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[1964

COMPANIES ACT, 1961-1962.

Crown Law Department,
Perth, 22nd July, 1964.

HIS Excellency the Lieutenant-Governor in Executive Council, acting under the provisions of section 384 of the Companies Act, 1961-1962, has been pleased to make the regulations set out in the schedule hereunder.

R. C. GREEN,
Under Secretary for Law.

Schedule.

Regulations.

PART I.—PRELIMINARY.

1. These regulations may be cited as the Companies (Meetings Citation. and Winding Up) Regulations, 1964.
2. These regulations are divided into Parts, as follows:—
 - Part I.—Preliminary (Regulations 1-3).
 - Part II.—Forms (Regulations 4-5).
 - Part III.—Meetings—
 - Division 1.—Meetings of creditors and contributories (Regulations 6-17).
 - Division 2.—Meetings of debenture holders (Regulations 18-23).
 - Division 3.—Joint meetings of the members and creditors of a company (Regulations 24-31).
 - Part IV.—Proof of Debts In a Voluntary Winding Up (Regulations 32-44).
 - Part V.—Proxies of Creditors and Contributories (Regulations 45-53).
3. In these regulations, unless the contrary intention appears—
 - “section” means section of the Act;
 - “the Act” means the Companies Act, 1961-1962.

PART II.—FORMS.

Particulars
prescribed
by forms.

4. Where a form prescribed by these regulations requires completion by the insertion of, or the attachment to the form of a document containing, particulars or other matters referred to in the form, those particulars or other matters are prescribed as the particulars or other matters required under the provisions of the Act or of these regulations for the purposes of which the form is prescribed.

Directions
in forms.

5. A form prescribed by these regulations shall be completed in accordance with such directions as are specified in the form as so prescribed.

PART III.—MEETINGS.

Division I.—Meetings of Creditors and Contributories.

Application
of Division.

6. Except where provisions to the contrary are made by the Act, the provisions of this Division apply to and in relation to—

- (a) meetings of the creditors of a company referred to in paragraph (b) of subsection (2) of section 10;
- (b) meetings of the creditors of a company (being meetings relating to the official management of the company) referred to in subsection (2) of section 202, subparagraph (ii) of paragraph (a), and paragraph (b), of section 203, paragraph (c) of subsection (1) of section 205, section 211, and subsection (2) of section 213;
- (c) meetings of creditors or of contributories called by a liquidator under paragraph (b) of subsection (3) of section 232, subsection (2) of section 237, subsection (1) of section 241, subsection (8) of section 242, and subsection (1) of section 259;
- (d) meetings of creditors or of contributories referred to in subsection (6) of section 242;
- (e) meetings of the creditors of a company summoned by the company under subsection (1) or subsection (8) of section 260;
- (f) meetings of the creditors of a company summoned by any two of those creditors under subsection (5) of section 261;
- (g) meetings of the creditors of a company referred to in paragraph (a) of subsection (1) of section 269; and
- (h) meetings of the creditors of a company held for the purposes of paragraph (c) of subsection (3) of section 284.

Notices of
meetings.

7. (1) The person summoning a meeting of creditors or of contributories shall give not less than seven days' notice of the time and place of the meeting by advertisement in a daily newspaper circulating generally throughout the State and shall, not less than seven days before the day appointed for the meeting, send notice of the meeting by post to every person appearing by the company's books or otherwise to be a creditor of the company or a contributory of the company, as the case may be.

(2) The notice referred to in subregulation (1) of this regulation that is to be advertised in a newspaper and to be sent to a creditor or contributory shall—

- (a) in the case of a notice given by a liquidator under subsection (1) of section 259, be in accordance with Form 64 in the second schedule to the Companies Regulations, 1962; or
- (b) in any other case, be in accordance with Form 1 in the schedule to these regulations.

(Form 64
Companies
Regulations,
1962.)
(Form 1.)

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

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

8. (1) A meeting of creditors or contributories shall 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 at least two creditors entitled to vote, or two contributories, or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the contributories, as the case may be, does not exceed two. Quorum.

(2) If within half an hour after the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day (not being less than seven or more than twenty-one days after the day from which the meeting is adjourned) and at such other time and place as the chairman may appoint.

9. (1) Subject to subregulation (2) of this regulation, the persons present at a meeting of the creditors or contributories of a company shall elect one of their number to be the chairman of the meeting. Chairman.

(2) Where a meeting of creditors or contributories of a company is called by the liquidator of the company, the liquidator or a person nominated by him shall be the chairman of the meeting.

10. The chairman of a meeting of creditors or contributories shall, if so directed by the meeting, or may, with the consent of the meeting, adjourn the meeting 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. Adjournment of meeting.

11. (1) At a meeting of creditors, a resolution is passed when a majority in number and value of the creditors present, personally or by proxy, have voted in favour of the resolution. Passing of resolutions.

(2) At a meeting of contributories, a resolution is passed when a majority in number and value of the contributories present, personally or by proxy, 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 articles of the company.

12. (1) Subject to subregulation (2) of this regulation, a person is not entitled to vote as a creditor at a meeting of creditors unless he has lodged with the liquidator or the official manager, as the case requires, a proof of the debt that he claims to be due to him from the company and the proof has been admitted wholly or in part before the date on which the meeting is held. Creditors who may vote.

(2) In the case of a meeting of creditors held under subsection (1) of subsection (8) of section 260, a person is not entitled to vote as a creditor at the meeting unless he has lodged with the chairman of the meeting a proof of the debt that he claims to be due to him from the company.

(3) A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, or 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 sequestration order

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

Votes of
secured
creditors.

13. (1) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof of debt the particulars of his security, the date when it was given, and the value at which he assesses it, and is entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security.

(2) If a secured creditor votes in respect of his whole debt, he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Creditor
required to
give up
security.

14. (1) The liquidator may, within twenty-eight days after a secured debt is proved, require the creditor to give up the security for the benefit of the creditors generally on payment of the value at which the creditor values it with the addition of twenty per centum.

(2) 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 twenty per centum shall not be made if the security is required to be given up.

Admission
and rejection
of proof
for purpose
of voting.

15. (1) The chairman of a meeting of creditors or contributories may admit or reject a proof of debt for the purpose of voting.

(2) If the chairman is in doubt whether a proof of debt 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.

Record of
meetings.

16. The chairman of a meeting of creditors or contributories—

(a) shall cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose and shall sign the minutes; and

(b) shall cause a list of the names of the creditors or contributories present at the meeting to be made and kept.

Copy of
minutes of
meeting to
be lodged
with
Registrar.

17. Where a meeting of the creditors or contributories of a company is called by the liquidator of the company, the liquidator shall, within a period of seven days after the meeting, lodge with the Registrar a copy of the minutes of the meeting certified by the chairman of the meeting to be a true copy.

Division II.—Meetings of Debenture Holders.

Application
of Division.

18. Except where provisions to the contrary are made by the Act or in the covenants contained in the relevant debentures or trust deed, the provisions of this Division apply to and in relation to meetings of holders of debentures summoned in pursuance of a covenant contained, or deemed under paragraph (c) of subsection (3) of section 74 to be contained, in the debentures or trust deed.

Quorum.

19. (1) A meeting of debenture holders shall not act for any purpose except the adjournment of the meeting unless there are present at least two debenture holders.

(2) If within half an hour after the time appointed for the meeting a quorum of debenture holders is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day (not being less than seven or more than twenty-one days after the day from which the meeting is adjourned) and at such other time and place as the chairman may appoint.

20. The chairman of a meeting of debenture holders shall, if so directed by the meeting, or may, with the consent of the meeting, adjourn the meeting 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. Adjournment of meeting.

21. At a meeting of debenture holders, a resolution is passed when a majority in number and value of the debenture holders present have voted in favour of the resolution. Passing of resolutions.

22. In the case of an equality of votes, the chairman of a meeting of debenture holders has a casting vote. Casting vote.

23. The chairman of a meeting of debenture holders— Record of meeting.
 (a) shall cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose and shall sign the minutes; and
 (b) shall cause a list of the names of the debenture holders present at the meeting to be made and kept.

Division III.—Joint Meetings of the Members and Creditors of a Company.

24. Except where provisions to the contrary are made by the Act or in the articles of the company concerned, the provisions of this Division apply to and in relation to— Application of Division.

- (a) joint meetings of the creditors and members of a company called by the official manager of the company under subsection (2) of section 213; and
- (b) joint meetings of a company and the creditors of the company called, in the case of a creditors' voluntary winding up of the company, by the liquidator of the company under subsection (1) of section 271 or under subsection (1) of section 272.

25. (1) An official manager of a company who is directed by a committee of management of the company to call a joint meeting of the creditors and members of the company under subsection (2) of section 213 shall give not less than seven days' notice of the time and place of the meeting by advertisement in a daily newspaper circulating generally throughout the State and shall cause notices of the meeting to be sent by post to the creditors simultaneously with the sending of notices of the meeting to members of the company. Notices of joint meetings called by official manager.

(2) The notice referred to in subregulation (1) of this regulation that is to be advertised in a newspaper and sent to a creditor shall be in accordance with Form 1 in the schedule to these regulations. (Form 1.)

(3) The notice shall be sent to every person appearing by the company's books or otherwise to be a creditor of the company, and shall be sent to the address mentioned in the company's books as the address of the creditor or to such other address as may be known to the official manager.

26. A joint meeting called under subsection (2) of section 213 or under subsection (1) of section 271 shall not act for any purpose unless there are present or represented at least two persons entitled to vote at the meeting. Quorum.

27. (1) The persons present at a joint meeting called under subsection (2) of section 213 shall elect one of their number to be the chairman of the meeting. Chairman.

(2) The liquidator or a person nominated by him shall be the chairman of a joint meeting called by the liquidator under subsection (1) of section 271 or under subsection (1) of section 272.

- Adjournment of meeting. 28. The chairman of a joint meeting called under subsection (2) of section 213 or under subsection (1) of section 271 shall, if so directed by the meeting, or may, with the consent of the meeting, adjourn the meeting 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.
- Passing of resolutions. 29. A resolution put to the vote at a joint meeting to and in relation to which this Division applies shall be decided on a show of hands.
- Casting vote. 30. In the case of an equality of votes, the chairman of a joint meeting to and in relation to which this Division applies has a casting vote.
- Record of meeting. 31. The chairman of a joint meeting called under subsection (2) of section 213 or under subsection (1) of section 271—
 (a) shall cause minutes of the proceedings at the meeting to be entered in a book kept for the purpose and shall sign the minutes; and
 (b) shall cause a list of the names of the persons present and entitled to vote at the meeting to be made and kept.

PART IV.—PROOF OF DEBTS IN A VOLUNTARY WINDING UP.

- Application of Part. 32. This Part applies to and in relation to the admission to proof of debts and claims under subsection (1) of section 291 in a voluntary winding up.
- Proof of debt. 33. Every creditor shall prove his debt or claim, unless the Court directs that any creditors or class of creditors be admitted without proof.
- Statutory declaration proving debt. (Forms 75 and 76, Companies Regulations, 1962.) 34. (1) A debt or claim may be proved by serving on the liquidator a statutory declaration, in accordance with Form 75 or Form 76 in the Second Schedule to the Companies Regulations, 1962, proving the debt.
 (2) Where there are claims for wages by employees of a company, one person may make a statutory declaration, in accordance with Form 76 in the Second Schedule to the Companies Regulations, 1962, proving the debt on behalf of all the employees.
 (3) A statutory declaration made under subregulation (2) of this regulation has effect as if a separate statutory declaration had been made by each employee.
- Notice of day by which debts have to be proved. 35. (1) The liquidator may fix a day, which shall be not less than fourteen days after the date of publication or the date of posting of the notice referred to in subregulation (2) of this regulation, whichever date is the later, on or before which the creditors of the company are to prove their debts or claims under subsection (1) of section 291.
 (2) The liquidator shall give notice of the day so fixed by advertisement in a daily newspaper circulating generally throughout the State and shall also give notice in writing of the day so fixed to every person mentioned in the statement of affairs as a creditor and who has not proved his debt or claim.
- Time for liquidator to deal with proofs. (Form 2.) 36. (1) The liquidator, within twenty-one days after receiving a proof of debt, shall in writing either admit it or reject it wholly or in part or require further evidence in support of it.
 (2) If the liquidator rejects a proof of debt wholly or in part, he shall state to the creditor the ground of his objection by instrument in writing in accordance with Form 2 in the schedule to these regulations.

- (3) Where the liquidator has given notice of his intention to declare a dividend, he shall, within fourteen days after the day mentioned in the notice referred to in subregulation (2) of regulation 35 of these regulations as the date on or before which debts or claims are to be proved, in writing either admit or reject wholly or in part or require further evidence in support of every proof of debt that he has not already dealt with and shall, if he rejects a proof of debt wholly or in part, state to the creditor the ground of his objection by instrument in writing in accordance with Form 2 in the schedule to these regulations.

(Form 2.)
- (4) Where the liquidator has admitted a proof of debt under subregulation (3) of this regulation, the notice of the dividend is a sufficient notification of the admission.
37. (1) A statutory declaration proving a debt or claim may be made by the creditor himself or by some person authorised by or on behalf of the creditor.

Persons who may make a statutory declaration proving a debt or claim.
- (2) A person so authorised shall state in the statutory declaration his authority and means of knowledge.
38. (1) A statutory declaration proving a debt or claim shall contain or refer to a statement of accounts showing the particulars of the debt or claim and shall specify the vouchers by which the debt or claim can be substantiated.

Contents of statutory declaration proving a debt or claim.
- (2) The liquidator may at any time call for the production of the vouchers.
39. A statutory declaration proving a debt shall state whether the creditor is a secured creditor and, if so, the nature of the security.

Statements of security.
40. A creditor shall bear the cost of proving his debt or claim unless the Court in a particular case otherwise orders.

Costs of proof.
41. In proving a debt or claim, a creditor shall make an allowance for all discount for which an allowance would have been made if the company were not being wound up.

Discount.
42. (1) Where a company that is liable to make any periodical payments (including rent) commenced to be wound up on a day other than a day on which such a payment becomes due, the person who is entitled to the payment may prove for a proportionate part of a payment in respect of the period from the day when the last payment became due to the day on which the winding up commences, as if the payment accrued due from day to day.

Periodical payments.
- (2) Where the liquidator remains in occupation of premises demised to a company that is being wound up, these regulations do not prejudice or affect the right of the landlord of the premises to claim payment by the company or the liquidator of rent during the period of the company's or the liquidator's occupation.
43. A creditor may prove a debt payable subsequently to the date of the commencement of the winding up as if it were payable at that date and may receive dividends equally with the other creditors, deducting out of each dividend a rebate of interest at the rate of four per centum per annum computed from the declaration of that dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Debt payable at future time.
44. Where a creditor seeks to prove a debt or claim in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, the proof of debt shall not, subject to any order of the Court to the contrary, be admitted, unless the bill, note, instrument, or security is produced to the liquidator.

Production of instrument on which company liable.

PART V—PROXIES OF CREDITORS AND CONTRIBUTORIES.

Appointment
of proxies.

45. (1) A creditor who is entitled to attend and vote at a meeting of contributories or at a meeting of creditors and contributories may appoint another person (whether a creditor or not) as his proxy to attend and vote instead of the creditor at the meeting.

(2) A contributory who is entitled to attend and vote at a meeting of contributories or at a meeting of creditors and contributories may appoint another person (whether a contributory or not) as his proxy to attend and vote instead of the contributory at the meeting.

(3) A proxy who is appointed under this regulation has the same right to speak at the meeting as the creditor or contributory by whom he is appointed.

Form of
proxies.
(Form 3.)

46. (1) The appointment of a person as the proxy of a creditor or contributory shall be made by an instrument of appointment in accordance with Form 3 in the schedule to these regulations.

(2) Subject to regulation 47 of these regulations, the instrument appointing a proxy shall be signed by the person appointing the proxy in the presence of a person (not being the person nominated as proxy) who shall add to his signature his description and the address of his place of residence.

Proxy of
disabled
person.
(Form 3.)

47. The proxy of a creditor or contributory who is blind or incapable of writing is sufficient for the purposes of these regulations if the creditor or contributory attaches his signature or mark to the instrument appointing the proxy in the presence of a person (not being the person nominated as proxy) who completes the instrument in accordance with regulation 46 and also completes the certificate set out in Form 3 in the schedule to these regulations.

Proxy forms
to accompany
notice of
meetings.

48. The person calling a meeting of creditors or contributories or a joint meeting of a company and the creditors of the company shall send a form of proxy to each creditor or contributory with the notice summoning the meeting, and shall ensure that the name of any person proposed as proxy is not printed or inserted in the body of the form of proxy before it is so sent.

General
proxy.

49. A creditor or a contributory may give a general proxy to any person who is not a minor.

Special
proxy.

50. A creditor or a contributory may give a special proxy to any person to vote at a specified meeting or adjournment of that meeting—

- (a) for or against the appointment or continuance in office of a specified person as liquidator or member of the committee of inspection; and
- (b) on all or any questions relating to any matter arising at the meeting or an adjournment of the meeting.

Power of
liquidator
to act as
proxy.

51. A creditor or a contributory may appoint the liquidator to act as his general or special proxy.

Voting by
proxy where
financially
interested.

52. (1) Subject to subregulation (2) of this regulation, a person acting either under a general or a special proxy shall not vote in favour of any resolution which would directly or indirectly place himself, his partner, or his employer in a position to receive any remuneration out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(2) Where a 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.

Power of
liquidator
to appoint
deputy.

53. Where a liquidator who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person to use the proxies on his behalf in such manner as he may direct, but so that the provisions of regulation 52 of these regulations shall be observed as would be the case if the liquidator were acting in person as proxy.

Schedule

Form 1.

Western Australia.

Companies Act, 1961 (as amended).

Regulation 7 (2).

Regulation 25 (2).

NOTICE OF MEETING OF CREDITORS OR CONTRIBUTORIES.

.....LIMITED.

Notice is hereby given that a meeting of the *creditors/*con-
tributories of.....Limited will be held at
.....on the.....day of
.....19....., at.....o'clock in the *forenoon/
*afternoon.

†Agenda.

.....
.....
.....
.....

Dated this.....day of.....19.....

(Signature).....

* Strike out whichever is inapplicable.
† Set out the purpose for which the meeting is called.

Form 2.

Western Australia.

Companies Act, 1961 (as amended).

Regulation 36 (2).

NOTICE OF REJECTION OF PROOF OF DEBT.

(title)

Take notice that, as liquidator of the abovenamed company, I
have this day rejected your claim against the company **to the
extent of £.....on the following grounds:—*
And further take notice that, subject to the power of the Court
to extend the time, no application to reverse or vary my decision in
rejecting your proof will be entertained after the expiration of
twenty-one days from this date.

Dated this.....day of.....19.....

Signature

Address

.....
Liquidator.

* If proof wholly rejected strike out words in italics.

Form 3.

Western Australia.

Companies Act, 1961 (as amended).

Regulation 46.

PROXY.

I/We,*....., of.....a †creditor/
 †contributory of.....Limited, hereby appoint‡
as †my/†our †general/†special
 proxy to vote at the meeting of †creditors/†contributories to be held
 on the.....day of.....19....., or at
 any adjournment of that meeting.§

Dated this.....day of.....19.....

(Signature/or mark).....

(Signature of witness)||.....

(Description of witness).....

(Address of place of residence of witness).....

Certificate.¶

I,....., of.....
 being a**....., hereby certify that
 all insertions in the above proxy are in my own handwriting, and
 have been made by me at the request of the abovenamed.....
and in his presence and read over
 to him, before he attached his †signature/†mark to the proxy.

Dated this.....day of.....19.....

(Signature).....

* If a firm strike out "I" and set out the full name of the firm.

† Strike out whichever is inapplicable.

‡ Insert "the liquidator of the company" or the name, address, and description of the person appointed.

§ If a special proxy, add the words "to vote for" or the words "to vote against" and specify the particular resolution. If a general proxy, this form requires no addition.

|| The signature of the creditor or contributory appointing a proxy is not to be attested as witness by the person nominated as proxy.

¶ This certificate is only to be completed where the person giving the proxy is blind or incapable of writing.

** Insert whether a manager, clerk, or other person in the regular employment of the creditor or contributory or a person authorised to administer an oath.