



High Court Amendment Rules 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 19th day of June 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

1 Title

- (1) These rules are the High Court Amendment Rules 2000.
- (2) In these rules, the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908 are called "the High Court Rules".

2 Commencement

These rules come into force on 1 August 2000.

3 Review of decisions of Masters

Rule 61C of the High Court Rules is amended by adding the following subclause:

- “(7) Notice of every application for leave to appeal under subclause (6) must be filed and served within 7 days after the decision of the Judge was given.”

4 Transitional provision relating to reviews of decisions of Masters

Rule 61C of the High Court Rules, as in force immediately before the coming into force of rule 3 of these rules, continues to apply to every appeal from a decision of a Judge given before the coming into force of rule 3 on an application for review of an order or decision made by a Master in Chambers.

5 Review of orders

- (1) Rule 264(2) of the High Court Rules is amended by inserting, after the word “filed”, the words “and served”.
- (2) Rule 264 of the High Court Rules is amended by adding the following subclause:
- “(5) No application may be made under this rule to vary or rescind an order made or decision given by a Master in Chambers.”

6 Transitional provision relating to reviews of orders

Rule 264(2) of the High Court Rules, as in force immediately before the coming into force of rule 5 of these rules, continues to apply to every application made before the coming into force of rule 5 to vary or rescind an order made or decision given on an interlocutory application.

7 Application of Part IV to proceedings under certain Acts

Rule 448(1)(c) of the High Court Rules is revoked.

8 New rule 448C inserted

- (1) The High Court Rules are amended by inserting, after rule 448B, the following rule:

“448C Application of this Part to certain proceedings under Companies Acts

This Part applies to every proceeding—

- “(a) in which the relief claimed is solely under the Companies Act 1955 or the Companies Act 1993, as the case may be; and
- “(b) that is not a proceeding properly brought under Part IVA or Part IXA.”

- (2) Rule 449A is consequentially amended by inserting, after the expression “448B”, the expression “or rule 448C”.

9 Application of Part IVA (originating applications)

- (1) Rule 458D(1)(a) of the High Court Rules is amended by revoking subparagraphs (v) and (vi), and substituting the following subparagraphs:

“(v) sections 108, 209J(1)(d), 209O(1)(c), 209O(2)(c), 209R, 264, 268(2), 269, and 273 of the Companies Act 1955:

“(vi) sections 228(1)(d), 233(1)(c), 233(2)(c), 236, 290, 294(2), 295, and 299 of the Companies Act 1993:”.

- (2) Rule 458D of the High Court Rules is amended by adding to subclause (1)(a) the following subparagraph:

“(xxiii) the Arbitration Act 1996 (other than article 35 of the First Schedule, and clause 5 of the Second Schedule, of that Act):”.

- (3) Rule 458D of the High Court Rules is amended by adding the following subclause:

- “(5) Despite subclause (1)(a)(xxiii), a second or subsequent application to the Court under the Arbitration Act 1996 with respect to the same arbitration, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.”

10 New rule 458EA inserted

The High Court Rules are amended by inserting, after rule 458E, the following rule:

“458EA Originating applications relating to certain proceedings under Companies Acts

“(1) Despite rule 458E(1),—

- “(a) an originating application under section 268(2) of the Companies Act 1955 or section 269 of that Act must be filed in the same office of the Court in which the notice under section 268(1) of that Act was filed; and
- “(b) an originating application under section 294(2) of the Companies Act 1993 or section 295 of that Act must be filed in the same office of the Court in which the notice under section 294(1) of that Act was filed; and
- “(c) an originating application under section 273 of the Companies Act 1955 or section 299 of the Companies Act 1993, as the case may be, must be filed in the proper office of the Court, as determined in accordance with rule 700ZK(1).

“(2) The affidavit filed in support of—

- “(a) an originating application under section 268(2) of the Companies Act 1955 must have attached to it a copy of the notice under section 268(1) of that Act; and
- “(b) an originating application under section 294(2) of the Companies Act 1993 must have attached to it a copy of the notice under section 294(1) of that Act.”

11 Directions as to service

Rule 458H of the High Court Rules is amended by adding the following subclause:

- “(3) Nothing in this rule applies to an originating application under any of the following provisions:
 - “(a) sections 264, 268(2), 269, and 273 of the Companies Act 1955;
 - “(b) sections 290, 294(2), 295, and 299 of the Companies Act 1993.”

12 Directions before hearing

Rule 458I of the High Court Rules is amended by revoking subclause (1), and substituting the following subclause:

- “(1) At any time before the hearing of an originating application,—
 - “(a) the Court may, of its own motion, do any of the following:

- “(i) give such directions regarding the proceeding commenced by the filing of the application as the Court thinks fit:
- “(ii) direct the parties to file a statement of claim and a statement of defence respectively, if the application has been made under any of the following provisions:
 - “(A) sections 268(2), 269, and 273 of the Companies Act 1955:
 - “(B) sections 294(2), 295, and 299 of the Companies Act 1993:
- “(b) any party may file an interlocutory application for directions regarding the proceeding commenced by the filing of the application.”

13 New rule 540 substituted

The High Court Rules are amended by revoking rule 540, and substituting the following rule:

“540 Time and mode of giving judgment

- “(1) A Judge may give a judgment orally or in writing.
- “(2) Except in the case of a judgment on an *ex parte* application, a Judge may give a judgment orally only if the affected parties or their counsel have been given a reasonable opportunity to—
 - “(a) be present when the judgment is given; or
 - “(b) hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.
- “(3) A judgment is given orally when the Judge pronounces it, with or without reasons.
- “(4) A written judgment is given when the judgment—
 - “(a) is signed by the Judge; and
 - “(b) bears a date and time that purport to be the date on which and the time at which the Judge signed the judgment.
- “(5) The date and time referred to in subclause (4)(b) are deemed to be the date on which and the time at which the judgment is given.
- “(6) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.”

14 Judgments to be sealed and dated

Rule 541 of the High Court Rules is amended by revoking subclauses (3) and (4), and substituting the following subclauses:

- “(3) A judgment may be sealed—
 - “(a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or
 - “(b) if no such direction is given, at any time after the judgment has been given.
- “(4) A sealed judgment must state—
 - “(a) the date on which, in accordance with rule 540, the judgment is given; and
 - “(b) the date on which it is sealed.”

15 New rule 542 substituted

The High Court Rules are amended by revoking rule 542, and substituting the following rule:

“542 When judgment takes effect

- “(1) Subject to rule 6 of the Court of Appeal (Civil) Rules 1997, a judgment takes effect when it is given.
- “(2) Despite subclause (1), no step may be taken on a judgment before it has been sealed.
- “(3) A party who has a judgment sealed must forthwith serve a sealed copy of the judgment on every other party who has given an address for service.”

16 Application of Part (companies liquidation)

Rule 700A of the High Court Rules is amended by revoking subclause (2), and substituting the following subclauses:

- “(2) Rules 700ZJ and 700ZK apply in respect of a notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be.
- “(3) The other Parts of these rules, and the general practice of the Court, apply to applications to which subclause (1) applies and notices to which subclause (2) applies except in so far as they are modified by or inconsistent with this Part or the Companies Act 1955 or the Companies Act 1993, as the case may be.”

17 Procedure in respect of miscellaneous applications

Rule 700ZH of the High Court Rules is amended by revoking subclause (3), and substituting the following subclause:

- “(3) To avoid doubt, nothing in subclause (1) applies to—
- “(a) an application to which rule 700ZI applies; or
 - “(b) an application to which Part IV or Part IVA applies.”

18 New heading and rules 700ZJ and 700ZK inserted

The High Court Rules are amended by inserting, after rule 700ZI, the following heading and rules.

“Notice for setting aside voidable transactions and charges

“700ZJ Liquidator’s notice to set aside voidable transaction or voidable charge

A notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be, must—

- “(a) contain the heading in form 64N; and
- “(b) be in form 64O or form 64P or form 64Q or form 64R, as the case may require; and
- “(c) comply with rules 36 and 44 (with any necessary modifications).

“700ZK Proper office of Court

“(1) A notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993, as the case may be, must,—

- “(a) if the company has been put into liquidation by the Court, be filed in the office of the Court in which the order putting the company into liquidation was made under the same file number as the liquidation file number (even though the heading of the notice is different); and
- “(b) in any other case, be filed in the office of the Court in the town where, or the office of the Court in the town nearest to where, the registered office of the company in liquidation was situated at the date of liquidation.

“(2) If more than 1 notice under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993 relating to the same company in liquidation has been filed in accordance with subclause (1)(b), those notices must be filed

under the same file number (even though the heading of each notice is different).”

19 Application of Part X (appeals to High Court)

Rule 701(1) of the High Court Rules is amended by inserting, after the expression “1957”, the words “or the Arbitration Act 1996”.

20 New Part 17 inserted

The High Court Rules are amended by inserting, after Part 16, the following Part:

**“Part 17
“Arbitration Act 1996**

“Preliminary provisions

“877 Interpretation

In this Part, unless the context otherwise requires,—

“**Act** means the Arbitration Act 1996

“**Arbitral tribunal** has the same meaning as in section 2(1) of the Act

“**First Schedule** means the First Schedule of the Act

“**Second Schedule** means the Second Schedule of the Act.

“878 Application of this Part

This Part applies to any application to the Court—

“(a) by way of appeal under clause 5(1)(a) or (b) of the Second Schedule:

“(b) for leave to appeal under clause 5(1)(c) of the Second Schedule:

“(c) for entry of an award as a judgment under article 35 of the First Schedule.

“Appeals under clause 5(1)(a) or (b) of Second Schedule

“879 Appeals

“(1) In cases to which clause 5(1)(a) or (b) of the Second Schedule applies, the plaintiff must commence the appeal by filing an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

- “(2) The originating application must be in form 108.
- “(3) Rule 44 applies in relation to the originating application.
- “(4) This rule has effect despite anything in rule 106 or Part IV.
- “(5) The originating application must not name the arbitral tribunal as a defendant.

“880 **Affidavit to be filed in support**

At the same time as the originating application is filed, the plaintiff must file an affidavit—

- “(a) exhibiting the award; and
- “(b) proving the matters set out in clause 5(1)(a) or (b), as the case may be, of the Second Schedule.

“881 **Amendment of grounds of appeal**

The grounds of the appeal may subsequently be amended by leave of the Court.

“882 **Service**

Either before or immediately after the filing of the originating application and the affidavit referred to in rule 880, the plaintiff must serve copies of both documents on the defendant.

“883 **Notice of opposition to application**

- “(1) If the defendant intends to oppose the originating application, the defendant must, within 14 days after service of the originating application, file in the Court and serve on the plaintiff and on all other parties a notice of opposition.
- “(2) The notice of opposition—
 - “(a) must state the defendant’s intention to oppose the application and the grounds of opposition, including a denial of any fact stated in the originating application that is not admitted and a statement of any fact or matter, not mentioned in the originating application, upon which the defendant relies; and
 - “(b) must contain a reference to any statutory provision, regulation, or rule, or any principle of law on which the defendant relies; and
 - “(c) must be in form 21, with such modifications as are appropriate.

“884 Cross-appeal**“(1) If—**

“(a) a defendant wishes to contend on the hearing of the originating application that another question of law arises out of the award and that it therefore wishes to cross-appeal; and

“(b) clause 5(1)(a) or (b) of the Second Schedule applies with respect to that other question of law,—

the defendant must, within 14 days after service of the plaintiff’s originating application, file in the Court and serve on the plaintiff and on all other parties a notice of cross-appeal.

“(2) The notice of cross-appeal must be in form 108, with such modifications as are appropriate.

“(3) This Part applies to cross-appeals with all necessary modifications.

“885 Directions conference**“(1) The Court—**

“(a) must call a directions conference if a notice of opposition is filed; or

“(b) if no notice of opposition is filed, may call a directions conference at any time, either on the application of any party or without any such application.

“(2) At least 3 working days before that conference, the parties must file and serve, where necessary, 1 or more memoranda specifying the matter or matters upon which directions are sought and, as far as possible, the directions sought.

“(3) At the conference the Court may give such directions as it thinks fit with a view to facilitating and expediting the appeal.

“(4) In particular, but without limiting the powers of the Court under this rule, the Court may give directions as to the—

“(a) preparation of the record in accordance with rule 886 or in such other manner as the Court thinks fit; or

“(b) transcription of the evidence in accordance with rule 887.

“(5) Despite subclauses (1) to (4), the Court may, at any time before the hearing of an appeal has commenced, exercise any of the powers specified in subclauses (3) and (4) without holding a directions conference.

“886 Record to be filed

- “(1) This rule applies where the Court gives a direction under rule 885(4)(a) (whether at a directions conference or otherwise), except to the extent that that direction provides otherwise.
- “(2) The plaintiff must, within 28 days of the direction being given, serve on the defendant a copy of the record of the arbitration, properly indexed.
- “(3) The record of the arbitration comprises—
- “(a) any application, documents, written submissions, statements, reports, and other papers lodged with the arbitral tribunal; and
 - “(b) any transcript of evidence; and
 - “(c) any exhibits.
- “(4) Within 7 days after service of the proposed record and index, the defendant must—
- “(a) agree the record and index and signify such agreement by signing the index; or
 - “(b) advise the plaintiff of changes sought to the proposed record or index.
- “(5) The plaintiff must then promptly file in the Court a copy of the record, properly indexed. If the defendant has sought changes and the plaintiff has not agreed to the changes, then the plaintiff must file a memorandum setting out the changes sought by the defendant and the plaintiff’s reasons for not agreeing to the changes. The plaintiff must also file any further documents that the defendant contends form part of the record.
- “(6) Despite subclause (3), if the parties agree that any part of the record is unnecessary for the hearing of the appeal, that part must be omitted from the record filed.
- “(7) The plaintiff must meet the cost of preparing the record, which is a disbursement in the proceeding.
- “(8) If an appeal is to be heard by more than 1 Judge, the Court may direct the plaintiff to file in the Court a further copy or further copies of the record.

“887 Transcription of evidence

- “(1) This rule applies where the Court gives a direction under rule 885(4)(b) (whether at a directions conference or otherwise).

- “(2) If any part of the evidence given in the arbitration was recorded but has not been transcribed, the Court may direct, subject to such conditions as it thinks fit,—
- “(a) if the ground of appeal is that there was no evidence on which the arbitral tribunal could properly have reached the decision or any part of the decision, that a transcript be made of all evidence given material to the issues involved and specified in the originating application:
 - “(b) if the ground of appeal is any other question of law, and the Court is satisfied that a proper determination of the question of law so requires, that a transcript be made of such of the evidence given as appears necessary for the determination of the question of law specified in the originating application.
- “(3) If the Court gives a direction to which this rule applies, the plaintiff must, within 28 days of the direction being given, serve on the defendant the proposed transcript.
- “(4) Within 7 days after service of the proposed transcript, the defendant must—
- “(a) agree the transcript and signify such agreement by an appropriate certification of the transcript; or
 - “(b) advise the plaintiff of changes sought or of additional evidence to be transcribed.
- “(5) The plaintiff must then promptly file the transcript in the Court. If the defendant has sought changes and the plaintiff has not agreed to the changes, then the plaintiff must file a memorandum setting out the changes sought by the defendant and the plaintiff’s reasons for not agreeing to the changes.
- “(6) If the defendant has sought to have additional evidence transcribed and the plaintiff has disputed the relevance of, or the necessity of transcription of, that evidence for the hearing of the appeal, the defendant may file in the Court a transcript of that evidence.
- “(7) The cost of preparing any transcript is a disbursement in the proceeding.
- “(8) If an appeal is to be heard by more than 1 Judge, the Court may direct any party submitting a transcript to file in the court a further copy or further copies.

“888 Setting down appeal for hearing

At any time after—

“(a) copies of the originating application and the affidavit referred to in rule 880 have been served in accordance with rule 882; and

“(b) any documents required to be filed in the Court by directions given at a directions conference or otherwise have been filed,—

any party may set the appeal down for hearing by filing a praecipe in form 33, and rules 426, 428, 429, and 430 to 436 apply with all necessary modifications.

“889 Hearing of appeal

“(1) Every appeal is to be by way of rehearing.

“(2) In any appeal, the Court has all the powers and discretions of the arbitral tribunal—

“(a) to hold the hearing or any part of it in private; and

“(b) to make orders prohibiting the publication of any report or description of the proceedings or any part of them.

“890 Leave to appeal to Court of Appeal

Any application to the High Court under clause 5(5) of the Second Schedule for leave to appeal to the Court of Appeal must be filed within 28 days of the High Court’s determination of the appeal under clause 5(4) of the Second Schedule.

“Leave to appeal under clause 5(1)(c) of Second Schedule

“891 Applications for leave to appeal

“(1) In cases to which clause 5(1)(c) of the Second Schedule applies, the plaintiff must commence the proceeding by filing an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

“(2) The originating application must be in form 109.

“(3) Rule 44 applies in relation to the originating application.

“(4) This rule has effect despite anything in rule 106 or Part IV.

“(5) The originating application must not name the arbitral tribunal as a defendant.

“(6) Rules 880 to 883 apply, with all necessary modifications.

“892 Submissions

“(1) Within 14 days of—

“(a) the date on which the plaintiff is served with a notice of opposition; or

“(b) the date by which the defendant had to file a notice of opposition if the defendant wished to oppose the application,—

the plaintiff must file the following:

“(c) submissions as to why leave should be granted:

“(d) copies of any authorities relied on.

“(2) Copies of the materials filed must immediately be served on any defendant who has filed and served a notice of opposition.

“(3) At any such hearing, unless otherwise directed by the Judge, the plaintiff or his or her counsel is restricted to 30 minutes, the defendant or his or her counsel is restricted to 30 minutes, and the plaintiff or his or her counsel is restricted to 10 minutes by way of reply.

“893 Granting leave

“(1) If the Court grants leave, it must not give reasons unless, in the opinion of the Court, the circumstances require it to do so.

“(2) The Court must give directions for the future conduct of the appeal.

“(3) The directions may include any directions that could have been given under rule 885.

“(4) Subject to any directions of the Court, the plaintiff must, within 14 days of the Court’s decision, file and serve a memorandum in numbered paragraphs setting out the grounds of appeal with such reasonable particularity as to give full advice of the issues involved to the Court and the other parties.

“(5) Subject to any directions of the Court, the defendant must, within 28 days of the Court’s decision, file and serve a memorandum answering the plaintiff’s memorandum.

“(6) Subject to any directions of the Court, rules 888 and 889 apply to the appeal.

“894 Refusing leave

- “(1) If the Court refuses to grant leave, it must give reasons.
- “(2) Any application to the High Court under clause 5(5) of the Second Schedule for leave to appeal to the Court of Appeal from the High Court’s refusal to grant leave to appeal must be filed within 28 days of the High Court’s refusal.

*“Entry of award as judgment under article 35 of
First Schedule*

“895 Entry of judgment where all parties agree

- “(1) If all parties to an award agree that it may be entered as a judgment, they may apply to any Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.
- “(2) If the Registrar is satisfied—
- “(a) that all parties have agreed; and
 - “(b) with respect to the matters set out in article 35(2) of the First Schedule,—
- the Registrar must enter the award as a judgment as soon as practicable.

“896 Entry of judgment in other cases

- “(1) In all other cases, a party to an award who wishes to enforce it may—
- “(a) enforce it by action; or
 - “(b) apply to the Court for entry of the award as a judgment.
- “(2) If a party elects the method set out in subclause (1)(a), the party must commence an ordinary proceeding under Part II.
- “(3) If a party elects the method set out in subclause (1)(b), the party must apply to the Court in accordance with the procedure set out in rules 897 to 901.

“897 Application for entry of award as judgment

- “(1) The party to the award must file an originating application in the proper office of the Court, as determined in accordance with rule 107(1).

- “(2) The originating application must be in form 110.
- “(3) Rule 44 applies in relation to the originating application.
- “(4) This rule has effect despite anything in rule 106 or Part IV.
- “(5) The originating application must not name the arbitral tribunal as a defendant.

“898 **Affidavit to be filed in support**

At the same time as the originating application is filed, the plaintiff must file an affidavit proving the matters set out in article 35(2) of the First Schedule.

“899 **Service**

Either before or immediately after the filing of the originating application and the affidavit referred to in rule 898, the plaintiff must serve copies of both documents on the defendant.

“900 **Entry as judgment where defendant takes no steps**

- “(1) If the defendant takes no steps within 14 days after service of the originating application, the Registrar must, on the application of the plaintiff, enter the award as a judgment as soon as practicable.
- “(2) An application to the Registrar under subclause (1) need not be served on the defendant, and may be made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment.

“901 **Opposition to entry as judgment**

- “(1) If the defendant wishes to oppose the originating application, the defendant must, within 14 days after service of the originating application, file and serve an application seeking an order that recognition and enforcement be refused in terms of article 36 of the First Schedule.
- “(2) The application referred to in subclause (1) is treated as if it were an originating application under Part IVA and must be disposed of in accordance with Part IVA.
- “(3) The plaintiff’s application to enforce the award by entry as a judgment is stayed pending the determination of the defendant’s application referred to in subclause (1). When determining that application, the Court must also determine the

plaintiff's application to enforce the award by entry as a judgment."

21 Forms amended

- (1) Form 64F in the First Schedule of the High Court Rules is amended—
 - (a) by omitting from the fourth paragraph the word "applicant", and substituting the word "plaintiff":
 - (b) by omitting from the fifth paragraph the words "applicant or the applicant's solicitor", and substituting the words "plaintiff or the plaintiff's solicitor":
 - (c) by omitting from the signature block the words "the Applicant", and substituting the word "Plaintiff".
- (2) Form 64G in the First Schedule of the High Court Rules is amended—
 - (a) by omitting from the fifth paragraph the word "applicant", and substituting the word "plaintiff":
 - (b) by omitting from the sixth paragraph the words "applicant or the applicant's solicitor", and substituting the words "plaintiff or the plaintiff's solicitor":
 - (c) by omitting from the signature block the words "the Applicant", and substituting the word "Plaintiff".

22 New forms 64N to 64R and 108 to 110 inserted in First Schedule

The First Schedule of the High Court Rules is amended by inserting, in their appropriate numerical order, the forms set out in the Schedule of these rules.

Transitional provisions relating to voidable transactions

23 Transitional provisions relating to voidable transactions

Rules 7 to 12, 16 to 18, and 22 apply only in relation to notices served under section 268(1) of the Companies Act 1955 or section 294(1) of the Companies Act 1993 (as the case may be) after the commencement of these rules.

Transitional provisions relating to arbitration applications

24 Transitional provisions relating to arbitration applications

Unless the Court directs otherwise in any particular case, rules 9(2) and (3), 19, 20, and 22 do not apply in respect of any application referred to in rule 878 of the High Court Rules that is made to the Court before the date on which these rules come into force.

r 22

Schedule**New forms 64N to 64R and 108 to 110 inserted in
First Schedule of High Court Rules**

r 700ZJ(a)

Form 64N**General heading for notices in forms 64O to 64R**In the High Court of New Zealand
[*Place*] RegistryFile no: [*Number*]

*The Companies Act 1955/*The Companies Act 1993

*Delete if inapplicable

In the matter of the liquidation of

[*Full name of company in liquidation*]Between [*Full name of liquidator*], liquidatorAnd [*Here insert full name, place of residence, and occupation of intended
recipient of notice*]

Form 64O

r 700ZJ(b)

Notice to set aside voidable transaction under
Companies Act 1955

[General heading as in form 64N]

Take notice that—

- 1 *[Full name]*, the liquidator of *[Full name of company in liquidation]* (the **company**) wishes to have set aside the following transaction by the company that is voidable under section 266 of the Companies Act 1955: *[Details of transaction to be set aside, including dates, amounts, and nature]*.
- 2 The company was put into liquidation by the appointment of a liquidator on *[Date and time]* by—
 - *• special resolution of those shareholders entitled to vote and voting on the question
 - *• the board of the company on the occurrence of an event specified in the memorandum or articles
 - *• the High Court at *[Place]* under proceeding No *[Number]*, as a result of an application for the appointment of a liquidator that was filed on *[Date]*.

*Delete if inapplicable
- 3 The property or value that the liquidator wishes to recover is *[Details of property or value]*.
- 4 In giving this notice, the liquidator relies on the following grounds:
Note: Here specifically and separately address each element of section 266 of the Companies Act 1955.
- 5 A person may apply to the Court for an order that the transaction not be set aside if the person—
 - (a) would be affected by the setting aside of the transaction; and
 - (b) considers that the transaction is not voidable.
- 6 In the case of a transaction that is voidable under section 266 of the Companies Act 1955, the transaction is set aside on the 28th day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the transaction not be set aside.
- 7 If 1 or more persons have applied to the Court for an order that the transaction not be set aside, the transaction is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at *[Place]* *[Date]*.

.....
(Solicitor or Counsel for)
the Liquidator

Form 64O—*continued*

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Important information for recipient of notice

Legal advice

- 1 You are strongly recommended to consult a solicitor about this notice 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.

Legal aid

- 2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that transaction not be set aside

- 3 You may apply to the Court for an order that the transaction not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

- 4 If you intend to apply to the Court for an order that the transaction not be set aside and the 28th day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

28th day after date of service of notice	Last day for filing
Saturday or Sunday	The Friday before
Labour Day or the Sovereign's Birthday	The Friday before
Anzac Day, Waitangi Day, or the day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open
A day in the period beginning on Good Friday and ending with the close of the Tuesday following Easter	The Thursday before Good Friday
A day in the period beginning on 24 December and ending with the close of 3 January (or 4 January, if 3 January is a Sunday or a Monday)	23 December, unless 23 December is a Saturday or a Sunday, in which event the last day for filing is the Friday before (either 21 or 22 December)

Office hours

- 5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Form 64P
 Notice to set aside voidable charge under
 Companies Act 1955

r 700ZJ(b)

[General heading as in form 64N]

Take notice that—

- 1 *[Full name]*, the liquidator of *[Full name of company in liquidation]* (the **company**) wishes to have set aside the following charge by the company that is voidable under section 267 of the Companies Act 1955:
[Details of charge to be set aside, including dates, amounts].
- 2 The company was put into liquidation by the appointment of a liquidator on *[Date and time]* by—
 - *• special resolution of those shareholders entitled to vote and voting on the question
 - *• the board of the company on the occurrence of an event specified in the memorandum or articles
 - *• the High Court at *[Place]* under proceeding No *[Number]*, as a result of an application for the appointment of a liquidator that was filed on *[Date]*.
 *Delete if inapplicable
- 3 In giving this notice, the liquidator relies on the following grounds:
Note: Here specifically and separately address each element of section 267 of the Companies Act 1955.
- 4 A person may apply to the Court for an order that the charge not be set aside if the person—
 - (a) would be affected by the setting aside of the charge; and
 - (b) considers that the charge is not voidable.
- 5 In the case of a charge that is voidable under section 267 of the Companies Act 1955, the charge is set aside on the 28th day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the charge not be set aside.
- 6 If 1 or more persons have applied to the Court for an order that the charge not be set aside, the charge is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at *[Place]* *[Date]*.

.....
 (Solicitor or Counsel for)
 the Liquidator

To the Registrar of the High Court at *[Place]*.

And to *[Full names of the parties to be served]*.

[Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3].

Form 64P—*continued***Important information for recipient of notice***Legal advice*

- 1 You are strongly recommended to consult a solicitor about this notice 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.

Legal aid

- 2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that charge not be set aside

- 3 You may apply to the Court for an order that the charge not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

- 4 If you intend to apply to the Court for an order that the charge not be set aside and the 28th day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

28th day after date of service of notice	Last day for filing
Saturday or Sunday	The Friday before
Labour Day or the Sovereign's Birthday	The Friday before
Anzac Day, Waitangi Day, or the day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open
A day in the period beginning on Good Friday and ending with the close of the Tuesday following Easter	The Thursday before Good Friday
A day in the period beginning on 24 December and ending with the close of 3 January (or 4 January, if 3 January is a Sunday or a Monday)	23 December, unless 23 December is a Saturday or a Sunday, in which event the last day for filing is the Friday before (either 21 or 22 December)

Office hours

- 5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Form 64Q

r 700ZJ(b)

Notice to set aside voidable transaction under Companies Act 1993

[General heading as in form 64N]

Take notice that—

- 1 [Full name], the liquidator of [Full name of company in liquidation] (the **company**) wishes to have set aside the following transaction by the company that is voidable under section 292 of the Companies Act 1993: [Details of transaction to be set aside, including dates, amounts, and nature].
- 2 The company was put into liquidation by the appointment of a liquidator on [Date and time] by—
 - *• special resolution of those shareholders entitled to vote and voting on the question
 - *• the board of the company on the occurrence of an event specified in the constitution
 - *• the High Court at [Place] under proceeding No [Number], as a result of an application for the appointment of a liquidator that was filed on [Date].
 *Delete if inapplicable
- 3 The property or value that the liquidator wishes to recover is [Details of property or value].
- 4 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of section 292 of the Companies Act 1993.
- 5 A person may apply to the Court for an order that the transaction not be set aside if the person—
 - (a) would be affected by the setting aside of the transaction; and
 - (b) considers that the transaction is not voidable.
- 6 In the case of a transaction that is voidable under section 292 of the Companies Act 1993, the transaction is set aside on the 20th working day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the transaction not be set aside.
- 7 If 1 or more persons have applied to the Court for an order that the transaction not be set aside, the transaction is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at [Place] [Date].

.....
(Solicitor or Counsel for)
the Liquidator

Form 64Q—*continued*

To the Registrar of the High Court at [*Place*].

And to [*Full names of the parties to be served*].

[*Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3*].

Important information for recipient of notice

Legal advice

- 1 You are strongly recommended to consult a solicitor about this notice 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.

Legal aid

- 2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that transaction not be set aside

- 3 You may apply to the Court for an order that the transaction not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

- 4 If you intend to apply to the Court for an order that the transaction not be set aside and the 20th working day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

20th working day after date of service of notice	Last day for filing
The Tuesday following Easter	The Thursday before Good Friday
24 December	23 December in the same year, unless 24 December is a Monday, in which event the last day for filing is 21 December
3 January	23 December in the previous year, unless 3 January is a Wednesday or a Thursday, in which event the last day for filing is 21 December in the previous year
The day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open

Office hours

- 5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Form 64Q—*continued**Definition of working day (Companies Act 1993)*

- 6 **Working day** means a day of the week other than—
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
 - (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
 - (c) if 1 January in any year falls on a Friday, the following Monday; and
 - (d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

r 700ZJ(b)

Form 64R

Notice to set aside voidable charge under
Companies Act 1993*[General heading as in form 64N]***Take notice that—**

- 1 *[Full name]*, the liquidator of *[Full name of company in liquidation]* (the **company**) wishes to have set aside the following charge by the company that is voidable under section 293 of the Companies Act 1993:
[Details of charge to be set aside, including dates, amounts].
- 2 The company was put into liquidation by the appointment of a liquidator on *[Date and time]* by—
 - *• special resolution of those shareholders entitled to vote and voting on the question
 - *• the board of the company on the occurrence of an event specified in the constitution
 - *• the High Court at *[Place]* under proceeding No *[Number]*, as a result of an application for the appointment of a liquidator that was filed on *[Date]*.
 *Delete if inapplicable
- 3 In giving this notice, the liquidator relies on the following grounds:
Note: Here specifically and separately address each element of section 293 of the Companies Act 1993.
- 4 A person may apply to the Court for an order that the charge not be set aside if the person—
 - (a) would be affected by the setting aside of the charge; and
 - (b) considers that the charge is not voidable.
- 5 In the case of a charge that is voidable under section 293 of the Companies Act 1993, the charge is set aside on the 20th working day after the date of service of this notice unless, **before** that date, you apply to the Court for an order that the charge not be set aside.
- 6 If 1 or more persons have applied to the Court for an order that the charge not be set aside, the charge is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

Dated at *[Place]* *[Date]*.

.....
(Solicitor or Counsel for)
the Liquidator

To the Registrar of the High Court at *[Place]*.**And to** *[Full names of the parties to be served]*.*[Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 3].*

Form 64R—*continued***Important information for recipient of Notice***Legal advice*

- 1 You are strongly recommended to consult a solicitor about this notice 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.

Legal aid

- 2 If you cannot afford to meet the cost of proceedings relating to this notice, you may be entitled to assistance under the Legal Services Act 1991 and the regulations made under that Act.

Application for order that charge not be set aside

- 3 You may apply to the Court for an order that the charge not be set aside. The application must be by way of originating application in accordance with Part IVA of the High Court Rules.

Last day for filing application

- 4 If you intend to apply to the Court for an order that the charge not be set aside and the 20th working day after the date of service of this notice falls on a day specified in column 1 of the following table, you must apply **on or before** the day specified in column 2 of the following table:

20th working day after date of service of notice	Last day for filing
The Tuesday following Easter	The Thursday before Good Friday
24 December	23 December in the same year, unless 24 December is a Monday, in which event the last day for filing is 24 December
3 January	23 December in the previous year, unless 3 January is a Wednesday or a Thursday, in which event the last day for filing is 21 December in the previous year
The day observed as the anniversary of the province in which the Court is situated	The last day before the specified day on which the Court is open

Office hours

- 5 The office hours of the Court are from 8.30 am to 5 pm except on Court holidays.

Definition of working day (Companies Act 1993)

- 6 **Working day** means a day of the week other than—
- Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
 - a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
 - if 1 January in any year falls on a Friday, the following Monday; and
 - if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

r 879, 884

Form 108

Appeal under Arbitration Act 1996

[General heading—Form 1 and endorsement]

Take notice that on the day of at am (or pm), or as soon thereafter as counsel (or parties) may be heard, the plaintiff will move the Court at [Place] by way of appeal from an award made by [Name/s of arbitral tribunal] dated [Insert date of award].

The question [or questions] of law arising out of the award is [or are]: [Here set out in precise form the question or questions of law alleged to arise, and, if more than 1, number them.]

The plaintiff contends that the question [or questions] should be answered as follows: [Here set out the answer or answers contended for.]

The plaintiff seeks the following relief: [Here set out the relief sought by the plaintiff.]

The grounds on which this application is made are—

- (a) the plaintiff was a party to the arbitration; and
(b) the parties to the arbitration agreed before the making of the award that any party might appeal to the High Court on any question of law arising out of the award; and

[Or] after the making of the award every other party to the arbitration gave consent to an appeal on the question [or questions] of law stated above; and

- (c) [Here set out any other grounds with such reasonable particularity as to give full advice of the issues involved to the Court and the other parties.]

This application is made in reliance on clause 5(1)(a)* [or clause 5(1)(b)*] of the Second Schedule of the Arbitration Act 1996. [Add any other statutory provision, regulation, rule, or principle of law relied upon.]

Dated this day of

(Solicitor or Counsel for the Plaintiff)

To the Registrar of the High Court at

And to [Names of parties to be served]

*Delete if not applicable

Note to the defendant

- 1 You should immediately seek legal advice with respect to this application.
2 If you wish to oppose this application, you must, within 14 days after service of this application on you, file in the Court and serve on the plaintiff and on all other parties a notice of opposition.
3 If you do not file and serve a notice of opposition within that period, the Court may proceed to determine this application in your absence.

r 897

Form 110

Application to enter award as judgment

[General heading—Form 1 and endorsement]

Take notice that the plaintiff seeks to enforce the award made by [*Name/s of arbitral tribunal*] dated [*Insert date of award*] by entry as a judgment.

This application is made in reliance on article 35 of the First Schedule of the Arbitration Act 1996.

Dated this day of

.....
Solicitor *or* Counsel for the Plaintiff

To the Registrar of the High Court at

And to [*Names of parties to be served*]

Note to the defendant

- 1 You should immediately seek legal advice with respect to this application.
- 2 If you wish to oppose this application, you must, within 14 days after service of this application on you, file in the Court and serve on the plaintiff and on all other parties an application seeking an order that recognition and enforcement be refused in terms of article 36 of the First Schedule of the Arbitration Act 1996.
- 3 If you do not file and serve such an application within that period, the Registrar of the High Court will proceed to enter the award as a judgment.

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, which come into force on 1 August 2000, amend the High Court Rules. The rules—

- make a number of miscellaneous amendments (*rules 3 to 6, 9, 13 to 15, and 21*)
- insert new rules relating to the setting aside of voidable transactions and charges under the Companies Act 1955 and the Companies Act 1993 (*rules 7 to 12, 16 to 18, 22, and 23*)

- prescribe a new procedure for appeals on questions of law under clause 5 of the Second Schedule of the Arbitration Act 1996 and for the enforcement of awards under Article 35 of the First Schedule of that Act (*rules 9(2) and (3), 19, 20, 22, and 24*).

Rule 3 adds a new subclause (7) to rule 61C. Rule 61C relates to the review by a Judge of an order or decision of a Master in Chambers. Subclause (6) provides that an appeal to the Court of Appeal against the decision of a Judge on a review may be made only with the leave of a Judge but does not specify a time within which the application for leave must be made. The new *subclause (7)* requires the application for leave to be filed and served within 7 days after the date of the Judge's decision.

Rule 4 provides that the new time limit for appeals in rule 61C does not apply to an appeal from a decision of a Judge given before the amendment made by *rule 3* comes into force.

Rule 5 amends rule 264 of the High Court Rules. Rule 264 sets out a procedure for the review of decisions and orders made in interlocutory proceedings. The rule is amended in 2 respects.

First, applications must now be both filed and served within the 7 day time limits specified in the rule. At present the time limits apply only to filing applications.

Second, the rule is amended to make it clear that it does not apply to the review of decisions of Masters in Chambers. Rule 61C sets out a procedure for the review of decisions of Masters in Chambers. There is conflicting judicial authority whether a decision of a Master in Chambers may be reviewed under either rule 61C or rule 264, or only under rule 61C. In future, applications to review decisions of Masters in Chambers will have to be made under rule 61C.

Rule 6 provides that the new requirement to serve a copy of an application under rule 264 does not apply in relation to existing applications.

The amendments in *rules 7 to 12* relate principally to applications for orders that voidable transactions or charges not be set aside and require the applications to be made by way of originating applications.

Rule 9 also requires the originating application procedure to be used for—

- applications by creditors and shareholders for leave to propose a compromise under Part VB of the Companies Act 1955 and under Part XIV of the Companies Act 1993;
- applications by creditors and shareholders for leave to apply for orders as to the effect of a compromise in the liquidation of a company under section 209O of the Companies Act 1955 and under section 233 of the Companies Act 1993.

Rule 13 revokes rule 540 of the High Court Rules relating to the giving of judgments and substitutes a new rule. The revision of the rule results from the decision of the Court of Appeal in *Bell-Booth v Bell-Booth* [1998] 2 NZLR 2 and, in particular, to the comments made in that case in relation to the application of the rule to orders in Chambers or away from the Court.

Rule 540 currently provides for the giving of judgments in 2 ways. First, a judgment may be given by the Judge reading or pronouncing the decision of the Court, with or without reasons, in open Court. Second, a judgment may be given by making copies signed by the Judge available to the parties through the Registrar. The term “judgment” is defined by rule 539 to include decrees and orders.

The new *rule 540* provides that a judgment may be given orally or in writing. If a judgment is to be given orally, unless it is a judgment on an *ex parte* application, the parties or their counsel must be given the opportunity to be present when the Judge gives the judgment or to hear the Judge give the judgement, for example, by telephone. The new rule provides that a judgment is given orally when it is read or pronounced by the Judge and that a written judgment is given when it is signed by the Judge and bears a date and time that purport to be the date on which and the time at which it is signed.

The principal changes made by the new rule are to provide for judgments to be given orally without the necessity for them to be given in open Court and for written judgments to bear the date and time they are signed by the Judge.

Rule 14 substitutes new *subclauses (3) and (4)* in rule 541 of the High Court Rules. The new *subclause (3)* provides that a judgment may be sealed at any time after it is given unless the Judge directs that it must not be sealed until some later date. The current subclause enables a judgment to be sealed as at an earlier date than the date on which it is given. The new *subclause (4)* provides that a sealed judgment must show both the date on which it is given in accordance with new *rule 540* and the date on which it is sealed.

Rule 15 substitutes a new *rule 542*. *Rule 542* currently states that a judgment takes effect from the day of its date. The rule also requires a party who has sealed a judgment to give notice of the sealing of the judgment to every other party who has filed an address for service. The new *rule 542* provides, in line with the new *rule 540*, that a judgment takes effect when it is given. It will also require a copy of the sealed judgment to be served on every party who has given an address for service.

The amendments in *rules 16 to 18* relate to the form, content, and filing of a liquidator's notice to set aside a voidable transaction or a voidable charge.

Rule 20 adds a new *Part 17* to the High Court Rules relating to the following applications to the High Court under the Arbitration Act 1996:

- applications by way of appeal under clause 5(1)(a) or (b) of the Second Schedule of that Act;
- applications for leave to appeal under clause 5(1)(c) of the Second Schedule of that Act;
- applications for entry of an award as a judgment under article 35 of the First Schedule of that Act.

Rule 9(2) and (3) and rule 19 make consequential amendments to rules 458D and 701 of the High Court Rules.

Rule 21 substitutes references to a plaintiff for references to an applicant in forms 64F and 64G in line with the terminology in rule 700I to which those forms relate.

Rule 22—

- inserts 4 forms of a liquidator's notice to set aside a voidable transaction or a voidable charge under the Companies Acts;
- adds new forms relating to the new *Part 17*.

Rule 23 is a transitional provision relating to the rules concerning voidable transactions.

Rule 24 is a transitional provision relating to arbitrations.

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

Date of notification in *Gazette*: 22 June 2000.

These rules are administered in the Ministry of Justice and the Department for Courts.

Tariff (Zero Duty Removal) Amendment Order 2000

Note: The Tariff (Zero Duty Removal) Amendment Order 2000 (SR 2000/110) appears in Volume 4 of the Statutory Regulations 2000.