

CORPORATIONS RULES 2003 (South Australia)

(as amended to the 23 January 2018– Amendment No. 9)

The Corporations Rules 2003 dated 24th February, 2003, which came into operation on 1st April, 2003 (South Australian Government Gazette, 13 March, 2003, p. 880) have been amended by the following rules:

		<i>Gazette</i>	<i>Date of operation</i>
# 1	31 July 2006	24 August 2006, p. 2896	4 September 2006
# 2	27 August 2007	13 September 2007, p.3690	1 October 2007
# 3	31 March 2008	17 April 2008, p. 1319	1 May 2008
# 4	26 May 2008	19 June 2008, p. 2352	1 July 2008
# 5	27 October 2008	27 November 2008, p. 5265	1 December 2008
# 6	31 May 2010	1 July 2010, p. 3327	1 July 2010
#7	16 July 2012	26 July 2012, p. 3216	29 July 2012
#8	29 June 2015	30 July 2015, p. 3624	1 September 2015
#9	27 November 2017	23 January 2018, p. 387	23 January 2018

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CORPORATIONS RULES 2003 **(South Australia)**

Division 1 – Preliminary

1.1 Citation

These Rules may be cited as the Corporations Rules 2003 (South Australia).

1.2 Commencement

- (1) The Corporations Law Rules 2000 (South Australia) are repealed as from 31 March 2003.
- (2) These Rules commence on 1 April 2003.

1.3 Application of these Rules and other rules of the Court

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

1.4 Expressions used in the Corporations Act

[subrule 1.4(1) amended by Corporation Rules 2003 (Amendment No. 9)]

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

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

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

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

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

ASIC — see section 9

body — see section 9

body corporate — see section 9

books — see section 9

company — see section 9
corporation — see section 57A
daily newspaper — see section 9
foreign company — see section 9

[expression “official liquidator — see section 9” deleted by Corporations Rules 2003 (Amendment No. 9)]

Part 5.1 body — see section 9
Part 5.7 body — see section 9
register — see section 9
registered liquidator — see section 9
registered office — see section 9
statutory demand — see section 9.

[subrule 1.4(2) inserted by Corporation Rules 2003 (Amendment No. 9)]

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

1.5 Definitions for these Rules

In these Rules, unless the contrary intention appears:

applicant means a person claiming interlocutory relief in a proceeding.

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

Corporations Act means the Corporations Act 2001.

Corporations Regulations means the *Corporations Regulations 2001*.

Cross-Border Insolvency Act means the *Cross-Border Insolvency Act 2008* (Cth) including, unless the contrary intention appears, the Model Law.

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

[definition inserted by Corporation Rules 2003 (Amendment No. 9)]

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

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

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

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

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

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

1.6 References to rules and forms

In these Rules, unless the contrary intention appears:

(a) a reference to a rule is a reference to a rule in these Rules; and

- (b) a reference to a form followed by a number is a reference to the form so numbered in Schedule 1 to the *Corporations Supplementary Rules 2015*.

1.7 Substantial compliance with forms

- (1) It is sufficient compliance with these Rules in relation to a document that is required to be in accordance with a form in Schedule 1 of the *Corporations Supplementary Rules 2015* if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.
- (2) Without limiting subrule (1), the Registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these Rules.

1.8 Court's power to give directions

The Court may give directions in relation to the practice and procedure to be followed in a proceeding if it is satisfied, in the circumstances of the proceeding, that:

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

1.9 Calculation of time

- (1) If, for any purpose, these Rules:
 - (a) prohibit, permit or require an act or thing to be done within, by, or before the end of; or
 - (b) otherwise prescribe, allow or provide for;
a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event, as the case may be.
- (2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.
- (3) If the last day of any period prescribed or allowed by these Rules for an act or thing to be done falls on a day that is not a business day in the place where the act or thing is to be or may be done, the act or thing may be done on the first business day in the place after that day.
- (4) In calculating a period of time for the purposes of these Rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

1.10 Extension and abridgment of time

Unless the Corporations Act, the ASIC Act, or these Rules otherwise provide, the Rules of this Court that provide for the extension or abridgment of a period of time fixed for the doing of any act or thing in relation to a proceeding apply to a proceeding to which these Rules apply.

Division 2 – Proceedings generally

2.1 Title of documents in a proceeding — Form 1

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

2.2 Originating process and interlocutory process — Forms 2 and 3

- (1) Unless these Rules otherwise provide, a person must make an application required or permitted by the Corporations Act to be made to the Court:
 - (a) if the application is not made in a proceeding already commenced in the Court — by filing an originating process; and
 - (b) in any other case — by filing an interlocutory process.
- (2) Unless the Court otherwise directs, a person may make an application to the Court in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory process in that proceeding.
- (3) An originating process must:
 - (a) be in accordance with Form 2; and
 - (b) state:
 - (i) each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought; and
 - (ii) the relief sought.
- (4) An interlocutory process must:
 - (a) be in accordance with Form 3; and
 - (b) state:
 - (i) if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of Court under which the application is made; and
 - (ii) the relief sought.

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

2.3 Fixing of hearing

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

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

2.4 Supporting affidavits

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

2.4A Application for order setting aside statutory demand (Corporations Act s459G)

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

2.5 Affidavits made by creditors

Subject to Rule 5.4, an affidavit that is to be made by a creditor may be made:

- (a) if the creditor is a corporation — by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or
- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed — by that person; or
- (c) in any other case — by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

2.6 Form of affidavits

An affidavit must be in a form that complies with:

- (a) the rules of the Court; or
- (b) the rules of the Supreme Court of the State (if any) or Territory (if any) where the affidavit was sworn or affirmed; or
- (c) the rules of the Federal Court of Australia.

2.7 Service of originating process or interlocutory process and supporting affidavit

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

- (b) if the corporation to which the application in the interlocutory process relates is not a party to the interlocutory application — the corporation.

2.8 Notice of certain applications to be given to ASIC

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

Column 1	Column 2
Provision	Description of application
Section 480	For the release of a liquidator of a company and the deregistration of the company
Subsection 482(1)	For the stay or termination of a winding up
<small>[amended by Corporation Rules 2003 (Amendment No. 9)]</small>	
Subsection 509(2)	For the deregistration of a company
<small>[repealed by Corporation Rules 2003 (Amendment No. 9)]</small>	
Subsection 536(1)	For an enquiry into the conduct of a liquidator
Subsection 601AH(2)	To reinstate the registration of a company
Subsection 601CC(8)	To restore the name of an Australian body to the register
Subsection 601CL(9)	To restore the name of a foreign company to the register
Chapter 6, 6A, 6B, 6C, 6D or 7	Any application under these Chapters
Subsections 1317S(2), (4) and (5)	For relief from liability for contravention of a civil penalty provision
<small>[inserted by Corporation Rules 2003 (Amendment No. 9)]</small>	
Subsection 45-1(3) of the Insolvency Practice Schedule (Corporations)	For an order under subsection 45-1(1) of the Insolvency Practice Schedule (Corporations) in relation to a registered liquidator
<small>[inserted by Corporation Rules 2003 (Amendment No. 9)]</small>	
subsection 90-10(1) of the Insolvency Practice Schedule (Corporations)	For an inquiry into the external administration of a company
<small>[inserted by Corporation Rules 2003 (Amendment No. 9)]</small>	
section 90-20 of the Insolvency Practice Schedule (Corporations)	For an order under section 90-15 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of a company

2.9 Notice of appearance (s465(c) of the Corporations Act) — Form 4

- (1) A person who intends to appear before the Court at the hearing of an application must, before appearing:
 - (a) file:
 - (i) a notice of appearance in accordance with Form 4; and
 - (ii) if appropriate — an affidavit stating any facts on which the person intends to rely; and
 - (b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than:
 - (i) if the person is named in an originating process — 3 days before the date fixed for hearing; or
 - (ii) if the person is named in an interlocutory process — 1 day before the date fixed for hearing.
- (2) If the person intends to appear before the Court to oppose an application for winding up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by section 465C of the Corporations Act.
- (3) The period prescribed for filing and serving the notice and affidavit required by section 465C of the Corporations Act is the period mentioned in subparagraph (1)(b)(i).

Note Under section 465C of the Corporations Act, a person may not, without the leave of the Court, oppose an application for winding up unless, within the period prescribed by the rules (see subrule (3) of this rule), the person has filed, and served on the plaintiff, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

2.10 Intervention in proceeding by ASIC (s1330 of the Corporations Act) — Form 5

- (1) If ASIC intends to intervene in a proceeding, ASIC must file a notice of intervention in accordance with Form 5.
- (2) Not later than 3 days before the date fixed for the hearing at which ASIC intends to appear in the proceeding, ASIC must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

[rule 2.11 deleted by Corporation Rules 2003 (Amendment No. 7)]

2.11 *****

2.12 Proof of publication

- (1) This Rule applies in relation to any matter published in connection with a proceeding.
- (2) Unless these Rules otherwise provide, or the Court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file:
 - (a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is annexed or exhibited a copy of the published matter; or

- (b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.
- (3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

2.13 Leave to creditor, contributory or officer to be heard

- (1) The Court may grant leave to any person who is, or who claims to be:
 - (a) a creditor, contributory or officer of a corporation; or
 - (b) an officer of a creditor, or contributory, of a corporation;to be heard in a proceeding without becoming a party to the proceeding.
- (2) If the Court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, which should be borne by the person to whom leave was granted, the Court may:
 - (a) direct that the person pay the costs; and
 - (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the Court's satisfaction.
- (3) The Court may order that a person who is, or who claims to be, a creditor, contributory or officer of a corporation be added as a defendant to the proceeding.
- (4) The Court may grant leave to a person under subrule (1), or order that a person be added as a defendant to a proceeding under subrule (3):
 - (a) on application by the person or a party to the proceeding; or
 - (b) on the Court's own initiative.
- (5) The Court may:
 - (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the Court, at the expense of the corporation; and
 - (b) remove any person so appointed.

2.14 Inquiry in relation to corporation's debts etc

The Court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

2.15 Meetings ordered by the Court

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

Division 3 – Compromises and arrangements in relation to Part 5.1 bodies

3.1 Application of Division 3

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

3.2 Nomination of chairperson for meeting

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

- (a) the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting; and
- (b) that each person nominated:
 - (i) is willing to act as chairperson; and
 - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
 - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and
- (d) that the person does not fall within paragraphs 411(7)(a) to (f) of the Corporations Act, except as disclosed in the affidavit.

3.3 Order for meetings to identify proposed scheme

- (1) An order under subsection 411(1) or (1A) of the Corporations Act ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.
- (2) Unless the Court otherwise orders, a meeting of members ordered under section 411 of the Corporations Act must be convened, held and conducted in accordance with:
 - (a) the provisions of Part 2G.2 of the Corporations Act that apply to the members of a company; and
 - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with Part 2G.2 of the Corporations Act.
- (3) Unless the Court otherwise orders, a meeting of a class of holders of convertible securities ordered under section 411 of the Corporations Act must be convened, held and conducted as if:
 - (a) the holders were a separate class of members; and
 - (b) the meeting was a meeting of members convened, held and conducted under subrule (2);but in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued.

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

- (1) This Rule applies to:
 - (a) an application, under subsection 411(4) of the Corporations Act, for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and
 - (b) an application, under subsection 413(1) of the Corporations Act, for an order in relation to the reconstruction of a Part 5.1 body, or Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.

- (2) Unless the Court otherwise orders, the plaintiff must publish a notice of the hearing of the application.
- (3) The notice must be:
 - (a) in accordance with Form 6; and
 - (b) published at least 5 days before the date fixed for the hearing of the application.

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

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

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

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

[heading substituted by Corporation Rules 2003 (Amendment No. 9)]

4.1 Inquiry into conduct of controller (s423 of the Corporations Act)

[rule 4.1 amended by Corporation Rules 2003 (Amendment No. 9)]

A complaint to the Court under paragraph 423(1)(b) of the Corporations Act about an act or omission of a receiver, or a controller appointed by the Court, must be made by an originating process seeking an inquiry in relation to the complaint. The complaint may be made by a person mentioned in any of paragraphs 11.2(1)(a) to (d).

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

[rule 4.2 inserted by Corporation Rules 2003 (Amendment No. 9)]

An application to the Court:

- (a) under section 45-1 of the Insolvency Practice Schedule (Corporations) for an order in relation to a registered liquidator; or
- (b) under section 90-10 of that Schedule for an inquiry into the external administration of a company; or
- (c) under section 90-20 of that Schedule for an order in relation to the external administration of a company;
must be made:
- (d) in the case of a winding up by the Court—by an interlocutory process seeking the inquiry or order; or
- (e) in any other case—by an originating process seeking the inquiry or order.

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

Division 5 – Winding up proceedings (including oppression proceedings where winding up is sought)

5.1 Application of Division 5

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

- (a) an application under section 246AA of the Corporations Act in a case of oppression or injustice;
- (b) an application under Part 5.4 or Part 5.4A of the Corporations Act.

5.2 Affidavit accompanying statutory demand (s459E(3) of the Corporations Act) — Form 7

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

- (a) be in accordance with Form 7 and state the matters mentioned in that Form; and
- (b) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (c) not state a proceeding number, or refer to a Court proceeding, in any heading or title to the affidavit.

5.3 Application for leave to apply for winding up in insolvency (s459P(2) of the Corporations Act)

An application for leave to apply to the Court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

5.4 Affidavit in support of application for winding up (s459P, s462, s464 of the Corporations Act)

- (1) The affidavit in support of an originating process seeking an order that company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.
- (2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must:
 - (a) verify service of the demand on the company; and
 - (b) verify the failure of the company to comply with the demand; and
 - (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.
- (3) If the application is made in reliance on the ground mentioned in paragraph 461 (1) (a) of the Corporations Act, the affidavit must:
 - (a) state whether the company is able to pay all its debts as and when they become due and payable; and
 - (b) refer to the company's most recent balance sheet and profit and loss statement as an annexure or exhibit to the affidavit, or explain their absence.
- (4) The affidavit must be made within 7 days before the originating process is filed.

5.5 Consent of liquidator (s532(9) of the Corporations Act) — Form 8

- (1) In this Rule:

liquidator does not include a provisional liquidator.

- (2) For the purposes of subsection 532(9) of the Corporations Act, the consent of an official liquidator to act as liquidator of a company must be in accordance with Form 8.
- (3) In an application for an order that a company be wound up, the plaintiff must:
 - (a) before the hearing of the application, file the consent mentioned in subrule (2) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
 - (b) serve a copy of the consent on the company at least 1 day before the hearing.

5.6 Notice of application for winding up

[rule 5.6 substituted by Corporation Rules 2003 (Amendment No. 9)]

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

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

- (2) A notice under subrule (1), or under paragraph 465A(1)(c) of the Corporations Act, of an application for a company to be wound up must be published:
 - (a) at least 3 days after the originating process is served on the company; and
 - (b) at least 7 days before the date fixed for the hearing of the application.

5.7 Applicant to make copies of documents available

A copy of any document filed in a proceeding to which this Division applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

5.8 Discontinuance of application for winding up

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

5.9 Appearance before Registrar [or other Court officer]

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

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

5.10 Order substituting plaintiff in application for winding up (s465B of the Corporations Act) — Form 10

- (1) If the Court makes an order under section 465B of the Corporations Act, the Court may also order that the substituted plaintiff or plaintiffs publish a notice stating

that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound up.

- (2) The notice must be:
 - (a) in accordance with Form 10; and
 - (b) published:
 - (i) at least 7 days before the date fixed for the hearing of the application;
 - or
 - (ii) as otherwise directed by the Court..

5.11 Notice of winding up order and appointment of liquidator

[rule 5.11 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

- (1) This Rule applies if the Court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.

[subrule 5.11(3) substituted by Corporation Rules 2003 (Amendment No. 9)]

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

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

[subrule 5.11(4) substituted by Corporation Rules 2003 (Amendment No. 9)]

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

Division 6 – Provisional liquidators (Part 5.4B of the Corporations Act)

[note inserted by Corporation Rules 2003 (Amendment No. 9)]

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

6.1 Appointment of provisional liquidator (s472 of the Corporations Act) — Form 8

- (1) An application by a company, a creditor or contributory of the company, or the Commission, under subsection 472(2) of the Corporations Act, for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.
- (2) The consent must be in accordance with Form 8.
- (3) If:
 - (a) an order is made appointing a provisional liquidator;
 - (b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the property of the company;

the order must include a short description of the part of the property of the company that the provisional liquidator may take into custody.

- (4) The Court may require the plaintiff to give an undertaking as to damages.

6.2 Notice of appointment of provisional liquidator

[rule 6.2 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

- (1) This Rule applies if the Court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must:
- (a) except if the plaintiff is ASIC — lodge an office copy of the order with ASIC; and
 - (b) serve an office copy of the order on the company (except if the plaintiff is the company) and on any other person as directed by the Court; and
 - (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).

[subrule 6.2(3) substituted by Corporation Rules 2003 (Amendment No. 9)]

- (3) If the order results from an application other than an application under section 459P, 462 or 464 of the Corporations Act, the provisional liquidator must cause a notice of the provisional liquidator's appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 12.

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

[subrule 6.2(4) substituted by Corporation Rules 2003 (Amendment No. 9)]

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

Division 7 – Liquidators

[rule 7.1 deleted by Corporation Rules 2003 (Amendment No. 9)]

7.1 *****

[rule 7.2 substituted by Corporation Rules 2003 (Amendment No. 9)]

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

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

Note: The Court may make the appointment:

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

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

7.3 Report to liquidator as to company's affairs (s475 of the Corporations Act)

[subrule 7.3(1A) inserted by Corporation Rules 2003 (Amendment No. 9)]

(1A) In this rule:

liquidator includes a provisional liquidator

- (1) If a person is required under section 475 of the Corporations Act to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.
- (2) Except by order of the Court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been:
 - (a) sanctioned by the liquidator before being incurred; or
 - (b) taxed or assessed.
- (3) The liquidator must report to the Court any default in complying with the requirements of section 475 of the Corporations Act.

[subrule 7.3(4) substituted by Corporation Rules 2003 (Amendment No. 9)]

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

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

7.4 Liquidator to file certificate and copy of settled list of contributories (s478 of the Corporations Act)

If, in a winding up by the Court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, within 14 days after doing so, file the certificate and a copy of the list.

7.5 Release of liquidator and deregistration of company (s480(c) and (d) of the Corporations Act)

- (1) This Rule applies to an application by the liquidator of a company:
 - (a) for an order that the liquidator be released; or
 - (b) for an order that the liquidator be released and that ASIC deregister the company.
- (2) The interlocutory process seeking the order must include:
 - (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection, in the prescribed form, within 21 days after the date of service of the interlocutory process; and
 - (b) a statement setting out the terms of subsection 481(3) of the Corporations Act.

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

- (3) The supporting affidavit must include details of the following matters:
 - (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding up;
 - (b) any calls made on contributories in the course of the winding up;
 - (c) any dividends paid in the course of the winding up;

- (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
- [paragraph 7.5(3)(e) substituted by Corporation Rules 2003 (Amendment No. 9)]
- (e) whether ASIC has caused books in relation to the company to be audited under section 70-15 of the Insolvency Practice Schedule (Corporations);
 - (f) whether the Court has ordered a report on the accounts of the liquidator to be prepared;
 - (g) whether any objection to the release of the liquidator has been received by the liquidator from:
 - (i) an auditor appointed by ASIC or by the Court; or
 - (ii) any creditor, contributory or other interested person;
 - (h) whether any report has been submitted by the liquidator to ASIC under section 533 of the Corporations Act;
 - (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
 - (j) any property disclaimed in the course of the winding up;
 - (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
 - (l) any costs, charges or expenses payable by the liquidator if the Court grants the liquidator's release;
 - (m) if the application is made under paragraph 480(c) of the Corporations Act — the facts and circumstances by reason of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the statements set out in paragraphs (a) and (b) of this subrule, including, if appropriate, the words in brackets:
- (a) 'To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit]';
 - (b) 'I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit]'.
- (5) The liquidator must file with, or annex to, the supporting affidavit:
- (a) a statement of the financial position of the company at the date when the interlocutory process seeking release was filed; and
 - (b) a summary of the liquidator's receipts and payments in winding up the company.
- (6) Unless the Court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding up, and on each contributory, a copy of the interlocutory process accompanied by:
- (a) a copy of the summary of the liquidator's receipts and payments in winding up the company; and
 - (b) a copy of the statement of the financial position of the company at the date when the interlocutory process seeking release was filed.

7.6 Objection to release of liquidator — Form 13

- (1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory process seeking release:
 - (a) file:
 - (i) a notice of objection in accordance with Form 13; and
 - (ii) if appropriate, an affidavit stating any facts relied on; and
 - (b) serve a copy of the notice and the affidavit (if any) on the liquidator.
- (2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

7.7 Report on accounts of liquidator (s481 of the Corporations Act)

- (1) If the Court orders that a report on the accounts of a liquidator be prepared under subsection 481(1) of the Corporations Act, the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must:
 - (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words ‘Auditor’s report under subsection 481(1) of the Corporations Act 2001’; and
 - (b) serve a copy of the report on the liquidator; and
 - (c) lodge a copy of the report with ASIC.
- (3) Except with the leave of the Court, a report is not available for inspection by any person except the liquidator or ASIC.

7.8 Application for payment of call (s483(3)(b) of the Corporations Act) — Form 14

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

7.9 Distribution of surplus by liquidator with special leave of the Court (s488(2) of the Corporations Act) — Form 15

- (1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.
- (2) At least 14 days before the date fixed for hearing of the application, the liquidator must publish a notice of the application.
- (3) The notice must be in accordance with Form 15.

7.10 Powers delegated to liquidator by the Court (s488 of the Corporations Act)

Subject to the Corporations Act, the Corporations Regulations, these Rules, and any order of the Court, the powers and duties conferred or imposed on the Court by Part 5.4B of the Corporations Act in respect of the matters mentioned in subsection 488(1) of the Corporations Act may be exercised or performed by a liquidator appointed by the Court as an officer of the Court and subject to the control of the Court.

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

[rule 7.11 substituted by Corporation Rules 2003 (Amendment No. 9)]

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

Division 8 – Special managers (Part 5.4B of the Corporations Act)

8.1 Application for appointment of special manager (s484 of the Corporations Act)

- (1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers which, in the liquidator's opinion, should be entrusted by the Court to the special manager.
- (2) The supporting affidavit must state:
 - (a) the circumstances making it proper that a special manager be appointed; and
 - (b) details of the remuneration proposed to be paid to the special manager; and
 - (c) whether any committee of inspection in the winding up, or a meeting of creditors, has approved the appointment of a special manager.

8.2 Security given by special manager (s484 of the Corporations Act)

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

8.3 Special manager's receipts and payments (s484 of the Corporations Act)

- (1) A special manager must give to the liquidator:
 - (a) an account of the special manager's receipts and payments; and
 - (b) a statutory declaration verifying the account.
- (2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

Division 9 – Remuneration of office-holders

9.1 Remuneration of receiver (s425(1) of the Corporations Act) —Form 16

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

Note 1 Under paragraph 425(2)(b) of the Corporations Act, the Court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

Note 2 The amendment to section 425 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 applies in relation to a receiver appointed on or after 31 December 2007 – See Corporations Act s1480(5).

- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the receiver must serve a notice in accordance with Form 16 of the receiver's intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following persons:
- (a) the person who appointed the receiver;
 - (b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);
 - (c) any administrator, liquidator or provisional liquidator of the corporation;
 - (d) any administrator of a deed of company arrangement executed by the corporation;
 - (e) if there is no person of the kind mentioned in paragraph (c) or (d):
 - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and
 - (ii) each member of the corporation whose shareholding represents at least 10 per cent of the issued capital of the corporation.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or any person mentioned in paragraph (2)(c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3):
- (a) the receiver may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the order stating:
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
 - (b) the receiver may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
 - (c) the application may be so dealt with.
- (5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory, or other person, who has given a notice of objection.

- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must:
 - (a) include evidence of the matters mentioned in subsection 425(8) of the Corporations Act; and
 - (b) state the nature of the work performed or likely to be performed by the receiver; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the receiver; and
 - (e) state particulars of any objection of which the receiver has received notice; and
 - (f) if the receivership is continuing – give details of any matters delaying the completion of the receivership.

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

[rule 9.2 substituted by Corporation Rules 2003 (Amendment No. 9)]

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

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

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

- (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the external administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
- (b) the external administrator may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the external administrator; and
 - (c) the application may be so dealt with.
- (5) If the external administrator receives a notice of objection within the period mentioned in subrule (3), the external administrator must serve a copy of the originating process, or interlocutory process, seeking the determination on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the determination must:
- (a) include evidence of the matters mentioned in section 60-12 of the Insolvency Practice Schedule (Corporations); and
 - (b) state the nature of the work performed or likely to be performed by the external administrator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the external administrator; and
 - (e) state particulars of any objection of which the external administrator has received notice; and
 - (f) if the external administration is continuing—give details of any matters delaying the completion of the external administration.

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

[rule 9.2A heading substituted by Corporation Rules 2003 (Amendment No. 9)]

[subrule 9.2A(1) substituted by Corporation Rules 2003 (Amendment No. 9)]

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

Note 1: Section 60-11 of the Insolvency Practice Schedule (Corporations) does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under section 489EC of the Corporations Act: see section 60-2 of the Insolvency Practice Schedule (Corporations).

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

[subrule 9.2A(2) deleted by Corporation Rules 2003 (Amendment No. 9)]

- (2) *****
- (3) At least 21 days before filing the originating process or the interlocutory process applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review and a copy of any affidavit

on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons:

[paragraph 9.2A(3)(a) amended by Corporation Rules 2003 (Amendment No. 9)]

(a) if there is a committee of inspection – each member of the committee;

[paragraph 9.2A(3)(b) amended by Corporation Rules 2003 (Amendment No. 9)]

(b) if the remuneration of the external administrator was determined by the creditors – each creditor who was present, in person or by proxy at the meeting of creditors at which the remuneration was determined;

(c) each member of the company whose shareholding represents at least 10% of the issued capita of the company.

(4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice:

(a) stating the person’s intention to appear at the hearing of the application for review; and

(b) setting out the issues that the person seeks to raise before the Court.

(5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).

(6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served such a notice.

[subrule 9.2A(7) amended by Corporation Rules 2003 (Amendment No. 9)]

(7) The external administrator must file an affidavit stating the following matters:

[paragraph 9.2A(7)(a) amended by Corporation Rules 2003 (Amendment No. 9)]

(a) the matters mentioned in section 60-12 of the Insolvency Practice Schedule (Corporations);

[paragraph 9.2A(7)(b) amended by Corporation Rules 2003 (Amendment No. 9)]

(b) the nature of the work performed or likely to be performed by the external administrator;

[paragraph 9.2A(7)(c) amended by Corporation Rules 2003 (Amendment No. 9)]

(c) the amount of remuneration claimed by the external administrator if that amount is different from the amount of remuneration that has been determined;

[paragraph 9.2A(7)(d) amended by Corporation Rules 2003 (Amendment No. 9)]

(d) a summary of the receipts taken and payments made by the external administrator;

[paragraph 9.2A(7)(e) amended by Corporation Rules 2003 (Amendment No. 9)]

(e) particulars of any objection to the remuneration as determined, of which the external administrator has received notice;

[paragraph 9.2A(7)(f) amended by Corporation Rules 2003 (Amendment No. 9)]

(f) if the external administration is continuing – details of any matters delaying the completion of the external administration.

[subrule 9.2A(8) deleted by Corporation Rules 2003 (Amendment No. 9)]

(8) *****

(9) The plaintiff or applicant must:

(a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and

(b) annex or exhibit to the affidavit a copy of any such notice.”

9.3 Remuneration of provisional liquidator (Insolvency Practice Schedule (Corporations) s 60-16)—Form 16

[rule 9.3 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

[subrule 9.3(1) substituted by Corporation Rules 2003 (Amendment No. 9)]

- (1) This rule applies in relation to an application by a provisional liquidator of a company for a determination under subsection 60-16(1) of the Insolvency Practice Schedule (Corporations) of the remuneration the provisional liquidator is entitled to receive.
- (2) The application must be made by interlocutory process in the winding up proceeding.

[subrule 9.3(3) amended by Corporation Rules 2003 (Amendment No. 9)]

- (3) At least 21 days before filing the interlocutory process seeking the determination, the provisional liquidator must serve a notice in accordance with Form 16 of the provisional liquidator's intention to apply for the determination, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following persons:
 - (a) any liquidator (except the provisional liquidator) of the company;
 - (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (c) each member of the company whose shareholding represents at least 10 per cent of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4):

[paragraph 9.3(5)(a) amended by Corporation Rules 2003 (Amendment No. 9)]

- (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the determination stating:
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
- (b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
- (c) the application may be so dealt with.

[subrule 9.3(6) amended by Corporation Rules 2003 (Amendment No. 9)]

- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the determination:
 - (a) on each creditor or contributory who has given a notice of objection; and
 - (b) on the liquidator (if any).

[subrule 9.3(7) amended by Corporation Rules 2003 (Amendment No. 9)]

- (7) An affidavit in support of the interlocutory process seeking the determination must:

- (a) state the nature of the work performed or likely to be performed by the provisional liquidator; and
- (b) state the amount of remuneration claimed; and
- (c) include a summary of the receipts taken and payments made by the provisional liquidator; and
- (d) state particulars of any objection of which the provisional liquidator has received notice; and
- (e) if the winding up proceeding has not been determined — give details of:
 - (i) any reasons known to the provisional liquidator why the winding up proceeding has not been determined; and
 - (ii) any reasons why the provisional liquidator’s remuneration should be determined before the determination of the winding up proceeding.

[subrule 9.3(8) amended by Corporation Rules 2003 (Amendment No. 9)]

- (8) The affidavit must also provide evidence of the matters mentioned in section 60-12 of the Insolvency Practice Schedule (Corporations):
 - (a) to the extent that they may be relevant to a provisional liquidator; and
 - (b) as if references in that subsection to “external administrator” were references to “provisional liquidator”.

[rule 9.4 deleted by Corporation Rules 2003 (Amendment No. 9)]

9.4 *****

[rule 9.4A deleted by Corporation Rules 2003 (Amendment No. 9)]

9.4A *****

9.5 Remuneration of special manager (s484(2) of the Corporations Act) — Form 16

- (1) This Rule applies to an application by a special manager of the property or business of a company for an order under subsection 484(2) of the Corporations Act fixing the special manager’s remuneration.
- (2) The application must be made by interlocutory process in the winding up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice in accordance with Form 16 of the special manager’s intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following persons:
 - (a) the liquidator of the company;
 - (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (c) each member of the company whose shareholding represents at least 10 per cent of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4):

- (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating:
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
 - (b) the special manager may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and
 - (c) the application may be so dealt with.
- (6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory process seeking the order:
- (a) on each creditor or contributory who has given a notice of objection; and
 - (b) on the liquidator.
- (7) The affidavit in support of the interlocutory process seeking the order must:
- (a) state the nature of the work performed or likely to be performed by the special manager; and
 - (b) state the amount of remuneration claimed; and
 - (c) include a summary of the receipts taken and payments made by the special manager; and
 - (d) state particulars of any objection of which the special manager has received notice; and
 - (e) if the special management is continuing — give details of any matters delaying the completion of the special management.

Division 10 – Winding up generally

10.1 Determination of value of debts or claims (s554A(2) of the Corporations Act)

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

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

10.2 Disclaimer of contract (s568(1A) of the Corporations Act)

- (1) The affidavit in support of an application by a liquidator, under section 568(1A) of the Corporations Act, for leave to disclaim a contract in relation to a company must:
 - (a) specify the persons interested, and their interests, under the contract; and
 - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

10.3 Winding up Part 5.7 bodies (s583, s585 of the Corporations Act) and registered schemes (s601ND of the Corporations Act)

These Rules apply, with any necessary adaptations, and in the same way as they apply to a company, in relation to the winding up of a Part 5.7 body or a registered scheme.

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

[heading substituted by Corporation Rules 2003 (Amendment No. 9)]

11.1 Definition for Division 11

In this Division:

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

11.2 Inquiries, examinations and investigations under paragraph 411(9)(b) or subsection 423(3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)

[rule 11.2 substituted by Corporation Rules 2003 (Amendment No. 9)]

(1) An application for an order for an examination or investigation under subsection 423(3) of the Corporations Act in relation to a controller of property of a corporation may be made by any of the following:

- (a) a person with a financial interest in the administration of the corporation;
- (b) an officer of the corporation;
- (c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
- (d) ASIC.

Note: An application:

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

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

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

- (3) The provisions of this Division that apply to an examination under Division 1 of Part 5.9 of the Corporations Act apply, with any necessary adaptations, to an inquiry, examination or investigation under paragraph 411(9)(b) or subsection 423(3) of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations).

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

- (1) An application for the issue of an examination summons must be made by filing an interlocutory process or an originating process, as the case requires.
- (2) The application may be made without notice to any person.
- (3) The originating process, or interlocutory process, seeking the issue of the examination summons must be:
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft examination summons.
- (4) The originating process, or interlocutory process, and supporting affidavit must be filed in a sealed envelope marked, as appropriate:
 - (a) ‘Application and supporting affidavit for issue of summons for examination under section 596A of the Corporations Act 2001’; or
 - (b) ‘Application and supporting affidavit for issue of summons for examination under section 596B of the Corporations Act 2001’.
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating process, or interlocutory process, and the supporting affidavit.
- (6) If the application is not made by ASIC, ASIC must be given notice of the application and, if required by ASIC, served with a copy of the originating process, or interlocutory process, and the supporting affidavit.
- (7) Unless the Court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by any person.
- (8) An examination summons is to be in accordance with Form 17.

11.4 Service of examination summons

An examination summons issued by the Court must be personally served, or served in any other manner as the Court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

11.5 Discharge of examination summons

- (1) This Rule applies if a person is served with an examination summons.
- (2) Within 3 days after the person is served with the examination summons, the person may apply to the Court for an order discharging the summons by filing:
 - (a) an interlocutory process seeking an order discharging the summons; and
 - (b) an affidavit stating the facts in support of the interlocutory process.
- (3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on:
 - (a) the person who applied for the examination; and
 - (b) unless that person is ASIC or a person authorised by ASIC — ASIC.

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

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

11.7 Authentication of transcript of examination (s597(14) of the Corporations Act)

For the purposes of subsection 597(14) of the Corporations Act, a transcript of an examination may be authenticated:

- (a) by the person, or persons, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or persons, that the record is a true transcript of the record of examination; or
- (b) by any person present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

11.8 Inspection of record or transcript of examination or investigation under s 411 or s 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations)

[rule 11.8 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

[subrule 11.8(1) amended by Corporation Rules 2003 (Amendment No. 9)]

- (1) A written record or transcript of an examination or investigation under section 411 or 423 of the Corporations Act or Subdivision B of Division 90 of the Insolvency Practice Schedule (Corporations) is not available for inspection by any person except:
 - (a) with the consent of the liquidator (if any) or ASIC; or
 - (b) by leave of the Court.
- (2) This Rule does not apply to the liquidator, ASIC or any person authorised by ASIC.

11.9 Entitlement to record or transcript of examination held in public

- (1) This Rule applies if:
 - (a) an examination under section 597 of the Corporations Act is held wholly or partly in public; and
 - (b) a written record or transcript of the examination is filed in the Court.
- (2) The person examined may apply to the Registrar [or other Court officer], within 3 years after the date of completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.
- (3) On receiving an application from a person under subrule (2), and any applicable fee, the Registrar [or other Court officer] must give a copy of the record or transcript to the person.

11.10 Default in relation to examination

- (1) This Rule applies if a person is summoned or ordered by the Court to attend for examination, and:
 - (a) without reasonable cause, the person:
 - (i) fails to attend at the time and place appointed; or

- (ii) fails to attend from day to day until the conclusion of the examination; or
 - (iii) refuses or fails to take an oath or make an affirmation; or
 - (iv) refuses or fails to answer a question that the Court directs the person to answer; or
 - (v) refuses or fails to produce books that the summons requires the person to produce; or
 - (vi) fails to comply with a requirement by the Court to sign a written record of the examination; or
- (b) before the day fixed for the examination, the person who applied for the summons or order satisfies the Court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- (2) The Court may:
- (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
 - (b) make any other orders that the Court thinks just or necessary.

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

- (1) This Rule applies to a person applying for an order under section 598 of the Corporations Act.
- (2) In addition to complying with rules 2.7 and 2.8, the person must serve a copy of the originating process, or interlocutory process, as the case requires, and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

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

Division 11.A Warrants (Corporations Act s486B and Part 5.4B Division 3 Subdivision B)

11A.1 Arrest of Person (Corporations Act s486B) – Form 17A

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

Note Sections 489A to 489E of the Corporations Act, inserted by the Corporations Amendment (Insolvency) Act 2007, apply in relation to a warrant issued on or after 31 December 2007 – See Corporations Act s1481(3).

**Division 12 – Acquisition of shares (Chapter 6 of the Corporations Act)
and Securities (Chapter 7 of the Corporations Act)**

12.1 Service on the ASIC in relation to proceedings under Chapter 6 or 7 of the Corporations Act

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

12.1A Reference to the Court of question of law arising in proceeding before Takeovers Panel (Corporations Act s659A)

Order 50 applies, with any necessary adaptations, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the Court under section 659A of the Corporations Act.

12.1B Notification to Court where proceeding is commenced before end of takeover bid period (Corporations Act s659B)

- (1) This rule applies to a party to a proceeding who suspects or becomes aware that:
 - (a) the proceeding was commenced in relation to a takeover bid, or proposed takeover bid, before the end of the bid period; and
 - (b) the proceeding falls within the definition of **court proceedings in relation to a takeover bid or proposed takeover bid** in subsection 659B(4) of the Corporations Act.
- (2) The party identified in subrule (1) must, immediately on suspecting or becoming aware of the matters mentioned in subrule (1), notify any other party to the proceeding and the Court of that suspicion or knowledge.
- (3) The party must comply with subrule (2), unless any other party to the proceeding has given a notice under this rule to the party.

12.2 Application for summons for appearance of person (s1092(3) of the Corporations Act) — Form 18

- (1) An application for the issue of a summons under subsection 1092(3) of the Corporations Act must be made by filing an originating process or an interlocutory process.
- (2) The application may be made ex parte.
- (3) The originating process, or interlocutory process, seeking the issue of the summons must be:
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft summons.
- (4) Unless the Court otherwise orders, a summons issued under this Rule is to be in accordance with Form 18.

12.3 Application for orders relating to refusal to register transfer or transmission of shares etc (s1094 of the Corporations Act)

As soon as practicable after filing an originating process seeking an order under section 1094 of the Corporations Act, the plaintiff must serve a copy of the originating process and the supporting affidavit on:

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

Division 13 – The futures industry (Chapter 8 of the Corporations Act)

13.1 Appeal against decision of futures exchange or futures association (s1135 of the Corporations Act)

For the purposes of subsection 1135(1) of the Corporations Act, a written notice of appeal against a decision of a futures exchange or futures association must:

- (a) be in the form of an originating process; and
- (b) state whether the whole, or part only, of the decision is complained of and, if part only, identify that part; and
- (c) state concisely the grounds of appeal.

13.2 Proceedings against futures organisation to establish claim against fidelity fund (s1243 of the Corporations Act)

A person who has been given leave by the Court, under subsection 1243(3) of the Corporations Act, to bring a proceeding to establish a claim against the fidelity fund of a futures organisation may bring the claim in the proceeding in which the leave was granted.

Division 14—Appeals authorised by the Corporations Act

[heading substituted by Corporation Rules 2003 (Amendment No. 9)]

14.1 Appeals against acts, omissions or decisions

[rule 14.1 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

- (1) All appeals to the Court authorised by the Corporations Act must be commenced by an originating process, or interlocutory process, stating:
 - (a) the act, omission or decision complained of; and
 - (b) in the case of an appeal against a decision — whether the whole or part only and, if part only, which part of the decision is complained of; and
 - (c) the grounds on which the complaint is based.
- (2) Unless the Corporations Act or the Corporations Regulations otherwise provide, the originating process, or interlocutory process, must be filed within:
 - (a) 21 days after the date of the act, omission or decision appealed against; or
 - (b) any further time allowed by the Court.
- (3) The Court may extend the time for filing the originating process, or interlocutory process, either before or after the time for filing expires and whether or not the application for extension is made before the time expires.
- (4) As soon as practicable after filing the originating process, or interlocutory process, and, in any case, at least 5 days before the date fixed for hearing, the person instituting the appeal must serve a copy of the originating process, or

interlocutory process, and any supporting affidavit, on each person directly affected by the appeal.

- (5) As soon as practicable after being served with a copy of the originating process, or interlocutory process, and any supporting affidavit, a person whose act, omission or decision is being appealed against must file an affidavit:
- (a) stating the basis on which the act, omission or decision was done or made; and
 - (b) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

Division 15 – Proceedings under the ASIC Act

15.1 Reference to Court of question of law arising at hearing of ASIC (s61 of the ASIC Act)

Rule 294 of the Supreme Court Civil Rules 2006 applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by ASIC to the Court under section 61 of the ASIC Act.

15.2 Reference to Court of question of law arising at hearing of Corporations and Securities Panel (s 196 of the ASIC Act)

Rule 294 of the Supreme Court Civil Rules 2006 applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by the Corporations and Securities Panel to the Court under section 196 of the ASIC Act.

15.3 Application for inquiry (s70, s201, s219 of the ASIC Act)

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

Division 15A [proceedings under the Cross-Border Insolvency Act]

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

Unless the Court otherwise orders:

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

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

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

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

Note: The following expressions used in this Division (including in the notes to this Division) are defined in the Model Law as having the following meanings:

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

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

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

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article.

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

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

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

15A.3 Application for recognition

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

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

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

15A.5 Registered liquidator's consent to act

[rule 15A.5 heading substituted by Corporation Rules 2003 (Amendment No. 9)]

If any application is made for an order:

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

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

- (c) be an official liquidator; and
- (d) have filed a Consent to Act, in accordance with Form 19, which specifies an address for service for a person within South Australia.

15A.6 Notice of filing of application for recognition

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

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

- (1) If the Court makes an order for recognition of a foreign proceeding under article 17 of the Model Law, or makes any order under article 19 or 21 of the Model Law, the plaintiff must, as soon as practicable after the order is made, do all of the following:
 - (a) have the order entered;
 - (b) serve a copy of the entered order on the defendant;
 - (c) send a notice of the making of the order in accordance with Form 21 to each person whose claim to be a creditor of the defendant is known to the plaintiff;
 - (d) publish a notice of the making of the order in accordance with Form 21, in a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (2) The Court may direct the plaintiff to publish the notice in accordance with Form 21 in a daily newspaper circulating generally in any State or Territory not described in rule subrule (1)(d).
- (3) If the application for recognition is withdrawn or dismissed, the plaintiff must, as soon as practicable, do all of the following:
 - (a) for a dismissal, have the order of dismissal entered;
 - (b) serve a copy of the entered order of dismissal or notice of the withdrawal, on the defendant;

- (c) send a notice of the dismissal or withdrawal in accordance with Form 22 to each person whose claim to be a creditor of the defendant is known to the plaintiff;
 - (d) publish a notice of the dismissal or withdrawal in accordance with Form 22, in a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (4) The Court may direct the plaintiff to publish the notice in accordance with Form 22 in a daily newspaper circulating generally in any State or Territory not described in subrule (3)(d).

15A.8 Relief after recognition

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

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

- (1) This rule applies to:
- (a) an application under paragraph 4 of article 17 of the Model Law for an order modifying or terminating an order for recognition of a foreign proceeding; and
 - (b) an application under paragraph 3 of article 22 of the Model Law for an order modifying or terminating relief granted under article 19 or 21 of the Model Law.
- (2) An application mentioned in subrule (1) must be made by filing an interlocutory process in accordance with Form 3.
- (3) An interlocutory process for an application under subrule (1) and any supporting affidavit must be served on:
- (a) for an application under paragraph (1)(a) — the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for recognition; and
 - (b) for an application under paragraph (1)(b) — the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for relief under article 19 or 21.
- (4) Unless the Court otherwise orders, a plaintiff who applies for an order under subrule (1) must:
- (a) send a notice of the filing of the application in accordance with Form 23 to each person whose claim to be a creditor of the defendant is known to the plaintiff; and

- (b) publish a notice of the filing of the application in accordance with Form 23, in a daily newspaper circulating generally in the State or Territory where the defendant has its principal, or last known, place of business.
- (5) The Court may direct the applicant to publish the notice in accordance with Form 23 in a daily newspaper circulating generally in any State or Territory not described in subrule (4)(b).
- (6) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

Division 16 – Powers of Masters

16.1 Powers of Masters

A Master may hear and determine any summons brought under these rules, subject to the limitations contained in Rule 15 of the Supreme Court Civil Rules 2006.

16.2 An applicant may, at the time of issuing an originating process or an interlocutory process, or a respondent may, at the time of filing an appearance, file an application, requesting that the matter be heard by a Judge, if it is an application under the following sections of the Corporations Act: 411, 716, 741, 1323, 1324 or 1325.

16.3 Any application brought pursuant to Rule 16.2 hereof shall be dealt with before the substantive application is heard. A Judge before whom such an application is brought may direct that it, or any issue relating to it, be heard by a Master.

Division 17 – Proceedings under the *Federal Courts (State Jurisdiction) Act 1999*

17.1 Form for initiating proceeding

(1) Subject to subrule (2) and any direction of the Court, a proceeding for relief under section 7, 10 or 11 of the *Federal Courts (State Jurisdiction) Act 1999* must be initiated by an originating process.

(2) If:

- (a) in a proceeding, the Federal Court of Australia has made an order for the winding up of a company; and
- (b) the order is an ineffective judgment within the meaning of the *Federal Courts (State Jurisdiction) Act 1999*;

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

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

[Schedule 1 Forms is repealed by Corporations Rules 2003 (Amendment No. 8)]

Schedule 1 Forms

History of amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
1.3(1)	am am5	1 Dec 2008
1.3(2)	am am5	1 Dec 2008
1.4	am am2 am am3 am am7 am am9 del am9	1 Oct 2007 1 May 2008 29 July 2012 23 January 2018 23 January 2018
1.4(2)	ins am9	23 January 2018
1.5	am am5 ins am9	1 Dec 2008 23 January 2018
1.6(b)	am am8	1 September 2015
1.7(1)	am am8	1 September 2015
2.2(4)	ins am2	1 Oct 2007
2.4(2)	am am3	1 May 2008
2.4A(3)(a)	am am3	1 May 2008
2.7(2)	am am2	1 Oct 2007
2.8 heading	am am3	1 May 2008
2.8(1)	am am3	1 May 2008
2.8(2)	am am3	1 May 2008
2.8(3)	am am3 am am4	1 May 2008 1 July 2008
2.8(3) table	am am9 repeal am9 ins am9	23 January 2018 23 January 2018 23 January 2018
2.10 heading	am am3	1 May 2008
2.10(1)	am am3	1 May 2008
2.10(2)	am am3	1 May 2008
2.11	del am7	29 July 2012
2.15	am am3	1 May 2008
3.4(3)(b)	am am7	29 July 2012
3.5 heading	am am3	1 May 2008
3.5(b)	am am3	1 May 2008
Division 4 heading	sub am9	23 January 2018
4.1	am am9	23 January 2018
4.2	ins am9	23 January 2018
5.6	sub am9	23 January 2018
5.6(2)(b)	am am7	29 July 2012
5.10(2)	sub am7	29 July 2012
5.11 heading	sub am9	23 January 2018
5.11(3)	sub am9	23 January 2018
5.11(4)	sub am7 sub am9	29 July 2012 23 January 2018
Div 6 note	ins am9	23 January 2018
6.2 heading	sub am9	23 January 2018
6.2(2)(a)	am am3	1 May 2008
6.2(3)	sub am9	23 January 2018

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
6.2(4)	sub am7 sub am9	29 July 2012 23 January 2018
7.1	del am9	23 January 2018
7.1(1)	am am3	1 May 2008
7.2	sub am9	23 January 2018
7.2(2)(a)	am am3	1 May 2008
7.3(1A)	ins am9	23 January 2018
7.3(4)	sub am9	23 January 2018
7.5(1)(b)	am am3	1 May 2008
7.5(3)(e)	am am3 sub am9	1 May 2008 23 January 2018
7.5(3)(g)(i)	am am3	1 May 2008
7.5(3)(h)	am am3	1 May 2008
7.7(2)(c)	am am3	1 May 2008
7.7(3)	am am3	1 May 2008
7.9(3)	sub am7	29 July 2012
7.11	sub am9	23 January 2018
7.11(2)	am am3	1 May 2008
7.11(4)	am am3	1 May 2008
9.1(1) notes	am am3	1 May 2008
9.1(6)	sub am3	1 May 2008
9.2	sub am3 sub am9	1 May 2008 23 January 2018
9.2(2)(d)	am am4	1 July 2008
9.2A heading	sub am9	23 January 2018
9.2A	ins am3	1 May 2008
9.2A(1)	sub am9	23 January 2018
9.2A(2)	del am9	23 January 2018
9.2A(3)(a)	am am9	23 January 2018
9.2A(3)(b)	am am9	23 January 2018
9.2A(7)	am am9	23 January 2018
9.2A(7)(a)	am am9	23 January 2018
9.2A(7)(b)	am am9	23 January 2018
9.2A(7)(c)	am am9	23 January 2018
9.2A(7)(d)	am am9	23 January 2018
9.2A(7)(e)	am am9	23 January 2018
9.2A(7)(f)	am am9	23 January 2018
9.2A(8)	del am9	23 January 2018
9.3 heading	sub am9	23 January 2018
9.3(1)	sub am9	23 January 2018
9.3(3)	am am9	23 January 2018
9.3(5)(a)	am am9	23 January 2018
9.3(6)	am am9	23 January 2018
9.3(7)	am am9	23 January 2018
9.3(7)(a)	am am3	1 May 2008
9.3(7)(c)	am am3	1 May 2008
9.3(8)	ins am 3 am am4 am am9	1 May 2008 1 July 2008 23 January 2018
9.3(8)(b)	am am9	23 January 2018

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
9.4	del am9	23 January 2018
9.4 heading	sub am3	1 May 2008
9.4(1)	am am3	1 May 2008
9.4(1) note	ins am3	1 May 2008
9.4(3)(a)	am am3	1 May 2008
9.4(3)(c)	sub am3	1 May 2008
9.4(3)(d)	ins am3	1 May 2008
9.4(7)	sub am3	1 May 2008
9.4A	ins am3	1 May 2008
9.5	del am9	23 January 2018
9.5(7)(a)	am am3	1 May 2008
9.5(7)(c)	am am3	1 May 2008
Div 11 heading	sub am9	23 January 2018
11.2	sub am9	23 January 2018
11.2(1)(a)	am am3	1 May 2008
11.2(1)(b)	am am3	1 May 2008
11.3(6)	am am3	1 May 2008
11.5(3)(b)	am am3	1 May 2008
11.8 heading	sub am9	23 January 2018
11.8(1)(a)	am am3 am am9	1 May 2008 23 January 2018
11.8(2)	am am3	1 May 2008
11.11(2) note	am am3	1 May 2008
11A	ins am3	1 May 2008
12.1 heading	am am3	1 May 2008
12.1	am am3	1 May 2008
12.1A	ins am2	1 Oct 2007
12.1B	ins am2	1 Oct 2007
Div 14 heading	sub am9	23 January 2018
14.1	sub am9	23 January 2018
15.1 heading	am am3	1 May 2008
15.1	am am1 am am3	4 Sept 2006 1 May 2008
15.2	am am1	4 Sept 2006
15A	ins am5	1 Dec 2008
15A.5	sub am6 sub am9	1 Jul 2010 23 January 2018
15A.6(1)(b)	am am7	29 July 2012
15A.6(2)	am am7	29 July 2012
15A.7(1)(d)	am am7	29 July 2012
15A.7(2)	am am7	29 July 2012
15A.7(3)(d)	am am7	29 July 2012
15A.9(4)(b)	am am7	29 July 2012
15A.9(5)	am am7	29 July 2012
16.1	am am1	4 Sept 2006
Schedule 1 Forms	Repealed am8	1 September 2015
Form 1	am am2	1 Oct 2007
Form 2	am am5	1 Dec 2008

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
Form 3	subs am2 am am5	1 Oct 2007 1 Dec 2008
Form 5	am am3	1 May 2008
Form 8	am am3	1 May 2008
Form 9	am am2 am am7	1 Oct 2007 29 July 2012
Form 10	am am2	1 Oct 2007
Form 11	am am2	1 Oct 2007
Form 12	am am2	1 Oct 2007
Form 15	am am2	1 Oct 2007
Form 16	am am2	1 Oct 2007
Form 16A	ins am3	1 May 2008
Form 17A	ins am3	1 May 2008
Form 19	ins am5	1 Dec 2008
Form 20	ins am5	1 Dec 2008
Form 21	ins am5	1 Dec 2008
Form 22	ins am5	1 Dec 2008
Form 23	ins am5	1 Dec 2008