

THE COMPANIES (WINDING-UP) RULES 1934

The following rules made by the Governor with the advice and assistance of the Judges of the High Court under the Companies Act, 1931, may be cited as 'The Companies (Winding-Up) Rules, 1934', and shall come into operation in the manner and at the time specified by section 35 of the Isle of Man Judicature Act, 1883.

Preliminary

1 Application of Rules

Subject to the limitation hereinafter mentioned, these rules shall apply to the proceedings in every winding-up under the Act of a company, which shall commence on and after the date on which these rules come into operation, and they shall also, so far as practicable, and subject to any general or special order of the Court, apply to all proceedings which shall be taken or instituted after the said date, in the winding-up of a company which commenced on or before such date. Rules which from their nature and subject matter are, or which by the headlines above the group in which they are contained or by their terms are made applicable only to the proceedings in a winding-up by the Court, or only to such proceedings and proceedings in a creditors' voluntary winding-up shall not apply to the proceedings in a voluntary winding-up, or as the case may be in a members' voluntary winding-up, whether any such voluntary winding-up is or is not being continued under the supervision of the Court.

2 Interpretation of terms

In these rules, unless the context or subject-matter otherwise requires:-

'**The Act**' means the Companies Act, 1931.

'**The company**' means a company which is being wound-up, or against which proceedings to have it wound up have been commenced.

'**Court**' means the Chancery Division of the High Court of Justice.

'**Judge**' means any judge of the Court.

'**Proceedings**' means the proceedings in the winding-up of a company under the Act.

'**Chief clerk**' means the chief clerk in the Rolls Office, and shall include a deputy chief clerk.

'**Registrar**' means the registrar or other officer performing the duty of registration of companies, and shall include a deputy registrar.

'**The rules**' means these rules, and includes the prescribed forms.

'**Taxing officer**' means the First Deemster and Clerk of the Rolls, or other officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction.

3 Use of forms in Appendix

(1) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable 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.

(2) Provided that the Governor may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Governor alters any form, or substitutes any new form in lieu of a form prescribed by these rules, such altered or substituted form shall be published in two Insular newspapers.

Court and Chambers

Proofs.

70 Proof of debt

In a winding-up by the Court every creditor shall, subject as hereinafter provided, prove his debt, unless the judge in any particular winding-up, shall give directions that any creditors or class of creditors shall be admitted without proof. [Form 59]

71 Mode of proof

A debt may be proved in any winding-up by delivering or sending through the post an affidavit verifying the debt. In a winding-up by the Court the affidavit shall be so sent to the official receiver or, if a liquidator has been appointed, to the liquidator; and in any other winding-up the affidavit may be so sent to the liquidator. [Form 59]

72 Verification of proof

An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge. [Form 59]

73 Contents of proof

An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The official receiver or liquidator to whom the proof is sent may at any time call for the production of the vouchers. [Form 59]

74 Statement of security

An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.

75 Costs of proof

A creditor shall bear the cost of proving his debt unless the Court otherwise orders.

76 Discount

A creditor proving his debt shall deduct therefrom (a) any discount which he may have agreed to allow for payment in cash in excess of five per centum on the net amount of his claim and (b) all trade discounts.

77 Periodical payments

When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day. Provided that where the liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company or the liquidator of rent during the period of the company's or the liquidator's occupation.

78 Interest

On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a rate not exceeding four per cent. per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment.