

NORTHERN TERRITORY

SUPREME COURT (COMPANIES) RULES 1986

TABLE OF PROVISIONS

PART I - PRELIMINARY

Rule

1. Citation
2. Commencement
3. Application
4. Repeal
5. Savings
6. Interpretation
7. Application of Supreme Court Rules
8. Forms
9. Jurisdiction of Master
10. Hearings by Master in open Court
11. Appeals against Master

PART II - PROCEEDINGS GENERALLY

12. Commencement of proceedings by summons
13. Proceedings on pleadings and affidavits
14. Interlocutory applications
15. Joinder of other cause of action
16. Pleadings and affidavits on counterclaims
17. Third party proceedings
18. Fourth and subsequent party proceedings
19. Contribution proceedings between defendants
20. Appeals against decisions of liquidators
21. Relief in default of appearance

PART III - WINDING UP UNDER SECTION 364(1)(e)
OF THE CODE

22. Summonses for winding up for insolvency and discontinuance
23. Affidavit in support of winding up summons
24. Swearing of affidavit in support of summons for winding up
25. Issue of summons where affidavit not sworn in accordance with rule 24(b)
26. Indorsement of hearing date on summons
27. Early disposal of summons for winding up
28. No application for directions necessary
29. Service and advertising of summons for winding up
30. Consent of a liquidator
31. Furnishing of copies on request
32. Notice of support or opposition by creditor or contributory

- 33. Filing of affidavits by creditors seeking to substitute
- 34. Filing of documents in support of summons
- 35. Certificate of readiness by Deputy Master
- 36. Effect of no certificate of readiness
- 37. Power to dismiss summons if no certificate of readiness
- 38. Substitution of another creditor as plaintiff
- 39. Steps to be taken by substituted plaintiff
- 40. Powers of Court to deal with summons after substitution order
- 41. Costs of supporting or opposing creditors
- 42. Notice of winding up order
- 43. Service and advertising of winding up order
- 44. Notice at foot of winding up order

PART IV - SUMMONSES FOR WINDING UP OTHER THAN THOSE UNDER PART III AND SECTION 320

- 45. Summons to which this Part applies
- 46. Affidavit in support
- 47. Summons for directions
- 48. Service
- 49. Powers on directions applications
- 50. Answering affidavits
- 51. Affidavits in reply by plaintiff

PART V - PROVISIONAL LIQUIDATORS

- 52. Application for a provisional liquidator
- 53. Filing and service of affidavits and consent
- 54. Contents of order
- 55. Notice of order
- 56. Service and advertising of order
- 57. Costs of provisional liquidator

PART VI - EXAMINATIONS

- 58. Affidavit in support
- 59. Form of order and summons
- 60. Service of order
- 61. Application to discharge or vary order
- 62. Proof of service
- 63. Application to hold examination in private
- 64. Certificate proving transcript and exhibits
- 65. Copy of evidence for witness
- 66. Witness in breach of section 541 or guilty of contempt
- 67. Report by Master on proceedings for contempt

PART VII - ARRANGEMENTS AND RECONSTRUCTIONS UNDER PART VIII OF THE CODE

- 68. Contents of summons
- 69. Service on Commissioner

- 70. Affidavit in support
- 71. Affidavits of fitness of proposed chairman and administrator of scheme
- 72. Application to restrain proceedings against company
- 73. Directions hearing
- 74. Clause to be included in orders for convening meetings
- 75. Obtaining ruling of Judge on Master's report on contents of scheme
- 76. Report from chairman of meetings
- 77. Listing of summons seeking approval of scheme
- 78. Notice of hearing to be given to Commissioner, &c.
- 79. Notice to be given by creditor or interested party who intends to oppose
- 80. Notice of opposition by Commissioner
- 81. Service of order approving scheme
- 82. Right of Commissioner to be heard
- 83. Costs in respect of Commissioner

PART VIII - REDUCTION OF CAPITAL

- 84. Application for directions
- 85. Powers on directions hearing
- 86. Settlement of list of creditors
- 87. Notice to creditors
- 88. Master's certificate proof of creditors
- 89. Notice of opposition
- 90. Contents, service and advertising of order confirming reduction

PART IX - THE ISSUING OF SHARES AT A DISCOUNT

- 91. Service of order

PART X - DIRECTIONS FROM COURT

- 92. Directions for service
- 93. Sealing up of affidavit in support
- 94. Representation orders
- 95. Appointment of representative of class

PART XI - POWERS AND DUTIES OF LIQUIDATORS

- 96. Official liquidators to be officers of Court
- 97. Liquidators may obtain information
- 98. Expenses for preparation of statement of affairs
- 99. Appointment of temporary joint liquidator
- 100. Filing of affidavit and consent
- 101. Powers of Court to appoint temporary joint liquidator
- 102. Notice of appointment
- 103. Remuneration of temporary joint liquidator
- 104. Release of temporary joint liquidator

PART XII - SPECIAL MANAGERS

- 105. Application for and appointment of special manager
- 106. Security to be given by special manager
- 107. Default of special manager in relation to security

PART XIII - DISCLAIMERS

- 108. Summons for leave to disclaim

PART XIV - THE COLLECTION AND DISTRIBUTION OF ASSETS
ON WINDING UP BY COURT

- 109. Powers under section 384(1) and (2) conferred on liquidator
- 110. Power of liquidator to make calls under section 384(3)
- 111. Application for orders under section 574(2)

PART XV - LIQUIDATORS AND COMMITTEES OF INSPECTION

- 112. Liquidator not to profit from company
- 113. Liquidator not to profit from trading of company
- 114. Costs of obtaining sanction from Court
- 115. Remuneration of members of committee of inspection
- 116. Procedure for liquidator to resign
- 117. Appointment of another liquidator upon resignation
- 118. Removal of liquidator for bankruptcy or imprisonment
- 119. Appointment of further liquidator where no liquidator is acting

PART XVI - THE COSTS AND EXPENSES OF WINDING UP

- 120. Costs of agents
- 121. Taxation of agent's costs
- 122. Certificate of employment of agent
- 123. Documents and information required for taxation
- 124. Solicitor's costs
- 125. Informal request to Court in lieu of taxation
- 126. Procedure on request under rule 125
- 127. Master not disqualified from taxing bill
- 128. Auctioneer's lien
- 129. Costs of execution

PART XVII - RELEASE OF LIQUIDATOR

- 130. Application for release, and objections
- 131. Auditor's report
- 132. Advertising order for release

- 133. Notice to Commissioner of application for destruction of records
- 134. Leave to show cause why company should not be struck off

PART XVIII - MISCELLANEOUS

- 135. Costs scales
- 136. *Ex parte* applications in winding up proceedings
- 137. Leave to proceed against company in liquidation
- 138. Intervention by Commissioner
- 139. Dispensation from Rules
- 140. Directions on procedure
- 141. Lists of liquidators
- 142. Proof of advertising and gazettal
- 143. Court fees
- 144. Fees on Court documents

INDEX OF FORMS

SCHEDULE

NORTHERN TERRITORY OF AUSTRALIA

Regulation 1986, No. 31*

Rules of Court under the *Supreme Court Act*

We, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 86 of the *Supreme Court Act*, hereby make the following Rules of Court.

Dated this eighth day of August, 1986.

K.F. O'Leary CJ

John Nader J

W. Kearney J

Phillip Rice J

Austin Asche J

Judges of the Supreme Court
of the Northern Territory
of Australia

SUPREME COURT (COMPANIES) RULES 1986

PART I - PRELIMINARY

1. CITATION

These Rules may be cited as the Supreme Court (Companies) Rules 1986.

2. COMMENCEMENT

These Rules shall come into operation on 1 September, 1986.

3. APPLICATION

These Rules shall apply to all proceedings seeking any relief pursuant to the Code.

* Notified in the *Northern Territory Government Gazette* on 27 August, 1986.

4. REPEAL

The Rules of Court (Companies Act) 1965-1975 of the State of South Australia in their application to the proceedings in Court in the Northern Territory under the *Companies Act* by virtue of a direction made by the Acting Chief Justice under section 72 of the *Supreme Court Act* shall cease to apply as from the 1st day of July, 1986.

5. SAVINGS

(1) Notwithstanding rule 4, the Rules mentioned in that rule shall continue to apply to any proceedings under the *Companies Act* except where the Court directs that these Rules or some part thereof shall apply to those proceedings.

(2) The cessation of the application of the Rules of Court (Companies Act) 1965-1975 of the State of South Australia in the Territory shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under those Rules.

6. INTERPRETATION

(1) In these Rules, unless the context otherwise requires -

"business day" means a day on which the Registry of the Court is usually open for business;

"Code" means the *Companies (Northern Territory) Code* as defined by section 10 of the *Companies (Application of Laws) Act*;

"Commission" means the National Companies and Securities Commission established under the *National Companies and Securities Act 1979* of the Commonwealth and includes a delegate of the National Companies and Securities Commission;

"Commissioner" or "Commissioner for Corporate Affairs" means the Commissioner for Corporate Affairs appointed under section 4(1) of the *Companies (Administration) Act*;

"Court" means the Supreme Court of the Northern Territory of Australia or a Judge thereof and includes the Master when exercising the jurisdiction of the Court;

"Deputy Master" means a Deputy Master appointed under section 48 of the *Supreme Court Act*;

"Master" means the Master of the Court;

"Solicitor" means a legal practitioner of the Court who holds a current practising certificate;

Supreme Court (Companies) Rules

"Supreme Court Rules" means the Supreme Court Rules of the Court currently in force.

(2) In these Rules, unless the context otherwise requires, the definitions contained in the Code and the provisions of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Northern Territory) Code* shall apply to the construction of these Rules.

7. APPLICATION OF SUPREME COURT RULES

The Supreme Court Rules for the time being in force, including the course of procedure and practice in Chambers, shall apply in relation to proceedings to which these Rules relate so far as may be practicable except and in so far as the Code or these Rules otherwise provide.

8. FORMS

(1) The forms contained in the Schedule to these Rules are to be used with such variations as the circumstances may require, and the reference to any form in these Rules shall be read as a reference to the appropriate form in the Schedule and as a direction to use that form for the purpose indicated by the rule.

(2) Where no form is prescribed for a document required for any purpose by these Rules or by the practice of the Court, the Master or a Deputy Master may give directions with respect to the form to be used.

9. JURISDICTION OF MASTER

The Master may hear or determine any summons brought under these Rules except those brought under sections 30R, 73, 126, 127, 129, 130, 144A, 146, 168, 175(4), 297, 311, 312, 315(6), 353, 383, 542, 552, 557, 562 and 574 of the Code or under any other section of the Code as directed by the Chief Justice.

10. HEARINGS BY MASTER IN OPEN COURT

(1) Summonses under Part III, IV and VIII of these Rules which are being dealt with by the Master shall be heard in open Court.

(2) Any other summons or application heard by the Master under these Rules shall be heard in Chambers unless the Court otherwise directs.

(3) In exercising jurisdiction under these Rules, the Master has the general powers of the Court whether the proceedings are in open Court or in Chambers.

11. APPEALS AGAINST MASTER

(1) A person affected by an order, decision or direction of the Master may appeal against the order, decision or direction.

Supreme Court (Companies) Rules

(2) An appeal under subrule (1) shall be made to a single Judge in a similar manner to that provided by the Supreme Court Rules for an appeal against an order or decision of the Master.

(3) Where the order, decision or direction of the Master was made in Chambers the appeal shall go to a Judge in Chambers and where the order, decision or direction of the Master was made in Court the appeal shall go to a Judge in Court.

PART II - PROCEEDINGS GENERALLY

12. COMMENCEMENT OF PROCEEDINGS BY SUMMONS

(1) All proceedings under these Rules shall be commenced by summons.

(2) Where it is not intended to serve a summons on a person, the summons shall be in Form 1 and shall be supported by an affidavit setting out the facts relied upon for the relief sought.

(3) Where it is necessary to serve a summons on a person, the summons shall be in Form 2 and shall be supported either by an affidavit setting out the facts relied upon for the relief sought or by a statement of claim pleading the plaintiff's cause of action in accordance with the requirements of the Supreme Court Rules.

(4) A summons for winding up under Part III of these Rules shall be in Form 3.

13. PROCEEDINGS ON PLEADINGS AND AFFIDAVITS

(1) If a summons is issued pursuant to rule 12(2) but the Court subsequently directs that it should be served on some other party, the Court may direct that a summons in accordance with rule 12(3) be substituted for that summons and that the proceedings shall continue as if they had been instituted pursuant to rule 12(3).

(2) If a summons under rule 12(3) is supported by an affidavit, any other party to the proceedings may apply to the Court for a direction that the summons shall continue on pleadings, and for directions for the pleadings.

(3) If the summons is supported by an affidavit under rule 12(3), and no directions for pleadings have been given under subrule (2) each other party to the proceedings shall file an affidavit in answer dealing with the matters raised in the affidavit on behalf of the plaintiff and setting out any facts on which that party wishes to rely in opposition to the claim within 14 days of the filing of its appearance.

Supreme Court (Companies) Rules

(4) Where a defendant files an affidavit pursuant to subrule (3) deposing to any matter not dealt with in the affidavit already filed by the plaintiff the plaintiff shall file a further affidavit in answer to such matter within 14 days of the service of the affidavit of the defendant.

14. INTERLOCUTORY APPLICATIONS

Every interlocutory application in proceedings under these Rules shall be made by application in Form 4.

15. JOINDER OF OTHER CAUSES OF ACTION

(1) A plaintiff may join in a summons issued under these Rules any other causes of action which are within the jurisdiction of the Court and which can be conveniently disposed of at the same time as the relief sought under the Code.

(2) A defendant may file a counterclaim in proceedings under these Rules where the counterclaim is within the jurisdiction of the Court and where the issues raised by the counterclaim can conveniently be disposed of in conjunction with the relief sought in the summons.

16. PLEADINGS AND AFFIDAVITS ON COUNTERCLAIMS

Rules 12(3), 13(2), (3), (4) and 15(1) shall apply *mutatis mutandis* to any counterclaim filed pursuant to rule 15(1).

17. THIRD PARTY PROCEEDINGS

With the prior leave of the Court, a defendant may, in the manner laid down by the Supreme Court Rules, issue third party proceedings whose subject matter is within the jurisdiction of the Court against any person who is not already a party to the summons where the issues raised by the third party proceedings can be conveniently disposed of in conjunction with the relief sought in the summons and in any counterclaim.

18. FOURTH AND SUBSEQUENT PARTY PROCEEDINGS

With the leave of the Court, any third or subsequent party may, in the manner laid down by the Supreme Court Rules, issue a fourth or subsequent party notice whose subject matter is within the jurisdiction of the Court against any person who is not already a party to the summons where the issues raised by that fourth or subsequent party notice can be conveniently disposed of in conjunction with relief sought in the summons and in any counterclaim.

19. CONTRIBUTION PROCEEDINGS BETWEEN DEFENDANTS

Unless the Court directs to the contrary the defendants or any third or subsequent parties to a summons shall, in the proceedings commenced by the summons, be entitled to carry on contribution proceedings between themselves in the manner laid down by the Supreme Court Rules.

20. APPEALS AGAINST DECISIONS OF LIQUIDATORS

As soon as practicable after being served with a summons appealing against a decision made by him, a liquidator shall file an affidavit setting out all of the material upon which he based his decision being appealed against and exhibiting thereto copies of all relevant documents in so far as they have not already been put in evidence by the plaintiff.

21. RELIEF IN DEFAULT OF APPEARANCE

Where no appearance is entered to a summons under these Rules by any defendant after being duly served with the summons or if any defendant is in default in taking any step in the proceedings, the Court may in Chambers grant to the plaintiff the relief to which he is shown to be entitled in any affidavit filed by him in support of the summons.

PART III - WINDING UP UNDER SECTION 364(1)(e)
OF THE CODE

22. SUMMONSES FOR WINDING UP FOR INSOLVENCY AND DISCONTINUANCE

(1) Rules 23 to 44 apply to summonses which only seek the winding up of a company under section 364(1)(e) of the Code and relief ancillary thereto.

(2) No summons to which this Part applies may be discontinued without the prior leave of the Court.

23. AFFIDAVIT IN SUPPORT OF WINDING UP SUMMONS

An affidavit shall be filed at the time at which the summons is issued setting out, *inter alia* -

- (a) the date and place of the incorporation of the Company, and exhibiting a copy of the certificate of incorporation;
- (b) any former names of the company;
- (c) the amounts of the authorized and paid up capital of the company;
- (d) the names of the directors and the secretaries of the company;

Supreme Court (Companies) Rules

- (e) the general nature of the business, if any, carried on by the company or apparently carried on by the company, or which has been previously carried on by the company at any relevant time;
- (f) the situation of the registered office and any known places of business of the company;
- (g) the amount of the debt alleged and details of how and when it was incurred and, if the claim is in relation to a written document, exhibiting a copy of that document;
- (h) details of any judgments obtained by the plaintiff against the company;
- (j) the grounds relied upon to show that the company is unable to pay its debts;
- (k) a statement that to the best of the knowledge, information and belief of the deponent the company is then truly and justly indebted to the plaintiff for the whole of the amount claimed;
- (m) any other facts to be relied upon by the plaintiff in support of the winding up order; and
- (n) the sources of the information for the statements in paragraphs (a) to (m) and, if based on information obtained from the Commission or the Commissioner, the date on which it was obtained.

24. SWEARING OF AFFIDAVIT IN SUPPORT OF SUMMONS FOR WINDING UP

The affidavit referred to in rule 23 shall:

- (a) be sworn by a person who can swear of his own knowledge to the indebtedness of the company to the plaintiff;
- (b) be sworn not earlier than 3 days on which the summons is issued; and
- (c) be served with the summons.

25. ISSUE OF SUMMONS WHERE AFFIDAVIT NOT SWORN IN ACCORDANCE WITH RULE 24(b)

The Court may on an informal application allow a summons to be issued notwithstanding that the affidavit in support has not been sworn in accordance with rule 24(b) above if an affidavit is filed from some person who swears that, at the date of the issue of the summons, the debt claimed by the plaintiff was still due and owing by the company to the plaintiff.

26. INDORSEMENT OF HEARING DATE ON SUMMONS

Upon the issue of a summons, the Registry shall indorse upon it notice of the hearing date as fixed by a Deputy Master and a time on that date before which it is not to be called for hearing.

27. EARLY DISPOSAL OF SUMMONS FOR WINDING UP

Notwithstanding the date set for hearing pursuant to rule 26 the Court may wherever it is proper to do so on the application of any party deal with the summons in whole or in part on an earlier date.

28. NO APPLICATION FOR DIRECTIONS NECESSARY

Upon the issue of a summons under this Part it shall not be necessary to issue any application for directions, but any party interested shall be at liberty at any time to issue an application for directions.

29. SERVICE AND ADVERTISING OF SUMMONS FOR WINDING UP

Within 14 days of the issue of a summons the plaintiff shall serve the summons on the company and cause an advertisement in Form 5 to be published once in each of -

- (a) a daily newspaper circulating in the Northern Territory of Australia;
- (b) a daily newspaper circulating in any State or Territory of Australia in which the plaintiff has reason to believe that the company has carried on business within the previous 6 months; and
- (c) the Gazette.

30. CONSENT OF LIQUIDATOR

Within 14 days of the issue of a summons for winding up the plaintiff shall cause to be filed a written consent in Form 6 signed by an Official Liquidator.

31. FURNISHING OF COPIES ON REQUEST

Every member or creditor of the company shall be entitled to be furnished by the plaintiff within 2 days of service of a request with a copy of the summons and the affidavit in support on payment of the proper charge therefor calculated in accordance with the scale for solicitors' costs under the Supreme Court Rules.

Supreme Court (Companies) Rules

32. NOTICE OF SUPPORT OR OPPOSITION BY CREDITOR OR CONTRIBUTORY

Neither the company, a creditor nor a contributory shall be heard in support of, or in opposition to, a summons for winding up unless it or he shall have filed at least 3 business days before the day on which the summons is next listed for hearing, and served on the plaintiff and the company, a notice in Form 7 and any affidavit on which it or he will rely at such hearing.

33. FILING OF AFFIDAVITS BY CREDITORS SEEKING TO SUBSTITUTE

Where a creditor of the company intends to seek a order under rule 38 he shall not later than 3 business days before the day on which the summons is next listed for hearing -

- (a) file an affidavit in Form 8 sworn by some person who of his own knowledge can depose that the amount claimed by that creditor was due and owing by the company to that creditor on the date on which the summons was issued; and
- (b) serve a copy of that affidavit on each of the plaintiff and the company.

34. FILING OF DOCUMENTS IN SUPPORT OF SUMMONS

At least 3 business days before the date set for the hearing of the summons the plaintiff shall file -

- (a) an affidavit proving service of the summons and the affidavit in support in Form 9;
- (b) an affidavit proving service of any notice under section 364(2) of the Code in Form 10;
- (c) proof of advertising under rule 29 in accordance with rule 142; and
- (d) minutes of order in Form 11.

35. CERTIFICATE OF READINESS BY DEPUTY MASTER

If a Deputy Master is satisfied that the provisions of the Rules relating to the summons have been complied with and that the summons is ready for hearing, not later than 2 clear business days before the next date set for the hearing of the summons, he or his delegate shall indorse a certificate on the summons that it is ready for hearing.

36. EFFECT OF NO CERTIFICATE OF READINESS

Unless the summons has been indorsed pursuant to rule 35, on the initial or any adjourned hearing the Court shall not, except for special reasons, make any order thereon other than to adjourn or dismiss the summons.

37. POWER TO DISMISS SUMMONS IF NO CERTIFICATE OF READINESS

If by the time of any hearing of the summons it has not been indorsed under rule 35, the Court may on the application of any party, or of its own motion if it sees fit, dismiss the summons.

38. SUBSTITUTION OF ANOTHER CREDITOR AS PLAINTIFF

If on any hearing of the summons the plaintiff does not attend, or does not, or cannot, seek an order for the winding up of the company at that hearing, the Court may permit any other creditor who has complied with rules 32 and 33 to be substituted as the plaintiff on the summons.

39. STEPS TO BE TAKEN BY SUBSTITUTED PLAINTIFF

Upon an order being made under rule 38 the substituted plaintiff shall within 2 days thereafter amend the summons in red ink to show himself as the substituted plaintiff and shall serve copies of the summons as amended on the company and on any other parties who have given notice under rule 32.

40. POWERS OF COURT TO DEAL WITH SUMMONS AFTER SUBSTITUTION ORDER

Upon any order being made under rule 38 the Court may -

- (a) if the summons has been indorsed with a Deputy Master's Certificate under rule 35, and it is otherwise proper to do so, make an order for the winding up of the company;
- (b) adjourn the summons for such period as it sees fit; or
- (c) give such directions as are necessary for the expeditious disposal of the summons.

41. COSTS OF SUPPORTING OR OPPOSING CREDITORS

(1) Where counsel for 2 or more creditors of a company (other than the plaintiff) who have each given notice under rule 32 attend on the hearing of a summons the Court, if it sees fit, may make an order that only one counsel fee be allowed as between such creditors unless it is satisfied that there was good reason why all such creditors should not have appeared at the hearing by the one counsel.

(2) Upon an Order being made under subrule (1) the Taxing Officer shall allow each creditor who has given notice under rule 32 by a separate solicitor his costs of doing so and his proper costs of briefing counsel to attend on the hearing, but he shall apportion a single counsel fee equally between all such creditors.

42. NOTICE OF WINDING UP ORDER

(1) Immediately upon a winding up order being made under rule 40 the plaintiff shall procure from the Court a notice of the Order signed by a Deputy Master or his delegate.

(2) As soon as possible after the making of the Order for winding up, and in any event on the day on which it is made the plaintiff shall -

- (a) deliver the notice under subrule (1) to the liquidator appointed by the Order at his business address;
- (b) lodge a copy of the notice with the Commissioner; and
- (c) serve a copy of the notice upon the company by posting by prepaid post on that day.

43. SERVICE AND ADVERTISING OF WINDING UP ORDER

Within 14 days of the making of a Order for winding up the plaintiff shall -

- (a) serve on the liquidator appointed by the Order an office copy of the sealed Order of the Court;
- (b) serve a copy of the sealed Order by prepaid post upon the company addressed to its registered office; and
- (c) cause an advertisement in Form 12 to be published once in each of -
 - (i) a daily newspaper circulating in the Northern Territory of Australia;

Supreme Court (Companies) Rules

(ii) a daily newspaper circulating in any State or Territory of Australia in which the plaintiff has reason to believe that the company has carried on business in the previous 6 months; and

(iii) the Gazette.

44. NOTICE AT FOOT OF WINDING UP ORDER

Every Order for the winding up of a company by the Court shall, unless the Court otherwise directs, contain at the foot thereof a notice stating it will be the duty of such persons who are liable to make out or concur in making out a report as to the affairs of the liquidator may require pursuant to section 375 of the Code to attend on the liquidator at such time and place as he may appoint and give him all the information which he may require.

PART IV - SUMMONSES FOR WINDING UP OTHER THAN THOSE UNDER PART III AND SECTION 320

45. SUMMONS TO WHICH THIS PART APPLIES

Rules 46 to 52 apply to summonses seeking an order for the winding up of a company (other than those to which Part III applies) and to those under section 320 of the Code.

46. AFFIDAVIT IN SUPPORT

Upon the issue of the summons the plaintiff shall file an affidavit in support deposing to such of the matters as are referred to in rule 23 which are relevant to the summons and setting out the grounds upon which the winding up order is sought. Such an affidavit shall be sworn by a person who can swear of his own knowledge to at least some of the grounds relied upon for winding up of the company.

47. SUMMONS FOR DIRECTIONS

At the time of the issue of the summons the plaintiff shall take out an application for directions.

48. SERVICE

As soon as practicable after the issue of the summons the plaintiff shall serve the summons, the affidavit in support and the application for directions upon the company and any officers or contributories of the company against whom orders, including orders for costs, are sought in the summons.

49. POWERS ON DIRECTIONS APPLICATIONS

In addition to the usual powers of the Court on the hearing of an application for directions the Court may, if it thinks fit -

Supreme Court (Companies) Rules

- (a) direct the filing of pleadings;
- (b) order that all parties before the Court give discovery or inspection of documents relating to any matters in issue in the proceedings;
- (c) direct that any of the Rules in Part III shall apply to the summons; or
- (d) give such directions as are appropriate for the mode and the time of the hearing or the trial of the summons.

50. ANSWERING AFFIDAVITS

Within 14 days of the service of the summons the company and any other defendant thereto shall each file an affidavit in answer to the matters deposed to in the affidavit filed by the plaintiff in support of the summons and deposing to any other matters upon which they wish to rely in defence of the summons.

51. AFFIDAVITS IN REPLY BY PLAINTIFF

If the company or a defendant shall file an affidavit pursuant to rule 50 deposing to matters not dealt with in the affidavit filed by the plaintiff in support of the summons, the plaintiff within 14 days of the service of such affidavit upon him shall file a further affidavit in answer to such matters in the affidavit of the company or the other defendant.

PART V - PROVISIONAL LIQUIDATORS

52. APPLICATION FOR PROVISIONAL LIQUIDATOR

At any time after the issue of a summons seeking the winding up of a company the plaintiff or any other party interested, including the company, may apply by application in Chambers for the appointment of a provisional liquidator.

53. FILING AND SERVICE OF AFFIDAVITS AND CONSENT

The party seeking an order for the appointment of a provisional liquidator shall -

- (a) at the time of filing the application, file an affidavit setting out the facts relied upon for the appointment of the provisional liquidator;
- (b) file a consent from an Official Liquidator in Form 6 to his being appointed as the provisional liquidator; and
- (c) forthwith serve the application and the affidavit in support upon the company and all other interested parties.

54. CONTENTS OF ORDER

An Order appointing a provisional liquidator shall state the nature, and give a short description, of the property of which he is ordered to take possession, the duties to be performed by him and the powers conferred upon him.

55. NOTICE OF ORDER

(1) Immediately upon an Order being made for the appointment of a provisional liquidator the party at whose instance the Order was made shall procure from the Court a notice of the Order signed by the Deputy Master or his delegate.

(2) As soon as possible after the making of the Order for the appointment of a provisional liquidator, and in any event on the day on which it is made, the party at whose instance the order was made shall -

- (a) deliver the notice referred to in subrule (1) to the provisional liquidator named in the Order at his business address;
- (b) lodge a copy of the notice with the Commissioner; and
- (c) if the company is not the applicant, serve a copy on the company by posting on that day by prepaid post.

56. SERVICE AND ADVERTISING OF ORDER

Within 7 days of the making of an Order for the appointment of a provisional liquidator the party at whose instance the Order was made shall -

- (a) serve an office copy of the Order on the provisional liquidator;
- (b) serve a copy of the sealed Order on the company by prepaid post addressed to its registered office; and
- (c) cause an advertisement in the Form 12 to be published once in -
 - (i) a daily newspaper circulating in the Northern Territory; and
 - (ii) the *Gazette*.

57. COSTS OF PROVISIONAL LIQUIDATOR

(1) The provisional liquidator shall be entitled to be paid out of the assets of the company all costs, charges and expenses properly incurred by him and such remuneration as shall be fixed by the Court.

(2) Before seeking the fixing of his remuneration by the Court the provisional liquidator shall give notice of his claim for remuneration to any liquidator of the company if it is not himself and to any Committee of Inspection.

(3) The provisions of rules 112 to 118 (inclusive) relating to liquidators shall apply *mutatis mutandis* to any provisional liquidator.

PART VI - EXAMINATIONS

58. AFFIDAVIT IN SUPPORT

An affidavit in support of a summons or an application seeking an order for the examination of any person under section 541 of the Code may, at the option of the applicant for the examination, be sealed up before it is filed, and in that case it shall not be opened or inspected other than by direction of the Court.

59. FORM OF ORDER AND SUMMONS

The Order for an examination shall be in Form 13 and a sealed copy of the Order shall constitute the summons to the examinee for his attendance at the examination.

60. SERVICE OF ORDER

An order for an examination shall be served personally upon the examinee or in such other manner as the Court shall direct within such time as the Court may direct or, if no direction is given, at least 7 days before the date set for the examination.

61. APPLICATION TO DISCHARGE OR VARY ORDER

An application by a person served with an Order for his examination to discharge that Order, or to vary the terms thereof, shall be filed within 7 days of the service of the Order upon him and shall be supported by an affidavit setting out all the facts and matters relied upon by him.

62. PROOF OF SERVICE

The service of any Order upon an examinee and the tender of any conduct money may be proved by affidavit.

63. APPLICATION TO HOLD EXAMINATION IN PRIVATE

An application under section 541(4) of the Code to hold an examination in private shall be made either by formal application before the commencement of the examination or orally at the commencement of the examination.

64. CERTIFICATE PROVING TRANSCRIPT AND EXHIBITS

The written record of an examination, or the transcript of an examination, and the exhibits tendered in the course of the examination, may be authenticated and proved in any other proceedings by a certificate annexed thereto in Form 14 and signed by the person conducting the examination.

65. COPY OF EVIDENCE FOR WITNESS

A person who is examined under section 541 of the Code, and who duly signs the record of his examination, shall be entitled upon making a request therefor in writing to Deputy Master to be supplied with a copy of his evidence upon payment of the fee prescribed for such a copy by the Supreme Court Rules.

66. WITNESS IN BREACH OF SECTION 541 OR GUILTY OF CONTEMPT

Where a person ordered to be examined under section 541 of the Code -

- (a) is, or appears to be, in breach of his obligations under that section; or
- (b) behaves in a manner which in the opinion of the Master conducting the examination may amount to a contempt of Court,

the Master may adjourn the examination for hearing before a Judge and direct that the examinee be taken into custody by the Sheriff pending his being brought before a Judge, but the Master may, if he thinks fit, admit him to bail in the meantime.

67. REPORT BY MASTER ON PROCEEDINGS FOR CONTEMPT

Upon an examination being adjourned to a Judge pursuant to rule 66 the Master may submit a report in writing to the Judge on any relevant matters and such a report shall be prima facie evidence in the proceedings before the Judge of the contents thereof.

PART VII - ARRANGEMENTS AND RECONSTRUCTIONS UNDER
PART VIII OF THE CODE

68. CONTENTS OF SUMMONS

A summons seeking directions under section 315(1) of the Code for the convening of meetings shall also claim an order for the approval of any compromise or arrangement which may be passed by the meetings.

69. SERVICE ON COMMISSIONER

(1) Copies of a summons seeking directions under section 315(1) of the Code, and all affidavits in support, shall be served on the Commissioner as soon as practicable after the filing thereof.

(2) Proper notice of all hearings of the summons, and of any application issued therein, shall be served on the Commissioner by the plaintiff.

70. AFFIDAVIT IN SUPPORT

In support of a summons seeking directions for convening a meeting under section 315(1) of the Code the plaintiff shall file an affidavit or affidavits setting out or exhibiting, where relevant, the following material:

- (a) the names and current addresses of all of the members and officers of the company, the source from which the addresses of the members and officers have been ascertained and a statement that there are no other members or officers;
- (b) the issued share capital of the company and the classes, if any, of the issued shares;
- (c) the names, full addresses and amounts owed to each of the creditors of the company, details of any security held by any such creditors, details of any priority or preference to which any creditors would be entitled if the company was then to be wound up, and including details of any prospective or contingent creditors;
- (e) the sources from which the list of creditors and their addresses have been compiled and a statement as to the likely accuracy and completeness of those sources;
- (f) a statement from some person whose means of knowledge is set out therein that there are no other prospective, contingent or other creditors of the company or threatened claims against the company;
- (g) the nature of the company's business and the places at which such business has been carried on;
- (h) a statement that the company has not carried on business or had dealings in any State or other Territory of Australia or any other country except as is disclosed;
- (j) the place of incorporation of the company and whether it is registered as a foreign company elsewhere, and to exhibit a copy of the certificate of incorporation;

- (k) details of any other compromise or arrangement which have been proposed to be implemented in any State or other Territory of Australia and of any liquidation, official management, receivership or other arrangements between the company and its members or creditors;
- (m) the proposed form of the compromise or arrangement;
- (n) details of the date, time and place for the holding of the proposed meetings;
- (p) where the company is already in liquidation or under official management, details of any outstanding steps to be taken in the liquidation or the official management;
- (q) any other matters relevant to the directions which are sought; and
- (r) where the deponent cannot swear to all of the contents of the affidavit of his own knowledge, details of the sources of his information and his belief in their truth.

71. AFFIDAVITS OF FITNESS OF PROPOSED CHAIRMAN AND ADMINISTRATOR OF SCHEME

Before any hearing of the summons seeking directions under section 315(1) of the Code, the plaintiff shall file an affidavit verifying -

- (a) that a person who is nominated to act as the Chairman, or the alternate Chairman, of any meeting to be convened by direction of the Court -
 - (i) is willing so to act;
 - (ii) does not have, and has not had, any relationship or dealings with the company or any other person referred to in the proposed compromise or arrangement except as are disclosed in the affidavit; and
 - (iii) does not have any interest or obligation which would be inconsistent with him acting as an independent Chairman of any meeting to be convened by direction of the Court; and
- (b) that a person proposed to be appointed to administer any compromise or arrangement satisfies the requirements of section 315(7) of the Code.

72. APPLICATION TO RESTRAIN PROCEEDINGS AGAINST COMPANY

If an order is sought under section 315(18) of the Code to restrain any action or other civil proceedings against the company, the order may be sought by an application in the proceedings commenced by the summons and shall be served, unless the Court otherwise directs, on the person bringing the action or other civil proceedings against the company.

73. DIRECTIONS HEARING

The summons shall be heard in Chambers for the purpose of giving any directions under section 315(1) of the Code.

74. CLAUSE TO BE INCLUDED IN ORDERS FOR CONVENING MEETINGS

Any Order made under section 315(1) of the Code for the convening of meetings shall include the following clause with such modifications as are required in the particular case:

"The Explanatory Statement pursuant to section 316 of the *Companies (Northern Territory) Code* referred to above shall contain the following notation prominently displayed:

'The giving of directions by the Supreme Court of the Northern Territory of Australia for the calling of meetings of members and creditors of the company does not in any way indicate that the Court has yet either approved of the contents of this Explanatory Statement or determined whether it complies with the provisions of the Code.'"

75. OBTAINING RULING OF JUDGE ON MASTER'S REPORT ON CONTENTS OF SCHEME

(1) If on a hearing for directions under section 315(1) of the Code the Master is of the opinion that any of the provisions contained in the proposed compromise or arrangement may not be acceptable to the Court he may file a report to that effect.

(2) If the plaintiff so elects he may request that the report be brought before a Judge in Chambers before any meetings are held, and, if he considers it proper to do so, the Judge may rule whether the terms of the arrangement or compromise, or some particular terms therein, would be acceptable to the Court if they were to be passed by the required majorities at the meetings convened under section 315(1) of the Code.

Supreme Court (Companies) Rules

(3) In so far as a Judge has ruled on the provisions of a compromise or arrangement under subrule (2), the Court hearing the summons for an approval of the compromise or arrangement under section 315(6) of the Code shall be bound by the ruling unless it has before it material evidence or submissions which were not placed before the Judge who made the ruling under subrule (2).

76. REPORT FROM CHAIRMAN OF MEETINGS

Immediately after the conclusion of any meeting directed to be held under section 315(1) of the Code the plaintiff shall file and serve on the Commissioner a report from the Chairman of that meeting setting out particulars of what occurred at the meeting and its result.

77. LISTING OF SUMMONS SEEKING APPROVAL OF SCHEME

If the plaintiff seeks an order that the Court grant its approval to any compromise or arrangement which has been duly passed by meetings held pursuant to directions given under section 315(1) of the Code the Deputy Master shall upon receipt of a written request from the plaintiff have the summons listed for hearing for that purpose before a Judge in open Court provided that the Deputy Master shall not fix a date for such hearing before such date on which it appears to him that the plaintiff will be ready to proceed.

78. NOTICE OF HEARING TO BE GIVEN TO COMMISSIONER &c.

Immediately upon the summons being listed for hearing pursuant to rule 77 the plaintiff shall -

- (a) give notice thereof in writing to the Commissioner and shall serve on the Commissioner all affidavits which he intends to use at that hearing which he has not previously served; and
- (b) at least 7 days before the hearing date which has been set serve by prepaid post on all known members and creditors of the company who may be affected by the compromise or arrangement, notice in Form 15 of the hearing seeking the approval of the compromise or arrangement.

79. NOTICE TO BE GIVEN BY CREDITOR OR INTERESTED PARTY WHO INTENDS TO OPPOSE

If any member or creditor or any other interested party intends to oppose the approval of any compromise or arrangement, he shall file and serve on the plaintiff, the company and the Commissioner at least 3 business days before the hearing date set for the summons -

- (a) notice in Form 16 of his intention to oppose the approval; and

(b) any affidavit to be used by him on such hearing.

80. NOTICE OF OPPOSITION BY COMMISSIONER

(1) If the Commissioner intends to appear at the hearing of a summons seeking the approval of a compromise or arrangement, and to oppose its approval, it shall file a notice and any affidavits in accordance with rule 79.

(2) If the Commissioner is not to attend on the hearing of the summons seeking the approval of a compromise or arrangement, it shall file and serve on all interested parties at least 3 business days before the date set for the hearing a statement referred to in section 315(21)(b) of the Code.

81. SERVICE OF ORDER APPROVING SCHEME

Where an Order is made approving a compromise or an arrangement the plaintiff shall forthwith have the Order sealed and copies -

(a) lodged with the Commissioner; and

(b) served on any manager or trustee appointed by the terms of the compromise or arrangement.

82. RIGHT OF COMMISSIONER TO BE HEARD

The Commissioner shall be entitled to be heard on any hearing of a summons seeking the approval of a compromise or arrangement, or any application issued in the proceedings commenced by the summons, by counsel and without being required to file any appearance to the summons.

83. COSTS IN RESPECT OF COMMISSIONER

Except in special circumstances no order for costs shall be made in favour of or against the Commissioner on a summons seeking the approval of a compromise or arrangement or any application therein.

PART VIII - REDUCTION OF CAPITAL

84. APPLICATION FOR DIRECTIONS

Upon the issue of a summons seeking confirmation of a reduction in capital an application for directions shall thereupon be taken out.

85. POWERS ON DIRECTIONS HEARING

Upon the hearing of the application for directions the Court shall, inter alia -

(a) determine whether section 123 of the Code, or any part thereof, is to apply in the proceedings;

Supreme Court (Companies) Rules

- (b) if it is determined that any of the requirements of section 123 of the Code are to be complied with, give all necessary directions;
- (c) direct what advertisements in Form 17 are to be inserted in which publications and by what dates; and
- (d) set a date for the hearing of the summons.

86. SETTLEMENT OF LIST OF CREDITORS

If the Court directs the settlement of a list of the creditors of the company, the Master shall conduct all such inquiries as the Court may direct, and if it shall so direct, in a summary way, to determine who are the creditors of the company and the amounts owed to each of them by the company.

87. NOTICE TO CREDITORS

The Court may cause notice to be given to any person who is believed to be a creditor of the company to submit a proof of his claim by a specified date, and if the proof is not submitted within the time allowed, that creditor, or such part of his debt for which a proof has not been submitted, shall be excluded from the settled list of creditors.

88. MASTER'S CERTIFICATE PROOF OF CREDITORS

Upon the hearing of a summons for the confirmation of a reduction of the capital of a company, the Court may, without requiring further proof, act on a certificate from the Master which specifies -

- (a) the creditors of the company; and
- (b) the amounts of their debts.

89. NOTICE OF OPPOSITION

If a member, creditor or any other interested party intends to oppose summons for the confirmation of the reduction of capital, he shall file and serve on the company at least 3 business days before the date set for the hearing of the summons -

- (a) a notice in Form 18 of his intention to oppose the confirmation setting out the grounds he relies upon; and
- (b) any affidavit to be used by him on such hearing.

90. CONTENTS, SERVICE AND ADVERTISING OF ORDER CONFIRMING REDUCTION

An Order confirming a reduction of capital shall -

Supreme Court (Companies) Rules

- (a) contain the particulars required by section 123(6) of the Code;
- (b) be lodged with the Commissioner within such time as is specified in the Order, or if no time is specified within 7 days of the making of the Order; and
- (c) be advertised in Form 19 within 14 days of the making of the Order in -
 - (i) a daily newspaper circulating in the Northern Territory;
 - (ii) the Gazette; and
 - (iii) such other publications as the Court may direct in the Order.

PART IX - THE ISSUING OF SHARES AT A DISCOUNT

91. SERVICE OF ORDER

Unless the Court shall otherwise direct an office copy of every Order sanctioning the issue of shares at a discount under section 118 of the Code shall be lodged with the Commissioner within 7 days from the making of such Order and the Order shall not take effect until such copy has been so lodged.

PART X - DIRECTIONS FROM COURT

92. DIRECTIONS FOR SERVICE

Upon the issue of any summons seeking directions pursuant to any right to do so under the Code the plaintiff shall take out an application for directions seeking, inter alia, directions as to the service of the summons.

93. SEALING UP OF AFFIDAVIT IN SUPPORT

An affidavit, or any exhibit thereto, in support of any summons seeking directions may be sealed up before it is filed if it contains confidential material, and if so it shall not be opened or inspected without the prior leave of the Court.

94. REPRESENTATION ORDERS

On a summons seeking directions the Court may appoint any person, subject to his consent, to represent any class of interested persons for the purpose of the directions hearing without requiring that notice thereof be given to any other members of that class.

95. APPOINTMENT OF REPRESENTATIVE OF CLASS

On any summons seeking directions the Court may appoint a representative of an interested class of person where it seems desirable to do so in the interests of saving costs.

PART XI - POWERS AND DUTIES OF LIQUIDATORS

96. OFFICIAL LIQUIDATORS TO BE OFFICERS OF COURT

(1) All official liquidators registered by the Commission shall be officers of the Court.

(2) Judicial notice shall be taken of the registration of any person by the Commission as an official liquidator.

97. LIQUIDATORS MAY OBTAIN INFORMATION

(1) Every person who under section 375 of the Code has been required by a liquidator to submit and verify a report as to the affairs of a company shall be furnished by the liquidator with the prescribed forms for the preparation and verification of the statement.

(2) A person who is referred to in section 375(2) of the Code shall attend upon the liquidator personally at such time and place as the liquidator may appoint and give to the liquidator all information which he may require including information which may be privileged or tending to incriminate, but any information so given by a person which may incriminate him shall not be used as an admission against him in any criminal proceedings.

(3) After the report as to the affairs of a company has been submitted to the liquidator it shall be the duty of each person who has made, or concurred in the making of, such report to attend, if required, before the liquidator and to answer all questions as may be put to him by the liquidator and give all such further information as may be required of him in relation to the report.

(4) Any default in complying with the requirements of section 375 of the Code may be reported by the liquidator to the Court and to the Commissioner.

98. EXPENSES FOR PREPARATION OF STATEMENT OF AFFAIRS

(1) A person who is required to make, or concur in making, any report as to the affairs of a company shall before incurring any costs or expenses for the preparation of the report apply to the liquidator for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur.

(2) On the application of any person interested the Court shall tax such expenses.

Supreme Court (Companies) Rules

(3) Except by order of the Court, no person shall be allowed out of the assets of a company any such costs or expenses which have not been taxed or sanctioned by the liquidator before being incurred.

99. APPOINTMENT OF TEMPORARY JOINT LIQUIDATOR

A liquidator of a company ("the appointed liquidator") may by application to the Court apply summarily for the appointment of another official liquidator ("the further liquidator") to have all of the powers and duties of the liquidator jointly and severally with the appointed liquidator for a limited period.

100. FILING OF AFFIDAVIT AND CONSENT

Upon the filing of an application under rule 99 the appointed liquidator shall also file -

- (a) a consent in writing of the further liquidator; and
- (b) an affidavit stating -
 - (i) briefly the reasons why the appointment of the further liquidator is sought;
 - (ii) that any Committee of Inspection in the winding up approves of the appointment of the further liquidation; and
 - (iii) that in the opinion of the appointed liquidator the person nominated to be the further liquidator will be able to deal for the period of his appointment with all matters which are then likely to arise in the course of the liquidation.

101. POWERS OF COURT TO APPOINT TEMPORARY JOINT LIQUIDATOR

Upon the hearing of an application under rule 99 the Court may upon such terms as it sees fit appoint the further liquidator to be the liquidator jointly and severally with the appointed liquidator for a period of up to 2 months, or in special circumstances for a period in excess of 2 months.

102. NOTICE OF APPOINTMENT

Upon any appointment of a further liquidator being made under rule 101 the appointed liquidator shall forthwith lodge notice of the same with the Commissioner.

103. REMUNERATION OF TEMPORARY JOINT LIQUIDATOR

Any remuneration of the further liquidator appointed under rule 101 shall be dealt with as part of the remuneration of the appointed liquidator and shall be paid to the further liquidator by the appointed liquidator upon his receipt of his remuneration for the period during which the further liquidator has held office.

104. RELEASE OF TEMPORARY JOINT LIQUIDATOR

Upon the conclusion of his appointment a further liquidator appointed under rule 101 shall not be entitled to apply for a release, but when the appointed liquidator applies for his own release he shall also apply for the release of the further liquidator and the Court may in granting a release to the appointed liquidator under rule 130 release the further liquidator.

PART XII - SPECIAL MANAGERS

105. APPLICATION FOR AND APPOINTMENT OF SPECIAL MANAGER

(1) A liquidator may by application apply for the appointment of a special manager.

(2) Such an application shall be supported by an affidavit setting out -

- (a) the circumstances making it proper that a special manager should be appointed;
- (b) details of the remuneration which it is proposed should be paid to the special manager; and
- (c) the attitude of any Committee of Inspection or a meeting of creditors to such an appointment of such a special manager.

(3) In the order appointing a special manager the Court may -

- (a) limit the powers which are to be conferred on the special manager;
- (b) fix the remuneration of the special manager or the basis upon which his remuneration is to be assessed; and
- (c) direct that the remuneration of the special manager be fixed subsequently by the liquidator, any Committee of Inspection and/or a meeting of creditors.

(4) Any Order for the appointment of a special manager shall be lodged with the Commissioner.

Supreme Court (Companies) Rules

(5) Every special manager shall account to the liquidator, and shall verify his accounts by affidavit or statutory declaration.

106. SECURITY TO BE GIVEN BY SPECIAL MANAGER

Where a special manager is appointed under rule 105 upon condition that he shall give security for the due performance of his obligations -

- (a) the security shall be given to the satisfaction of the Master;
- (b) where a person is appointed to be a special manager in more than one liquidation, the Court may allow him to give security in respect of the liquidations collectively;
- (c) the Court may from time to time as it sees fit either increase or diminish the amount of the security given, or to be given, by a special manager;
- (d) the certificate of the Master that a special manager has given security to his satisfaction shall be filed with the Commissioner; and
- (e) the costs of furnishing the required security by special manager shall unless the Court otherwise directs be an expense in the winding up.

107. DEFAULT OF SPECIAL MANAGER IN RELATION TO SECURITY

(1) If -

- (a) a special manager fails to comply with any direction given concerning the security to be given by him;
- (b) any condition upon which the security has been given is breached; or
- (c) the liquidator is of the opinion that there is a likelihood that the value of the security given has materially diminished,

the liquidator shall immediately make application to the Court for directions in the matter.

(2) Upon the hearing of such an application the Court may rescind the Order appointing the special manager or make such other order as is appropriate in the circumstances.

PART XIII - DISCLAIMERS

108. SUMMONS FOR LEAVE TO DISCLAIM

Where a summons for leave to disclaim under section 454 of the code is issued the plaintiff shall file an affidavit disclosing who are the parties interested and the reasons why it is said to be just to allow a disclaimer and take out an application for directions for service of the summons upon any interested persons.

PART XIV - THE COLLECTION AND DISTRIBUTION OF ASSETS
ON WINDING UP BY COURT

109. POWERS UNDER SECTION 384(1) AND (2) CONFERRED ON LIQUIDATOR

The powers conferred on the Court by subsections 384(1) and (2) of the Code may be exercised by the liquidator as an officer of the Court.

110. POWER OF LIQUIDATOR TO MAKE CALLS UNDER SECTION 384(3)

The powers of the Court in relation to the making of calls on contributories under section 384(3) of the Code shall be exercised by the liquidator as an officer of the Court subject to the following provisions:

- (a) if there is a Committee of Inspection, the liquidator shall first obtain the approval of the Committee for the intended call;
- (b) where there is no Committee of Inspection, the call shall not be made without the liquidator first obtaining the leave of the Court to do so;
- (c) upon an application for leave to make a call, the Court may give such directions as it sees fit for notice thereof to be given to the contributories of the company by advertisement or otherwise;
- (d) where a call has been made by a liquidator on the contributories without the leave of the Court, and any contributory does not pay the call, the liquidator may take out an application seeking an order of the Court that the call be paid by the contributories; and
- (e) where a contributory has not paid a call, which has been made with the leave of the Court, or in compliance with an Order of the Court made under paragraph (d) the liquidator may enforce the payment of the call from the contributory as if there was a judgement of the Court against that contributory for the amount of the call in favour of the company.

111. APPLICATION FOR ORDERS UNDER SECTION 574(2)

(1) A liquidator may seek orders under section 574(2) of the Code upon an application taken out in the proceedings commenced by the summons which resulted in the winding up order for the company.

(2) An application under subrule (1) shall be served personally upon the person against whom the injunction is sought or in such other manner as the Court may direct.

(3) An application under subrule (1) shall be dealt with summarily in Chambers unless the respondent by affidavit satisfies the Court that there is a substantial question of fact or law to be determined.

PART XV - LIQUIDATORS AND COMMITTEES OF INSPECTION

112. LIQUIDATOR NOT TO PROFIT FROM COMPANY

Except as is provided by the Code or these Rules a liquidator shall not under any circumstances whatever make any arrangement for, or accept from, any solicitor, auctioneer or any person connected with the company of which he is the liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Code and these Rules he is entitled as liquidator nor shall he make any arrangement for giving up or give up any part of such remuneration to any such solicitor, auctioneer or person connected with the company.

113. LIQUIDATOR NOT TO PROFIT FROM TRADING OF COMPANY

Where a liquidator carries on the business of the company he shall not without the prior sanction of the Court purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in him obtaining any portion of the profit, if any, arising out of the transaction.

114. COSTS OF OBTAINING SANCTION FROM COURT

In any case in which the sanction of the Court is obtained under rule 113, or section 435 of the Code, the cost of obtaining such sanction shall unless otherwise ordered be an expense of the winding up.

115. REMUNERATION OF MEMBERS OF COMMITTEE OF INSPECTION

(1) Except with the sanction of the Court no remuneration beyond out of pocket expenses actually incurred shall under any circumstances be paid to a member of a Committee of Inspection for services rendered by him in the discharge of the duties attaching to his office as a member of such Committee.

Supreme Court (Companies) Rules

(2) Where the sanction of the Court for a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the Order of the Court shall specify the nature of the services and such sanction shall only be given where the service performed or to be performed is of a special nature.

116. PROCEDURE FOR LIQUIDATOR TO RESIGN

Where a liquidator appointed by the Court desires to resign his office he shall -

- (a) obtain from another official liquidator a consent in writing to act as the liquidator of the company in his place;
- (b) convene and hold separate meetings of the creditors and the contributories of the company to ascertain whether they agree to his resignation and to the appointment of the person whose consent he has obtained to act as the new liquidator;
- (c) take out an application in the proceedings commenced by the summons in which the winding up order was made seeking leave to resign and the appointment of a new liquidator in his stead; and
- (d) if he is given leave to resign by the Court, he shall file the Order of the Court and his notice of resignation forthwith with the Commissioner.

117. APPOINTMENT OF ANOTHER LIQUIDATOR UPON RESIGNATION

Upon an application under rule 116 for leave to resign the Court shall not except in exceptional circumstances give a liquidator leave to resign unless at the same time it is able to appoint another suitable official liquidator to be the liquidator of the company in his place.

118. REMOVAL OF LIQUIDATOR FOR BANKRUPTCY OR IMPRISONMENT

If a sequestration order in bankruptcy is made against a liquidator, if he enters into any arrangement with his creditors or if he is sentenced to a term of imprisonment he shall thereupon be deemed to have been removed from office.

119. APPOINTMENT OF FURTHER LIQUIDATOR WHERE NO LIQUIDATOR IS ACTING

If for any cause there is no liquidator acting in a liquidation, the Court may upon application by the Commissioner, a creditor or a contributory, or in the case of a winding up by the Court, the Court of its own motion, may appoint another liquidator to be the liquidator of the company.

PART XVI - THE COSTS AND EXPENSES OF WINDING UP

120. COSTS OF AGENTS

The liquidator may with the prior approval of any Committee of Inspection, or of a meeting of creditors, pay the proper and reasonable charges of any solicitor, manager, accountant, auctioneer, broker or other person who has rendered services in the winding up of the company.

121. TAXATION OF AGENT'S COSTS

(1) If a liquidator, any Committee of Inspection or any meeting of creditors so requests, any bill of any person rendering services in the winding up of the company which has not been paid shall be subject to taxation by the Court.

(2) The person rendering the services shall upon receipt of a written request to that effect from liquidator furnish to the liquidator within 14 days a detailed bill giving full particulars of his charges in taxable form and the liquidator may lodge the same with the Court with a request for its taxation.

(3) A liquidator may without taxation pay and allow the costs and charges of any person other than a solicitor employed by him where the profit costs included in such costs and charges are within the scale allowed by the Court and do not exceed \$3,000; but the Court may require the costs or charges to be taxed by the Court.

122. CERTIFICATE OF EMPLOYMENT OF AGENT

Where the bill of costs or charges of any solicitor, manager, accountant, auctioneer, broker or other person employed by a liquidator is payable out of the assets of the company a certificate in writing, signed by the liquidator, shall, on the taxation, be produced to the taxing officer setting forth any special terms of remuneration which have been agreed to.

123. DOCUMENTS AND INFORMATION REQUIRED FOR TAXATION

Upon the taxation of any bill of costs lodged pursuant to rule 121 the Court may require the liquidator and the party rendering the services to the company to provide all documents and to give all information relevant to the fixing of the proper charges.

124. SOLICITOR'S COSTS

No solicitor shall be entitled to be paid for his services to the liquidator or to the company in liquidation unless -

- (a) if the Court has directed that his costs be taxed, such costs have first been duly taxed and a copy of the allocatur has been served on the liquidator;
- (b) he has rendered to the liquidator full particulars of the work done, and the disbursements incurred, by him; and
- (c) if so requested by the liquidator, he has rendered his bill in taxable form to the liquidator.

125. INFORMAL REQUEST TO COURT IN LIEU OF TAXATION

If the liquidator is in doubt about whether it is proper to pay any account of a person who has rendered services, to him or to the company in liquidation, he may file a request at Court together with copies of all relevant documents seeking advice on whether he should pay the account without requiring the taxation of the same.

126. PROCEDURE ON REQUEST UNDER RULE 125

Upon receipt of a request pursuant to rule 125 the Court may deal with the request informally and may -

- (a) direct that the liquidator or the party rendering the services attend before it;
- (b) direct that the liquidator or the party rendering the services shall give such further information or produce such documents as the Court may require;
- (c) direct that the views be obtained of any Committee of Inspection or of some person appointed to represent the creditors of the company, or a class thereof, for that purpose;
- (d) direct that a meeting of the creditors of the company be convened to consider the matter;

Supreme Court (Companies) Rules

- (e) arbitrate or conciliate between the liquidator and the person rendering the services about the costs, or appoint some other person so to arbitrate or conciliate on the matter;
- (f) direct that the liquidator pay the hole, or some part of, the account; or
- (g) direct that the liquidator apply to have the account, or some part thereof, taxed pursuant to rule 121.

127. MASTER NOT DISQUALIFIED FROM TAXING BILL

The fact that the Master has dealt with a request under rule 126 shall not preclude him from subsequently taxing a bill under rule 121 relating to the same subject matter unless there are good grounds for him to disqualify himself.

128. AUCTIONEER'S LIEN

Where any property forming part of a company's assets is sold through an auctioneer or other agent that agent shall be required to account to the liquidator for the gross proceeds of the sale, but he may maintain a lien on those proceeds of sale up to the amount of the charge claimed by him pending payment to him by the liquidator of his proper charges.

129. COSTS OF EXECUTION

(1) A liquidator may with the approval of any Committee of Inspection, or a meeting of creditors, agree the amount of the costs of execution with the Sheriff, Registrar or other officer may retain under section 456(8) of the Code.

(2) If the costs referred to in subrule (1) cannot be agreed, the liquidator by notice in writing to the creditor entitled to the benefit of the charge may require that creditor to request the court within one month of the service of that notice to have such costs taxed.

(3) If such creditor does not lodge his bill of costs within that period of one month, or within such further time as the Court may allow, the liquidator may apply summarily to the Court to fix the amount of the costs which may be retained on behalf of the creditor and once such costs have been fixed by the Court in this manner no greater amount may be retained on behalf of the creditor under section 456(8) of the Code.

PART XVII - RELEASE OF LIQUIDATOR

130. APPLICATION FOR RELEASE, AND OBJECTIONS

(1) On the completion of a winding up ordered by the Court a liquidator may apply to the Court for his release and for the dissolution of the company.

(2) A notice in accordance with Form 20 shall be sent by the liquidator by prepaid post to the Commissioner and all creditors and contributories of the company at their last known addresses and as soon as practicable after the last posting thereof the liquidator shall cause notice of his application to be published in the Gazette.

(3) The Commissioner and any creditor or contributory who wishes to object to the granting of a release to the liquidator shall within 21 days of the publication of the said notice file and serve upon the liquidator a notice of objection in Form 21.

(4) After the time for objection has expired the liquidator shall file an application in Form 22 for his release and for the dissolution of the company.

(5) Such application shall be accompanied by a copy of the summary of the receipts and payments of the winding up and after the filing thereof a copy of such application and summary shall be lodged with the Commissioner.

(6) Where a liquidator applies to the Court for his release only, the form of application may be varied accordingly and in addition state reasons as to why the company should not be dissolved.

131. AUDITOR'S REPORT

(1) Where the Court has caused a report on the accounts of a liquidator to be prepared under section 382(1)(a) of the Code the liquidator shall supply to the auditor appointed to make such report all information, books and vouchers as may be required for that purpose.

(2) Upon the completion of his report the auditor shall file a copy thereof at Court in a sealed envelope and shall serve copies on the liquidator and the Commissioner.

(3) The report of the auditor shall not become a public document unless and until the Court so directs.

132. ADVERTISING ORDER FOR RELEASE

Immediately upon the granting of his release the liquidator shall cause notice of the same to be published in the Gazette and the costs of the same shall be payable out of the assets of the company.

Supreme Court (Companies) Rules

133. NOTICE TO COMMISSIONER OF APPLICATION FOR DESTRUCTION OF RECORDS

(1) When an application is made to the Court under section 425(3) of the Code for an order for the destruction of the books and papers of a company before the expiration of the period of 5 years the liquidator shall give 14 days notice of such application to the Commissioner.

(2) The Commissioner or any creditor or contributory of the company shall be entitled to be heard on such application.

134. LEAVE TO SHOW CAUSE WHY COMPANY SHOULD NOT BE STRUCK OFF

(1) Where any liquidator who has been appointed by the Court receives any notice from the Commissioner pursuant to section 459(3) of the Code, and where he does not show cause to the Commissioner as is provided in section 459(4) of the Code, he shall forthwith apply to the Court for leave that he be not required to show cause to the Commissioner pursuant to the said section 459(4) of the Code.

(2) Upon an application pursuant to subrule (1) above being made to the Court the liquidator shall forthwith give notice thereof to the Commissioner, and the Commissioner shall not strike the name of the company off the Register pending the determination of the application by the Court.

(3) The Court may treat an application under subrule (1) above as an application for the release of a liquidator and for the dissolution of the company or as an application for directions.

(4) The Court may give such directions and may give leave upon such terms and conditions as it shall think fit.

(5) Upon the final determination by the Court of an application for leave pursuant to subrule (1) above notice thereof shall forthwith be given by the liquidator to the Commissioner.

PART XVIII - MISCELLANEOUS

135. COSTS SCALES

Where the principal relief sought in any proceedings under these Rules is a sum of money or damages which is less than the then jurisdictional limit of the Local Court for actions for breach of contract, or if the subject matter of the proceedings is property worth less than that sum, the Court may if it sees fit order that any costs to

be paid in respect of the proceedings either as between party and party, solicitor and client or solicitor and own client shall be only the costs which would be payable in proceedings in the Local Court involving that amount of money.

136. *EX PARTE* APPLICATIONS IN WINDING UP PROCEEDINGS

A summons upon which a winding up order was made shall remain open for any subsequent application to be made therein to the Court in relation to the assets or the property of the company or for any other matter incidental to or consequent upon the Order for the winding up provided that except as is otherwise provided in these Rules or as the Court may direct a fresh summons shall be issued where any relief is sought *inter partes*.

137. LEAVE TO PROCEED AGAINST COMPANY IN LIQUIDATION

(1) An Order under sections 371(2) and 401(2) of the Code for leave to proceed against a company in liquidation, or under section 343 of the Code for leave to proceed against a company under Official Management, may be made if the Court considers it proper and expedient to do so upon an application taken out in any proceedings in the Court in respect of which the leave is sought.

(2) Any application pursuant to subrule (1) above shall be served on the liquidator.

138. INTERVENTION BY COMMISSIONER

(1) The Commissioner may without filing an appearance intervene in any proceedings relating to any matter under the Code pursuant to section 540 of the Code by filing a notice of intervention in Form 23 and serving copies on all other parties to the proceedings.

(2) Upon the filing of such notice the Court may give such directions as it sees fit as to what, if any, affidavits or pleadings shall be filed by the Commissioner and generally as to how the proceedings shall proceed thereafter in relation to the Commissioner.

139. DISPENSATION FROM RULES

The Court may in its discretion dispense with the compliance with all or any of the requirements of these Rules.

140. DIRECTIONS ON PROCEDURE

If any circumstance arises for which no procedure is provided by the Code or these Rules, or if there is any doubt as to what is the correct procedure to be adopted, the Court may direct (and *ex parte* if it thinks fit) what shall be done in each particular instance or that the procedure which has been adopted shall be proper and the

Supreme Court (Companies) Rules

direction shall be of the same validity as if it was specifically included in these Rules.

141. LISTS OF LIQUIDATORS

The Commissioner shall give to the Deputy Master a list of all persons registered by the Commission to act as liquidators and official liquidators under the Code. Where any change occurs in the list the Commissioner shall as soon as practicable give to the Deputy Master notice in writing of such change.

142. PROOF OF ADVERTISING AND GAZETTAL

Any advertising or gazettal carried out pursuant to these Rules or the Code may be proved by the filing of a certificate signed by a solicitor stating that the copies of the advertisements set out therein or annexed thereto appeared in the newspaper or *Gazette* referred to in the certificate on the date set out therein.

143. COURT FEES

The fees and charges to be made for proceedings under these Rules shall be the same as for proceedings in the Supreme Court under the Supreme Court Rules for equivalent proceedings and procedures under those Rules.

144. FEES ON COURT DOCUMENTS

The fees and charges for and duty to be paid on Court documents in proceedings under these Rules shall be the same as for proceedings in the Supreme Court under the *Supreme Court Act* or any rules made thereunder.

INDEX OF FORMS

Form No.

1. *Ex parte* summons
2. *Inter parte* summons other than for summonses under Part III of the Supreme Court (Companies) Rules
3. Summons seeking a winding up under Part III of the Supreme Court (Companies) Rules
4. Interlocutory application
5. Advertisement for summons for winding up
6. Consent of liquidator
7. Notice by creditor or contributory in support or in opposition to summons for winding up
8. Affidavit of creditor who wishes to seek substitution
9. Affidavit of service of summons for winding up
10. Affidavit proving service of notice under section 364(2) of *Companies (Northern Territory) Code*
11. Minutes of order for winding up
12. Advertisement of winding up order
13. Order and summons for examination
14. Certificate authenticating transcript taken on examination under section 541 of *Companies (Northern Territory) Code*
15. Notice of hearing of summons to approve compromise or arrangement
16. Notice of intention to oppose approval of compromise or arrangement
17. Advertisement of summons for reduction of capital
18. Notice by creditor or contributory in opposition to summons for reduction of capital
19. Advertisement of order approving reduction of capital
20. Notice by liquidator of intention to seek release
21. Notice by creditor or contributory of objection to liquidator's application for release
22. Application by liquidator for release
23. Notice of intervention by Commissioner

Supreme Court (Companies) Rules

FORM 2

INTER PARTES SUMMONS OTHER THAN FOR SUMMONSES UNDER PART III OF THE SUPREME COURT (COMPANIES) RULES

Rule 12(3)

IN THE SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA

No.

of 19

RE: Limited

and

THE COMPANIES (NORTHERN TERRITORY) CODE

BETWEEN

..... Plaintiff

and

..... Defendant

LET of within days after the service of this summons upon him/her/it inclusive of the day of such service cause an appearance to be entered for him/her/it to this summons which is issued on the application of of seeking orders:

1. (Set out the orders sought)

DATED: 19

This summons is brought pursuant to Section of the Companies (Northern Territory) Code and rule of the Supreme Court (Companies) Rules. The defendant may enter an appearance by filing the appropriate document either personally or by a solicitor at the Registry, Supreme Court Darwin/Alice Springs. If the defendant does not enter an appearance within the time stated the Court may make orders on this summons without reference to him.

A directions hearing will be held before the Master on the day of 19... at am/pm.

All interested parties must then attend.

This summons was taken out by of solicitors for the plaintiff, whose address for service is

FORM 3

SUMMONS SEEKING A WINDING UP UNDER PART III
OF THE SUPREME COURT (COMPANIES) RULES

Rule 12(4)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. of 19

RE: Limited

and

THE COMPANIES (NORTHERN TERRITORY) CODE

BETWEEN

..... Plaintiff

and

..... Limited Defendant

LET all person interested attend before the Supreme Court,
Mitchell Street, Darwin (or Alice Springs) on
the day of 19.... at not
before am/pm or so soon thereafter as this summons
shall be called on for hearing on the application of
..... of for orders:

1. That abovenamed Limited be wound up.
2. (Set out such further orders as are sought)

DATED: 19

This summons is brought pursuant to Section of
the *Companies (Northern Territory) Code* and rule of
the Supreme Court (Companies) Rules. Under Rule 32 of the
Supreme Court (Companies) Rules neither the defendant
company, a creditor nor a contributory shall be heard in
support of or in opposition to this summons unless he, she
or it shall have filed at least three business days before
the day on which the summons is listed for hearing and
served on the plaintiff and all other interested parties a
notice in the form set out in the Rules and any affidavit
on which he, she or it will rely at such hearing.

This summons was taken out by
of solicitors
for the plaintiff, whose address for service is

FORM 4

INTERLOCUTORY APPLICATION

Rule 14

(Heading as on Summons)

LET all parties concerned attend in Chambers at the Supreme Court, Mitchell Street, Darwin (or Alice Springs) on hearing of an application on the part of the for orders:

- 1. (Set out the orders sought)

DATED: 19

This application is brought under Section of the Companies (Northern Territory) Code and rule of the Supreme Court (Companies) Rules (and/or rule of the Supreme Court Rules)

This application is to be served upon This summons was taken out by of solicitors for the

FORM 5

Rule 29

ADVERTISEMENT FOR SUMMONS FOR WINDING UP

RE: A.B. LIMITED (In capitals or otherwise prominently displayed)

of (Registered Office) (name of Plaintiff) has brought a summons in action No. .. of in the Supreme Court of the Northern Territory of Australia at Darwin (or Alice Springs) seeking the winding up A.B. Limited. The summons is listed for hearing on the day of 19... at not before am/pm. Any creditor or contributory of A.B. Limited wishing to be heard on the summons must file and serve a notice in accordance with rule 32 of the Supreme Court (Companies) Rules at least 3 business days before the day on which the summons is listed for hearing and must attend at the Supreme Court Darwin/Alice Springs at the time set for the hearing of the summons. A copy of the summons and the affidavit in support can be obtained on payment of the proper cost from of

FORM 6

Rules 30 and 53

CONSENT OF LIQUIDATOR

(Heading as on Summons)

I, of an Official Liquidator hereby consent to act as the Liquidator/provisional Liquidator of Limited if so appointed by the Court. I am not aware of any conflict of interest which would make it improper for me to so act.

DATED: 19

.....
(Signature of Liquidator)

This consent is filed etc.

FORM 7

Rule 32

NOTICE BY CREDITOR OR CONTRIBUTORY IN SUPPORT OR IN OPPOSITION TO SUMMONS FOR WINDING UP

(Heading as on Summons)

..... Limited, the defendant abovenamed, or X.Y. of a creditor of Limited for \$..... or P.Q. of a contributory of Limited holding shares therein gives notice pursuant to rule 32 of the Supreme Court (Companies) Rules that he/she/it will attend at the hearing of the summons and support/oppose the order sought in the summons.

DATED: 19

.....
Signature by the Company/
Creditor contributory or
his/her/its solicitor

This notice is filed by of solicitors for whose address for service is

AFFIDAVIT OF CREDITOR WHO WISHES TO SEEK SUBSTITUTION

(Heading as on Summons)

I, of
MAKE OATH AND SAY as follows:
.....

1. Limited is now
and was at (insert the date of the issue of the summons)
truly indebted to for
\$. for (set out nature of the debt).

2. (If applicable) A Judgment was obtained against
..... Limited by for
\$. in action No. in
(insert the name of the Court) on (insert the date of
the judgment).

3. holds no security
for payment of the said debt.

4. intends to apply at
the hearing of the summons herein to be substituted as the
plaintiff if the present plaintiff does not seek an order
for winding up.

SWORN etc.

This affidavit is filed by
of
solicitors for the creditor, whose address for service is
.....

FORM 9

Rule 34(a)

AFFIDAVIT OF SERVICE OF SUMMONS FOR WINDING UP

(Heading as on Summons)

I, of MAKE OATH AND SAY AS follows:

1. I did on19... ascertain from the Office of the Commissioner for Corporate Affairs at Darwin that the registered office of A.B. Limited was then situated at (or if service was on officers of the company) that of was then a director/ secretary of Limited.

2. (Where served personally at the registered office) I did leave true copies of the summons and the affidavit in support thereof at the said registered office of A.B. Limited with (name of person) who then admitted that he was the of the company (or where no officer or employee received the document) that it appeared that A.B. Limited was carrying on business at that address because or it appeared that A.B. Limited then had the following connection with that place, namely,

3. (Where served by post) On 19... I, posted by prepaid post true copies of the summons and the affidavit in support thereof addressed to A.B. Limited at its said registered office and that those items have not been returned by Australia Post as unclaimed and that they would have been so returned in the normal course of events if not delivered.

4. (Where served on officers of the company) I did on 19... at serve true copies of the summons and the affidavit in support thereof on an officer of the abovenamed company by delivering the same to him personally. At the time of such service I identified the person served as the said because.....

SWORN etc.

(Note - it is not ordinarily necessary to exhibit copies of the summons and the affidavits in support of the affidavit of service.)

This affidavit of service is filed by of solicitors for the plaintiff, whose address for service is

AFFIDAVIT PROVING SERVICE OF NOTICE UNDER SECTION 364(2) OF COMPANIES (NORTHERN TERRITORY) CODE

(Heading as on Summons)

I, of MAKE OATH AND SAY as follows:

1. I did on 19... ascertain from the Office of the Commissioner for Corporate Affairs at Darwin that the registered office of A.B. Limited was then situated at (or if the service was on officers of the company) that was then a director/ secretary of Limited.

2. (Where served at the registered office) I did leave a notice signed by a true copy of which is now produced and shown to me and marked "A" at the said registered office with (name of person) who then admitted that he was the of (or where no officer or employee received the document) that it then appeared that A.B. Limited was still carrying on business at that address because or it appeared that A.B. Limited then had the following connection with that place, namely

3. (Where served by post) On 19... I posted by prepaid post a notice signed by a true copy of which is now produced and shown to me and marked "A" addressed to A.B. Limited at its registered office and that the said item has not been returned by Australia Post as unclaimed and that it would have been so returned in the normal course of events if not delivered.

4. (Where served on officer of the company) I did on 19... at serve a notice signed by a true copy of which is now produced and marked "A", on an officer of the abovenamed company by delivering the same to him personally. At the time of such service I identified the person served as the said because SWORN etc.

This affidavit of service is filed by of solicitors for the plaintiff, whose address for service is

MINUTES OF ORDER FOR WINDING UP

(Heading as on Summons)

THE COURT ORDERS:

1. That the said Limited by wound up by this Court under the provisions of the *Companies (Northern Territory) Code*.

2. That of, an official liquidator, be and is hereby appointed the liquidator of the affairs of the said company.

3. That the plaintiff's costs of the summons for winding up and this order and the costs of the supporting creditors be taxed and paid out of the assets of the company provided that only one counsel fee shall be allowed between all the supporting creditors.

BY THE COURT

.....
DEPUTY MASTER

NOTE: IT WILL BE THE DUTY OF SUCH PERSONS WHO ARE LIABLE TO MAKE OUT OR CONCUR IN MAKING OUT A REPORT AS TO COMPANY'S AFFAIRS AS THE LIQUIDATOR MAY REQUIRE PURSUANT TO SECTION 375 OF THE *COMPANIES (NORTHERN TERRITORY) CODE* AND TO ATTEND ON THE LIQUIDATOR AT SUCH TIME AND PLACE AS HE MAY APPOINT AND GIVE HIM ALL THE INFORMATION WHICH HE MAY REQUIRE.

ADVERTISEMENT OF WINDING UP ORDER

RE: A.B. Limited (Capitals or otherwise prominently displayed)

of (Registered Office)

On 19... the Supreme Court of the Northern Territory of Australia in action No. of 19... made an Order for the winding up of (A.B. Limited and appointed of to be the liquidator of the abovenamed company) or (appointing of as the provisional liquidator of the abovenamed company.)

This advertisement is inserted by of solicitors for



ORDER AND SUMMONS FOR EXAMINATION

(Heading as on Summons)

Preamble for an order.

IT IS ORDERED:

1. That X.Y. of be examined before the Court pursuant to section 541 of the Companies (Northern Territory) Code.

2. That the said X.Y. is hereby summoned to attend before the Court at the Supreme Courthouse, Mitchell Street, Darwin (or Alice Springs) on the day of 19..... at a.m./p.m. to be examined in respect of the affairs of the abovenamed company.

3. That at the time of the examination the said X.Y. bring with him and produce to the Court all of the documents mentioned in the Schedule hereto and all other books, papers, deeds, writings and other documents in his possession, custody or power in any way relating to the affairs of the abovenamed company.

4. That further consideration of this summons is adjourned to the time of the said examination.

5. That any person interested be at liberty to apply prior to the time of the said examination to vary or discharge this Order.

6. That the costs of and incidental to this Order and the examination be paid out of the assets of the company.

BY THE COURT

.....
DEPUTY MASTER

THE SCHEDULE:

FORM 14

Rule 64

CERTIFICATE AUTHENTICATING TRANSCRIPT TAKEN ON
EXAMINATION UNDER SECTION 541 OF COMPANIES (NORTHERN
TERRITORY) CODE

I CERTIFY that pages to of the
transcript annexed hereto and the exhibits marked
serially from to are the
transcript of the evidence taken before me of
as signed by him and the exhibits referred to in that
transcript.

Dated

19

.....
Master

NOTICE OF HEARING OF SUMMONS TO APPROVE COMPROMISE OR ARRANGEMENT

To all of the creditors and the members of Limited.

TAKE NOTICE that on day of 19.... at a.m./p.m. the Supreme Court of the Northern Territory of Australia at the Supreme Courthouse, Mitchell Street, Darwin (or Alice Springs) will hear a summons seeking the approval of the compromise or arrangement entered into between the abovenamed company and its members and creditors as passed by meetings of the members and creditors of the company held on the day of 19.... The compromise or arrangement as passed by those meetings was amended from the form of compromise or arrangement previously forwarded to you in the following respects:

..... (Set out the details of any amendments made at the meetings)

If you wish to oppose the approval of the compromise or arrangement you must file and serve on the plaintiff, the company and the Commissioner for Corporate Affairs at least 3 business days before the above date for hearing a notice as required by rule 79 of the Supreme Court (Companies) Rules and any affidavit to be used by you on such hearing and to attend on the hearing.

Further information may be obtained from the solicitors having the carriage of the compromise or arrangement.

Dated 19

..... Plaintiff

..... Name and address of the person or solicitors giving the notice

.....

NOTICE OF INTENTION TO OPPOSE APPROVAL OF
COMPROMISE OR ARRANGEMENT

(Heading as on Summons)

..... of
..... intends to
attend at the hearing of the summons seeking the approval
of the compromise or arrangement between
..... Limited and
its members and creditors passed at meetings held on
..... 19..... .

The grounds relied upon in objecting to the approval are:

- 1. (Set out details of grounds).

.....
.....
.....

- 2. The following affidavits will be relied upon in support of such opposition:

.....
.....
.....

Dated:

19

.....
Signature of objector or
solicitor for objector

THIS NOTICE of objection is filed by
of solicitors
for the abovenamed, whose address for service is
.....
.....

FORM 17

Rule 85

ADVERTISEMENT OF SUMMONS FOR REDUCTION OF CAPITAL

RE: A.B. Limited (In capitals or otherwise prominently displayed) of (Registered Office).

(Name of Plaintiff) has brought a summons in action No. .. of in the Supreme Court of the Northern Territory of Australia seeking an order for the approval of the reduction of the capital of A.B. Limited by (set out the terms of the reduction sought).

The summons is listed for hearing on the day of 19.... at not before am/pm. Any creditor or contributory of A.B. Limited wishing to be heard on the summons must file and serve a notice in accordance with rule 89 (Form 18) of the Supreme Court (Companies) Rules at least 3 business days before the day on which the summons is listed for hearing and must attend at the Supreme Courthouse, Mitchell Street, Darwin (or Alice Springs) at the time set for the hearing of the summons. A copy of the summons and affidavit in support can be obtained on payment of the proper cost from of
.....

NOTICE BY CREDITOR OR CONTRIBUTORY IN OPPOSITION TO
SUMMONS FOR REDUCTION OF CAPITAL

(Heading as on Summons)

X.Y.
of
a creditor of, Limited
for \$....., or a contributory of
holding shares
therein gives notice that pursuant to rule 89 of the
Supreme Court (Companies) Rules that he/she/it will attend
at the hearing of the summons and oppose the order sought
in the summons upon the following grounds:

.....
(Set out the grounds relied upon)
.....
.....

DATED

19

.....
Creditor or contributory or
his/her/its solicitor

THIS NOTICE is filed by
the solicitors for
of
whose address for service is
.....
.....

FORM 19

Rule 90

ADVERTISEMENT OF ORDER APPROVING
REDUCTION OF CAPITAL

RE: A.B. Limited (In capitals or otherwise prominently displayed) of (Registered Office).

On the day of 19....
the Supreme Court of the Northern Territory of Australia
in action No. of 19.... made an Order approving the
reduction of the capital of Limited
by (set out terms of the reduction).

This advertisement is inserted by
.....
solicitors for

NOTICE BY LIQUIDATOR OF INTENTION TO SEEK RELEASE

(Heading as on Summons)

RE: Limited

TAKE NOTICE that I

of
the Liquidator of the abovenamed company, intend to make application to the Supreme Court of the Northern Territory of Australia for my release as the Liquidator of the abovenamed company.

AND TAKE FURTHER NOTICE that if you have any objection to the granting of my release you must, within 21 days of the publication in the *Gazette* of the notice of my intention to apply for a release, file at the Supreme Court and also forward to me a notice of objection in the form laid down by the Supreme Court (Companies) Rules (Form 21). A summary of my receipts and payments as Liquidator is enclosed herewith.

DATED

19

.....
Signature of Liquidator

NOTE: Section 382 of the *Companies (Northern Territory) Code* enacts that an order of the Court releasing a Liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as Liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

NOTICE BY CREDITOR OR CONTRIBUTORY OF OBJECTION
TO LIQUIDATOR'S APPLICATION FOR RELEASE

(Heading as on Summons)

I,
of
a creditor of the abovenamed company for \$..... or a
contributory of the abovenamed company holding
..... shares therein, hereby object to the
granting of a release to
of
the Liquidator of the abovenamed company on the following
grounds:

.....
(Set out the grounds upon which the objection is made)
.....
.....

DATED

19

.....
Signature of Objector
or his solicitor

THIS NOTICE is filed by
of solicitors
for the abovenamed objector, whose address for service is
.....
.....
.....

APPLICATION BY LIQUIDATOR FOR RELEASE

(Heading as on Summons)

I,
of
the liquidator of the abovenamed company, do hereby report
and apply to the Court as follows:

1. That the whole of the property of the company has
been realised for the benefit of creditors and contri-
butories and I am now holding \$..... .

OR

1. That (in the joint opinion of myself and the
Committee of Inspection) so much of the property of the
company as can be realized, without needlessly protracting
the liquidation, has been realized, as is shown by the
statement hereunto annexed.

2. The following dividends have already been paid (set
out details).

.....
.....
.....

3. The Committee of Inspection on 19....
passed a resolution approving of my application for
release as liquidator of the company.

OR

3. No Committee of Inspection has been appointed.

4. That the Commissioner for Corporate Affairs has
appointed
of
to be an auditor in respect of the winding up of the
company pursuant to section 422(2) of the *Companies*
(*Northern Territory*) Code.

Supreme Court (Companies) Rules

OR

4. That the Commissioner for Corporate Affairs has not appointed any auditor in respect of the winding up of the company.

5. The Court has/has not caused a report to be prepared on my accounts pursuant to section 382 of the Code.

6. On 19....
I sent notices by prepaid post to all of the known creditors and contributories of the company in the form annexed hereto.

7. Notice of this application was published in the Northern Territory Government Gazette on

8. The following objections have been received to my release as liquidator of the company:

.....
.....
.....

9. A report has been submitted to the Commissioner for Corporate Affairs pursuant to section 418 of the Code and I have been advised by the Commissioner that he does not intend to take any action (or as the case may be).

OR

9. The unsecured creditors of the company have been paid more than 50 cents in the dollar and it is not otherwise necessary to report on the affairs of the company or its officers.

10. The following are details of onerous property disclaimed:

.....
.....
.....

11. If the Court shall see fit to grant my release I request that it shall be subject to payment by me of the following costs and expenses (here set out details).

.....
.....
.....

DATED

19

.....
(Signed) Liquidator

This Application is filed by
whose address for service is
.....
.....

FORM 23

Rule 138

NOTICE OF INTERVENTION BY COMMISSIONER

Heading as on the Summons

The Commissioner for Corporate Affairs of
..... hereby
intervenes in these proceedings.

DATED

19

.....
Signature

THIS NOTICE is given by Commissioner for Corporate Affairs
of whose
address for service is
.....
.....