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OF

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SUPREME COURT ACT 1935 and  
COMPANIES (WESTERN AUSTRALIA) CODE

## COMPANIES (WESTERN AUSTRALIA) (TRANSITIONAL PROVISION) RULES 1982.

Crown Law Department,  
Perth, 23 June 1982.

THE undermentioned Rules made under the provisions of the Supreme Court Act 1935 and the Companies (Western Australia) Code and in force at 1 July 1982 are printed by authority of the Attorney General.

I. G. MEDCALF.

SUPREME COURT ACT 1935.

**COMPANIES (WESTERN AUSTRALIA) CODE.**

The Judges of the Supreme Court of Western Australia, pursuant to the powers conferred by—

- (a) the Supreme Court Act 1935;
- (b) the Companies (Application of Laws) Act 1981;
- (c) the Companies (Western Australia) Code;
- (d) the Interpretation Act 1918; and
- (e) all other powers hereunto enabling,

hereby make the following rules.

FRANCIS BURT C. J.

JOHN WICKHAM J.

R. WALLACE J.

P. F. BRINSDEN J.

HOWARD SMITH J.

G. A. KENNEDY J.

H. W. OLNEY J.

Dated 23 June 1982.

Note: These Rules are made in the format of the Supreme Court (Companies) Rules 1963 for the guidance of practitioners pending the making of rules to give effect to the provisions of the Companies (Western Australia) Code and the corresponding laws in force in participating States and Territories.

SUPREME COURT ACT 1935.  
COMPANIES (WESTERN AUSTRALIA) CODE.

**COMPANIES (WESTERN AUSTRALIA)  
(TRANSITIONAL PROVISION) RULES 1982**

1. These rules may be cited as the Companies (Western Australia) (Transitional Provision) Rules 1982 and shall come into operation on 1 July 1982. Citation and commencement.

2. (1) Subject to paragraph (3) of this rule, the Supreme Court (Companies) Rules, 1963 are hereby revoked. Revocation and application.

(2) These rules shall have effect in relation to all proceedings under the Companies (Western Australia) Code that are commenced in the Supreme Court on or after the commencement of these rules.

(3) Notwithstanding the revocation of the rules specified in paragraph (1), the Supreme Court (Companies) Rules, 1963 shall continue to apply to all proceedings under the Companies Act 1961 commenced before the coming into operation of these rules.

3. In these rules, unless the contrary intention appears— Interpretation.

“Commission” means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth, and any requirement with respect to lodgement with the Commission shall be construed as a requirement for lodgement with the office of the Commissioner for Corporate Affairs, Perth;

“filed” means filed with the Registrar of the Supreme Court;

“Gazette” or “Commonwealth Gazette” means the Commonwealth of Australia Gazette, and cognate expressions shall be construed accordingly;

“liquidator” includes a provisional liquidator;

“Registrar of the Supreme Court” or “Registrar” means a person for the time being holding or acting in an office designated under the Supreme Court Act 1935, by that name, and a reference to the Registrar of the Supreme Court or the Registrar includes a reference to the Principal Registrar or a Deputy Registrar duly appointed under that Act;

“rule” means a rule of the Companies (Western Australia) (Transitional Provision) Rules 1982;

“section” means section of the Code;

“solicitor” in relation to any party to proceedings under these rules, includes any solicitor acting as agent for the solicitor in the proceedings and includes his Perth agent acting in the matter;

“the Code” means the Companies (Western Australia) Code;

“the Master” means the Master of the Supreme Court and includes a duly appointed Acting Master; and

words and expressions defined in section 5 of the Code and used in these rules have the same respective meanings as in the Code.

General  
rules of  
practice of  
Court to  
apply when  
no specific  
provision  
made.

4. (1) The rules of the Supreme Court for the time being in force and the general practice of the Court including the course of procedure and practice in Chambers apply in relation to proceedings to which these rules relate so far as may be practicable, except if and so far as the Code or these rules otherwise provide.

(2) Where a provision of the Code applies, and these rules make no provision or no sufficient provision, proceedings in relation to that provision may be instituted—

(a) by notice of motion or summons; or

(b) otherwise as the Court, a Judge or the Master may on application direct.

Title.

5. Every petition, notice of motion and summons and all notices, affidavits and other documents in any proceedings under the Code shall be intitled "in the Supreme Court," "in the matter of the Companies (Western Australia) Code" and "in the matter of ..." the company to which the proceeding relates, with the addition of the words "in liquidation" where the company is in liquidation.

Form 1.

All matters  
except those  
referred to  
in rules 18,  
52 and 54  
to be dealt  
with by  
Master  
except in  
special cases.

6. No matter that is authorized by or under these rules to be heard and determined by the Master shall be brought before a Judge except—

(i) on a reference from the Master;

(ii) by leave of a Judge or the Master.

Power to  
Master to  
refer matter  
to Court.

7. If a matter brought before the Master appears to him proper for the decision of a Judge the Master may refer that matter to a Judge and the Judge may either dispose of the matter or refer it back to the Master with such directions as he may think fit.

8. - - - - .

Proceedings  
to be  
attached to  
the Central  
Office of  
the Supreme  
Court.

9. All proceedings under the Code or under these rules shall be attached to the Central Office of the Supreme Court.

Filing of  
documents  
within  
prescribed  
time.

10. All petitions, notices of motion, summonses, affidavits, orders, certificates, proofs of debts, notices, depositions, bills of costs and other documents in proceedings under the Code or under these rules shall be filed within the time fixed by these rules and where no time is expressly fixed, they shall, unless the Court or a Judge or the Master otherwise permits, be filed before the hearing of the application to which they relate commences.

Issue of  
notice of  
petition,  
motion and  
summons.

11. Every petition, notice of motion and summons to which these rules relate shall be prepared by the applicant or his solicitor.

Service of  
petition,  
notice of  
motion and  
summons.

12. (1) Subject to an order to the contrary, every petition, notice of motion and summons shall be served upon every person against whom any order or other relief is sought but the Court or a Judge may, at any time, direct that service be effected or notice of the proceedings given to any person who may be affected by the order or other relief sought and

may at any time direct the manner in which that service is to be effected or the notice given and any person so served or notified is entitled to be heard.

Mode of  
service.

(2) A document referred to as an exhibit in an affidavit shall be made available for inspection by any person upon whom service of the affidavit is required.

13. (1) Except as otherwise provided by the Code or these rules or any order—

- (a) all notices, summonses and other documents, except those of which personal service is required, are sufficiently served, if left at or sent by prepaid post to the last known address of the person to be served therewith or the address (if any) at which the person has authorized service on him to be effected; and the notice, summons or document if so sent by prepaid post, shall be considered as served at the time that it ought to be delivered in the ordinary course of post by the post office and notwithstanding it may be returned by the post office;
- (b) no service shall be deemed invalid by reason that the name or any of the names other than the surname of the person to be served has been omitted from the document containing the person's name, if the Court is satisfied that in other respects the service of the document has been sufficient;
- (c) when the solicitor for a party to be served accepts service of a document on behalf of that party and indorses the original or a copy thereof to that effect that service shall be deemed sufficient.

(2) Unless otherwise expressly provided in these rules or unless otherwise expressly ordered—

Advertise-  
ments in the  
*Common-  
wealth  
Gazette.*

- (a) all matters that require to be gazetted shall be published once in the *Commonwealth Gazette*;
- (b) all matters that require to be advertised shall be published once in a Perth daily newspaper;
- (c) all matters required to be gazetted subsequent to a winding up order shall be gazetted by the liquidator;
- (d) where any winding up order is amended, and also where any matter that has been gazetted has been amended or altered, or where a matter has been wrongly or inaccurately gazetted or advertised the matter shall be re-gazetted or re-advertised with the necessary amendments and alterations.

(3) Unless otherwise expressly provided in these rules or unless otherwise expressly ordered, where any matter is gazetted or advertised for or in connection with any proceedings under the Code or under these rules.

Memorandum  
of advertise-  
ments to  
be filed.

- (a) a memorandum referring to and giving the date of the gazettal or advertisement, signed by the person or his solicitor responsible for the gazettal or advertisement shall be filed—
  - (i) if the advertisement relates to proceedings for or in connection with a winding up by the Court, by the liquidator; or
  - (ii) in any other case, by the party responsible for the gazettal or the advertisement; and

- (b) in the case of the gazettal or advertisement of matter for or in connection with a winding up by the Court, a copy of the newspaper or *Commonwealth Gazette* in which the matter appeared shall be delivered to the liquidator by the party responsible for the gazettal or advertisement; and
- (c) such a memorandum is *prima facie* evidence that the advertisement to which it refers was published in the *Commonwealth Gazette* or in the issue of the newspaper mentioned in it.

Enquiry and certificate by Master as to meetings ordered by the Court.

14. (1) Where an order has been made for the convening of a meeting to consider a resolution, the party obtaining the order or his solicitor shall, after the meeting has been held, attend before the Registrar on a day to be appointed by the Registrar.

(2) The Registrar shall enquire as to whether the meeting was duly convened and as to whether the resolution was duly passed at the meeting in accordance with the terms of the order under which it was held.

(3) The Registrar shall certify to the Court or the Judge—

- (a) whether the meeting was duly convened and the resolution was duly passed; and
- (b) if in his opinion any irregularities occurred in the convening of the meeting or in the passing of the resolution, the nature and extent of the irregularities.

(4) No order based on any such resolution shall be made by a Court or a Judge until a certificate of the Registrar in accordance with this rule has been filed.

Forms.

15. Subject to these rules, where a provision of these rules is specified in the first column of the First Schedule to these rules, the form set out in the Second Schedule to these rules the number of which is specified in the third column of the First Schedule opposite to that provision is prescribed as the form to be used for the purposes of that provision in relation to the matter or thing described in the second column of the First Schedule opposite to that provision.

Particulars prescribed by forms.

16. (1) Where a form prescribed by these rules requires completion by the insertion of 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 provision of the rules for the purposes for which the form is prescribed.

(2) A form prescribed by these rules shall be completed in accordance with such directions as are specified in the form as so prescribed.

Substantial compliance with forms to be sufficient.

17. Strict compliance with the forms contained in the Second Schedule to these rules is not necessary, and substantial compliance is sufficient.

#### PETITIONS.

Application by petition.

18. The following applications shall be made by petition and shall be heard and determined in open court:—

Form 2.

- (1) Under section 123 (application to confirm a reduction of capital).
- (2) Under section 312 (application by the Commission for the winding up of a company or a corporation that is a body to

which Division 6 of Part XII applies after a report of an investigation under Part VII has been presented by an inspector).

- (3) Under section 320 (application for relief against oppression or injustice).
- (4) Under section 363 (application for the winding up of a company by the Court).
- (5) Under section 470 (application for the winding up of a body to which Division 6 of Part XII applies).

19. (1) Presentation of a petition is effected by producing the petition to the Registrar of the Supreme Court and filing a copy thereof. Presentation of petition.

(2) The date and time of the presentation shall be endorsed upon both the original and copy petition by the Registrar.

(3) Except in the case of a petition to confirm a reduction of capital, the Registrar, upon presentation of the petition, shall appoint a time and place for the hearing.

20. (1) Every petition shall set out in the prayer thereof the nature of the relief sought and shall contain all the allegations necessary in support thereof and shall be verified by affidavit. Verification of petition. Form 3.

(2) The affidavit verifying the petition shall be made by the petitioner or by one of the petitioners, if more than one, or where the petition is presented by a corporation, by a director, principal executive officer, secretary or other principal officer thereof, and shall be filed immediately after the petition has been presented and that affidavit is sufficient *prima facie* evidence of the statements in the petition.

(3) When a petition is required to be served a copy of the verifying affidavit shall be served with the petition.

21. (1) When a time has been appointed for the hearing of the petition, notice of the time and place appointed for hearing the petition shall be written on the petition and copies thereof by the officer of the Court, authorized by these rules to fix the time and place for the hearing and that officer may, at any time before the petition has been advertised, alter the time appointed and fix another time. Time and place of hearing to be endorsed.

(2) The original petition shall be filed with the Registrar of the Supreme Court before the date appointed for the hearing of the petition. Registrar of Supreme Court.

22. (1) Every petition shall, unless presented by the company or other body to which the petition relates, be served upon the company or other body. Service of petition. Form 4.

(2) If there is no registered office of the company, the petition may be served upon the company or other body at the principal or last known principal place of business of the company or body, if any such place can be found, by leaving a copy with any member, officer or employee of the company or body there, or if no such member, officer or employee can be found there, then by leaving a copy at the principal or last known principal place of business or by serving it on a member, officer or employee of the company or body as the Court may direct.

(3) Where a petition is presented by a person other than the liquidator in relation to a company or other body which is in course of being wound up, the petition shall be personally served upon the liquidator.

Copy  
petition for  
contributory  
or creditor.

23. Every member or creditor of a company or other body in respect of which a petition has been filed is entitled to be furnished by the solicitor of the petitioner with a copy of the petition within forty-eight hours after requiring it, on payment at the rate of twenty cents per folio for the copy.

Notice of  
intention to  
appear.  
Form 5.

24. (1) A person who intends to appear on the hearing of a petition shall serve on the petitioner or his solicitor notice of intention to appear thereon.

(2) The notice shall be signed by that person or by his solicitor and shall give the address of the person by whom or whose behalf it is signed and shall be served, or if sent by post, shall be posted, in such time as in ordinary course of post to reach the address of the person on whom it is intended to be served, not later than four o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition or if that day be a Monday, or a Tuesday following a public holiday not later than four o'clock in the afternoon of the Friday previous to that day.

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

List of  
persons  
intending to  
appear.  
Form 6.

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

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

Affidavits  
opposing the  
petition and  
affidavits in  
reply.

26. (1) Affidavits in opposition to a petition shall be filed and a copy thereof served on the petitioner or his solicitor at least seven clear days before the time appointed for the hearing of the petition.

(2) Any affidavit in reply to an affidavit filed in opposition to a petition (including a further affidavit in support of any of the facts alleged in the petition) shall be filed within three days of the date of service on the petitioner of the affidavit in opposition and a copy of the affidavit in reply shall be forthwith served on the petitioner or his solicitor.

Substitution  
of another  
person as  
petitioner.

27. (1) If a petitioner, whether or not he is entitled to present a petition—

- (a) fails to take all the steps prescribed by these rules preliminary to the hearing of the petition;
- (b) consents to withdraw his petition or to allow it to be dismissed or the hearing to be adjourned; or
- (c) fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof or any day to which the hearing has been adjourned, or if appearing does not apply for an order in the terms of the prayer of his petition—

the Court may, upon such terms as it may think just, substitute for the petitioner any person who, in the opinion of the Court, would have a right to present the petition and who is desirous of proceeding with the petition.



(2) An order to substitute a petitioner may, where a petitioner fails to advertise his petition within the time prescribed by or under these rules or consents to withdraw his petition, be made by the Master at any time before the date fixed for the hearing.

#### REDUCTION OF CAPITAL.

28. Rules 29 to 45 (both inclusive) apply only to a petition by a company to the Court for the confirmation of a resolution to reduce its share capital.

Application  
of R. 29-45:

29. After the petition has been presented an application for directions as to the proceedings to be taken shall forthwith in every case be made by summons returnable before the Master.

Application  
for  
directions.  
Form 7.

30. (1) Upon the hearing of the summons or upon any adjourned hearing or hearings thereof or any subsequent application, the Master may make such orders and give such directions as he may think fit as to all proceedings to be taken and more particularly as to the following matters, namely:—

Powers of  
Master.

- (a) Directing the petition to be heard by the Court on a date and at a place to be fixed by the Master.
- (b) Directing that having regard to any special circumstances that appear all or any of the provisions of subsection (2) of section 123 shall not apply as regards any specified class of creditors.
- (c) The publication of notices.
- (d) In a case where the settlement of a list of creditors is ordered fixing the date with reference to which the list of creditors is to be made out and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in the rules hereafter set out or not.

31. (1) Within seven days after the date with reference to which the list of creditors is to be made out, or within such other time as the Master may order, the company shall file an affidavit made by an officer or officers of the company competent to make it verifying a list containing so far as possible the names and addresses of the creditors of the company to whom such enquiry extends.

Filing  
affidavits  
verifying list  
of creditors.  
Form 8.

(2) The list shall also contain the amounts due to the creditors therein named respectively in respect of any debts, claims or liabilities to which the enquiry extends, or in the case of any debt payable on a contingency or not ascertained or any claim the value of which is not ascertained the amount so far as can be justly estimated of that debt or claim.

Amounts  
due to be  
stated.

(3) The list shall be filed with the affidavit.

(4) The person making any such affidavit shall state therein his belief that the list verified by the affidavit is correct and that there was not at the date with reference to which the list of creditors is to be made out any debt, claim or liability that, if that date were the commencement of the winding up of the company, would be admissible in proof against the company except the debts, claims and liabilities set forth in the list and any debts, claims or liabilities to which the enquiry does not extend.

No out-  
standing  
admissible  
debts.

Publication of  
list of  
creditors.

32. Copies of the list of creditors to which rule 31 refers containing the names and addresses of the creditors of the company and the total amount due to them including the value of any debts or claims estimated as provided in rule 31 but omitting the amounts due to them respectively, or, if the Master shall so direct, complete copies of the list, shall be kept at the registered office of the company and at the office of the solicitor to the company and any person desirous of inspecting the list may at any time during the ordinary hours of business inspect and take extracts from it on payment of the sum of twenty cents.

Notice of  
petition,  
order and  
list of  
creditors, etc.  
Form 9.

33. (1) Within seven days of the filing of the affidavit mentioned in rule 31 or at such other time and in such manner as the Master may order, the company shall gazette and advertise notice of the presentation of the petition.

(2) The notice shall state the amount of the proposed reduction of capital and the places where the list of creditors referred to in rule 31 may be inspected, and the time fixed by the Master within which creditors of the company, who being entitled to be entered on the list are not so entered and are desirous of being entered therein, must send in their names and addresses and the particulars of their debts or claims and the names and addresses of their solicitors, if any, to the company or its solicitor.

Notice to  
creditors  
on list.  
Form 10.

(3) The company shall send to each creditor whose name is entered in the list, a notice stating the amount of the proposed reduction of capital, the effect of the order directing the enquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which that creditor is entered in the list, and the time fixed by the Master within which, if he claims to be entitled to be entered on the list as a creditor for a larger amount, he must send to the solicitor of the company his name and address and the particulars of his debt or claim and the name and address of his solicitor (if any).

Barring of  
late claims.

34. (1) After the time fixed to send in particulars of his claim, no claim by a person to be a creditor or to be a creditor for an amount larger than that for which he is entered on the list shall be received unless the Master thinks fit to give special leave, on such terms and conditions as to costs and otherwise, as the Master may think fit.

(2) On an application for special leave the summons shall be served upon the company and shall be supported by an affidavit setting forth the facts upon which the creditor relies.

Affidavit  
verifying  
list.  
Form 11.

35. (1) The company shall, within seven days after the expiration of the time fixed by the Master for creditors to send in particulars of their claims or within such other time as the Master shall direct, file with the Registrar of the Supreme Court an affidavit made by the company's solicitor stating the result of the notices gazetted, advertised or sent in accordance with rule 33 and verifying a list to be filed with the affidavit containing in alphabetical order the names and addresses of the persons who have sent in the particulars of their debts or claims in pursuance of those notices respectively and the amounts of those debts or claims.

Affidavit  
distinguishing  
claims ad-  
mitted and  
rejected.

(2) Some competent officer or officers of the company shall join in the affidavit and shall in the list distinguish which (if any) of the debts and claims are wholly or partly admitted by the company and which (if any) of the debts and claims are wholly or partly disputed by the company and which (if any) of the debts and claims are alleged by the company to be wholly or partially excluded from the enquiry.

(3) The company shall at the same time file with the Registrar the following lists of creditors made out in alphabetical order and showing the address of each creditor and the amount or estimated value of the debt or claim for which each is entered either in the list kept in pursuance of rule 32 or that made out in pursuance of subrule (1) of this rule:—

Filing with Registrar verified list of consenting creditors and for list of creditors whose claims not fully admitted.

- (a) a list of all creditors who have been paid or who have consented to the proposed reduction of the company's capital, which list must be verified by an affidavit made by a competent officer or officers of the company exhibiting the receipts and, where necessary, the invoices, showing the payments made, and in the case of each creditor consenting, a consent in writing signed by him or by a member of the firm, if the creditor is a firm, or under the seal of the corporation, if the creditor is a corporation; and
- (b) a list of all creditors whose debts or claims the company does not admit at their full amounts but is willing to appropriate in such manner as the Master directs.

36. (1) If the company has filed any list of creditors consenting to the proposed reduction, or of creditors whose debts or claims the company is willing to appropriate as the Master directs or if any debt or claim the particulars of which have been sent in as mentioned in rule 35 be not admitted by the company at its full amount and the company is not willing to appropriate the full amount thereof as the Master directs, or if any such debt or claim is alleged by the company to be not wholly included in the enquiry the company shall forthwith apply *ex parte* to the Master for directions.

Settlement of list of creditors. Form 12.

(2) On the application the Master may order that the affidavit verifying consent is sufficient proof of the consent to the proposed reduction or may require any further proof and may give such directions as he thinks proper for securing in the manner mentioned in section 123, subsection (3) the payment of the debt or claim of any creditor who does not consent to the proposed reduction and for that purpose may require such evidence and give such directions as may be necessary and may give such further or other directions as appear to him desirable.

(3) If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim whether admitted or not or if any debt or claim, the particulars of which have been sent in, be not admitted by the company at its full amount, then and in every such case unless the company is willing to appropriate in such manner as the Master directs the full amount of the debt or claim, the company shall, if the Master thinks fit so to direct, serve on the creditor a notice that he is required to come in and establish his title to be entered on the list (or as the case may be) to come in and prove the debt or claim or such part thereof as is not admitted by the company, by a day to be therein named being not less than four clear days after the notice and being the time appointed by the Master for adjudication upon the title, debt and claim.

37. A creditor who has received notice that he is required to come in and prove his title shall file an affidavit verifying his debt or claim and shall on the day fixed appear before the Master and there produce all deeds and documents necessary to prove his debt or substantiate his claim.

Creditor to prove debt.

Adjournment  
of hearing;  
investigation  
and further  
particulars.

38. The Master may adjourn the hearing of the proofs of debts and claims as often as he thinks fit and may on the hearing or any adjourned hearing direct such investigation of all or any of the claims and require such further particulars, information or evidence relating thereto as he thinks fit and may hear evidence and may disallow any debt or claim or any part thereof or fix the amount at which any debt or claim is to be allowed.

Creditors  
costs.

39. (1) A creditor who has come in and established his debt or claim is entitled to the costs thereof unless the Master is of opinion that in the circumstances his costs ought not be allowed.

(2) The Master shall fix those costs unless he thinks fit to direct the taxation thereof, and the amount of the costs so fixed or taxed shall be added to the debt or claim so established.

Creditors  
wrongly  
listed as  
consenting.

40. The Master may, before, or the Court may on, the hearing of the petition, on the application of a creditor appearing on any list as having consented to the proposed reduction of the company's capital, if satisfied that the creditor has not consented or that the circumstances of his consent were such as to make it proper to do so, order that the creditor shall be at liberty to appear on the hearing of the petition and oppose the proposed reduction of capital and for that purpose the Master or the Court may direct any investigation and require such particulars or information or hear such evidence as he or it may think fit.

Master's  
certificate.

41. (1) The result of the settlement of the list of creditors shall be stated in a certificate to be settled and signed by the Master and filed forthwith.

(2) The certificate shall state—

- (a) the debts or claims admitted at their full amount by the company;
  - (b) the debts or claims the full amount of which the company is willing to appropriate;
  - (c) the names of the creditors who have come in under rule 37 and sought to establish their title to be entered in the list of creditors, distinguishing those whose debts or claims have been disallowed by the Master and those the amounts of whose debts or claims have been fixed by the Master and showing the amounts so fixed;
  - (d) the debts or claims the full amount of which the company does not admit or is not willing to appropriate or such as have been disallowed or the amounts have not been fixed by the Master;
  - (e) the names of the creditors appearing on the list filed by the company as consenting to the proposed reduction of capital and the total amount of the debts due to them;
  - (f) the total amount of the debts or claims the payment of which has been secured in manner provided by subsection (3) of section 123 and the persons to whom the debts are due or by whom the claims are made.
- (3) No reference need be made in the certificate to any debts or claims to which the enquiry does not extend.

42. (1) In all cases where a list of creditors has been settled the Master shall on settling and signing his certificate fix the time and place for the hearing of the petition which shall not be less than fourteen days after the filing of his certificate.

Date for  
petition.

(2) On the day for the hearing of the petition being fixed, the company shall not less than five days before that day gazette and advertise a notice in the prescribed form of the day fixed for the hearing.

Notice of  
date fixed.  
Form 13.

43. (1) Any person appearing on a Master's certificate to be a creditor of the company who has not consented to the proposed reduction of capital and whose debt or claim has not been secured in full may, unless the company is willing to appropriate his debt or claim in such manner as the Court directs or his debt or claim has been discharged or determined, appear on the hearing of the petition and oppose the application.

Dissenting  
creditor  
may appear  
to oppose.

(2) A dissenting creditor who appears at the hearing of an application under section 123 is entitled to costs unless the Court is of opinion that in the circumstances his costs ought not to be allowed.

Costs under  
S. 123 for  
dissenting  
creditor.

44. (1) The Court may adjourn the hearing of the petition from time to time as it thinks fit.

Directions as  
to payment  
of claims of  
dissenting  
creditors.

(2) On the hearing of the petition the Court may give such directions as it thinks proper for securing, in the manner mentioned in subsection (3) of section 123 the payment of the debts or claims of any creditors who do not consent to the proposed reduction and for that or any other purpose may require such evidence and give such further directions as may be necessary.

45. An order confirming a reduction shall show the particulars required to be shown by subsection (6) of section 123 and shall contain directions—

Order  
confirming  
reduction.  
S. 123 (6).

- (a) as to the time within which an office copy of the order must be lodged with the Commission;
- (b) as to the manner and mode in which notice of the order is to be gazetted and advertised after the office copy of the order has been lodged with the Commission.

#### WINDING UP BY THE COURT AND APPLICATIONS UNDER SECTION 320.

46. Rules 47 to 51 apply only to petitions for winding up and petitions under section 320.

Application  
of R. 47-51.

47. (1) Every petition must be gazetted and advertised not less than fourteen days before the hearing.

Advertise-  
ment of  
petition.  
Form 14.

(2) The advertisement in the *Commonwealth Gazette* and newspaper shall state the day on which the petition was presented and the date and place appointed for the hearing thereof, and the name and address of the petitioner and of his solicitor and Perth agent, if any, and shall contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner or to his solicitor within the time and in the manner prescribed by rule 24, and an advertisement of a petition that does not contain the note shall be deemed irregular.

## 14

Official liquidator to be nominated by Registrar of Supreme Court.

As to consent of liquidator.

Attendance on Registrar.

Notice of winding up order.  
Forms 15 and 16.

Service of copy winding up order.  
S. 370 (2).

Notice at foot of every winding up order.

Order appointing provisional liquidator:  
S. 372 (2).  
Forms 17, 18 and 19.

48. (1) On the application of the petitioner the Registrar of the Supreme Court shall nominate in writing the official liquidator who is to be appointed as liquidator, if an order for the winding up of the company is made by the Court and may from time to time as circumstances require make further nominations.

(2) Before the hearing of the petition the petitioner or his solicitor shall obtain and file the consent in writing of the official liquidator who is nominated by the Registrar.

49. (1) After a petition has been presented the petitioner or his solicitor shall on a day to be appointed by the Registrar of the Supreme Court attend before him and satisfy him that—

- (a) the petition has been duly gazetted and advertised;
- (b) the prescribed affidavit verifying the statements in the petition and the affidavit of service, if any, have been duly filed;
- (c) that the consent in writing of the official liquidator nominated by the Registrar has been obtained and filed; and
- (d) the provisions of the rules as to petitions have been duly complied with by the petitioner.

(2) No order save an order for the dismissal or adjournment of the petition shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed and satisfied him in manner required by this rule.

50. (1) When an order is made for the winding up of a company the petitioner shall forthwith thereafter inform the liquidator and within fourteen days of the passing and entering of the order—

- (a) gazette and advertise a notice of the making of the order; and
- (b) deliver to the liquidator an office copy of the order.

(2) The copy of the winding up order required by subsection (2) of section 370 to be served upon the company may be served upon the secretary or the principal executive officer either personally or by prepaid letter addressed to the secretary or manager at the registered office of the company (if any) or if there is no registered office at its principal or last known place of business.

(3) Every order for the winding up of a company by the Court shall, unless the Court otherwise directs, contain at the foot thereof, a notice stating that it will be the duty of such of the persons who are required under subsection (1) or subsection (2) of section 375 to make out or concur in making out a report as to the affairs of the company or, in a case to which subsection (2) of section 375 applies, as to such of the affairs of the company as is specified in the notice requiring the report, as the liquidator may require, to attend on the liquidator at such time and place as he may appoint and give him all information he may require.

51. (1) At any time after the presentation of a petition the Court may upon application of any creditor or contributory or of the company and upon proof by affidavit of sufficient ground for the appointment of a provisional liquidator make the appointment upon such terms as the Court thinks just or necessary.

(2) An order appointing a provisional liquidator shall state the nature and give a short description of the property of which the provisional liquidator is ordered to take possession and the duties to be performed by him.

Contents of order.

(3) Upon the pronouncement of the order the party obtaining the order shall lodge a notice of the making thereof with the Commission and cause such notice to be gazetted and advertised.

Lodgement with Commission and giving notice of appointment upon pronouncement of order.

(4) The expense of complying with subrule (3) of this rule shall, unless the Court otherwise orders, be a charge upon the assets of the company.

Expense.

(5) Upon the order being passed and entered the party obtaining the order shall within seven days thereof lodge with the Commission an office copy of the order and serve a copy thereof on the company and on any other person on whom the Court shall direct service to be made.

Office copy of issued order to be lodged with Commission.

(6) Upon the completion of his term of office a provisional liquidator shall on accounting to the liquidator (if any) be entitled to be paid out of the property of the company, all costs, charges and expenses properly incurred by him and remuneration as may be authorized by the order, appointing him or any subsequent order and may retain out of that property the amount of those costs, charges, expenses and remuneration.

#### MOTIONS.

52. (1) The following applications shall be made by motion and shall be heard and determined in open court:—

Applications.

1. Under section 537 pursuant to section 18 or section 20 (appeal from decision of the Commission in relation to the registration of auditors or liquidators) or section 27 (appeal from decision of the Companies Auditors and Liquidators Disciplinary Board).
2. Under subsection (8) of section 73 (application to cancel alteration in objects or powers of company).
3. Under section 118 (application to confirm the issue of shares at a discount).
4. Under section 122 (application to validate the issue or allotment of shares invalidly issued or created or to confirm the terms of issue or allotment thereof).
5. Under section 125, 126 or 127 (application to set aside a proposed variation or abrogation of rights attaching to shares or an alteration to the memorandum or articles authorizing such a variation or abrogation).
6. Under subsection (6) of section 168 (application by trustee or representative to confirm, set aside or vary a direction of the interest holders).
7. Under subsection (4) of section 175 (application to confirm resolution to wind up scheme relating to prescribed interests).

## 16

8. Under subsection (1) of section 227 (application by an insolvent under administration for leave to be re-appointed or to act as a director or to be concerned or take part in the management of a corporation).
9. Under subsection (4) of section 222 or subsection (2) of section 227 (application by certain convicted persons for leave to act as a director or promoter, or be concerned or take part in the management of a company).
10. Under subsection (2) of section 297 (application for Court to inquire as to officer failing to comply with requirement of inspector).
11. Under section 383 (application to stay proceedings in, or terminate, winding up).
12. Under section 391 (application for leave to wind up voluntarily when a petition for winding up by the Court has been presented).
13. Under section 405 (application to remove a liquidator in a voluntary winding up and appoint another in his stead).
14. Under subsection (2) of section 427 (application for order requiring liquidator to submit account of undistributed assets with or without directions as to audit or payment).
15. Under subsection (8) of section 427 (appeal to Court against decision of Commissioner for Corporate Affairs).
16. Under section 458 (application to declare dissolution void).
17. Under subsection (6) of section 459 (application for the re-instatement of the registration of a company).
18. Under section 542 (application for an order against persons concerned with a corporation).
19. Under section 557 (application for a declaration that a person convicted under section 556 should be personally responsible for the liabilities of the company).
20. Under subsection (2) of section 535 (application for relief in respect of any default or breach of trust, etc.).

(2) The descriptions in parentheses are not to be taken to control or qualify the application of this rule to the provision to which they purport to refer.

Notice of  
motion.

53. (1) Every notice of motion must state the nature and the grounds of the application.

(2) Where notice of a motion is required by these rules to be served, the notice shall be served not less than two clear days before the day named in the notice for hearing the motion.

(3) Every motion shall be supported by an affidavit and a copy of any affidavit in support of the motion shall be served on the respondent.



## SUMMONS.

54. (1) The following applications shall be made by summons and shall be heard and determined by a Judge in Chambers:—

Applications.  
Form 20.

1. Under subsections (1) or (4) of section 71 (application in relation to proprietary company).
2. Under section 133 (application for approval to payment of interest out of capital).
3. Under subsection (1) of section 155 (application for direction that security of certain debentures be enforceable).
4. Under subsection (3) of section 184 (application for order for delivery up of documents to company).
5. Under subsection (3) of section 205 or section 212 (application to extend period for lodging a charge or variation in the terms of a charge or to rectify Register of Charges).
6. Under subsection (1) of section 246 (application for order that a meeting be called other than in accordance with the articles or the Code).
7. Under subsection (5) of section 247 (application to dispense with circulation of statement).
8. Under section 258 (application for order on default in relation to production of register of members).
9. Under section 259 (application to rectify register of members).
10. Under subsection (8) of section 267 (application for order that company accounting records be available for inspection).
11. Under subsection (1) of section 315 (application for an order for meetings in relation to a compromise or arrangement).
12. Under subsections (4), (6) or (18) of section 315 (application to sanction compromise or arrangement, or to restrain proceedings).
13. Under section 317 (application for orders facilitating compromise or arrangement).
14. Under section 318 (application for order as to acquisition of shares of dissenting shareholder).
15. Under subsection (5) of section 320 (application for leave to make alteration to memorandum or articles inconsistent with a Court order).
16. Under subsection (4) of section 338 (application to terminate appointment as official manager).
17. Under subsection (4) of section 349 (application for leave to dispose of, mortgage or charge company's assets).
18. Under section 350 (application for directions as to official management).

19. Under section 352 (application to terminate the official management and for consequential orders).
20. Under section 353 (application to Court to vary or cancel resolution that company be placed under official management).
21. Under subsection (1) of section 355 (application for order that the appointment of a person as official manager be terminated).
22. Under section 365 (application for order that proceedings be deemed not validly taken).
23. Under section 368 (application for order to validate disposition of property after commencement of Court winding up).
24. Under subsection (2) of section 374 (application to vest company property in liquidator).
25. Under sections 381 and 382 (application with respect to release or resignation of liquidator).
26. Under subsection (1) of section 384 (application for direction that property be delivered to the liquidator or dissolution of company).
27. Under subsection (2) of section 384 (application to direct payment of money due from a contributory).
28. Under subsection (3) of section 384 (application for order for calls and payment thereof).
29. Under subsection (4) of section 384 (application for order for payment into bank to the account of the liquidator).
30. Under subsection (3) of section 386 (application for order as to priorities in payment of costs, charges and expenses in a winding up).
31. Under section 388 (application for an order for arrest of absconding contributory).
32. Under subsection (2) of section 389 (application for leave to make call or distribute any surplus).
33. Under subsection (3) of section 401 (application for direction that company property be delivered to liquidator).
34. Under subsection (4) of section 409 (application to sanction resolution transferring company's business or property where company later wound up by Court).
35. Under subsection (5) of section 409 (application for directions as to arbitration).
36. Under subsection (6) of section 409 (application for approval of exercise of certain powers by liquidator in a creditors' voluntary winding up).
37. Under subsection (3) of section 412 (application for settlement of dispute as to value in an arrangement with creditors).

38. Under subsection (4) of section 412 (application to, set aside or modify or confirm an arrangement).
  39. Under section 413 (application for the determination of a question or for exercise by Court of powers in a voluntary winding up).
  40. Under subsection (3) of section 418 (application to direct the liquidator to report delinquent officer or member).
  41. Under section 420 (application relating to the control and conduct of a liquidator in a winding up).
  42. Under section 450 (application for order as to distribution of assets where there have been indemnifying creditors).
  43. Under subsection (9) of section 456 (application to set aside rights of liquidator where sheriff executing judgment on behalf of a creditor).
  44. Under subsection (14) of section 518 (application for direction as to disposal of net assets in winding up of a foreign company).
  45. Under section 538 (application with respect to decisions of receivers, liquidators, etc.).
  46. Under subsection (3) or (4) of section 539 (applications with respect to irregularity in proceedings).
  47. Under section 541 (application for order for the attendance of a person for examination).
  48. Under section 551 (application for order that document be made available for inspection).
- (2) Applications under items 31, 35, 41, 47 and 48 of subrule (1) of this rule may be made *ex parte* and an application under item 43 shall be made on notice to the sheriff who is entitled to be heard on the application.
- (3) (a) An application under subsection (1) of section 315 shall be supported by an affidavit exhibiting a copy of the proposed compromise or arrangement which shall be filed and notice of the application shall be given to the Commission by lodging a copy of the summons with the Commission before the application is heard.
- (b) An office copy of any order made under subsection (1) of section 315 shall be lodged with the Commission within seven days of the passing and entering of the order.
- (c) After the holding of any meeting ordered pursuant to subsection (1) of section 315 the solicitor for the applicant shall attend before the Registrar on a day to be appointed by him and the Registrar shall enquire as to whether the meeting was duly summoned and held in the manner directed by the Court and as to whether a compromise or arrangement was agreed to by the necessary majority of creditors or members, as the case may be.
- (d) The Registrar shall certify to the Court or the Judge whether the meeting was duly summoned and held and the compromise or arrangement was agreed to by the necessary majority and if in his opinion any irregularities occurred in the summoning of the meeting or in the proceedings thereof the nature and extent of the irregularities.

(e) A certificate under this rule shall contain a direction regarding the notice (if any) to be given to creditors or members of the application under subsection (2) of section 315 for approval of the compromise or arrangement.

(f) Application for the approval of a compromise or arrangement shall not be made until a certificate of the Registrar in accordance with this rule has been obtained and filed.

(g) A copy of any order made under subsection (18) of section 315 shall be lodged with the Commission within seven days of the making thereof.

(4) The descriptions in parentheses are not to be taken to control or qualify the application of this rule to the provision to which they purport to refer.

Applications  
to be made to  
the Master.

55. (1) Subject to this rule, all applications required or authorized by the Code or these rules other than those referred to in rules 18, 52 and 54 shall be made on summons and shall be heard and determined by the Master, who may in respect of every such application exercise any of the powers conferred on the Court or a Judge in relation thereto.

(2) With the consent of all parties any application under rule 54 may be heard by the Master but the failure of any party to seek or give consent shall not prejudice his right to costs on a summons before a Judge.

(3) An application referred to in items 1, 4, or 5 of rule 18 may be heard and determined by the Master who may in respect of every such application exercise any of the powers conferred on the Court or a Judge in relation thereto.

Summons  
to be  
supported by  
affidavit.

56. (1) Every summons where necessary shall be supported by affidavit and where the summons is required to be served a copy of the affidavit shall be served with the summons and an affidavit in support of an *ex parte* summons shall show the parties interested and their interests.

(2) On the hearing of the summons the Judge or Master shall give such directions as he sees fit and in particular directions as to notices to be given to any of the parties interested and may adjourn the application to enable those parties to attend and may if he considers it proper in the circumstances to do so adjourn the hearing or the further hearing of the summons into Court.

Summons  
for directions  
by liquidator.

57. (1) Where—

- (a) a liquidator desires to obtain directions as to any matter in relation to a winding up; or
- (b) any applicant in any proceedings under these rules desires to obtain directions as to the proceedings to be taken in relation to the application—

he may take out a summons for directions and apply *ex parte* to the Master for directions in relation to the matter or proceedings.

(2) On any application for directions, the Master may adjourn the application and direct that notice by advertisement or otherwise of the application may be given to such person or persons or classes of persons as he may direct.

## LIQUIDATORS REPORTS.

58. (1) In a winding up by the Court, a copy of any report made by the liquidator to the Commission under section 376 or subsection (1) or (2) of section 418 shall be filed in the Central Office of the Supreme Court.

Liquidator's  
report.

(2) In a winding up by the Court, any report made by the liquidator pursuant to section 376 or 418 shall state in narrative form the facts and matters that the liquidator is required or desires to bring to the notice of the Court and his opinion as to the matters required by those sections.

59. (1) The following reports to be made by the liquidators shall be filed in the Central Office of the Supreme Court and a copy lodged with the Commission:—

Filing of  
report.

(a) Under subsection (3) of section 418—any report in a winding up as to offences which have not been reported to the Commission.

(b) Under subsection (2) of section 383—any report in relation to an application to stay or terminate winding up proceedings.

(2) Any report or copy of a report made under section 418 shall not be open to the inspection of any creditor, contributory or other person except the liquidator or his solicitor unless or until the Court so directs.

60. (1) Any report made under section 418 shall be considered by the Judge in Chambers upon the application of the liquidator or the Commission made by summons *ex parte*. The Judge may direct service of the summons upon any other person concerned.

Consideration  
of report by  
Judge.

(2) The liquidator shall personally or by counsel or solicitor attend upon the consideration of the report and give the Judge any further information or explanation with reference to the matters stated in the report that the Judge may require.

## EXAMINATIONS.

61. An application by the Commission or a prescribed person within the meaning of subsection (1) of section 541 for an order that any person attend before the Court for examination under section 541 shall be made *ex parte*. If made in relation to a corporation which is being wound up it shall be made by summons served on the liquidator and supported by affidavit.

As to  
examination  
under S. 541.

63. An application for an order for the examination of the liquidator or other persons under section 420 may be made *ex parte* by the Commission or any creditor or contributory to a Judge in Chambers and shall be supported by affidavit.

Examination  
under S. 420.

64. The Commission or other applicant for the order for examination may attend in person or by counsel or solicitor at any examination of a witness under section 541 and he or his counsel or solicitor may take notes of the examination for his use, and put such questions to the persons examined as the Court may allow.

Representation  
of prescribed  
persons under  
S. 541.

Application  
for  
appointment.  
Forms 21  
and 22.

65. (1) Upon the making of an order under section 541 directing a person to attend before the Master or Registrar for examination, the applicant for the order shall apply *ex parte* to the Master or Registrar, as the case may be, for the appointment of a day on which the examination is to be held.

Notice of  
appointment  
to examine.

(2) Where the Court makes an order that a person attend for examination, the applicant for the order or his solicitor shall cause a notice of the day and place appointed for holding the examination to be served on the person to be examined.

Notice of  
appointment.  
Form 23.

66. (1) Unless otherwise directed by the Court, the applicant for the order for examination under section 541 shall give notice of the examination to the creditors, contributories and other persons by gazetting and advertising a notice of the time and place appointed for holding the examination.

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

As to public  
and private  
examination  
under S. 541.  
Form 24.

67. (1) Where an order has been made for an examination under section 541—

- (a) the examination may be held before a Judge, the Master or a Registrar or if the Judge in Chambers so directs before the District Court or a magistrate of a Local Court named for the purpose by the Judge and, pursuant to subsection (4) of that section, where special circumstances exist he may order that the examination be not held in open court and not open to the public;
- (b) the Judge may either in the order for examination or by subsequent order give directions as to the matters on which any person is to be examined;
- (c) if a person examined before the District Court or a Local Court fails or refuses to answer to the satisfaction of the District Court Judge or magistrate constituting the Court any question which he may allow to be put the District Court Judge or magistrate may in respect of such failure or refusal exercise any powers which the Court might have exercised had the failure or refusal been made in an examination before the Court;
- (d) where on an examination held before the District Court or a Local Court, District Court Judge or magistrate constituting the Court, as the case may be, considers the examination is unnecessarily protracted or that there is any other sufficient cause he may adjourn the examination of any person so that it may be held before the Court.

(2) Where on examination under section 541 is held before the Master or before the Registrar—

- (a) the Master or the Registrar, as the case may be, may exercise the powers of the Court under that section;

- (b) the Master or Registrar, as the case may be, may, if he thinks fit, adjourn to a Judge the examination of any person or any part of the examination; and
- (c) the Master or Registrar, as the case may be, may refer for the direction of a Judge any question arising on the examination.

68. (1) If the Court or another Court or person before whom any examination under the Code or rules is directed to be held considers that it would be desirable that a person other than the person before whom an examination is taken should be appointed to take down in shorthand or otherwise record the evidence of any person examined, the court or person before whom the examination is taken may make such appointment.

Shorthand  
notes of  
examinations  
and powers  
of Commis-  
sioner.  
Forms 25  
and 26.

(2) The person at whose instance the examination is taken shall nominate a person for the purpose and the person so nominated shall be appointed unless the court or person holding the examination otherwise orders.

(3) Every person so appointed shall be paid by the person at whose instance the appointment was made, or out of the assets of the company as may be directed by the court or person before whom the examination is taken.

69. (1) The written record of the examination of a person examined in private under section 541, or under any order of the Court whether before the Court or before any other Court or person appointed to take such an examination, other than the written record of the examination of a person examined at a public examination under that section, shall be filed, but shall not be open to the inspection of any creditor, contributory, or other person, except the liquidator or its or his solicitor, unless and until the Court so directs, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of that record and the furnishing of copies of or extracts therefrom.

Record to be  
filed.  
Forms 27  
and 28.

(2) The written record of the examination of a person examined in public under section 541 shall, after being signed as required by subsection (13) of section 541, if a transcript, or authenticated as required by subrule (3), be filed and shall be open to the inspection of the Commission, the official manager, the liquidator and of any creditor or contributory.

(3) For the purposes of subsection (14) of section 541, a transcript of an examination of a person under section 541 may be authenticated—

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

Failure to  
attend or  
absconding  
warrant for  
arrest.  
Form 29.

70. If a person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed and no good cause is shown by him for such failure or, if, before the day appointed for the examination the Commission or the liquidator or other person who was the applicant for the order for the examination satisfies the Court that the person has absconded or that there is reason for believing that he is about to abscond with a view to avoiding examination, the Court may, upon proof to its satisfaction that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice, issue a warrant for the arrest of the person required to attend or to make such other order as the Court thinks just.

#### ORDERS.

Settling  
and issuing  
orders.

71. (1) Every order of the Court shall be settled and signed by the Registrar of the Supreme Court and issued from the Central Office, unless in any proceeding the Judge or Master making the order directs that no order need be drawn up.

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

Provision of  
documents  
for settling  
order.

72. (1) Subject to any direction to the contrary every order shall be passed and entered forthwith and the petitioner or his solicitor or the applicant or his solicitor and all other persons who have appeared on the hearing of a petition or motion shall, not later than the day after the order is pronounced in Court, leave at the Central Office all the documents required for the purpose of enabling the Registrar of the Supreme Court to settle the order forthwith.

Appointment  
unnecessary.  
Forms to be  
used.

(2) It shall not be necessary for the registrar of the Supreme Court to make an appointment to settle the order unless in any particular case the special circumstances make an appointment necessary.

Office copy  
order  
sanctioning  
issue of  
shares at  
discount to  
be filed with  
Commission.  
S. 118.

73. Unless the Court otherwise directs an order confirming the issue of shares at a discount shall contain a direction that an office copy of the order shall be lodged with the Commission for registration within seven days from the date thereof or within such time as the Court may allow and that the order shall not take effect until after the office copy has been so delivered.

#### POWERS AND DUTIES OF LIQUIDATOR AND PROCEEDINGS IN WINDING UP BY THE COURT.

Officer of  
Court.  
S. 21.

74. (1) All official liquidators registered as such under the Code by the Commission shall be officers of the Court.

Judicial  
notice of  
appointment.  
S. 21.

(2) Judicial notice shall be taken of the registration of any person by the Commission as an official liquidator.

Contributories  
listed may  
attend  
proceedings.

75. (1) Every person for the time being on the list of contributories of a company and every person whose proof of debt or claim has been admitted is at liberty at his own expense to attend proceedings in relation to the winding up of the company by the Court, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he by written request desires.



(2) If the Court is of opinion that the attendance of any person to whom subrule (1) relates upon any proceedings has occasioned additional costs that ought not to be borne by the funds of the company it may direct the costs or a gross sum in lieu thereof to be paid by the person and the person is not entitled to attend any further proceedings until he has paid those costs.

Costs occasioned by such attendance.

(3) The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court at the expense of the company all or any class of the creditors or contributories upon any question or in relation to any proceedings before the Court and may remove the person so appointed.

Representative of creditors or contributories may be appointed.

(4) If more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

Same solicitor to act for representatives of a class.

76. Where the attendance of the liquidator's solicitor is required on any proceedings in Court or Chambers the liquidator need not attend in person except in cases where his presence is necessary or the Court directs him to attend.

Liquidator's attendance at proceedings.

77. (1) Every person who by or under section 375 has been required by the liquidator to submit and verify a report as to the affairs of the company shall be furnished by the liquidator with forms and instructions for the preparation of the report.

Report as to affairs.

(2) The liquidator may from time to time hold personal interviews with any such person as is mentioned in subsection (1) or (2) of section 375 for the purpose of investigating the company's affairs and every such person shall attend at such time and place as the liquidator may appoint and shall give the liquidator all information that he may require.

Investigation of affairs by personal interview.

(3) When any person requires an extension of time for submitting the report as to the affairs of the company he shall apply to the liquidator who may, for special reasons, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding up and shall render an application to the Court unnecessary.

Procedure for extension of time.  
S. 375 (6).

(4) After the report as to the affairs of a company has been submitted to the liquidator each person who has made or concurred in making the report shall attend, if required, and answer all such questions as may be put to him by the liquidator and give all such further information as may be required of him in relation to the report.

Providers of information to attend for further questioning.

(5) Any default in complying with the requirements of section 375 shall be reported by the liquidator to the Court.

Default.

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

As to costs of preparing report as to affairs.

Liquidator's  
bank  
account.

79. (1) Every liquidator of a company that is being wound up by the Court shall unless otherwise directed by the Court—

(a) open a trust account in a bank to be named in the winding up order to be known as the Liquidator's General Account, in the name of the company being wound up, together with the words "in liquidation"; and

(b) pay all moneys received by him into that account forthwith after being so received.

Mode of  
payments  
out.

(2) Subject to any order to the contrary all payments out from any such account shall be made by cheque payable to order and the cheque shall have marked or written on the face of it the name of the company and where there is a committee of inspection shall be countersigned by at least one member thereof and by such other person (if any) as the committee of inspection may appoint, and where there is no committee of inspection, by such person or persons (if any) as the Court may direct.

Moneys, etc.,  
received  
to be paid  
into trust  
account.

80. (1) All bills of exchange, promissory notes and other securities payable to the company or to the liquidator thereof shall, as soon as they come to the hands of the liquidator, be deposited by him in the bank named under rule 79 for the purpose of being presented by the bank for acceptance and payment or for payment only, as the case may be.

(2) All marketable securities shall be deposited by the liquidator with the bank named for the purpose, for safe custody, as they come into his hands.

(3) All bills and notes and marketable and other securities deposited with the bank named shall be delivered out, only upon a request signed—

(a) by the liquidator and if there is a committee of inspection, by at least one member of the committee of inspection or by such other person (if any) as the committee of inspection may appoint; or

(b) if there is no committee of inspection, by the liquidator and such person or persons (if any) as the Court may direct.

Payment  
into Court  
of trust  
account  
moneys.

81. All or any part of the money for the time being standing to the credit of the account of the liquidator at the bank named under rule 79 and not immediately required for the purposes of the winding up may be paid into Court to the credit of an account intituled in the matter of the company in liquidation.

Court  
directions  
as to money.

82. (1) The Master may in any case give special directions with respect to the payment, deposit or custody of moneys or securities payable to or coming into possession of a liquidator.

Special  
bank account  
in winding up.

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

Office copy  
to be served  
on bank.

(3) An office copy of every order of the Master giving special direction with respect to the payment, deposit or custody of moneys or securities shall be served upon the bank.

83. (1) An application by the liquidator for the appointment of a special manager shall be supported by a report of the liquidator which shall be placed on the file of proceedings and the report shall state the powers that in the liquidator's opinion should be entrusted to the special manager and either—

Application  
for  
appointment  
of special  
manager.  
S. 385.

- (a) state the amount of remuneration that in the opinion of the liquidator ought to be allowed to the special manager; or
- (b) state that in the opinion of the liquidator it is desirable that the fixing of that remuneration should be deferred.

(2) The remuneration of a special manager shall, unless the Master otherwise directs, be stated in the order appointing him, but the Master may at any subsequent time for good cause shown make an order increasing, reducing or otherwise altering that remuneration.

84. A special manager shall account to the liquidator on whose application he was appointed and the special manager's accounts shall be verified by statutory declaration and when approved by that liquidator the totals of the receipts and payments shall be added by the liquidator to his accounts.

Special  
manager's  
accounts.  
Form 30.

85. In the case of a special manager the following provisions as to security apply:—

Security by  
special  
manager.  
S. 385.  
Form 31.

- (1) The security shall be given to the satisfaction of the Master or in such other manner as the Court may from time to time direct.
- (2) It shall not be necessary that security shall be given in each separate winding up; but security may be given either specially in a particular winding up, or generally, to be available for any winding up in which the person giving security may be appointed special manager.
- (3) The Master shall fix the amount and nature of the security and may from time to time as he thinks fit either increase or diminish the amount of special or general security that any person has given and the special manager shall give additional security accordingly within such time as the Master prescribes or may reduce the amount of his security as the case may be.
- (4) The certificate of the Master that a special manager has given security to his satisfaction shall be lodged with the Commission.
- (5) The cost of furnishing the required security by a special manager, including any premiums that he may pay therefor, shall be borne by him personally and shall not be charged against the assets of the company as an expense incurred in the winding up.

86. (1) If a special manager fails to give the required security or additional security within the time stated for that purpose in any order, the liquidator shall report the failure to the Master and the Master may thereupon rescind the order appointing the special manager.

Failure to  
give or  
keep up  
security.

(2) If a special manager fails to keep up his security the liquidator shall report the failure to the Master and the Master may thereupon remove the special manager and make such order as to costs as he thinks fit.

(3) The Master may, on application made *ex parte* and on being satisfied that the condition of any bond given as security has been broken, order the bond to be assigned to some person to be named in the order and that person, his executors or administrators is thereupon entitled to sue upon the bond in his or their own name or names as if the bond had been originally given to such person and is entitled to recover thereon as trustee or trustees for all persons interested in the full amount recoverable in respect of any breach of the condition of the bond.

#### OBJECTIONS TO SETTLING LIST OF CONTRIBUTORIES IN A WINDING UP BY THE COURT.

87, 88, 89, 90, 91 . . . . .

Objection to  
list of  
contribu-  
tories.  
Form 41.

92. (1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories or to any supplemental list shall be entertained after the expiration of twenty-one days from the date of the service on that person of the notice required by regulation 134 of the Companies (Western Australia) Regulations.

Liquidator  
not liable  
for costs.

(2) The liquidator is not personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company, unless the Court otherwise orders.

#### COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING UP BY THE COURT.

Liquidator  
to collect and  
distribute  
assets.  
Ss. 378, 389.

93. In the discharge of his duties in the collection of the property of the company and the application of that property in discharge of its liabilities the liquidator is, for the purpose of acquiring or retaining possession of that property, in the same position as if he were a receiver of the property appointed by the Court, and the Master may on his application enforce such acquisition or retention accordingly.

S. 384.  
Form 42.

94. (1) The powers conferred on the Court by subsection (1) of section 384 shall be exercised by the liquidator.

Transfer of  
property.  
S. 389.

(2) Any contributory for the time being on the list of contributories, trustee, receiver, banker, agent or officer of a company that is being wound up shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to, or into the hands of the liquidator, any money or property or books that are in his hands and to which the company is *prima facie* entitled, and the Court may on application of the liquidator order such payment, delivery, conveyance, surrender or transfer.

Calls by  
liquidator.  
Ss. 384 (3),  
389.  
Forms 43, 44  
and 45.

95. The powers and duties of the Court in relation to making calls on contributories conferred by subsection (3) of section 384 shall be exercised by the liquidator as an officer of the Court, subject to the following provisions:—

(1) Where the liquidator desires to make a call for a purpose authorized by the Code, if there is a committee of inspection, he shall summon a meeting of that committee for the purpose of obtaining its sanction to the intended call.

- (2) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him in the ordinary course of post not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended.
- (3) Notice of the intended call and the intended meeting of the committee of inspection, shall also be gazetted and advertised, stating the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting in reference to the intended call.
- (4) At the meeting of the committee of inspection for the purposes of the intended call, any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory, shall be considered before the intended call is sanctioned.
- (5) The sanction of the committee shall be given by resolution, which shall be passed by a majority of the members of the committee present.
- (6) Where there is no committee of inspection the liquidator shall not make a call without obtaining the leave of the Court.

96. (1) (a) An application to the Court for leave to make a call for a purpose authorized by the Code, shall be made by summons stating the proposed amount of the call.

Application to court for leave to make a call. Forms 46, 47, 48 and 49.

(b) The summons shall be served, at least four clear days before the day appointed for making the call, on every contributory proposed to be included in the call; or if the Court so directs, notice of the intended call may be given by advertisement without a separate notice to each contributory.

(2) The copy of the summons served on each contributory shall contain a statement of the amount claimed as due from the contributory served.

(3) Upon the hearing of the summons, the Court may make the call and also order the payment by the contributories respectively of the amounts due in respect of the call, within a time to be named in the order.

97. (1) When the liquidator is authorized by resolution of the committee of inspection or order of the Court to make a call on the contributories he shall file in the Central Office of the Supreme Court a document in accordance with Form 51 with such variation as circumstances may require.

Filing document making the call. Forms 50, 51 and 52.

Notice of  
amount due  
from con-  
tributory.

(2) When a call has been made by the liquidator, he shall forthwith serve upon each of the contributories included in the call a copy of the resolution of the committee of inspection or order of the Court, authorizing the call together with a notice specifying the amount or balance due from the contributory in respect of the call.

Enforcement  
of call.  
Forms 53, 54  
and 55.

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

#### PROOF OF DEBTS AND CLAIMS SHALL BE PROVED.

99, 100 . . . . .

Proof  
admitted  
improperly  
may be  
expunged.

101. If the liquidator is of the opinion that a proof of debt or claim has been improperly admitted, the Master may, on the application of the liquidator, after notice to the creditor expunge the proof or reduce its amount.

102, 103 . . . . .

Liquidator  
to file  
monthly list  
of proof.  
Form 56.

104. (1) Every liquidator in a winding up by the Court shall on the first day of every month, file in the central office of the Supreme Court a certified list of all proofs received by him during the last preceding month, distinguishing in the list the proofs admitted, those rejected, and such as are to stand over for further consideration.

Proof  
admitted or  
rejected  
to be filed.

(2) In the case of proofs admitted or rejected, he shall cause the proofs to be filed in the central office of the Supreme Court.

Procedure  
where  
creditor  
appeals.

105. The liquidator shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file the proof in the central office of the Supreme Court, with a memorandum setting out the grounds of his disallowance thereof.

Liquidator  
not liable  
for costs of  
appeal.

106. A liquidator is not personally liable for costs in relation to an appeal from his decision rejecting any proof, wholly or in part, unless the Court or the Master otherwise orders.

#### RELEASE AND RESIGNATION OF LIQUIDATOR.

Notice of  
liquidator's  
intention to  
apply for  
release.  
Ss. 381, 382.  
Forms 57, 58  
and 59.

107. A liquidator, before making application for his release, shall give notice of his intention so to do to all the creditors who have proved their debts and to all the contributories, and shall send with the notice a summary of all receipts and payments in the winding up.

Meetings of  
creditors and  
contribu-  
tories to  
consider  
resignation  
of liquidator.

108. (1) A liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

Memorandum  
of resignation  
to be filed.

(2) If the creditors and contributories by ordinary resolutions agree to accept the resignation of the liquidator he shall file in the Central Office of the Supreme Court and lodge with the Commission, a memorandum of his resignation and the resignation thereupon takes effect.

(3) In any other case the liquidator shall report to the Court the result of the meetings and thereupon the Court may, upon the application of the liquidator, determine whether or not his resignation shall be accepted and may give such directions and make such orders, as in its opinion are necessary.

Court consideration of application to resign.

(4) On the Court pronouncing a determination that a resignation shall be accepted the liquidator shall forthwith lodge a notice thereof with the Commission.

Notice of acceptance of resignation to be filed.

(5) The Court or a Judge may dispense with all or any of the requirements of this rule and rule 107.

#### TRANSFERS OF ACTIONS AND PROCEEDINGS.

109. (1) Where an order has been made for the winding up of a company, the Judge has power without further consent, to order the transfer to him of any action, cause or matter pending, brought or continued by or against the company.

Upon winding up order Judge may order transfer of action to himself.

(2) Where any action brought by or against a company against which a winding up order has been made, is so transferred, the Court may determine and deal with any application, matter or proceeding that, if the action had not been transferred, would have been determined in Chambers.

#### COSTS AND CHARGES OF PERSONS EMPLOYED BY LIQUIDATORS.

110. (1) Every solicitor, manager, accountant, auctioneer, broker or other person employed by a liquidator in a winding up by the Court, shall on request by the liquidator, to be made a sufficient time before the declaration of a dividend, deliver his bill of costs or charges to the liquidator in taxable form for the purpose its taxation; and if he fails to do so within the time stated in the request or such extended time as the Master may allow, the liquidator shall declare and distribute the dividend without regard to his claim, and subject to any order of the Master the claim shall be forfeited.

Submission of bill of costs by employees to liquidator for taxation. Form 60.

(2) The bill of costs or charges shall be lodged with the liquidator.

(3) The liquidator shall, where the bill is required to be taxed, lodge the bill of costs or charges with the taxing officer.

111. Where a bill of costs or charges in any winding up has been lodged with the taxing officer, he shall give notice of an appointment to tax to the liquidator and to the person to or by whom the bill of costs or charges is to be paid.

Notice of appointment to tax.

Supply of  
copy of bill  
of costs to  
liquidator.

112. (1) Every person whose bill of costs or charges in a winding up by the Court is or are to be taxed shall, on the application of the liquidator, furnish a copy of his bill or charges so to be taxed on payment at the rate of twenty cents per folio, which payment shall be charged on the assets of the company.

Attendance  
at taxation.

(2) The liquidator may attend or be represented on the taxation.

Issue of  
allowance or  
certificate of  
taxation.  
Forms 61  
and 62.

113. (1) Upon the taxation of any bill of costs, charges or expenses being completed, the taxing officer shall issue to the person presenting the bill for taxation his allowance or certificate of taxation.

(2) The taxing officer shall keep a Register of Taxations.

Liquidator's  
certificate as  
to special  
terms of  
remuneration  
to employee.

114. Where the bill of costs or charges of any solicitor, manager, accountant, auctioneer, broker or other person employed by a liquidator is payable out of the assets of the company, a certificate in writing, signed by the liquidator, shall, on the taxation, be produced to the taxing officer setting forth any special terms of remuneration that have been agreed to.

No allowance  
for  
performance  
by other  
person of  
liquidator's  
and special  
manager's  
duties.

115. (1) Where a liquidator or special manager in a winding up by the Court receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties that are required by law to be performed by himself.

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

Application  
for costs  
after  
proceedings  
concluded.

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

- (a) the party or person shall serve notice of his intended application on the company or if the company is in liquidation, on the liquidator;
- (b) the company or the liquidator may appear on the application and object thereto; and
- (c) no costs of or incidental to the application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceedings.

Bills under  
\$1 000.

117. In the case of any bill of costs or charges that does not exceed one thousand dollars the liquidator may, if he thinks fit, dispense with the requirements of the foregoing rules in relation to taxation.



## FIRST SCHEDULE.

## LIST OF FORMS.

## Rule 15.

First Column	Second Column	Third Column
Provision of Companies Rule for which Form Provided	Description of Form	Number of Form in Second Schedule
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20	Affidavit Verifying Petition	3
22	Affidavit of Service of Petition upon Members Officers or Servants	4
24	Notice of Intention to Appear upon Petition	5
25	List of Persons Attending the Hearing of a Petition	6
29	Order on Summons for Directions in Relation to a Petition to Confirm a Reduction of Capital	7
31	Affidavit Verifying List of Creditors	8
33	Advertisement of Petition and List of Creditors	9
33	Notice to Creditors	10
35	Affidavit as to Claims	11
36	Notice to Creditors to Come In and Prove	12
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50	Notice of Winding Up Order	16
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## SECOND SCHEDULE.

## FORMS.

## No. 1 (Rule 5).

In the Supreme Court

(a) Insert  
full name of  
company.

19

No.

In the matter of the Companies (Western  
Australia) Code, and in the matter of  
(a)

## No. 2 (Rule 18).

## PETITION.

(Title.)

(b) Insert  
full name,  
title, etc., of  
petitioner.(c) Cite law  
under which  
company is  
incorporated.(d) State the  
full address  
of the  
registered  
office.

The humble petition of (b)

showeth as follows:—

1. The Company Limited (hereinafter called "the company")  
was on the day of , 19 , incorporated under (c).
2. The registered office of the company is at (d)
3. The nominal capital of the company is \$ , divided  
into shares of \$ each. The amount of the capital  
paid up or credited as paid up is \$
4. The objects for which the company was established are as follow:—

To

and other objects set forth in the memorandum of association thereof.

*[Here set out in paragraphs the facts on which the petitioner relies to support  
his petition, and conclude as follows]:—*

Your petitioner therefore humbly prays as follows:—

- (1) That the Company Limited may be wound up  
by the Court under the provisions of the Companies (Western  
Australia) Code (or as the case may be).
- (2) Or that such other order may be made in the premises as shall  
be just.

(e) This note  
will be  
unnecessary  
if the  
company is  
petitioner.

Note.—(e) It is intended to serve this petition on

## No. 3 (Rule 20).

## AFFIDAVIT VERIFYING PETITION.

*If the Petition is by an Individual or Firm.*

(Title.)

(a) State  
nature of  
marking.I, A.B., of etc., make oath and say, that such of the statements in the petition  
now produced and shown to me, and marked (a) as relate to my own acts  
and deeds are true, and such of those statements as relate to the acts and deeds  
of any other person or persons I believe to be true.

Sworn, etc.

*If the Petition is by a Limited Company.*

*(Title.)*

I, A.B., of etc., make oath and say, as follows:—

(1) I am (a Director or the Secretary) of

Company Limited, the Petitioner in this matter, a company duly incorporated under (a), and am duly authorized by the Petitioner to make this affidavit on its behalf.

(a) Cite law under which company is incorporated.

(2) Such of the statements in the petition now produced and shown to me marked (b) as relate to the acts and deeds of the Petitioner are true and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

(b) State nature of marking.

Sworn, etc.

No. 4 (Rule 22).

# AFFIDAVIT OF SERVICE OF PETITION ON COMPANY.

*(Title.)*

In the matter of a petition dated

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say:—

1. *[In the case of service under the provisions of section 528.]* That I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, serve (a) with the petition by leaving it at (or sending it by post to as the case may be), the registered office of that company.

(a) Insert full name of company.

2. *[In the case of service of petition on a member, officer, or servant, if no registered office at the principal or last known principal place of business of the company.]*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, serve (a) with the petition, by delivering to and leaving with [name and description], a member (or officer or servant) of that company a copy of the petition, duly sealed with the seal of the Court at [place of business], before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

3. *[In the case of no member, officer, or servant of the company being found at the place of business.]*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, having failed to find any member, officer, or servant of (a) at [here state place of business], leave there a copy of the petition, duly sealed with the seal of the Court, before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon [add with whom such sealed copy was left, or where, e.g., affixed to door of offices, or placed in letterbox, or otherwise].

4. *[In the case of directions by the Court as to the member or members of the company to be served.]*

That I did on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, serve [name or names and description] with a copy of the petition, duly sealed with the seal of the Court, by delivering the same personally to the said \_\_\_\_\_, at [place], before the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon.

5. The petition served is now produced and shown to me, marked (b).  
Sworn at, etc.

(b) State nature of marking.

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## No. 5 (Rule 24).

## NOTICE OF INTENTION TO APPEAR ON PETITION.

(Title.)

(a) State full name, or if a firm the name of the firm. Take notice that A.B. (a) (a creditor for \$ or a contributory) of (b) intends to appear on the hearing of the petition advertised to be heard on the day of , 19 , and to object to such petition.

(b) Insert full name of company. Signed (c)

(c) To be signed by the person or his solicitor. [Address.]

## No. 6 (Rule 25).

## LIST OF PERSONS ATTENDING THE HEARING OF A PETITION.

(Title.)

The following are the names of those who have given notice of intention to attend the hearing of the petition herein, on the day of , 19 .

Name	Address	Name and Address of Solicitor and Perth Agent	Creditors Amount of Debt	Contributors Number of Shares	Opposing	Supporting

Signed  
Solicitor for the Petitioner.

## No. 7 (Rule 29).

ORDER ON SUMMONS FOR DIRECTIONS IN RELATION TO A  
PETITION TO CONFIRM A REDUCTION OF CAPITAL  
In the Supreme Court.

(a) Insert full name of company. In the matter of the Companies (Western Australia) Code, and in the matter of (a)

Upon the application of the petitioner and upon hearing the solicitor for the petitioner, and on reading the petition presented to the Supreme Court, the affidavit of (*in support of the petition*), the affidavit of (*service of notices convening meetings*), and the exhibits thereon respectively referred to, and it appearing that the special resolution for the reduction of the capital of the said company referred to in the petition has been duly passed:

It is ordered that subsection (3) of section 123 shall not apply to (*here set out class of creditors to whom subsection (3) of section 123 is not to apply*) and it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the company on the day of , 19 , [other than debts, claims or liabilities in respect of (*here set out any debts, claims, or liabilities which have been excluded from the provisions of subsection (3) of section 123 by the earlier part of the order*)] and that (*here set out any other orders or directions that may be made or given*).

Dated the day of , 19 .  
Master.

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No. 8 (Rule 31).

## AFFIDAVIT VERIFYING LIST OF CREDITORS.

(Title.)

I, A.B., of , make oath and say as follows:—

1. I am the (Secretary, or as the case may be, of the petitioner).

2. The paper writing now produced and shown to me, and marked (a), contains a list of the creditors of and persons having claims upon (b), (or a list of the creditors of and persons having claims upon (b), except those of the following class or classes (*set out class or classes*)).

(a) State nature of marking.

on the day of , 19 (*the date fixed by the Court*), together with their respective addresses, and the nature and amount of their respective debts or claims and that list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on that day, and of the nature and amount or estimated value of their debts or claims.

(b) Insert full name of company.

3. To the best of my knowledge and belief there was not, on that date, any such debt or claim which would, if such date were the commencement of the winding up of the company, be admissible in proof against the company other than and except the debts and claims set forth in the list produced.

I am enabled to make this statement from facts within my knowledge as the

(c) of the company, and from information derived upon investigation of the affairs and the books, documents and papers of the company.

(c) State capacity in which the knowledge was given.

Sworn, etc.

This list of creditors marked (a) was produced and shown to A.B., and is the same list of creditors as is referred to in his affidavit sworn before me this

(a) State nature of marking.

day of , 19 .

X.Y.,

Commissioner.

Names, Addresses, and Descriptions of the Creditors	Nature of Debt or Claim	Amount of Estimated Value of Debt or Claim

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No. 9 (Rule 33.)

ADVERTISEMENT OF PETITION AND LIST OF CREDITORS.

(Title.)

(a) Insert full name of Company.

Notice is hereby given that a petition has been presented to the Supreme Court for confirming a resolution of (a) for reducing its capital from \$ \_\_\_\_\_ to \$ \_\_\_\_\_. A list of the persons admitted to have been creditors of the company on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, may be inspected at the offices of the company at \_\_\_\_\_, or at the office of \_\_\_\_\_, at any time during usual business hours, on payment of the charge of twenty cents.

Any person who claims to have been on that day and still to be a creditor of the company, except such as belong to the following class or classes (*set out class or classes*) and who is not entered on that list and claims to be so entered, must, on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any) to the undersigned at \_\_\_\_\_, or in default he will be precluded from objecting to the proposed reduction of capital.

Every creditor who does not consent shall be entitled to object.

Any creditor who has not received notice that his name is entered in the list of creditors must send to the solicitor of the company particulars of his name and address.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

A.B.,  
Solicitor for the Company.

No. 10 (Rule 33).

## NOTICE TO CREDITORS.

(Title.)

To Mr.

(a) Insert full name of Company. You are requested to take notice that a petition has been presented to the Supreme Court, to confirm a special resolution of the (a), for reducing its capital from \$ to \$ and that in the list of persons admitted by the company to have been on the day of , 19 , creditors of the company (here insert when necessary other than, etc., as may have been directed) your name is entered as a creditor (here state the nature and amount or estimated value of the debt or claim).

If you claim to have been on that day a creditor to a larger amount than is stated above, you must, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, send the particulars of your claim, your name and address and the name and address of your solicitor (if any) to the undersigned at \_\_\_\_\_. In default of your so doing, the entry referred to in this notice in the list of creditors will in all the proceedings under the application to reduce the capital of the company be treated as correct.

Dated this                      day of                      , 19                      .

A.B.,  
Solicitor for the Company.

## No. 11 (Rule 35).

## AFFIDAVIT AS TO CLAIMS.

(Title.)

We, C.D., of etc. (the secretary of the company), E.F., of etc. (the solicitor for the company), and A.B., of etc. (the managing director of the company), do severally make oath and say as follows:—

I, C.D., for myself say as follows:—

- (1) I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked "B" (a) upon each of the respective persons whose names, addresses and descriptions appear in the first column of the list of creditors marked "A" (a) referred to in the affidavit of \_\_\_\_\_ filed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. (a) Insert name of respective markings.
- (2) I served the copies, of the notice by putting the copies, duly addressed to the persons according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of those persons), and with the proper postage stamps affixed thereto as prepaid letters, into the post office at \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_ of the clock, in the noon of \_\_\_\_\_ day of \_\_\_\_\_.

And I, E.F., for myself say as follows:—

- (3) A true copy of the notice now produced and shown to me, and marked "C" (a); has appeared in the \_\_\_\_\_ of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, etc.
- (4) I have, in the paper writing now produced and shown to me, and marked "D" (a), set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice "B" (a), (now produced and shown to me) by persons claiming to be creditors of the company for larger amounts than are stated in the list of creditors, marked "A" (a), referred to in the affidavit of \_\_\_\_\_ filed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (or) no person has sent in to me pursuant to the notice "B" (a) a claim to be entered on the list for a larger sum than in respect of which he is entered in the list "A" (a).
- (5) I have, in the paper writing now produced and shown to me, marked "E" (a), set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the company on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, not appearing on the list of creditors marked "A" (a), and who claimed to be entered thereon (or) no claims have been sent in to me pursuant to the notice referred to in paragraph (3) hereof by persons not entered on the list "A" (a) and claiming to be so entered.

And we, C.D. and A.B., for ourselves say as follows:—

- (6) We have, in the first part of the paper writing marked "D" (a), (now produced and shown to us), and also in the first part of the paper writing marked "E" (a), (also produced and shown to us), respectively set forth such of the debts and claims as are admitted by the company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the company contends are wholly or as to any and what part thereof not included in the enquiry in this matter.
- (7) We have, in the second part of each of the paper writings, marked "D" (a) and "E" (a), set forth such of the debts and claims as are wholly disputed by the company and such of the same debts and claims as the company contends would even if admitted be wholly, and as to what part thereof not included in the enquiry in this matter.

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And I, C.D., further say:—

- (8) All rents, rates, taxes, salaries and wages, other incidental expenses on the said day of , 19 , and since become due, have been paid and discharged by the company.

Sworn, etc.

Exhibit "D" (a).

In the matter, etc.

List of Debts and Claims of which the Particulars have been Sent in to by Persons Claiming to be Creditors of the Company for Larger Amounts than are Stated in the List of Creditors Made Out by the Company.

This paper writing, marked "D" (a), was produced and shown to C.D., E.F. and A.B., respectively, and is the same as is referred to in their affidavit sworn before me this day of , 19 .

X.Y.,  
Commissioner.

First Part.

*Debts and Claims Wholly or Partly Admitted by the Company.*

Names and Addresses of Creditors	Particulars of Debt or Claim	Amount Claimed	Amount admitted by the Company to be owing to Creditor	Amounts admitted by the Company to be owing but which it is contended are not within the enquiry

Second Part.

*Debts and Claims Wholly Disputed by the Company.*

Names, Addresses, and Descriptions of Claimants	Particulars of Claim	Amount Claimed	Amounts which, even if admitted, it is contended would not be within the enquiry

Exhibit "E" (a).

In the matter, etc.

List of Debts and Claims of which the Particulars have been Sent in to Mr. by Persons Claiming to be Creditors of the Company and to be Entered on the List of Creditors Made Out by the Company.

This paper writing marked "E" (a), was produced and shown to C.D., E.F. and A.B., respectively, and is the same as is referred to in their affidavit sworn before me this day of , 19 .

X.Y.,  
Commissioner.



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## First Part.

*(Same as in Exhibit "D.")*

## Second Part.

*(Same as in Exhibit "D.")*

Note.—The names are to be inserted alphabetically.

## No. 12 (Rule 36.)

## NOTICE TO CREDITORS TO COME IN AND PROVE.

*(Title.)*

To Mr.

You are hereby required to come in and prove the debt claimed by you against (a) Insert full name of company.

(a)

, by filing your affidavit and giving notice thereof to

, the solicitor for the company, on or before the

day of

next; and you are to attend personally or by your solicitor

at the office of the Master, Supreme Court Buildings, Perth, on the

day of , 19 , at o'clock in the noon, being

the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with these directions, you will (be precluded from objecting to the proposed reduction of the company or in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated this day of , 19 .

A.B.

Solicitor for the Company.

## No. 13 (Rule 42).

## ADVERTISEMENT OF HEARING OF PETITION.

*(Title.)*

Notice is hereby given that a petition presented to the Supreme Court on the day of , for confirming a resolution reducing the

capital of (a) from \$ to \$ is directed (a) Insert full name of company.

to be heard before His Honour Mr. Justice at the hour of , on the day of , 19 .

Any creditor appearing to be such on the Master's certificate filed with the Registrar of the Supreme Court, unless his debt or claim is shown therein as one, the full amount of which, the company is willing to appropriate, may, on giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application, if his debt or claim has not then been discharged or determined and he has not consented to the proposed reduction of capital.

A.B.

Solicitor for the Company.

Dated this day of , 19 .

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No. 14 (Rule 47).

## ADVERTISEMENT OF PETITION.

(Title.)

(a) Insert full name of company. Notice is hereby given that a petition for the winding up of (a) \_\_\_\_\_ by the Supreme Court was, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, presented by the company [or as *the case may be*], and that the petition is directed to be heard before the Court sitting at \_\_\_\_\_ at the hour of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and any creditor or contributory of that company desiring to support or oppose the making of an order on that petition may appear at the time of hearing by himself or his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of that company requiring the same

(b) Insert amount of charge. by the undersigned on payment of \_\_\_\_\_ (b).  
The petitioner's address is \_\_\_\_\_.

The petitioner's solicitor is (Mr.) \_\_\_\_\_,  
of \_\_\_\_\_,  
whose Perth agent is (Mr.) \_\_\_\_\_,  
of \_\_\_\_\_.

(c) To be signed by the solicitor to the plaintiff or by the petitioner if he has no solicitor. (Signed) (c) \_\_\_\_\_.

(d) Solicitor or petitioner as the case may be. *Note.—Any person who intends to appear on the hearing of the petition must serve on or send by post to (d) \_\_\_\_\_ notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or, if posted, must be sent by post in sufficient time to reach (d), not later than four o'clock in the afternoon of the*

*of \_\_\_\_\_, 19\_\_\_\_ (the day before the day appointed for the hearing of the petition or the Friday preceding the day appointed for the hearing of the petition if such day is a Monday, or a Tuesday following a public holiday).*

No. 15 (Rule 50).

## ORDER FOR WINDING UP BY THE COURT.

day of \_\_\_\_\_, 19\_\_\_\_.  
(Title.)

(a) Insert full name of company. Upon the petition of (a) \_\_\_\_\_ [or A.B., of etc. (a creditor or contributory) of (a) \_\_\_\_\_], on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, proffered unto the Court, and upon hearing \_\_\_\_\_ for the petitioner, and \_\_\_\_\_, and upon reading the petition, an affidavit of \_\_\_\_\_, filed, etc., verifying the petition, an affidavit of L.M., filed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the *Gazette* of \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the newspaper of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ [enter any other papers],

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each containing an advertisement of the petition [*enter any other evidence*], this Court doth order—

- (1) that the said company be wound up by the Court under the provisions of the Companies (Western Australia) Code;
- (2) that A.B. be appointed Liquidator for the purposes of the said winding up;
- (3) that the bank in which the liquidator is to open a trust account is .

*Note.—It will be the duty of such of the persons as are liable to make out or concur in making out a statement of affairs as the liquidator may require to attend on him at such time and place as he may appoint and to give him all information he may require.*

No. 16 (Rule 50).

#### NOTICE OF WINDING UP ORDER.

In the matter of \_\_\_\_\_ Limited.  
 Winding Up Order made \_\_\_\_\_, 19 \_\_\_\_.  
 Name and Address of Liquidator. \_\_\_\_\_  
 Petitioner or his Solicitor.

No. 17 (Rule 51).

#### ORDER APPOINTING PROVISIONAL LIQUIDATOR AFTER PRESENTATION OF PETITION, AND BEFORE ORDER TO WIND UP.

(Title.)

Upon the application, etc., and upon reading, etc., the Court doth hereby appoint A.B., an official liquidator, to be provisional liquidator of (a) \_\_\_\_\_ until the making of a winding up order herein or until further order. The duties to be performed by the provisional liquidator are as follows:—

(a) Insert  
full name  
of company.

The nature and description of the property of which the provisional liquidator is to take possession is as follows:—

No. 18 (Rule 51).

#### NOTIFICATION TO PROVISIONAL LIQUIDATOR OF ORDER PRONOUNCED FOR HIS APPOINTMENT AS PROVISIONAL LIQUIDATOR PRIOR TO WINDING UP ORDER BEING MADE.

(Title.)

To the Provisional Liquidator.

(Address.)

Order pronounced this day by the Honourable Mr. Justice \_\_\_\_\_ for the appointment of an official liquidator as provisional liquidator prior to any winding up order being made.

Name of Company	Registered Office of Company	Petitioner's Solicitor	Date of Presentation of Petition

44

No. 19 (Rule 51).

## NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR.

Companies (Western Australia) Code.

In the matter of \_\_\_\_\_, Limited.

Order for appointment of an official liquidator as provisional liquidator made  
, 19 .

Name and address of provisional liquidator.

Petitioner or his Solicitor.

No. 20 (Rule 54).

## FORM OF SUMMONS (GENERAL).

(Title.)

(a) Name of respondent. Let (a) \_\_\_\_\_ attend at \_\_\_\_\_  
on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19 ,  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the hearing of an application  
of (b) for an order that (c)  
(b) Name and description of applicant. Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .  
(c) State object of application. This summons was taken out by \_\_\_\_\_,  
of \_\_\_\_\_, solicitors for \_\_\_\_\_.  
To \_\_\_\_\_

*Note.—If you do not attend, either in person or by your solicitor, at the time and place abovementioned, such order will be made, and proceedings taken, as the Judge or Master may think just and expedient.*

No. 21 (Rule 65).

## ORDER DIRECTING EXAMINATION.

(Title.)

Upon reading the reports of the liquidator in the above matter dated respectively the \_\_\_\_\_ day of \_\_\_\_\_, 19 , the \_\_\_\_\_ day of \_\_\_\_\_, 19 , and \_\_\_\_\_.

It is ordered that the several persons whose names and addresses are set forth in the schedule hereto do attend before the Court on a day and at a place to be named for the purpose, and be examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to their conduct and dealings as directors or officers of the company.

The Schedule Referred To.

Name	Address	Connection with the Company

Judge.

45

No. 22 (Rule 65).

## ORDER APPOINTING A TIME FOR EXAMINATION.

(Title.)

Upon the application of the liquidator in the above matter, it is ordered that the examination of  
 who, by the order of the Court, dated the \_\_\_\_\_ day  
 of \_\_\_\_\_, 19\_\_\_\_, was directed to attend before \_\_\_\_\_,  
 to be examined \_\_\_\_\_ be held at (a) \_\_\_\_\_, (a) Insert  
 on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock the place  
 in the \_\_\_\_\_ noon. for the  
 examination.

And it is ordered that the abovenamed \_\_\_\_\_ do attend  
 at the place and time abovenamed.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Master.

No. 23 (Rule 66).

## NOTICE TO ATTEND EXAMINATION.

(Title.)

Whereas by an order of this Court, made on the \_\_\_\_\_ day  
 of \_\_\_\_\_, 19\_\_\_\_, it was ordered that you, the undermentioned  
 \_\_\_\_\_, should attend before the \_\_\_\_\_ Court on a  
 day and at a place to be named for the purpose, and be examined as to  
 the promotion or formation of the company and as to the conduct of the  
 business of the company, and as to your conduct and dealings as (a)  
 And whereas the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (a) Insert  
 at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, before the \_\_\_\_\_ director or  
 at \_\_\_\_\_ has been appointed as the time and place for holding officer [as the  
 of the examination. case may be.]

Notice is hereby given that you are required to attend at that time and  
 place, and at any adjournments of the examination which may be ordered,  
 and to bring with you and produce all books, papers and writings and other  
 documents in your custody or power in any wise relating to the abovenamed  
 company.

And take notice that if you fail, without reasonable excuse, to attend at  
 such time and place, and at any adjournment of the examination which  
 may be ordered, you will be liable to be convicted of an offence punishable  
 by imprisonment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

To \_\_\_\_\_

Liquidator.

No. 24 (Rule 67).

ORDER ON PERSONS TO ATTEND AT CHAMBERS  
TO BE EXAMINED.

(Title.)

A.B., of etc., and E.F., of etc., are hereby severally ordered to attend at  
 (a) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, (a) State  
 at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, to be examined on the place of  
 part of the liquidator for the purpose of proceedings, directed by the Court examination.  
 to be taken in the above matter. [And the said A.B. is hereby required to  
 bring with him and produce, at the time and place aforesaid the documents  
 mentioned in the schedule hereto, and all other books, papers, deeds, writings,  
 and other documents in his custody or power in any wise relating to the above-  
 named company.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This order was made on the application of Messrs. C. and D., of  
 \_\_\_\_\_, solicitors for

The Schedule Above Referred To.

Master.

46

No. 25 (Rule 68).

APPLICATION FOR APPOINTMENT OF SHORTHAND WRITER TO TAKE  
DOWN NOTES OF EXAMINATION AND ORDER THEREON.

(Title.)

I, \_\_\_\_\_, the liquidator herein, do hereby apply to the Court for an order for the appointment of \_\_\_\_\_ of \_\_\_\_\_, to take down in shorthand or record by mechanical means the notes of examination of \_\_\_\_\_ at their examination.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
Liquidator.

Upon the application of the liquidator the Court hereby appoints \_\_\_\_\_ of \_\_\_\_\_, to take down in shorthand or record by mechanical means the notes of examination, of the persons mentioned in the above application at their examination or at any adjournment thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

No. 26 (Rule 68).

## DECLARATION BY SHORTHAND WRITER.

(Title.)

I, \_\_\_\_\_, of \_\_\_\_\_, the person appointed by this Court to take down (a) in shorthand or by mechanical means the examination of \_\_\_\_\_, do solemnly and sincerely declare that I will truly and faithfully (take down or record) the questions and answers put to and given by the said \_\_\_\_\_ in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

[Declared before me at the time and place abovementioned.]

No. 27 (Rule 69).

NOTES OF EXAMINATION TAKEN IN SHORTHAND OR  
RECORDED BY MECHANICAL MEANS.

(Title.)

(a) Mr. an  
officer for as  
the case may  
be] of the  
abovenamed  
company.

Examination of (a).

Before \_\_\_\_\_ at the Court \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_ .

The abovenamed \_\_\_\_\_, being sworn and examined at the time and place abovementioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say:—

A.

These are the notes of the examination referred to in the memorandum of examination of \_\_\_\_\_,  
taken before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

47

No. 28 (Rule 69).

NOTES OF EXAMINATION NOT TAKEN IN  
SHORTHAND OR RECORDED BY  
MECHANICAL MEANS.

(Title.)

Examination of (a).  
Before at the Court this  
day of , 19 .  
The abovenamed , being sworn and examined  
at the time and place abovementioned, upon his oath saith as follows:—  
A.  
These are the notes of the examination referred to in the memorandum  
of examination of , taken  
before me this day of , 19 .

(a) Mr. an  
officer [or as  
the case may  
be] of the  
abovenamed  
company.

No. 29 (Rule 70).

WARRANT AGAINST PERSON WHO FAILS TO  
ATTEND EXAMINATION.

(Title.)

TO X.Y., the officer of this Court, and all police officers within the jurisdiction  
of the said Court, and to the governor or keeper of the [here insert the prison].

Whereas by evidence taken by oath, it has been made to appear to the  
satisfaction of the Court that by order of the Court, dated the

day of , 19 , and directed to (a) he was directed to attend personally at the  
(b) , and be examined before (c)  
, which order was afterwards, as hath  
been duly proved on oath, duly served upon the said (a) [or, that there is  
probable reason to suspect and believe that the said (a)  
has absconded and gone abroad or quitted his place of residence or is about to  
go abroad or quit his place of residence] with a view of avoiding examination  
under the Companies (Western Australia) Code.

(a) Name of  
person  
required to  
attend.  
(b) Place of  
examination.  
(c) Name of  
title of com-  
missioner  
before whom  
examination  
is directed  
to be held.

And whereas the said (a) did without good  
cause fail to attend on the said day of  
, 19 , for the purpose of being  
examined, according to the requirements of the said order of this Court made  
on the day of , 19 ,  
directing him so to attend.

These are therefore to require you the said [or  
bailiffs, and others] to take the said (a) and  
deliver him to the governor or keeper of the abovenamed prison, and you the  
said governor or keeper to receive the said (a)  
and him safely to keep in the said prison until such time as this Court may  
order.

Dated this day of , 19 .

48

No. 30 (Rule 84).

STATUTORY DECLARATION BY SPECIAL MANAGER  
VERIFYING ACCOUNT.

(Title.)

I, \_\_\_\_\_ of \_\_\_\_\_, do  
solemnly and sincerely declare:—

(a) Insert  
nature of  
marking.

- (1) The account hereunto annexed marked with the letter (a), produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the abovenamed company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the estate or business.
- (2) The several sums of money mentioned in the account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the account mentioned.
- (3) The account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of section 106 of the Evidence Act 1906.

Declared at, etc.

No. 31 (Rule 85).

CERTIFICATE THAT SPECIAL MANAGER HAS  
GIVEN SECURITY.

(Title.)

This is to certify that A.B., of \_\_\_\_\_, who was  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
appointed special manager of the abovenamed company, has duly given security  
to my satisfaction.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(Signed) \_\_\_\_\_  
Master.

No. 41 (Rule 92).

ORDER ON APPLICATION TO VARY LIST  
OF CONTRIBUTORIES.

(Title.)

Upon the application of W.N., by summons dated  
day of \_\_\_\_\_, 19\_\_\_\_, for an order that the list of  
contributories of the company and the liquidator's certificate finally settling the  
same [or the list of contributories of the company as added to or varied by the  
liquidator in his certificate dated \_\_\_\_\_, 19\_\_\_\_, as the case  
may be] be varied by excluding the name of the applicant therefrom [or as the  
case may be] and upon hearing, etc., and upon reading, etc., it is ordered, that  
the list of contributories of the company and the liquidator's certificate finally  
settling the same be varied by excluding the name of the said W.N. from the  
said list of contributories, or by including the name of the said W.N. as a  
contributory in the said list for \_\_\_\_\_ shares [or as the case may be or  
the Court doth not think fit to make any order on the application except  
that the said W.N. do pay to the liquidator of the company his costs of this  
application, to be taxed in case the parties differ.]

Judge.



49

No. 42 (Rule 94).

NOTICE BY LIQUIDATOR REQUIRING PAYMENT OF MONEY OR  
DELIVERY OF BOOKS, ETC., TO LIQUIDATOR.

(Title.)

Take notice that I, the undersigned (a) \_\_\_\_\_, have  
been appointed liquidator of (b) \_\_\_\_\_, and that you, the under-  
mentioned (c) \_\_\_\_\_ are required, within  
days after service hereof, to pay to me [or deliver, convey, surrender, or transfer  
to or into my hands] as liquidator of the said company, at my office, situated at  
(d) \_\_\_\_\_, etc., the sum of \$ \_\_\_\_\_, being  
the amount of debt appearing to be due from you on your account with the  
said company [or any sum or balance, books, papers, estate or effects, or  
specifically describe the property] now being in your hands, and to which the said  
company is entitled [or otherwise as the case may be].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
Liquidator.

To (b)  
(Address)

(a) Name of  
liquidator.  
(b) Insert full  
name of  
company.  
(c) Name of  
person to  
whom notice  
is addressed.  
(d) Address  
of liquidator's  
office.

No. 43 (Rule 95).

NOTICE TO EACH MEMBER OF COMMITTEE OF INSPECTION OF  
MEETING FOR SANCTION TO PROPOSED CALL.

(Title.)

Take notice that a meeting of the committee of inspection of (a) \_\_\_\_\_  
will be held at \_\_\_\_\_ on the (b) \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon  
for the purpose of considering and obtaining the sanction of the committee to a  
call of \$ \_\_\_\_\_ per share proposed to be made by the liquidator on the  
contributories.

Annexed hereto is a statement showing the necessity for the proposed call  
and the amount required.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
(Signed) \_\_\_\_\_  
Liquidator.

To (c)  
(Address)

(a) Insert full  
name of  
company.  
(b) To be a  
date not less  
than seven  
days from  
the date  
when the  
notice will  
in course of  
post reach  
the person  
to whom it  
is addressed.  
(c) Name of  
person  
to whom  
notice is  
addressed.

## STATEMENT.

1. The amount due in respect of proofs admitted against the company, and  
the estimated amount of the costs, charges and expenses of the winding up, form  
in the aggregate the sum of \$ \_\_\_\_\_ or thereabouts.

2. The assets of the company are estimated to realise the sum of \$ \_\_\_\_\_.  
There are no other assets, except the amounts due from certain of the con-  
tributories to the company, and in my opinion it will not be possible to realize  
in respect of the said amounts more than \$ \_\_\_\_\_.

3. The list of contributories has been duly settled, and \_\_\_\_\_ persons  
have been settled on the list in respect of the total number of  
shares.

4. For the purpose of satisfying the several debts and liabilities of the com-  
pany, and of paying the costs, charges and expenses of the winding up, I  
estimate that a sum of \$ \_\_\_\_\_ will be required in addition to the amount of  
the company's assets hereinbefore mentioned.

5. In order to provide the said sum of \$ \_\_\_\_\_ it is necessary to make a  
call on the contributories, and having regard to the probability that some of  
them will partly or wholly fail to pay the amount of the call, I estimate that for  
the purpose of realizing the amount required it is necessary that a call of \$ \_\_\_\_\_  
per share should be made.

(Annex tabular statement showing amounts of debts, costs, etc., and of assets.)

50

No. 44 (Rule 95).

ADVERTISEMENT OF MEETING OF COMMITTEE OF INSPECTION  
TO SANCTION PROPOSED CALL.

(Title.)

(a) Insert full name of company. Notice is hereby given that the undersigned liquidator of (a) proposes that a call should be made on all the contributories of the said company (*or as the case may be*), of \$ \_\_\_\_\_ per share, and that he has summoned a meeting of the committee of inspection of the company, to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting, and be heard or make any communication in writing to the liquidator or the members of the committee of inspection in reference to the intended call.

(b) Insert address. A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the liquidator at his office at (b) \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. Liquidator.

No. 45 (Rule 95).

## RESOLUTION OF COMMITTEE OF INSPECTION SANCTIONING CALL.

Resolved, that a call of \$ \_\_\_\_\_ per share be made by the liquidator on all the contributories of the company [*or, as the case may be*].

(Signed)

Members of the Committee of Inspection.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

No. 46 (Rule 96).

## SUMMONS FOR LEAVE TO MAKE A CALL.

(Title.)

(a) Insert full name of company. Let the several persons whose names and addresses are set forth in the second column of the schedule hereto, being contributories of (a) as shown in the third column of the schedule, attend at \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application on the part of the liquidator of the company for an order that he may be at liberty to make a call to the amount of \_\_\_\_\_ per share on all the contributories [*or as the case may be*] of the said company.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_ solicitors for the liquidator.

*Note.—If you do not attend either in person or by your solicitor, at the time and place abovementioned, such order will be made and proceedings taken as the Judge may think just and expedient.*

Schedule.

Number on List	Name and Address	In what character included

51

No. 47 (Rule 96).

## AFFIDAVIT OF LIQUIDATOR IN SUPPORT OF PROPOSAL FOR CALL.

(Title.)

I, \_\_\_\_\_, of, etc., the liquidator of (a) \_\_\_\_\_  
 ,make oath and say as follows:—

(a) Insert full  
 name of  
 company.

- (1) I have in the schedule now produced and shown to me and marked with the letter (b) \_\_\_\_\_ set forth a statement showing the amount due in respect of the debts proved and admitted against the company, and the estimated amount of the costs, charges and expenses of and incidental to winding up the affairs thereof, and which several amounts form in the aggregate the sum of \$ \_\_\_\_\_ or thereabouts.
- (2) I have also in the schedule set forth a statement of the assets in hand belonging to the company, amounting to the sum of \$ \_\_\_\_\_ and no more. There are no other assets belonging to the company, except the amounts due from certain of the contributories of the company, and to the best of my information and belief, it will be impossible to realize in respect of the amounts more than the sum of \$ \_\_\_\_\_ or thereabouts.
- (3) \_\_\_\_\_ persons have been settled by me on the list of contributories of the company in respect of the total number of shares.
- (4) For the purpose of satisfying the several debts and liabilities of the company and of paying the costs, charges and expenses of and incidental to winding up the affairs thereof, I believe the sum of \$ \_\_\_\_\_ will be required in addition to the amount of the assets of the company mentioned in the Schedule, and the said sum of \$ \_\_\_\_\_.
- (5) In order to provide the sum of \$ \_\_\_\_\_, it is necessary to make a call upon the several persons who have been settled on the list of contributories as beforementioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that, for the purpose of realising the amount required, it is necessary that a call of \$ \_\_\_\_\_ per share should be made.

(b) Insert  
 nature of  
 marking.

Sworn, etc.

No. 48 (Rule 96).

## ADVERTISEMENT OF INTENDED CALL.

In the matter of \_\_\_\_\_  
 Notice is hereby given that the Supreme Court has appointed \_\_\_\_\_ the  
 day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock in the  
 noon, at (a) \_\_\_\_\_, to sanction a call on all contributories of (b) \_\_\_\_\_  
 [or as the case may be] and that the liquidator of the said  
 company proposes that such call shall be for \$ \_\_\_\_\_ per share. All persons  
 interested are entitled to attend at such day, hour and place to offer objections  
 to such call.

(a) State  
 place of  
 appointment.  
 (b) Insert full  
 name of  
 company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Liquidator.

52

No. 49 (Rule 96).

## ORDER GIVING LEAVE TO MAKE A CALL.

(Title.)

The                      day of                      , 19                      .

(a) Insert full name of company. Upon the application of the liquidator of (a)                      , and upon reading the affidavit of the liquidator, filed the                      day of                      , 19                      , and the exhibit marked (b)                      therein referred to, and an affidavit of                      filed the                      day of                      , 19                      .

(b) Insert nature of marking.

(c) Or as the case may be

It is ordered that leave be given to the liquidator to make a call of \$                      per share on all the contributories of the company (c).

And it is ordered that each such contributory do so on or before the                      day of                      , 19                      , pay to the liquidator of the company, the amount which will be due from him or her in respect of such call.

No. 50 (Rule 97).

## DOCUMENT MAKING A CALL.

(Title.)

(a) Insert full name of company. I,                      , the liquidator of (a)                      , in pursuance of (b)                      made (or passed)                      this                      day of                      , 19                      , hereby make a call of                      per share on all the contributories of the company, which sum is to be paid at my office (c)                      on the                      day of                      , 19                      .

(b) An order of the Court, or resolution of the committee of inspection.

(c) Insert address.

Dated this                      day of                      , 19                      .

No. 51 (Rule 97).

## NOTICE OF CALL SANCTIONED BY COMMITTEE OF INSPECTION TO BE SENT TO CONTRIBUTORY.

(Title.)

(a) Insert full name of company. Take notice that the committee of inspection in the winding up of (a)                      has passed a resolution as follows (b):—

(b) Set out resolution. The amount due from you in respect of the call is the sum of \$                      .

(c) State address. This sum should be paid by you direct to me at my office (c)                      on or before the                      day of                      , 19                      .

Dated this                      day of                      , 19                      .

To Mr.                      Liquidator.

*Note.—If you do not pay the sum due from you by the date mentioned, interest will be claimed on such sum at the rate of four per cent per annum from the said date until payment.*

53

No. 52 (Rule 97).

NOTICE TO BE SERVED WITH THE ORDER  
SANCTIONING A CALL.

(Title.)

The amount due from you, A.B., in respect of the call made pursuant to leave given by the above [or within] order is the sum of \$ , which sum is to be paid by you to me as the liquidator of (a) at my office, No. Street, Perth. (a) Insert full name of company.

Dated this day of , 19 .

To Mr. A.B.

Liquidator.

*Note—If you do not pay the sum due from you by the date mentioned, interest will be claimed on such sum at the rate of four per cent per annum from the said date until payment.*

No. 53 (Rule 98).

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR  
PAYMENT OF CALL.

(Title.)

I, , of, etc., the liquidator of (a) (a) Insert full name of Company.

, make oath and say as follows:—

(1) None of the contributories of the company, whose names are set forth in the schedule hereto annexed, marked (b) , have paid or caused to be paid the sums set opposite their respective names in that schedule, which sums are the amounts now due from them respectively under the call of per share, duly made under the Companies (Western Australia) Code dated the day of , 19 . (b) Insert nature of marking.

(2) The respective amounts or sums set opposite the names of such contributories in such schedule are the true amounts due and owing by such contributories respectively in respect of the call.

A.

The Schedule Above Referred To.

Number on List	Name	Address	Description	In what Character Included	Amount Due
					\$ c

Sworn, etc.

*Note.—In addition to the above affidavit, an affidavit of the service of the application for the call will be required in cases in which the committee of inspection or the Court has authorized a call to be made.*

54

No. 54 (Rule 98).

## AFFIDAVIT OF SERVICE OF ORDER FOR PAYMENT OF CALL.

(Title.)

I, J.B., of, etc., make oath and say as follows:—

- (1) I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally serve G.F., of \_\_\_\_\_, etc., with an order made in this matter by this Court, dated the day of \_\_\_\_\_, 19\_\_\_\_, whereby it was ordered [set out the order] by delivering to and leaving with the said G.F., at \_\_\_\_\_ a true copy of the order, and at the same time producing and showing unto him, the said G.F., the original order.
- (2) There was endorsed on the copy when so served the following words, that is to say, "If you, G.F., neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same."

Sworn, etc.

No. 55 (Rule 98).

## ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY.

(Title.)

The \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Upon the application of the liquidator of the abovenamed company, and upon reading an affidavit of \_\_\_\_\_, filed the day of \_\_\_\_\_, 19\_\_\_\_, and an affidavit of the liquidator, filed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, it is ordered that C.D., of, etc., [or E.F., of, etc., the legal personal representative of L.M., late of, etc., deceased], one of the contributories of the company [or, if against several contributories, the several persons named in the second column of the schedule to this order, being respectively contributories of the company], do, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, or within four days after service of this order, pay to the liquidator of the company at his office, No. \_\_\_\_\_ Street, \_\_\_\_\_, Perth, the sum of \$ \_\_\_\_\_ [if against a legal personal representative add, out of the assets of the said L.M., deceased, in his hands as such legal personal representative as aforesaid, to be administered, in due course of administration if the said E.F. has in his hands so much to be administered, or, if against several contributories, the several sums of money set opposite to the respective names in the sixth column of the schedule hereto], such sum [or sums] being the amount [or amounts] due from the said C.D. [or L.M. or the said several persons respectively], in respect of the call of \$ \_\_\_\_\_ per share duly made, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the liquidator interest at the rate of \_\_\_\_\_ per centum per annum on the amounts specified in the sixth column of the said schedule from the \_\_\_\_\_ to the date of payment.

55

And it is ordered that the said several persons do within the like period and at the place aforesaid pay to the liquidator the several sums set opposite their respective names in the seventh column of the said schedule, such sum being the proportion of the applicant's costs of the application payable by such several persons respectively.

[Add appropriate paragraphs as to amounts payable by legal personal representatives (if any).]

The Schedule Referred to in the Foregoing Order.

Number on List	Name	Address	Description	In what Character Included	Amount Due	Proportion of Costs	Total Amount Payable Exclusive of Interest
					\$ c		

Note.—The copy for service of the above order must be endorsed as follows:—

If you, the undermentioned A.B., neglect to obey this order within the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same.

No. 56 (Rule 104).

# LIST OF PROOFS TO BE FILED UNDER RULE 104.

(Title.)

I hereby certify that the following is a correct list of all proofs tendered to me in the above matter during the past month.

Dated this                      day of                      , 19                      .

Liquidator.

Name of Creditor	Proofs Tendered		
	Amount of Proof	Whether Admitted, Rejected or Standing Over for Further Consideration	If Admitted, Amount
	\$ c		\$ c

56

No. 57 (Rule 107).

NOTICE TO CREDITORS AND CONTRIBUTORIES OF  
INTENTION TO APPLY FOR RELEASE.

(Title.)

(a) Set out name and address. Take notice that I, (a) the liquidator of (b), intend to apply to a Judge in Chambers at the Supreme Court, Perth, at 10.30 in the forenoon on the day of , 19 , for my release, and further take notice that any objection you may have to the granting of my release should be notified to the Registrar of the Supreme Court and to the undersigned within twenty-one days of the date hereof.

(b) Insert full name of company.

A summary of my receipts and payments as liquidator is hereto annexed.

Dated this day of , 19 .

Liquidator.

To

Note.—*Subsection (3) of section 382 enacts that an order of the Court releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.*

No. 58 (Rule 107).

APPLICATION BY LIQUIDATOR TO THE COURT  
FOR RELEASE,

(Title.)

I, , the liquidator of the abovenamed company, do hereby report to the Court as follows:—

- (1) That the whole of the property of the company has been realized for the benefit of the creditors and contributories [and a dividend to the amount of cents in the dollar has been paid, as shown by the statement hereunto annexed, and a return of per share has been made to the contributories of the company]

[Or, That so much of the property of the company as can, according to the joint opinion of myself and the committee of inspection hereunto annexed in writing under our hands be realized, without needlessly protracting the liquidation, has been realized, as shown by the statement hereunto annexed, and a dividend to the amount of cents has been paid as shown with a return of per share to the contributories of the company];

(a)

(a) Add, if necessary, "That the rights of the contributories between themselves have been adjusted."

- (2) I have given or caused to be given to all creditors and contributories the notice required to be given by rule 107.
- (3) I therefore request the Court to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this day of , 19 .

Liquidator.





58

No. 60 (Rule 110).

## REQUEST TO DELIVER BILL FOR TAXATION.

(Title.)

I hereby request that you will, within \_\_\_\_\_ days of this date, or such further time as the Court may allow, deliver to me for taxation by the proper officer your bill of costs [or charges] as (a) \_\_\_\_\_, failing (a) Here state nature of employment. which I shall, in pursuance of the Companies (Western Australia) Code, and rules, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company, and your claim against the assets of the company will be liable to be forfeited.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .  
Liquidator.

No. 61 (Rule 113).

## CERTIFICATE OF TAXATION.

(Title.)

I hereby certify that I have taxed the bill of costs [or charges] [or expenses] of Mr. C.D. [here state capacity in which employed or engaged, where necessary add "pursuant to an order of the Court dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_"], and have allowed the same at the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents [where necessary add "which sum is to be paid to the said C.D. by \_\_\_\_\_ as directed by the said order"].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

\$ \_\_\_\_\_ : \_\_\_\_\_

Taxing Officer.

No. 62 (Rule 113).  
**REGISTER TO BE KEPT BY TAXING OFFICER.**  
 Companies (Western Australia) Code.

Name of Company	Solicitors' Bills			Auctioneers' Bills			Bailiffs' Bills			Accountants' Bills			Brokers' or other Persons, Bills		
	Gross Amount of Bill	Amount Taxed off	Net Amount Allowed	Gross Amount of Bill	Amount Taxed off	Net Amount Allowed	Gross Amount of Bill	Amount Taxed off	Net Amount Allowed	Gross Amount of Bill	Amount Taxed off	Net Amount Allowed	Gross Amount of Bill	Amount Taxed off	Net Amount Allowed

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By Authority: WILLIAM C. BROWN, Government Printer