

COMPANIES AND ALLIED MATTERS ACT

SUBSIDIARY LEGISLATION

COMPANIES PROCEEDINGS RULES

ARRANGEMENT OF RULES

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COMPANIES PROCEEDINGS RULES

[S.I. 14 of 1992.]

under section 635 (1)

[Commencement: 1st November, 1992]

1. Entitlement of proceedings

(1) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings shall be entitled in the matter of the company in question and in the matter of the Companies and Allied Matters Act.

(2) The originating summons by which an application for leave under section 254 (1) of the Act is made shall be entitled in the matter of the company in relation to which the plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section and in the matter of the Act.

2. Particular application to be made by originating summons

(1) Except in the case of the application mentioned in rules 5 and 6 of these Rules and applications made in proceedings relating to the winding up of companies, every application under the Act shall be made by originating summons.

(2) An originating summons under these Rules shall be in Form 1 specified in the Schedule to these Rules.

(3) An application under section 317 or 638 of the Act may be made by *ex-parte* originating summons.

3. Application to be made by originating motion

The following applications under the Act shall be made by originating motion, namely, applications—

- (a) under section 23 (2) for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;
- (b) under section 46 (8), 129 (2) or 312 (5) for an order extending the time for delivery to the Corporate Affairs Commission of any document required by that section to be delivered;
- (c) under section 90 (1) for the rectification of the register of members of a company;
- (d) under section 315 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Commission;
- (e) under section 319 (3) and (4) for an inquiry into any such case as is therein mentioned;
- (f) under section 329 for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by that section; and
- (g) under section 524 (1) for an order declaring a dissolution of a company which has not been wound up to have been void.

4. Application to be made by petitions

The following applications under the Act shall be made by petition, namely, applications—

- (a) under section 46 (1) and (2) to cancel the alteration of a company's objects;

- (b) under section 47 (1) to cancel the alteration of a condition contained in a company's memorandum;
- (c) under section 53 (3) to cancel a special resolution to which that section applies;
- (d) under section 120 to confirm a reduction of the share premium account of a company;
- (e) under section 121 (2) to sanction the issue by a company of shares at a discount;
- (f) under section 158 to confirm a reduction of the capital redemption reserve fund of a company;
- (g) under section 107 (1) to confirm a reduction of the share capital of a company;
- (h) under section 142 (1) to cancel any variation or abrogation of the rights attached to any class of shares in a company;
- (i) under section 311 (1) for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner;
- (j) under section 525 (6) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company;
- (k) under section 591 (3) to sanction a scheme for a merger between two or more companies;
- (l) under section 641 for relief from liability of an officer of a company or a person employed by a company as auditor.

5. Summons for direction

(1) After presentation of a petition by which any such application as is mentioned in rule 6 of these Rules is made, the petitioner, except where his application is one of those mentioned in subrule (2) of this rule, shall take out a summons for direction under this rule.

(2) The applications referred to in subrule (1) of this rule are—

- (a) an application under section 121 (2) of the Act to sanction the issue by a company of shares at a discount;
- (b) an application under section 591 (3) of the Act to sanction a compromise or arrangement, unless there is included in the petition for such sanction an application for an order under paragraphs (a) to (f) of that subsection;
- (c) an application under section 525 (6) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons, the court may, by order, give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit, including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account or the capital redemption reserve fund of a company,

then without prejudice to the generality of subrule (3) of this rule, the court may give directions—

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to subject to the reduction and fixing the date by reference to which the list is to be made,

and the power of the court under section 107 (2) of the Act to direct that section 107 (2) thereof shall not apply as regards any class or classes of creditors, may be exercised on any hearing of the summons.

(5) Rules 8 to 13 of these rules shall have effect subject to any direction given by the court under this rule.

6. Inquiry as to debts: company to make list of creditors

(1) Where the court orders such an inquiry as is mentioned in paragraph (4) of rule 5 of these rules, the company in question shall, within 14 days after the making of the order, file in the office of the Companies Court Registrar an affidavit made by an officer of the company competent to make it verifying a list containing—

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;
- (b) the amount due to each creditor in respect of such debt or claim or in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and
- (c) the total of those amounts and values.

(2) The deponent shall state in the affidavit his belief that at the date fixed by the court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company other than the debts or claims to which the inquiry does not extend, and shall also state his means of knowledge of the matters deposed to.

(3) The list shall be left at the office mentioned in subrule (1) of this rule not later than one day after the affidavit is filed.

7. Inspection of list of creditors

(1) Copies of the list made under rule 6 of these Rules with the omission, unless the court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered or head office of the company and at the office of the company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of ₦10, to inspect the said list at any such office and to take extracts therefrom.

8. Notice to creditors

Within 14 days after filing the affidavit required by rule 6 of these Rules, the company shall send by registered post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

- (a) the amount of the reduction sought to be confirmed;
- (b) the effect of the order, directing an inquiry as to debts and claims;
- (c) the amount or value specified in the list as due or estimated to be due to that creditor; and
- (d) the time fixed by the court within which, if he claims to be entitled to a large amount, he shall send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

9. Advertisement of petition and list of creditors

After filing the affidavit required by paragraph (b) of this rule, the company shall insert, in such newspapers and at such times as the court may direct, a notice stating—

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed;
- (b) the inquiry ordered by the court under rule 6 of these Rules;
- (c) the places where the list of creditors may be inspected in accordance with rule 7 of these Rules;
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends shall send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

10. Affidavit as to claims made by creditors

Within such time as the court may, from time to time, direct, the company shall file in the office of the Companies Court Registrar, an affidavit made by the company's solicitor and an officer of the company competent to make it—

- (a) proving service of the notices mentioned in rule 8 of these rules and the advertisement of the notice mentioned in rule 9 of these Rules;
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim;
- (c) distinguishing in such list those debts or claims which are—
 - (i) wholly, or as to any and what part thereof, admitted by the company;
 - (ii) disputed by the company or alleged by the company to be outside the scope of inquiry; and
 - (iii) stating which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

11. Adjudication of disputed claim

If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company shall, if the court so directs, send to that person by post at his last known address a notice requiring him—

- (a) within such time as may be specified in the notice, being not less than four clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the court for the adjudication of debts and claims.

12. Certifying lists of creditors entitled to object to reduction

The list of creditors entitled to object to such reduction as is mentioned in rule 5 (4) of these Rules as settled by the court under section 107 (2) of the Act, shall be certified and filed by the Court Registrar and the certificate shall—

- (a) specify the debts or claims (if any) disallowed by the Court;
- (b) distinguish the debts or claims (if any)—
 - (i) the full amount of which is admitted by the company;
 - (ii) the debts or claims (if any) the full amount of which though not admitted by the company, the company is willing to appropriate;
 - (iii) the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 107 (2) of the Act; and
 - (iv) other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriating under section 107 (2) of the Act;
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 11 of these Rules and state which of such debts or claims were allowed.

13. Evidence of consent of creditors

The consent of a creditor to such reduction as is mentioned in rule 5 (4) of these Rules, may be proved in such manner as the court may think sufficient.

14. Time, etc., of hearing of petition for confirmation of reduction

(1) A petition for the confirmation of any such reduction as is mentioned in rule 5 (4) of these Rules shall not, where the court had directed an inquiry pursuant to that rule, be heard before the expiration of at least eight clear days after the filing of the certificate mentioned in rule 12 of these Rules.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing shall be published at such times and in such newspapers as the court may direct.

15. Restriction on taking effect of order under section 121 (2)

Unless the court otherwise directs, an order under section 121 (2) of the Act sanctioning the issue of shares at a discount, shall direct that an office copy of the order be delivered to the Registrar-General of Companies within 10 days after the making of the order or such extended time as the court directed.

16. Affidavit to be filed in court Registry

Where an application to which these Rules relate is proceeding in a judicial division in which the company has its registered office, all affidavits made in connection with the application shall be filed in that Registry.

17. Where motions, etc., can be filed

Wherever any notice of motion or notice of originating summons or any petition is to be issued or filed, such petition may be issued out or filed in the Registry of the court in the judicial division in which the registered office of the company is situated or in which the company is carrying on a substantial part of its business.

18. Non-compliance with the Rules, etc.

No proceedings under the Act shall be invalidated by reason only that these Rules are not fully complied with or in respect of any other irregularity, unless the court before which an objection is made to the proceeding, is of the view that he injustice cannot be remedied by any order of that court.

19. Application of Court's Civil Procedure Rules

In all proceedings in or before the court concerning the operations of the Act where no provision is made by these Rules, the Federal High Court (Civil Procedure) Rules shall apply.

20. Interpretation

In these rules, unless the content otherwise requires—

“Act” means the Companies and Allied Matters Act;
[L.F.N. 2004 Cap. C20.]

“the companies court registrar” means any officer of the Court who is a registrar within the meaning of any rules for the time being in force relating to the winding up of companies;

“the court” means the Federal High Court.

21. Application and Forms

(1) These Rules shall apply to all proceedings taken out or arising from any provision of any section of Part A of the Companies and Allied Matters Act.

(2) The forms set out in the Schedule to these Rules and any other form in use in ordinary civil proceedings of the court, where applicable, or any other forms which may, from time to time, be made on order of the Chief Judge, may be used.

22. Citation and commencement

These Rules may be cited as the Companies Proceedings Rules and shall come into effect on the 1st day of November 1992.

SCHEDULE

FORMS

FORM 1

IN THE FEDERAL HIGH COURT

DIVISION HOLDEN AT

SUIT NO. of 20

IN THE MATTER OF X LIMITED (registered name of the company as it appears in its certificate).

FORM 2

Originating Summons

(Heading as in Form 1)

Let I of (address) or, if the Respondent is a Company X Limited, whose registered office is situate (address) within days on or after service of this Summons on (him or it) inclusive of the day of such service, cause an appearance to be entered for (him or it) to this Summons, which is of (address and description) for an order of (specify the relief sought).

DATED the day of 20

This Summons was taken out by A.B. & Co. of (address) Solicitors for the Applicant.

FORM 3

Petition

(Heading as in Form 1)

The humble Petition of the above-named X Limited (for a company that is the same as one referred to in the heading) or Y Limited whose registered office is situate at (address) for the Company that is not the same as one referred to in the heading; or where the petitioner is not a company, just A.B. of (address) states as follows—

FORM 4

Petition to cancel alteration of objects

(Heading as in Form 1, preamble as in Form 3)

1. The above-mentioned company (hereinafter referred to as "the company") was incorporated on as a company (limited by shares).
2. The registered office of the company is situate at (address).
.....
3. The objects for which the company was established are set forth in clause of its memorandum of association as follows: (set out the objects as set out in such clause *in extenso*).
4. The capital of the company is ₦ divided into each of the said shares of each of and the remainder are and are not fully paid up.
5. After its incorporation namely on 20 the company obtained a certificate that it was entitled to commence business, (and it has continued to carry on business ever since or as the case may be). The principal business of the company as always (since at least the year 20) been that of
In the year 20 it acquired the business of and of which it has carried on ever since, but on a much smaller scale than its principal business. (It has never had any interests whatsoever in any business connected with or as the case may be).
6. At an extraordinary general meeting of the company duly convened and held on 20 , the following resolution was duly passed as a special resolution in accordance with section 46 of the Companies and Allied Matters Act namely;
7. Your Petitioner (are or have been appointed in writing by) A.B.C.D. and P.Q., being (not less than 15 per cent of the said company's members or the holders of not less in the aggregate than 15 per cent in nominal value of the said company's issued share capital or not less than 15 per cent in nominal value of the said company's issued share capital or not less than 15 per cent of the said company's debentures entitling the holders to object to alteration of its objects).
8. Your Petitioner (and the said A.B., C.D. and P.Q) were present at the said extraordinary general meeting (in person or by proxy) and voted against the said alteration (g) or as the case may be.
9. The said alteration would prejudice your Petitioners (and the other persons entitled to object thereto) in that (state the reasons why the objectors would be prejudiced).

Your Petitioners therefore humbly pray as follows—

- (1) The alteration of the company's objects effected by the special resolution set out in paragraph 6 of this Petition may be cancelled by the court pursuant to section of the Companies and Allied Matters Act.
- (2) That the company may be ordered to pay the costs of this petition.

FORM 4—continued

(3) Or that such other order may be made in the premises as the court may deem necessary.

DATED the day of 20

Signed

A.B. & Co.

Solicitors to the Petitioners

Address

(4) Petition to cancel alteration of conditions contained in the memorandum, and petition to cancel substitution of memorandum and articles of association for deed of settlements are in the like manner and contents with modifications to suit the issue involved.

FORM 5

Summons for directors on application to cancel alteration

(Heading as in Form 1)

Let the above-named X Ltd whose registered office is situate at (address attend at the Federal High Court sitting at on day of

20 on the hearing of an application by (A.B. of address and C.D. of (address) or as the case may be) the petitions named in the petition preferred unto this court in the above matters, for an order:

- (1) that a day may be fixed for the hearing of the said petition;
- (2) that directions may be given as to advertising the said Petition; and
- (3) that such other order may be made in the premises as to the court may deem necessary.

DATED the day of 20

This summons was taken out by F.H. & Co. Solicitors for the Petitioners.

FORM 6

Advertisement of day fixed for hearing petition

(Heading as in Form 1)

NOTICE is hereby given that a Petition was on 20 presented to

Federal High Court sitting by (A.B.C. & P.S.) for the cancellation of the alteration of the (Provisions of the Memorandum of Association of the above-named company with respect to its objects or conditions of the memorandum of association of the above-named company) affected by a special resolution passed at an extraordinary general meeting of the said company held on 20 which resolution was in the words following that is to say (set out the resolution).

FORM 6—continued

And notice is further given that the said petition is directed to be heard before the Hon. Mr Justice
..... at the Federal High Court sitting at
on the day of 20

Any (shareholder or debenture stockholder) of the said company does ring to support or oppose the making of an order on the said petition should appear at the time of hearing in person or by counsel for that purpose.

A copy of the said petition will be furnished to any such person requiring the same by the Registrar of the court on payment of appropriate fees.

DATED the day of 20

Signature

Solicitor for the Petitioners

Address: