

## **INSOLVENCY ORDER, 2016**

**(S 1/2016)**

### **INSOLVENCY (WINDING UP) RULES, 2018**

#### **ARRANGEMENT OF RULES**

##### **Rule**

##### **PRELIMINARY**

1. Citation and application
2. Interpretation

##### **COURT AND CHAMBERS**

3. Office of Registrar in Court
4. Matters in Court to be heard in Court and chambers
5. Applications in chambers
6. Motions and summonses

##### **PROCEEDINGS**

7. Times for holding Court
8. Title of proceedings
9. Written or printed proceedings
10. Process to be sealed
11. Issue of summonses
12. Orders

13. File of proceedings in office of Registrar
14. Office copies
15. Inspection of file
16. Use of file by Official Receiver
17. Defacement of stamps

#### SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS

18. Duties of bailiff
19. Mode of service
20. Enforcement of judgments or orders

#### PETITION

21. Form of petition
22. Presentation of petition
23. Advertisement of petition
24. Service of petition
25. Verification of petition
26. Copy of petition to be furnished to creditor or contributory

#### PROVISIONAL LIQUIDATOR

27. Appointment of provisional liquidator

#### HEARING OF PETITIONS AND ORDERS MADE THEREON

28. Attendance before hearing to show compliance with Rules
29. Notice by persons who intend to appear
30. List of names and addresses of persons who appear on petition
31. Affidavits in opposition and reply
32. Substitution of creditor or contributory for withdrawing petitioner

## ORDER TO WIND UP COMPANY

- 33. Notice that winding up order has been pronounced to be given to Official Receiver
- 34. Drawing up and contents of winding up order
- 35. Transmission and advertisement of winding up order

## STATEMENT OF AFFAIRS

- 36. Preparation of statement of affairs
- 37. Extension of time for submitting statement of affairs
- 38. Information subsequent to statement of affairs
- 39. Default
- 40. Expenses of statement of affairs
- 41. Dispensing with statement of affairs

## APPOINTMENT OF LIQUIDATOR IN WINDING UP BY COURT

- 42. Appointment of liquidator of report of meetings of creditors and contributories

## NOTICE OF APPOINTMENT OF LIQUIDATOR

- 43. Notice of appointment of liquidator

## SECURITY BY LIQUIDATOR IN WINDING UP BY COURT

- 44. Security to satisfaction of Official Receiver
- 45. Failure to give or keep up security

## PUBLIC EXAMINATION

- 46. Report of Official Receiver to be filed

- 47. Appointment of time for consideration of report
- 48. Consideration of report
- 49. Order for public examination
- 50. Application for day for holding examination
- 51. Appointment of time and place for public examination
- 52. Notice of public examination to creditors and contributories
- 53. Default in attending and warrant of arrest
- 54. Notes of examination to be filed

#### PROCEEDINGS BY OR AGAINST DIRECTORS AND OFFICERS

- 55. Application by or against delinquent directors and officers
- 56. Use of depositions taken at public examinations

#### WITNESSES AND DEPOSITIONS

- 57. Shorthand etc. notes
- 58. Committal of contumacious witness
- 59. Depositions at private examinations

#### DISCLAIMER

- 60. Disclaimer

#### VESTING OF DISCLAIMED PROPERTY

- 61. Vesting of disclaimed property

#### ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN WINDING UP BY COURT

- 62. Report by Official Receiver on arrangements and compromises



## COLLECTION AND DISTRIBUTION OF ASSETS IN WINDING UP BY COURT

- 63. Collection and distribution of company's assets by liquidator
- 64. Power of liquidator to require delivery of property etc.

## LIST OF CONTRIBUTORIES IN WINDING UP BY COURT

- 65. Liquidator to settle list of contributories
- 66. Appointment of time and place for settlement of list
- 67. Settlement of list of contributories
- 68. Notice to contributories
- 69. Application to Court to vary list
- 70. Variation of or addition to list of contributories

## CALLS

- 71. Calls by liquidator
- 72. Application to Court for leave to make call
- 73. Document making call
- 74. Service of notice of call
- 75. Enforcement of call

## PROOFS

- 76. Proof of debt
- 77. Mode of proof
- 78. Verification of proof
- 79. Contents of proof
- 80. Statement of security
- 81. Proof before whom sworn
- 82. Costs of proof

- 83. Discounts
- 84. Periodical payments
- 85. Interest
- 86. Proof for debt payable at future time
- 87. Workmen's wages
- 88. Production of bills of exchange and promissory notes
- 89. Transmission of proofs to liquidator

#### ADMISSION AND REJECTION OF PROOFS AND PREFERENTIAL CLAIMS, AND APPEAL TO COURT

- 90. Notice to creditors to prove
- 91. Examination of proof
- 92. Appeal by creditor
- 93. Expunging at instance of liquidator
- 94. Expunging at instance of creditor
- 95. Oaths
- 96. Official Receiver's powers
- 97. Filing proofs by Official Receiver
- 98. Proofs to be filed
- 99. Procedure where creditor appeals
- 100. Time for dealing with proofs by Official Receiver
- 101. Time for dealing with proofs by liquidator
- 102. Costs of appeals against rejection

#### GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO WINDING UP BY COURT

- 103. First meetings of creditors and contributories
- 104. Notice of first meetings
- 105. Summoning of first meetings
- 106. Form of notices of first meetings

- 107. Notice of first meetings to officers of company
- 108. Summary of statement of affairs

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO  
WINDING UP BY COURT AND OF CREDITORS IN RELATION TO CREDITORS'  
VOLUNTARY WINDING UP

- 109. Liquidator's meeting of creditors and contributories
- 110. Application of rules as to meetings
- 111. Summoning of meetings
- 112. Proof of notice
- 113. Place of meetings
- 114. Costs of calling meeting
- 115. Chairman of meeting
- 116. Ordinary resolution of creditors and contributories
- 117. Copy of resolution to be filed
- 118. Non-reception of notice by creditor
- 119. Adjournment
- 120. *Quorum*
- 121. Creditors entitled to vote
- 122. Cases in which creditors may not vote
- 123. Votes of secured creditors
- 124. Creditors required to give up security
- 125. Admission and rejection of proofs for purpose of voting
- 126. Statement of security
- 127. Minutes of meeting

PROXIES IN RELATION TO WINDING UP BY COURT, AND TO MEETINGS OF  
CREDITORS IN CREDITORS' VOLUNTARY WINDING UP

- 128. Proxies
- 129. Form of proxies

- 130. Forms of proxy to be sent with notices
- 131. General proxies
- 132. Special proxies
- 133. Solicitation by liquidator to obtain proxies
- 134. Proxies to Official Receiver or liquidator
- 135. Holder of proxy not to vote on matter in which he is financially interested
- 136. Lodgment of proxies
- 137. Use of proxies by deputy
- 138. Filling in where creditor blind or incapable

#### DIVIDENDS IN WINDING UP BY COURT

- 139. Dividends to creditors
- 140. Return of capital to contributories

#### ATTENDANCE AND APPEARANCE OF PARTIES

- 141. Attendance at proceedings
- 142. Attendance of liquidator's solicitor

#### LIQUIDATOR AND LIQUIDATION COMMITTEE

- 143. Remuneration of liquidator
- 144. Limit of remuneration
- 145. Dealings with assets
- 146. Restriction on purchase of goods by liquidator
- 147. Liquidation committee not to make profit
- 148. Cost of obtaining sanction of Court
- 149. Sanction of payments to committee
- 150. Discharge of costs before assets handed to liquidator
- 151. Resignation of liquidator
- 152. Office of liquidator vacated by his insolvency

## PAYMENTS INTO AND OUT OF BANK

- 153. Payments out of bank
- 154. Special bank account

## BOOKS

- 155. Record of proceedings
- 156. Cash Book

## INVESTMENT OF FUNDS

- 157. Investment of assets in securities and realisation of securities

## ACCOUNTS AND AUDIT IN WINDING UP BY COURT

- 158. Audit of Cash Book
- 159. Official Receiver's audit of liquidator's accounts
- 160. Liquidator carrying on business
- 161. Copy of accounts to be filed
- 162. Summary of accounts
- 163. Affidavit of no receipts
- 164. Proceedings on resignation etc. of liquidator and disposal of books
- 165. Expenses of sales

## TAXATION OF COSTS

- 166. Taxation of costs payable by or to Official Receiver or liquidator or by company
- 167. Notice of appointment
- 168. Lodgment of bill
- 169. Copy of bill to be furnished

- 170. Application for costs
- 171. Certificate of taxation
- 172. Certificate of employment
- 173. Costs and taxation
- 174. Review of taxation and appeals thereon

#### COSTS AND EXPENSES PAYABLE OUT OF COMPANY'S ASSETS

- 175. Liquidator's charges
- 176. Costs payable out of assets

#### STATEMENTS BY LIQUIDATOR TO REGISTRAR OF COMPANIES

- 177. Conclusion of winding up
- 178. Times of sending liquidator's statements and regulations applicable thereto
- 179. Affidavit of no receipts or payments

#### UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN HANDS OF LIQUIDATOR

- 180. Payment of undistributed and unclaimed money into companies liquidation account
- 181. Liquidator to furnish information to Official Receiver
- 182. Official Receiver may call for verified accounts
- 183. Application to Court for enforcing account and getting in money
- 184. Application for payment out by person entitled
- 185. Application by liquidator for payment out

#### RELEASE OF LIQUIDATOR IN WINDING UP BY COURT

- 186. Proceedings for release of liquidator
- 187. Disposal of books and papers

## OFFICIAL RECEIVERS

- 188. Appointment
- 189. Removal
- 190. Personal performance of duties
- 191. Deputy official receivers
- 192. Powers of certain officers and Official Receivers' clerks in certain cases to act for Official Receivers
- 193. Duties where no assets
- 194. Accounting by Official Receiver
- 195. Official Receiver to act as liquidation committee where no liquidation committee appointed
- 196. Appeals from Official Receiver

## BOOKS TO BE KEPT AND RETURNS MADE BY OFFICERS OF COURT

- 197. Applications under sections 111 and 190(4)
- 198. Books to be kept by officers of Court

## PUBLICATION IN *GAZETTE* AND LOCAL NEWSPAPER IN WINDING UP BY COURT

- 199. Publication of notices in *Gazette*
- 200. Filing memorandum of notices in *Gazette* and local newspaper

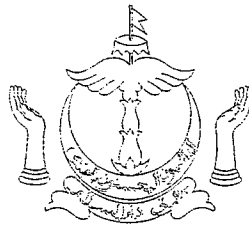
## ARRESTS AND COMMITMENTS

- 201. To whom warrants may be addressed
- 202. Prison to which person arrested on warrant is to be taken
- 203. Prison to which person arrested is to be conveyed, and production and custody of persons arrested

## GENERAL

- 204. Disposal of moneys received after execution
- 205. Enlargement or abridgement of time
- 206. Formal defect not to invalidate proceedings
- 207. Application of existing procedure





**INSOLVENCY ORDER, 2016**  
**(S 1/2016)**

**INSOLVENCY (WINDING UP) RULES, 2018**

In exercise of the power conferred by section 245 of the Insolvency Order, 2016, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules –

**PRELIMINARY**

**Citation and application**

1. (1) These Rules may be cited as the Insolvency (Winding Up) Rules, 2018.

(2) Subject to the limitation hereinafter mentioned, these Rules apply to the proceedings in every winding up of a company under the Order. Rules which from their nature and subject matter are, or which by the headlines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding up by the Court, or only to such proceedings in a creditors' voluntary winding up do not apply to the proceedings in a voluntary winding up or in a members' voluntary winding up, as the case may be.

**Interpretation**

2. In these Rules, unless the context requires otherwise –

“bailiff” means a bailiff attached to the Court, and includes an assistant bailiff;

“company” means a company which is being wound up, or against which proceedings to have it wound up have been commenced;

“companies liquidation account” means an account kept by the Official Receiver to which all moneys received in respect of proceedings in connection with the winding up of companies is paid;

“Court” means the Supreme Court in Brunei Darussalam, and includes any Judge thereof;

“creditor” includes a corporation and a firm of creditors in partnership;

“liquidator” includes an Official Receiver when acting as liquidator;

“Official Receiver” includes any officer appointed by His Majesty the Sultan and Yang Di-Pertuan under rule 188 to discharge the duties of Official Receiver under the Order, and includes a deputy official receiver so appointed;

“proceedings” means the proceedings in the winding up of a company under the Order;

“Registrar” means the Chief Registrar, Deputy Chief Registrar, Senior Registrars and Registrars for the Supreme Court appointed under section 30(1) of the Supreme Court Act (Chapter 5);

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

“Taxing Master” means the Registrar or other officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

## COURT AND CHAMBERS

### Office of Registrar in Court

3. (1) All proceedings in the winding up of companies in the Court shall be attached to the Registrar, who shall, together with the necessary clerks and officers, and subject to the Order and these Rules, act under the general or special directions of a Judge.

(2) In every cause or matter within the jurisdiction of a Judge, whether by virtue of the Order or otherwise, the Registrar shall, in addition to his powers and duties under these Rules, have all the powers and duties of a Master or like officer of the Supreme Court in England or the Taxing Master.

### Matters in Court to be heard in Court and chambers

4. (1) The following matters and applications in the Court shall be heard before a Judge in open Court –

- (a) petitions;
- (b) appeals to the Court from the Official Receiver when acting as Official Receiver and not as liquidator;
- (c) applications under section 156;
- (d) applications for the committal of any person to prison for contempt;
- (e) public examinations;
- (f) applications under section 190;
- (g) applications to rectify the register; and
- (h) such matters and applications as a Judge may, by any general or special orders, direct to be heard before him in open Court.

(2) Public examinations of persons directed by the Court under section 111(3) shall be held in Court or in chambers as the Court shall direct.

(3) Every other matter or application in the Court under the Order to which these Rules apply may be heard and determined in chambers.

### **Applications in chambers**

5. Subject to the provisions of the Order and these Rules –

(a) the Registrar may, under the general or special directions of a Judge, hear and determine any matter or application which under the Order and these Rules may be heard and determined in chambers;

(b) any matter or application before the Registrar may, at any time, be adjourned by him to be heard before a Judge; and

(c) any matter or application may, if a Judge thinks fit, be adjourned from chambers to Court, or from Court to chambers.

### **Motions and summonses**

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 2 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.

(3) Every application by the liquidator to the Court for directions in relation to any particular matter arising under the winding up shall be made in chambers.

## **PROCEEDINGS**

### **Times for holding Court**

7. Subject to the provisions of the Order, the times of the sitting of the Court in matters of the winding up of companies shall be those which are appointed for the transaction of the general business of the Court, unless a Judge shall otherwise order.

### **Title of proceedings**

8. (1) Every proceeding in a winding up matter shall be dated, and shall, with any necessary addition, be instituted as follows –

IN THE SUPREME COURT OF BRUNEI DARUSSALAM  
INSOLVENCY (WINDING UP) RULES. No.      OF 20

In the matter of the Insolvency Order, 2016 (S 1/2016)

and in the matter of the company to which it relates. Numbers and dates may be denoted by figures. The party taking out the proceedings shall be described as the plaintiff and other parties shall be described as the defendants.

(2) The first proceeding in every winding up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

### **Written or printed proceedings**

9. 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, and must have a stitching margin; 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**

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

### **Issue of summonses**

11. (1) Every summons in a winding up matter in the Court shall be prepared by the applicant or his solicitor, and issued from the office of the Registrar.

(2) A summons, when sealed, is deemed to be issued.

## **Orders**

12. (1) Every order, whether made in Court or in chambers, in the winding up of a company shall be drawn up by the applicant or his solicitor and signed by the Registrar, 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.

(2) Where a direction is given that no order need be drawn up, the note or memorandum of the order, signed or initialed by the Judge or Registrar making the order, shall be sufficient evidence of the order having been made.

## **File of proceedings in office of Registrar**

13. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs and other proceedings in the Court in a winding up matter shall be kept and remain of record in the office of the Registrar and, subject to the directions of the Court, shall be placed in one continuous file.

## **Office copies**

14. All office copies of petitions, affidavits, depositions, papers and writings, or any part thereof, required by the Official Receiver or 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 sealed and delivered out without any unnecessary delay and in the order in which they shall have been spoken.

## **Inspection of file**

15. 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 a fee of \$1 for each inspection per day, at all reasonable times, to inspect the file of proceedings and to take copies or extracts from any document therein, or to be furnished with such copies or extracts on payment of \$2 per page or part thereof.

### **Use of file by Official Receiver**

16. Where, in the exercise of his functions under the Order or these Rules, the Official Receiver requires to inspect or use the file of proceedings, the Registrar shall (unless the file is at the time required for use in Court or by him), on request, transmit the file of proceedings to the Official Receiver, and the Registrar may, in his discretion, permit the Official Receiver to retain any file or files of proceedings in his custody for such time as the Registrar may think fit.

### **Defacement of stamps**

17. Every officer of the Court who shall receive any document to which an adhesive stamp shall be affixed shall, immediately on receipt of the document, deface the stamp thereon and no such document shall be filed or delivered until the stamp thereon shall have been so defaced.

## **SERVICE AND EXECUTION OF PROCESS AND ENFORCEMENT OF ORDERS**

### **Duties of bailiff**

18. (1) It shall be the duty of the bailiff to –

- (a) serve such orders, summonses, petitions and notices as the Court may require him to serve;
- (b) execute warrants and other process;
- (c) attend any sittings of the Court if so required by the Court (but not sittings in chambers); and
- (d) do and perform all such things as may be required of him by the Court.

(2) Nothing in this rule shall require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially required by the Order or these Rules to be so served, unless the Court in any particular proceeding by order specially so directs.

### **Mode of service**

19. Except as otherwise provided by the Order, these Rules or any order –

(a) all notices, summonses and other documents, except those of which personal service is required, may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice, summons or document shall be considered as served at the time that the notice, summons or document ought to be delivered in the due course of post by the post office, and notwithstanding the notice, summons or document may be returned by the post office; and

(b) no service is deemed invalid by reason that the name, or any of the names of the person to be served, has been omitted from the document containing the name of the person, provided that the Court is satisfied that in other respects the service of the document has been sufficient.

### **Enforcement of judgments or orders**

20. Every judgment or order of the Court made in the exercise of the powers conferred by the Order and these Rules may be enforced by the Court as if it was a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

## **PETITION**

### **Form of petition**

21. Every petition for the winding up of a company by the Court shall be in the prescribed form.

### **Presentation of petition**

22. (1) A petition shall be presented at the office of the Registrar, who shall appoint the time and place at which the petition is to be heard.

(2) 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**

23. (1) Every petition shall be advertised 7 clear days or such longer time as the Court may direct before the hearing, as follows –

(a) in the case of a company whose registered office or, if there is no such office, whose principal or last known principal place of business is or was situate within Brunei Darussalam, once in the *Gazette*, or once at least in such Malay or English local daily newspaper as the Court directs;

(b) in the case of any other company, once in the *Gazette*, or twice at least in a local newspaper of the principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as the Court directs; and

(c) the advertisement shall state the day on which the petition was presented, and the name and address of the petitioner and of his solicitor, and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner or to his solicitor within the time and in the manner prescribed by rule 29, and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note is deemed irregular.

(2) If the petitioner or his solicitor does not, within the time 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 a Judge or the Registrar shall otherwise direct.

### **Service of petition**

24. Every petition shall, unless presented by the company, be served on the company at the registered office, if any, of the company, and if there is no registered office, 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, by leaving a copy at such registered office or principal

place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound up voluntarily, the petition shall also be served on the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

#### **Verification of petition**

25. (1) Every petition of the winding up of a company by the Court shall be verified by an affidavit referring thereto.

(2) The 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 director, secretary or other principal officer thereof, and shall be sworn on the date of the filing of the petition or thereafter and filed within 5 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**

26. Every creditor, contributory or the company shall be entitled to be furnished by the petitioner or his solicitor with a copy of the petition within 2 business days on payment of \$2 per page or part thereof.

### **PROVISIONAL LIQUIDATOR**

#### **Appointment of provisional liquidator**

27. (1) For the purposes of section 113(1) and (2), a creditor, a contributory or the company may apply to the Court for the appointment of a provisional liquidator on proof by affidavit of sufficient grounds for such appointment.

(2) The order under section 113 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 on 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 containing the voluntary winding up of the company, the provisional liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges and expenses properly incurred by him as provisional liquidator, including such sum as is or would be payable under the scale of fees in force for the time being where the Official Receiver is appointed provisional liquidator, and may retain out of such property the amounts of such costs, charges, expenses and fees.

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

#### HEARING OF PETITIONS AND ORDERS MADE THEREON

##### **Attendance before hearing to show compliance with Rules**

28. (1) After a petition has been presented, the petitioner or his solicitor 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 these Rules as to petitions for winding up companies have been duly complied with by the petitioner.

(2) An order for the winding up of a company shall not 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**

29. (1) Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner or his solicitor, at the address stated in the advertisement of the petition, notice of his intention.

(2) The notice shall contain the address of such person, and shall be signed by him or his solicitor, and 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 one business day.

(3) The notice shall be in the prescribed form, with such variations as circumstances may require.

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

**List of names and addresses of persons who appear on petition**

30. (1) The petitioner or his solicitor shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in the prescribed form.

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

**Affidavits in opposition and reply**

31. (1) Affidavits in opposition to a petition that a company may be wound up by the Court shall be filed and a copy thereof served on the petitioner or his solicitor within 7 business days, or such longer time as the Court may direct, of the date on which the affidavit verifying the petition is filed.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within 5 business days of the date of service on the petitioner or his solicitor of the affidavit in opposition and a copy thereof served on the opposing party or his solicitor.

**Substitution of creditor or contributory for withdrawing petitioner**

32. (1) When a petitioner is not entitled to present a petition or whether so entitled or not, where he –

(a) fails to advertise his petition within the time prescribed by these Rules or such extended time as the Registrar may allow;

(b) 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

(c) if appearing, does not apply for an order in the terms of the prayer of his petition,

the Court may, on 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 the winding up petition, and who is desirous of proceeding with the petition.

(2) 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 winding up petition, be made in chambers at any time.

**ORDER TO WIND UP COMPANY**

**Notice that winding up order has been pronounced to be given to Official Receiver**

33. (1) When an order for the winding up of a company, or for the appointment of a provisional liquidator prior to the making of an order for the winding up of the company, has been pronounced in Court, the Registrar shall, on the same day or soon thereafter but not later than 3 business days, send to the Official Receiver a notice informing him that the order has been pronounced.

(2) The notice may be in the prescribed form, with such variations as circumstances may require.

#### **Drawing up and contents of winding up order**

34. (1) It shall be the duty of the petitioner or his solicitor and of all other persons who have appeared on the hearing of the petition, at least 2 business days following the day on which an order for the winding up of a company is pronounced in Court, to leave with the Registrar a draft of the order and all other documents required for the purpose of enabling the Registrar to complete the order forthwith. It shall not be necessary for the Registrar to make an appointment to settle the order unless in any particular case the special circumstances make an appointment necessary.

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

#### **Transmission and advertisement of winding up order**

35. (1) When an order that a company be wound up or for the appointment of a provisional liquidator has been made –

(a) three copies of the order sealed with the seal of the Court shall forthwith be sent by the Registrar to the Official Receiver;

(b) the Official Receiver shall cause a sealed copy of the order to be served on the company by prepaid letter addressed to it at the registered office of the company (if any) or, if there is no registered office, at its principal or last known principal place of business, or on such other person or persons, and in such other manner as the Court may direct, and if the order is that the company be wound up by the Court, shall forward to the Registrar of Companies the copy of the order which by section 108(1) shall be forwarded by the company, or otherwise as may be prescribed;

(c) the Official Receiver shall forthwith cause notice of the order to be published in the *Gazette*; and

(d) the Official Receiver shall forthwith send notice of the order to such Malay or English local daily newspaper as the Court may direct or, in default of such direction, as he may select.

(2) An order for the winding up of a company 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.

## STATEMENT OF AFFAIRS

### **Preparation of statement of affairs**

36. (1) Every person who under section 109 has been required by the Official Receiver to submit and verify a statement as to the affairs of a company shall be furnished by the Official Receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be filed with the Registrar the verified statement of affairs.

(2) The Official Receiver may hold personal interviews with every such person for the purpose of investigating the affairs of the company, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all the information that he may require.

### **Extension of time for submitting statement of affairs**

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

**Information subsequent to statement of affairs**

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

**Default**

39. Any default in complying with the requirements of section 109 may be reported by the Official Receiver to the Court.

**Expenses of statement of affairs**

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

**Dispensing with statement of affairs**

41. (1) Any application to dispense with the requirements of section 109 shall be supported by a report of the Official Receiver showing the special circumstances which in his opinion render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of section 109, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notice which are by these Rules required to be sent to any person mentioned in the statement of affairs.



## APPOINTMENT OF LIQUIDATOR IN WINDING UP BY COURT

### **Appointment of liquidator of report of meetings of creditors and contributories**

42. (1) As soon as possible after the first meetings of creditors and contributories have been held, the Official Receiver, or the chairman of the meetings, as the case may be, shall report the result of each meeting to the Court.

(2) On the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, on the application of the Official Receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences (if any) and making such order as shall be necessary.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than 7 days before the time so fixed.

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

(5) If a liquidator is appointed, a copy of the order appointing him shall be transmitted by him to the Official Receiver and the Official Receiver shall, as soon as the liquidator has given security, cause notice of the appointment to be published in the *Gazette*. The expenses of publishing in the *Gazette* the notice of the appointment shall be paid by the liquidator, but may be charged by him on the company's assets.

(6) Every appointment of a liquidator or liquidation committee 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.

(7) If a liquidator in a winding up by the Court dies, resigns or is removed, another liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one-tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but this rule does not apply where the liquidator is released under section 145 in which case the Official Receiver shall remain liquidator.

#### NOTICE OF APPOINTMENT OF LIQUIDATOR

##### **Notice of appointment of liquidator**

43. The notice of the appointment of a liquidator required by section 90 shall be in the prescribed form.

#### SECURITY BY LIQUIDATOR IN WINDING UP BY COURT

##### **Security to satisfaction of Official Receiver**

44. Where a liquidator other than the Official Receiver has been appointed, the following provisions as to security shall have effect –

(a) the security shall be given to such officers or persons, and in such manner, as the Official Receiver may direct;

(b) 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;

(c) the Official Receiver shall fix the amount and nature of such security, and may, as he thinks fit, increase or diminish the amount of special or general security which any person has given;

(d) the certificate of the Official Receiver that a liquidator has given security to his satisfaction shall be filed with the Registrar; and

(e) the cost of furnishing the required security by a liquidator, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the company's assets as an expense incurred in the winding up.

#### **Failure to give or keep up security**

45. (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 Official Receiver shall report such failure to the Court, which may thereupon rescind the order appointing the liquidator.

(2) If a liquidator fails to keep up his security, the Official Receiver shall report such failure to the Court, which 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 another liquidator is 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.

### **PUBLIC EXAMINATION**

#### **Report of Official Receiver to be filed**

46. A report made by the Official Receiver pursuant to section 110 shall state, in a narrative form, the facts and matters which the Official Receiver desires to bring to the notice of the Court, and his opinion as required by that section.

#### **Appointment of time for consideration of report**

47. The Official Receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appoint a day on which the report shall be considered.

#### **Consideration of report**

48. The consideration of the report shall be before a Judge personally in chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report and give the Court any further information or explanation with reference to the matter stated in the report which the Court may require.

#### **Order for public examination**

49. An order under section 111 directing any person or persons to attend for public examination shall be in the prescribed form.

#### **Application for day for holding examination**

50. On an order directing a person to attend for public examination being made, the Official Receiver shall apply for the appointment of a day on which the public examination is to be held.

#### **Appointment of time and place for public examination**

51. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

#### **Notice of public examination to creditors and contributories**

52. (1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such Malay or English local daily newspaper as the Court may direct or, in default of any such direction, as the Official Receiver thinks fit, and shall also cause notice of the appointment to be published in the *Gazette*.

(2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised.

#### **Default in attending and warrant of arrest**

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

#### **Notes of examination to be filed**

54. (1) The notes of every public examination shall, after being signed by the person examined, be filed with the Registrar.

(2) The notes of the public examination shall be taken down in writing and may be used in evidence against the person examined.

### **PROCEEDINGS BY OR AGAINST DIRECTORS AND OFFICERS**

#### **Application by or against delinquent directors and officers**

55. (1) An application under any of the following provisions –

- (a) section 184;
- (b) section 185;
- (c) section 186,

shall be made by a summons returnable in the first instance in chambers, in which summons shall state the nature of the declaration or order for which application is made, and the grounds

of the application, and which summons, unless otherwise ordered by the Court, shall be served in accordance with the provisions of Orders 9, 10, 11 and 62 of the Rules of the Supreme Court (R1 of Chapter 5) on every person against whom an order is sought, not less than 8 days before the day named in the summons for hearing the application. Where the application is made by the Official Receiver or liquidator, he may make a report to the Court stating any fact and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the proceedings. Where the application is made by any other person, it shall be supported by affidavit to be filed by him.

(2) A copy of every report and affidavit intended to be used in support of the summons shall be served on every person against whom an order is sought not less than 4 days before the hearing of the summons.

(3) On the return of the summons, the Court may give such directions as it shall think fit as to the taking of evidence wholly or in part by affidavit or orally, and the cross-examination before a Judge on the hearing in Court or in chambers of any deponents to affidavits in support of or in opposition to the application and as to any report it may require the Official Receiver or liquidator to make and generally as to the procedure on the summons and for the hearing thereof.

#### **Use of depositions taken at public examinations**

56. Where, in the course of the proceedings in a winding up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 111, in any proceedings subsequently instituted under any of the provisions of the Order mentioned in rule 55(1), the verified notes of the examination of each person who was examined under the order shall, subject to the provisions of this rule, and to any order or direction of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made, who, under section 111 and the order for the public examination, was or had the opportunity of being present at and taking part in the examination:

Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the notes shall, not less than 15 days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

## WITNESSES AND DEPOSITIONS

### **Shorthand etc. notes**

57. (1) If the Court or the officer of the Court before whom any examination under the Order and these Rules is directed to be held shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined in shorthand or otherwise, it shall be competent for the Court or officer to make such appointment, and every person so appointed, if not in the service of the Government, shall be paid a sum not exceeding \$75 a day, and also a sum not exceeding \$2 per part thereof for any transcript of the evidence that may be required and such sums shall be paid by the party at whose instance the appointment was made, or out of the company's assets, as may be directed by the Court.

(2) The writer (if any) attached to the Official Receiver's office is deemed to be duly appointed under this rule, and it shall not be necessary to make any application to make such appointment, and a general declaration by such writer adapted from the prescribed form is deemed to apply to all cases in which notes are taken by him as aforesaid, but this rule shall not be construed as precluding the appointment of any other person.

(3) A transcript of any such notes, purporting to be such transcript, and purporting to be signed by a writer duly appointed under this rule or by the writer attached to the Official Receiver's office, shall until the contrary is proved be sufficient evidence that the questions and answers set forth therein were so put and answered respectively.

#### **Committal of contumacious witness**

58. (1) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to a Judge, and on report being made, the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

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

(3) The Registrar or other officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to a Judge, and on receiving the report a Judge may take such action thereon as he shall think fit. If a Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

#### **Depositions at private examinations**

59. (1) The Official Receiver may attend in person, or by a deputy official receiver, or by counsel or solicitors employed for the purpose, any examination of a witness under section 207(3) on whose application the examination has been ordered, and may take notes of the examination for his own use, and put such question to the persons examined as the Court may allow.

(2) The notes of the depositions of a person examined under section 207 or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 111) shall not be filed, or be open to the inspection of any



creditor, contributory or other person, except the Official Receiver or liquidator, or any provisional liquidator other than the Official Receiver, while he is acting as provisional liquidator, unless and until the Court shall so direct, and the Court may give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom.

## DISCLAIMER

### Disclaimer

60. (1) Any application for leave to disclaim any part of the property of a company pursuant to section 151 shall be by *ex parte* summons. Such summons shall be supported by an affidavit showing who are the parties interested and what their interests are. On the hearing of the summons, the Court shall give such directions as it sees fit and, in particular, directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.

(2) Where a liquidator disclaims a leasehold interest, he shall forthwith enclose the file at the office of the Registrar and, when the property is situate in Brunei Darussalam, register a notice thereof in the Land Office. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the liquidator and, when the property is situate in Brunei Darussalam, a notice thereof is registered in the Land Office, the disclaimer shall be inoperative. A disclaimer and a notice of disclaimer shall be in the prescribed form.

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

## VESTING OF DISCLAIMED PROPERTY

### **Vesting of disclaimed property**

61. (1) Any application under section 151 for an order for the vesting of any disclaimed property in or the delivery of any such property to any person shall be supported by the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by assignment or demise or under-lessee of such property, the Court may direct that notice shall be given to such mortgagee or under-lessee that, if he does not elect to accept and apply for such a vesting order as mentioned in subrule (1) on the terms required by that subrule and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security on the property and the Court may adjourn the application for such notice to be given and for such mortgagee or under-lessee to be added as a party to and served with the application and, if he sees fit, to make such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the Court such mortgagee or under-lessee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security on the property.

## ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES IN WINDING UP BY COURT

### **Report by Official Receiver on arrangements and compromises**

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

## COLLECTION AND DISTRIBUTION OF ASSETS IN WINDING UP BY COURT

### **Collection and distribution of company's assets by liquidator**

63. (1) The duties imposed on the Court by section 124(1) in a winding up by the Court with regard to the collection of the company's assets 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 purposes of the discharge by the liquidator of the duties imposed by section 124(1) and subrule (1), the liquidator in a winding up by the Court shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

### **Power of liquidator to require delivery of property etc.**

64. (1) The powers conferred on the Court in respect of the payment, delivery, conveyance, surrender or transfer of money, property, books and papers shall be exercised by the liquidator.

(2) 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 sum of money or balance, books, papers, estate or effects which happen to be in his hands for the time being and to which the company is *prima facie* entitled.

## LIST OF CONTRIBUTORIES IN WINDING UP BY COURT

### **Liquidator to settle list of contributories**

65. 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 124(3).

### **Appointment of time and place for settlement of list**

66. 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**

67. 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 so settled shall be the list of contributories of the company.

### **Notice to contributories**

68. 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 the notice.

### **Application to Court to vary list**

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

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

### **Variation of or addition to list of contributories**

70. The liquidator may 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**

71. The powers and duties of the Court in relation to making calls on contributories conferred by section 126 may be exercised, in a winding up by the Court, by the liquidator as an officer of the Court subject to the following provisions –

(a) where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Order, he may summon a meeting of a liquidation committee, if any, for the purpose of obtaining their sanction to the intended call;

(b) the notice of the meeting shall be sent to each member of the liquidation committee in sufficient time to reach him not less than 7 days before the day appointed for holding the meeting, or such longer time as the Court may appoint, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended;

### **Contents of proof**

79. An affidavit proving 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 debt can be substantiated. The Official Receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers.

### **Statement of security**

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

### **Proof before whom sworn**

81. An affidavit proving a debt may, in a winding up by the Court, be sworn before the Official Receiver or a deputy official receiver, or before any commissioner of oaths.

### **Costs of proof**

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

### **Discounts**

83. A creditor proving his debt shall deduct therefrom –  
(a) all trade discounts; and  
(b) any discount which he may have agreed to allow for payment in cash, in excess of 5 *per cent* on the net amount of his claim.

### **Periodical payments**

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

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

### **Interest**

85. On any debt or sum, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding *6 per cent per annum* to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

### **Proof for debt payable at future time**

86. A creditor may prove for a debt not payable at the date of the winding up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of *6 per cent per annum* computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

### **Workmen's wages**

87. In any case in which it appears that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the workmen and others.

### **Production of bills of exchange and promissory notes**

88. 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 shall, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting or liquidator, as the case may be, and be marked by him before the proof can be admitted for voting or for any purpose.

**Transmission of proofs to liquidator**

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

ADMISSION AND REJECTION OF PROOFS AND PREFERENTIAL CLAIMS,  
AND APPEAL TO COURT

**Notice to creditors to prove**

90. (1) Subject to the provisions of the Order, and unless otherwise ordered by the Court, the liquidator in any winding up may fix a certain day, which shall be not less than 14 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 147 or to be excluded from the benefit of any distribution made before such debts are proved or from objecting to such distribution, as the case may be, and the liquidator shall give notice in writing of the day so fixed by advertisement in such Malay and English local daily newspaper as he shall consider convenient, and in a winding up by the Court to every person mentioned in the statement of affairs as a creditor, and who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding up to the last known address or place of abode of each person who, to the knowledge of the liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.

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



### **Examination of proof**

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

### **Appeal by creditor**

92. 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 21 days from the date of the service of the notice of rejection.

### **Expunging at instance of liquidator**

93. 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**

94. The Court may also expunge or reduce a proof on the application of a creditor or contributory if the liquidator declines to interfere in the matter.

### **Oaths**

95. For the purposes of any of his duties in relation to proofs, the liquidator may, in a winding up by the Court, administer oaths and take affidavits.

### **Official Receiver's powers**

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

### **Filing proofs by Official Receiver**

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

### **Proofs to be filed**

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

### **Procedure where creditor appeals**

99. The liquidator in a winding up by the Court, including the Official Receiver when he is liquidator, shall, within 3 days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof.

### **Time for dealing with proofs by Official Receiver**

100. Subject to the power of the Court to extend the time in a winding up by the Court, the Official Receiver as liquidator shall, not later than 14 days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, in writing admit or reject wholly or in part every proof lodged with him or require further evidence in support of it.

### **Time for dealing with proofs by liquidator**

101. Subject to the power of the Court to extend the time, the liquidator in a winding up by the Court, other than the Official Receiver, within 28 days after receiving a proof, which has not previously been dealt with, shall in writing 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 14 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 a sufficient notification of the admission.

### **Costs of appeals against rejection**

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

## **GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO WINDING UP BY COURT**

### **First meetings of creditors and contributories**

103. Unless the Court otherwise directs, the meetings of creditors and contributories under section 114 (in these Rules referred to as the first meetings of creditors and contributories) shall be held within 12 weeks after the date of the winding up order. The dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.

### **Notice of first meetings**

104. The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories by advertisement in the *Gazette* and in a Malay or English local daily newspaper.

### **Summoning of first meetings**

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

### **Form of notices of first meetings**

106. The notices of first meetings of creditors and contributories may be in the prescribed form, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.

### **Notice of first meetings to officers of company**

107. The Official Receiver shall give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories 7 days' notice of the time and place appointed for each meeting. The notice may be delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend, if so required by the Official Receiver, and if any such director or officer fails to attend, the Official Receiver shall report the failure to the Court.

### **Summary of statement of affairs**

108. (1) The Official Receiver shall, as soon as practicable, send to each creditor mentioned in the statement of affairs of the company, and to each person appearing from the company's books or otherwise to be a contributory of the company, a summary of the statement of affairs of the company, including the causes of its failure, and any observation thereon which the Official Receiver may think fit to make. The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these Rules not having been sent or received before the meeting.

(2) Where prior to the winding up order the company has commenced to be wound up voluntarily, the Official Receiver may, if in his absolute discretion he sees fit to do so, send to the persons mentioned in subrule (1) or any of them an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company

has been disposed of and any observation which the Official Receiver may think fit to make on such account or on the voluntary winding up.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN RELATION TO  
WINDING UP BY COURT AND OF CREDITORS IN RELATION TO CREDITORS'  
VOLUNTARY WINDING UP

**Liquidator's meeting of creditors and contributories**

**109.** (1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 170 (in these Rules referred to as Court meetings of creditors and contributories), the liquidator in any winding up by the Court may himself, subject to the provisions of the Order and the control of the Court, summon, hold and conduct meetings of the creditors or contributories (in these Rules referred to as liquidator's meetings of creditors and contributories) for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up, the liquidator may himself summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (such meetings and all meetings of creditors which a liquidator or a company is by the Order required to convene in or immediately before such a voluntary winding up and all meetings convened by a creditor in a voluntary winding up under these Rules are hereinafter referred to as voluntary liquidation meetings).

**Application of rules as to meetings**

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

### **Summoning of meetings**

**111.** (1) The Official Receiver or liquidator shall summon all meetings of creditors and contributories by giving not less than 7 days' notice of the time and place thereof in the *Gazette* and in one or more Malay or English local daily newspapers; and shall not, less than 7 days before the day appointed for the meeting, send by post notice of the meeting of creditors to every person appearing by the company's books to be a creditor of the company, and notice of the meeting of contributories to every person appearing by the company's books or otherwise to be a contributory of the company.

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

(3) In the case of meetings under section 74, the continuing liquidator or, if there is no continuing liquidator, any contributory may summon the meeting.

(4) This rule does not apply to meetings under section 79 or 87.

### **Proof of notice**

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

### **Place of meetings**

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

### **Costs of calling meeting**

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

(2) The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent –

(a) \$1 per creditor or contributory for the first twenty creditors or contributories;

(b) 50 cents per creditor or contributory for the next thirty creditors or contributories; and

(c) 25 cents per creditor or contributory for any number of creditors or contributories after the first fifty.

(3) The costs shall be repaid out of the company's assets if the Court shall by order, or if the creditors or contributories (as the case may be) shall by resolution, so direct.

(4) This rule does not apply to meetings under sections 74 and 79.

### **Chairman of meeting**

**115. (1)** Where a meeting is summoned by the Official Receiver or the liquidator, he or someone nominated by him shall be chairman of the meeting.

(2) At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution shall appoint.

(3) This rule does not apply to meetings under section 79.

### **Ordinary resolution of creditors and contributories**

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

### **Copy of resolution to be filed**

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

### **Non-reception of notice by creditor**

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

### **Adjournment**

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



### ***Quorum***

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

(2) If within half an hour from the time appointed for the meeting a *quorum* of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day as the chairman may appoint, not being less than 7 nor more than 21 days from the day from which the meeting was adjourned.

### **Creditors entitled to vote**

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

Provided that this rule and rules 122, 123, 124 and 125 does not apply to a Court meeting of creditors held prior to the first meeting of creditors. This rule does not apply to any creditor or class of creditors who by virtue of any direction given under these Rules are not required to prove their debts or to any voluntary liquidation meeting.

### **Cases in which creditors may not vote**

122. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the

company, and against whom a Receiving Order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purpose of voting, but not for the purposes of dividend, to deduct it from his proof.

#### **Votes of secured creditors**

**123.** For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as mentioned in rule 124 the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt, he is deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

#### **Creditors required to give up security**

**124.** The Official Receiver or liquidator may, within 28 days after a proof or in a voluntary liquidation a statement estimating the value of a security as mentioned in rule 123 has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of 20 *per cent*:

Provided that where a creditor has valued his security, he may at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debt, but in that case the addition of 20 *per cent* shall not be made if the security is required to be given up.

#### **Admission and rejection of proofs for purpose of voting**

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

### **Statement of security**

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

### **Minutes of meeting**

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

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

## **PROXIES IN RELATION TO WINDING UP BY COURT, AND TO MEETINGS OF CREDITORS IN CREDITORS' VOLUNTARY WINDING UP**

### **Proxies**

128. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 115 of the Companies Act (Chapter 39) to represent a corporation at any meeting of creditors or contributories, such person shall produce to the Official Receiver, liquidator or other chairman of the meeting a copy of the resolution so authorising him. Such copy must be under the seal of the corporation or certified to be a true copy by the secretary or a director of the corporation. Rules 129 to 138 as to proxies do not (unless otherwise directed by the Court) apply to a Court meeting of creditors or contributories prior to the first meeting.

### **Form of proxies**

129. Every instrument of proxy shall be in accordance with the prescribed form and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager, clerk or other person in his regular employment or of the solicitor employed by him in connection with the matter or of a commissioner to administer oaths in the Supreme Court.

### **Forms of proxy to be sent with notices**

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

### **General proxies**

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

### **Special proxies**

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

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the liquidation committee; and

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

### **Solicitation by liquidator to obtain proxies**

133. 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 may, if it thinks fit, order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised, notwithstanding any resolution of the liquidation committee or of the creditors or contributories to the contrary.

### **Proxies to Official Receiver or liquidator**

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

### **Holder of proxy not to vote on matter in which he is financially interested**

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

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

### **Lodgment of proxies**

**136.** (1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than one business day for such meeting, unless the Court otherwise directs.

(2) In every other case, a proxy shall be lodged with the Official Receiver or liquidator in a winding up by the Court, with the company at its registered office for a meeting under section 79 and with the liquidator, or if there is no liquidator, with the person named in the notice convening the meeting to receive the same in a voluntary winding up, not later than 4 o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

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

### **Use of proxies by deputy**

**137.** Where an Official Receiver 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**

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

**DIVIDENDS IN WINDING UP BY COURT****Dividends to creditors**

139. (1) Not more than 2 months before declaring a dividend, the liquidator in a winding up by the Court shall give notice of his intention to do so to the Official Receiver in order that the notice may be published in the *Gazette*, and at the same time to such of the creditors mentioned in the statement of affairs who 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 14 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 a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within 7 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 on such proof, and the probable costs 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 Official Receiver (in order that the notice may be published in the *Gazette*), 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 and the liquidation committee to postpone the declaration of the dividend beyond the limit of 2 months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Official Receiver in order that the notice may be published in the *Gazette*; but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs who 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) On the declaration of a dividend, the liquidator shall forthwith transmit to the Official Receiver a list of the proofs filed with the Registrar under rule 98, which list shall be in the prescribed form, and the liquidator shall, if so required by the Official Receiver, transmit to him office copies of all lists of proofs filed by him up to the date of the declaration of the dividend.

(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 prescribed form which shall be a sufficient authority for payment of the dividend to the person therein named.

(8) The Official Receiver, when he is liquidator, shall cause to be published in the *Gazette* notice of his intention to declare a dividend and notice of his declaration thereof, and shall also at the same time give to creditors notice of such intention or of such declaration in like manner as notice thereof is required to be given by a liquidator other than the Official Receiver.

### **Return of capital to contributories**

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

## **ATTENDANCE AND APPEARANCE OF PARTIES**

### **Attendance at proceedings**

**141.** (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, on payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of:

Provided that if the Court shall be of opinion that the attendance of any such person on 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; and such person shall not be entitled to attend any further proceedings until he has paid the costs.

(2) The Court may 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, on any question or in relation to any proceedings before the Court, and may remove the person so appointed. Such person or persons may appoint a solicitor to represent them.



(3) No creditor or contributory shall be entitled to attend any proceedings in chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and on any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

#### **Attendance of liquidator's solicitor**

**142.** Where the liquidator's solicitor attends on any proceedings in Court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

### **LIQUIDATOR AND LIQUIDATION COMMITTEE**

#### **Remuneration of liquidator**

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

(2) The remuneration of the liquidator shall, unless the Court shall otherwise order, be fixed by the scale of fees and percentages for the time being payable on realisations and distributions by the Official Receiver as liquidator.

(3) This rule applies to a liquidator appointed in a winding up by the Court.

#### **Limit of remuneration**

**144.** Except as provided by the Order or these Rules, a liquidator shall not, under any circumstances, make any arrangement for, or accept from, any solicitor, auctioneer or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration or pecuniary or other consideration or benefit beyond the remuneration to which under the Order and these Rules he

is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of, such remuneration to any such solicitor, auctioneer or other person.

#### **Dealings with assets**

**145.** Neither the liquidator nor any member of the liquidation committee of a company shall, while acting as liquidator or member of such committee, except by leave of the Court, 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 the Official Receiver in a winding up by the Court or of any creditor or contributory in any winding up and the Court may make such order as to costs as the Court shall think fit.

#### **Restriction on purchase of goods by liquidator**

**146.** 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 the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

#### **Liquidation committee not to make profit**

**147.** No member of a liquidation committee shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent or servant, be entitled to derive any profit from any transaction arising out of the winding up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. In a winding up by the Court, if it appears to the Official Receiver, or in a voluntary winding up, if it appears to the liquidation committee or to any meeting of creditors or contributories, that any profit or payment has been made contrary to the provisions of this rule, they may disallow the payment or recover the profit, as the case may be, on the audit of the accounts of the liquidator, or otherwise.

### **Cost of obtaining sanction of Court**

**148.** In any case in which the sanction of the Court is obtained under rules 146 and 147, 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.

### **Sanction of payments to committee**

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

### **Discharge of costs before assets handed to liquidator**

**150.** (1) Where a liquidator is appointed by the Court, and has notified his appointment to the Registrar of Companies, and given security to the satisfaction of the Official Receiver, the Official Receiver shall forthwith put the liquidator into possession of all property of the company of which the Official Receiver may have custody:

Provided that such liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of *6 per cent per annum*; and the liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

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

(3) It shall be the duty of the Official Receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

(4) This rule and rule 151 apply in a winding up by the Court.

### **Resignation of liquidator**

**151.** A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted. If the creditors and contributories by ordinary resolutions both agree to accept the resignation of the liquidator, he shall file with the Registrar a memorandum of his resignation, and shall send notice thereof to the Official Receiver, and the resignation shall thereupon take effect. In any other case, the liquidator shall report to the Court the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, on the application of the liquidator or Official Receiver, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

### **Office of liquidator vacated by his insolvency**

**152.** If a Receiving Order in bankruptcy is made against the liquidator, he shall vacate his office and, for the purposes of the application of the Order and these Rules, is deemed to have been removed.

## **PAYMENTS INTO AND OUT OF BANK**

### **Payments out of bank**

**153.** All payments out of the companies liquidation account shall be made in such manner as the Official Receiver may direct.

### **Special bank account**

154. (1) Where the liquidator in a winding up by the Court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the liquidation committee, and by such other person, if any, as the liquidation committee may appoint.

(2) Where application is made to the Official Receiver to authorise the liquidator in a winding up by the Court to make his payments into and out of a special bank account, the Official Receiver may grant such authorisation for such time and on such terms as he may think fit, and may at any time order the account to be closed if he is of opinion that the account is no longer required for the purposes mentioned in the application.

## **BOOKS**

### **Record of proceedings**

155. In a winding up by the Court, the Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a record in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the liquidation committee, and all such matters as may be necessary to give a correct view of his administration of the affairs of the company, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the liquidation committee or the Official Receiver.

### **Cash Book**

156. (1) In a winding up by the Court, the Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Official Receiver may direct) in which he shall

(subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him.

(2) In a winding up by the Court, a liquidator other than the Official Receiver shall submit the record and Cash Book, together with any other requisite books and vouchers, to the liquidation committee (if any) when required, and not less than once every 3 months.

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

## INVESTMENT OF FUNDS

### **Investment of assets in securities and realisation of securities**

157. (1) Where, in a winding up by the Court or in a creditors' voluntary winding up, the liquidation committee is of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Official Receiver.

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

(3) Where, in any such winding up as is mentioned in subrules (1) and (2) and in every members' voluntary winding up, there is no liquidation committee, 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 invested, the liquidator shall sign and transmit to the

Official Receiver a certificate of the facts on which his opinion is founded, and a request to the Official Receiver to make the investment or sale mentioned in the certificate, and the Official Receiver may thereupon, if he thinks fit, invest or sell the whole or any part of the funds or securities, and the certificate and request shall be a sufficient authority to the Official Receiver for the investment or sale.

## ACCOUNTS AND AUDIT IN WINDING UP BY COURT

### **Audit of Cash Book**

**158.** The liquidation committee shall, not less than once every 3 months, audit the liquidator's Cash Book and certify therein under its hand the day on which the Cash Book was audited.

### **Official Receiver's audit of liquidator's accounts**

**159.** (1) The liquidator shall, at the expiration of 6 months from the date of the winding up order, and at the expiration of every succeeding 6 months thereafter until his release, transmit to the Official Receiver a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the liquidation committee. The liquidator shall also forward with the first accounts a summary of the statement of affairs of the company, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised. The liquidator shall also at the end of every 6 months forward to the Official Receiver, with his accounts, a report on the position of the liquidation of the company in such form as the Official Receiver may direct.

(2) When the company's assets have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Official Receiver, although the 6 months may not have expired.

(3) The accounts sent in by the liquidator shall be verified by him by affidavit.

**Liquidator carrying on business**

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

(2) The trading account shall, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the liquidation committee (if any) or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

**Copy of accounts to be filed**

161. When the liquidator's account has been audited, the Official Receiver shall certify the fact on the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the Registrar.

**Summary of accounts**

162. (1) The liquidator shall transmit to the Official Receiver with his accounts a summary of such accounts in such form as the Official Receiver may direct and, on the approval of such summary by the Official Receiver, shall forthwith obtain, prepare and transmit to the Official Receiver so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to such creditor and contributory.

(2) The cost of printing and posting such copies shall be a charge on the company's assets.

**Affidavit of no receipts**

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



### **Proceedings on resignation etc. of liquidator and disposal of books**

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

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

### **Expenses of sales**

**165.** 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 Master. 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.

## **TAXATION OF COSTS**

### **Taxation of costs payable by or to Official Receiver or liquidator or by company**

**166.** Every solicitor, manager, accountant, auctioneer, broker or other person employed by an Official Receiver or liquidator in a winding up by the Court shall, on request by the Official Receiver or liquidator (to be made a sufficient time before the declaration of a dividend), deliver his bill of costs or charges to the Official Receiver or 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 to 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 Official Receiver or liquidator shall be in the prescribed form.

#### **Notice of appointment**

167. Where a bill of costs or charges in any winding up has been lodged with the Taxing Master, he shall give notice of an appointment to tax the same, in a winding up by the Court to the Official Receiver, and in every winding up to the liquidator, and to the person to or by whom the bill or charges is or are to be paid (as the case may be).

#### **Lodgment of bill**

168. 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 Official Receiver, and if incurred after the appointment of a liquidator, shall be lodged with the liquidator. The Official Receiver or the liquidator, as the case may be, shall lodge the bill or charges with the Taxing Master.

#### **Copy of bill to be furnished**

169. Every person whose bill or charges in a winding up by the Court is or are to be taxed shall, on application of the Official Receiver or liquidator, furnish a copy of his bill or charges so to be taxed, on payment at the rate of 35 cents per folio, which payment shall be charged on the company's assets. The Official Receiver shall call the attention of the liquidator to any item which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

#### **Application for costs**

170. Where any party to, or person affected by, any proceedings desires to make an 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 proceedings –

(a) such party or person shall serve notice of his intended application on the Official Receiver or liquidator, as the case may be;

(b) the Official Receiver or liquidator may appear on such application and object thereto; and

(c) 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 proceedings.

### **Certificate of taxation**

171. On the taxation of any bill of costs, charges or expenses being completed, the Taxing Master shall issue to the person presenting such bill for taxation his allowance or certificate of taxation. The bill of costs, charges and expenses, together with the allowance or certificate, shall be filed with the Registrar.

### **Certificate of employment**

172. Where the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or liquidator, is or are payable out of the company's assets, a certificate in writing, signed by the Official Receiver or liquidator, as the case may be, shall on the taxation be produced to the Taxing Master setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment of a solicitor to assist the liquidator in the performance of his duties, and the instructions given to such solicitor by the liquidator.

### **Costs and taxation**

173. All costs properly incurred in a winding up by the Court shall be allowed and shall be taxed by the Registrar.

### **Review of taxation and appeals thereon**

174. The procedure and practice of the Supreme Court shall be observed in all reviews of taxation.

## COSTS AND EXPENSES PAYABLE OUT OF COMPANY'S ASSETS

### **Liquidator's charges**

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

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

### **Costs payable out of assets**

176. (1) The company's assets 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 –

(a) first, the taxed costs of the petitions, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court;

(b) next, the costs and expenses of any person who makes or concurs in making the statement of affairs of the company;

(c) next, the taxed charges of any writer appointed to take an examination:

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

(d) 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 provided for;

(e) next, the costs of any person properly employed by any such liquidator;

(f) next, the remuneration of any such liquidator;

(g) next, the actual out-of-pocket expenses necessarily incurred by the liquidation committee, subject to the approval of the Official Receiver.

(2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons, other than payments for costs and expenses incurred and sanctioned under rule 40, and payments of bills which have been taxed and allowed under orders made for the taxation thereof, shall be allowed out of the company's assets without proof that the payments have been considered and allowed by the Registrar. The Taxing Master shall satisfy himself before passing such bills or charges that the employment of the solicitor or other person in respect of the matters mentioned in the bills or charges has been duly sanctioned:

Provided that the Official Receiver when acting as liquidator may, without taxation, pay and allow the costs and charges of any person other than a solicitor employed by him where such costs and charges are within the scale usually allowed by the Court and do not exceed the sum of \$100.

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

## STATEMENTS BY LIQUIDATOR TO REGISTRAR OF COMPANIES

### **Conclusion of winding up**

177. The winding up of a company, for the purposes of section 168, is deemed to be concluded –

(a) in the case of a company wound up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the Registrar of Companies or at the date of the release of the liquidator or provisional liquidator pursuant to section 145;

(b) in the case of a company wound up voluntarily, at the date of the dissolution of the company, unless at such date any fund or company's assets remain

unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding up is not deemed to be concluded until such fund or assets have been distributed or paid into the companies liquidation account.

#### **Times of sending liquidator's statements and regulations applicable thereto**

**178.** In a voluntary winding up, the statements with respect to the proceedings in and position of a liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be sent to the Registrar of Companies twice in every year as follows –

(a) the first statement commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding up, shall be sent within 30 days from the expiration of such 12 months, or within such extended period as the Court may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent. In cases in which the company's assets have been fully realised and distributed before the expiration of a half-yearly interval, a final statement shall be sent forthwith;

(b) subject to rule 179, the prescribed form, where applicable, shall be used, and the directions specified in the form shall (unless the Court otherwise directs) be observed in reference to every statement;

(c) every statement shall be sent in duplicate, and shall be verified by an affidavit in the prescribed form.

#### **Affidavit of no receipts or payments**

**179.** Where in a voluntary winding up a liquidator has not, during any period for which a statement has to be sent, received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement, send to the Registrar of Companies the prescribed statement in the prescribed form, in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in the prescribed form.

## UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN HANDS OF LIQUIDATOR

### **Payment of undistributed and unclaimed money into companies liquidation account**

**180.** (1) Subject to the order of the Court, all moneys in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for 6 months from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the 6 months, be paid into the companies liquidation account.

(2) In a voluntary winding up, all other moneys in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the companies liquidation account shall be the minimum balance of such moneys which the liquidator has had in his hands or under his control during the 6 months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Official Receiver may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the companies liquidation account within 14 days from the date to which the statement of account is brought down.

(3) Notwithstanding anything in this rule, any money representing unclaimed or undistributed assets or dividends in the hands of the liquidator at the date of the dissolution of the company shall forthwith be paid by him into the companies liquidation account.

(4) A liquidator whose duty it is to pay into the companies liquidation account money representing unclaimed or undistributed company's assets shall pay in the money through the Official Receiver and shall be entitled to a certificate of receipt for the money so paid in the prescribed form.

(5) In a voluntary winding up, money invested or deposited at interest by a liquidator is deemed to be money under his control, and when such money forms part of the minimum balance payable into the companies liquidation account pursuant to subrule (2), the

liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the companies liquidation account, provided that where the money is invested in Government securities, or such securities as the Court may direct, such securities may, with the permission of the Court, be transferred to the control of the Official Receiver instead of being forthwith realised and the proceeds thereof paid into the companies liquidation account. In the latter case, if and when the money represented by the securities is required wholly or in part for the purposes of the liquidation, the Official Receiver may realise the securities wholly or in part and pay the proceeds of realisation into the companies liquidation account and deal with the proceeds in the same way as other moneys paid into the account may be dealt with.

#### **Liquidator to furnish information to Official Receiver**

181. In a voluntary winding up, every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Official Receiver particulars of any money in his hands or under his control representing unclaimed or undistributed company's assets and such other particulars as the Official Receiver may require for the purpose of ascertaining or getting in any money payable into the companies liquidation account at the bank. The Official Receiver may require such particulars to be verified by affidavit.

#### **Official Receiver may call for verified accounts**

182. (1) In a voluntary winding up, the Official Receiver may at any time order any such person to submit an account verified by affidavit of the sums received and paid by him as liquidator of the company and may direct and enforce an audit of the account.

(2) For the purposes of section 159 and these Rules, the Court shall have and, at the instance of the Official Receiver, may exercise all the powers conferred by the Bankruptcy Act (Chapter 67) with respect to the discovery and realisation of the property of a debtor, and the provisions of that Act with respect thereto apply, with any necessary modification, to proceedings under section 159.



### **Application to Court for enforcing account and getting in money**

**183.** An application by the Official Receiver for the purpose of ascertaining and getting in money payable into the bank pursuant to section 159 shall be made by motion.

### **Application for payment out by person entitled**

**184.** An application by a person claiming to be entitled to any money paid into the bank in pursuance of section 159 shall be made in such form and manner as the Official Receiver may direct, and shall, unless the Official Receiver otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled and such further evidence as the Official Receiver may direct.

### **Application by liquidator for payment out**

**185.** A liquidator who requires to make payments out of money paid into the bank in pursuance of section 159, by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Official Receiver may direct, and the Official Receiver may thereupon make an order for payment to the liquidator of the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the liquidator or transmission to the persons to whom the payments are to be made.

## **RELEASE OF LIQUIDATOR IN WINDING UP BY COURT**

### **Proceedings for release of liquidator**

**186.** (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 to do so 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 published in the *Gazette*. The liquidator shall provide their requisite payment for the *Gazette*, which he may charge against the company's assets.

### **Disposal of books and papers**

187. (1) The Court may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding 5 years from the dissolution of the company) as the Court thinks proper.

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

(3) A resolution for the destruction of the books and papers of such a company within the period of 5 years or any shorter period fixed by an order of the Court in force at the date of such resolution shall not take effect until the expiration of such period of 5 years or of such shorter period unless the Court shall otherwise direct.

(4) At least one week's notice shall be given to the Official Receiver of any application to the Court for an order for destruction of the books and papers of a company before the expiration of such period of 5 years or shorter period.

## **OFFICIAL RECEIVERS**

### **Appointment**

188. (1) Judicial notice shall be taken of the appointment of the Official Receiver appointed by His Majesty the Sultan and Yang Di-Pertuan.

(2) When His Majesty the Sultan and Yang Di-Pertuan appoints any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be published in the *Gazette*.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights and powers, and be subject to all the liabilities of an Official Receiver.

## **Removal**

189. Where an Official Receiver is removed from his office by His Majesty the Sultan and Yang Di-Pertuan, notice of the order removing him shall be published in the *Gazette*.

## **Personal performance of duties**

190. The Court may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

## **Deputy official receivers**

191. A deputy official receiver appointed by His Majesty the Sultan and Yang Di-Pertuan shall be an officer of the Court, as fully as the Official Receiver and, subject to the directions of the Court, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of a deputy official receiver and he may be removed in the same manner as is provided in the case of an Official Receiver.

## **Powers of certain officers and Official Receivers' clerks in certain cases to act for Official Receivers**

192. In the absence of the Official Receiver, any officer duly authorised for the purpose by His Majesty the Sultan and Yang Di-Pertuan and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

## **Duties where no assets**

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

### **Accounting by Official Receiver**

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

(2) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Court which shall take such action (if any) thereon as it may deem expedient.

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

### **Official Receiver to act as liquidation committee where no liquidation committee appointed**

195. Where there is no liquidation committee in a winding up by the Court, any function of the liquidation committee which devolves on the Court may, subject to the directions of the Court, be exercised by the Official Receiver.

### **Appeals from Official Receiver**

196. An appeal to the Court from an act or decision of the Official Receiver acting otherwise than as liquidator of a company shall be brought within 21 days from the time when the decision or act appealed against is done, pronounced or made.

## **BOOKS TO BE KEPT AND RETURNS MADE BY OFFICERS OF COURT**

### **Applications under sections 111 and 190(4)**

197. (1) An application by the Official Receiver to the Court to examine any person pursuant to section 111 or to confer on the Official Receiver or on any person designated by him for the purpose with respect to the company concerned the powers of investigating the affairs of the company mentioned in section 190(4) shall be made *ex parte* and shall be supported by a report to the Court.

(2) The report shall be signed by the Official Receiver and shall for the purposes of such application be *prima facie* evidence of the statement therein contained.

#### **Books to be kept by officers of Court**

198. (1) The Registrar of the Court shall keep books according to the prescribed forms, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

(2) The books shall at all times be open to inspection by the Official Receiver, and the officers of the Court whose duty it is to keep the books prescribed by these Rules shall furnish the Official Receiver with such information and returns as the Official Receiver may require.

#### **PUBLICATION IN GAZETTE AND LOCAL NEWSPAPER IN WINDING UP BY COURT**

##### **Publication of notices in *Gazette***

199. (1) All notices subsequent to the making by the Court of a winding up order in pursuance of the Order or these Rules requiring publication in the *Gazette* shall be published in the *Gazette* by the Official Receiver.

(2) Where any winding up order is amended, and also in any case in which any matter which has been published in the *Gazette* has been amended or altered, or in which a matter has been wrongly or inaccurately published in the *Gazette*, the Official Receiver shall re-publish in the *Gazette* such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Court may direct.

### **Filing memorandum of notices in *Gazette* and local newspaper**

**200.** (1) Whenever the *Gazette* contains any advertisement relating to any winding up proceedings, the Official Receiver or liquidator, as the case may be, shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2) In the case of an advertisement in a Malay or English local daily newspaper, the Official Receiver or liquidator, as the case may be, shall keep copies thereof and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3) For such purpose, one copy of each local daily newspaper in which any advertisement relating to any winding up proceeding in the Court is inserted, shall be left with the Official Receiver or liquidator, as the case may be, by the person who inserts the advertisement.

(4) A memorandum under this rule shall, until the contrary is proved, be evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* or in a Malay or English local daily newspaper mentioned in it.

## **ARRESTS AND COMMITMENTS**

### **To whom warrants may be addressed**

**201.** A warrant of arrest, or any other warrant issued under the provisions of the Order and these Rules, may be addressed to such bailiff or officer of the Court or police officers as the Court may in each case direct.

### **Prison to which person arrested on warrant is to be taken**

**202.** Where the Court issues a warrant for the arrest of a person under any of the provisions of the Order or these Rules, he shall be committed, unless the Court shall otherwise order, to the prison used by the Court in cases of commitment made in the exercise by the Court of its ordinary jurisdiction.

**Prison to which person arrested is to be conveyed, and production and custody of persons arrested**

**203.** (1) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Order and these Rules, other than sections 133 and 206 and rule 53, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison used by the Court in cases of commitment made in the exercise by the Court of its ordinary jurisdiction and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the Court or otherwise by law.

(2) Where a person is arrested under a warrant issued under section 133 or 206, or under rule 53, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to such prison as aforesaid; and the Director of Prisons shall produce such person before the Court as it may direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

**GENERAL**

**Disposal of moneys received after execution**

**204.** (1) Where any money is seized or received by the bailiff in part satisfaction of an execution against the goods of a company, the money shall be paid into Court to the credit of a ledger account in the name of the bailiff with a subtitle in the matter of the action and if, before the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the bailiff shall forthwith inform the Registrar of the service of such notice and the Registrar shall, on being so required, deliver any money so seized or received in part satisfaction of the execution to the liquidator after deducting therefrom the costs of the execution.

(2) Where under an execution in respect of a judgment for a sum exceeding \$200 the goods of a company are sold or money is paid in order to avoid a sale, the proceeds of sale or money paid in order to avoid a sale shall be paid into Court to the credit of a ledger account

in the name of the bailiff with a subtitle in the matter of the action and shall be retained for 14 days from the date of such sale or payment in order to avoid sale, and if, within such 14 days, notice is served on the bailiff of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company, the bailiff shall forthwith notify the Registrar of the service of such notice and if an order is made or a resolution is passed, as the case may be, for the winding up of the company, the Registrar shall deduct the costs of the execution and shall pay the balance to the liquidator.

(3) Payment by the bailiff in to Court in pursuance of this rule shall be a good discharge to him as against the liquidator.

#### **Enlargement or abridgement of time**

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

#### **Formal defect not to invalidate proceedings**

206. (1) No proceedings under the Order or these Rules shall be invalidated by any formal defect or by any irregularity, unless the Court 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 the Court.

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

#### **Application of existing procedure**

207. In all proceedings in or before the Court, or any Registrar or officer thereof, or over which the Court has jurisdiction under the Order and these Rules, where no other provision is made by the Order or these 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 Court.



Made this 9th day of Muharram 1440 1439 Hijriah corresponding  
to the 19th day of September 2018.

