

**SECTION 282 (1) AND SECTION 49 OF THE COURTS
ORDINANCE**

THE COMPANIES WINDING-UP RULES, 1939

[8454/26-5-1939.]

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THE COMPANIES WINDING-UP RULES, 1939

1. These rules may be cited as the Companies Winding-up Rules, 1939.

[8454/26-3-1939]
Short title.

2. (1) The forms in the First Schedule hereto, where applicable, shall be used with such variations as circumstances may require.

Forms.

(2) Any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the court shall otherwise direct.

3. Every application to the court other than a petition shall be made by motion notice of which shall be served on every person against whom an order is sought, not less than two clear days before the day named in the notice for hearing the motion.

Application to court how made.

PROCEEDINGS

4. (1) Every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled in the matter of the company to which it relates and in the matter of the Companies Ordinance.

Title of proceeding

(2) The first proceeding in every winding-up matter shall have a distinctive number assigned to it by the court, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

5. Except where it is otherwise so provided by these rules or where the court otherwise directs the service of any notice, summons, or other document on any person shall be made by delivering or tendering a duplicate thereof through the Fiscal to such person.

Service

PETITIONS

6. Every petition for the winding-up of a company by the court, or subject to the supervision of the court, shall be in the Forms 1 and 2.

Form of petition.
Forms 1 and 2.

Advertisement of petition. Form 3.

7. (1) Every petition shall be advertised seven clear days before the hearing once in the Government Gazette, and once at least in one daily English newspaper published in Ceylon.

(2) The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his proctor, and shall contain a note at the foot thereof, stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner, or to his proctor, within the time and manner prescribed by rule 13, and an advertisement of a petition for the winding up of a company by the court which does not contain such a notice shall be deemed irregular.

(3) If the petitioner or his proctor does not within the time prescribed by paragraph (1) or within such extended time as the court may allow duly advertise the petition in the manner prescribed by paragraph (2) the petition shall be removed from the roll of the court.

Service of petition. Forms 4 and 5.

8. Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company in Ceylon, if any such can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the court may direct; and where the company is being wound up voluntarily, the petition shall also be served upon the Liquidator, if any, appointed for the purpose of winding up the affairs of the company.

Verification of petition. Forms 6 and 7.

9. Every petition for the winding up of a company by the court, or subject to the supervision of the court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition

is presented by a corporation, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavits shall be sufficient prima facie evidence of the statements in the petition.

10. Every contributory or creditor of the company shall be entitled to be furnished, by the proctor of the petitioner with a copy of the petition, within twenty-four hours after requiring the same, on paying the rate of twenty-five cents per folio of 72 words for such copy.

Copy of petition to be furnished to creditor or contributory.

PROVISIONAL LIQUIDATOR

11. (1) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the court if it thinks fit and upon such terms as in the opinion of the court shall be just and necessary, may make the appointment.

Appointment of Provisional Liquidator. Form 8.

(2) The order appointing the Provisional Liquidator shall bear the number of the petition, and shall state the nature and a short description of the property of which the Provisional Liquidator is ordered to take possession, and the duties to be performed by the Provisional Liquidator.

(3) Subject to any order of the court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company on the petition is rescinded, or if all proceedings on the petition are stayed, or if an order is made continuing the voluntary winding up of the company subject to the supervision of the court, the Provisional Liquidator shall be entitled to be paid, out of the property of the company, all the costs, charges, and expenses properly incurred by him as Provisional Liquidator, including such sum as is or would be payable under the scale of fees for the time being in force where the Official Receiver is appointed Provisional Liquidator, and may retain out of such property the amounts of such costs, charges, and expenses.

(4) Where any person other than the Official Receiver has been appointed Provisional Liquidator and the Official Receiver has taken any steps for the purpose of obtaining a Statement of Affairs or has performed any other duty prescribed by these rules the Provisional Liquidator shall pay the Official Receiver such sum, if any, as the court directs.

HEARING OF PETITIONS AND ORDERS MADE THEREON

12. After a petition has been presented, the petitioner, or his proctor shall, on a day to be appointed by the court, attended before it and satisfy it that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service, if any, have been duly filed, and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the court at the time appointed, and satisfied it in manner required by this rule.

13. (1) Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner, or his proctor at the address stated in the advertisement of the petition, notice of his intention.

(2) The notice shall contain the address of such person, and shall be signed by him or by his proctor, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition, or if such day be a Monday, not later than one o'clock in the afternoon of the Saturday previous to such day. The notice shall be in Form 9. A person who has failed to comply with this rule shall not, without the special leave of the court, be allowed to appear on the hearing of the petition.

Attendance before hearing to show compliance with rules.

Notice by persons who intend to appear Form 9.

14. The petitioner, or his proctor shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective proctors, which shall be in Form 10. On the day appointed for hearing the petition a fair copy of the list (or if no notice of intention to appear has been given a statement in writing to that effect) shall be handed by the petitioner, or his proctor, to the court prior to the hearing of the petition.

List of names and addresses of persons who appear on the petition.
Form 10

15. (1) Affidavits in opposition to a petition that a company may be wound up by or subject to the supervision of the court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his proctor on the day on which the affidavit is filed.

Affidavits in opposition and reply.

(2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or his proctor.

16. When a petitioner is not entitled to present a petition, or whether so entitled or not, where he—

- (a) fails to advertise his petition within the time by these rules prescribed or such extended time as the court may allow, or
- (b) consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or
- (c) if appearing, does not apply for an order in the terms of the prayer of his petition,

Substitution of creditor or contributory for withdrawing petitioner.

the court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the court would have a right to present a petition, and who is desirous of prosecuting the petition.

ORDER TO WIND UP A COMPANY

Notice that winding-up order has been pronounced to be given to Official Receiver. Forms 11 and 12.

17. When an order for the winding up of a company, or for the appointment of a Provincial Liquidator prior to the making of an order for the winding up of the company, has been made, the Secretary of the court shall, on the same day, give to the Official Receiver notice informing him that the order has been pronounced.

The notice shall be in Forms 11 and 12 respectively.

Documents for drawing up order to be left with Secretary.

18. It shall be the duty of the petitioner, or his proctor and of all other persons who have appeared on the hearing of the petition, at least on the day following the day on which an order for the winding up of a company is pronounced in court to deliver to the Secretary of the court all the documents required for the purpose of enabling the Secretary to complete the order forthwith.

Contents of winding-up order. Forms 8 and 13.

19. An order to wind up a company or for the appointment of a Provincial Liquidator shall contain at the foot thereof a notice stating that it will be the duty of such of the persons who are liable to make out or concur in making out the company's Statement of Affairs as the Official Receiver may require, to attend on the Official Receiver at such time and place as he may appoint and to give him all information he may require.

Transmission and advertisement of winding-up order.

20. (1) When an order that a company be wound up, or for the appointment of a Provincial Liquidator has been made—

- (a) three copies of the order signed by the judge of the court shall forthwith be sent by post or otherwise by the Secretary of the court to the Official Receiver ;

(b) the Official Receiver shall cause a copy of the order signed by the judge of the court to be served upon the company by prepaid letter addressed to it at its registered office (if any) or if there is no registered office at its principal or last known principal place of business in Ceylon or upon such other person or persons, or in such other manner as the court may direct, and if the order is that the company be wound up by the court, shall forward to the Registrar of Companies the copy of the order which by section 170 of the Ordinance is directed to be so forwarded by the company ;

(c) the Official Receiver shall forthwith give notice of the order to Director, who shall forthwith cause the notice to be gazetted ;

Form 93 (1).

(d) the Official Receiver shall forthwith send notice of the order to such daily English newspaper as the Director may from time to time direct, or, in default of such direction, as he may select.

Form 14.

(2) An order for the winding up of a company subject to the supervision of the court, shall before the expiration of twelve days from the date thereof be advertised by the petitioner, once in the Government Gazette and shall be served on such persons (if any) and in such manner as the court shall direct.

Form 15.

SPECIAL MANAGER

21. (1) An application by the Official Receiver for the appointment of a Special Manager shall be supported by a report of the Official Receiver, which shall be filed in the record of the proceedings, and such report shall either state the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the Special Manager, or that it is, in the opinion of the Official Receiver, desirable that the fixing of such remuneration should be deferred. No affidavit by the Official Receiver in support of the application shall be required.

Appointment
of Special
Manager.

(2) The remuneration of the Special Manager shall, unless the court otherwise in any case directs, be stated in the order appointing him, but the court may at any subsequent time for good cause shown make an order for payment to the Special Manager of further remuneration.

(3) A copy of the order appointing a Special Manager shall be transmitted to the Director by the Official Receiver.

22. Every Special Manager shall account to the Official Receiver, and the Special Manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added by the Official Receiver to his accounts.

STATEMENT OF AFFAIRS

23. (1) A person who under section 175 of the Ordinance has been required by the Official Receiver to submit and verify a Statement of Affairs of a company shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary. The Statement of Affairs shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall cause to be delivered to the Secretary of the court the verified Statement of Affairs.

(2) The Official Receiver may from time to time hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c) or (d) of subsection (2) of section 175 of the Ordinance for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.

Accounting
by Special
Manager.
Form 16.

Preparation
of Statement
of Affairs.
Form 17.

24. When any person requires any extension of time for submitting the Statement of Affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding up and shall render an application to the court unnecessary.

Extension of time for submitting Statement of Affairs.

25. After the Statement of Affairs of a company has been submitted to the Official Receiver it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the State of Affairs.

Information subsequent to Statement of Affairs.

26. Any default in complying with the requirements of section 175 of the Ordinance may be reported by the Official Receiver to the court.

Default

27. A person who is required to make or concur in making any Statement of Affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the Statement of Affairs, apply to the Official Receiver for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur; and, except by order of the court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the Official Receiver.

Expenses of Statement of Affairs.

28. (1) Any application to dispense with the requirements of section 175 of the Ordinance shall be supported by a report of the Official Receiver showing the special circumstances which in his opinion render such a course desirable.

Dispensing with Statement of Affairs.

(2) When the court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these rules required to be sent to any person mentioned in the Statement of Affairs.

APPOINTMENT OF LIQUIDATOR IN A WINDING UP
BY THE COURT

Appointment
of Liquidator
on report of
meetings of
creditors and
contribu-
tories.

29. (1) As soon as possible after the first meeting of creditors and contributories has been held, the Official Receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the court.

Form 18.

(2) Upon the result of the meetings of creditors being reported to the court, if there is a difference between the determination of the meetings of the creditors and contributories, the court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences, and making such order as shall be necessary. In any other case the court may upon the application of the Official Receiver forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

(3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.

(4) Upon the consideration of the resolutions and determinations of the meetings, the court shall hear the Official Receiver and any creditor or contributory.

(5) If a Liquidator is appointed a copy of the order appointing him shall be transmitted to the Director by the Official Receiver, and the Director shall, as soon as the Liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the company.

Forms 19
and 98 (7).

(6) Every appointment of a Liquidator or Committee or Inspection shall be advertised by the Liquidator in such manner as the court directs immediately after the appointment has been made, and the Liquidator has given the required security.

Form 20.

(7) If a Liquidator in a winding up by the court dies, or resigns, or is removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the Liquidator is released under section 190 of the Ordinance in which case the Official Receiver shall remain Liquidator.

Form 93 (8)

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER
IN A WINDING UP BY THE COURT

30. In the case of a Special Manager or a Liquidator other than the Official Receiver, the following provisions as to security shall have effect, namely:—

Standing security.

- (a) the security shall be given to such officers or persons, and in such manner as the court may from time to time direct;
- (b) it shall not be necessary that security shall be given in each separate winding up; but security may be given either specially in a particular winding up, or generally, to be available for any winding up in which the person giving security may be appointed, either as Liquidator or Special Manager;
- (c) the court shall fix the amount and nature of such security, and may from time to time, as it thinks fit, either increase or diminish the amount of special or general security which any person has given. Every order made by the court under this paragraph shall forthwith be communicated in writing by the Secretary of the court to the Registrar of Companies;

Form 21.

- (d) the certificate of the Registrar of Companies that a Liquidator or Special Manager has given security to his satisfaction shall be filed in the court;
- (e) the cost of furnishing the required security by a Liquidator or Special Manager, including any premiums which he may pay to a guarantee company or society, shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding up;
- (f) a Liquidator or Special Manager may give security in one or more of the following ways:—
- (i) by personal bond in favour of the Crown and deposit with the Deputy Secretary to the Treasury of public securities of the United Kingdom of Great Britain and Northern Ireland, India, the Dominions, or the Colonies, duly endorsed in favour of the said Deputy Secretary to the Treasury, or
 - (ii) by personal bond in favour of the Crown and lodgment of monies in the name of the Deputy Secretary to the Treasury in the Ceylon Savings Bank, or Post Office Savings Bank or any bank approved by the Minister with the concurrence of the Minister of Finance, or
 - (iii) by personal bond in favour of the Crown and the guarantee of any company or society accustomed as part of their regular business to guarantee the fidelity of any person, as may be approved by the Minister with the concurrence of the Minister of Finance, or
 - (iv) by personal bond and by hypothecation of immovable property in favour of the Crown.

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Failure to give or keep up security.