

Corporations Law Rules 2000 1999 No. 359

EXPLANATORY STATEMENT

Statutory Rule 1999 No. 359

Issued by the authority of the Judges of the Federal Court of Australia

Corporations Law Rules

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59(4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the Acts *Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

DIVISION 1 PRELIMINARY

RULE 1.1 Name of rules

This rule provides that the Rules are to be cited as the *Corporations Law Rules 2000*.

RULE 1.2 Commencement

This rule provides that these Rules commence on 1 January 2000.

RULE 1.3 Application of these Rules and other rules of the Court

Under subrule 1.3(1), unless the Court otherwise orders these Rules apply to a proceeding under the Corporations Law, or the ASC Law, that commences on or after the commencement of these Rules on 1 January 2000. Subrule 1.3(2) provides that the other rules of the Court, so far as they are relevant and not inconsistent with these Rules, will also apply to such a proceeding.

Pursuant to subrule 1.3(3), the rules applying to a proceeding under the Corporations Law, or the ASC Law, as in force immediately before the commencement of these Rules on 1 January 2000 will continue to apply to such a proceeding that was commenced before the commencement of these Rules on that date.

RULE 1.4 Expressions used in the Corporations Law

This rule provides that, unless the contrary intention appears, an expression used in the these Rules and in the Corporations Law is to have the same meaning in these Rules as it has in the Corporations Law.

RULE 1.5 Definitions for these Rules

Unless the contrary intention appears, for the purposes of these Rules "applicant" and "respondent" are the parties to a claim for interlocutory relief, "plaintiff" and "defendant" are the parties to a claim for relief under the Corporations Law or the ASC Law; "interlocutory process" is an interlocutory process in accordance with Form 3 (being an application made in a proceeding already commenced in the Court); "originating process" is an originating process in accordance

with Form 2 (being an application to commence a proceeding); and "the Law" is the Corporations Law.

RULE 1.6 References to rules and forms

This rule provides that references to rules and forms are references to rules and forms in these Rules and Schedule 1 to these Rules respectively, unless the contrary intention appears.

RULE 1.7 Substantial compliance with forms

Subrule 1.7(1) provides that it is sufficient compliance with these Rules if a document which must be in accordance with a form in Schedule 1 is substantially in accordance with that form, or only has such variations as the nature of the case requires.

Subrule 1.7(2) provides that the Registrar must not reject a document for filing only because it describes a party in different terms to the description used in these Rules.

RULE 1.8 Court's power to give directions

Where the Court is satisfied that the provisions of the Law, ASC Law or the rules of the Court do not adequately provide for the practice and procedure to be followed; or that a difficulty arises, or a doubt exists, about the practice and procedure to be followed, the Court may give directions in relation to the practice and procedure to be followed in a proceeding.

RULE 1.9 Calculation of time

This rule provides for the manner of calculating the period of time in which an act or thing required by these Rules must be done.

Subrule 1.9(1) provides that a period of time before or after a particular day, act or event must be calculated without counting that day, or the day of the act or event, as the case may be.

Subrule 1.9(2) provides that only the first day, or the day of the first act or event, is to be counted when calculating how many days a particular day, act or event is before or after another day, act or event.

Subrule 1.9(3) provides that if the last day of any period prescribed or allowed by these Rules for an act or thing to be done falls on a day that is not a business day where that act or thing is to be or may be done, the act or thing may be done on the first business day in the place after that day.

Subrule 1.9(4) excludes the period beginning on 25 December in a year and ending at the end of 1 January in the next year when calculating a period of time for the purposes of these Rules.

RULE 1.10 Extension and abridgement of time

The rules of the Court providing for the extension or abridgement of a period of time for the doing of any act or thing will apply to a proceedings to which these Rules apply unless the Law, ASC Law or these Rules otherwise provide.

DIVISION 2 PROCEEDINGS GENERALLY

RULE 2.1 Title of documents in a proceeding - Form 1

This rule provides that the title of a document filed in a proceeding must be in accordance with Form 1, which requires details of the Court in which the proceeding is filed, the Court's number for the proceedings, and the parties to the proceedings.

RULE 2.2 Originating process and interlocutory process - Forms 2 and 3

Subrule 2.2(1) provides that, unless these Rules provide otherwise, an application required or permitted by the Law must be made by filing an originating process if there is no proceeding already commenced in the Court, or by filing an interlocutory process in any other case.

Subrule 2.2(2) allows a person to make an application in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory process in that proceeding, unless the Court orders otherwise.

Under subrule 2.2(3), an originating process must be in accordance with Form 2 and must state each section of the Corporation Law or the ASC Law, or each regulation of the Corporation Regulations, under which the proceeding is brought, and the relief sought.

Under subrule 2.2(4), an interlocutory process must be in accordance with Form 3 and must state each section of the Corporation Law or the ASC Law, or each regulation of the Corporation Regulations, under which the proceeding is brought, and the relief sought.

RULE 2.3 Fixing of hearing

Under this rule the Registrar must fix a time, date and place for hearing and endorse those details on each originating process or interlocutory process received by the Registry. The Registrar may seal a sufficient number of copies for service and proof of service.

RULE 2.4 Supporting affidavits

Under subrule 2.4(1), an originating process or interlocutory process must be accompanied by an affidavit stating the facts in support of the process. An affidavit in support of an originating process must also, pursuant to subrule 2.4(2), annex a record of a search of the records maintained by the Australian Securities and Investment Commission ("the Commission") in relation to the company that is the subject of the application. This search must have been carried out no earlier than 7 days before the originating process is filed.

RULE 2.5 Affidavits made by creditors

This rule sets out who may make an affidavit for a creditor. Where the creditor is a corporation, the affidavit may be made by a director, secretary or other principal officer of the corporation, or by an employee of the corporation who is authorised to make the affidavit on its behalf. Where the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed, that person may make the affidavit. In any other case the affidavit may be made by the creditor or a person authorised by the creditor to make the affidavit.

This rule is subject to rule 5.4, which provides that an affidavit in support of an originating process seeking an order that the company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff.

RULE 2.6 Form of affidavits

Rule 2.6 provides that an affidavit must comply with the rules of the Court; or the rules of the Supreme Court of the State or Territory where the affidavit was sworn or affirmed.

RULE 2.7 Service of originating process or interlocutory process and supporting affidavit

Subrule 2.7(1) provides that the plaintiff must serve a copy of the originating process and any supporting affidavit on each defendant and, if the corporation to which the proceeding relates is not a party, the corporation, as soon as practicable after the filing of the originating process and, in any case, at least 5 days before the date fixed for hearing.

Subrule 2.7(2) provides that the applicant must serve a copy of the interlocutory process and any supporting affidavit on each respondent and, if the corporation to which the proceeding relates is not a party, the corporation, as soon as practicable after the filing of the interlocutory process and, in any case, at least 3 days before the date fixed for hearing.

RULE 2.8 Notice of certain applications to be given to Commission

This rule requires a person making certain applications under the Law to serve documents on the Commission. Pursuant to subrule 2.8(1), the rule applies in addition to any requirements of the Law that particular documents be served on, or notice of particular matters be given to, the Commission. Subrule 2.8(2) provides that the rule does not apply where the person making the application is the Commission or a person authorised by the Commission.

Under subrule 2.8(3), unless the Court otherwise orders, a person making an application under a provision of the Law specified in the subrule must serve on the Commission, a reasonable time before the hearing of the application, a copy of the originating or interlocutory process and the supporting affidavit.

The subrule applies to applications to validate an issue of shares or confirm its terms; extend the time for registration of a charge; avoid or validate a deed of company arrangement; remove an administrator; fix the remuneration of a provisional liquidator or liquidator; release a liquidator of a company and deregistration of the company; stay a compulsory winding-up; deregister a company; stay the voluntary winding up (if the application is for the exercise of the power that would be exercisable under subsection 482(1) of the Law if a company were being wound up by the Court); obtain leave to be appointed or act as a liquidator; have an inquiry into the conduct of a liquidator; deal with fraud, negligence, etc by a person concerned with a corporation; reinstate the registration of a company; restore the name of an Australian body to the register; restore the name of a foreign company to the register; restrain dealings with a futures broker's bank accounts; obtain a further order or directions following an order made under section 1224 of the Law to restrain dealings with a futures broker's bank accounts; obtain relief from liability for contravention of a civil penalty provision; obtain relief from liability for negligence, default or breach of trust or duty; and overcome any irregularity in a proceeding.

RULE 2.9 Notice of appearance (s 465C of the Law) - Form 4

Under subrule 2.9(1), a person intending to appear at the hearing of an application must, before appearing, file a notice of appearance in accordance with Form 4 and, if appropriate, an affidavit stating any facts on which the person intends to rely. Where the application is an originating process, the notice of appearance and any affidavit must be served on the plaintiff at least 3 days before the hearing. If the application is an interlocutory process, the notice of appearance and any affidavit must be served on the applicant within 1 day of the hearing.

Subrules 2.9(2) and (3) give effect to section 465C of the Law which provides that a person may not, without the leave of the Court, oppose an application for winding up unless, within the period prescribed by the rules, the person has filed and served on the plaintiff notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

Subrule 2.9(2) provides that the notice of grounds required by section 465C may be included in the notice of appearance filed by the person who intends to oppose the winding up application. Subrule 2.9(3) provides that the notice and affidavit required by section 465C must be filed and served not later than 3 days before the date fixed for hearing of the originating process.

RULE 2.10 Intervention in proceeding by Commission (s 1330 of the Law) - Form 5

Pursuant to subrule 2.10(1), the Commission must file a notice of intervention in accordance with Form 5 if it intends to intervene in a proceeding. Subrule 2.10(2) provides that the Commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and any other party not later than 3 days before the date fixed for the hearing at which the Commission intends to appear.

RULE 2.11 Publication of notices

A rule may require a notice in relation to a body to be published in accordance with rule 2.11. If a rule so requires, then rule 2.11 provides that the notice must be published once in a daily newspaper circulated in the State or Territory where the body has its principal, or last known, place of business. Nothing in the rule is intended to affect the operation of any provision of the Law that requires publication of a notice in the *Gazette*.

RULE 2.12 Proof of publication

This rule provides for the manner in which the publication of any matter in connection with a proceeding is to be proved. Subrule 2.12(2) provides that, unless these Rules otherwise provide, or the Court otherwise orders, the person responsible for the publication, or the person's legal practitioner, must file an affidavit made by, or a memorandum signed by, the person or the person's legal practitioner stating the date of publication and to which is annexed or exhibited a copy of the published matter. Pursuant to subrule 2.12(3), the affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

RULE 2.13 Leave to creditor, contributory or officer to be heard

Subrule 2.13(1) allows the Court to grant leave to a person who is, or who claims to be, a creditor (or an officer of a creditor), a contributory (or an officer of a contributory) or an officer, of a corporation to be heard in a proceeding without becoming a party to it.

Subrule 2.13(2) provides that the Court may direct a person given leave under subrule 2.13(1) to pay any additional costs incurred by a party or the corporation as a result of the person's attendance, and to order that the person not be heard until the costs are paid or secured to the Court's satisfaction.

Under subrule 2.13(3) the Court may order that a person who is, or who claims to be, a creditor, a contributory or an officer of a corporation to be added as a defendant to the proceeding.

Subrule 2.13(4) allows leave to be granted to a person under subrule 2.13(1), or an order to be made under subrule 2.13(3) to add a person as a defendant, either on the application by the person or a party to the proceeding, or on the Court's own initiative.

Subrule 2.13(5) provides that the Court may appoint a creditor or contributory to represent all or any class of creditors or contributories on any question, or in relation to any proceeding, at the expense of the Corporation. The Court also has the power to remove any person so appointed.

RULE 2.14 Inquiry in relation to corporation's debts etc

This rule provides that the Court may direct an inquiry in relation to debts, claims or liabilities, or a class thereof, of or affecting a corporation to which a proceeding relates.

RULE 2.15 Meetings ordered by the Court

Regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the Court, subject to the Law, these Rules and any direction of the Court to the contrary. Regulations 5.6.12 to 5.6.36A deal with the notification, cost, and conduct of a meeting, including the appointment and role of proxies.

DIVISION 3 COMPROMISES AND ARRANGEMENTS IN RELATION TO PART 5.1 BODIES

RULE 3.1 Application of Division 3

This Division applies where an application is made to the Court under Part 5.1 of the Law for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members. A Part 5.1 body is defined in the Law as a company, a foreign company, or a registrable Australian body (other than a registrable local body).

RULE 3.2 Nomination of chairperson for meeting

Subsections 411(1), (1A) and (1B) of the Law involve applications to the Court for an order that a meeting or meetings take place between a Part 5.1 body and its creditors or members, or any class of its creditors or members. Rule 3.2 provides that, before the hearing of such an application, the plaintiff must file an affidavit stating the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting and that each of these persons is willing to act as chairperson, has had no previous relationship or dealing with the body or any other person interested in the proposed compromise or arrangement except as disclosed in the affidavit, and has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson except as disclosed in the affidavit.

The affidavit must also state the name of any person proposed to be appointed to administer the proposed compromise or agreement, and that this person does not fall within paragraphs 411(7)(a) to (f) of the Law except as disclosed in the affidavit. Paragraphs 411(7)(a) to (f) apply to a person who (a) is a mortgagee of any property of the body, (b) is an auditor or an officer of the body, (c) is an officer of a body corporate that is a mortgagee of any property of the body, (d) is not a registered liquidator, (e) is an officer of a body corporate related to the body, or (f) has at any time within the last 12 months been an officer or promoter of the body or of a related body corporate (unless the Commission directs in writing that paragraph (f) does not apply to the person).

RULE 3.3 Order for meetings to identify proposed scheme

This rule provides that an order under subsections 411 (1) or (1A) of the Law for a meeting or meetings must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement to be considered at the meeting or meetings.

RULE 3.4 Notice of hearing (s 411(4), s 413(1) of the Law) - Form 6

Pursuant to subrules 14(1) and (2), unless the Court otherwise orders a plaintiff must publish a notice of the hearing of an application under subsection 411(4) of the Law for an order approving a proposed compromise or arrangement, or an application under subsection 413(1) of the Law for an order in relation to the reconstruction of one or more Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.

Subrule 3.4(3) provides that the notice must be in accordance with Form 6 and must be published in accordance with rule 2.11 at least 5 days before the date fixed for the hearing of the application.

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

This rule provides that the plaintiff must, as soon as practicable after the Court makes an order approving a compromise or arrangement, have the order sealed or authenticated, and have an office copy of the order lodged with the Commission and served on any person appointed to administer the compromise or arrangement.

DIVISION 4 RECEIVERS AND OTHER CONTROLLERS OF CORPORATION PROPERTY (PART 5.2 OF THE LAW)

RULE 4.1 Inquiry into conduct of controller (s 423 of the Law)

Under paragraph 423(1)(b) of the Law a person may complain to the Court about an act or omission of a receiver or other controller of the property of a corporation. This rule provides that such a complaint must be made by filing an originating process seeking an inquiry in relation to the complaint.

DIVISION 5 WINDING UP PROCEEDINGS (INCLUDING OPPRESSION PROCEEDINGS WHERE WINDING UP IS SOUGHT)

RULE 5.1 Application of Division 5

This rule provides that Division 5 applies to applications for the winding up of a company under section 246AA, Part 5.4 or Part 5.4A of the Law.

Section 246AA of the Law allows the Court to order that a company be wound up if it is satisfied that the company's conduct or proposed conduct is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the company, or is contrary to the interests of the members as a whole.

Part 5.4 of the Law allows the Court to order a company to be wound up on the basis that it is insolvent, while Part 5.4A gives the Court the power to order the winding up of a company on grounds other than insolvency.

RULE 5.2 Affidavit accompanying statutory demand (s 459E(3) of the Law) -Form 7

Under Part 5.4 of the Law a company may be wound up in insolvency on the basis that it has failed to comply with a statutory demand. A person may serve on a company a statutory demand relating to one or more debts that the company owes to the person, that are due and payable and whose total amount is at least the statutory minimum. Section 459E(3) of the Law provides that unless the debt, or each of the debts, is a judgment debt, the statutory demand must be accompanied by an affidavit that complies with the rules and that verifies that the debt, or the total of the amounts of the debts, is due and payable by the company.

Rule 5.2 provides that, for the purposes of subsection 459E(3), the affidavit must be in accordance with Form 7 and state the matters mentioned in that Form; be made by the creditor or a person with the authority of the creditor or creditors; and not state a proceeding number or refer to a Court proceeding in any heading or title to the affidavit.

RULE 5.3 Application for leave to apply for winding up in insolvency (s 459P(2) of the Law)

Subsection 459P(2) provides that a person who is a creditor of a company only because of a contingent or prospective debt, a contributory, a director, or the Commission may only apply for the winding up of a company in insolvency with the leave of the Court.

This rule provides that an application for leave under subsection 459P(2) may be made at the same time as the application that the company be wound up in insolvency is made.

RULE 5.4 Affidavit in support of application for winding up (s 459P, s 462, s 464 of the Law)

Subrule 5.4(1) provides that the affidavit in support of an originating process seeking a winding up order under Part 5.4 or Part 5.4A of the Law must be made by the plaintiff or a person with the authority of the plaintiff or plaintiffs.

Subrule 5.4(2) provides that the affidavit in support of an application based on a failure to comply with a statutory demand must verify the service of the demand on the company, and the company's failure to comply with the demand; and state whether, and to what extent, each of the debts to which the demand relates is still due and payable at the date of the affidavit.

Under subrule 5.4(3), the affidavit made in support of an application based on a ground under Part 5.4A of the Law must state whether the company is able to pay all its debts as and when they become due and payable; and annex or exhibit the company's most recent balance sheet and profit and loss statement, or explain their absence.

Subrule 5.4(4) requires the affidavit in support to be made within 7 days before the originating process is filed.

RULE 5.5 Consent of liquidator (s 532(9) of the Law) - Form 8

Subsection 532(9) of the Law provides that a person shall not be appointed as liquidator or a company unless the person has, before his or her appointment, consented in writing to act in that capacity.

This rule provides for the form and filing of the consent to be a liquidator. However, the rule does not, pursuant to subrule 5.5(1), apply to the appointment of a provisional liquidator.

Subrule 5.5(2) provides that the consent under subsection 532(9) to act as a liquidator must be in accordance with Form 8.

Under subrule 5.5(3), the plaintiff in an application to have a company wound up must file the consent before the hearing of the application, and serve a copy of the consent on the company at least 1 day before the hearing.

RULE 5.6 Notice of application for winding up - Form 9

Subrule 5.6(1) provides that, unless the Court otherwise orders, the plaintiff must publish a notice of the application that a company be wound up.

Under subrule 5.6(2), the notice must be published in accordance with rule 2.11 at least 3 days after the originating process is served on the company and at least 7 days before the hearing of the application.

RULE 5.7 Applicant to make copies of documents available

This rule provides that a copy of any document filed in a proceeding to which Division 5 applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor, contributory of the company.

RULE 5.8 Discontinuance of application for winding up

Rule 5.8 provides that an application that a company be wound up may only be discontinued with the leave of the Court.

RULE 5.9 Appearance before Registrar [or other Court officer]

Under this rule, after an originating process seeking a winding up order has been filed, a plaintiff must, if required, appear before the Registrar and satisfy the Registrar that the plaintiff has complied with the Law and these Rules in relation to applications for a winding up order.

RULE 5.10 Order substituting plaintiff in application for winding up (s 465B of the Law) - Form 10

Section 465B of the Law provides that the Court may by order substitute, as applicant or applicants in an application for a winding up order, a person or persons who might otherwise have made such an application. A substitution order may only be made if the Court thinks it appropriate to do so because the application is not being proceeded with diligently enough or for some other reason.

Subrule 5.10(1) provides that, where a substitution order is made under section 465B, the Court may also order that the substituted plaintiff or plaintiffs publish a notice that they intend to apply for a winding up order.

Under subrule 5.10(2), the notice must be in accordance with Form 10 and must be published in accordance with rule 2.11 unless the Court otherwise directs.

RULE 5.11 Notice of winding up order and appointment of liquidator - Form 11

Pursuant to subrule 5.11(1), this rule applies if the Court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.

Under subrule 5.11(2), the plaintiff must inform the liquidator of the appointment not later than a day after the order is made.

Subrule 5.11(3) provides that the liquidator must publish a notice of the winding up order and the liquidator's appointment as soon as practicable after being informed of the appointment.

The notice must, pursuant to subrule 5.11(4), be in accordance with Form 11 and be published in accordance with rule 2.11.

Subrule 5.11(5) provides that rule 5.11 does not apply to provisional liquidators.

DIVISION 6 PROVISIONAL LIQUIDATORS (PART 5.4B OF THE LAW)

RULE 6.1 Appointment of provisional liquidator (s 472 of the Law) - Form 8

Subrule 6.1 (1) provides that an application under subsection 472(2) of the Law for the appointment of an official liquidator as a provisional liquidator must be accompanied by the written consent of the official liquidator. Under subrule 6.1(2), the consent must be in accordance with Form 8.

Pursuant to subrule 6.1(3), an order appointing a provisional liquidator must include a short description of the property that may be taken into the provisional liquidator's custody.

Subrule 6.1(4) provides that the Court may require a plaintiff to give an undertaking as to damages that may result from the appointment of a provisional liquidator.

RULE 6.2 Notice of appointment of provisional liquidator - Form 12

Subrules 6.2(1) and (2) provide that the plaintiff must, as soon as practicable after the Court makes an order appointing a provisional liquidator, have an office copy of the order lodged with the Commission (unless the Commission is the plaintiff), served on the company (unless the company is the plaintiff) and on any person as directed by the Court, and given to the provisional liquidator with a written statement that the order has been served on the company and on any other person as directed.

Subrules 6.2(3) provides that the provisional liquidator must, as soon as practicable after the order is made, publish a notice of the provisional liquidator's appointment. Under subrule 6.2(4), the notice must be in accordance with Form 12 and must be published in accordance with rule 2.11.

DIVISION 7 LIQUIDATORS

RULE 7.1 Resignation of liquidator (s 473 (1) of the Law)

Subsection 473(1) of the Law provides that a liquidator appointed by the Court may resign.

Subrule 7.1 (1) provides that a liquidator appointed by the Court who wishes to resign must file with the Registrar, and lodge with the Commission, a memorandum of resignation.

Pursuant to subrule 7.1(2), the resignation takes effect on the filing and lodging of the memorandum.

RULE 7.2 Filling vacancy in office of liquidator (s 473(7), s 502 of the Law)

Subsection 473(7) of the Law provides that a vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. Section 502 allows the Court to appoint a liquidator where there is no liquidator acting.

Under subrule 7.2(1), if there is no liquidator acting the Court may, in the case of a winding up by the Court, appoint another official liquidator and, in the case of a voluntary winding up, appoint another registered liquidator. In each case the liquidator

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must have filed a written consent in accordance with Form 8.

Subrule 7.2(2) provides that the Court may make the appointment in any case on application by the Commission, a creditor or a contributory. In the case of a winding up by the Court, the Court may also make the appointment on its own initiative.

RULE 7.3 Report to liquidator as to company's affairs (s 475 of the Law)

Under section 475 of the Law, a written report as to the company's affairs must be submitted to the liquidator by the directors and secretary of a company, and by any other person required by the liquidator to so report.

Subrule 7.3(1) provides that the liquidator must give to any person required under section 475 to submit and verify a report the appropriate forms and instructions for the preparation of the report.

Under subrule 7.3(2), the costs or expenses of preparing the report shall only be paid out of the property of the company if they have been sanctioned by the liquidator before being incurred, or have been taxed or assessed, unless the Court otherwise orders.

Pursuant to subrule 7.3(3), the liquidator must report to the Court any default in complying with the requirements of section 475.

Subrule 7.3(4) provides that "liquidator" includes provisional liquidator for the purposes of rule 7.3.

RULE 7.4 Liquidator to file certificate and copy of settled list of contributories (s 478 of the Law)

Under section 478 of the Law, a liquidator must settle a list of contributories in certain circumstances.

If such a list, or a supplementary list of contributories, is settled and certified by the liquidator then, pursuant to rule 7.4, within 14 days of doing so the liquidator must file the certificate and a copy of the list.

RULE 7.5 Release of liquidator and deregistration of company (s 480(c) and (d) of the Law)

A liquidator of a company may apply to the Court under paragraph 480(c) of the Law for an order that he or she be released, or under paragraph 480(d) for an order that he or she be released and that the Commission deregister the company. This application may be made when the liquidator has realised all the property of the company, distributed a final dividend (if any) to the creditors, adjusted the rights of the contributories among themselves, and made a final return (if any); or when the liquidator has resigned or been removed from office.

Under subrule 7.5(1), this rule applies to an application by a liquidator of a company for an order that he or she be released, or that he or she be released and that the Commission deregister the company.

Subrule 7.5(2) provides that the interlocutory process seeking the order must include a notice stating that any objection to the release must be made by filing and serving a notice of objection within 21 days after the date of service of the process, and a statement setting out the terms of subsection 481(3) of the Law. Subsection 483(1) provides that an order releasing a liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

Subrule 7.5(3) sets out the matters which must be included in the affidavit in support of the interlocutory process. These include whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding up; any calls made on contributories; any dividends paid; whether the committee of inspection (if any) has passed a resolution approving the liquidator's release; whether the Commission has appointed an auditor to report on an account or statement of the position in the winding up; whether the Court has ordered a report on the accounts of the liquidator to be prepared; whether any objection to the release of the liquidator has been received by the liquidator; whether any report has been submitted by the liquidator to the Commission; whether the liquidator considers it necessary to

report on the affairs of the company or any of its officers; any property disclaimed; any remuneration paid or payable to the liquidator and how such remuneration was determined; any costs, charges or expenses payable by the liquidator if the Court grants the liquidator's release; and, if the application is made under paragraph 480(c) of the Law, the facts and circumstances by reason of which it is submitted that the company should not be deregistered.

Under subrule 7.5(4), the liquidator must also include in the supporting affidavit two prescribed statements in relation to the disclosure of any act done or default by the liquidator which could give rise to any liability to the corporation or any creditor or contributory, or of any claim made by any person that there has been such an act or default.

Subrule 7.5(5) requires that the liquidator file, or annex to the supporting affidavit, a statement of the company's financial position at the date when the interlocutory process seeking the release was filed, and a summary of the liquidator's receipts and payments in winding up the company.

Subrule 7.5(6) provides that, unless the Court otherwise orders, each creditor who has provided a debt and each contributory must be served a copy of the interlocutory process and a copy of the financial statement and summary of receipts and payments mentioned in subrule 7.5(5).

RULE 7.6 Objection to release of liquidator - Form 13

A creditor or contributory who wishes to object to the release of the liquidator must, pursuant to subrule 7.6(1), file, and serve on the liquidator, a notice of objection in accordance with Form 13 and, if appropriate, an affidavit stating any facts relied on.

Subrule 7.6(2) provides that a liquidator who is served with a notice of objection by a creditor or contributory must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

RULE 7.7 Report on accounts of liquidator (s 481 of the Law)

Under paragraph 481(1)(a) of the Law, the Court may order that a report on the accounts of the liquidator be prepared by an auditor appointed by the Commission or by the Court.

Subrule 7.7(1) provides that where the Court makes such an order, the liquidator must give to the auditor all information, books and vouchers required to prepare the report.

Under subrule 7.7(2), the auditor must file a copy of the completed report in a sealed envelope that is marked with the title and number of the proceeding and the words 'Auditor's report under subsection 481 (1) of the Corporations Law'; and arrange for a copy of the report to be served on the liquidator and lodged with the Commission.

Subrule 7.7(3) provides that a copy of the report is not available for inspection by any person except the liquidator or the Commission unless the Court otherwise orders.

RULE 7.8 Application for payment of call (s 483(3)(b) of the Law) - Form 14

Paragraph 483(3)(b) of the Law gives the Court power to make an order for payment of any calls made by the Court or the liquidator on all or any of the contributories for the payment of money.

Under rule 7.8, the affidavit in support of an application by the liquidator for such an order must be in accordance with Form 14.

RULE 7.9 Distribution of surplus by liquidator with special leave of the Court (s 488(2) of the Law) - Form 15

Subsection 488(2) of the Law provides that a liquidator may not distribute a surplus without the Court's special leave.

Under subrule 7.9(1), the affidavit in support of an application for special leave must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator proposes to distribute any part of the surplus.

Subrule 7.9(2) requires the liquidator to publish a notice of the application at least 14 days before the date fixed for hearing of the application.

Subrule 7.9(3) provides that the notice must be in accordance with Form 15 and must be published in accordance with rule 2.11.

RULE 7.10 Powers delegated to liquidator by the Court (s 488 of the Law)

Subsection 488(1) of the Law provides that the rules or regulations may make provision for enabling or requiring all or any of the powers conferred and imposed on the Court under Part 5.4B of the Law in respect of the holding and conducting of meetings to ascertain the wishes of creditors and contributories; the paying, delivery, conveyance, surrender or transfer of money, property or books to the liquidator; the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it; and the fixing of a time within which debts and claims must be proved; to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

Rule 7.10 provides that, subject to the Law, Corporations Regulations, these Rules, and any order of the Court, all the powers conferred and imposed on the Court under Part 5.4B of the Law in respect of the matters listed in subsection 488(1) may be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

RULE 7.11 Inquiry into conduct of liquidator (s 536 of the Law)

Under paragraph 536(1)(b) of the Law, the Court may inquire into, and such action as it thinks fit in relation to, a complaint made to it by a person with respect to the conduct of a liquidator in connection with the performance of his or her duties.

Subrule 7.11 (1) provides that such a complaint must be made, in the case of a winding up by the Court, by an interlocutory process seeking an inquiry, and, in the case of a voluntary winding up, by an originating process seeking an inquiry.

Under subrule 7.11(2), a report to the Court by the Commission under subsection 536(2) of the Law must be made, in the case of a winding up by the Court, by an interlocutory process seeking orders under the subsection, and, in the case of a voluntary winding up, by an originating process seeking orders under the subsection. In each case the process must be accompanied by a written report in a sealed envelope that is marked with the title of the proceedings and either its number or provision for its number. Subsection 536(2) of the Law allows the Commission to report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the liquidator.

Subrule 7.11(3) provides that the contents of the report filed under subrule 7.11(2) need not, at the time of filing, be verified by an affidavit.

Under subrule 7.11(4), a copy of the report is not available for inspection by any person except the liquidator or the Commission unless the Court otherwise orders.

Subrule 7.11 (5) provides that "liquidator" includes provisional liquidator for the purposes of rule 7.11.

DIVISION 8 SPECIAL MANAGERS (PART 5.4B OF THE LAW)

RULE 8.1 Application for appointment of special manager (s 484 of the Law)

Subsection 484(1) of the Law provides that a liquidator may apply to the Court for the appointment of a special manager of the property or business of a company for such time as the Court directs and with such powers as the Court entrusts to the special manager.

Subrule 8.1 (1) provides that an application by a liquidator for the appointment of a special manager must state the powers which, in the liquidator's opinion, the Court should entrust to the special manager.

Pursuant to subrule 8.1(2), the affidavit in support of the application must state the circumstances making it proper for a special manager to be appointed; details of the proposed remuneration for the special manager; and whether the appointment has been approved by any committee of inspection in the winding up or a meeting of creditors.

RULE 8.2 Security given by special manager (s 484 of the Law)

Subsection 484(2) of the Law provides that the special manager shall give such security, account in such manner, and receive such remuneration as the Court directs.

Subrule 8.2(1) allows the Court, from time to time, to vary the amount of security given by the special manager.

Subrule 8.2(2) provides that, unless the Court otherwise directs, the costs of furnishing the security given by the special manager are the personal expenses of the special manager and must not be charged against the property of the company as an expense incurred in the winding up.

RULE 8.3 Special manager's receipts and payments (s 484 of the Law)

Under subrule 8.3(1), a special manager must give to the liquidator an account of the special manager's receipts and payments, and a statutory declaration verifying the account.

Subrule 8.3(2) provides that the liquidator must, if the account is approved,, include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

DIVISION 9 REMUNERATION OF OFFICE-HOLDERS

This division sets out the procedure to be followed by a person who applies to the Court for an order fixing the person's remuneration as a receiver, administrator, provisional liquidator, liquidator or special manager.

RULE 9.1 Remuneration of receiver (s 425(1) of the Law) - Form 16

Pursuant to subrule 9.1(1), this rule applies to an application by a receiver for an order under subsection 425(1) of the Law fixing the receiver's remuneration.

Subrule 9.1(2) provides that the receiver must, at least 21 days before filing an originating process or interlocutory process seeking the order, serve a notice in accordance with Form 16, and a copy of any affidavit on which the receiver intends to rely, on (a) the person who appointed the receiver; (b) any secured creditor of the corporation; (c) any administrator, liquidator or provisional liquidator of the corporation; (d) any administrator of a deed of company arrangement executed by the corporation; and, (e) if there is no person of a kind described in

paragraph (c) or (d), each of the 5 largest (measured by amount of debt) unsecured creditors and each member who holds more than 10 per cent of the issued capital of the corporation.

Under subrule 9.1(3), any creditor or contributory, or any person mentioned in paragraph 9.1(2)(c), (d) or (e) of these Rules, may give to the receiver a notice of objection to the remuneration claimed. The notice must state the grounds of the objection, and be given to the receiver within 21 days after the last service of the documents mentioned in subrule 9.1(2).

Pursuant to subrule 9.1(4), if the receiver does not receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.1(2), then (a) the receiver may make and file an affidavit stating the dates when the notice and affidavit required under subrule 9.1(2) were served and that the receiver has not received any notice of objection within the 21 day period; (b) the receiver may endorse the originating process or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and (c) the application may be so dealt with.

Subrule 9.1(5) provides that if the receiver does receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.1(2), then the receiver must serve a copy of the originating process or interlocutory process on each person who has given a notice of objection.

Under subrule 9.1(6), an affidavit in support of the originating process or interlocutory process seeking the order must state the nature of the work carried out by the receiver; state the amount of remuneration claimed; include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed, and, if the receivership is continuing, give details of any matters delaying the completion of the receivership.

RULE 9.2 Remuneration of administrator (s 449E(1) of the Law) - Form 16

Pursuant to subrule 9.2(1), this rule applies to an application by a administrator for an order under subsection 449E(1) of the Law fixing the administrator's remuneration.

Under subrule 9.2(2), an administrator must not apply for the order until 28 days after the date when a meeting of creditors mentioned in paragraph 44915(1)(a) was held. Paragraph 449E(1)(a) refers to a meeting of creditors convened by the administrator under section 439A or 445F at which the remuneration of the administrator may be fixed.

Subrule 9.2(3) provides that the administrator must, at least 21 days before filing an originating process or interlocutory process seeking the order, serve a notice in accordance with Form 16, and a copy of any affidavit on which the administrator intends to rely, on (a) each creditor who was present, in person or by proxy, at the meeting of creditors; (b) each member of any committee of inspection; (c) each member of the company who holds more than 10 per cent of the issued capital of the company.

Under subrule 9.2(4), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed. The notice must state the grounds of the objection, and be given to the administrator within 21 days after the last service of the documents mentioned in subrule 9.2(3).

Pursuant to subrule 9.2(5), if the administrator does not receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.2(3), then (a) the administrator may make and file an affidavit stating the dates when the notice and affidavit required under subrule 9.2(3) were served and that the administrator has not received any notice of objection within the 21 day period; (b) the administrator may endorse the originating process or interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and (c) the application may be so dealt with.

Subrule 9.2(6) provides that if the administrator does receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.2(3), then the administrator must serve a copy of the originating process or interlocutory process on each creditor or contributory who has given a notice of objection.

Under subrule 9.2(7), an affidavit in support of the originating process or interlocutory process seeking the order must state the nature of the work carried out by the administrator; state the amount of remuneration claimed; include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed, and, if the administration is continuing, give details of any matters delaying the completion of the administration.

RULE 9.3 Remuneration of provisional liquidator (s 473(2) of the Law) - Form 16

Pursuant to subrule 9.3(1), this rule applies to an application by a provisional liquidator for an order under subsection 473(2) of the Law determining the provisional liquidator's remuneration.

Under subrule 9.3(2), the application must be made by interlocutory process in the winding up proceeding.

Subrule 9.3(3) provides that the provisional liquidator must, at least 21 days before filing the interlocutory process seeking the order, serve a notice in accordance with Form 16, and a copy of any affidavit on which the provisional liquidator intends to rely, on (a) any liquidator (except the provisional liquidator) of the company; (b) each member of any committee of inspection, or, if there is no committee, each of the 5 largest (measured by amount of debt) creditors; (c) each member of the company who holds more than 10 per cent of the issued capital of the company.

Under subrule 9.3(4), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed. The notice must state the grounds of the objection, and be given to the provisional liquidator within 21 days after the last service of the documents mentioned in subrule 9.3(3).

Pursuant to subrule 9.3(5), if the provisional liquidator does not receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.3(3), then (a) the provisional liquidator may make and file an affidavit stating the dates when the notice and affidavit required under subrule 9.3(3) were served and that the provisional liquidator has not received any notice of objection within the 21 day period; (b) the provisional liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and (c) the application may be so dealt with.

Subrule 9.3(6) provides that if the provisional liquidator does receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.3(3), then the provisional liquidator must serve a copy of the interlocutory process on each creditor or contributory who has given a notice of objection, and on any liquidator.

Under subrule 9.3(7), an affidavit in support of the originating process or interlocutory process seeking the order must state the nature of the work carried out by the provisional liquidator; state the amount of remuneration claimed; include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed, and, if the winding up proceeding has not been determined, give details of any reason known to the provisional liquidator why the proceeding has not been determined and why the provisional liquidator's remuneration should be determined before the winding up proceeding is determined.

RULE 9.4 Remuneration of liquidator (s 473(3) of the Law) - Form 16

Pursuant to subrule 9.4(1), this rule applies to an application by a liquidator for an order under subsection 473(3) of the Law determining the liquidator's remuneration.

Under subrule 9.4(2), the application must be made by interlocutory process in the winding up proceeding, and must not be made until 28 days after the date when a meeting of creditors mentioned in subsection 473(4) was held. Subsection 473(4) refers to a meeting of creditors convened by the liquidator at which the remuneration of the liquidator may be fixed.

Subrule 9.4(3) provides that the liquidator must, at least 21 days before filing the interlocutory process seeking the order, serve a notice in accordance with Form 16, and a copy of any affidavit on which the liquidator intends to rely, on (a) each creditor who was present, in person or by proxy, at the meeting of creditors; (b) each member of any committee of inspection; (c) each member of the company who holds more than 10 per cent of the issued capital of the company.

Under subrule 9.4(4), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed. The notice must state the grounds of the objection, and be given to the liquidator within 21 days after the last service of the documents mentioned in subrule 9.4(3).

Pursuant to subrule 9.4(5), if the liquidator does not receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.4(3), then (a) the liquidator may make and file an affidavit stating the dates when the notice and affidavit required under subrule 9.4(3) were served and that the liquidator has not received any notice of objection within the 21 day period; (b) the liquidator may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and (c) the application may be so dealt with.

Subrule 9.4(6) provides that if the liquidator does receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.4(3), then the liquidator must serve a copy of the interlocutory process on each creditor or contributory who has given a notice of objection.

Under subrule 9.4(7), an affidavit in support of the originating process or interlocutory process seeking the order must state the nature of the work carried out by the liquidator; state the amount of remuneration claimed; include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed, and, if the winding up is continuing, give details of any matters delaying the completion of the winding up.

RULE 9.5 Remuneration of special manager (s 484(2) of the Law) - Form 16

Pursuant to subrule 9.5(1), this rule applies to an application by a special manager for an order under subsection 484(2) of the Law fixing the special manager's remuneration.

Under subrule 9.5(2), the application must be made by interlocutory process in the winding up proceeding.

Subrule 9.5(3) provides that the special manager must, at least 21 days before filing the interlocutory process seeking the order, serve a notice in accordance with Form 16, and a copy of any affidavit on which the special manager intends to rely, on (a) the liquidator of the company; (b) each member of any committee of inspection, or, if there is no committee, each of the 5 largest (measured by amount of debt) creditors ; (c) each member of the company who holds more than 10 per cent of the issued capital of the company.

Under subrule 9.5(4), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed. The notice must state the grounds of the objection, and be given to the special manager within 21 days after the last service of the documents mentioned in subrule 9.5(3).

Pursuant to subrule 9.5(5), if the special manager does not receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.5(3), then (a) the special

manager may make and file an affidavit stating the dates when the notice and affidavit required under subrule 9.5(3) were served and that the special manager has not received any notice of objection within the 21 day period; (b) the special manager may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and (c) the application may be so dealt with.

Subrule 9.5(6) provides that if the special manager does receive a notice of objection within 21 days after the last service of the documents mentioned in subrule 9.5(3), then the special manager must serve a copy of the interlocutory process on each creditor or contributory who has given a notice of objection, and on the liquidator.

Under subrule 9.5(7), an affidavit in support of the originating process or interlocutory process seeking the order must state the nature of the work carried out by the special manager; state the amount of remuneration claimed; include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed, and, if the special management is continuing, give details of any matter delaying the completion of the special management.

DIVISION 10 WINDING UP GENERALLY

RULE 10.1 Determination of value of debts or claims (s 554A(2) of the Law)

Subsection 554A(2) of the Law provides that a liquidator may refer to the Court the question of the value of a debt or claim of a company which the liquidator is winding up.

Such a referral must, pursuant to rule 10.1, be made by filing an interlocutory process in the case of a winding up by the Court, or by filing an originating process in the case of a voluntary winding up. The interlocutory process or originating process, as the case may be, must seek an order estimating, or determining a method for working out, the value of the debt or claim.

RULE 10.2 Disclaimer of contract (s 568(1A) of the Law)

Under subsection 568(1A) of the Law, a liquidator of a company can not disclaim a contract in relation to a company (other than an unprofitable contract or a lease of land) without the leave of the Court.

Subrule 10.2(1) provides that the affidavit in support of an application by a liquidator to disclaim a contract must specify the persons interested, and their interests, under the contract; and state the facts on which it is submitted the contract should be disclaimed.

Under subrule 10.2(2), the liquidator must serve a copy of the affidavit on each party to the contract (other than the company) and on any person interested in the contract.

RULE 10.3 Winding up Part 5.7 bodies (s 583, s 585 of the Law) and registered schemes (s 601ND of the Law)

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

A Part 5.7 body is defined by the Law as a foreign company, a registrable body (other than a registrable local body), or a partnership, association or other body (whether a body corporate or not) that consists of more than 5 members. A registered scheme is defined by the Law as a managed investment scheme that is registered under section 601EB of the Law.

DIVISION 11 EXAMINATIONS AND ORDERS (PART 5.9, DIVISIONS 1 AND 2 OF THE LAW)

RULE 11.1 Definition for Division 11

Rules 11.1 provides that, for the purposes of Division 11, "examination summons" means a summons under section 596A or 596B of the Law for an examination of a person about a corporation's examinable affairs.

Section 596A and 596B set out the Court's duties and powers in relation to mandatory and discretionary examinations respectively. Section 9 defines "examinable affairs" in relation to a corporation as meaning (a) the promotion, formation, management, administration or winding up of the corporation; (b) any other affairs of the corporation (including anything that is included in the corporation's affairs because of section 53); or (c) the business affairs of a connected entity of the corporation, in so far as they are, or appear to be, relevant to the corporation or to anything that is included in the corporation's examinable affairs because of paragraph 9(a) or (b).

RULE 11.2 Application for examination or investigation under s 411, s 423 or s 536(3) of the Law

Paragraph 411(9)(b) provides that section 536 applies to a person or persons appointed to administer a compromise or arrangement under Part 5.1 of the Law as if the person or persons had been appointed as a liquidator, and that references to a liquidator in section 536 should be read as a reference to that person or persons. This means a person appointed to administer a compromise or arrangement can be the subject of an inquiry, examination or investigation under subsection 536(3).

Under subsection 423(3), the Court may at any time require a controller of property of a corporation to answer questions about the performance or exercise of any of the controller's functions and powers as controller, examine a person about the performance or exercise by the controller of the controller's functions and powers as controller, or direct an investigation of the controller's books.

Subsection 536(3) provides that the Court may at any time require a liquidator to answer any inquiry in relation to the winding up of a company, examine the liquidator or any other person about the performance on oath concerning the winding up, or direct an investigation of the liquidator's books.

Subrule 11.2(1) provides that an application for an examination or investigation under section 411 or 423 or subsection 536(3) may be made by the Commission; a person authorised by the Commission; a creditor or contributory; or any other person aggrieved by the conduct of a person appointed to administer a compromise or arrangement, a controller, or a liquidator or provisional liquidator.

Under subrule 11.2(2), the application may be made ex parte.

Subrule 11.2(3) provides that the provisions of this Division that apply to an examination under Division 1 of Part 5.9 of the Law apply, with any necessary adaptations, to an examination or investigation under section 411 or 423 or subsection 536(3). Division 1 of Part 5.9 deals with examinations under section 596A and 596B of the Law.

RULE 11.3 Application for examination summons (s 596A, s 596B of the Law) - Form 17

Under subrule 11.3(1), an application for the issue of an examination summons must be made by filing an originating process or interlocutory process, as the case requires. The application may, pursuant to subrule 11.3(2), be made ex parte.

Subrule 11.3(3) provides that the originating process or interlocutory process must be supported by an affidavit stating the facts in support of the application, and must be accompanied by a draft examination summons.

Under subrule 11.3(4), the originating process or interlocutory process and supporting affidavit must be filed in a sealed envelope marked 'Application and supporting affidavit for issue of summons for examination under section 596A [or 596B, as the case may be] of the Corporations Law'.

If the application is not made by the liquidator then, pursuant to subrule 11.3(5), the liquidator must be given a notice of the application and, if the liquidator so requires, served with a copy of the originating process or interlocutory process and supporting affidavit.

Under subrule 11.3(6), if the application is not made by Commission then the Commission must be given a notice of the application and, if the Commission so requires, served with a copy of the originating process or interlocutory process and supporting affidavit.

Subrule 11.3(7) provides that the supporting affidavit is not available for inspection by any person unless the Court otherwise orders.

Under subrule 11.3(8), an examination summons must be in accordance with Form 17.

RULE 11.4 Service of examination summons

This rule provides that an examination summons issued by the Court must be served personally, or in any other manner the Court directs, on the person who is to be examined at least 8 days before the date fixed for the examination.

RULE 11.5 Discharge of examination summons

Pursuant to subrule 11.5(1), this rule applies if a person is served with an examination summons.

Under subrule 11.5(2), within 3 days of being served with the examination summons the person may apply to the Court for an order discharging the summons by filing an interlocutory process seeking such an order, and an affidavit stating the facts in support of the interlocutory process.

Subrule 11.5(3) provides that, as soon as practicable after filing the interlocutory process and supporting affidavit, a copy of these documents must be served on the person who applied for the examination, and, unless that person is the Commission or a person authorised by the Commission, the Commission.

RULE 11.6 Filing of record of examination (s 597(13) of the Law)

Subsection 597(13) of the Law provides that the Court may order that the questions put to a person and the answers given by him or her at an examination be recorded in writing, and may require him or her to sign that written record .

Under rule 11.6, if the Court makes an order under subsection 597(13) it may give directions for the filing of a written record of an examination.

RULE 11.7 Authentication of transcript of examination (s 597(14) of the Law)

Subsection 597(14) provides that any transcript of an examination of a person that is authenticated as provided by the rules, may, subject to subsection 597(12A), be used in evidence in any legal proceedings against the person.

Paragraph 11.7(a) provides that the transcript may be authenticated by the person or persons who prepared, or who supervised the preparation of, the record of examination certifying in writing signed by the person or persons that the record is a true transcript of the record of examination. Under paragraph 11.7(b), the transcript may also be authenticated by any person present at the whole or part of the examination signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

RULE 11.8 Inspection of record or transcript of examination or investigation under s 411, s 423 or s 536 of the Law

Subrule 11.8(1) provides that nobody may inspect a written record or transcript of an examination or investigation under section 411, 423 or 536 without the consent of the liquidator (if any) or the Commission, or the leave of the Court.

This rule does not, under subrule 11.8(2), apply to the liquidator, the Commission or any person authorised by the Commission.

RULE 11.9 Entitlement to record or transcript of examination held in public

Pursuant to subrule 11.9(1), this rule applies where an examination under section 597 of the Law is held wholly or partly in public, and a written record or transcript of the examination is filed in the Court.

Under subrule 11.9(2), the person examined may apply to the Registrar within 3 years of the date of completion of the examination for a copy of the record or transcript of the part of the examination held in public.

Subrule 11.9(3) provides that the Registrar, on receiving an application and the applicable fee, must give a copy of the record or transcript to the person.

RULE 11.10 Default in relation to examination

Under paragraph 11.10(1)(a), this rule applies if a person is summoned or ordered by the Court to attend for examination and the person, without reasonable cause, fails to attend at the time and place appointed or from day to day until the examination is completed, refuses or fails to take an oath or make an affirmation, refuses or fails to answer a question that the Court directs the person to answer, refuses or fails to produce books that the summons requires the person to produce, or fails to comply with a requirement of the Court to sign a written record of the examination. The rule also applies, pursuant to paragraph 11.10(1)(b), where the person who applied for the summons or order satisfies the Court, before the day fixed for the examination, that there is reason to believe the person summoned or ordered to attend has absconded or is about to abscond.

Subrule 11.10(2) provides that the Court may issue a warrant for the arrest of the person summoned or ordered to attend for examination, and may make any other orders it thinks just or necessary.

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

Section 598 of the Law allows an eligible applicant to apply to the Court for orders against a person on the basis that the person will be found guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation; and the corporation has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty. Section 9 of the Law defines "eligible applicant" in relation to a corporation as meaning the Commission, a liquidator or provisional liquidator of the corporation, an administrator of the

corporation, an administrator of a deed of company arrangement executed by the corporation, or a person authorised in writing by the Commission to make (i) applications under the Division of Part 5.9 in which the expression occurs; or (ii) such an application in relation to the corporation.

Subrule 11.11(1) provides that this rule applies to a person applying for an order under section 598 of the Law.

Subrule 11.11(2) provides that if the person is not the liquidator or provisional liquidator, the person must, in addition to complying with rules 2.7 and 2.8, serve a copy of the originating process or interlocutory process (as the case requires) and the supporting affidavit on any liquidator or provisional liquidator of the corporation or body.

DIVISION 12 ACQUISITION OF SHARES (CHAPTER 6 OF THE LAW) AND SECURITIES (CHAPTER 7 OF THE LAW)

RULE 12.1 Service on Commission in relation to proceedings under Chapter 6 or 7 of the Law

This rule provides that, if the Commission is not a party to an application under Chapter 6 (which deals with the acquisition of shares) or Chapter 7 (which deals with securities), then the plaintiff must serve a copy of the originating process and supporting affidavit as soon as practicable after filing the originating process.

RULE 12.2 Application for summons for appearance of person (s 1092(3) of the Law) -Form 18

Subsection 1092(2) of the Law provides that a company, on the written request of a transferor of a share, debenture or interest in the company, must, by written notice, require the person having the possession, custody or control of the share certificate, debenture or document evidencing title to the interest (as the case may be) and the instrument of transfer of the share, debenture or interest, or either of them, to deliver the document or documents to the company within a stated period. If the person fails to comply with such a notice then, under subsection 1092(3), the transferor may apply to the Court to issue a summons requiring the person to appear before the Court and to show cause why the documents mentioned in the notice should not be delivered as required.

Subrule 12.2(1) provides that an application for a summons under subsection 1092(3) must be made by filing an originating process or an interlocutory process.

The application may be made, pursuant to subrule 12.2(2), *ex parte*.

Subrule 12.2(3) provides that the originating process or an interlocutory process seeking the summons must be supported by an affidavit stating the facts in support of the process, and must be accompanied by a draft summons.

Under subrule 12.2(4), a summons issued under this rule must be in accordance with Form 18 unless the Court otherwise orders.

RULE 12.3 Application for orders relating to refusal to register transfer or transmission of shares etc (s 1094 of the Law)

Under section 1094 of the Law a company, transferee or transferor may apply to the Court for an order where a relevant authority in relation the company refuses or fails, without just cause, to register, or to give its consent or approval to the registration of, a transfer or transmission of a share, debenture or interest in the company. A relevant authority is a person, 2 or more persons or a body, with authority to register such a transfer or transmission, or whose consent or approval is required before such a transfer or transmission can occur.

Rule 12.3 provides that, as soon as practicable after filing an application seeking an order under section 1094, the plaintiff must serve a copy of the originating process and the supporting affidavit on the company and any person against whom an order is sought.

DIVISION 13 THE FUTURES INDUSTRY (CHAPTER 8 OF THE LAW)

RULE 13.1 Appeal against decision of futures exchange or futures association (s 1135 of the Law)

Section 1135 of the Law allows a person to file a written notice of appeal to the Court against a decision by a futures exchange or a futures association to refuse, suspend or cancel the person's membership of that exchange or association.

Rule 13.1 provides that the written notice of appeal must be in the form of an originating process; state whether the whole or part only (and, if so, which part) of the decision is complained of, and state concisely the grounds of the appeal.

RULE 13.2 Proceedings against futures organisation to establish claim against fidelity fund (s 1243 of the Law)

Under section 1228 of the Law, a futures organisation must keep a fidelity fund to compensate any person who suffers pecuniary loss because of a defalcation or fraudulent misuse of money or other property by a contributing member (or its directors, partners, officers or employees) of that organisation. Subsection 1243(2) provides that a person making a claim for compensation can not commence proceedings against a futures organisation without the leave of the organisation's board unless the board has disallowed the claim or the person has exhausted all relevant rights of action and other legal remedies in relation to the loss. Subsection 1243(3) allows a person who has been refused leave by the board to apply to the Court for leave to commence proceedings against the futures organisation.

Rule 13.2 provides that a person who has brought a proceeding in the Court asking for leave under subsection 1243(3), and who is given leave to bring a proceeding to establish a claim against the fidelity fund, may bring the claim in the same proceeding as the one in which the leave was granted.

DIVISION 14 POWERS OF COURTS (PART 9.5 OF THE LAW)

RULE 14.1 Appeal from act, omission or decision of administrator, receiver or liquidator, etc (s 554A, s 1321 of the Law)

This rule sets out the procedure for appeals authorised by the Law from an act, omission or decision of an administrator, receiver, liquidator or special manager.

Subrule 14.1.(1) provides that an appeal must be commenced by an originating process or interlocutory process stating the act, omission or decision (or part of decision) complained of, and the grounds of the complaint.

Subrule 14.1(2) requires that, unless the Law or Corporations Regulations otherwise provide, the originating process or interlocutory process be filed within 21 days after the date of the act, omission or decision appealed against, or within any further time allowed by the Court.

Subrule 14.1(3) gives the Court power to extend the time for filing either before or after the time for filing expires, and whether or not the application for an extension of time is made before the time expires.

The person instituting the appeal must, under subrule 14.1(4), as soon as practicable after filing the originating process or interlocutory process and, in any case, at least 5 days before the date

fixed for hearing, serve a copy of the originating process or interlocutory process and any supporting affidavit on each person directly affected by the appeal.

Subrule 14.1(5) provides that a person whose act, omission or decision is being appealed against must, as soon as practicable after being served with a copy of the originating process or interlocutory process and any supporting affidavit, file an affidavit stating the basis on which the act, omission or decision was made, and annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

DIVISION 15 PROCEEDINGS UNDER THE ASC LAW

RULE 15.1 Reference to Court of question of law arising at hearing of Commission (s 61 of the ASC Law)

Section 61 of the ASC Law allows the Commission to refer to the Court for decision a question of law arising at a Commission hearing under section 51 of the ASC Law. Rule 15.1 provides that Order 50 of the Federal Court Rules, with such adaptations as may be necessary, will apply to such a referral.

Order 50 of the Federal Court Rules provides that a referral must be in the form of a stated case which states the facts concisely and annexes all the documents necessary to enable the Court to decide the questions referred to it.

RULE 15.2 Reference to Court of question of law arising at hearing of Corporations and Securities Panel (s 196 of the ASC Law)

Section 196 of the ASC Law allows the Corporations and Securities Panel ("the Panel") to refer to the Court for decision a question of law arising at a Panel inquiry under section 187 of the ASC Law. Rule 15.2 provides that Order 50 of the Federal Court Rules, with such adaptations as may be necessary, will apply to such a referral.

Order 50 of the Federal Court Rules provides that a referral must be in the form of a stated case which states the facts concisely and annexes all the documents necessary to enable the Court to decide the questions referred to it.

RULE 15.3 Application for inquiry (s 70, s 201, s 219 of the ASC Law)

Subsection 70(3) of the ASC Law gives the Court power to inquire into a case where the Commission has certified that a person has, without reasonable excuse, failed to comply with a requirement made under Part 3 of the ASC Law (which deals with investigations by the Commission). Subsection 201(3) of the ASC Law gives the Court power to inquire into a case where the Panel has certified that a person has, without reasonable excuse, failed to comply with a requirement made under section 192 of the ASC Law (which sets out the Panel's powers to compel a witness to attend and give evidence to the Panel at an inquiry). Subsection 219(7) of the ASC Law gives the Court power to inquire into a case where the Companies Auditors and Liquidators Disciplinary Board has certified that a person has, without reasonable excuse, failed to comply with a requirement made under section 219 of the ASC Law (which sets out the Board's powers to compel a witness to attend and give evidence to the Board at a hearing).

Rule 15.3 provides that an application under any of the above subsections must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

DIVISION 16 POWERS OF MASTERS AND REGISTRARS

RULE 16.1 Powers of Registrars

Subrule 16.1(1) allows a Registrar to exercise a power of the Court under a provision of the Law or the ASC specified in Schedule 2 if the Court or a Judge so directs. Under subrule 16.1(2), a decision, direction or act of a Registrar made under this rule may be reviewed by the Court or a Judge. An application for review must, by subrule 16.1(3), be made within 21 days of the decision, direction or act or within such further time allowed by the Court.

RULE 162 Reference by Registrar

Under subrule 16.2(1), a matter in a proceeding before a Registrar may or, if required by a party to the proceeding, must be referred by the Registrar to the Court or a Judge if it appears to the Registrar to be proper to do so. Subrule 16.2(2) allows a Court or Judge to dispose of the matter or refer it back to the Registrar with any direction which the Court or Judge considers appropriate.

SCHEDULE 1 FORMS

Schedule 1 sets out the following forms:

- Form 1 Document title
- Form 2 Originating process
- Form 3 Interlocutory process
- Form 4 Notice of appearance
- Form 5 Notice of intervention by the Commission
- Form 6 Notice of hearing to approve compromise or arrangement
- Form 7 Affidavit accompanying statutory demand
- Form 8 Consent of liquidator/provisional liquidator
- Form 9 Notice of application for winding up order
- Form 10 Notice of application for winding up order by substituted plaintiff
- Form 11 Notice of winding up order and of appointment of liquidator
- Form 12 Notice of appointment of provisional liquidator
- Form 13 Notice by creditor or contributory of objection to release of liquidator
- Form 14 Affidavit in support of application for order for payment of call
- Form 15 Notice of application for leave to distribute a surplus
- Form 16 Notice of intention to apply for remuneration
- Form 17 Summons for public examination
- Form 18 Summons for appearance in relation to registration of transfer of interests

SCHEDULE 2 POWERS OF THE COURT THAT MAY BE EXERCISED BY A REGISTRAR [OR OTHER COURT OFFICER]

This schedule sets out the powers of the Court under the Law and the ASC Law that may be exercised by a Registrar.