



## Statutory Rules

1980 No. 210

### RULES OF COURT UNDER THE AUSTRALIAN CAPITAL TERRITORY SUPREME COURT ACT 1933<sup>1</sup>

WE, Judges appointed under sub-section 7 (1) of the *Australian Capital Territory Supreme Court Act 1933*, hereby make the following Rules of Court under that Act.

Dated this tenth day of July 1980.

R. A. BLACKBURN  
Chief Judge

XAVIER CONNOR  
Judge

J. KELLY  
Judge

Z. HARTSTEIN  
Registrar

---

### AMENDMENTS OF THE RULES OF THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY<sup>2</sup>

#### Principal Rules

1. The Rules of the Supreme Court of the Australian Capital Territory are in these Rules referred to as the Principal Rules.
2. Rule 46 of Order 75 of the Principal Rules is repealed and the following rule substituted:

#### Notice to Registrar that winding up order has been made in a winding up by the Court N.S.W. r. 53

- “46. A notice of a winding up and its date and the name and address of the liquidator, to be lodged with the Registrar of Companies under sub-section 230 (1) of the Ordinance, shall be in accordance with Form 32.”.

**Advertisement of winding up order and appointment of liquidator in a winding up by the Court N.S.W. r. 57**

3. Rule 50 of Order 75 of the Principal Rules is amended by omitting “seven days” and substituting “14 days”.

**Resignation of liquidator N.S.W. r. 89**

4. Rule 80 of Order 75 of the Principal Rules is amended—

- (a) by omitting from sub-rule (1) all words and figures after “accepted.”;
- (b) by omitting from sub-rule (2) all words and figures after “accepted.”;
- (c) by inserting after sub-rule (2) the following sub-rules:

“(2A) The resignation of a liquidator accepted by ordinary resolution at a meeting referred to in sub-rule (1) or (2) shall take effect—

- (a) in the case of a winding up by the Court, on the liquidator—
  - (i) lodging with the Registrar of Companies a notice under sub-section 280 (2) of the Ordinance; and
  - (ii) filing a copy of that notice in the Registrar’s office;
- (b) in the case of a creditors’ voluntary winding up—on the liquidator lodging with the Registrar of Companies a notice under sub-section 280 (2) of the Ordinance; or
- (c) in the case of a members’ voluntary winding up—on the liquidator lodging with the Registrar of Companies a notice under sub-section 280 (2) of the Ordinance.

“(2B) A notice of a liquidator’s resignation to be lodged with the Registrar of Companies under sub-section 280 (2) of the Ordinance shall be in accordance with Form 42.”; and

- (d) by omitting sub-rule (6).

**Office of liquidator vacated by his insolvency N.S.W. r. 90**

5. Rule 81 of Order 75 of the Principal Rules is amended by omitting sub-rule (2) and substituting the following sub-rule:

“(2) A notice of a liquidator’s removal to be lodged with the Registrar of Companies under sub-section 280 (2) of the Ordinance shall be in accordance with Form 42 and the liquidator to whom it relates shall, in a winding up by the Court, file a copy of that notice in the Registrar’s office.”.

6. Rule 95 of Order 75 of the Principal Rules is repealed and the following rule substituted:

**Creditors entitled to vote N.S.W. r. 104**

“95. (1) Subject to sub-rule (2), a person shall not be entitled to vote as a creditor at a meeting of creditors unless—

- (a) he has lodged with the liquidator a proof of the debt that he claims to be due to him from the company and that proof has been admitted wholly or in part before the date on which the meeting is held; or
- (b) his debt or claim has been otherwise admitted by the liquidator.

“(2) In the case of a meeting of creditors held under sub-section 260 (1) or (8) of the Ordinance, a person is not entitled to vote as a creditor at the meeting unless he has lodged with the chairman of the meeting a proof of the debt which he claims to be due to him from the company.”.

7. Rule 99 of Order 75 of the Principal Rules is repealed and the following rule substituted:

**Admission, or rejection, of proofs for purposes of voting N.S.W. r. 108**

“99. (1) The chairman of a meeting of creditors or contributories shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court or the Registrar.

“(2) If the chairman is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.”.

8. Order 75 of the Principal Rules is amended by adding at the end thereof the following rules:

**Declaration of solvency**

“213. (1) A declaration under sub-section 257 (1) of the Ordinance, by the directors of a company where it is proposed to wind up the company voluntarily, shall be in accordance with Form 105.

“(2) For the purposes of sub-section 257 (2) of the Ordinance, the matters specified in paragraphs 257 (2) (a), (b) and (c) shall be shown in a statement of affairs in accordance with Form 106.

**Notices of the summoning and holding of a creditors’ meeting in case of insolvency**

“214. (1) A notice under sub-section 259 (1) of the Ordinance by a liquidator of the summoning of a creditors’ meeting shall be in accordance with Form 107.

“(2) A notice under sub-section 259 (4) of the Ordinance of the holding of a creditors’ meeting shall be in accordance with Form 108.

**Return of final meeting and dissolution**

“215. A return to be lodged with the Registrar of Companies under sub-section 272 (3) or (4) of the Ordinance of the holding of a meeting under sub-section 272 (1) or of the summoning of a meeting at which no quorum was present shall be in accordance with Form 109.

**Notice of appointment and address of liquidator**

“216. A notice under sub-section 280 (1) of the Ordinance to be lodged by a liquidator of his appointment and the situation of his office shall be in accordance with Form 110.

**Notice of change in situation of office of liquidator**

“217. A notice under sub-section 280 (1) of the Ordinance of a change in the situation of the office of a liquidator shall be in accordance with Form 111.

**Liquidator's accounts**

- “218. (1) An account of receipts and payments and a statement of position in the winding up to be lodged with the Registrar of Companies under sub-section 281 (1) of the Ordinance shall be in accordance with Form 112 and a statutory declaration by a liquidator under that sub-section shall be in accordance with Form 113.
- “(2) In the case of a winding up by the Court, a liquidator lodging with the Registrar of Companies the documents referred to in sub-rule (1) shall file a copy of those documents in the Registrar's office.”.

**Seventh Schedule**

9. The Seventh Schedule to the Principal Rules is amended—
- (a) by omitting Form 42 and substituting the following form:

FORM 42 Order 75, rules 80 and 81

AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 280 (2)

NOTICE BY LIQUIDATOR OF RESIGNATION OF REMOVAL FROM OFFICE

.....Limited

To the Registrar of Companies.

I, ..... of.....

hereby give notice that on.....19 ,

I resigned/was removed\* from the office of liquidator of.....Limited.

Dated this                      day of                      19   .

.....

Liquidator

---

\* Strike out whichever is inapplicable.

and

(b) by adding at the end thereof the following forms:

FORM 105  
AUSTRALIAN CAPITAL TERRITORY  
*Companies Ordinance 1962*  
Sub-section 257 (1)  
DECLARATION OF SOLVENCY  
.....Limited

Order 75, sub-rule 213 (1)

We,..... of.....  
and..... of.....  
being\*.....the directors of.....Limited,  
and being present at a meeting of the directors of the company, declare that—

- (a) we have made an inquiry into the affairs of the company; and
- (b) at this meeting, we have formed the opinion that the company will be able to pay its debts in full within a period of†.....months after the commencement of the winding up.

We attach a true and correct statement of affairs of the company showing, in the prescribed form—

- (c) the assets of the company and the total amount expected to be realized therefrom;
- (d) the liabilities of the company; and
- (e) the estimated expenses of winding up,

made up to the latest practicable date before the making of this declaration.

Dated this                      day of                      19      .

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

Directors

\* Insert “all” or “a majority of”, as the case requires.

† Insert a period of months not exceeding 12.

NOTE: Sub-sections 257 (3) and (4) of the *Companies Ordinance 1962* provide:

“(3) A declaration so made has no effect for the purposes of this Ordinance unless it is—

- (a) made at the meeting of directors referred to in sub-section (1) of this section;
- (b) made within five weeks immediately preceding the passing of the resolution for voluntary winding up; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

“(4) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence against this Ordinance.

Penalty: One thousand dollars or imprisonment for six months, or both.”.

Order 75, sub-rule 213 (2)

Estimated to realise or to rank for  
payment (to nearest \$)

Estimated realizable value of assets .....	\$
--	----

## Directors

## FORM 107

Order 75, sub-rule 214 (1)

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 259 (1)

## NOTICE OF MEETING OF CREDITORS

.....Limited

Notice is given that, in pursuance of sub-section 259 (1) of the *Companies Ordinance 1962*, a meeting of the creditors of.....Limited will be held at

..... on.....  
19....., at.....o'clock in the forenoon/afternoon.\*

The winding up of the company commenced on.....  
.....19..... and I was appointed liquidator by resolution of the members of the company. As the directors declared that the company would be able to pay its debts in full within a period of .....months after the commencement of the winding up, the liquidation is proceeding as a members' voluntary winding up.

I have formed the opinion that the company will not be able to pay or provide for the payment of its debts in full within that period and this meeting is summoned in order that the creditors may, if they so wish, exercise their right under sub-section 259 (2) of the *Companies Ordinance 1962* to appoint some person other than myself to be the liquidator of the company for the purpose of winding up the affairs and distributing the assets of the company.

A statement of the assets and liabilities of the company will be laid before the meeting.

Dated this                                      day of                                      19                                      .

.....  
Liquidator

\* Strike out whichever is inapplicable.

## FORM 108

Order 75, sub-rule 214 (2)

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 259 (4)

## NOTICE OF HOLDING OF MEETING OF CREDITORS

.....Limited

To the Registrar of Companies.

NOTICE is given that, in pursuance of sub-section 259 (1) of the *Companies Ordinance 1962*, a meeting of the creditors of.....Limited was summoned and held on.....19....., for the purpose of laying before the meeting a statement of the assets and liabilities of the company and permitting the creditors, if they so wished, to exercise their right under sub-section 259 (2) of the *Companies Ordinance 1962* to appoint a person other than myself/the liquidator appointed by the company\* for the purpose of winding up the affairs and distributing the assets of the company.

Dated this                                      day of                                      19                                      .

.....  
Liquidator/Person appointed by the creditors to be liquidator\*

\* Strike out whichever is inapplicable.

## FORM 109

Order 75, rule 215

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-sections 272 (3) and (4)

## RETURN BY LIQUIDATOR RELATING TO FINAL MEETING

.....Limited

To the Registrar of Companies.

I/We,\*.....of.....,  
 the liquidator(s) of.....Limited, inform you that a  
 general meeting of the company,/a meeting of the company and the creditors of the company,\* summoned  
 for.....19.....,  
 for the purpose of laying before the meeting an account, a copy of which is attached to this return, showing  
 how the winding up has been conducted and how the property of the company has been disposed of and of  
 giving any explanation of the account, was duly held on that date/was not attended by the necessary  
 quorum\*.

Dated this                                      day of                                      19                                      .

.....  
Liquidator(s)

\* Strike out whichever is inapplicable.

## FORM 110

Order 75, rule 216

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 280 (1)

## NOTICE OF APPOINTMENT AND SITUATION OF OFFICE OF LIQUIDATOR

.....Limited

To the Registrar of Companies.

I/We,\*.....of.....,  
 give notice that—

(a) I was/we were\* appointed liquidator(s)/provisional liquidator(s)\* of .....  
 .....Limited—

† by resolutions of.....Limited passed on .....  
 .....19....., and of the creditors of that company  
 passed on.....19.....;

† by a resolution of the creditors of.....Limited passed on  
 .....19.....;

† by a resolution of.....Limited passed on  
 .....19.....;

† by an order of the Supreme Court of the Australian Capital Territory made on  
 .....19.....; and

(b) my/our\* office is situated at .....

Dated this                                      day of                                      19                                      .

.....  
Liquidator(s)

\* Strike out whichever is inapplicable.

† Strike out whichever paragraphs are inapplicable.



## FORM 111

Order 75, rule 217

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 280 (1)

## NOTICE OF CHANGE IN SITUATION OF OFFICE OF LIQUIDATOR

.....Limited

To the Registrar of Companies.

I/We,\*....., the liquidator(s)/one of the liquidators\*  
of.....Limited, give notice that, on.....  
.....19....., the situation of my/our\* office was changed to  
.....

Dated this                      day of                      19                      .

.....  
Liquidator(s)

\* Strike out whichever is inapplicable.

## FORM 112

Order 75, sub-rule 218 (1)

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 281 (1)

LIQUIDATOR'S ACCOUNT OF RECEIPTS AND PAYMENTS AND STATEMENT  
OF THE POSITION IN THE WINDING UP

.....Limited

Nature of winding up.....

Date of commencement of winding up.....

Date to which the account and statement are made up.....

Name and address of liquidator.....

## ACCOUNT OF RECEIPTS AND PAYMENTS\*

Receipts				Payments			
Date	From whom received	Nature of receipts	Amount	Date	To whom paid	Nature of payments	Amount
			\$				\$
		Brought forward				Brought forward	
		Carried forward†				Carried forward†	

## FORM 112—continued

\$

Total receipts .....

Total payments .....

Balance.....

\$

The balance is made up as follows:

1. Cash in hands of liquidator .....

2. Cash in bank—

Credit as per bank pass book .....

Less unrepresented cheque .....

..... 3..... Amounts invested by liquidator and not converted into cash\*

Balance as above.....

## PARTICULARS OF RATES OF DIVIDENDS AND DATES DECLARED

Dividend of.....in the dollar, paid on .....

.....19.....

Name of creditors in alphabetical order	Amount of proof	Amount of dividend	
		Paid	Unclaimed
		\$	\$
Total as per previous return .....			
		\$	

Total.....

FORM 112—continued

PARTICULARS OF DATES AND RATE PER SHARE OF RETURN OF SURPLUS  
ASSETS PAYABLE TO CONTRIBUTORIES

Return of surplus assets to contributories at rate of.....per share  
paid on.....19.....

Names of contributories in alphabetical order	Number of shares	Amount returned on shares	
		Paid	Unclaimed
		\$	\$
Total as per previous return .....			

Total.....

STATEMENT OF THE POSITION IN THE WINDING UP

1. The estimated value of assets and liabilities at the date of the commencement of the winding up	Assets (after deducting amounts charged to secured creditors and debenture-holders).....	\$
	Liabilities—	
	Secured creditors.....	\$
	Debenture-holders.....	\$
	Unsecured-creditors.....	\$
2. The total amount of the capital paid up at the date of the commencement of the winding up	Paid up in-cash.....	\$
	Issued as paid up otherwise than for cash.....	\$
3. The general description and estimated value of outstanding assets (if any)		
4. Total amount of unsecured debts in respect of which proofs have been admitted		
5. Estimated amount of debts or claims remaining for proof		
6. Details of any arrangement whereby assets of the company have been disposed of by the liquidator for a consideration other than cash		

## FORM 112—continued

- 
7. The causes which delay the termination of the winding up
- 
8. The period within which the winding up may probably be completed
- 

Dated this

day of

19 .

Liquidator

\* Full details of investments made by the liquidator and of the realization of the investments are to be given in a separate statement attached to and forming part of this account. Any profit or loss on realization is to appear in the "Account of Receipts and Payments" as a notional receipt or payment, as the case may be, with a reference to the particular investment.

† A balance is not to be shown on this account. Show only the total receipts and payments, which are to be carried forward to the next account.

## FORM 113

Order 75, sub-rule 218 (1)

## AUSTRALIAN CAPITAL TERRITORY

*Companies Ordinance 1962*

Sub-section 281 (1)

## STATUTORY DECLARATION VERIFYING LIQUIDATOR'S ACCOUNT AND STATEMENT

.....Limited

I\*, ....., do solemnly and sincerely declare as follows:

1. I am the liquidator of.....Limited.

†2. The account of receipts and payments set out in the attached form marked with the letter "A"‡ contains a full and true account of my receipts and payments in the winding up of that company from..... 19..... to .....19....., and during that period I have not, nor has any other person by my order or for my use, received or paid any moneys on account of the company other than the items specified in that account.

†2. During the period from .....19..... to .....19....., I have not, nor has any other person by my order or for my use, received or paid any moneys on account of the company.

3. The particulars contained in the statement of the position in the winding up of that company set out in the attached form marked with the letter "A"‡ are true to the best of my knowledge and belief.

And I make this solemn declaration by virtue of the *Statutory Declarations Act 1959*, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

§.....

Declared at.....the..... day of .....

.....19.....

Before me,

|| .....  
¶ .....

\* Here insert name, address and occupation of person making the declaration.

† Strike out whichever paragraph is inapplicable.

‡ The annexure is to be endorsed by the person before whom the declaration is made as follows:

"This is the annexure marked 'A' referred to in the statutory declaration of..... made on .....19....."

Before me,

.....

§ Signature of person making the declaration.

|| Signature of person before whom the declaration is made.

¶ Here insert title of person before whom the declaration is made.

### **NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 24 July 1980.
2. Statutory Rules 1937 No. 85 as amended by Statutory Rules 1938 No. 99; 1939 Nos. 48 and 61; 1950 No. 22; 1956 No. 135; 1958 No. 64; 1962 Nos. 47 and 76; 1966 No. 132; 1967 No. 68; 1968 No. 13; 1969 Nos. 57, 66, 221 and 222; 1972 No. 189; 1973 Nos. 95 and 149; 1974 Nos. 25, 60 and 197; 1975 No. 81; 1976 No. 190; 1977 No. 152; 1978 Nos. 86 and 173.