CHAPTER 308

COMPANIES

COMPANIES (WINDING-UP) RULES*

S.I. 74/1975
S.I. 109/1975
S.I. 18/1996
S.I. 93/2010

(SECTION 174)

[Commencement 1st October, 1975]

Preliminary

Citation.

1. These Rules may be cited as the Companies (Winding-up) Rules.

Interpretation.

2. In these Rules, unless the context or subject matter otherwise requires —

"the Act" means the Companies Act; Ch. 308.

"Appendix" means the Appendix to the English Companies (Winding-up) Rules, 1949; *(S.I. 1949 No. 330 of the U.K.)*

"company" means a company which is being wound up and includes an international business company; *S.I. 93/2010.*

"Judge" means a Justice of the Supreme Court;

"liquidator" means Official Liquidator as referred to in the Act;

"prescribed" in relation to fees or charges means prescribed by the Rules of the Supreme Court;

"proceedings" means the proceedings in the winding-up of a company under the Act;

"Registrar" means the Registrar of the Supreme Court and includes an Assistant Registrar;

"the Rules" means these Rules, and includes the Forms prescribed by the English Companies (Winding-up) Rules, 1949, subject to such modifications, omissions and alterations as to names, localities, courts, officers, persons, and

* Subsidiary Legislation under the Companies Act, 1866.

otherwise as may be necessary to make them applicable to the circumstances of The Bahamas and the particular case, but only in so far as such Forms are within the meaning of, and not inconsistent with, the provisions of the Act;

"sealed" means sealed with the seal of the Supreme Court;

"Taxing Officer" means the Registrar.

(2) Wherever a Form is referred to in these Rules it shall mean a Form contained in the Appendix and shall be construed as hereinbefore mentioned.

Application of Rules.

3. Subject to the limitations hereinafter mentioned, these Rules shall apply to the proceedings in every winding-up by the Court and also (unless the context or subject matter otherwise requires) to every winding-up subject to the supervision of the Court which shall commence on and after the date on which these Rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date in the winding-up of a company by or under the supervision of the Court which commenced on or after the 26th day of October, 1953.

S.I. 109/1975.

Courts and Chambers

Matters in Supreme Court to be heard in Court and Chambers.

4. (1) The following matters and applications in the Supreme Court shall be heard in open court —

(a) petitions;

(b) applications for the committal of any person to prison for contempt;

(c) such matters and applications as the Judge may from time to time by any general or special order direct to be heard in open court.

(2) Examinations of persons summoned before the Supreme Court under section 115 of the Act shall be held in Court or in Chambers as the Court shall direct.

(3) Every other matter or application in the Supreme Court under the Act to which the Rules apply may be heard and determined in Chambers.

Applications in Chambers.

5. Subject to the provisions of the Act and Rules —

(1) the Registrar may under the general or special directions of the Judge hear and determine any

application or matter which under the Act and Rules may be heard and determined in Chambers;

(2) any matter or application before the Registrar may at any time be adjourned by him to be heard before the Judge either in Chambers or in Court;

(3) any matter of application may, if the Judge or, as the case may be, the Registrar, thinks fit, be adjourned from Chambers to Court or from Court to Chambers.

Motions and summonses. Form 1.

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

(2) Every application in Chambers shall be made by summons, which, unless otherwise ordered, shall be served on every person against whom an order is sought, and shall require the person or persons to whom the summons is addressed to attend at the time and place named in the summons.

Proceedings

Title of proceedings.

Forms 2 & 3.

7. Every proceeding shall be dated, and shall, with any necessary additions, be instituted in the matter of the company to which it relates and in the matter of the Companies Act, and otherwise as in Form 2 or 3, whichever is appropriate. Numbers and dates may be denoted by figures.

Written or printed proceedings.

8. All proceedings shall be written or printed, or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts; but no objection shall be allowed to any proof or affidavit on account only of its being written or printed on paper of other size.

Process to be sealed.

9. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court) and office copies in any proceedings shall be sealed.

Issue of summonses.

10. Every summons in proceedings in the Court shall be prepared by the applicant or his attorney and issued

from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's Office a duplicate which shall be stamped with the appropriate stamp and filed.

Orders.

11. Every order, whether made in Court or in Chambers, shall be drawn up by the applicant, unless in any proceeding, or classes of proceedings, the Judge or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge or the Registrar making the order, shall be sufficient evidence of the order having been made.

Certified copies.

12. All certified copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be stamped or sealed and delivered out without any unnecessary delay, and in the order in which they have been bespoken.

Inspection of file.

13. Every person who has been a director or officer of a Company which is being wound-up shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of the prescribed fee, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or be furnished with such copies or extracts on payment of the prescribed fee.

Service of Process and Enforcement of Orders

Service by post.

14. All notices, summonses, and other documents other than those of which personal service is required, may be sent by prepaid post letter to the last known address or post office box of the person to be served therewith; and the notice, summons or document shall be considered as served at the time that the same ought to be delivered in the ordinary course of post by the post office, and notwithstanding the same may be returned to the post office.

Validity of service.

15. No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the person's name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

Enforcement of Orders.

16. Every order of the Court made in the exercise of the powers conferred by the Act and Rules, may be enforced by the Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

Petition

Form of petitions. Forms 4 & 5.

17. Every petition shall be in the Form No. 4 or 5 in the Appendix.

Presentation of petition.

18. A petition shall be presented at the office or chambers of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the Registrar may, at any time before the petition has been advertised, alter the time appointed and fix another time.

Advertisement of petition. Forms 6 & 6a.

19. Every petition shall be advertised seven clear days before the hearing as follows —

(1) Once at least in the *Gazette* and once at least in one newspaper of general circulation published in New Providence and in such other newspaper (if any) as the Court may direct.

(2) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his attorney, and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his attorney, within the time and manner prescribed by rule 25, and an advertisement of a petition for the winding-up of a company by the Court which does not contain such a notice shall be deemed irregular.

And if the petitioner or his attorney does not within the time hereby prescribed, or within such extended time as the Registrar may allow, duly advertise the petition in the manner prescribed by this rule, the appointment of the

time and place at which the petition is to be heard shall be cancelled by the Registrar and the petition shall be removed from the file, unless the Judge or the Registrar shall otherwise direct.

Service of petition. Forms 7 & 9.

20. Every petition shall, unless presented by the Company, be served upon the Company at the registered office, if any, of the Company, and if there is no registered office, then at the principal or last known principal place of business of the Company, if any such can be found, by leaving a copy with any member, officer or servant of the Company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the Company as the Court may direct.

Copy of petition to be served upon the Central Bank. *S.I. 18/1996.* Ch. 316.

20A. A copy of every petition for the winding up of a bank or trust company being a licensee under the Banks and Trust Companies Regulation Act shall be served by the petitioner or his attorney upon the Central Bank of The Bahamas ("the Central Bank") and the Central Bank shall be entitled to intervene in the proceedings where, in the opinion of the Central Bank, the public interest is at risk.

Verification of petition. Forms 9 & 10.

21. Every petition shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a corporation, by some person who has been concerned 1n the matter on behalf of the corporation, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Copy of petition to be furnished to creditor or contributory.

22. Every contributory, or in the case of a petition for the winding-up of a company every creditor, of the Company shall be entitled to be furnished by the attorney of the petitioner with a copy of the petition within 24 hours after requiring same, on paying the prescribed charge for such copy.

Provisional Liquidator

Appointment of provisional liquidator. Form 11.

23. (1) After the presentation of a petition for the winding-up of a company by the Court, upon the application of a creditor, or of a contributory, or of the Company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the Court, if it thinks fit, and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment, and such appointment may be made *ex parte* in cases of urgency.

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

(3) Subject to any order of the Court, if no order for the winding-up of the Company is made upon the petition, or if an order for the winding-up of the Company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding-up of the Company subject to the supervision of the Court, the Provisional Liquidator shall be entitled to be paid, out of the property of the Company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, and may retain out of such property the amounts of such costs, charges, and expenses.

Hearing of Petition and Orders Made thereon

Attendance before hearing to show compliance with Rules.

24. After a petition has been presented, the petitioner or his attorney shall, on a day to be appointed by the Registrar, attend before the Registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein, and the affidavit of service (if any), have been duly filed, and that the provisions of the Rules as to petitions have been duly complied with by the petitioner. No order shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed, and satisfied him in manner required by this Rule.

Notice by Persons who intend to Appear.

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

(2) The notice shall contain the address of the person intending to appear, shall be signed by him (or by his attorney) and shall otherwise be in Form No. 12 with such variations as circumstances may require.

Form 12.

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

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

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

(6) For the purposes of this rule "the day before the hearing" means the day before the day appointed for the hearing of the petition, and a Friday shall be regarded as the day before the following Monday.

List of names and addresses of persons who appear on the petition. Form 13.

26. The Petitioner, or his attorney shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective attorneys; such list shall be in Form 13. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his attorney to the Court prior to the hearing of the petition.

Affidavits in opposition and reply.

27. (1) Affidavits in opposition to a petition shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his attorney, on the day on which the affidavit if filed.

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

Substitution of creditor or contributory for withdrawing petitioner.

28. When a petitioner for an order that a company be wound up by the Court or subject of the supervision of the Court is not entitled to present a petition, or whether so entitled or not, where he (1) fails to advertise his petition within the time prescribed by these Rules or such extended time as the Registrar may allow or (2) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or (3) if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court would have a right to present a petition, and who is desirous of prosecuting the petition. An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by these Rules or consents to withdraw his petition, be made in Chambers at any time.

Order to Wind Up a Company

Proceedings on Order. Form 11.

29. A copy of every order for winding up a Company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the Chambers of the Judge, within ten days after the same shall have been passed and entered, and in default thereof the Judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the Company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the Judge thinks fit, be fixed for the appointment of a Liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

Transmission and advertisement of winding-up order. Forms 17, 18 & 103(1).

30. (1) When an order that a Company be wound up, or for the appointment of a Provisional Liquidator has been made, the petitioner or his attorney shall cause a sealed copy of the order to be served upon the Company by prepaid letter addressed to it at its registered office (if any) or post office box, or, if there is no registered office, at its principal place of business or post office box or upon such other person or persons, or in such other manner as the Court may direct, and if the order is that the Company be wound up by the Court, shall within 12 days forward to the Registrar General a copy of the order, and shall within 21 days cause notice of the order to be gazetted.

(2) An order for the winding-up of a Company subject to the supervision of the Court shall before the expiration of 12 days from the date thereof be advertised by the petitioner, once in the *Gazette*, and shall be served on such persons (if any) and in such manner as the Court shall direct.

Appointment of Liquidator in a Winding-up by the Court

Appointment of liquidator. Forms 23, 24, 25, 103(7) & (8).

31. The Judge may appoint a person to the office of Liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of a Liquidator and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

(2) When a time and place are fixed for the appointment of a Liquidator such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within 14 days and not less than 7 days before the date so fixed.

(3) Every appointment of a Liquidator shall be advertised in such manner as the Judge shall direct, immediately after he has been appointed, and has given security, if required to do so.

(4) When the Judge shall direct a meeting of the creditors or contributories of the Company to be summoned under section 91 or 149 of the Act, the Registrar shall give notice in writing 7 clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the Judge desires to

ascertain the wishes of the creditors or contributories; or, if the Judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *Gazette*.

(5) The votes of the creditors or contributories of the Company at any meeting summoned by the direction of the Judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the Company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the Company.

(6) The direction of the Judge for any meeting of creditors or contributories under section 91 or 149 of the Act, and the appointment of a person to act as Chairman of any such meeting, shall be testified by a memorandum signed by the Registrar.

(7) As soon as possible after the first meetings of creditors and contributories have been held the Chairman of the meeting shall report the result of each meeting to the Court.

(8) Upon the result of the meetings of creditors and contributories being reported to the court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences, and making such order as shall be necessary.

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

(10) Upon the consideration of the resolutions and determinations of the meetings the Court shall hear the Registrar and any creditor or contributory.

(11) If a Liquidator is appointed the Registrar shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the Company.

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

(13) In case of the death, removal, or resignation of a Liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same.

Direction or Sanction of the Judge

Compromise.

32. Every application for the sanction of the Judge to a Company with any contributory or other person indebted to the Company, shall be supported by the affidavit of the Liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the Company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum, signed by the Registrar, on the agreement of compromise, unless any party shall desire to appeal from the decision of the Judge, in which case an order shall be drawn up for that purpose.

Other cases.

33. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the Liquidator shall be obtained upon summons, and an order shall be drawn up thereon, unless the Judge shall otherwise direct.

Security by Liquidator in a Winding-up by the Court

Standing Security to Registrar. Form 26.

34. The following provisions as to security by a Liquidator shall have effect, namely —

(1) The security shall be given to such officers or persons and in such manner as the Registrar may from time to time direct.

(2) It shall not be necessary that security shall be given in each separate winding-up; but security may be given either specially in a particular winding-up, or generally, to be available for any winding-up in which the person giving security may be appointed as Liquidator.

(3) The Registrar shall fix the amount and nature of such security, and may from time to time, as he thinks fit, either increase or diminish the amount of special or general security which any person has given.

(4) The cost of furnishing the required security by the Liquidator, including any premiums which he may pay to a Guarantee Society, Bank or other such institution, shall be borne by him personally, or if the Court so determines, shall be charged against the assets of the Company as an expense incurred in the winding-up.

Failure to keep or give up security.

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

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

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

Proceedings by or against Directors, Promoters and Officers

Applications by or against delinquent Directors, Officers and Promoters.

36. (1) An application made to the Court under section 166 of the Act shall be made by a summons returnable in the first instance in Chambers. The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, and, unless otherwise ordered, shall be served, in the manner in which an originating summons is required by the Rules of the Supreme Court to be served, on every person against whom an order is sought, not less than fourteen days before the day named in the summons for hearing the application. No affidavit shall be filed before the return of the summons.

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

(3) Where any such order as is mentioned in paragraph (2) of this Rule has directed that points of claim and defence shall be delivered then, if subsequently to such order and before the summons has been set down for trial or adjourned to the Judge, either party wishes to apply for any further direction as to any interlocutory matter or thing he shall give two clear days' notice in writing to the other party stating the grounds of the application. A copy of such notice shall be filed with the Registrar two clear days before the day for which the summons is restored.

Collection and Distribution of Assets in a Winding-up by the Court

Collection and distribution of Company's assets by Liquidator.

37. (1) The duties imposed on the Court by section 98 of the Act in a winding-up by the Court with regard to the collection of the assets of the Company, and the application of the assets in discharge of the Company's liabilities, shall be discharged by the Liquidator as an officer of the Court, subject to the control of the Court.

(2) For the purpose of the discharge by the Liquidator of the duties imposed by section 98 of the Act, and paragraph (1) of this Rule, the Liquidator in a winding-up by the Court shall, for the purpose of acquiring or retaining possession of the property of the Company, be in the same position as if he were a Receiver of the property appointed by the Supreme Court, and the Court may on his application enforce such acquisition or retention accordingly.

Power of Liquidator to require delivery of property. Form 37.

38. The powers conferred on the Court by section 100 of the Act shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a

Company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled.

List of Contributories in a Winding-up by the Court

Liquidator to settle list of Contributories. Form 38.

39. Unless the Court shall dispense with the settlement of a list of contributories, the Liquidator shall with all convenient speed after his appointment settle a list of contributories of the Company, and shall appoint a time and place for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest, and shall distinguish the several classes of contributories. As regards representative contributories the Liquidator shall, so far as practicable, observe the requirements of section 99 of the Act.

Appointment of time and place for Settlement of List. Forms 39 and 40.

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

Settlement of List of Contributories. Form 41.

41. On the day appointed for settlement of the list of contributories the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when settled shall be the list of contributories of the Company.

Notice to Contributories. Forms 42 and 43.

42. The Liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list, and what amount has been called up, and what amount paid up in respect of such shares or interest, and in the

notice he shall inform such person that any application for the removal of his name from the list, or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.

Applications to the Court to vary the list. Form 44.

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

Variation of or addition to List of Contributories. Form 45.

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

Calls

Calls by liquidator. Forms 46, 47 and 48.

45. The powers and duties of the Court in relation to making calls upon contributories conferred by section 102 of the Act, shall and may be exercised, in a winding-up by the Court, by the Liquidator as an officer of the Court, provided he first obtains the leave of the Court.

Application to the Court for leave to make a call. Forms 49 and 52.

46. In a winding-up by the Court, an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorised by the Act, shall be made by summons stating the proposed amount of such call, which summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Document making a call.

Form 53.

47. When the Liquidator is authorised by resolution or order to make a call on the contributories he shall file with the Registrar a document making the call in the Form 53 in the Appendix.

Service of notice of a call. Forms 48, 52, 54 and 55.

48. When a call has been made by the Liquidator in a winding-up by the Court, a copy of the order of the Court (if any), shall forthwith, after the call has been made, be served upon each of the contributories included in such call, together with a notice from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such order need not be advertised unless, for any special reason, the Court so directs.

Enforcement of calls. Forms 56, 57 and 58.

49. The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers on summons by the Liquidator.

Proofs

Proof of Debt.

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

Mode of Proof.

51. A debt may be proved in any winding-up by delivering or sending through the post to the Liquidator an affidavit verifying the debt.

Verification of Proof.

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

Contents of Proof. Form 59.

53. An affidavit providing a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Liquidator to whom the proof is sent may at any time call for the production of the vouchers.

Statement of security.

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

Proof before whom sworn.

55. An affidavit proving a debt may in a winding-up by the Court be sworn before the Registrar.

Costs of Proof.

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

Discount.

57. A creditor proving his debt shall deduct therefrom (a) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim and (b) all trade discounts.

Periodical Payments.

58. When any rent or other payment falls due at stated periods, and the order to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for the proportionate part thereof up to the date of the winding-up order as if the rent or payment grew due from day to day. Provided that where the Liquidator remains in occupation of premises demised to a Company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the Company, or the Liquidator, or rent during the period of the Company's or the Liquidator's occupation.

Production of bills of Exchange and Promissory Notes.

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

Admission and Rejection of Proofs and Preferential Claims and Appeal to the Court

Notice to creditors to prove.

60. (1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator, in any winding-up may from time to time fix a certain day, which shall not be less than twenty-eight days from the date of the notice, on or before which the creditors of the Company are to prove their debts or claims, and to establish any title they may have to priority under section 159 of the Act, or to be excluded from the benefit of any distribution made before such debts are proved, or as the case may be from objecting to such distribution.

(2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and to any person who, to his knowledge, claims to be a creditor of the Company, and whose claim has not been admitted, by sending the notice to the last known address or place of abode of such person.

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

Examination of Proof. Form 61.

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

Appeal by Creditor.

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

Expunging at instance of Liquidator.

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

Expunging at instance of Creditor.

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

Proofs to be filed. Form 62.

65. Every Liquidator in a winding-up shall on the first day of every six-month period, file with the Registrar a certified list of all proofs, if any, received by him during the six months next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.

Procedure where Creditor appeals.

66. The Liquidator in a winding-up, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

Time for dealing with Proofs by Liquidator.

67. Subject to the power of the Court to extend the time, the Liquidator in a winding-up, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it:

Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision rejecting a proof wholly or in part, to the creditors affected thereby. Where a creditor's proof has been admitted the notice of dividend shall be sufficient notification of the admission.

Dividends in a Winding-up by the Court

Dividends to creditors. Forms 63 to 68 and 103(4) & (5).

68. (1) Not more than two months before declaring a dividend the Liquidator in a winding-up, shall give notice of his intention to do so to the Registrar and shall cause such notice to be gazetted, and shall at the same time give notice to such of the creditors known to him as have not proved their debts; such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than twenty-eight days from the date of such notice.

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within twenty-eight days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this Rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this Rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Registrar (and shall cause the same to be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4) If it becomes necessary, in the opinion of the Liquidator to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Registrar and shall cause the same to be gazetted: but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors known to him as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(5) Upon the declaration of a dividend the Liquidator shall forthwith transmit to the Registrar a list of the proofs filed with the Registrar under Rule 65, which list shall be in the Form 66 or 67 in the Appendix as the case may be. Forms 66 and 67.

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

(7) If a person to whom dividends are payable desires that they shall be paid to some other person he may lodge with the Liquidator a document in the Form 68 in the Appendix which shall be a sufficient authority for payment of the dividend to the person therein named.

Return of Capital to Contributories. Forms 69, 70 and 103(6).

69. Every order by which the Liquidator in a winding-up is authorised to make a return to contributories of the Company shall, unless the Court shall otherwise direct, contain or have appended thereto a Schedule or List (which the Liquidator shall prepare), setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made, or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories, and such other information as may be requisite to enable the return to be made. The Schedule or List shall be in the Form 70 in the Appendix with such variations as circumstances shall require, and the Liquidator shall send a notice of return to each contributory. Form 70, Sch.

Proxies in relation to a Winding-up

Proxies.

70. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised to

represent a corporation at any meeting of creditors or contributories such person shall produce to the Liquidator a copy of the resolution so authorising him. Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the corporation. The succeeding Rules as to proxies shall not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

Form of Proxies. Forms 80 & 81.

71. Every instrument of proxy shall be in accordance with the appropriate form in the Appendix.

Forms of Proxy to be sent with notices.

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

General Proxies.

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

Special Proxies.

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

(a) for or against the appointment or continuance in office of any specified person as Liquidator; and

(b) on all questions relating to any matter other than those above referred to and arising at the meeting or on adjournment thereof.

Solicitation by Liquidator to obtain Proxies.

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

Proxies to Liquidator.

76. A creditor or a contributory in a winding-up may appoint the Liquidator as his general or special proxy.

Proxies. Forms 80 & 81.

77. (1) In every case a proxy shall be lodged with the Liquidator in a winding-up, not later than four o'clock in

the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

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

Use of Proxies by Deputy. Form 78.

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

Filling in where Creditor blind or incapable.

79. The proxy of a creditor blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence:

Provided that such witness shall have certified at the foot of the proxy that all insertions have been made at the request and in the presence of the creditor before he attached his signature or mark.

Attendance and Appearance of Parties

Attendance at proceedings.

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

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

Liquidator

Dealings with assets.

81. The Liquidator shall not, while acting as Liquidator, except by leave of the Court, either directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, become purchaser of any part of the Company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of any creditor or contributory in any winding-up, and the Court may make such order as to costs as the Court shall think fit.

Restriction on purchase of goods by Liquidator.

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

Cost of obtaining sanction of court.

83. In any case in which the sanction of the Court is obtained under the last preceding Rule, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the Company's assets.

Investment of Funds

Investment of assets in securities and realisation of securities. Forms 84 & 85.

84. In any winding-up, if a case has in the opinion of the Liquidator arisen for an investment of funds of the Company or a sale of securities in which the Company's funds have been vested, the Liquidator may invest the funds on deposit at interest with a bank or otherwise, or sell the whole or any part of the said funds and securities.

Accounts and Audit in a Winding-up by the Court

Liquidator carrying on business. Forms 88 & 89.

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

(2) The trading account shall from time to time, and not less than once in every six months, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Registrar.

Summary of accounts.

86. (1) The Liquidator shall prepare a summary of the accounts of a Company at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months until his release, and shall, subject to any dispensation granted by the Court send a printed copy of that summary by post to every creditor and contributory.

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

Expenses of Sales.

87. Where property forming part of a Company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

Release and Resignation of Liquidator in a Winding-up by the Court

Release of Liquidators.

88. (1) When the Liquidator of a Company which is being wound up has realised all the property of the Company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the Court, or has resigned, or has been removed from his office, the Court shall, on his application, take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the Liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a Liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the Liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the Liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the Company or otherwise in relation to his conduct as Liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the Liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Proceedings for the release of Liquidator. Forms 98 to 100 & 103(9).

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

(2) When the Court has granted to a Liquidator his release, a notice of the order granting the release shall be gazetted.

Proceedings on resignation, etc., of Liquidator.

90. (1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Registrar or, as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of Liquidator. The release of a Liquidator shall not take effect unless and until he has delivered over to the Registrar or, as the case may be, to the new Liquidator, all the books, documents, papers and accounts which he is by this Rule required to deliver on his release.

Disposal of Books

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

Taxation of Costs

Taxation of costs payable by or to Registrar or Liquidator or by Company.

91. Every attorney, manager, accountant, auctioneer, broker or other person employed by a Liquidator in a winding-up shall, on request by the Liquidator (to be made a sufficient time before the declaration of a dividend), deliver his bill of costs or charges to the Liquidator for the

purpose of taxation and, if he fails to do so within the time stated in the request, or such extended time as the Court may allow, the Liquidator shall declare and distribute the dividend without regard to such person's claim, and subject to any order of the Court the claim shall be forfeited. The request by the Liquidator shall be in Form No. 90 in the Appendix. Form 90.

Notice of Appointment.

92. Where a bill of costs or charges in any winding-up has been lodged with the Taxing Officer, he shall give notice of an appointment to take the same to the person to or by whom the bill or charges is or are to be paid, as the case may be.

Notice of Appointment.

93. The bill or charges, if incurred in a winding-up by the Court prior to the appointment of a Liquidator, shall be lodged with the Registrar, and if incurred after the appointment of a Liquidator, shall be lodged with the Liquidator. The Liquidator shall lodge the bill or charges with the Taxing Officer.

Lodgement of Bill.

94. Every person whose bill or charges is or are to be taxed shall, on application either of the Registrar or the Liquidator, furnish a copy of his bill or charges so to be taxed.

Copy of the Bill to be furnished.

95. Where any party to, or person affected by, any proceeding desires to make application for an order that he be allowed his costs, or any part of them, incidental to such proceedings, and such application is not made at the time of the proceeding —

(1) Such party or person shall serve notice of his intended application to the Liquidator.

(2) The Liquidator may appear on such application and object thereto.

(3) No costs of or incidental to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Applications for Taxation.

96. (1) Except as otherwise provided in the Act or in the Rules, every bill of costs, charges or expenses shall be taxed as if it were a bill of costs arising out of proceedings in or before the Court under its ordinary jurisdiction:

Provided that, if the judge sees fit he may fix a gross sum in lieu of taxed costs.

(2) Upon taxation being completed the Registrar shall issue to the person presenting the bill for taxation a certificate of taxation.

Certificate of Employment.

97. Where the bill or charges of any attorney, manager, accountant, auctioneer, broker or other person employed by a Liquidator, is or are payable out of the assets of the Company, a certificate in writing, signed by the Liquidator, shall on the taxation be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to.

Certificate of Employment.

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

First — The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court.

Next — The necessary disbursements of any Liquidator appointed in the winding-up by the Court, other than expenses properly incurred in preserving, realising or getting in the assets heretofore provided for.

Next — The costs of any person properly employed by any such Liquidator.

Next — The remuneration of any such Liquidator.

(2) No payments in respect of bills of costs, charges or expenses of attorneys, managers, accountants, auctioneers, brokers or other persons, other than payments for costs, charges or expenses fixed or allowed by the Court under the Act or the Rules, shall be allowed out of the assets of the Company unless they have been duly taxed and allowed by the Taxing Officer. The Taxing Officer shall, before passing the bill of costs, charges or expenses of an attorney satisfy himself that the appointment of an attorney to assist the Liquidator in the performance of his duties has been duly sanctioned.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against a Company which is being wound up by the Court, are ordered by the Judge to be paid by the Company or the Liquidator, or the rights of the person to whom such costs are payable.

Miscellaneous Matters

Enlargement or Abridgement of Time.

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

Formal Defect not to Invalidate Proceedings.

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

(2) No defect or irregularity in the appointment or election of a Liquidator shall vitiate any act done by him in good faith.

Application of Existing Procedure.

101. In all proceedings in or before the Court, or any Judge, Registrar or Officer thereof, or over which the Court has jurisdiction under the Act and Rules, where no other provision is made by the Act or Rules, the practice, procedure and regulations shall, unless the Court otherwise in any special case directs, be in accordance with the Rules and practice of the Supreme Court.

SCHEDULE *S.I. 93/2010.*

COURT FEES

COMMERCIAL DIVISION

Petitions for the winding-up of Companies $ 1,000.00.