

## CAYMAN ISLANDS



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### **GRAND COURT (AMENDMENT NO. 2) RULES 2008**

## **GRAND COURT LAW (2008 REVISION)**

### **THE GRAND COURT (AMENDMENT No. 2) RULES 2008**

These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law (2008 Revision).

#### **1. Citation, Commencement and Interpretation.**

- (1) These Rules shall be cited as the Grand Court (Amendment No. 2) Rules 2008.
- (2) These Rules shall come into operation on the 1st day of March 2009 referred to in this rule as the "Commencement Date".
- (3) These rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (4) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as in the Grand Court Rules 1995.

#### **2. Revocation and Replacement of Orders 1 and 102**

- (1) GCR Order 1 is hereby revoked and replaced by the Order contained in the Schedule hereto.
- (2) GCR Order 102 is hereby revoked and replaced by the Order contained in the Schedule hereto.

#### **3. Revocation of Practice Directions**

- (1) Practice Directions No.1/2003 (*Official Liquidators: Security for the Due Performance of their Duties*) is hereby revoked.
- (2) Practice Direction No.1/2006 (*Liquidators' Remuneration*) is hereby revoked.

Made by the Rules Committee on the 15th day of December 2008.

The Honourable Anthony Smellie QC, Chief Justice  
The Honourable Sam Bulgin QC, Attorney General  
Andrew J Jones QC, Legal Practitioner  
Graham Ritchie QC, Legal Practitioner

## ORDER 1

### CITATION, APPLICATION, COMMENCEMENT, INTERPRETATION AND FORMS

#### Citation (O.1, r.1)

1. (1) These Rules may be cited as the Grand Court Rules, 1995.
- (2) An individual rule may be cited using the abbreviation "GCR".

#### Application (O.1, r.2)

2. (1) Subject to the following provisions of this rule, these Rules shall apply in relation to all proceedings in the Court.
- (2) Except for Part I of Order 52 (Committal), Order 53 (Applications for Judicial Review), Part III of Order 62 (Wasted Costs Orders) and Order 103 (Confidential Relationships (Preservation) Law (1995 Revision)), these Rules shall not apply to any criminal proceedings.
- (3) These Rules shall not apply to any application or proceedings governed by Parts I to III of the Succession Law (Probate and Administration) Rules 1977, as amended.
- (4) Except for Orders 3 (Time), 38 Part II (Writs of Subpoena), 39 (Evidence by Deposition), 62 (Costs), 67 (Change of Attorney), 45-51 (Enforcement) and 52 (Committal) 80, these Rules shall not apply to any proceedings which are –
  - (a) governed by the Matrimonial Causes Rules (2003 Revision),
  - (b) governed by the Grand Court (Bankruptcy) Rules 1977, as amended,
  - (c) governed by the Companies Winding Up Rules 2008; or
  - (d) on appeal from civil proceedings in the Summary Court.
- (5) Notwithstanding the provisions of paragraphs (2) to (5) of this rule -
  - (a) Order 38 shall apply to every civil proceeding except -
    - (i) a proceeding under the Companies Winding Up Rules, 2008; and
    - (ii) any appeal from civil proceedings in the Summary Court;
  - (b) every affidavit or other document filed in the Court office shall comply with the requirements of Orders 41 and 66;

- (c) every judgment and order made by the Court shall comply with the requirements of Order 42;
  - (d) except in the case of petitions in proceedings governed by the Matrimonial Causes Rules (2003 Revision), every originating process or other document required to be served by these Rules or any other rules in connection with any civil proceedings shall be served in accordance with Orders 10 and 65;
  - (e) Part I of Order 80 shall apply to every proceeding to which a person under disability is a party; and
  - (f) every interlocutory summons issued by the Court, including summonses issued in proceedings governed by the Matrimonial Causes Rules (2003 Revision) and those issued in proceedings under the Companies Winding Up Rules 2008, shall be endorsed in accordance with Order 32, rule 2(4), and Order 32, rules 2 to 8 shall apply to the hearing of such summonses.
- (6) All funds required to be paid into or out of Court, whether by order of the Court of Appeal, the Court, the Summary Court or otherwise, in both criminal and civil proceedings, shall be lodged, paid, invested and dealt with in accordance with the provisions of Order 92.

### **Commencement and transitional provisions (O.1, r.3)**

3. (1) These Rules shall come into operation on the 1st day of June, 1995, referred to in this Order as the "commencement date".
- (2) These Rules shall apply to -
- (a) every proceeding commenced on or after the commencement date; and
  - (b) every step taken or required to be taken after the commencement date in any proceeding pending on that date.
- (3) No step taken or required to be taken before the commencement date shall be treated as a non-compliance with these Rules provided that it complied with the rules then in force.
- (4) Order 6, rule 8 shall have no application to writs issued prior to the commencement date.

### **Revocations (O.1, r.4)**

4. The following rules are hereby revoked with effect from the commencement date –

- (a) the Grand Court (Civil Procedure) Rules 1976, as amended;
- (b) the Grand Court (Admiralty) Rules 1977;
- (c) the Grand Court (Forms and Miscellaneous) Rules 1976;
- (d) the Civil Evidence Rules 1978;
- (e) the Grand Court (Proceedings by and against the Crown) Rules 1977;
- (f) Part IV of the Succession Law (Probate and Administration) Rules 1977, as amended;
- (g) the Grand Court (Applications for Orders of Mandamus, Prohibition, Certiorari and Habeas Corpus) Rules 1977;
- (h) the Grand Court (Foreign Process) Rules 1977; and
- (i) the Grand Court (Foreign Judgments) (Reciprocal Enforcement) Rules 1977.

**Non application of English rules (O.1, r.5)**

- 5.** (1) Except as provided in Order 75, r.2, the Rules of the Supreme Court 1965 shall cease to have any application to –
- (a) every proceeding commenced on or after the commencement date; and
  - (b) any step taken or required to be taken after the commencement date in any proceeding pending on that date.
- (2) Notwithstanding paragraph (1), The Supreme Court Practice may be relied upon where appropriate as an aid to the interpretation and application of these Rules.

**Application of Interpretation Law (1995 Revision) (O.1, r.6)**

- 6.** The Interpretation Law (1995 Revision) shall apply to the interpretation of these Rules as it applies to the interpretation of a Law.

**Definitions (O.1, r.7)**

- 7.** (1) In these Rules, unless the context otherwise requires –

"Accountant General" means the Accountant General of the Grand Court appointed under paragraph 1 of the First Schedule of the Judicature Law or an officer appointed by him under Order 92, rule 6;

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and "personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"attorney" means a person admitted or otherwise entitled to practise as an attorney-at-law in the Cayman Islands either generally or in respect of a particular cause or matter and includes Crown Counsel;

"Bailiff" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any assistant bailiffs;

"Chief Justice" means the Chief Justice of the Cayman Islands or any other Judge authorised to act as Chief Justice;

"Chief Marshall" means the person appointed as such by the Chief Justice and includes any deputies and assistants;

"Clerk of the Court" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any deputies;

"the Court" means the Grand Court of the Cayman Islands constituted pursuant to Section 3 of the Grand Court Law (1995 Revision) whether sitting as the Grand Court or as the Chief Court of Bankruptcy or as a Colonial Court of Admiralty;

"Court Funds Office" means the office of the Accountant General or of an officer appointed by him under Order 92, rule 6;

"Court office" is the office established pursuant to Section 10 of the Grand Court Law (1995 Revision), as amended;

"Court file" means the file established in respect of every proceeding in accordance with Order 63, rule 2;

"Grand Court Law" means the Grand Court Law (1995 Revision) as amended from time to time;

"The Judicature Law" means The Judicature Law (1995 Revision), as amended from time to time;

"Judge" means any judge or acting judge of the Court;

"notice of intention to defend" means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;

"originating summons" means every summons other than a summons in a pending cause or matter;

"pleading" does not include a petition, summons or preliminary act;

"prescribed fee" means the fee prescribed by the Grand Court Fees Rules 1999;

"practice form" means a form contained in a practice direction issued pursuant to Order 1, rule 12;

"prescribed form" means a form prescribed by these Rules and contained in the Appendices;

"prescribed rate" means the applicable rate of interest prescribed from time to time by the Rules Committee pursuant to Section 34 of The Judicature Law;

"probate action" has the meaning assigned by Order 76;

"receiver" includes a manager;

"Register of Judgments" means the file maintained in accordance with Order 63, rule 7;

"Register of Writs" means the file maintained in accordance with Order 63, rule 8;

"State Immunity Act 1978" means the United Kingdom State Immunity Act 1978 as applied to the Cayman Islands by the State Immunity (Overseas Territories) Order 1979 (SI 1979/458);

"writ" means a writ of summons.

- (2) In these Rules, unless the context otherwise requires, "the Court" means the Grand Court or any one or more Judges thereof, whether sitting in open Court or in chambers.
- (3) In these Rules, unless the context otherwise requires, a reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Court office an acknowledgment of service of that document or, as the case may be, a notice to defend those proceedings.

**Construction of references to orders, rules, etc. (O.1, r.8)**

8. (1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or Appendix to, these Rules and any reference to a specified rule, paragraph or subparagraph is a reference to that rule of the Order, that paragraph of the rule, or that subparagraph of the paragraph, in which the reference occurs.
- (2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement date under any corresponding rule of court ceasing to have effect on the commencement date.
- (3) Except where the context otherwise requires, any reference in these Rules to any Law shall be construed as a reference to the Law as amended, extended or applied by or under any other Law.

**Construction of references to action, etc. for possession of land (O.1, r.9)**

9. Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

**Prescribed forms (O.1, r.10)**

10. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case requires.

**Use of English Practice Forms as precedents (O.1, r.11)**

11. The Queens Bench and Chancery Masters' Practice Forms contained in Part 2 of The Supreme Court Practice, as may be hereafter amended from time to time, are not incorporated in these Rules, but they shall be regarded as approved precedents to be used, with all necessary and appropriate variations, whenever possible.

**Practice directions (O.1, r.12)**

12. (1) The Chief Justice may issue practice directions for the purpose of -
  - (a) supplementing these Rules, provided that no practice direction shall revoke or vary any rule;
  - (b) establishing forms to be known as "practice forms" in respect of any matter in which no prescribed form is contained in Appendix I; and



- (c) providing for the practice and procedure of the Court in respect of any matter not governed by these or any other rules.
- (2) The Rules Committee shall from time to time issue practice directions containing guidelines relating to the matters referred to in Order 62, rule 17
- (3) The Accountant General may, with the concurrence of the Chief Justice, issue practice directions for the purpose of supplementing the provisions of Order 92 and establish practice forms in respect of any matter relating to Order 92 for which no prescribed form is contained in Appendix II.
- (4) All practice directions and practice forms issued pursuant to this rule shall be gazetted.
- (5) Any practice direction or practice form issued pursuant to this rule may be varied or revoked by the Chief Justice in the case of those issued by him or by the Accountant General in the case of those issued by him.
- (6) Any practice direction or practice form may be revoked by the Rules Committee.



**ORDER 102****APPLICATIONS PURSUANT TO THE COMPANIES LAW (2001 SECOND REVISION)****Definitions and application (O.102, r.1)**

1. (1) In this Order "the Law" means the Companies Law as amended or revised from time to time and expressions used in this Order have the same meaning as in the Law.
- (2) This Order shall not apply to proceedings governed by the Companies Winding Up Rules 2008.

**Applications to be made by originating summons (O.102, r.2)**

2. (1) The following applications under the Law must be made by originating summons, namely -
  - (a) under Section 44 of the Law, for an order to inspect the register of members of a company;
  - (b) under Section 46 of the Law, for an order for rectification of the register of members of a company;
  - (c) under Section 54 of the Law, for an order for inspection of a company's register of mortgages and charges;
  - (d) under Section 223 of the Law, for an order approving changes to the charter documents of a registrant;
  - (e) under Section 249(4) of the Law, for an order that rights attaching to a bearer share be restored;
  - (f) any other application under the Law not specifically provided for in this rule or rules 3 and 4.
- (2) An originating summons under this rule shall be in Form No. 3 of Appendix I except for applications referred to in subparagraphs (1)(a), (c) and (d) which may be made ex parte in Form No. 4 of Appendix I.
- (3) All applications of the kind referred to in subparagraph (1)(e) shall be served upon the Registrar of Companies.

**Applications to be made by originating motion (O.102, r.3)**

3. The following applications under the Law must be made by originating motion, namely –
- (a) under Section 64 of the Law, for an order for the appointment of inspectors in respect of a company;
  - (b) under Section 88 of the Law, for a declaration that a bidder is neither entitled nor bound to acquire compulsorily the shares of dissentient members of a company.

**Applications to be made by petition (O.102, r.4)**

4. The following applications under the Law must be made by petition, namely –
- (a) under Section 15 of the Law, for an order confirming a resolution for reducing the share capital of a company;
  - (b) under Section 35 of the Law, for an order sanctioning the issue by a company of shares at a discount;
  - (c) under Section 86 of the Law for an order sanctioning a compromise or arrangement between a company and its creditors or members or any class of them;
  - (d) under Section 237 of the Law, for an Order relieving a director of a segregated portfolio company from personal liability; and
  - (e) under Section 243 of the Law, for a receivership order in respect of a segregated portfolio of a segregated portfolio company.

**Entitlement of proceedings (O.102, r.5)**

5. Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Law.

**Summons for directions (O.102, r.6)**

6. (1) Upon the issue of a petition by which any such application as is mentioned in rule 4 is made, the petitioner must at the same time take out a summons for directions under this rule.
- (2) A summons for directions under this rule and the petition to which it relates must be served on the company at the same time.

- (3) On the hearing of the summons, the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.
- (4) Where the application made by the petition is to confirm a reduction of the share capital of a company, then, without prejudice to the generality of paragraph (2) the Court may give directions under Section 15 of the Law -
  - (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
  - (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made; and
  - (c) the power of the Court under Section 15(3) of the Law to direct that Section 15(2) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.
- (5) Rules 6 to 11 shall have effect subject to any directions given by the Court under this rule.

**Inquiry as to debts: company to make list of creditors (O.102, r.7)**

- 7. (1) Where under rule 6 the Court orders such an inquiry as is mentioned in paragraph (3) thereof, the company in question must, within 7 days after the making of the order, file in Court an affidavit made by an officer of the company competent to make it, verifying a list containing -
  - (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;
  - (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and
  - (c) the total of those amounts and values.
- (2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

**Inspection of list of creditors (O.102, r.8)**

8. (1) Copies of the list made under rule 7 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's attorneys, if any.
- (2) Any person shall be entitled during ordinary business hours to inspect the said list at any such office and to take extracts therefrom or copies thereof.

**Notice to creditors (O.102, r.9)**

9. Within 7 days after filing the affidavit required by rule 7 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating -
  - (a) the amount of the reduction sought to be confirmed;
  - (b) the effect of the order directing an inquiry as to debts and claims;
  - (c) the amount or value specified in the list as due or estimated to be due to that creditor; and
  - (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his attorney, if any, to the company's attorney.

**Advertisement of petition and list of creditors (O.102, r.10)**

10. After filing the affidavit required by rule 7 the company must insert in such newspapers and at such times as the Court directs, a notice stating –
  - (a) the date of issue of the petition and the amount of reduction thereby sought to be confirmed;
  - (b) the inquiry ordered by the Court under rule 6;
  - (c) the places where the list of creditors may be inspected in accordance with rule 9; and
  - (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his attorney, if any, and particulars of his debt or claim to the company's attorney.

**Affidavit as to claims made by creditors (O.102, r.11)**

- 11.** Within such time as the Court directs the company must file in Court an affidavit made by an officer of the company or other person competent to make it –
- (a) proving service of the notices mentioned in rule 9 and advertisement of the notice mentioned in rule 10;
  - (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notice sent in particulars of debts or claims, specifying the amount of each debt or claim;
  - (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry; and
  - (d) stating which of the persons named in the list made under rule 7 and which of the persons in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

**Adjudication of disputed claims (O.102, r.12)**

- 12.** If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him –
- (a) within such time as may be specified in the notice being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and
  - (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

**Certifying lists of creditors entitled to object to reduction (O.102, r.13)**

- 13.** The list of creditors entitled to object to such reduction as is mentioned in rule 6(3) as settled by the Court under Section 15(2) of the Law, shall be certified and filed and the Court's certificate shall –
- (a) specify the debts or claims (if any) disallowed by the Court;
  - (b) distinguish the debts or claims (if any), the full amount of which is admitted by the company, the debts or claims (if any), the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or

claims (if any), the amount of which has been fixed by adjudication of the Court under Section 15(2) of the Act and other debts or claims;

- (c) specify the amount of debts or claims, payment of which has been secured by appropriation under the said Section 15(2);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 11 and state which of such debts or claims were allowed.

**Evidence of consent of creditor (O.102, r.14)**

- 14.** The consent of a creditor to such reduction as is mentioned in rule 6(3) may be proved in such manner as the Court thinks sufficient.

**Time, etc., of hearing of petition for confirmation of reduction (O.102, r.15)**

- 15.** (1) A petition for the confirmation of any such reduction as is mentioned in rule 6(3) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 13.
- (2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

**Service out of the jurisdiction without leave (O.102, r.16)**

- 16.** Any originating summons, originating motion or petition issued pursuant to rule 2, 3 or 4 may be served out of the jurisdiction upon any shareholder, director or creditor of the company concerned without the leave of the Court.

**Restoration of companies to the register: Application by a company or a member thereof (O.102, r.17)**

- 17.** (1) An application by a company or any member thereof under Section 178 of the Law shall be made by originating application in Form No. 66 of Appendix I.
- (2) The originating application shall be supported by an affidavit proving the following facts and matters-
- (a) the company's registration number and the date of its registration;
  - (b) the date upon which the company was struck off the register of companies;



- (c) if the company was struck off the register more than two years prior to the date of the originating application, the Governor in Council has no objection to its restoration to the register of companies;
  - (d) the Registrar of Companies has no objection to the company's restoration to the register of companies;
  - (e) the amount of the reinstatement fee payable and the amount of any outstanding annual return fees, the payment of which is sought by the Registrar of Companies;
  - (f) the address of the premises which will become the company's registered office in the event that it is restored to the register of companies;
  - (g) if the proposed registered office is the premises of a professional service provider, such person has agreed to provide registered office services to the company.
- (3) Every originating application under this rule shall be accompanied by a draft order (in triplicate) in Form No. 67 of Appendix I.
  - (4) Every originating application under this rule shall be determined by the Clerk of the Court without hearing the applicant.
  - (5) If the Clerk of the Court is satisfied that the requirements of this rule and of Section 178 of the Law have been met, he shall make an order in Form No. 67 of Appendix I.
  - (6) If the Clerk of the Court is not satisfied that the requirements of this rule or Section 178 of the Law have been met, he may-
    - (a) require the applicant to file further evidence;
    - (b) direct that the application be served on the Registrar of Companies;
    - (c) refer the application for an oral hearing before a judge; or
    - (d) dismiss the application.

**Restoration of companies to the register - Application by a creditor (O.102, r.18)**

- 18. (1) An application by a creditor under Section 178 may be combined with an application under Section 94 of the Companies Law and may be made by petition in Form No. 68 of Appendix I, in which case Order 3 of the Companies Winding Up Rules, 2008 shall apply.
- (2) A petition under this rule shall be served on-

- (a) the last known registered office of the company; and
  - (b) the Registrar of Companies.
- (3) Unless the Court otherwise directs, a petition under this rule shall be advertised in accordance with Order 3, rule 6 of the Companies Winding Up Rules, 2008.
- (4) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.
- (5) If the petitioner seeks a winding up order, the petition must be supported by an affidavit sworn by the person nominated for appointment as official liquidator and containing the information required by Order 3, rule 4 of the Companies Winding Up Rules, 2008.

**Application to restore rights attaching to bearer shares (O.102, r.19)**

- 19. -** (1) An application under Section 249(4) of the Law by the holder of a bearer share certificate for an order that the rights attaching to such share be restored, shall be made by originating summons in Form No. 2.
- (2) Where the shares which are the subject of the application represented the whole of the company's issued share capital, the Financial Secretary shall be made party to the application.
- (3) Where the shares which are the subject of the application represented part only of the company's issued share capital, the originating summons shall be served on -
- (a) the company; and
  - (b) subject to any direction given under paragraph (4), each shareholder of the company.
- (4) If the Court is satisfied that service upon each shareholder of the company is impractical, it shall consider making representation orders pursuant to Order 15, Rule 12 and shall give directions for the application to be advertised in such manner as it thinks fit.
- (5) The originating summons shall be supported by an affidavit sworn by or on behalf of the applicant which -
- (a) explains why the share certificates were not deposited with a custodian;
  - (b) states the address which is or will be the registered office of the company in the event that the rights attaching to the shares are restored;

- (c) states the names and addresses of the directors or the persons intended to be appointed as directors of the company in the event that the rights attaching to the shares are restored;
  - (d) sets out full particulars of the company's assets and liabilities and the nature of its business;
  - (e) sets out full particulars of all special resolutions passed by the company since 26<sup>th</sup> April, 2002; and
  - (f) states the amount of the company's issued share capital and particulars of any changes which have occurred since 26<sup>th</sup> April, 2002.
- (6) The Court may direct the company's directors to swear and serve upon the applicant an affidavit complying with the requirements of sub-paragraphs (c) to (f) of paragraph (5).
  - (7) The originating summons shall also be supported by an affidavit sworn by an authorised or recognised custodian stating that it has custody of the share certificates which are the subject of the application and that it has agreed with the applicant to hold the shares on his behalf in the event that the Court makes an order that the rights attaching to such shares be restored.
  - (8) An order that the rights attaching to a bearer share be restored shall be in Form 70.

#### **Schemes of Arrangement (O.102, r.20)**

- 20.** (1) An application under Section 86 of the Law for an order sanctioning a proposed compromise or arrangement between a company and its creditors or members or any class of them shall be commenced by petition.
- (2) Upon the presenting of a petition under paragraph (1), the petitioner must at the same time take out a summons for a direction convening the Court meeting(s).
- (3) The summons under paragraph (2) shall be supported by an affidavit which shall-
  - (a) describe the purpose and effect of the proposed scheme;
  - (b) contain such information as may be necessary to enable the Court to determine whether it should convene class meetings and, if so, the composition of the classes;
  - (c) contain such information as may be necessary to enable the Court to determine whether the proposed time and place of the Court meeting(s) and the method of giving notice is appropriate in all the circumstances.

- (4) The following documents shall be exhibited to the supporting affidavit referred to in paragraph 3-
  - (a) the proposed scheme together with any supplementary documents to which it refers;
  - (b) draft notice of the meeting(s);
  - (c) draft proxy forms;
  - (d) draft voting instructions for use by custodians; and
  - (e) a draft explanatory memorandum or proxy statement which provides the shareholders or creditors with all the information reasonably necessary to enable them to make an informed decision about the merits of the proposed scheme.
- (5) If the proposed scheme relates to shares or debt instruments which are listed on a stock exchange, the summons under paragraph (2) shall be supported by an affidavit or expert report which sets out the relevant listing rules and practice and explains the steps which have been or will be taken to comply with such listing rules or practice.
- (6) The Court shall give such directions as may be necessary for the purpose of enabling it to determine whether or not the statutory majorities will have been achieved. If all or substantially all of the shares or debt instruments to which the proposed scheme relates are registered in the name of one or more custodians or clearing houses, the Court may direct that-
  - (a) such custodian or clearing house may cast votes both for and against the proposed scheme in accordance with the instructions of its clients;
  - (b) such custodian or clearing house shall specify the number of votes cast in favour of the scheme and the number of clients or members on whose instructions they are cast and the number of votes cast against the proposed scheme and the number of clients or members on whose instructions they are cast.
- (7) The explanatory memorandum or proxy statement referred to in sub-paragraph (4)(e) above shall contain a timetable of principal events including-
  - (a) the latest time for transmission to custodians or clearing houses of voting instructions for the Court meeting;
  - (b) the latest time for lodging forms of proxy for the Court meeting;
  - (c) the date of the Court meeting;

- (d) the date of the hearing of the petition to sanction the scheme; and
  - (e) the anticipated date upon which the scheme, if sanctioned, will become effective.
- (8) Within seven days after the date fixed for the Court meeting the petitioner shall file an affidavit sworn by the chairman of the meeting verifying that-
- (a) notice of the meeting was duly sent in accordance with the order for directions;
  - (b) the meeting was duly held in accordance with the order for directions; and
  - (c) full particulars of the voting.
- (9) The hearing of the summons taken out in accordance with paragraph (2) shall be in chambers.
- (10) The final hearing of the petition shall be heard in open court and any person who:
- (a) voted at the court meeting(s); or
  - (b) gave voting instructions to a custodian or clearing house who voted at the Court meeting(s),

shall be entitled to appear and be heard.



(Price \$6.00)