 the Corporations Act, section 459G 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 1 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.*]

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**[If the demand was varied by order under the Corporations Act, section 459H (4)]**

- 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*

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**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 plaintiff [*or if the applicant is a corporation, I am \*a/\*the director of the 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 in relation to the defendant.
- 3 [*If the defendant is registered or taken to be registered in another State or Territory, state any facts—apart from the defendant’s principal place of business—which bear upon jurisdiction being exercised in the ACT rather than another State or Territory*].
- 4 The following facts are within my own personal knowledge except 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 precisely 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 XY 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*

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## Endnote

### 1 Statutory rules

These rules are also part of the Commonwealth Statutory Rules series and are Statutory Rules 2003 No 284.

### 2 Notification

Notified in the ACT Legislation Register on 11 November 2003.  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))

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