



## THE HIGH COURT AMENDMENT RULES (NO. 2) 1987

PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At Wellington this 22nd day of June 1987

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

#### ANALYSIS

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| <p>1. Title and commencement</p> <p>2. New heading and rules inserted</p> <p style="padding-left: 40px;"><i>Masters of the High Court</i></p> <p>61A. Jurisdiction and powers of Masters</p> <p>61B. Power to make interim order on transfer of proceeding</p> <p>61C. Review of decisions of Masters</p> <p>61D. Appeal to Court of Appeal</p> <p>3. New heading and rules inserted</p> <p style="padding-left: 40px;"><i>Summary Proceeding for Recovery of Land</i></p> <p>134A. Application of rules relating to summary proceeding for recovery of land</p> | <p>134B. Defendants</p> <p>134C. Affidavit in support</p> <p>134D. Service</p> <p>134E. Time for filing statement of defence</p> <p>134F. Power of Court to make occupiers defendants</p> <p>134G. Judgment for possession</p> <p>134H. Writ of possession</p> <p>4. Notices of application filed in absence of Judge and Master</p> <p>5. Contempt of Court</p> <p>6. New heading and rules inserted</p> <p style="padding-left: 40px;"><i>Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities</i></p> <p>416A. Application of rules 416B to 416K</p> |
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RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules (No. 2) 1987, 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) Except as provided in rules 2 (2) and 4 (2) of these rules, these rules shall come into force on the 1st day of August 1987.

**2. New heading and rules inserted**—(1) The High Court Rules are hereby amended by inserting, after rule 61, the following heading and rules:

*“Masters of the High Court*

**“61A. Jurisdiction and powers of Masters**—(1) All Masters of the High Court shall have the jurisdiction and powers (whether conferred by the Act or any other Act or by rules of Court) of a Judge sitting in Chambers.

(2) Nothing in subclause (1) confers on Masters of the High Court any jurisdiction or powers in respect of—

“(a) The matters specified in subsections (3) and (4) of section 26J of the Act; or

“(b) An application under section 26P (1) of the Act.

“(3) The jurisdiction and powers conferred on Masters of the High Court by this rule are in addition to those conferred on Masters of the High Court by or pursuant to section 26I of the Act.

**“61B. Power to make interim order on transfer of proceeding—**Where a Master, acting under section 26N (1) of the Act, refers any proceeding or any matter arising in a proceeding to a Judge, the Master may, pending the final disposal of the proceeding or matter, make such interim order as may be just.

**“61C. Review of decisions of Masters—**(1) Every application under section 26P (1) of the Act for the review of any order or decision made by a Master in Chambers shall be made by interlocutory application.

“(2) Notice of every application under section 26P (1) of the Act shall, unless a Judge or the Master otherwise directs, be filed and served,—

“(a) If it is made by a party who was present or represented when the order was made or the decision was given, within 7 days thereafter:

“(b) If it is made by a party who was not so present or represented, within 7 days after the receipt by that party of notice of the making of the order or the giving of the decision, as the case may be, and of its effect.

“(3) The application shall not operate as a stay of the proceedings, or any step therein, unless a Judge or the Master so directs.

“(4) The review shall be by way of rehearing of the matter in respect of which the Master made the order or decision.

“(5) In rehearing the matter the Judge may, in his or her discretion, rehear the whole or any part of the evidence, or may receive further evidence, if the Judge thinks that the interests of justice so require.

“(6) Except by leave of a Judge, no appeal shall lie from the decision of a Judge under this rule.

**“61D. Appeal to Court of Appeal—**(1) Where an appeal is brought under section 26P (2) of the Act against any order or decision of a Master, the Court of Appeal Rules 1955\* shall apply, in relation to that appeal, with all necessary modifications.”

(2) This rule shall come into force on the 15th day of July 1987.

**3. New heading and rules inserted—**The High Court Rules are hereby amended by inserting, after rule 134, the following heading and rules:

*“Summary Proceeding for Recovery of Land*

**“134A. Application of rules relating to summary proceeding for recovery of land—**(1) Rules 134B to 134H apply to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by a person or persons (not being a tenant or tenants or subtenant or subtenants holding over after the termination of a tenancy or subtenancy)

\*S.R. 1955/30

Amendment No. 1: (Revoked by S.R. 1977/329)

Amendment No. 2: (Revoked by S.R. 1975/129)

Amendment No. 3: S.R. 1977/123

Amendment No. 4: S.R. 1977/329

who entered into or remained in occupation without the plaintiff's licence or consent or that of any predecessor in title of the plaintiff.

“(2) Nothing in this rule or in rules 134B to 134H limits the application, in relation to any proceeding for the recovery of land, of rules 136 to 144.

“134B. **Defendants**—(1) In a proceeding to which this rule applies, the plaintiff shall, subject to subclause (2), name as a defendant in the statement of claim each person who is known to the plaintiff to be in occupation of the land.

“(2) If the plaintiff does not know the name of any person in occupation of the land, the plaintiff may commence the proceeding without naming any person as defendant.

“134C. **Affidavit in support**—In a proceeding to which this rule applies, the plaintiff shall file with the statement of claim an affidavit—

“(a) Stating the interest of the plaintiff in the land; and

“(b) Stating the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

“(c) If the statement of claim does not name any person as defendant, stating that the plaintiff does not know the name of any person in occupation of the land.

“134D. **Service**—(1) In the case of a proceeding to which this rule applies,—

“(a) The statement of claim; and

“(b) The notice of proceeding; and

“(c) A copy of the affidavit required by rule 134C; and

“(d) A copy of any exhibit referred to in the affidavit required by rule 134C,—

shall be served on each defendant, if any, and on each person occupying the land who is not a defendant.

“(2) In the case of a defendant, service shall be effected in accordance with rule 126.

“(3) In the case of a person occupying the land who is not a defendant, service (except where the Court directs or permits a different mode of service) shall be effected—

“(a) By affixing to some conspicuous part of the land the documents required to be served pursuant to subclause (1); and

“(b) If practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served pursuant to subclause (1) (which documents shall be enclosed in a sealed envelope addressed to ‘The Occupiers’).

“134E. **Time for filing statement of defence**—Notwithstanding anything in rule 122 (b), where service is effected in accordance with rule 134D (3), the time within which the statement of defence is required to be filed shall be within 30 days after the day on which service is effected under rule 134D (3).

“134F. **Power of Court to make occupiers defendants**—In the case of any proceeding to which this rule applies, the Court may order that a person occupying the land to which the proceeding relates who is not a defendant be made a defendant or be added as a defendant, as the case may require.

“134G. **Judgment for possession**—In a proceeding to which this rule applies,—

- “(a) No judgment for possession shall be given except by a Judge; and  
 “(b) Rule 461 shall not apply in respect of that proceeding.

“134H. **Writ of possession**—(1) No writ of possession to enforce a judgment for possession in a proceeding to which this rule applies shall issue without the leave of the Court after 3 months have elapsed since the date of the judgment.

“(2) An application for leave under subclause (1) may be made by way of an *ex parte* application unless the Court otherwise directs.”

**4. Notices of application filed in absence of Judge and Master**—(1) Rule 255 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) Where a notice of interlocutory application is filed at a time when neither a Judge nor a Master is present and the order sought is not one that the Registrar has jurisdiction to make, the Registrar may, at the request of the solicitor for any party to the application, forward the application, with all other relevant documents, from the registry in which it has been filed to a Registrar who has jurisdiction, or, if there is no such Registrar, to the Registrar at any other place to be dealt with at that place.”

(2) This rule shall come into force on the 15th day of July 1987.

**5. Contempt of Court**—The High Court Rules are hereby amended by inserting, after rule 317, the following rule:

“317A. (1) Every person is guilty of contempt of Court who,—

“(a) Being a person from whom discovery is sought by an order made pursuant to rule 299 (1) or rule 301 (1), wilfully and without lawful excuse disobeys the order or fails to ensure that the order is complied with; or

“(b) Being a person who is not a party to the proceeding and who is required by an order made under rule 307 to produce for inspection the whole or part of a document, wilfully and without lawful excuse disobeys the order or fails to ensure that it is complied with; or

“(c) Being a person who is not a party to the proceeding and who is required by an order made under rule 310 to produce a document, wilfully and without lawful excuse fails to produce the document or thing in accordance with the order.

“(2) Nothing in this rule limits or affects any power or authority of the Court to punish any person for contempt of Court.”

**6. New heading and rules inserted**—The High Court Rules are hereby amended by inserting, after rule 416, the following heading and rules:

*“Inquiries under Companies Act 1955 as to Debts, Claims, or Liabilities*

“416A. **Application of rules 416B to 416K**—The provisions of rules 416B to 416K apply in any case where the Court makes, under rule 458A (3), an order for an inquiry of the kind described in rule 458A (4).

“416B. **Affidavit as to creditors**—(1) The company shall, within 7 days after the order or such further or other time as the Court allows, file in the registry an affidavit made by some officer or officers of the company

competent to make it, verifying a list containing so far as possible the names, addresses, and descriptions of the creditors of the company to whom the inquiry extends.

“(2) The list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims, or liabilities to which the inquiry extends, or in the case of any such debt payable on a contingency or not ascertained or any such claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated, of the debt or claim.

“(3) Every such list shall be annexed to the affidavit verifying it.

Cf. S.R. 1956/216, r. 9 (a)

“416C. **Form of affidavit**—The person making the affidavit required by rule 416B shall state therein—

“(a) That person’s belief—

“(i) That the list verified by the affidavit is correct; and

“(ii) That there was not, at the date by reference to which the list of creditors is made out, any debt, claim, or liability which, if that date were the commencement of the winding up of the company, would be admissible to proof against the company, except the debts, claims, and liabilities set forth in the list and any debts, claims, or liabilities to which the inquiry does not extend; and

“(b) That person’s means of knowledge of the matters deposed to in the affidavit.

Cf. S.R. 1956/216, r. 9 (b)

“416D. **Inspection of list of creditors**—(1) Copies of the list containing the names, addresses, and descriptions of the creditors, and the total amount so due to them (including the value of any debts or claims estimated as aforesaid), but omitting the individual amounts so due to them respectively, or (as the Court thinks fit) complete copies of the list, shall be kept—

“(a) At the registered office of the company; and

“(b) At the office of the solicitors of the company; and

“(c) At the address for service of the company.

“(2) Any person desirous of inspecting the copies referred to in subclause (1) may at any time during the ordinary hours of business inspect and take extracts from them.

Cf. S.R. 1956/216, r. 9 (c)

“416E. **Notice to creditors**—(1) The company shall, within 7 days after the filing of the affidavit or such further or other time as the Court may allow, send to each creditor whose name is entered on the list a notice stating—

“(a) The amount of the proposed reduction in capital; and

“(b) The effect of the order directing the inquiry; and

“(c) The amount or estimated value of the debt or the contingent debt or claim or both for which the creditor is entered on the list; and

“(d) The time (that time to be fixed by the Court) within which, if the creditor claims to be entitled to be entered on the list as a

creditor a larger amount, the creditor must send in to the solicitor of the company—

- “(i) The creditor’s name, address, and description; and
- “(ii) Particulars of the creditor’s debt or claim; and
- “(iii) The name and address of the creditor’s solicitor (if any).

“(2) Every notice under subclause (1) shall be sent through the post in a prepaid letter addressed to each creditor at the creditor’s last known business or residential address or place of abode.

Cf. S.R. 1956/216, r. 9 (d)

**“416F. Advertisement of application and list of creditors—**

(1) Notice of the filing of the proceeding under the Companies Act 1955, of the effect of the order directing the inquiry, and of the list of creditors shall, after the filing of the affidavit mentioned in rule 416B be published at such times and in such newspapers as the Court directs.

“(2) Every notice under subclause (1) shall state—

- “(a) The amount of the proposed reduction of capital; and
- “(b) The places where the list of creditors may be inspected; and
- “(c) The time within which creditors of the company who are not, but are entitled to be, entered on the list, and are desirous of being entered thereon, must send in—

- “(i) Their names, addresses, and descriptions; and
- “(ii) The names and addresses of their solicitors (if any)—

to the solicitor of the company.

“(3) Every notice under subclause (1) may be in form 32A, with such variations as the circumstances of the case may require.

Cf. S.R. 1956/216, r. 9 (e)

**“416G. Affidavit as to result of rules 416E and 416F—**(1) The company shall, within such time as the Court directs, file in the registry an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in rules 416E and 416F, required to be sent in—

- “(a) Stating the result of the notices respectively; and
- “(b) Verifying a list containing the names, addresses, and descriptions of the persons (if any) who have sent in the particulars of their debts or claims in pursuance of the notices respectively, and the amounts of those debts and claims.

“(2) Some competent officer or officers of the company shall join in the affidavit, and shall in the list distinguish—

- “(a) Which (if any) of the debts and claims are wholly, or as to any and what part thereof, admitted by the company; and
- “(b) Which (if any) of the debts and claims are wholly, or as to any and what part thereof, disputed by the company; and
- “(c) Which (if any) of the debts and claims are alleged by the company to be wholly, or as to any and what part thereof, not included in the inquiry.

“(3) The affidavit shall also state which of the persons who are entered on the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of the notices have been paid or have consented to the proposed reduction.

“(4) The affidavit may be in form 32B, with such variations as to the circumstances of the case may require; and the list shall be annexed to the affidavit.

Cf. S.R. 1956/216, r. 9 (f)

“416H. **Procedure where claim not admitted**—(1) If the company contends that a person is not entitled to be entered on the list of creditors in respect of any debt or claim, whether admitted or not, or if any debt of claim, the particulars of which are so sent in, is not admitted by the company at its full amount, then and in every such case, unless the company is willing to appropriate in such manner as the Court directs the full amount of the debt or claim, the company shall, if the Court thinks fit so to direct, send to the creditor a notice that the creditor is required to come in and establish the creditor’s title to be entered on the list or, as the case may be, to come in and prove the debt or claim, or such part thereof, as is not admitted by the company, by a day to be therein named, being not less than 4 clear days after the notice, and being the time appointed by the Court for adjudicating upon those titles, debts, and claims.

“(2) The notice under subclause (1) shall be sent in the manner mentioned in rule 416E, and may be in form 32C, with such variations as the circumstances of the case may require.

Cf. S.R. 1956/216, r. 9 (g)

“416I. **Costs of proof**—Such creditors as come in to prove their titles, debts, or claims in pursuance of a notice under rule 416H shall be allowed their costs of proof against the company and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under an administration judgment.

Cf. S.R. 1956/216, r. 9 (h)

“416J. **Certificate as to creditors**—(1) The result of the settlement of the list of creditors shall be stated in a certificate by the Registrar of the Court.

“(2) The certificate—

“(a) Shall state what debts or claims (if any) have been disallowed; and

“(b) Shall distinguish—

“(i) The debts or claims the full amount of which the company is willing to appropriate; and

“(ii) The debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 76 (2) of the Companies Act 1955 and these rules; and

“(iii) The debts or claims (if any) the full amount of which the company does not admit or is not willing to appropriate, or the amount of which has not been fixed by inquiry and adjudication as aforesaid; and

“(c) Shall show—

“(i) Which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them; and

“(ii) The total amount of the debts or claims the payment of which has been secured in manner provided by section 76 (2) of the Companies Act 1955, and the persons to or by whom the same are due or claimed.

“(3) The certificate shall also state what creditors have under rule 416H come in and sought to establish their title to be entered on the list and



whether their claims have been allowed or not, but it shall not be necessary—

“(a) To make in the certificate any further or other reference to any creditors who are not entitled to be entered on the list or to any debts or claims to which the inquiry does not extend; or

“(b) To show in the certificate the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured in the manner provided by section 76 (2) of the Companies Act 1955.

Cf. S.R. 1956/216, r. 9 (i)

“416K. **Evidence of consent of creditor**—The consent of any creditor, whether in respect of a debt due or presently due, or a debt payable on a contingency or not ascertained, or a claim admissible to proof in a winding up of the company, may be evidenced in any manner which the Court thinks reasonably sufficient, having regard to the amount of the creditor's debt or claim and all the circumstances of the case.”

Cf. S.R. 1956/216, r. 9 (j)

**7. Disputes concerning construction**—Rule 446P (2) of the High Court Rules (as inserted by rule 2 of the High Court Amendment Rules 1987\*) is hereby amended by omitting the expression “34B”, and substituting the expression “34C”.

**8. Application of Part IV to proceedings under certain Acts**—Rule 448 (1) of the High Court Rules is hereby amended by revoking paragraph (a).

**9. Proceedings commenced by originating application**—The principal rules are hereby amended by inserting, after rule 449, the following rule:

“449A. Nothing in rule 448 or rule 448A or rule 448B prevents relief under any of the provisions specified both in those rules and in rule 458D (1) (a) being claimed in a proceeding commenced by the filing of an originating application under Part IVA; but where relief under any of the provisions so specified is claimed in a proceeding so commenced, nothing in this Part applies to that proceeding.”

**10. Directions as to service**—Rule 451 (1) of the High Court Rules is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) The proceeding is under the Companies Act 1955 and is not a proceeding in the winding up of a company or a proceeding under section 209 of that Act; or”.

**11. New rules inserted**—The High Court Rules are hereby amended by inserting in Part IV, after rule 458, the following rules:

“458A. **Directions as to conduct of proceedings under Companies Act 1955**—(1) The plaintiff, in any proceeding to which rule 451 (1) (ca) applies (other than a proceeding under section 464 of the Companies Act 1955), 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.

“(2) The application shall specify the directions (if any) that are considered appropriate.

“(3) On hearing the application the Court may make such orders and give such directions (whether sought by the plaintiff or not) as it deems proper.

“(4) Where the proceeding is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of subclause (3), the Court may give directions for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims.

“(5) Every Registrar (not being a Deputy Registrar) shall have the jurisdiction and powers of the Court in Chambers to hear and determine an application under this rule.

“(6) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (4).

Cf. S.R. 1956/216, rr. 2, 8; The Rules of the Supreme Court (Revision) 1965, Order 102, r. 7 (4) (U.K.)

“458B. **Procedure where inquiry ordered under Companies Act 1955 as to debts, claims, or liabilities**—(1) Where the Court makes, under rule 458A (3), an order for an inquiry of the kind described in rule 458A (4), rules 416B to 416K shall apply in relation to the inquiry.

“(2) The order may include provisions relating to any or all of the following matters:

“(a) The settling of the list of creditors entitled to object:

“(b) The dispensing with the observance of section 76 (2) of the Companies Act 1955 as regards any class or classes of creditors:

“(c) The date with reference to which the list of creditors entitled to object is to be made out:

“(d) The fixing of a time for and the giving of directions as to all other necessary or proper steps in relation to the inquiry.

“(3) Where the Court makes, under rule 458A (3), an order for an inquiry of the kind described in rule 458A (4),—

“(a) The proceeding under the Companies Act 1955 in which it is made shall not be heard until the expiration of at least 8 clear days from the filing of the certificate mentioned in rule 416j; and

“(b) Before the hearing of the proceeding under the Companies Act 1955, in which it is made, notices stating the day on which the proceeding is appointed to be heard shall be published at such times and in such newspapers as the Court directs.

“(4) Notices under subclause (3) (b) may be in form 34D, with such variations as the circumstances of the case may require.

Cf. S.R. 1956/216, rr. 8 (2) (b), 9 (k), (1)

“458C. **Delivery of copy of order under section 65 of the Companies Act 1955 to Registrar of Companies**—Unless in any particular case the Court otherwise directs, every order sanctioning the issue of shares at a discount shall direct that a sealed copy of the order shall be delivered to the Registrar of Companies for registration within 7 days after the date thereof or within such further or other time as the Court may allow, and that the order shall not take effect until the sealed copy has been so delivered.”

Cf. S.R. 1956/216, r. 10

**12. New Part IVA inserted**—The High Court Rules are hereby amended by inserting, after Part IV, the following Part:

“PART IVA

“ORIGINATING APPLICATIONS

“458D. **Application of this Part**—(1) This Part applies to—

“(a) Any application to the Court under any of the following provisions:

“(i) The Aged and Infirm Persons Protection Act 1912:

“(ii) Sections 6 (2) and 10 of the Arbitration Act 1908:

“(iii) Sections 5 (1) and (2) and 7 (3) of the Arbitration Amendment Act 1938:

“(iv) Section 21 (1) (a) and (b) and Parts III, IV, and V of the Charitable Trusts Act 1957:

“(v) Sections 13 and 45 of the Chattels Transfer Act 1924:

“(vi) Section 108 of the Companies Act 1955:

“(vii) Section 43 (6) of the District Courts Act 1947:

“(viii) Section 56 of the Judicature Act 1908:

“(ix) Sections 132, 133, 140, 143, 145, 148, 216, and 217 of the Land Transfer Act 1952:

“(x) Sections 46, 55, and 149 of the Law Practitioners Act 1982:

“(xi) Section 9A (3) of the Law Reform Act 1936:

“(xii) Section 22 (3) of the Matrimonial Property Act 1976:

“(xiii) Sections 87, 93, and 96 of, and the Third Schedule to, the Mental Health Act 1969:

“(xiv) Section 12 (1) (a) of the Minors’ Contracts Act 1969:

“(xv) Sections 92, 118, 119, 120, and 152 of the Property Law Act 1952:

“(xvi) The Reciprocal Enforcement of Judgments Act 1934:

“(xvii) Section 44C (2) and (8) of the Securities Act 1978:

“(xviii) Section 76 of the Trustee Act 1956; and

“(b) Any originating proceeding for contempt of Court; and

“(c) Any other proceeding that the Court, in the interests of justice, permits to be commenced by the filing of an originating application.

“(2) The Registrars (not being Deputy Registrars) for the time being exercising their office at the registries of Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, and Dunedin shall have for the purposes of this Part the jurisdiction and powers of the Court in Chambers conferred by section 13 (1) of the Chattels Transfer Act 1924, but only in respect of the extension of time for the registration of an instrument or of an affidavit of renewal of an instrument.

“(3) The provisions of rules 272 to 275 shall apply to the exercise of the jurisdiction conferred by subclause (2).

“458E. **Originating applications**—(1) Any proceeding to which this Part applies may be commenced by the filing of an originating application in the proper office of the Court, as determined in accordance with rule 107 (1).

“(2) Rule 41 shall apply in relation to any originating proceeding for contempt of Court commenced by the filing of an originating application; but not in relation to any other proceeding commenced by the filing of an originating application.

“(3) Rule 44 shall apply in relation to any proceeding commenced by the filing of an originating application.

“(4) Subject to rule 7, the proper heading of a document presented for filing in a proceeding commenced by the filing of an originating application shall,—

“(a) Where there is a defendant or respondent to the application, be in form 1; and

“(b) In any other case, be as follows:

In the Matter of [*Short Title of Act*]

And

In the matter of [*Full name*],  
of [*Place of residence*],  
[*Occupation*]

“(5) This rule has effect notwithstanding anything in rule 106 or Part IV.

“458F. **Application of provisions relating to interlocutory applications**—(1) In relation to originating applications, the provisions of rules 235, 236, 237, 239, 243, 244, 247, 248, 252, 255, 256, 257, 258, 259, 260, 261, 262, 263, and 269 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to interlocutory applications.

“(2) Notwithstanding anything in subclause (1), the provisions of rule 263 shall, in their application to any originating application, be subject to the Act under which the originating application is made.

“458G. **Date of hearing**—In the case of an *inter partes* application, the date shown on the notice of application as the date for the hearing of the application shall be that allocated by the Registrar when the notice of application is filed and the Registrar shall enter the application on the list for that date without any further request.

“458H. **Directions as to service**—(1) In relation to a proceeding commenced by the filing of an originating application, the provisions of subclauses (1), (2), (4), and (5) of rule 451 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to a proceeding to which Part IV applies.

“(2) The effect of every order for directions as to service or for representation made pursuant to subclause (1) or subclause (5) of rule 451 (as applied by subclause (1) of this rule) shall be set out in the notice of originating application as if that notice were a notice of proceeding to which rule 121 (3) applied.

“458I. **Directions before hearing**—(1) At any time before the hearing of an originating application, any party may file an interlocutory application for directions regarding the proceeding commenced by the filing of the application.

“(2) In relation to an interlocutory application made under subclause (1), subclauses (2) to (7) of rule 437 shall apply, subject to this Part and to all necessary modifications, as they apply in relation to an interlocutory application made under rule 437 (1).

“458J. **Directions affecting the hearing**—(1) At any time after the filing of an originating application, any party may apply to the Court for an order for directions affecting the hearing, stating the directions sought.

“(2) In relation to a proceeding commenced by the filing of an originating application, the provisions of subclauses (2) to (4) of rule 438 shall

apply, subject to this Part and to all necessary modifications, as they apply in relation to a proceeding commenced by the filing of a statement of claim.

“(3) Any order or direction made or given pursuant to this rule may, if justice so requires, be varied or revoked (in whole or in part) by the Court at the hearing.

“458k. **Court may convene conference of parties**—The Court may, at any time before or during the hearing, require the parties to attend in Chambers with a view to making any order or giving any directions which might be made or given on an application under rule 458j and may, after hearing the parties, make any order or give any directions which might be made or given pursuant to rule 458j.

“458L. **Evidence**—Notwithstanding the provisions of rules 247 and 248 (as applied by rule 458F), in the case of a proceeding commenced by the filing of originating application evidence may be taken orally on oath if the Court, on any application before or at the hearing, so directs.

“458M. **Cross-examination of deponent**—Rule 508 shall apply in relation to any proceeding commenced by the filing of an originating application.”

**13. Effect of writ of sale**—Rule 549 (1) (a) of the High Court Rules is hereby amended—

(a) By omitting the expression “\$300”, and substituting the expression “\$500”;

(b) By omitting the expression “\$1,000”, and substituting the expression “\$2,000”.

**14. Affidavit to lead grant of administration with will annexed**—The First Schedule to the High Court Rules is hereby amended by revoking paragraph 10A of form 52, and substituting the following paragraph:

“10A. The inquiries referred to in paragraph 10 of this affidavit, which included those required by section 5A (2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries.*].”

**15. Affidavit to lead grant of administration on intestacy to widow or widower**—The First Schedule to the High Court Rules is hereby amended by revoking paragraph 9A of form 53, and substituting the following paragraph:

“9A. The inquiries referred to in paragraph 9 of this affidavit, which included those required by section 5A (2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries.*].”

**16. Affidavit to lead grant of administration on intestacy to daughter or son of deceased**—The First Schedule to the High Court Rules is hereby amended by revoking paragraph 11A of form 54, and substituting the following paragraph:

“11A. The inquiries referred to in paragraph 11 of this affidavit, which included those required by section 5A (2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries.*].”

**17. Affidavit to lead grant of administration on intestacy to parent of deceased**—The First Schedule to the High Court Rules is hereby

amended by revoking paragraph 12A of form 55, and substituting the following paragraph:

“12A. The inquiries referred to in paragraph 12 of this affidavit, which included those required by section 5A (2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries.*].”

**18. Affidavit to lead grant of administration on intestacy to brother or sister of deceased**—The First Schedule to the High Court Rules is hereby amended by revoking paragraph 13A of form 56, and substituting the following paragraph:

“13A. The inquiries referred to in paragraph 13 of this affidavit, which included those required by section 5A (2) of the Status of Children Act 1969, consisted of [*Give a brief indication of the nature of the inquiries.*].”

**19. New forms inserted**—(1) The First Schedule to the High Court Rules is hereby amended by inserting, after form 32, the new forms 32A, 32B, and 32C set out in the Schedule to these rules.

(2) The First Schedule to the High Court Rules is hereby further amended by inserting, after form 34C (as inserted by rule 3 of the High Court Amendment Rules 1987), the new form 34D set out in the Schedule to these rules.

**20. Revocation and saving**—(1) The High Court (Companies) Rules 1956\* are hereby revoked.

(2) Where, at the date of the commencement of these rules, proceedings in relation to any application made under the High Court (Companies) Rules 1956 before the commencement of these rules have not been completed, those proceedings may be continued and completed under the High Court (Companies) Rules 1956 as if these rules had not been made.

SCHEDULE

Rule 19

NEW FORMS 32A, 32B, 32C, AND 34D INSERTED IN FIRST SCHEDULE TO HIGH COURT RULES

Rule 416F (3)

Form 32A

ADVERTISEMENT OF PROCEEDING AND LIST OF CREDITORS

In the matter of the Companies Act 1955
and
In the matter of ..... Limited

NOTICE is hereby given that an application for an order confirming the reduction of the capital of the above company from \$..... to \$..... was on the ..... day of ..... 19..... filed in the High Court of New Zealand at ....., and is now pending: And that by an order dated the ..... day of ..... 19..... an inquiry was directed as to the debts, claims, and liabilities of the said company as on the ..... day of ..... 19..... [other than debts, claims, and liabilities in respect of (Here set out the nature of the debts, claims, or liabilities to which the inquiry does not extend)]. A list of the persons admitted to have been creditors of the company for debts, claims, and liabilities to which the inquiry extends on the said ..... day of ..... 19..... may be inspected at the offices of the company, at ..... or at the office of ... .., at any time during usual business hours.

Any person who claims to have been on the said ..... day of ..... 19....., and still to be, a creditor of the company in respect of any such debt, claim, or liability, and who is not entered on the said list and claims to be so entered, must on or before the ..... day of ..... 19..... send in the person's name, address, and description, and the particulars of the person's claim, and the name and address of that person's solicitor (if any) to the undersigned at ....., or, in default thereof, that person will be precluded from objecting to the proposed reduction of capital.

Dated this ..... day of ..... 19.....

A. B.,
Solicitor for the said Company.

SCHEDULE—continued

Form 32B

Rule 416G (4)

AFFIDAVIT IN ANSWER TO INQUIRY

In the High Court of New Zealand

..... Registry

No.

In the matter of the Companies Act 1955,  
and

In the matter of .....Limited

WE, C. D., of ....., [the secretary of the above-named company].  
E. F., of ..... [the solicitor of the said company], and A. B., of .....  
..... [the managing director of the said company], severally make oath and  
say as follows:

I, the said C. D., for myself, say as follows:

1. I did, on the .....day of .....19....., in the manner  
hereinafter mentioned, serve a true copy of the notice hereunto annexed  
and marked B upon each of the respective persons whose names,  
addresses, and descriptions appear in the first column of the list of credi-  
tors, marked A, referred to in the affidavit of ..... filed herein on  
the ..... day of ..... 19.....

2. I served the said respective copies of the said notice by putting the  
copies respectively duly addressed to those persons respectively, according  
to their respective names and addresses appearing in the said list (being the  
last known business or residential addresses or places of abode of those  
persons respectively), and with the proper postage stamps affixed thereto  
as prepaid letters, into the post office at ..... between the hours of ..  
..... and ..... of the clock in the ..... noon of the said  
..... day of ..... 19.....

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

3. A true copy of the notice hereunto annexed and marked C as appears  
in the ..... newspaper of the ..... day of ..... 19.....,  
the ..... newspaper of the ..... day of ..... 19.....,  
etc.

4. I have, in the paper writing hereunto annexed and marked D, set  
forth a list of all claims the particulars of which have been sent in to me  
pursuant to the said notice B hereunto annexed by persons claiming to be  
creditors of the said company for larger amounts than are stated in the list  
of creditors, marked A, referred to in the affidavit of ....., filed  
herein on the ..... day of .....19.....

[Or 4. No person has sent in to me pursuant to the said notice B a claim to  
be entered on the said list for a larger sum than that in respect of which  
that person is entered on the said list A.]

5. I have in the paper writing hereunto annexed and marked E set forth  
a list of all claims the particulars of which have been sent in to me pursuant  
to the notice referred to in paragraph 3 of this affidavit by persons claim-  
ing to be creditors of the said company on the ..... day of .....  
.... 19....., not appearing on the said list of creditors marked A, and who  
claimed to be entered thereon.



SCHEDULE—*continued*

[Or 5. No claims have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons not entered on the said list A and claiming to be so entered.]

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

6. We have, in the first part of the said paper writing marked D, and also in the first part of the said paper writing marked E, respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the company contends are wholly or as to any and what part thereof not included in the inquiry in this matter.

7. We have, in the second part of each of the said paper writings marked D and E, set forth such of the said debts and claims as are wholly disputed by the said company, and such of the same debts and claims as the company contends would, even if admitted, be wholly or as to any and what part thereof not included in the inquiry in this matter.

8. In the said exhibits D and E are distinguished such of the debts the full amounts whereof are proposed to be appropriated in such manner as the Judge directs.

And I, the said C. D., further say:

9. The exhibit now produced and shown to me marked F contains the [*Invoices to the amount of the receipt should be attached when the receipt is for a larger sum than that stated in list A (and exhibits D and E) invoices and*] receipts and the written concepts of such of the persons named in the said list A (and in the said exhibits D and E) as have been paid by the said company or have consented to the proposed reduction of capital.

10. The said company is willing to set apart and appropriate the full amount of the debts, claims, and liabilities specified in the said list A [and in the said exhibits D and E] in respect of which consents have not been obtained or which the said company has not paid and discharged.

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

Sworn, etc.

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SCHEDULE—continued

EXHIBIT D REFERRED TO IN THE ABOVE AFFIDAVIT

**D**

In the matter, etc.

List of Debts and Claims of which the particulars have been sent in to.....  
 .....by persons claiming to be creditors of the said company for *larger amounts* than are stated in the list of creditors made out by the company.

FIRST PART-DEBTS OR CLAIMS WHOLLY OR PARTLY ADMITTED BY THE COMPANY

Names, Addresses, and Descriptions of Creditors	Particulars of Debt or Claim	Total Amount Claimed	Amount Admitted by the Company to be Within the Inquiry and to be Owed to Creditor	Debts Proposed to be Appropriated in Full Although Disputed	Amount Admitted by the Company to be Owed to the Creditor but Which it is Contended is Not Within the Inquiry

SECOND PART-DEBTS AND CLAIMS WHOLLY DISPUTED BY THE COMPANY

Names, Addresses, and Descriptions of Claimants	Particulars of Claim	Total Amount Claimed	Debts Proposed to be Appropriated in Full Although Disputed	Amount Which, Even if Admitted, it is Contended Would Not be Within the Inquiry

EXHIBIT E REFERRED TO IN THE ABOVE AFFIDAVIT

**E**

In the matter, etc.

List of Debts and Claims of which the particulars have been sent in to  
 ..... by persons claiming to be creditors of the company, and to be entered on the list of creditors made out by the company.

SCHEDULE—continued

First Part

[Same as in Exhibit D]

Second Part

[Same as in Exhibit D]

**NOTE:**

The names are to be inserted alphabetically.



Rule 416H (2)

Form 32C

NOTICE TO CREDITORS TO COME IN AND PROVE

In the matter of the Companies Act 1955,  
and

In the matter of ..... Limited

To

You are hereby required to come in and prove [or establish your title to be entered on the list of creditors in this matter in respect of] the debt claimed by you against the above company, by filing your affidavit in the registry of the High Court at ..... and serving a copy thereof at the offices of ....., the solicitor of the company, or on or before the ..... day of ..... next; and you are to attend by your solicitor at the Chambers of the Honourable Mr Justice ..... at the High Court, ..... on the ..... day of ..... 19....., at ..... o'clock in the ..... noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

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

Dated this ..... day of ..... 19.....

A.B.,  
Solicitor for the said Company.



SCHEDULE—*continued*

Form 34D

Rule 458B (4)

ADVERTISEMENT OF HEARING OF APPLICATION

In the matter of the Companies Act 1955,  
and

In the matter of ..... Limited

NOTICE is hereby given that an application filed in the High Court of New Zealand on the ..... day of ..... 19....., for confirming the reduction of the capital of the above company from \$..... to \$....., is directed to be heard at the High Court at, ....., on the ..... day of ..... 19....., at ..... o'clock in the ..... noon.

[Agents for E. and F., of .....],  
Solicitors for the Company.

Dated the ..... day of ..... 19.....

P. G. MILLEN,  
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. These rules (with the exception of rules 2 and 4) come into force on 1 August 1987.

*Rule 2*, which comes into force on 15 July 1987, inserts new rules 61A to 61D into the High Court Rules. The new rules relate to the jurisdiction and powers of Masters of the High Court.

*Rule 3* inserts new rules 134A to 134H into the High Court Rules. The new rules establish a summary proceeding for recovery of land.

*Rule 4*, which comes into force on 15 July 1987, revokes subclause (1) of rule 255 of the High Court Rules, and substitutes a new subclause.

The new subclause provides that where a notice of interlocutory application is filed at a time when neither a Judge nor a Master is present and the order sought is not one that the Registrar has jurisdiction to make, the Registrar may at the request of the solicitor for any party to the application forward the application to the Registrar at any other place to be dealt with at that place.

Previously the forwarding of the application at the request of the solicitor was mandatory. The new subclause also takes account of the appointment of Masters.

*Rule 5* inserts a new rule 317A into the High Court Rules. The new rule provides that wilful failure to comply with certain orders or to ensure that they are complied with constitutes contempt of Court.

*Rule 6* inserts new rules 416A to 416K into the High Court Rules. The new rules provide for inquiries under the Companies Act 1955 as to debts, claims, or liabilities to be dealt with under the High Court Rules. Such inquiries are at present dealt with under the High Court (Companies) Rules 1956. Those rules are revoked by *rule 20* of these rules.

*Rule 7* corrects a cross-reference.

*Rule 8* revokes rule 448 (1) (a) of the High Court Rules. The revocation has the effect of removing from Part IV of those rules proceedings in which relief is claimed solely under the Aged and Infirm Persons Protection Act 1912. Such a proceeding may now be commenced by originating application under Part IVA (as inserted by *rule 12* of these rules).

*Rule 9* inserts a new rule 449A into Part IV of the High Court Rules. The new rule provides that certain proceedings may be brought either under Part IV (Procedure in Special Cases) or Part IVA (Originating Applications).

*Rule 10* inserts a new paragraph (ca) into rule 451 (1) (which relates to directions as to service). The amendment is consequential on the repeal of the High Court (Companies) Rules 1956 by *rule 20* of these rules.

*Rule 11* inserts new rules 458A to 458C into the High Court Rules. The new rules embody, with amendments, provisions of the High Court (Companies) Rules 1956. The new rule 458A (1) requires the plaintiff in any proceeding to which rule 451 (1) (ca) applies (other than a proceeding under section 464 of the Companies Act 1955) to apply to the Court on notice for directions as to the subsequent conduct of the proceeding.

*Rule 12* inserts a new *Part IVA* into the High Court Rules. The new Part provides for originating applications.

*Rule 13* amends rule 549 (1) (a) of the High Court Rules. Rule 549 (1) (a) sets out the value of the tools of trade and the value of the household furniture and effects, including wearing apparel, that may not be seized under a writ of sale. Those values are brought into line with the corresponding limits prescribed by section 52 of the Insolvency Act 1967 (as amended by section 2 (1) of the Insolvency Amendment Act 1986).

*Rules 14 to 18* amend forms 52 to 56 in the First Schedule to the High Court Rules. The amendments are designed to bring these forms (all of which are affidavits to lead grant of administration) into line with section 5A (3) of the Status of Children Act 1969.

*Rule 19* inserts new forms 32A, 32B, and 32C into the First Schedule to the High Court Rules. The new forms are required for the purposes of the new rules relating to inquiries under the Companies Act 1956 (as inserted by *rules 6 and 11* of these rules).

*Rule 20: Subclause (1)* revokes the High Court (Companies) Rules 1956.

*Subclause (2)* is a savings provision in respect of existing proceedings.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 25 June 1987.

These rules are administered in the Department of Justice.