



THE COMPANIES ACT 1993 LIQUIDATION REGULATIONS 1994

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 20th day of June 1994

Present:

THE HON. J. M. SHIPLEY PRESIDING IN COUNCIL

PURSUANT to sections 277 and 395 of the Companies Act 1993, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

Preliminary

1. Title and commencement—(1) These regulations may be cited as the Companies Act 1993 Liquidation Regulations 1994.

(2) These regulations shall come into force on the 1st day of July 1994.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Companies Act 1993:

“Company” means a company that is in liquidation:

“High Court Rules” means the rules from time to time set out in the Second Schedule to the Judicature Act 1908:

“Registered bank” has the same meaning as in the Reserve Bank of New Zealand Act 1989.

3. Application of regulations—(1) These regulations shall apply, so far as they are relevant, to the conduct of every company that is in liquidation.

(2) These regulations shall not apply to any Court proceedings including—

(a) Proceedings for an order to put a company into liquidation; or

(b) Proceedings for the appointment of an interim liquidator; or

(c) Proceedings for an order under section 174 of the Act.

(3) The High Court Rules shall apply to the proceedings referred to in subclause (2) of this regulation.

4. Forms—A form in the Schedule to these regulations may be varied as the circumstances of any particular case may require.

Statutory Demand

5. Prescribed amount for statutory demand—The sum of \$1,000 is the amount prescribed for the purposes of paragraph (a) of subsection (2) of section 289 of the Act.

Claims

6. Claim by unsecured creditor—A claim by an unsecured creditor under section 304 (1) of the Act shall be in form 1 in the Schedule to these regulations.

7. Secured creditor valuing security and claiming as unsecured creditor for balance due—A valuation and claim by a secured creditor under section 305 (4) of the Act shall be in form 2 in the Schedule to these regulations.

8. Amendment of liquidator's decision in relation to claim—Where a liquidator, under section 304 (3) or section 305 of the Act, revokes or amends his or her decision to admit or reject a claim in whole or in part, the liquidator must record his or her amended decision in writing.

9. Trade discounts—A creditor making his or her claim shall deduct all trade discounts which he or she would otherwise have given if the company had not gone into liquidation.

10. Periodical payments—(1) When any payment (including rent) falls due at stated periods, and liquidation commences at any time other than at the beginning of one of those periods, the persons entitled to the payment may claim up to the date of commencement of liquidation as if the payment accrued on a daily basis.

(2) Nothing in subclause (1) of this regulation shall affect the right of the lessor of the property to claim rent that accrues on or after the commencement of liquidation.

11. Employees' claims—(1) A person may make a claim on behalf of all or a number of employees of the company.

(2) A schedule setting out the names of the employees, and the amounts severally due to them, shall be attached to the claim.

(3) Any claim made in compliance with this regulation shall have the same effect as if separate claims had been made by each of the employees.

12. Notice to creditors to claim—(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator may fix a certain day, which shall not be less than 10 working days from the date of the notice, on or before which the creditors of the company are to make their claims, and to establish any priority their claims may have under section 312 of the Act.

(2) The liquidator shall give public notice of the day fixed in accordance with subclause (1) of this regulation.

13. Failure to claim by day fixed for claims—(1) Subject to subclause (2) of this regulation, any creditor who fails to make his or her claim on or before the day fixed in accordance with regulation 12 of these regulations shall be excluded from the benefit of any distribution made before his or her claim is made.

(2) A creditor who makes a claim after the day fixed in accordance with regulation 12 of these regulations and whose claim is admitted shall be entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

14. Failure to establish priority by day fixed for claims—(1) Subject to subclause (2) of this regulation, any creditor who fails to establish any

priority that his or her claim may have on or before the day fixed in accordance with regulation 12 of these regulations shall be excluded from objecting to any distribution made before the priority of his or her claim is established.

(2) The liquidator may, in making any distribution after the claim is admitted, make an assumption as to the priority that the claim may have and accord the creditor the benefit of the distribution accordingly.

(3) A creditor who establishes the priority of his or her claim after the day fixed in accordance with regulation 12 of these regulations shall be entitled to receive the benefit of any distribution from which the creditor was previously excluded (if any) if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

15. Dividends in respect of rejected claims—(1) Where any creditor applies to the Court under section 284 (1) (b) of the Act for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the liquidator may in any such case make provision for the dividend upon the claim, and the probable cost of the application in the event of the claim being admitted.

(2) Where no notice of an application under section 284 (1) (b) of the Act has been given within the time specified in the High Court Rules for appeals to the High Court, the liquidator shall exclude all claims which have been rejected from participation in the dividend.

16. Costs of proceedings relating to a liquidator's decision on claim—Where any creditor applies to the Court under section 284 (1) (b) of the Act for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the Court may, if it thinks fit,—

- (a) Allow any costs of any creditor to be added to his or her claim:
- (b) Allow any costs of any party to be paid out of the assets of the company, such costs being deemed to be expenses of the liquidator:
- (c) Order any costs to be paid by any party to the proceedings other than the liquidator.

Proceedings at Meetings

17. Place of meetings—Every meeting of creditors or shareholders called under Part XVI of the Act shall be held at such place as is, in the opinion of the person convening the meeting, most convenient for the majority of the creditors or shareholders.

18. List of creditors or shareholders—(1) The person chairing a meeting of creditors or shareholders, as the case may be, must ensure that an accurate record is kept of all creditors or shareholders, as the case may be, present or represented at the meeting, including—

- (a) In the case of a meeting of creditors—
 - (i) The name of each creditor present or represented:
 - (ii) Whether the creditor has made a claim, and the amount of the claim:
 - (iii) Whether the creditor has filed a proxy or is present in person:
 - (iv) The total number of creditors present or represented:
- (b) In the case of a meeting of shareholders—
 - (i) The name of each shareholder present or represented:

- (ii) The number of shares issued to that shareholder;
- (iii) The number of votes that the shareholder may exercise according to the constitution of the company;
- (iv) Whether the shareholder has filed a proxy or is present in person;
- (v) The total number of shareholders present or represented.

(2) A record required under subclause (1) of this regulation which has been signed correct by the person chairing or convening the meeting is *prima facie* evidence of the details set out in the record.

19. Creditors entitled to vote—A person shall not be entitled to vote as a creditor unless, by the time the vote is taken, the creditor has made a claim under section 304 (1) or section 305 (4) of the Act and either—

- (a) The liquidator has admitted the claim wholly or in part either for payment or for voting purposes; or
- (b) The chairperson of the meeting of creditors allows the person to vote in accordance with regulation 20 of these regulations.

20. Admission and rejection of claims by chairperson of meeting of creditors for purposes of voting—(1) The chairperson of a meeting of creditors shall have power to admit or reject a claim for the purposes of voting at that meeting, but his or her decision shall be subject to appeal to the Court.

(2) If a chairperson is uncertain whether a claim may be admitted or rejected, he or she must allow the creditor to vote subject to the vote being declared invalid in the event of the claim being rejected for the purposes of voting.

21. Cases in which creditors may not vote—A creditor shall not vote in respect of—

- (a) Any claim that is subject to a contingency or that is for damages or that is, for some other reason, of an uncertain amount unless the value of the claim has been estimated by the liquidator or determined by the Court in accordance with section 307 of the Act;
- (b) A debt on or secured by a current bill of exchange or promissory note held by him or her unless the creditor treats the liability to him or her thereon of every person who is liable thereon antecedently to the company, and who has not been adjudged bankrupt, as a security in his or her hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his or her claim.

22. Votes of secured creditors—(1) A secured creditor shall be entitled to vote—

- (a) For the whole debt if he or she surrenders the charge to the liquidator for the general benefit of creditors; or
- (b) In respect of the balance of the debt if he or she values the charge and claims as an unsecured creditor under section 305 (4) of the Act for the balance due; or
- (c) In respect of the balance of the debt if he or she realises property subject to a charge and claims as an unsecured creditor under section 305 (3) (a) of the Act for any balance due after deducting the net amount realised.

(2) Subject to the Act, if a secured creditor votes in respect of the creditor's whole debt, the creditor shall be taken to have surrendered his or her charge.

(3) A creditor who is not entitled to vote may with the leave of the liquidator attend and speak at a meeting of creditors.

Proxies

23. Appointment of liquidator, etc., as proxy—A creditor or shareholder may appoint any person, including the liquidator or, if there is no liquidator, the chairperson of a meeting, to act as his or her proxy.

24. Liquidator not to solicit for proxies—(1) Subject to a direction of a meeting of creditors or shareholders, a liquidator must not solicit for proxies.

(2) Without limiting the orders that a Court may make, where a liquidator has not complied with subclause (1) of this regulation, the Court may—

(a) Order that the liquidator shall not be entitled to his or her remuneration:

(b) Make an order removing the liquidator from office:

(c) Make an order declaring any transaction entered into by the liquidator to be void or overturning any vote, and granting such consequential relief as the Court thinks fit.

(3) For the purposes of this regulation, the term "liquidator" includes a person who has been, or may be, nominated for appointment as a liquidator in place of the person already holding office as liquidator.

25. Irregularity in notice of proxy—If an irregularity that is not material is contained in the notice of proxy, the liquidator or chairperson of a meeting, as the case may be, may accept the proxy as being valid for voting purposes, if he or she is satisfied that the proxy holder represents the creditor or shareholder.

26. Disqualification from voting—(1) Subject to subclause (2) of this regulation, no person acting under a proxy shall vote in favour of or against any resolution which would place that person, either directly or indirectly, in a position to receive any benefit out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(2) Any person who holds a proxy to vote for the appointment of a liquidator may use the proxy to vote in favour of the appointment of himself or herself as liquidator if it is not inconsistent with the terms of the proxy to do so.

27. Use of proxies by liquidator's nominee—(1) Where a liquidator who holds a proxy cannot attend a meeting called under Part XVI of the Act, he or she may, in writing, nominate his or her partner (if the liquidator is a member of a partnership) or some person in his or her employment, to use the proxy on his or her behalf and in such manner as he or she may direct.

(2) Nothing in this regulation authorises the person nominated to vote in a manner that would be in contravention of regulation 26 of these regulations if the liquidator had acted under the proxy personally.

Liquidators and Liquidation Committees

28. Remuneration of certain liquidators—(1) Unless the Court otherwise orders under section 276 (2) of the Act, the remuneration of every Official Assignee who is appointed a liquidator under paragraph (a) of subsection (2) of section 241 of the Act and every liquidator appointed under paragraph (c) of that subsection is the greater of either—

(a) An amount of \$2,000; or

(b) A fee calculated on an hourly rate in accordance with the following:

(i) For work undertaken by the liquidator, including any Deputy Official Assignee where the liquidator is the Official Assignee, \$65 per hour or part of an hour:

(ii) For work undertaken by an accountant or solicitor employed by the liquidator, \$70 per hour or part of an hour:

(iii) For work undertaken by any other employee of the liquidator, \$40 per hour or part of an hour.

(2) The amount and the hourly rates specified in subclause (1) of this regulation are exclusive of goods and services tax under the Goods and Services Tax Act 1985.

29. Restrictions relating to remuneration—(1) Subject to the Act, a liquidator must not make any arrangement for, or accept from any person, any benefit beyond the remuneration to which he or she is entitled as liquidator.

(2) A liquidator must not make any arrangement for giving up, whether in whole or in part, his or her remuneration to any person.

30. Liquidator's charges—(1) Where a liquidator receives remuneration for his or her services as such, no payment shall be allowed on his or her accounts in respect of the performance by any other person of the ordinary duties which are required by the Act to be performed by himself or herself.

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

31. Restriction on purchase of company's assets by liquidator or liquidation committee—(1) Subject to the leave of the Court, a liquidator or any member of a liquidation committee of a company must not, either directly or indirectly, become a purchaser of any part of the company's assets.

(2) The Court may set aside any purchase made contrary to this regulation, and grant such consequential relief as it thinks fit.

(3) The Court may give its leave under subclause (1) of this regulation on such terms and conditions as it thinks fit.

32. Restriction on purchase of goods or services from persons connected with liquidator—(1) Subject to the leave of the Court, a liquidator must not purchase goods or services for the purposes of the liquidation from any person whose connection with him or her would result in the liquidator directly or indirectly obtaining any portion of the benefit (if any) arising out of the transaction.

(2) The Court may give its leave under subclause (1) of this regulation on such terms and conditions as it thinks fit.

(3) The Court may disallow or recover any benefit made contrary to the provisions of this regulation.

33. Liquidation committee not to obtain benefit—(1) Subject to the leave of the Court, no member of a liquidation committee may directly or indirectly be entitled to—

- (a) Derive any benefit from any transaction arising out of the assets of the company; or
- (b) Receive out of the assets of the company any payment for services rendered by him or her in connection with the administration of the assets, or for any goods supplied by him or her to the liquidator for or on account of the company.

(2) Where the leave of the Court is sought in respect of any payment for services, the leave shall be given only where the services performed are of a special nature and the order shall specify the nature of the services for which leave is given.

(3) Except by the leave of the Court, no remuneration shall, under any circumstances, be paid to a member of a liquidation committee for services rendered by him or her in the discharge of the duties attaching to his or her office as a member of the committee.

(4) The Court may disallow or recover any benefit or payment made contrary to the provisions of this regulation.

(5) The Court may give its leave under this regulation on such terms and conditions as it thinks fit.

34. Transmission of documents and property to liquidator's successor—Where a new liquidator is appointed, the person vacating the office of liquidator must forthwith, or within such reasonable time as may be specified by the new liquidator, deliver—

- (a) Books, records, or documents of the company; and
- (b) Other property of the company; and
- (c) All claims; and
- (d) Accounts and records of the liquidation—

in his or her possession or under his or her control to the new liquidator.

35. Fees, expenses, and remuneration of vacating liquidator—(1) A person vacating the office of liquidator is entitled to deduct fees and expenses properly incurred by him or her in carrying out the duties and exercising the powers of the liquidator and his or her remuneration as liquidator as set out in the Act, and such fees, expenses, and remuneration shall rank in priority to the fees, expenses, and remuneration of that person's successor.

(2) If there are no available assets of the company from which to pay the vacating liquidator's fees, expenses, and remuneration at the time the person vacates the office of liquidator, then the new liquidator must pay such fees, expenses, and remuneration from the assets of the company as soon as is practicable.

Miscellaneous Provisions

36. Defect in appointment not to invalidate acts of liquidator—No defect or irregularity in the appointment of a liquidator shall invalidate any act done by him or her in good faith.

37. Deposit of company funds—A liquidator must deposit the funds of a company under his or her administration in—

- (a) A bank account to the credit of the company; or
- (b) A trust account—

at a registered bank.

38. Investment of funds—(1) Notwithstanding regulation 37 of these regulations, in any liquidation all or any part of the balance standing to the credit of the company in any bank account or trust account kept by the liquidator, and not required for the time being to meet claims made against the company, may be invested in any registered bank or in any Government securities or any other securities as authorised by the Court.

(2) All dividends, interest, and other profits from investments under this regulation shall from time to time as received be paid into the bank account or trust account kept by the liquidator under regulation 37 of these regulations.

39. Liquidator carrying on business—Where a liquidator carries on the business of the company, he or she must keep accounting records for the carrying on of the business of the company that comply with section 194 of the Act to the extent that that section is applicable.

40. Service—(1) Where the Act does not provide the method of service for documents in legal proceedings, service must be effected under the High Court Rules.

(2) Where the methods of service specified by the Act or the High Court Rules do not apply, then documents must be served on persons in accordance with section 391 of the Act as if the person is a creditor or shareholder.

SCHEDULE
FORMS
Form 1
UNSECURED CREDITOR'S CLAIM
Section 304 (1) Companies Act 1993

<p>Name and postal address of creditor in full: </p> <p>Telephone Number: (.....)</p> <p>My Reference is: (if applicable)</p>	<p>* Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1993. The information will be used and retained by [<i>Insert name and address of agency collecting and holding information</i>] and will be released to other parties only with your authorisation or in compliance with the Privacy Act 1993. Under section 304 (1) of the Companies Act 1993 any claim by an unsecured creditor against a company in liquidation must be made in this prescribed form and must— (a) Contain full particulars of the claim; and (b) Identify any documents that evidence or substantiate the claim. You may have access to and request correction of any personal information.</p> <p>(*Not applicable, if creditor is not an individual within the meaning of the Privacy Act 1993.)</p>
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Name of Company in Liquidation: _____ (In liquidation)

I _____ [*If claim is made on behalf of creditor, specify relationship to creditor and authority*] claim that the company was at the date it was put into liquidation indebted to the abovenamed creditor for the sum of [*Amount in words and figures*]:
\$

Either: I hold no security for the amount claimed; or
 I am surrendering my security and I am claiming as an unsecured creditor
 [*Omit whichever does not apply*]

Full particulars of the claim are set out, and any supporting documents that substantiate the claim are identified, on the reverse of this form.
 (The liquidator may require the production of a document under section 304 (1) (b) of the Companies Act 1993. You are not required to attach any supporting documents at this stage, but you may attach them now, if you think it would expedite the processing of the claim.)

Signed: _____ Date: / /

WARNING— It is an offence under section 304 (6) of the Companies Act 1993 to—
Make, or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or
Omit, or authorise the omission, from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.

<p>Received (Date Stamp)</p>	<p>Reserved For Office Use:</p> <p>Claim admitted for voting purposes: Signed: <input style="width: 150px; height: 20px;" type="text"/> Date: / /</p> <p>Claim rejected for voting purposes: Signed: <input style="width: 150px; height: 20px;" type="text"/> Date: / /</p> <p>Claim rejected for payment: Signed: <input style="width: 150px; height: 20px;" type="text"/> Date: / /</p> <p><u>Claim admitted for payment:</u></p> <p>Preferential Claim for: Ordinary Claim for: Deferred Claim for: \$ <input style="width: 100px;" type="text"/> \$ <input style="width: 100px;" type="text"/> \$ <input style="width: 100px;" type="text"/></p> <p>Signed Liquidator: <input style="width: 200px; height: 40px;" type="text"/> Dated: / /</p> <p>Note: If the decision to admit or reject a claim is amended, regulation 8 of the Companies Act 1993 Liquidation Regulations 1994 requires that it be recorded in writing.</p>
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SCHEDULE—continued

FORMS—continued

Form 1—continued

PARTICULARS OF CLAIM

Date	Details of Claim and Identification of Documents that Evidence or Substantiate the Claim	Amount \$
	<p>If applicable, less Retention of Title for goods supplied by creditor to the company [Describe goods]</p> <p>If applicable, less debts owed by creditor to the company [Describe debts]</p>	<p>\$</p> <p>\$</p>

If applicable, please record here your GST Registration number:
and total GST included in your claim

\$

/ /

SCHEDULE—continued

FORMS—continued

Form 2

SECURED CREDITOR'S VALUATION AND CLAIM

Section 305 (4) Companies Act 1993

Name and postal address of creditor in full: Telephone Number: (.....) My Reference is: (if applicable)	<p>* Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1993.</p> <p>The information will be used and retained by <i>[Insert name and address of agency collecting and holding the information]</i> and will be released to other parties only with your authorisation or in compliance with the Privacy Act 1993.</p> <p>Under section 305 (4) of the Companies Act 1993 the valuation and claim made by a secured creditor claiming as an unsecured creditor against a company in liquidation for the balance due must be in this prescribed form and must—</p> <p>(a) Contain full particulars of the valuation and any claim; and</p> <p>(b) Contain full particulars of the charge including the date on which it was given; and</p> <p>(c) Identify any documents that substantiate the claim and charge.</p> <p>You may have access to and request correction of any personal information.</p> <p>(*Not applicable, if creditor is not an individual within the meaning of the Privacy Act 1993.)</p>
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Name of Company in Liquidation:	(In liquidation)
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I _____ *[If claim is made on behalf of creditor, specify relationship to creditor and authority]* claim that after valuing the security as at the date the company was put into liquidation the abovenamed creditor is an unsecured creditor of the company for the sum of *[Amount in words and figures]*:

\$

Full particulars of the valuation, claim, and charge are set out, and any supporting documents that substantiate the claim and the charge, are identified on the reverse of this form.

(The liquidator may require the production of a document under section 305 (5) of the Companies Act 1993. You are not required to attach any supporting documents at this stage, but you may attach them now, if you think it would expedite the processing of the claim.)

Signed:	Date: / /
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WARNING—	<p>It is an offence under section 305 (11) of the Companies Act 1993 to—</p> <p>Make, or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or</p> <p>Omit, or authorise the omission, from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.</p>
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Received (Date Stamp)	Reserved For Office Use:	
	Claim admitted for voting purposes: Signed: <input style="width: 100px;" type="text"/>	Date: / / <input style="width: 40px;" type="text"/>
	Claim rejected for voting purposes: Signed: <input style="width: 100px;" type="text"/>	Date: / / <input style="width: 40px;" type="text"/>
	Claim rejected for payment: Signed: <input style="width: 100px;" type="text"/>	Date: / / <input style="width: 40px;" type="text"/>
	<u>Claim admitted for payment:</u>	
	Preferential Claim for: <input style="width: 100px;" type="text"/>	Ordinary Claim for: <input style="width: 100px;" type="text"/>
Signed Liquidator: <input style="width: 150px;" type="text"/>	Dated: / / <input style="width: 40px;" type="text"/>	

Note: If the decision to admit or reject a claim is amended, regulation 8 of the Companies Act 1993 Liquidation Regulations 1994 requires that it be recorded in writing.

SCHEDULE—*continued*FORMS—*continued*Form 2—*continued*

VALUATION OF SECURITY

Particulars of the Charge:	
<p>Description of charge:</p> <p>Description and location of property subject to charge:</p> <p>Date charge given [<i>Or date of acquisition of property subject to the charge</i>]:</p> <p>If applicable, details of registration (including date):</p>	
Particulars of the Valuation	
<p>Amount security valued at: \$</p> <p>Particulars of valuation:</p>	
<p>Identification of any documents that substantiate the claim and the charge <i>[If not already supplied in either of above boxes]</i></p>	

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 1994,—

- (a) Regulate the conduct of liquidations under the Companies Act 1993; and
- (b) Fix an amount and prescribe rates in respect of the remuneration of every Official Assignee who is appointed liquidator by special resolution of shareholders and of every liquidator who is appointed by the Court under section 241 (2) (c) of the Act.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 23 June 1994.

These regulations are administered in the Department of Justice.