

COMPANIES WINDING-UP RULES

[Commencement: *see rule 1 (1).*]

Citation, application, etc.

1. Citation, commencement and revocation of S.I. 45 of 1983

(1) These Rules may be cited as the Companies Winding-Up Rules 2001, and shall come into effect three months from the date of the making of the Rules.

(2) The Companies Winding-Up Rules 1983 are hereby revoked.

2. Alteration of Rules

These Rules shall apply to all proceedings in every winding up under the Act and the forms in the appendix, where applicable, shall be used:

Provided that the Chief Judge of the Court may from time to time alter any forms specified in the appendix hereto or substitute new forms in lieu thereof. Where the Chief Judge alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *Gazette*.

3. Proceedings in open court

All proceedings in respect of winding up shall be heard in open Court unless the Court otherwise orders.

4. Motions

Every application in Court other than a petition shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than five clear days before the day named in the notice for hearing the motion.

5. Title of proceedings

Every proceeding shall be dated and shall, with any necessary addition, be instituted in the matter of the company to which it relates and in the matter of the Companies and

Allied Matters Act and otherwise as in Form 1 and shall bear a distinctive number assigned to the suit in the Court's registry.

[Form 1.]

6. Issue of summons

(1) Every summons in any proceedings shall be prepared by the applicant or his solicitor and issued from the Court's registry.

(2) A summons, when sealed, shall be deemed to be issued; and the person obtaining the summons shall leave, in the Court's registry, a duplicate which shall be stamped with the appropriate stamp and filed.

7. Orders

Every order, whether made in Court or in chambers, shall be drawn up by the registrar, unless in any proceedings or classes of proceedings, the judge who makes the order shall direct that no order need be drawn up. Where a directive is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the judge, making the order, shall be sufficient evidence of the order having been made.

8. File of proceedings in office of Registrar

All petitions, affidavits, summons, orders, proofs, notices, depositions and other proceedings in the Court shall be kept and remain as record in the office of the registrar and, subject to the directions of the Court, shall be placed in one continuous file.

9. Office copies

All office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any Liquidator, creditor, contributory, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay.

10 to 15 inclusive.

[EDITORIAL NOTE: The text of rules 10 to 15 inclusive has been omitted. If necessary, these rules will be re-inserted and issued to subscribers in subsequent updates.]

16. Presentation of petition

(1) A petition shall be presented at the Court's registry and the Chief Judge or any other judge in charge, as the case may be, shall appoint the time and place at which the petition is to be heard.

(2) Notice of the time and place appointed for the hearing of the petition shall be written on the petition.

17. Service of petition

(1) Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office thereat, the principal or last known principal place of business of the company, if any, if such can be found, by leaving a copy with any member, officer or servant of the company

there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding up the affairs of the company.

(2) Affidavit of service of any such petition shall be as in Form 5 or 6 in the Appendix with such variations as circumstances may require.

[Form 5 and 6.]

18. Verification of petition

(1) Every petition shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

(2) Affidavit of verification should be in Form 7 or 8 in the Appendix with such variations as circumstances may require.

[Form 7 and 8.]

19. Advertisement of petition

(1) No petition shall be advertised until the judge hearing the petition or a judge before whom the petition is first mentioned in open Court so orders.

(2) The order for advertisement of a petition shall be as follows—

(a) the petition shall be advertised fifteen clear days before the hearing;

(b) the petition shall be advertised once or as many times as the Court may direct, in the *Gazette* and in one national daily newspaper and one other newspaper circulating in the State where the registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the Court;

(c) the advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and shall contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his solicitor, within the time and manner prescribed by this rule and any advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular.

(3) A petition not advertised within the time prescribed or in the manner prescribed shall be struck out, unless, for sufficient reason given, the Court otherwise orders.

(4) Advertisement of the petition shall be in Form 9 or 10 in the Appendix with such variations as circumstances may require.

[Forms 9 and 10.]

20. Copies of petition to creditors and contributories

After the advertisement of the petition but before the hearing date next to the date when the order for advertisement was given, every contributory, or in the case of a petition for the winding up of a company, every creditor of the company, shall be entitled to be furnished by the solicitor of the petitioner with a copy of the petition within two days after requiring same, on paying the prescribed fee for such copy.

Provisional Liquidator

21. Appointment of provisional Liquidator

(1) After the advertisement of a petition for the winding up of a company by the Court, upon the application of a creditor, or of a contributory or of the company, and upon proof by affidavit of sufficient ground for the appointment of a provisional Liquidator, the Court, if it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.

(2) The order appointing the provisional Liquidator, shall bear the number of the petition, and shall state the nature and a short description of the property of which the provisional Liquidator is ordered to take possession, and the duties to be performed by the provisional Liquidator.

(3) Subject to any order of the Court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding up of the company subject to supervision of the Court, the provisional Liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as provisional Liquidator, including such sum as is or would be payable under the scale of land fees for the time being in force; where the Official Receiver is appointed provisional Liquidator, he may retain out of such property the amounts of such costs, charges, and expenses.

(4) Where any person other than the Official Receiver has been appointed provisional Liquidator and the Official Receiver has taken any step for the purpose of obtaining a statement of affairs or has performed any other duty prescribed by these Rules, the provisional Liquidator shall pay the Official Receiver such sum, if any, as the Court may direct.

(5) The order of appointment of a provisional Liquidator shall be in Form 11 in the Appendix with such variations as circumstances may require.

[Form 11.]

Hearing of petition and orders made thereon

22. Hearing to show compliance with rules

(1) After the hearing at which the order to advertise the petition was given by the Court, the petitioner or his solicitor shall, on the next adjourned date, satisfy the Court that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any), have been duly complied with by the petitioner.

(2) No order (other than the one already made in respect of advertising the petition) shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, satisfied the Court in the manner required by this rule.

23. Notice by persons who intend to appear

(1) Every person who intends to appear on the hearing of a petition shall give to the petitioner notice of his intention in accordance with this rule.

(2) The notice shall contain the address of the person intending to appear, shall be signed by him (or by his solicitor) and shall otherwise be in Form 12 with such variations as circumstances may require.

[Form 12.]

(3) The notice shall be served or sent by post to the petitioner or his solicitor, at the address stated in the advertisement of the petition.

(4) The notice shall be served (or if sent by post shall be posted in such time as in ordinary course of post to reach the address) not later than five days before the hearing.

(5) A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear in the hearing of the petition.

24. List of names and addresses of persons who appear on the petition

(1) The petitioner, or his solicitor, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective solicitors; and such list shall be in Form 13 in the Appendix.

[Form 13.]

(2) On the day appointed for hearing the petition, a fair copy of the list (or if no notice of intention to appear has been given, a statement in writing to that effect) shall be filed by the petitioner, or his solicitor in the Court's registry prior to the hearing of the petition.

25. Affidavits in opposition and reply

(1) An affidavit in opposition to a petition shall be filed by the respondent within ten days of the service of the petition or by any other party, within fifteen days of the date on which the petition was advertised, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor on the day on which the affidavit is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within five days of the date on which notice of such affidavit is received by the petitioner or his solicitor.

26. Substitution of creditor or contributory for withdrawing petition

When a petitioner for an order that a company be wound up by the Court or subject to the supervision of the Court is not entitled to present a petition, or whether so entitled or not, he—

(a) fails to advertise his petition as ordered;

- (b) consents to withdraw his petition or to allow it to be dismissed, or the hearing adjourned;
 - (c) or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned; or
 - (d) if appearing, does not apply for an order in terms of the prayer of his petition,
- the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition.

Order to wind up a company and order under section 312 of the Act

27. Notice that winding up has been pronounced to be given to Official Receiver

(1) When an order for the winding up of a company, or for the appointment of a provisional Liquidator prior to the making of an order of the winding up of the company has been made, the registrar shall, on the same day or, at the latest not later than five days thereafter, send to the Official Receiver a notice informing him that the order has been pronounced.

(2) The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require.

[Forms 14 and 15.]

28. Documents for drawing up and order to be left with Registrar

It shall be the duty of the petitioner, or his solicitor, and of all other persons who have appeared on the hearing of the petition, at latest within two days of the day on which an order for the winding up of a company or an order under section 312 of the Act is pronounced in Court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

29. Contents of winding-up order

(1) An order to wind up a company or for the appointment of a provisional Liquidator, shall contain at the foot thereof a notice stating that it will be the duty of such other persons who are liable to make out or concur in making out the company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give all information he may require.

(2) The order for the winding up of a company shall be in Form 16 in the Appendix with such variations as circumstances may require.

[Form 16.]

30. Transmission and advertisement of winding-up order

(1) When an order that a company be wound up, or for the appointment of a provisional Liquidator has been made—

- (a) three copies of the order sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the registrar to the Official Receiver;

- (b) the Official Receiver shall cause a sealed copy of the order to be served upon the company by registered letter addressed to it at its registered office (if any) or if there is no registered office, at its principal or last known principal place of business or upon such other person or persons, or in such other manner as the Court may direct; and if the order is that the company be wound up by the Court, shall forward to the Commission, the copy of the order which by section 416 of the Act, is directed to be so forwarded by them or otherwise as may be prescribed.

(2) An order for the winding up of a company subject to the supervision of the Court, (in Form 17 in the Appendix, with such variations as circumstances may require), shall before the expiration of 28 days from the date thereof, be advertised by the petitioner, once in the *Gazette*, and once in two national daily newspapers in which notice of petition was previously advertised and shall be served on such persons (if any) and in such manner as the Court shall direct.

[Form 17.]

(3) Where an order under section 312 of the Act has been made, a sealed copy of the order shall, unless the Court otherwise orders, be served by the petitioner on the company and on the Registrar-General in like manner as under paragraph (1) (b) of this rule, the Official Receiver is required to serve a sealed copy of the order, and where such order involves a reduction of capital or the alteration of the memorandum of association, the service may be effected as the Court orders.

31. Where written notice necessary

For the purposes of section 501 of the Act, a notice that—

- (a) a winding-up petition has been presented; or
- (b) a winding-up order has been made; or
- (c) a provisional Liquidator has been appointed; or
- (d) a meeting has been called at which there is to be proposed a resolution for the voluntary winding up of the company; or
- (e) a resolution has been passed for the winding up of the company,

shall be in writing and shall be addressed to the sheriff, and may be served by being delivered by hand or by registered post:

Provided that where a winding-up petition is presented or winding-up order is made or a provisional Liquidator is appointed in the Court other than in the head office of the Court, the filing of the petition or the making of the order or the appointment of the provisional Liquidator shall, for the purposes of section 501 of the Act, be sufficient notice to the registrar, that the petition has been presented or the order made or the provisional Liquidator appointed, as the case may be.

Transfers of action and proceedings

32. Transfer of actions

(1) Where an order has been made for the winding up of a company, then if such order was made by the Court or if the proceedings have been transferred to the Court, the

judge shall, upon application of any party to the proceedings, have power, without further consent, to request the transfer to him of any action, cause or matter pending in any other Court brought or continued by or against the company, and any action or proceedings by a mortgagee or debenture holder of the company against the company, for the purpose of realising his security or by any other person for the purpose of enforcing a claim against the company's assets or property which is pending in the Court.

(2) The order of request shall be served on the registrar of the other Court in which the case to be transferred is pending.

(3) Where any action brought by or against a company against which a winding-up order has been made is transferred as stated in paragraph (1) of this rule, the judge to which the action has been transferred may hear, determine, and deal with any application, matter or proceeding which, if the action had not been transferred, would have been heard and determined in the other Court.

Special manager

33. Appointment by special manager

(1) An application by the Official Receiver for the appointment of a special manager shall be supported by an affidavit and by a report of the Official Receiver and such report shall either recommend the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager, or request the Court to fix one.

[Form 18.]

(2) The remuneration of the special manager shall be stated in the order appointing him, but the Court may, at any subsequent time, for good cause shown, make an order for payment to the special manager of further remuneration.

34. Accounting of special manager

Every special manager shall submit accounts to the Official Receiver, and the special manager's accounts shall be verified by affidavit, in Form 18 in the Appendix, with such variations as circumstances may require, and when approved by the Official Receiver, the total of the receipts and payments shall be added by the Official Receiver to his accounts.

Statement of affairs

35. Preparation of statement of affairs

(1) A person who, under section 420 of the Act, has been required by the Official Receiver to submit and verify a statement of affairs of a company, shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary.

(2) The statement which shall be in Form 19 in the Appendix, with such variations as circumstances may require, shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the registrar, the verified statement of affairs.

[Form 19.]

(3) The Official Receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c), or (d) of subsection (2) of section 420 of the Act for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

36. Extension of time for submitting statements of affairs

When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver who may, if he thinks fit, give a written certificate extending the time in which the certificate shall be filed with the proceedings and shall render an application to the Court unnecessary.

37. Information subsequent to statement of affairs

After the statement of affairs of a company has been submitted to the Official Receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him and give all such further information as may be required of him by the Official Receiver in relation to the statement of affairs.

38. Default

Any default in complying with the requirements of section 420 of the Act may be reported by the Official Receiver to the Court.

39. Expenses of statement of affairs

A person who is required to make or concur in making any statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred, been sanctioned by the Official Receiver.

40. Dispensing with statement of affairs

(1) Any application to dispense with the requirements of section 420 of the Act shall be supported by a report of the Official Receiver showing the special circumstances which, in his opinion, render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these Rules required to be sent to any person mentioned in the statement of affairs.

Appointment of Liquidator in a winding up by the Court

41. Appointment of Liquidator on report of meetings of creditors and contributories

(1) As, soon as possible after the first meetings of creditors and contributories have been held, the Official Receiver or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court in Form 20 in the Appendix, with such variations as circumstances may require.

[Form 20.]

(2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings, the Court shall hear the Official Receiver and any creditor or contributory.

(5) If a Liquidator is appointed, a copy of the order appointing him in Form 21 in the Appendix, with such variations as circumstances may require, shall be transmitted to the Registrar-General by the Official Receiver, and the Registrar-General shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted.

[Form 21.]

(6) The expense of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the company.

(7) Every appointment of a Liquidator or committee of inspection shall be advertised by the Liquidator in such manner as the Court directs immediately after the appointment has been made, and the Liquidator has given the required security.

(8) If a Liquidator in a winding up by the Court shall die, or resign, or be removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the Liquidator is released under section 431 of the Act, in which case the Official Receiver shall remain the Liquidator.

Security by Liquidators or special manager in a winding up by the Court

42. Standing security

In the case of a special manager or a Liquidator other than the Official Receiver, the following provision as to security shall have effect, namely—

(a) the security shall be given to such officers or persons and in such manner as the Court may direct in each case;

- (b) the Court may, as it thinks fit, either increase or diminish the amount of the security which any person has given;
- (c) a certificate in Form 23 in the Appendix, with such variations as circumstances may require, shall be issued by the registrar that a security has been given and a copy of such certificate shall be filed in the file of the case;
[Form 23.]
- (d) the cost of furnishing the required security by a Liquidator or special manager, including any premium which he may pay to a bank, shall be borne by him personally and shall not be charged against the assets of the company as an expense incurred in the winding up.

43. Failure to give or keep up security

(1) If a Liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court who may thereupon rescind the order appointing the Liquidator or special manager.

(2) If a Liquidator or special manager fails to keep up his security, the Official Receiver shall report such failure to the Court, who may thereupon remove the Liquidator or special manager, and make such order as to costs as the Court shall think fit.

(3) Where an order is made under this rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that meetings shall be held for the purpose of determining whether an application shall be made to the Court for another Liquidator to be appointed, and thereupon the same meeting shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

Public examination

44. Consideration of report

The consideration of a report made by the Official Receiver pursuant to subsection (2) of section 421 of the Act shall be before a Judge in Court or in chambers, and the Official Receiver shall personally or by counsel, attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

45. Procedure consequent on order for public examination

Where the judge makes an order under section 450 of the Act directing any person or persons to attend for public examination in Form 24 in the Appendix, with such variations as circumstances may require—

[Form 24.]

- (a) the examination shall be held before the judge and the judge may direct that the whole or any part of the examination of any such person or persons, be held and heard and determined before any of the persons mentioned in subsection (9) of the said section;

- (b) the judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined;
- (c) where on an examination held before one of the persons mentioned in subsection (9) of the said section, he is of the opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person or any part of the examination, to be held before the judge.

46. Application for holding examination

Upon an order directing a person to attend for public examination being made, the Official Receiver shall, unless the judge shall otherwise direct, without further order, make an appointment for the public examination to be held.

47. Appointment of time and place for public examination

A day and place shall be appointed for holding the public examination and notice of the day and place so appointed shall be given by the Official Receiver in Form 25 in the Appendix, with such variations as circumstances may require, to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

[Form 25.]

48. Notice of public examination to creditors and contributories

(1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspaper as the Court may direct and in the *Gazette*.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the *Gazette*, a notice of the time and place fixed for the adjourned examination.

49. Default in attending

If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination, the Official Receiver satisfied the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court, that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice to issue a warrant in Form 26 in the Appendix, with such variations as circumstances may require, for the arrest of the person required to attend, or to make such other order as the Court shall think just.

50. Notes of examination to be filed

The notes of every public examination shall, after being signed as required by subsection (7) of section 450 of the Act, be filed in the Court to form part of the Court's record.

Proceedings by or against directors, promoters and officers

51. Application by or against delinquent directors, officers and promoters

(1) An application made to the Court under any of the following provisions of the Act—

- (a) section 254;
- (b) subsection (1) or (2) of section 506;
- (c) section 507;
- (d) subsection (2) of section 64,

shall be made by summons returnable in the first instance in chambers.

(2) The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, and unless otherwise ordered, shall be served in the manner in which an originating summons is required by the Rules of Court to be served on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. No affidavit or report shall be filed before the return of the summons.

(3) On the return of the summons, the Court may give such directions as it thinks fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-examination either before the judge in the hearing in Court or in chambers of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Official Receiver or Liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

(4) Where any such order as is mentioned in subrule (2) of this rule has directed that points of claim and defence shall be delivered then, if subsequently to such order and before the summons has been set down for trial or adjourned for mention, either party wishes to apply for any further direction as to any interlocutory matter or thing, he shall apply and shall give two clear days' notice in writing to the other party stating the grounds of the application before the application can be heard.

52. Notice of application

Where the application is made by motion, the Court may at any time before making an order, require the Official Receiver or Liquidator to furnish to the Court, a report with respect to any facts or matters which are in his opinion relevant to the application and give any directions it may see fit with regard to any of the matters mentioned in subrule (2) of the last preceding rule. Notice of any such intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

53. Hearing of application

(1) Where any application under section 254 of the Act is made or heard after a public examination under section 450 of the Act which has been held before the registrar or any of the persons mentioned in subsection (9) of the said section 450, then unless the judge shall otherwise direct, such application shall be heard and determined by such registrar or either person; but the judge shall personally hear all other applications under the said section 254.

(2) Where any order has been made under the said section, any application for leave arising out of such order shall be made in the winding up of the company in relation to which such order was made and the dissolution of the company or the stay of all proceedings in such winding up shall not be a bar to such application or to the granting of leave.

54. Use of depositions taken at public examination

(1) Where in the course of the proceedings in a winding up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 450 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in subrule (1) of rule 51, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 450 of the Act and the order for the public examination, was or had the opportunity of being present at the taking part in the examination.

(2) Before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than 21 days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to use against him, and furnish him with copies of such notes or parts of notes (except notes of the person's own depositions):

Provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be), any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and depositions

55. Taking of evidence

(1) The Court may order the way and manner the evidence of any person to be examined under the Act and these Rules before any person other than the Court, may be taken.

(2) Where any person other than an official of the Court is nominated to take notes of evidence as mentioned in subrule (1) of this rule, the Court shall decide the necessary fees to be paid to such person.

56. Committal of contumacious witness

(1) If a person examined before any person other than a judge refuses to answer to the satisfaction of the person examining him any question which he may allow to be put, the person examining shall report such refusal to the judge, and upon such report being made, the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) Form 27 in the Appendix, with such variations as circumstances may require, shall be used for the report.

[Form 27.]

(4) The person examining shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report, the judge may take such action thereon as he shall think fit.

57. Depositions of private examinations

(1) The Official Receiver may attend in person, or by an assistant Official Receiver, or by counsel employed for that purpose, any examination of a witness under section 449 of the Act, on whoever application the same has been ordered, and may take notes of the examination for his own use, and, put such questions to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 449 of the Act, or under any order of the Court before the Court, or before any person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 450 of the Act) shall be forthwith filed in the Court registry and be opened to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, or any provisional Liquidator other than the Official Receiver, while he is acting as provisional Liquidator, unless and until the Court shall so direct, and the Court may, from time to time, give such general or special directions as it shall think expedient as to the custody or inspection of such notes and the furnishing of copies of extracts therefrom.

Disclaimer

58. Disclaimer

(1) Any application for leave to disclaim any part of the property of a company pursuant to subsection (1) of section 499 of the Act shall be by *ex parte* summons which shall be supported by an affidavit showing who are the parties interested and what their interests are.

(2) On the hearing of the summons, the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(3) Where a Liquidator disclaims a leasehold interest, he shall forthwith file the disclaimer at the office of the registrar.

(4) The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the Liquidator, the disclaimer shall be inoperative.

(5) A disclaimer shall be in the Form 28 and a notice of disclaimer in the Form 29 in the Appendix, with such variations as circumstances may require.

(6) Where any person claims to be interested in any part of the property of a company which the Liquidator wishes to disclaim, he shall at the request of the Liquidator, furnish a statement of the interest so claimed by him.

Vesting of disclaimed property

59. Vesting of disclaimed property

(1) Any application under subsection (2) of section 499 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any person shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid is to disclaimed property of a leasehold nature and it appears that there is any mortgages by demise (including a charge by way of legal mortgage), or under lease of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by subsection (2) of section 499 of the Act and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security upon the property.

(3) The Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and if he sees fit, to make such election and application as it mentioned in the notice.

(4) If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

Arrangement with creditors and contributories in a winding up by the Court

60. Report by Official Receiver or arrangement and compromises

In a winding up by the Court, if application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the company, and as to any other matters which, in the opinion of the Official Receiver or the Ministry ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

Collection and distribution of assets in a winding up by the Court

61. Collection and distribution of company's assets by Liquidator

(1) The duties imposed on the Court by subsection (1) of section 439 of the Act in a winding up by the Court with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.

(2) For the purpose of the discharge by the Liquidator of the duties imposed by subsection (1) of section 439 of the Act, and paragraph (1) of this rule, the Liquidator in a winding up by the Court shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

62. Power of Liquidator to require delivery of property

The powers conferred on the Court by section 440 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound up under order of the Court shall, on notice (in Form 30 in the Appendix, with such variations as circumstances may require) from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happened to be in his hands for the time being and which the company is *prima facie* entitled.

[Form 30.]

List of contributories in a winding up by the Court

63. Liquidator to settle list of contributories

(1) Unless the Court shall dispense with the settlement of a list of contributories, the Liquidator shall, with all convenient speed after his appointment, settle a list of contributories of the company, and shall appoint a time and place for that purpose.

[Form 31.]

(2) The list of contributories in Form 31, in the Appendix, with such variations as circumstances may require, shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories.

(3) As regards representative contributories, the Liquidator, so far as practicable, shall observe the requirements of subsection (2) of section 439 of the Act.

64. Appointment of time and place for settlement of list

The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been

called up and what amount paid up in respect of such shares or interest. The notice shall be in Form 32 in the Appendix, with such variations as circumstances may require.

[Form 32.]

65. Settlement of list of contributories

On the day appointed for settlement of the list of contributories, the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing, shall finally settle the list and issue a certificate in Form 33 in the Appendix, with such variations as circumstances may require; and the list so settled, shall be the list of contributories of the company.

[Form 33.]

66. Notice of contributories

The Liquidator shall forthwith give notice in Form 34 in the Appendix, with such variations as circumstances may require, to every person whom he has finally placed on the list of contributories stating in what character and for what number of shares or interest he has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within thirty days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

[Form 34.]

67. Application to Court to vary the list

(1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service of such person of notice of the settlement of the list.

(2) The Court may on an application under rule 66 make an order in Form 35 in the Appendix, with such variations as circumstances may require, for the setting aside or variation of the list.

[Form 35.]

(3) The Official Receiver shall not in any case be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

68. Variation of or addition to list of contributories

The Liquidator may from time to time, vary or add to the list of contributories but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Calls

69. Calls by Liquidator

The powers and duties of the Court in relation to making calls upon contributories conferred by section 442 of the Act, shall and may be exercised, in a winding up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 453 of the Act, and to the following conditions—

- (a) where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection, he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call;
- (b) the notice of the meeting, in Form 36 in the Appendix, with such variations as circumstances may require, shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than fourteen days before the day appointed for holding the meeting and such notice shall contain a statement of the proposed amount of the call, and the purpose for which it is intended;

[Form 36.]

- (c) notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised in Form 37 in the Appendix, with such variations as circumstances may require, once at least in a national newspaper, or, where the winding up is not in the head office of the Court, in a newspaper circulating in the district of the Court in which the proceedings are pending;

[Form 37.]

- (d) the advertisement shall state the time and place of the intended meeting of the Committee of Inspection to be laid before the meeting, in reference to the said intended call;
- (e) at the meeting of the Committee of Inspection, any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned;

- (f) the sanction of the Committee shall be given by resolution in Form 38 in the Appendix, with such variations as circumstances may require, which shall be passed by a majority of the members present;

[Form 38.]

- (g) where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

70. Application to the Court for leave to make a call

In a winding up by the Court, an application to the Court for leave to make any call on the contributories of a company, or any of them, for any purpose authorised by the Act, shall be made by summons in the Forms 39 and 40 in the Appendix, with such variations as circumstances may require, stating the proposed amount of such call, which summons shall be served seven clear days at the least before the day appointed for making the call

on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement in Form 41 in the Appendix, with such variations as circumstances may require, without a separate notice to each contributory.

[Forms 39, 40 and 41.]

71. Documents making the call

When the Liquidator is authorised by resolution or order in Form 42 in the Appendix with such variations as circumstances may require, to make a call on the contributories, he shall file with the registrar, a document making the call in the Form 43 in the Appendix with such variations as circumstances may require.

[Forms 42 and 43.]

72. Service of notice of a call

When a call has been made by the Liquidator in a winding up by the Court, a copy of the resolution of the Committee of Inspection or order of the Court (if any) in Forms 38, 42 and 44 in the Appendix, with such variations as circumstances may require, as the case may be, shall forthwith, after the call has been made, be served upon each of the contributories included in such call, together with a notice in Form 45 in the Appendix, with such variations as circumstances may require, from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

[Forms 38, 42, 44 and 45.]

73. Enforcement of call

The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in chambers in Form 47 in the Appendix, on summons by the Liquidator supported by an affidavit in Form 46 in the Appendix.

[Forms 46 and 47.]

Proofs

74. Proof of debt

In a winding up by the Court, every creditor shall, subject as hereinafter provided, prove his debt, unless the judge in any particular winding up shall give directions that any creditor or class of creditors shall be admitted without proof.

75. Mode of proof

(1) A debt may be proved in any winding up by delivering or sending through the post, an affidavit verifying the debt.

(2) In a winding up by the Court, the affidavit shall be so sent to the Official Receiver or if a Liquidator has been appointed, to the Liquidator; and in any other winding up, the affidavit may be so sent to the Liquidator.

76. Verification of proof

An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

77. Contents of proof

(1) An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt in Form 48 in the Appendix, and shall specify the vouchers if any, by which the same can be substantiated.

[Form 48.]

(2) The Official Receiver or Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

78. Statement of security

An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

79. Proof before whom sworn

An affidavit proving a debt may in a winding up by the Court, be sworn before any Commissioner of Oaths.

80. Costs of proof

A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

81. Discount

A creditor proving his debt shall deduct therefrom—

- (a) any discount which he may have agreed to allow for paying in cash in excess of five per cent of the net amount of his claim; and
- (b) all trade discounts.

82. Periodical payment

When any rent or other payment falls due at stated periods, and the order or resolution to wind up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day:

Provided that where the Liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the Liquidator, of rent during the period of the company's or the Liquidator's occupation.

83. Interest

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding four per cent per

annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

84. Proof for debt payable at a future time

A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting debt only thereout, a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

85. Where formal proof of debt not required

Unless the Official Receiver or Liquidator shall in any special case otherwise direct formal proof of the debts mentioned in paragraph (e) of subsection (1) of section 494 of the Act shall not be required.

86. Workmen's wages

(1) In any case in which it appears that there are numerous claims for wages or accrued holiday remuneration by workmen and others employed by the company, it shall be sufficient if one proof for all such claims in the Form 49 in the Appendix is made either by a foreman or by some other person on behalf of all such creditors.

[Form 49.]

(2) Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others and the amounts severally due to them.

(3) Any proof made in compliance with this rule shall have the same effect as if separate proofs have been made by each of the said workmen and others.

87. Production of bills of exchange and promissory notes

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

88. Transmission of proofs to Liquidator

Where a Liquidator is appointed in a winding up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

Admissions and rejection of proofs and preferential claims and appeal to Court

89. Notice to creditors to prove

(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding up may from time to time fix a certain day, which shall be not less than thirty days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, and to establish any title they may have to priority under Section 494 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or as the case may be, from objecting to such distribution.

(2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding up by the Court to every person mentioned in the statement of affairs as a creditor, who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding up to the last known address or place of abode of each person who, to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

(3) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.

90. Examination of proof

The Liquidator shall examine every proof of debt lodged with him and the grounds of the debt, and in writing, admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection in Form 50 in the Appendix.

[Form 50.]

91. Appeal by creditor

If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision, but subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding up by the Court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of thirty days from the date of the service of the notice of rejection.

92. Expunging at instance of Liquidator

If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

93. Expunging at instance of creditor

The Court may also expunge or vary a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

94. Oaths

For the purpose of any of his duties in relation to proofs, the Liquidator, in a winding up by the Court, may cause oaths to be administered by affidavits taken before a commissioner for oaths.

95. Official Receiver's powers

In a winding up by the Court, the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

96. Filing proofs by Official Receiver

In a winding up by the Court, the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

97. Proofs to be filed

Every Liquidator in a winding up by the Court other than the Official Receiver, shall on the first day of every month, file with the registrar, a certified list in Form 51 in the Appendix of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the registrar.

[Form 51.]

98. Procedure where creditor appeals

The Liquidator in a winding up by the Court, including the Official Receiver when he is Liquidator, shall within five days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar with a memorandum thereon of his disallowance thereof.

99. Time for dealing with proofs by Official Receiver

Subject to the power of the Court to extend the time in a winding up by the Court, the Official Receiver as Liquidator, not later than 21 days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.

100. Time for dealing with proofs by Liquidator

(1) Subject to the power of the Court to extend the time, the Liquidator in a winding up by the Court, other than the Official Receiver, within 35 days after receiving a proof, which has not previously been dealt with shall in writing either admit or reject it wholly or in part or require further evidence in support of it:

Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall, within 21 days after the date mentioned in the notice as the latest date

up to which proofs must be lodged, examine, and in writing admit or reject or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby.

(2) Where a creditor's proof has been admitted, the notice of dividend shall be a sufficient notification of the admission.

101. Costs of appeal from decisions as to proofs

The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

Dividends in a winding up by the Court

102. Dividends to creditors

(1) Not more than two months before declaring a dividend, the Liquidator in a winding up by the Court, shall give notice of his intention to do so in the Form 52 in the Appendix to the Ministry in order that the same may be gazetted, and shall at the same time give notice in the Form 53 in the Appendix to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than 21 days from the date of such notice.

[Forms 52 and 53.]

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend at the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within fifteen days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted.

(3) Where no notice of appeal has been given within the time specified in this rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(4) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the Liquidator, he shall proceed to declare a dividend, and shall give notice to the Ministry (in order that the same may be gazetted), and shall also send a notice of dividend in the Form 54 in the Appendix to each creditor whose proof has been admitted.

[Form 54.]

(5) If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Ministry in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects, the same procedure shall follow the fresh notice as would have followed the original notice.

(6) Upon the declaration of a dividend, the Liquidator shall forthwith transmit to the Ministry a list of the proofs with the registrar under rule 96.

(7) In every winding up by the Court, the Liquidator shall, if so required by the Ministry, transmit to the Ministry office copies of all lists of proof filed by him up to the date of the declaration of the dividend.

(8) Dividends may, at the request and risk of the person to whom they are paid, be transmitted to him by post.

(9) If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the Liquidator a document in the Form 55 in the Appendix which shall be a sufficient authority for payment of the dividend to the person therein named.

[Form 55.]

103. Return of capital to contributories

(1) Every order by which the Liquidator in a winding up by the Court is authorised to make a return to contributories of the company shall, unless the Court shall otherwise direct, contain or have appended thereto, a schedule or list (which the Liquidator shall prepare) setting out in a tabular form, the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made.

(2) The schedule or list shall be in the Form 56 in the Appendix, with such variations as circumstances may require, and the Liquidator shall send a notice of return to each contributory.

[Form 56.]

General meeting of creditors and contributories in relation to a winding up by the Court

104. First meeting of creditors and contributories

Unless the Court otherwise directs, the meeting of creditors and contributories under section 519 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a special manager has been appointed, then within six weeks after the date of the winding-up order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

105. Notice of first meeting to the Ministry

The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Ministry, who shall gazette the same.

106. Summoning of first meetings

The first meetings of creditors and contributories shall be summoned as hereinafter provided.

107. Form of notices of first meetings

The notice of the first meetings of creditors and contributories may be in Forms 57 and 58 in the Appendix, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

[Forms 57 and 58.]

108. Notice of first meeting to officers of company

(1) The Official Receiver shall also give to each of the officers of the company who, in his opinion, ought to attend the first meetings of creditors and contributories, fifteen days' notice of the time and place appointed for each meeting. The notice may either be delivered personally or sent by prepaid post letter, as may be convenient.

[Form 59.]

(2) It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Official Receiver, and if such officer fails to attend, the Official Receiver shall report such failure to the Court.

109. Summary of statement of affairs

(1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make.

(2) The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(3) Where prior to the winding-up order, the company has commenced to be wound up voluntarily, the Official Receiver may, if in his absolute discretion he sees fit to do so, send to the persons aforesaid or any of them, an account of such voluntary winding up, showing how such winding up has been conducted and how the property of the company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding up.

General meetings of creditors and contributories in relation to winding up by the Court and of creditors in relation to a creditor's voluntary winding up

110. Liquidator's meetings of creditors and contributories

(1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 519 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator in any winding up by the Court may himself from time to time, subject to the provisions of the Act and the control of the Court, summon, hold, and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meetings of creditors and contributories), for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up, the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining

their wishes in all matters relating to the winding up (such meetings and all meetings of creditors which a Liquidator of a company is by the Act required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these Rules, are hereinafter called voluntary liquidation meetings).

111. Application of rules as to meetings

Except where and in so far as the nature of the subject matter or context may otherwise require, the rules as to meetings hereinafter set out shall apply to first meetings, Court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so however that the said rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings, subject and without prejudice to any express directions of the Court.

112. Summoning of meetings

(1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than fifteen days' notice in Form 60 in the Appendix of the time and place thereof in the *Gazette* and in a local paper; and shall not, less than fifteen days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company, notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories.

[Form 60.]

(2) The notice to each creditor shall be sent to the address given in his proof or if he has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting.

(3) The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

(4) In the case of meetings under section 465 of the Act, the continuing Liquidator, or if there is no continuing Liquidator, any contributory, may summon the meeting.

(5) This rule shall not apply to meetings under section 472 or section 478 of the Act.

113. Evidence of dispatch of notice of meetings

A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or his solicitor or the clerk of either of such persons, or as the case may be, by some officer of the company or its solicitor or the clerk of such company or solicitor, that the notice of any meeting has been duly posted shall be sufficient evidence of such notice having been duly sent to persons to whom the same was addressed.

114. Place of meetings

Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both, and different times or places or both may, if thought expedient, be named for the meetings of creditors and for the meetings of contributories.

115. Costs of calling meetings

(1) The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator, shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned, deposit with the Official Receiver or Liquidator, as the case may be, such sum as may be required by the Official Receiver or Liquidator as security for the payment of such cost.

(2) The costs of summoning a meeting under subrule (1) above, including all disbursements for printing, stationery, postage and the hire of room, shall be decided by the Official Receiver or Liquidator and shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution, so direct.

116. Chairman of meetings

Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him under the authority as in the Form 61 in the Appendix, shall be chairman of the meeting. At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under section 472 of the Act.

[Form 61.]

117. Ordinary resolution of creditors and contributories

At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

118. Copy of resolution to be filed

The Official Receiver or as the case may be, the Liquidator, shall file with the registrar a copy certified by him of every resolution of a meeting of creditors or contributories in a winding up by the Court.

119. Non-reception of notice by a creditor

Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

120. Adjournments

The chairman may, with the consent of those present at the meeting, adjourn it from time to time and from place to place using the Form 62 in the Appendix, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

[Form 62.]

121. Quorum

(1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat in the case of a creditor's meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories, as the case may be, shall not exceed three.

(2) If within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than fifteen nor more than thirty days from the day from which the meeting was adjourned.

122. Creditors entitled to vote

(1) In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver, not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting, a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or Liquidator's meeting of creditors, a person shall not be entitled to vote as creditor unless he has lodged with the Official Receiver or Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held:

Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors.

(2) This rule shall not apply to any creditors or class of creditors who, by virtue of these Rules or any directions given thereunder, are not required to prove their debts or to any voluntary liquidation meeting.

123. Cases in which creditors may not vote

A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a Receiving Order in Bankruptcy has to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

124. Votes of secured creditors

For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned, the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

125. Creditors required to give up security

The Official Receiver or Liquidator may, within thirty days after a proof or in a voluntary liquidation after a statement estimating the value of a security as aforesaid, has been used in voting at a meeting, require the creditor to give up security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per cent:

Provided that where a creditor has valued his security, he may at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debts, but in that case the said addition of twenty per cent shall not be made if the security is required to be given up.

126. Admission and rejection of proofs for purpose of voting

The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

127. Statement of security

For the purpose of voting at a voluntary liquidation meeting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator or, where there is no Liquidator, at the registered office of the company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

128. Minutes of meetings

(1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 63 in the Appendix.

[Form 63.]

Proxies in relation to a winding up by the Court and to meetings of creditors in a creditor's voluntary winding up

129. Proxies

(1) A creditor or a contributory may vote either in person or by proxy where a person is authorised in the manner provided by section 231 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other person who is the chairman of the meeting, a copy of the resolution so authorising him.

(2) Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding rules as to proxies shall not (unless otherwise directed by the Court), apply to a Court meeting of creditors or contributories prior to the first meeting.

130. Form of proxies

Every instrument of proxy shall be in accordance with the Form 64 or 65 in the Appendix.

[Form 64 and 65.]

131. Form of proxy to be sent with notice

General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

132. General proxies

A creditor or a contributory may give a general proxy to any person.

133. Special proxies

A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof—

- (a) for or against the appointment or continuance in office of any specified person as Liquidator or member of the Committee of Inspection; and
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

134. Solicitation by Liquidator to obtain proxies

Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the Committee of Inspection or of the creditors or contributories to the contrary.

135. Proxies to Official Receiver or Liquidator

A creditor or a contributory in a winding up by the Court may appoint the Official Receiver or Liquidator and in a voluntary winding up the Liquidator or if there is no Liquidator, the chairman of a meeting to act as his general or special proxy.

136. Holder of proxy not to vote on matters in which he is financially interested

No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the company otherwise than as creditor rateably with other creditors of the company:

Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator, he may use the said proxies and vote accordingly.

137. Proxies

(1) A proxy intended to be used at the first meeting shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but before one, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

[Form 64 and 65.]

(2) In every other case, a proxy shall be lodged with the Official Receiver or Liquidator in a winding up by the Court, with the company at its registered office for a meeting under section 472 of the Act, and with the Liquidator or, if there is no Liquidator, with the person named in the notice convening the meeting, to receive the same in a voluntary winding up not later than three o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

138. Use of proxies by deputy

Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, deputise some person under his official control to use the proxies on his behalf and in such manner as he may direct.

139. Proxy of blind, etc., creditor to comply with illiterates protection laws

The proxy of a creditor blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness and the witness shall comply with the provisions of the illiterates protection laws.

Attendance and appearance of parties

140. Attendance at proceedings

(1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall, by written request, desire to have of. If the Court shall have the opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person who shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may, from time to time, appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the Court, and may remove the person so appointed. If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the registrar for that purpose,

his name and address, and the name and address of his solicitor (if any) and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

141. Attendance of Liquidator's solicitor at meetings

Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

Liquidator and Committee of Inspection

142. Remuneration of Liquidator

(1) The remuneration of a Liquidator, unless the Court shall otherwise order, shall be fixed by the Committee of Inspection, (or the creditors, as the case may be) and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities and the other part on the amount distributed in dividend.

(2) If the Ministry is of the opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection or the creditors, as the case may be, is unnecessarily large, the Ministry may apply to the Court, and thereupon the Court shall fix the amount of the remuneration of the Liquidator.

(3) This rule shall only apply to a Liquidator appointed in a winding up by the Court.

143. Limit of remuneration

Except as provided by the Act or these Rules, a Liquidator shall not, under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is Liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration, or pecuniary or other consideration of benefit whatever beyond the remuneration to which under the Act and these Rules he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to such solicitor, auctioneer or other person.

144. Dealings with assets

Neither the Liquidator, nor any member of the Committee of Inspection of a company shall, while acting as Liquidator or member of such Committee, except by leave of Court, either directly or indirectly, by himself or any employer, clerk, agent or servant, become purchaser of any part of the company's assets; and any purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Ministry in a winding up by the Court or of any creditor or contributory in any winding up, and the Court may make such order as to costs as the Court shall think fit.

145. Restriction on purchase of goods by Liquidator

Where the Liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

146. Committee of Inspection not to make profit

(1) No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself, any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding up or to receive, out of the assets, any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the company.

(2) In a winding up by the Court, if it appears to the Ministry or in a voluntary winding up, if it appears to the Committee of Inspection or to any meeting of creditors or contributories, that any profit or payment has been made contrary to the provisions of this rule, the Ministry, Committee of Inspection or meeting, as the case may be, may disallow such payment or recover such profit, on the audit of the Liquidator's accounts or otherwise.

147. Costs of obtaining sanction of Court

In any case in which the sanction of the Court is obtained under rules 145 and 146, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall be payable out of the company's assets.

148. Sanction for payments to Committee

Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the service, and such sanction shall only be given where the service performed is of a special nature; and except by the express sanction of the Court, no remuneration shall, under any circumstances, be paid to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

149. Discharge of costs before assets handed to Liquidator

(1) When a Liquidator appointed by the Court has notified his appointment to the Registrar-General and has given security to the Court, the Official Receiver shall forthwith put the Liquidator into possession of all property of the company of which the Official Receiver may have custody:

Provided that such Liquidator, before the assets are handed over to him by the Official Receiver, shall have discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of ten per cent per annum, and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the company, whether incurred before or after he has been put into such possession.

(2) The Official Receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator, all such information respecting the estate and affairs of

the company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

(4) This rule and rule 150 shall only apply in winding up by the Court.

150. Resignation of Liquidator

(1) A Liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

(2) If the creditors and contributories by ordinary resolution both agree to accept the resignation of the Liquidator, he shall file with the Registrar-General a memorandum of his resignation and shall send notice thereof to the Official Receiver and the resignation shall thereupon take effect.

(3) In any other case, the Liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

151. Office of Liquidator vacated by insolvency

If a Receiver Order in Bankruptcy is made against a Liquidator, he shall thereby vacate his office, and for the purpose of the application of the Act and these Rules, shall be deemed to have been removed.

Payments to and withdrawals from account

152. Withdrawal from account

All payments out of the Companies Liquidation Account shall be made in such manners as the Ministry may, from time to time, direct.

153. Special bank account

(1) Where the Liquidator in a winding up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the company.

(2) All payments out of the special bank account shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it, the name of the company and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

(3) Where application in Form 66 in the Appendix is made to the Court to authorise the Liquidator in a winding up by the Court to make his payments into and out of a special bank account, the Court may grant such authorisation as in Form 67 in the Appendix for such time and on such terms as it may think fit, and may, at any time, order the account to be closed if it is of the opinion that the account is no longer required for the purpose mentioned in the application.

[Forms 66 and 67.]

Books

154. Keeping of Record Book

In a winding-up by the Court, the Official Receiver, until a Liquidator is appointed by the Court and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs; but he shall not be bound to insert in the Record Books any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the Official Receiver or the Ministry.

155. Cash Book

(1) In a winding up by the Court, the Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Ministry may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts), enter from day to day the receipts and payments made by him.

(2) In a winding up by the Court, a Liquidator other than the Official Receiver shall submit the Record and Cash Books together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.

(3) In a creditors' voluntary winding up the Liquidator shall keep such books as the Committee of Inspection, or if there is no such committee, as the creditors direct, and all books kept by the Liquidator shall be submitted to the Committee of Inspection or if there is no such committee, to the creditors with any other books, documents, papers and accounts in his possession relating to his office as Liquidator or to the company as and when the Committee of Inspection, or if there is no such committee, the creditors direct.

Investment of funds

156. Investment of assets in securities and realisation of securities

(1) Where in a winding up by the Court or in a creditors' voluntary winding up, the Committee of Inspection are of the opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request in Forms 68 and 69 in the Appendix, and the Liquidator shall transmit such certificate and request to the Commission.

[Forms 68 and 69.]

(2) Where the Committee of Inspection in any such winding up are of the opinion that it is advisable to sell any of the securities in which the moneys of the company's assets are invested, they shall sign a certificate and request to the effect, and the Liquidator shall transmit such certificate and request to the Commission.

(3) Where there is no Committee of Inspection in any such winding up as is mentioned in subrules (1) and (2) of this rule and in every members' voluntary winding up

whether under the supervision of the Court or not, if a case has in the opinion of the Liquidator arisen under section 529 of the Act for an investment of funds of the company or a sale of securities in which the company's funds have been invested, the Liquidator shall sign and transmit to the Commission a certificate of the facts on which his opinion is founded, and a request to the Registrar-General so that the Accountant-General can make the investment or sale mentioned in the certificate and the Accountant-General may thereupon if he thinks fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Accountant-General for the said investment or sale.

Accounts and audit in a winding up by the Court

157. Audit of Cash Book

The Committee of Inspection shall not less than once every three months, audit the Liquidator's Cash Book and certify therein in Form 70 in the Appendix under their hands, the day on which the said book was audited.

[Form 70.]

158. Commission's audit of Liquidator's accounts

(1) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Registrar-General, a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection and he shall also forward—

(a) with the accounts, a summary of the company's statement of affairs showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised;

(b) at the end of every six months, forward to the Registrar General, with his accounts, a report upon the position of the liquidation of the company in such form as the Registrar-General may direct.

(2) When the assets of the company have been fully realised and distributed, the Liquidator shall forthwith send in his accounts to the Registrar General although the six months may not have expired.

(3) The accounts sent in by the Liquidator shall be verified by him by affidavit and be in Form 71 in the Appendix.

[Form 71.]

159. Liquidator carrying on business

(1) Where the Liquidator carries on the business of the company, he shall keep a distinct account of the trading and shall incorporate in the Cash Book, the total weekly amounts of the receipts and payments on such trading account.

(2) The trading account in Form 71 in the Appendix shall, from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the Committee of that purpose who shall examine and certify the same.

160. Copy of accounts to be filed

When the Liquidator's account have been audited, the Commission shall certify that fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with him, and that copy, together with a copy of the said account delivered to the Court for filing in accordance with section 429 of the Act, shall be open to the inspection of any person on payment of the same fee as is payable with respect to the inspection of the file of proceedings under rule 10.

161. Summary of accounts

(1) The Liquidator shall prepare a summary of such of accounts and shall, subject to any dispensation granted by the Registrar-General under subsection (5) of section 429 of the Act, send a printed copy of that summary by post to every creditor and contributory.

(2) The cost of printing and posting such copy shall be a charge upon the assets of the company.

162. Affidavit of no receipts or payments

When a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Commission, forward to the Commission, an affidavit of no receipts or payments.

163. Proceedings on resignation of Liquidator

(1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Official Receiver or, as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of Liquidator.

(2) The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver or, as the case may be, to the new Liquidator, all the books, documents, papers and accounts which he is by these Rules, required to deliver on his release.

(3) The Court may, at any time during the progress of the liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers and documents of the company or of the Liquidator as are no longer required for the purpose of the liquidation may be sold, destroyed or otherwise disposed of.

164. Expenses of sales

(1) Where property forming part of a company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent.

(2) Every Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be acceptable for the process of every such sale.

Final account in voluntary winding up

165. Form of final account

The account required by sections 468 and 478 of the Act to be made up by the Liquidator as soon as the affairs of the company are fully wound up, shall be in Form 72 in the Appendix.

Costs and expenses payable out of the assets of the company

166. Liquidator's charges

(1) Where a Liquidator or special manager in a winding up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where a Liquidator is a solicitor, he may contract that the remuneration for his services as Liquidator shall include all professional services.

167. Costs payable out of the assets

(1) The assets of a company in a winding up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company was previously to be wound up voluntarily, such remuneration, costs and expenses, as the Court may allow to a Liquidator appointed in such voluntary winding up shall, subject to any order of the Court, be liable to the following payments, which shall be in the following order of priority, namely—

- (a) the costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the Court;
- (b) the remuneration of the special manager (if any);
- (c) the costs and expenses of any person who makes or concurs in making the company's statement of affairs;
- (d) the charges of any shorthand writer appointed to take an examination:

Provided that where the shorthand writer is appointed at the instance of the Official Receiver, the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the company;

- (e) the necessary disbursements of any Liquidator appointed in the winding up by the Court, other than property incurred in preserving, realising or getting in the assets heretofore provided for;
- (f) the costs of any person's property employed by any such Liquidator;
- (g) the remuneration of any such Liquidator;
- (h) the actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Ministry.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers or other persons, other than payments for costs and expenses incurred and sanctioned under rule 39 and payments of bills which have been allowed, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the registrar.

(3) The Official Receiver when acting as Liquidator may pay and allow the costs and charges of any person employed by him where such costs and charges are within the scale usually allowed by the Court.

(4) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the company or the Liquidator, or the rights of the person to whom such costs are payable.

Statements of Liquidator to the Registrar-General

168. Conclusion of winding up

The winding up of a company shall, for the purposes of section 516 of the Act, be deemed to be concluded—

- (a) in the case of a company wound up by order of the Court, at the date on which the order dissolving the company has been reported by the Liquidator to the Commission, or at the date of the order of the Attorney-General of the Federation releasing the Liquidator pursuant to section 431 of the Act;
- (b) in the case of a company wound up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account kept with the Accountant-General of the Federation.

169. Times of sending Liquidator's statements and regulations applicable thereto

In a voluntary winding up or a winding up under the supervision of the Court, the statements with respect to the proceedings in and position of the liquidation of a company the winding up of which is not concluded within a year after its commencement, shall be sent to the Registrar-General twice in every year as follows—

- (a) the first statement, commencing at the date when a Liquidator was first appointed and brought down to the end of the twelfth month from the commencement of the winding up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period as the Commission may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent; and in cases in which the assets of the company have been fully realised and distributed before the expiration of a half-yearly interval, a final statement shall be sent forthwith;
- (b) subject to the next succeeding rule, Form 73 in the Appendix and where applicable Forms 75, 76 and 77 in the Appendix, with such variations as circumstances may require, shall be used, and the directions specified in the Form be observed in reference to every statement;

[Use of Forms 73, 75, 76 and 77.]

- (c) every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form 74 in the Appendix, with such variations as circumstances may require.

[Form 74.]

170. Affidavit of no receipts or payments

Where, in a voluntary winding up or a winding up under the supervision of the Court, a Liquidator has not during any period for which a statement has to be sent, received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement, send to the Registrar-General, the prescribed statement in the Form 73 in the Appendix in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in Form 74 in the Appendix.

[Form 73 and 74.]

Unclaimed funds and undistributed assets in the hands of a Liquidator

171. Payment of undistributed and unclaimed money into Companies Liquidation Account

(1) All money in the hands or under the control of a Liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the hands or under the control of the Liquidator shall forthwith on the expiration of the six months, be paid into the Companies Liquidation Account.

(2) In a voluntary winding up or a winding up under the supervision of the Court, all other money in the hands or under the control of a Liquidator of a company, representing unclaimed or undistributed assets or held by the company in trust which, under subsection (4) of section 516 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar-General is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Commission may authorise him to retain for immediate purposes of liquidation.

(3) Such amount shall be paid into the Companies Liquidation Account within 28 days from the date to which the statement of account is brought down.

(4) Notwithstanding anything in this rule, any moneys in the hands of the Liquidator at the date of the dissolution of the company representing unclaimed or undistributed assets or dividends or held by the company in trust in respect of dividends or other sums due to any person as a member of the company shall forthwith be paid by him into the Companies Liquidation Account.

(5) A Liquidator whose duty it is to pay into the Companies Liquidation Account kept by the Accountant-General of the Federation money representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, shall apply in such manner as the Minister shall direct to the Ministry for a paying-in order, which paying-in order shall be an authority to the Accountant-General of the Federation to receive the payment.

(6) In a voluntary winding up or a winding up under the supervision of the Court, money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money from part of the minimum balance is payable into the Companies Liquidation Account pursuant to subrule (2) of this rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account:

Provided that where the money is invested in Government securities, such securities may, with the permission of the Ministry, be transferred to the control of the Ministry instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account; and if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Ministry may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other moneys paid into the said Account may be dealt with.

172. Liquidator to furnish information to the Commission

(1) In a voluntary winding up or a winding up under the supervision of the Court, whether the liquidation has been concluded or not, the Liquidator shall furnish to the Commission, particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, and such other particulars as the Commission may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account with the Accountant-General of the Federation.

(2) The Commission may require such particulars to be verified by affidavit in Form 78 in the Appendix.

[Form 78.]

173. Registrar-General may call for verified account

(1) In a voluntary winding up or a winding up under the supervision of the Court, the Registrar-General may at any time, order any such person as is mentioned in the preceding rule to submit to him an account verified by affidavit of the sums received and paid by him as Liquidator of the company and may direct and enforce an audit of the account.

(2) For the purpose of subsection (4) of section 516 of the Act, and these Rules, the Court may, if it thinks fit, make any appropriate order with respect to the discovery and realisation of the property of a debtor.

(3) Forms 72 to 76 in the Appendix shall be used as appropriate for the purposes of this rule.

174. Application to the Court for enforcing an account and getting in money

An application to the Commission for the purpose of ascertaining and getting in money payable to the Accountant-General of the Federation pursuant to subsection (4) of section 516 of the Act shall be made by motion, and when the winding up is by or under the supervision of the Court or in a voluntary winding up, shall be made to and dealt with by the judge in Court.

175. Application for payment out to person entitled

An application by a person claiming to be entitled to any money paid to Accountant-General of the Federation in pursuance of subsection (4) of section 516 of Act, shall be made in such form and manner as the Commission may from time to time direct, and shall, unless the Commission otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Commission may direct.

176. Application by Liquidator for payment out

A Liquidator who requires to make payments out of money paid to the Accountant-General of the Federation in pursuance to subsection (4) of section 516 of the Act either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Commission may direct, and the Commission may thereupon either make an order for payment to the Liquidator of the sum required by him for purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator in a winding up by the Court

177. Proceedings for release of Liquidator

(1) A Liquidator in a winding up by the Court before making application to the Registrar for his release, shall give notice of his intention so to do in Form 79 in the Appendix, to all the creditors who have proved their debts, and all the contributories and shall send, with the notice, a summary of all receipts and payments in the winding up in Form 80 in the Appendix.

[Forms 79 and 80.]

(2) When the registrar having complied with the provisions of section 431 of the Act, grants to a Liquidator his release, a notice of the order granting the release shall be gazetted; and the Liquidator shall pay for the expenses of such gazetting and he may charge such expenses against the company's assets.

178. Disposal of books and papers

(1) The Attorney-General of the Federation may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the company) as he thinks proper, notwithstanding any resolution of creditors or contributories to the contrary.

(2) Any creditor or contributory may apply to the Court with regard to the destruction of such books and papers.

Official Receiver

179. Duty where no assets

Where a company against which a winding up order been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding up without order of the Court.

180. Accounting by Official Receiver

(1) Where a Liquidator is appointed by the Court in a winding up by the Court, the Official Receiver shall account to the Liquidator.

(2) If the Liquidator is dissatisfied with the account, he may apply to the Court to order the Official Receiver to give a better and further particulars of the issue in disagreement.

(3) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is a Liquidator, but he shall account in such manner as the Court may direct.

181. Power of Court to extend or abridge time

The Court may, in any case in which shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

182. Defects and irregularity not to invalidate proceedings

(1) No proceedings under the Act or these Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of the opinion that injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment or election of an Official Receiver, Liquidator or member of a Committee of Inspection shall vitiate any act done by him in good faith.

183. Application of Court's (Civil Procedure) Rules

In any proceedings in or before the Court where no provision is made by these Rules, the Court's (Civil Procedure) Rules shall apply.

184. Interpretation

(1) Unless the context otherwise requires words or expressions contained in these Rules shall bear the same meaning as in the Act or any statutory modification thereof.

(2) In these Rules, unless the context or subject-matter otherwise requires—

“Act” means the Companies and Allied Matters Act;

“Commission” means the Corporate Affairs Commission established under section 1 of the Act;

“company” means a company which is being wound up or against which proceedings to have it wound up or proceedings under section 410 of the Act have been commenced;

“Court” means the Federal High Court established by section 228 of the Constitution of the Federal Republic of Nigeria;

175. Application for payment out to person entitled

An application by a person claiming to be entitled to any money paid to Accountant-General of the Federation in pursuance of subsection (4) of section 316 of Act, shall be made in such form and manner as the Commission may from time to time direct, and shall, unless the Commission otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as the Commission may direct.

176. Application by Liquidator for payment out

A Liquidator who requires to make payments out of money paid to the Accountant-General of the Federation in pursuance to subsection (4) of section 316 of the Act either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Commission may direct, and the Commission may thereupon either make an order for payment to the Liquidator of the sum required by him for purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

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[Forms 79 and 80.]

(2) When the registrar having complied with the provisions of section 431 of the Act, grants to a Liquidator his release, a notice of the order granting the release shall be gazetted; and the Liquidator shall pay for the expenses of such gazetting and he may charge such expenses against the company's assets.

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(1) The Attorney-General of the Federation may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the company) as he thinks proper, notwithstanding any resolution of creditors or contributories to the contrary.

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“company” means a company which is being wound up or against which proceedings to have it wound up or proceedings under section 410 of the Act have been commenced;

“Court” means the Federal High Court established by section 228 of the Constitution of the Federal Republic of Nigeria;

“(Civil Procedure) Rules” means the Federal High Court (Civil Procedure) Rules 2000, as amended or replaced from time to time;

“Gazette” means Federal Gazette;

“head office of the Court” means where the Chief Judge is stationed;

“Ministry” means the Federal Ministry charged with responsibility for commerce;

“registrar” includes the Chief Registrar and all other registrars of the Court and any subordinate officer acting under the registrar’s instructions;

“Registrar-General” means the Registrar-General of the Corporate Affairs Commission appointed under section 8 of the Act;

“sealed” means sealed with the seal of the Court.

(3) The Forms prescribed for use under these Rules shall be used with such variations as circumstances may require.

FORMS

FORM 1
[Rule 5.]

Form of summons (general)

IN THE FEDERAL HIGH COURT

..... DIVISION

No. of 20

In the matter of (a), Limited and in the matter of the Companies and Allied Matters Act.

[(a) Insert full name and company.]

Let (b)

[(b) Name of Respondent.]

attend at

on the day of

20 at o'clock in the noon on the hearing

of an application of (c)

[(c) Name and description of applicant.]

for an order that (d)

[(d) State object of application.]

DATED the day of 20