



**THE COMPANIES (WINDING UP) RULES 1956,  
AMENDMENT NO. 3**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 9th day of November 1992

Present:

THE RIGHT HON. D. C. MCKINNON PRESIDING IN COUNCIL

PURSUANT to section 341 of the Companies Act 1955 and the Judicature Act 1908, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

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ANALYSIS

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| <ol style="list-style-type: none"> <li>1. Title and commencement</li> <li>2. Applications by or against delinquent officers and promoters</li> <li>3. New rules inserted</li> </ol> |  | <ol style="list-style-type: none"> <li>189A. Procedure in respect of miscellaneous applications</li> <li>189B. Applications involving allegations of fraud, negligence, misfeasance, or like behaviour</li> <li>189C. Reports</li> </ol> |
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## RULES

**1. Title and commencement**—(1) These rules may be cited as the Companies (Winding Up) Rules 1956, Amendment No. 3, and shall be read together with and deemed part of the Companies (Winding Up) Rules 1956\* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of January 1993.

**2. Applications by or against delinquent officers and promoters**—The principal rules are hereby amended by revoking rule 49, and substituting the following rule:

“49. (1) Every application made to the Court under any of the following provisions of the Act, namely,—

“(a) Section 189:

“(b) Subsection (1) or subsection (2) of section 320:

“(c) Section 321:

“(d) Section 364:

“(e) Subsection (2) of section 468,—

shall be made by filing a statement of claim in accordance with the High Court Rules.

“(2) Where a statement of claim is filed pursuant to subclause (1) of this rule, the applicant shall, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file, under rule 437 of the High Court Rules, an application for directions regarding the proceeding.

“(3) The Court may, on the application under rule 437 of the High Court Rules or at any other time before an order is made under any of the provisions specified in subclause (1) of this rule,—

“(a) Require the Official Assignee or liquidator to furnish to the Court a report with respect to any facts or matters which are, in the opinion of the Official Assignee or liquidator, relevant to the proceeding commenced pursuant to subclause (1) of this rule; and

“(b) Give such directions as the Court thinks fit as to—

“(i) Taking of evidence wholly or in part by affidavit or orally; and

“(ii) The cross-examination either in Court or in Chambers of any deponents to affidavits in support of or in opposition to the proceeding commenced pursuant to subclause (1) of this rule; and

“(iii) Any report that the Court may require the Official Assignee or liquidator to make; and

“(iv) Generally as to the procedure of the application and for the hearing thereof.”

**3. New rules inserted**—The principal rules are hereby amended by inserting, before rule 190, the following rules:

“189A. **Procedure in respect of miscellaneous applications**—(1) Subject to subclauses (2) and (3) of this rule, where any provision of the Act or these rules provides for an application to be made to the Court in respect of—

\*S.R. 1956/215

Amendment No. 1: S.R. 1972/33

Amendment No. 2: S.R. 1985/326

“(a) A company that is the defendant company in relation to an application made under section 219 of the Act for the winding up of that company; or

“(b) A company in respect of which a winding-up order has been made under section 219 of the Act; or

“(c) A company in respect of which an application under section 209 of the Act is pending,—

the application to be made to the Court shall, unless any provision of the Act or these rules or the High Court Rules otherwise requires or the Court otherwise directs, be made to the Court in accordance with the High Court Rules as if that application were an interlocutory application and Part III of the High Court Rules shall, with all necessary modifications, apply accordingly.

“(2) Every application to which subclause (1) of this rule applies shall show, in addition to any matters required by the High Court Rules, the same intitulum as the intitulum shown on the application for the winding up of the company or for the order under section 209 of the Act.

“(3) Nothing in subclause (1) of this rule applies to an application to which rule 49 or rule 189B of these rules applies.

**“189B. Applications involving allegations of fraud, negligence, misfeasance, or like behaviour—**(1) Where an application that involves an allegation of fraud, negligence, misfeasance, or like behaviour is to be made to the Court under the Act or these rules in respect of—

“(a) A company that is the defendant company in relation to an application made under section 219 of the Act for the winding up of that company; or

“(b) A company in respect of which a winding-up order has been made under section 219 of the Act; or

“(c) A company in respect of which an application under section 209 of the Act is pending,—

that application shall be made by filing a statement of claim in accordance with the High Court Rules.

“(2) Where a statement of claim to which subclause (1) of this rule applies is filed in accordance with the High Court Rules, the applicant shall, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file, under rule 437 of the High Court Rules, an application for directions regarding the proceeding.

“(3) Every statement of claim to which subclause (1) of this rule applies shall show, in addition to any matters required by the High Court Rules, the same intitulum as the intitulum shown on the application for the winding up of the company or for the order under section 209 of the Act.

**“189c. Reports—**(1) Where any provision of the Act or these rules provides for the making of a report to the Court in relation to—

“(a) A company that is the defendant company in relation to an application made under section 219 of the Act for the winding up of that company; or

“(b) A company in respect of which a winding-up order has been made under section 219 of the Act; or

“(c) A company in respect of which an application under section 209 of the Act is pending,—

that report may, unless these rules or the High Court Rules otherwise require or the Court otherwise directs, be contained in a memorandum duly signed and dated.

“(2) Unless any provision of the Act or these rules otherwise requires, the Court may direct that any matter of fact set out in a memorandum to which subclause (1) of this rule applies shall be verified by affidavit or otherwise.

“(3) The intitulum on every memorandum to which subclause (1) of this rule applies shall be the same as that shown, in accordance with rule 6 (1) of these rules, on the application for the winding up of the company or for an order under section 209 of the Act.”

MARIE SHROFF,  
Clerk of the Executive Council.

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EXPLANATORY NOTE

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

These rules, which come into force on 1 January 1993, amend the Companies (Winding Up) Rules 1956.

The amendments set out the procedure to be followed in making certain applications and reports provided for in the Companies Act 1955 or the principal rules in respect of—

- (a) A company that is the defendant company in relation to an application made under section 219 of the Companies Act 1955 for the winding up of that company; or
- (b) A company in respect of which a winding-up order has been made under section 219 of the Companies Act 1955; or
- (c) A company in respect of which an application under section 209 of the Companies Act 1955 is pending.

The applications and reports to which the new rules apply are those in respect of which the High Court Rules do not otherwise apply.

In addition, these rules alter the form of application in respect of applications referred to in rule 49 of the principal rules. Those applications were previously required to be made to the Court by motion. These rules require those applications to be made by statement of claim.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 12 November 1992.  
These rules are administered in the Department of Justice.