



THE HIGH COURT AMENDMENT RULES 1994

THOMAS EICHELBAUM, Administrator of the Government

ORDER IN COUNCIL

At Wellington this 27th day of June 1994

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to section 51c of the Judicature Act 1908, His Excellency the Administrator of the Government, 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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- Order to Put Company into Liquidation*
- 700zb. Obligation to send notice of order appointing liquidator

RULES

1. Title and commencement—(1) These rules may be cited as the High Court Amendment Rules 1994, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

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

2. Power to make order for security for costs—Rule 60 (1) (a) of the High Court Rules (as substituted by rule 5 of the High Court Amendment Rules 1991), is hereby amended by revoking subparagraph (iii), and substituting the following subparagraph:

“(iii) Is, within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, a subsidiary of a corporation incorporated outside New Zealand; or”.

3. When not necessary to file notice of proceeding—Rule 124 (a) of the High Court Rules is hereby amended by omitting the words “wound up”, and substituting the words “put into liquidation”.

4. Personal service on New Zealand corporations—(1) The High Court Rules are hereby amended by revoking rule 198 (as substituted by rule 3 of the High Court Amendment Rules 1988), and substituting the following rule:

“198. (1) Personal service of a document on a company incorporated under the Companies Act 1955 shall be effected by service in accordance with section 460 of that Act.

“(2) Personal service of a document on a company incorporated under the Companies Act 1993 shall be effected by service in accordance with section 387 of that Act.

“(3) Personal service of a document on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1955 or the Companies Act 1993, as the case may be, may be effected—

“(a) By service in accordance with rule 197 on—

“(i) The mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or

“(ii) Any member, officer, or servant of the corporation at the corporation’s head office or principal place of business; or

“(b) By leaving the document at the corporation’s registered office; or

“(c) By serving the document on a member, officer, or servant of the corporation in such manner as the Court directs.

“(4) Subclause (3) is in addition to any provision made by or under any Act for service of a document on a corporation unless the provision so made is expressed to be exclusive of any other mode of service.”

(2) Rule 3 of the High Court Amendment Rules 1988 is hereby consequentially revoked.

5. Personal service in New Zealand on foreign corporations—The High Court Rules are hereby amended by revoking rule 199, and substituting the following rule:

“199. (1) Personal service on an overseas company (within the meaning of section 2 of the Companies Act 1993) and which, under these rules, may be served out of New Zealand, shall be effected in accordance with section 389 of the Companies Act 1993.

“(2) Personal service on a corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) that—

“(a) Is incorporated outside New Zealand; and

“(b) Under these rules, may be served out of New Zealand; and

“(c) Has a place or places of business in New Zealand—

may be effected in New Zealand by service in accordance with rule 197 on any person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand.”

6. Affidavit as to creditors—Rule 416B (2) of the High Court Rules (as inserted by rule 6 of the High Court Amendment Rules (No. 2) 1987), is hereby amended by omitting the words “to proof in a winding up of the company”, and substituting the words “against a company in liquidation”.

7. Form of affidavit—Rule 416c (a) (ii) of the High Court Rules (as so inserted), is hereby amended by omitting the words “winding up of the company, would be admissible to proof”, and substituting the words “liquidation of the company, would be admissible as a claim”.

8. Evidence of consent of creditor—Rule 416K of the High Court Rules (as so inserted), is hereby amended by omitting the words “to proof in a winding up of the company”, and substituting the words “against a company in liquidation”.

9. Application of rules 426 to 436—Rule 425 of the High Court Rules is hereby amended by revoking paragraph (b) and substituting the following paragraph:

“(b) Proceedings to put a corporation into liquidation.”

10. Application of this Part to proceedings under certain Acts—Rule 448 (1) of the High Court Rules is hereby amended by revoking paragraph (c), and substituting the following paragraph:

“(c) The Companies Act 1955 or the Companies Act 1993, as the case may be.”

11. Directions as to service—(1) Rule 451 (1) of the High Court Rules is hereby amended by revoking paragraph (ca) (as inserted by rule 10 of the High Court Amendment Rules (No. 2) 1987), and substituting the following paragraphs:

“(ca) The proceeding is under the Companies Act 1955 and is not a proceeding in the liquidation of a company or a proceeding under section 209zc of that Act; or

“(cb) The proceeding is under the Companies Act 1993 and is not a proceeding in the liquidation of a company or a proceeding under section 174 of that Act; or”

(2) Rule 10 of the High Court Amendment Rules (No. 2) 1987 is hereby consequentially revoked.

12. Directions as to conduct of proceedings under Companies Act 1955 or Companies Act 1993—Rule 458A of the High Court Rules (as inserted by rule 11 of the High Court Amendment Rules (No. 2) 1987), is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) In any proceeding to which—

“(a) Rule 451 (1) (ca) applies (other than a proceeding to which section 464 of the Companies Act 1955 applies); or

“(b) Rule 451 (1) (cb) applies,—

as the case may be, the plaintiff shall, within 14 days after the expiration of the time for filing statements of defence in the proceeding, apply to the Court on notice for directions as to the subsequent conduct of the proceeding.”

13. Application of Part IVA of High Court Rules—Rule 458D (1) (a) of the High Court Rules (as amended by rule 16 of the High Court Amendment Rules (No. 2) 1988), is hereby amended by revoking subparagraph (vi), and substituting the following subparagraphs:

“(vi) Sections 108, 209R, and 264 of the Companies Act 1955:

“(via) Sections 236 and 290 of the Companies Act 1993.”

14. Application of Part—The High Court Rules are hereby amended by revoking rule 700A (as inserted by rule 5 of the High Court Amendment Rules 1988), and substituting the following rule:

“700A. (1) This Part applies in respect of every application to the Court—

“(a) For putting a company into liquidation; or

“(b) For an order under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.

“(2) The other provisions of these rules shall apply in relation to any application to which this Part applies except so far as those provisions are modified by or inconsistent with this Part.”

15. Applications to be made by statement of claim—The High Court Rules are hereby amended by revoking rule 700c (as so inserted), and substituting the following rule:

“700c. (1) Every application to the Court to put a company into liquidation under section 211 (2) (c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993, as the case may be, shall be made by statement of claim in form 64A in accordance with these rules.

“(2) Every application to the Court under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be, shall be made by statement of claim in form 64B in accordance with these rules”.

16. Advertisement of application—Rule 700r (4) of the High Court Rules (as so inserted), is hereby amended by revoking paragraph (a), and substituting the following paragraph:

“(a) State the day on which the application to put the defendant company into liquidation was filed; and”.

17. Power to stay liquidation proceedings—Rule 700k of the High Court Rules (as so inserted and as amended by rule 22 of the High Court Amendment Rules 1991), is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) Where an application for putting a company into liquidation is made by the filing of a statement of claim pursuant to rule 700c (1), the defendant company, or, with the leave of the Court, any creditor or contributory or shareholder, as the case may be, of that company, or the Registrar of Companies, may, within 7 days after the date of the service of the statement of claim on the defendant company, apply to the Court for an order restraining publication of any advertisement required by rule 700r or any other information relating to that statement of claim and staying any further proceedings in relation to the liquidation.”

18. Service of proceeding—Rule 700l of the High Court Rules (as so inserted), is hereby amended by revoking subclause (2).

19. Affidavit of service—Rule 700m of the High Court Rules (as so inserted), is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) The plaintiff shall, before the hearing, file an affidavit of service in form 64H proving the service of the statement of claim, verifying affidavit, and notice of proceeding on the defendant company.”

20. Entitlement to copy of statement of claim etc.—Rule 700o of the High Court Rules (as so inserted) is hereby amended by inserting, after the word “contributory”, the words “or shareholder, as the case may be.”.

21. Statement of defence—(1) Rule 700p (2) of the High Court Rules (as so inserted), is hereby amended by inserting, after the word “contributory”, the words “or shareholder, as the case may be.”.

(2) Rule 700p (4) of the High Court Rules (as so inserted), is hereby amended by inserting, after the word “contributory”, the words “or shareholder, as the case may be.”.

22. Appearance—Rule 700R of the High Court Rules (as so inserted), is hereby amended by omitting the expression “64j”, and substituting the expression “64i”.

(2) Rule 700R of the High Court Rules is hereby further amended by revoking paragraph (b), and substituting the following paragraph:

“(b) Indicating whether that person supports or opposes the application to put the company into liquidation or the application for an order under section 209zC of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.”

23. Interlocutory applications—Rule 700v (1) of the High Court Rules (as so inserted), is hereby amended by revoking paragraph (c), and substituting the following paragraph:

“(c) An application for the appointment of an interim liquidator; or”.

24. Power to appoint interim liquidator—(1) The High Court Rules are hereby amended by revoking rule 700w (as so inserted and as amended by rule 21 of the High Court Amendment Rules (No. 2) 1988), and substituting the following rule:

“(1) Where a proceeding for putting a company into liquidation has been commenced by the filing of a statement of claim under rule 700c (1), the plaintiff and any person entitled to apply to the Court for the appointment of a liquidator under section 211 (2) (c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993, as the case may be, may apply to the Court for the appointment of an interim liquidator.

“(2) If, on an application under subclause (1), the Court is satisfied, upon proof by affidavit, that there is sufficient ground for the appointment of an interim liquidator, it may make the appointment, and may limit the rights and powers of the interim liquidator in such manner as it thinks fit.”

(2) Rule 21 of the High Court Amendment Rules (No. 2) 1988 is hereby consequentially revoked.

25. Additional and substituted plaintiffs in liquidation proceeding—(1) Rule 700x of the High Court Rules (as so inserted), is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) This rule applies to any person, who is entitled to make an application to the Court for putting the company into liquidation under section 211 (2) (c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993, as the case may be.”

(2) Rule 700x (2) of the High Court Rules (as so inserted), is hereby amended by omitting the words “for the winding up of a company by the Court”, and substituting the words “to put a company into liquidation”.

(3) Rule 700x of the High Court Rules (as so inserted and as amended by rule 15 (1) of the High Court Amendment Rules 1990), is hereby amended by revoking subclause (3), and substituting the following subclause:

“(3) Where a person to whom this rule applies has filed an appearance under rule 700R in a proceeding to put a company into liquidation and, on the day appointed for the hearing, or on any day to which the hearing has been adjourned, no plaintiff wishes to proceed, on that day, with the hearing of the application to put the company into liquidation, the Court may, on the oral application of that person, but subject to subclause (4),—

“(a) Add that person as a plaintiff in the proceeding; or

“(b) Substitute that person for the plaintiff or plaintiffs or any of the plaintiffs in the proceeding.”

(4) Rule 15 (1) of the High Court Amendment Rules 1990 is hereby consequentially revoked.

26. Requirements in relation to order appointing interim liquidator—Rule 700z of the High Court Rules (as so inserted), is hereby amended by omitting the word “provisional”, in each place where it appears, and substituting the word “interim”.

27. Costs, charges, and expenses of interim liquidator and Official Assignee—(1) Rule 700zA of the High Court Rules (as so inserted), is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) Subject to any order of the Court, if—

“(a) No order for putting the defendant company into liquidation is made in the proceeding; or

“(b) An order for putting the defendant company into liquidation is rescinded; or

“(c) All proceedings for putting the defendant company into liquidation are stayed—

the person holding office as interim liquidator shall be entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person as interim liquidator, or, where that person is the Official Assignee, such sum as the Court directs.”

“(2) Rule 700zA (2) (as so inserted) is hereby amended by omitting the word “provisional”, in each place where it appears, and substituting the word ‘interim’.”

28. New cross-heading and rules substituted—(1) The High Court Rules are hereby amended by revoking rules 700zb to 700zj and the cross-heading above those rules (as inserted, in the case of that cross-heading and rules 700zb to 700zg, by rule 5 of the High Court Amendment Rules 1988 and, in the case of rules 700zh to 700zj, by rule 13 of the High Court Amendment Rules (No. 2) 1992), and substituting the following cross-heading and rules:

“Order to Put Company into Liquidation

“700zb. Obligation to send notice of order appointing liquidator or interim liquidator of a company—(1) When the Court has made an order appointing a person to be liquidator of a company, or has made an order appointing an interim liquidator before an order putting the company into liquidation is made, the Registrar shall, on the same day, send to the liquidator or interim liquidator a notice informing him or her of his or her appointment.

“(2) The notices shall be in form 64j or in form 64k, as the case may require, with such variations as circumstances may require.

“700zc. Order and copies to be sealed—The plaintiff or the plaintiff’s solicitor shall, at latest on the second working day after the day on which an order putting a company into liquidation is pronounced in Court, leave the order and 2 copies thereof at the office of the Court for sealing.

“700zd. Contents of order putting a company into liquidation—(1) An order putting a company into liquidation may be in form 64l.

“(2) An order for the appointment of an interim liquidator may be in form 64m.

“700ZE. Transmission of order putting a company into liquidation—When an order that a company be put into liquidation or an order for the appointment of an interim liquidator has been made,—

- “(a) One copy of the order sealed with the seal of the Court shall forthwith be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be:
- “(b) One copy of the order sealed with the seal of the Court shall be served by the plaintiff upon the company in accordance with the Companies Act 1955 or the Companies Act 1993, as the case may be.

“700ZF. Service of order made under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993—

(1) Where an order is made under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be, an office copy of the order shall, unless the Court otherwise orders, be served by the plaintiff on—

- “(a) The defendant company in accordance with the Companies Act 1955 or the Companies Act 1993, as the case may be:
- “(b) The Registrar of Companies.

(2) Where the order involves a reduction of capital or alteration of the memorandum of association or constitution of the company, the Companies Act 1955 or the Companies Act 1993, as the case may be, and the provisions of these rules relative to those matters shall apply as the Court may direct.

“700ZG. Service of notice of company being put into liquidation—Any notice given for the purposes of section 222 of the Companies Act 1955 or section 252 of the Companies Act 1993, as the case may be, being—

- “(a) A notice that an application has been made to the Court to appoint a liquidator; or
- “(b) A notice that the Court has made an order appointing a liquidator; or
- “(c) A notice that the Court has appointed an interim liquidator; or
- “(d) A notice of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or
- “(e) A notice that a special resolution has been passed appointing a liquidator; or
- “(f) A notice of the calling of a meeting of the board at which a resolution is proposed to appoint a liquidator; or
- “(g) A notice that a resolution has been passed appointing a liquidator,—

shall be in writing and shall be addressed to the officer charged with the execution, and may be served by being delivered by hand or by registered post at the office of the officer charged with the execution.

“700ZH. Procedure in respect of miscellaneous applications—(1) Subject to subclauses (2) and (3), where any provision of the Companies Act 1955 or the Companies Act 1993, as the case may be, provides for an application to be made to the Court in respect of—

- “(a) A company that is the defendant company in relation to an application made for putting that company into liquidation under section 211 (2) (c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993; or

“(b) A company in respect of which a liquidator has been appointed under section 211 (2) (c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993, as the case may be; or

“(c) A company in respect of which an application under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993 is pending, as the case may be,—

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

“(2) Every application to which subclause (1) applies shall show, in addition to any matters required by these rules, the same intitulum as the intitulum shown on the application for putting the company into liquidation or for the order under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993, as the case may be.

“(3) Nothing in subclause (1) of this rule applies to an application to which rule 700zi of these rules applies.

“700zi. **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 Companies Act 1955 or Companies Act 1993, as the case may be, in respect of—

“(a) A company that is the defendant company in relation to an application made to put that company into liquidation under section 211 (2)(c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993; or

“(b) A company in respect of which a liquidator has been appointed under section 211 (2)(c) of the Companies Act 1955 or section 241 (2) (c) of the Companies Act 1993; or

“(c) A company in respect of which an application under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993 is pending,—

that application shall be made by filing a statement of claim in accordance with these rules.

“(2) Where a statement of claim to which subclause (1) applies is filed in accordance with these 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, an application for directions regarding the proceeding.

“(3) Every statement of claim to which subclause (1) applies shall show, in addition to any matters required by these rules, the same intitulum as the intitulum shown on the application for putting the company into liquidation or for the order under section 209zc of the Companies Act 1955 or section 174 of the Companies Act 1993.”

(2) Rule 13 of the High Court Amendment Rules (No. 2) 1992 is hereby consequentially revoked.

29. New forms substituted—The First Schedule to the High Court Rules (as amended by rule 6 of the High Court Amendment Rules 1988 and rule 18 of the High Court Amendment Rules (No. 2) 1992), is hereby amended by revoking forms 64A to 64O, and substituting the forms set out in the Schedule to these rules.

(2) The following rules are hereby consequentially revoked:

(a) Rule 6 of the High Court Amendment Rules 1988:

(b) Rule 18 of the High Court Amendment Rules (No. 2) 1992.

30. Transitional provisions applying to liquidation of companies—Nothing in these rules applies to or affects—

(a) Any company on which a demand under section 218 (a) of the Companies Act 1955 has been served before the commencement of these rules:

(b) Any application to the Court for the winding up of a company made before the commencement of these rules:

(c) Any resolution of a company to be wound up by the Court passed before the commencement of these rules:

(d) Any resolution of a company for voluntary winding up passed before the commencement of these rules:

(e) Any order made by the Court under Part VI of the Companies Act 1955 before the commencement of these rules,—

and the provisions of High Court Rules as in force immediately before the commencement of these rules, shall continue to apply in respect of any such demand, application, resolution, order, winding up, dissolution, or other consequence resulting from it as if these rules had not been made.

SCHEDULE

Reg. 29

NEW FORMS SUBSTITUTED IN FIRST SCHEDULE TO HIGH COURT RULES

"Form 64A

Rule 700c(1)

STATEMENT OF CLAIM IN PROCEEDING FOR PUTTING COMPANY INTO LIQUIDATION

(General heading—Form 1)

The plaintiff says:

1. The Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 19... and was reregistered under the Companies Act 1993 on [*State month and year*] */has not been reregistered under the Companies Act 1993*.

*Delete if not applicable

OR

1. The Company Limited (hereinafter called the defendant company) was in [*State month and year*] incorporated under the Companies Act 1993.

2. The registered office of the defendant company is at [*State the full address of the registered office*].

[*Here set out in paragraphs the facts on which the plaintiff relies*].

The plaintiff therefore prays that the defendant company be put into liquidation by the Court under the Companies Act 1955.

OR

The plaintiff therefore prays that the defendant company be put into liquidation by the Court under the Companies Act 1993.

[*Subscribe memorandum in form 3.*]

SCHEDULE—continued

Rule 700c (2)

“Form 64B

STATEMENT OF CLAIM IN PROCEEDINGS FOR ORDER UNDER SECTION 209ZG OF THE COMPANIES ACT 1955

OR

STATEMENT OF CLAIM IN PROCEEDINGS FOR ORDER UNDER SECTION 174 OF THE COMPANIES ACT 1993

(General heading—Form 1)

The plaintiff says:

1. The Company Limited (hereinafter called the defendant company) was in [State month and year] incorporated under the Companies Act 19.... and was reregistered under the Companies Act 1993 on [State month and year] */has not been reregistered under the Companies Act 1993*.

*Delete if not applicable

OR

1. The Company Limited (hereinafter called the defendant company) was in [State month and year] incorporated under the Companies Act 1993.

2. The registered office of the defendant company is at [State the full address of the registered office].

3. The affairs of the defendant company have been (or are being or are likely to be) conducted in a manner that is oppressive (or unfairly discriminatory or unfairly prejudicial) to the plaintiff in the plaintiff's capacity as a member*/shareholder* of the defendant company (or [State any other capacity]).

OR

3. An Act (or acts) of the defendant company have been (or are being or are likely to be) oppressive (or unfairly discriminatory or unfairly prejudicial) to the plaintiff in the plaintiff's capacity as a member*/shareholder* of the defendant company (or [State any other capacity]).

*Delete if not applicable

OR

[Where the case falls within section 173 (3) of the Companies Act 1955]

3. A report has been made in respect of the defendant company under section 172 of the Companies Act 1955.

4. The report has been referred to the Attorney-General under section 173 (1) of the Companies Act 1955.

5. The defendant company is liable to be put into liquidation under the Companies Act 1955.

6. It appears to the Attorney-General from the report that it is expedient to put the defendant company into liquidation by reason of circumstances suggesting—

SCHEDULE—*continued*“Form 64B—*continued*”

- *(a) That its business is being conducted with intent to defraud its creditors.
- *(b) That its business is being conducted with intent to defraud the creditors of [*Full name*].
- *(c) That its business is being conducted for a fraudulent or unlawful purpose.
- *(d) That its business is being conducted in a manner oppressive of part of its members.
- *(e) That it was formed for a fraudulent or unlawful purpose.
- *(f) That persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, or other misconduct towards it or towards its members.

[*Here set out in paragraphs the facts on which the plaintiff relies.*]

The plaintiff therefore applies, under section 209zc of the Companies Act 1955, for an order [*Set out the nature of the order sought.*]

*Delete if inapplicable

[*Subscribe memorandum in form 3.*]

SCHEDULE—continued

“Form 64c

Rule 700E (2) (a)

“NOTICE OF PROCEEDING FOR PUTTING COMPANY INTO LIQUIDATION
(or FOR ORDER UNDER SECTION 209ZG OF THE COMPANIES ACT 1955)
(or FOR ORDER UNDER SECTION 174 OF THE COMPANIES ACT 1993)

(General heading—Form 1)

TO [Full name of company] (hereinafter called the defendant company)
and

[Where a liquidator or interim liquidator has been appointed]

TO [Full name], [Address], [Description], the liquidator*/interim liquidator* of
the defendant company*

*Delete if not applicable

Take notice that the plaintiff is, by a statement of claim, making
application for an order that the defendant company be put into
liquidation under the Companies Act 1955 (or the Companies Act 1993) (or
for an order in respect of the defendant company under section 209ZG of
the Companies Act 1955) (or for an order in respect of the defendant
company under section 174 of the Companies Act 1993).

A copy of the statement of claim is served herewith.

The application will be heard in this Court at [Place] at
a.m./p.m. on [Date].

Take notice that unless, within 14 days after the date on which this
notice is served on you, you file in this office of this Court a statement of
your defence to the plaintiff’s claim, a copy of which is served herewith,
the plaintiff may proceed to a hearing and an order may be made for the
liquidation of the defendant company by the Court under the Companies
Act 1955 (or the Companies Act 1993) (or an order may be made in respect
of the defendant company under section 209ZG of the Companies Act
1955) (or an order may be made in respect of the defendant company
under section 174 of the Companies Act 1993).

Dated this day of 19 .

.....
Plaintiff (or Solicitor
for Plaintiff)

Your attention is particularly directed to the Memorandum endorsed
hereon or attached hereto.

MEMORANDUM

Advice

1. If the defendant company wishes to oppose the application or to
appear at the hearing, it is essential that it consult a solicitor without delay.
A company has no right to carry on proceedings in the Court except by a
solicitor. Nor can a company appear to conduct a proceeding except by
counsel.”

SCHEDULE—*continued*“Form 64C—*continued*”*Advertising*

2. The application to put the defendant company into liquidation under the Companies Act 1955 (or the Companies Act 1993) (or for the making in respect of the defendant company of an order under section 209zc of the Companies Act 1955 (or the Companies Act 1993) is to be advertised in the *New Zealand Gazette* and in a newspaper.

3. The advertisements will not be published until at least 7 days after the date on which the statement of claim is served on the defendant company.

Power of Court to restrain advertising and stay proceedings

[Delete this heading and paragraphs 4 and 5 if the application is not an application to put the defendant company into liquidation].

4. The Court has power to make an order restraining the publication of the advertisement and staying any further proceedings in relation to the liquidation.

5. The defendant company or, with the leave of the Court, any creditor or contributory or shareholder of the defendant company may apply for such an order within 7 days after the date of the service of the statement of claim on the defendant company.

Statement of defence

6. If the last day for filing your statement of defence falls on a day on which the office of the Court is closed, you may file your statement of defence on the next day on which that office is open.

7. In calculating the time for filing your statement of defence you must disregard the period that commenced with the 20th day of December and ends with the 20th day of January. [This paragraph must be deleted if it conflicts with a direction given by the Court.]

8. If you file a statement of defence, you must also, within the time limited for filing it in the office of the Court, serve a copy of the statement on the plaintiff and on any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

9. If a statement of defence is not filed on behalf of the defendant company within the time prescribed, counsel for the defendant company will not, without an order for extension of time or the special leave of the Court, be allowed to appear on the hearing. A company cannot appear in person. If it wishes to appear on the hearing, it must appear by counsel.

Appearance by persons other than the defendant company

10. Any person (other than the defendant company) who intends to appear on the hearing of the application must file an appearance—

(a) Stating that the person intends to appear; and

(b) Indicating whether the person supports or opposes the appointment of a liquidator by the Court (or the making in respect of the defendant company of an order under section 209zc of the Companies Act 1955) (or section 174 of the Companies Act 1993).”

11. Any person who files an appearance need not file a statement of defence.

SCHEDULE—continued

“Form 64c—continued

12. Every appearance must be filed not later than the second working day before the day appointed for the hearing.

13. If you fail to file an appearance within the time prescribed, neither you nor counsel on your behalf will, without an order for extension of time or the special leave of the Court, be allowed to appear on the hearing.

Office hours

14. The office hours of the Court are from 9.30 a.m. to 4 p.m. except on Court holidays.

Dated this day of 19 .

.....
(Deputy) Registrar.



Rule 700E (2) (b)

“Form 64D

VERIFYING AFFIDAVIT
(General heading—Form 1)

I, [Full name], of [Place of residence], [Occupation], swear that such of the allegations in the statement of claim herein (a copy of which is hereunto annexed, and marked with the letter “A”) as relate to my own acts and deeds [or, where the plaintiff is a firm, the acts and deeds of my firm] are true and such of those allegations as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at this day of 19 ,
before me—

A Solicitor of the High Court of New Zealand



SCHEDULE—continued

“Form 64E

Rule 700E (2) (b)

AFFIDAVIT VERIFYING STATEMENT OF CLAIM OF A LIMITED COMPANY

(General heading—Form 1)

I, [Full name], of [Place of residence], [Occupation], swear:

1. I am [a director], [the secretary] of Company Limited, the plaintiff in the above matter, and am duly authorised by the plaintiff to make this affidavit on its behalf.

2. Such of the statements in the statement of claim herein (a copy whereof is hereunto annexed and marked with the letter “A”) as relate to the acts and deeds of the plaintiff are true and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at this day of 19 , before me—

A Solicitor of the High Court of New Zealand

—

“Form 64F

Rule 700i (4)

ADVERTISEMENT OF APPLICATION FOR PUTTING COMPANY INTO LIQUIDATION

TAKE NOTICE that on [Date] an application for putting [Full name of company] into liquidation by the High Court was filed in the High Court at [Place].

The application is to be heard before the High Court at [Place] on [Date] at a.m./p.m.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The applicant is [Full name], whose address for service is

Further particulars may be obtained from the office of the Court or from the applicant or the applicant’s solicitor.

.....
(Solicitor for the)
Applicant

—

SCHEDULE—continued

Rule 700r (4)

“Form 64G

ADVERTISEMENT OF APPLICATION FOR ORDER UNDER SECTION 209ZG OF COMPANIES ACT 1955

(or FOR ORDER UNDER SECTION 174 OF COMPANIES ACT 1993)

TAKE NOTICE that on [Date] an application for an order under section 209ZG of the Companies Act 1955 (or section 174 of the Companies Act 1993) in respect of [Full name of company] was filed in the High Court at [Place].

The order sought is an order [Set out the nature of the order sought].

The application is to be heard before the High Court at [Place] on [Date] at a.m./p.m.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The applicant is [Full name], whose address for service is

Further particulars may be obtained from the office of the Court or from the applicant or the applicant’s solicitor.

.....
(Solicitor for the)
Applicant

Rule 700M (1)

“Form 64H

AFFIDAVIT OF SERVICE

(General heading—Form 1)

I, [Full name], of [Address], [Occupation], swear that I did on day, the day of 19, serve the defendant company with a statement of claim, verifying affidavit, and notice of proceeding (true copies of which are hereunto annexed and marked “A”, “B”, and “C” respectively), by [Specify the method by which service was effected].

Sworn at this day of 19 , before me—

A Solicitor of the High Court of New Zealand

*Delete if not applicable.

SCHEDULE—continued

“Form 64i

Rule 700r

APPEARANCE IN SUPPORT OF (or IN OPPOSITION TO) APPLICATION FOR PUTTING A COMPANY INTO LIQUIDATION (or FOR MAKING OF ORDER UNDER SECTION 209ZG OF THE COMPANIES ACT 1955) (or FOR MAKING OF ORDER UNDER SECTION 174 OF THE COMPANIES ACT 1993)

(General heading—Form 1)

I, [Full name], of [Address and description] intend to appear on the hearing of this proceeding.

I support (or oppose) the application for putting the defendant into liquidation by the High Court (or the application for an order under section 209zG of the Companies Act 1955 (or section 174 of the Companies Act 1993))”.

*I am a creditor for \$..... in the defendant company.

I am a contributory/shareholder* holding [State number and class of shares held] shares in the defendant company.

Dated this day of 19 .

(Solicitor or Counsel for) Person filing the Appearance

*Delete if inapplicable

[Subscribe memorandum in form 3.]

“Form 64j

Rule 700za (2)

NOTIFICATION TO LIQUIDATOR OF ORDER PUTTING COMPANY INTO LIQUIDATION

To [Full name], liquidator [Full address].

ORDER pronounced this day by the Honourable Justice [or as the case may be] that the undermentioned defendant company be put into liquidation by the Court under the Companies Act 1955 (or the Companies Act 1993).

Table with 4 columns: Name of company, Registered Office of company, Plaintiff's Solicitor, Date of Filing of Statement of Claim

SCHEDULE—continued

Rule 700zB (2)

“Form 64k

NOTIFICATION TO INTERIM LIQUIDATOR OF APPOINTMENT

To [Full name], interim liquidator [Full address].

ORDER pronounced this day by the Honourable Justice [or as the case may be] for the appointment of (a) as interim liquidator prior to any order putting company into liquidation being made.

Name of company	Registered Office of company	Plaintiff's Solicitor	Date of Filing of Statement of Claim

(a) Insert “the Official Assignee” or, if some other person has been appointed, the name, address, and description of that person.



Rule 700zD (1)

“Form 64L

ORDER PUTTING COMPANY INTO LIQUIDATION

(General heading—Form 1)

Before the Honourable Justice day, the day of 19....

UPON the application of the above-named plaintiff, on the day of.... 19...., and upon the hearing for the plaintiff, and for and upon reading the statement of claim, the affidavit of [Full name] verifying the allegations in the statement of claim, the New Zealand Gazette of the day of 19, the newspaper of the day of 19.... [Enter any other papers], each containing an advertisement of the said statement of claim [Enter any other evidence], this Court doth order that the defendant company be put into liquidation by this Court under the provisions of the Companies Act 1955 (or the Companies Act 1993), and that [State full name of liquidator] be appointed liquidator.

And it is ordered that the cost of of the said application be taxed and paid out of the assets of the defendant company.

By the Court,

..... (Deputy) Registrar.



SCHEDULE—continued

“Form 64M

Rule 700zd (2)

ORDER APPOINTING AN INTERIM LIQUIDATOR

(General heading—Form 1)

Before the Honourable Justice
..... day, the day of 19....

UPON the application, etc., and upon reading, etc., the Court doth hereby appoint [State full name of interim liquidator] to be liquidator of the defendant company. And the Court doth hereby limit and restrict the powers of the said interim liquidator to the following acts, that is to say [Describe the acts which the interim liquidator is to be authorised to do and the property of which the interim liquidator is to take possession].

By the Court,

.....
(Deputy) Registrar.”

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

These rules amend the High Court Rules. The rules come into force on 1 July 1994. The rules make a number of consequential amendments to the High Court Rules as a result of the enactment of the Companies Act 1993 and the Companies Amendment Act 1993 both of which Acts come into force on 1 July 1994.

The amendments take account of the fact that, as from 1 July 1994, new companies may be incorporated only under the Companies Act 1993 and that the Companies Act 1955 will continue to apply to companies existing before that date (except for those companies that reregister under the Companies Act 1993).

Rule 2 amends rule 60, which relates to the power to order the giving of security for costs, and extends the rule to apply where the plaintiff is a subsidiary under the Companies Act 1993 of an overseas corporation.

Rule 3 amends rule 124 by omitting reference to the winding up of a company and substituting a reference to liquidation. On and after 1 July 1994 companies may be put into liquidation under the Companies Act 1955 or the Companies Act 1993, as the case may be. The term “winding up” will no longer be used.

A large number of the amendments to the rules fall into this category.

Rule 4 substitutes a new rule 198 relating to service on New Zealand corporations. The new rule distinguishes between service of documents on companies and other corporations. The new rule makes it clear that service on a company must be effected in accordance with the Companies Act 1955 or the Companies Act 1993, as the case may be. The provision of the existing rule will continue to apply in relation to service on other corporations.

Rule 5 substitutes a new rule 199 relating to service on overseas corporations and is similar to the new rule 4.

The amendments to rules 416b, 416c, and 416k substitute references to winding up with references to liquidation. These rules form part of a series of rules relating to the procedure that applies where the Court makes under rule 458A an order for reduction of share capital. Such an order will be able to be made only in relation to a company registered under the Companies Act 1955.

Rule 9 effects a consequential change in terminology in rule 425.

Rules 10, 11, and 12 extend Part IV to proceedings under the Companies Act 1993. Part IV makes special provision in the case of proceedings under certain Acts and other specified proceedings.

Rule 12 amends rule 458b. Rule 458b provides that an application under section 205 of the Companies Act 1955 may be made by originating application. That section confers power to approve amalgamations and reconstructions. With effect from 1 July 1994 the corresponding power will be contained in section 209r of that Act and, in the case of companies under the Companies Act 1993, section 236 of that Act. Rule 458b is extended to apply to both sections.

The rule is also amended to enable applications to set aside a statutory demand under section 264 of the Companies Act 1955 or section 290 of the Companies Act 1993 to be by way of originating application.

Rules 14 to 28 amend a number of rules contained in Part IXA which relates to the procedure in the case of winding up by the Court. The amendments principally effect changes in terminology and extend Part IXA to liquidation under the Companies Act 1993.

Rule 29 substitutes new forms for the existing forms 64A to 64O. The changes to the forms are principally consequential.

Rule 30 is a transitional provision. The new rules will not affect existing windings up. The High Court Rules, as in force before 1 July 1994, will continue to apply to existing windings up.

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

Date of notification in *Gazette*: 30 June 1994.

These rules are administered in the Department of Justice.