

**RGN 841 of 1972**

**Companies(Winding Up) Rules,1972**

ARRANGEMENT OF RULES

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**IT is hereby notified that the Chief Justice, in consultation with the Minister of Justice, has, in terms of section 311 of the Companies Act [Chapter 223], made the following rules:—**

**1. Title** These rules may be cited as the Companies (Winding Up) Rules 1972.

**2. Application**  
These rules shall apply to all proceedings in every winding up and every judicial management under the Act.

**3. Definition**  
In these rules, "Assistant Master" means the Assistant Master of the High Court, at Bulawayo.

**4. Forms**  
The forms prescribed in the Schedule shall be used where applicable, and the particulars contained therein are hereby prescribed as the particulars required by the Act and these rules.

**5. Petitions and applications**  
(1) A petition presented under the provisions of sections 180 and 181 of the Act for the winding up of a company shall state, *inter alia*—  
(a) the capital, object and nature of the company;

- (b) the title of the petitioner to present the petition;
- (c) the circumstances on which he relies for the order;
- (d) if fraud or misconduct on the part of a director or other person is relied on, the facts relative thereto;
- (e) the facts supporting any allegation that it is just and equitable that the company be wound up;
- (f) if the petitioner desires the appointment of a provisional liquidator, the name and address of some suitable person, supported by an allegation that he is willing to serve and is not disqualified for appointment under the provisions of the Act.

(2) Except where the petition is presented by the company itself, a copy of the petition and the notice of set-down for hearing shall be served upon the company by deliver of such copy at its registered office or to a responsible person at its place of business, or, failing such service, to a director or secretary of the company, or, if the company is in voluntary liquidation, to the liquidator. An affidavit of service shall be filed with the petition.

(3) Any provisional order granted by the court in terms of section 181 of the Act shall be published by the petitioner in the *Gazette* and in one or more newspapers, as the court may direct.

(4) Any person intending to oppose or support the petition on the return day shall give due notice to the petitioner, and serve on him and on the company a copy of any affidavit filed with the Registrar of the court.

(5) After publication of a provisional order for winding up, a petitioner may not withdraw his petition without the leave of the court, which may be granted on the courts being satisfied that no other person wishes to obtain a final order, and on such terms and conditions as to costs as the court deems just.

#### **6. Director's petition regarding liquidation**

(1) An application to the court by a director, member or creditor in terms of the proviso to subsection (6) of section 225 of the Act shall be by petition which shall set out, *inter alia*,—

- (a) the name of the company, its share capital and estimated value of assets to be administered;
- (b) the title of the petitioner to present the petition;
- (c) the circumstances on which he relies for an order;
- (d) the facts supporting any allegation that the person nominated by the creditors should not be liquidator or that his own nomination would be in the better interests of creditors or others interested in the winding up; (e) if any irregularity in the holding of the creditors' meeting is relied on, the facts relative thereto.

(2) A copy of the petition shall be served on the liquidator nominated by the creditors.

#### **7. Action to be taken on receipt of winding-up order**

(1) The Sheriff shall, on receipt of a winding-up order, if the Master so directs, proceed to attach the movable assets of the company, and, in doing so, shall follow the procedure and be entitled to fees applicable to proceedings in insolvency.

(2) A messenger or deputy sheriff shall transmit to the Master, as soon as a winding-up order comes to his notice, an inventory of property attached by him prior to the proceedings for winding up, and known by him to belong to the company.

(3) Where a liquidator is in office, the Master shall not direct the Sheriff to attach the property of the company, unless the liquidator so requests, or, for some special reason, he thinks fit.

#### **8. Master's reports**

A report by the Master pursuant to the provisions of section 183 of the Act may be submitted to a judge in chambers, or, if the Master thinks fit, through counsel to the court. The judge in chambers, or the court, as the case may be, may direct in what manner further proceedings shall be conducted or make such other order as is deemed to be just. The like procedure may be applied to any other matter which, in the opinion of the Master, should be brought to the attention of the court.

#### **9. Recognition of foreign liquidators**

(1) Where a foreign company has been placed in liquidation elsewhere than in Zimbabwe, the liquidator thereof may apply by petition for an order recognizing his appointment, and declaring that he be entitled to the sole administration of all of the assets of the company in Zimbabwe, both movable and immovable. The petition may be made by the liquidator himself or by his duly authorized agent within Zimbabwe. The petitioner shall set out, *inter alia*—

- (a) the name of the company;
- (b) the extent of its share capital, and, if possible, the extent to which such capital is held by residents of Zimbabwe;
- (c) the circumstances leading up to the order of winding up;
- (d) such other facts as would justify the court in granting the order sought.

The petition shall be supported by a balance-sheet or statement prepared as at the date of liquidation, or some convenient date as near as possible thereto, reflecting not only the general position of the company but the extent of the assets and liabilities of the company in Zimbabwe.

(2) At the hearing, the court may grant an order calling upon all persons to show cause why the liquidator should not be granted recognition and the sole administration of assets in Zimbabwe, subject to all or any of the following conditions, that is to say—

- (a) that the liquidator choose *domicilium citandi* within Zimbabwe, and that he appoint a duly authorized agent within Zimbabwe;
- (b) that he give security, to the satisfaction of the Master, for the due administration of the assets of the company in Zimbabwe, for compliance with the provisions of the order, and for payment of all fees and charges payable under the laws of Zimbabwe;
- (c) that he file with the Master an inventory, supported by affidavit, showing the assets of the company in Zimbabwe and their value;
- (d) that he shall, as soon as possible, publish a notice in the *Gazette* and such newspapers as the Master shall direct, calling upon all persons in Zimbabwe having claims against the company to lodge them with the agent of the liquidator on the prescribed form within a period stated in the notice, and determined by the Master;
- (e) that he shall recognize the right of all creditors in Zimbabwe to prove their claims against the company, whereupon the admission or rejection of such claims, the liability of the company therefor to the extent of its assets in Zimbabwe and all question of mortgage or preference in respect of such assets shall be regulated by the laws of Zimbabwe as if the company were being wound up in terms of the Act;
- (f) that he shall render to the Master an account of his administration of the assets in Zimbabwe and a distribution account showing—
  - (i) all claims entitled to be ranked preferentially against the proceeds of the local assets and the proposed application of such assets in satisfaction thereof; and
  - (ii) the balance remaining for distribution among the general body of creditors; and
  - (iii) the names of all creditors who have proved their claims in Zimbabwe to the satisfaction of the Master, together with the amount of such claims;
- (g) that he shall also furnish the Master with an account and plan of distribution of the general assets of the company, supported by the acquittances of those creditors whose claims have been proved in Zimbabwe, and who have received any dividend in respect of them;
- (h) that he shall pay any expenses incurred by the Master in giving effect to the order; (i) that he shall comply with all the relevant provisions of the Act.

(3) Where proceedings against the foreign company are pending in Zimbabwe, or are anticipated, the court may order the rule nisi to operate as an interim interdict restraining any person from instituting any action or proceeding further against the company until it has given judgment on the application for a final order.

(4) The rule nisi shall be published in the *Gazette* and in such newspapers as the court may direct. In any such publication, the conditions under which the order is granted may be stated in an abbreviated form approved by the Registrar of the court.

(5) Any person intending to object to the recognition of such liquidator shall give the petitioner notice of his objection, stating the ground thereof, and serve upon the petitioner a copy of any affidavit which he files with the Registrar of the court. Such notice and affidavits shall be served at least forty-eight hours before the return day.

(6) On the return day, the court may, after hearing any objections, refuse or grant a final order, or may grant a final order subject to further conditions, and may make such order as to costs as it deems just.

#### ***10. Public examination of directors***

(1) Where the court has made an order, under section 205 of the Act, directing any person to attend for public examination, notice of the order and of the time and place appointed for the holding of the examination shall be served through the Sheriff.

(2) The Master shall give public notice of the time and place appointed for the holding of a public examination by advertisement in the *Gazette* and such newspapers, if any, as the court may direct.

(3) If any person who has been directed by the court to attend for public examination fails to attend at the time and place appointed for the holding of the same, and no good cause is shown for such failure, and it has been proved, to the satisfaction of the court, that notice of the order and of the time and place so appointed has been duly given to such person, or if before the day appointed for the examination, the court shall be satisfied that such person has absconded, or that there is reason to believe that he is about to abscond with the view of avoiding examination, it shall

be lawful for the court, without any further notice, to issue a warrant for the arrest of the person required to attend, or to make such other order as the court may think just.

### ***11. Meetings***

(1) Meetings of creditors, contributories and members shall be convened—

(a) in the case of meetings to be held in terms of subsection (1) of section 186 of the Act, by the Master; (b) in all other cases, by the liquidator or judicial manager, as the case may be:

Provided that, where a meeting is to be presided over by an official mentioned in subrule (1) of rule 15, that official shall appoint the time and date of the meeting.

(2) Meetings shall in all cases be convened in such place as, in the opinion of the person presiding thereat, is most convenient to the majority of persons likely to attend.

### ***12. Notice of meetings***

(1) Not less than ten days' notice of the time, place and purpose of any meeting shall be given by advertisement in the *Gazette*.

(2) Except in the case of meetings to be held in terms of subsection (1) of section 186 of the Act, notice of meetings shall be sent by post to each contributory or creditor:

Provided always that the proceedings and resolutions of any meetings in respect of which notice is required to be sent by post to each contributory or creditor shall, unless the court otherwise directs, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

### ***13. Costs of meetings***

(1) Where, by the Act or these rules, notice of a meeting is required to be sent, whether to creditors or contributories, the costs of summoning the meeting, including all disbursements for printing, stationery, postage, and the hire of room, shall be calculated at the rate of twenty cents for each creditor or contributory to whom notice is required to be sent.

(2) The costs of any meeting (other than a special meeting) called at the instance of a creditor for proof of debt shall be recoverable from the assets of the company.

(3) The costs of a special meeting called at the instance of a creditor shall be paid by the person at whose instance it is summoned, who shall, before the meeting is summoned, deposit with the liquidator such sum as may be required by him as security for the payment of such costs.

### ***14. Addresses and notices***

(1) A creditor or contributory may furnish the liquidator with his address or the name and address of some other person to act for him under a properly executed power of attorney.

(2) Any notices required to be sent under these rules shall thereafter be sent to that address or agent, or, failing such address, to such other address as may be known to the liquidator or recorded in the books of the company or the statement of affairs submitted under the provisions of section 182 of the Act.

### ***15. Chairman of meetings***

(1) The liquidator, or, in his unavoidable absence, some person appointed by him, shall preside over meetings convened by him, except that, in cases where a company is unable to pay its debts, or where it is being wound up by the court, the meeting shall be presided over—

(a) in Salisbury, by the Master or officer appointed by him; (b) in Bulawayo, by the Assistant Master or officer appointed by him; (c) in other centres, by the magistrate or officer appointed by him.

(2) In cases where the company is under judicial management, meetings shall be presided over by the judicial manager, except in the case of a meeting held in terms of subsection (1) of section 186 of the Act, which shall be presided over by one of the officers mentioned in subrule (1).

### ***16. Minutes of meetings***

(1) Minutes shall be kept of the proceedings at every meeting of creditors and contributories, and shall be signed as correct by the presiding officer.

(2) Minutes of meetings signed by the presiding officer in a winding up by the court, or of a company unable to pay its debts, or in a judicial management, shall be submitted to the Master within seven days of the meeting.

(3) Where the presiding officer is not the liquidator or judicial manager, a signed copy of the minutes of such a meeting shall be sent to the liquidator or judicial manager, as the case may be.

(4) If no liquidator or judicial manager has been appointed, the original minutes, together with a signed copy, shall be submitted to the Master.

- (5) The report of the liquidator mentioned in section 244 of the Act shall be annexed to the minutes.

#### ***17. Proxies***

Subject to the provisions of subsection (4) of section 254 of the Act, a contributory may vote in person or, if the articles of the company permit, by proxy in the manner and form laid down in such articles.

#### ***18. Proof of claims***

(1) Every claim against a company shall be proved by affidavit as nearly as may be in the form prescribed by these rules, and that affidavit may be made by the creditor or any person fully cognizant of the claim.

(2) Every claim against a company being wound up by the court or which is unable to pay its debts shall be delivered at the office of the presiding officer not less than forty-eight hours before the advertised time of the meeting at which it is intended to prove the claim, failing which the claim shall not be admitted to proof at that meeting unless the presiding officer is of the opinion that, through no fault of the creditor, he has been unable to deliver his claim within the time prescribed.

#### ***19. Contempt of court***

(1) If a person, examined under the provisions of section 235 of the Act before the Master or other person who has no power to commit for contempt of court, refuses to answer, to the satisfaction of the Master or such other person, any questions which may be lawfully put to him, the Master or such other person shall report such refusal to the court, and, upon such report being made, the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the court.

(2) The report shall be in writing but without affidavit, and shall set forth the question put, and the answer (if any) of such report to the person examined.

#### ***20. Restriction on purchase of goods by liquidator***

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

#### ***21. Dealing with assets by liquidator***

Except by leave of the court, neither the liquidator, while acting as liquidator, either directly or indirectly, nor any partner, clerk, agent, servant or the wife of the liquidator, shall become purchaser of any part of the company's assets. Any purchase made contrary to the provisions of this rule may be set aside by the court on the application of the Master or any creditor or contributory, as the court may make such order as to costs as the court shall think fit.

#### ***22. List of contributories: calls***

(1) The following rules shall apply to the resettlement of lists of contributories under the provision of section 195 of the Act, and also, modified to the circumstances, to proceedings under the provisions of section 201 of the Act.

(2) The liquidator shall, with all convenient speed, prepare a list of the contributories of the company, and shall set opposite the name of each contributory his address and the number of shares, with their distinctive numbers, for which he has placed them on the list, and, if a call is to be made, the name of each contributory to be included in the call, the amount of the call to be made upon him and the number of shares, with their distinctive numbers, in respect of which it is proposed to make a call.

(3) In the preparation of the list, the liquidator shall observe the requirements of subsection (2) of section 19 of the Act as regards representative contributories.

(4) He shall further distinguish between contributories who are past members and contributories who are present members of the company, including present members in a list to be styled the A list, which shall be prepared forthwith, and past members in a list to be styled the B list, which shall be prepared when it is ascertained that there is an unsatisfied debt or liability for which, under the Act, those past members are liable, and that the present members are unable to satisfy the contributions required to be made by them in pursuance of the Act.

(5) It shall not be necessary to include a holder of fully paid-up shares in the list of contributories mentioned in the last preceding rule unless there is or is likely to be a surplus for distribution among shareholders.

(6) The liquidator shall, after consultation with the Master, give notice to every person whom he has placed on the list of contributories, stating—

- (a) (i) in what character, that is, whether as a past or present member, and whether in his own right or as the representative of, or as being liable for the debts of, some other person; and
- (ii) from what number of shares, with their distinctive numbers, he has been placed on the list; and
- (b) if he is to be included in a call, the amount of the call to be made upon him, and the number of shares, with their distinctive numbers, in respect of which it is proposed to make the call upon him; and

- (c) the date upon which the court to which application will be made to settle the lists of contributories and calls; and
- (d) the period during which the lists will be lying open for inspection with the Master and the time within which objections thereto may be lodged with the Master as in subrule (7) provided.

(7) The liquidator shall give notice, by advertisement in the *Gazette*, that the list will lie open in the office of the Master for inspection by alleged contributories for a period of twenty-one days from the date of the publication of the notice or for such longer period as the Master shall have directed; and that, during the said period, objections to the list may be lodged with the Master, in writing, in triplicate, and that thereafter the list will be submitted for settlement upon the date and to the court mentioned in the notice.

(8) Every list of contributories and calls shall be open for inspection in the manner and for the period advertised; and, during that period, objections may be lodged in triplicate with the Master, in writing. The Master shall inquire into such objections. Thereafter, upon a date approved by the Master, the liquidator shall make application to the court for settlement of the list, and the court, upon considering the same, the objections thereto and the Master's report thereon, shall settle the list or make such other order as the court may deem just.

(9) A list of contributories so settled shall be the list of the contributories of the company, but without prejudice to any power possessed by the court to resettle the list as justice may require.

(10) The provisions of section 200 of the Act shall apply to a list of calls settled as aforesaid as though a list so settled were an order made by the court on the contributories mentioned therein; and shall be enforceable, at the option of the liquidator, by writ of execution taken out in that court or in the court of the magistrate for the district in which the contributory resides, or partly in the one way and partly in the other.

### ***23. Legal costs***

Any legal costs or charges arising out of a winding up by the court or a creditors' voluntary winding up which have not been taxed by a taxing officer of the court, and which exceed an amount of one hundred dollars, shall be approved by the Master before payment by the liquidator.

### ***24. Offences***

When, in the course of an examination before a commissioner for the purpose of taking evidence under the Act, it shall appear that any person has been guilty of an offence, the commissioner, when forwarding to the Master the record of the examination, shall make mention, in writing, of the facts in evidence which appear to him to constitute such offence, and thereupon the Master shall submit the record to the Attorney-General.

### ***25. Filing of depositions***

(1) The record of every examination of persons under the Act shall be filed in the office of the Master.

(2) Any interested person may inspect such record and obtain copies thereof upon payment of the appropriate fees of office:

Provided that the record of an examination by the court pursuant to section 204 of the Act shall not be open to inspection by any person other than the liquidator or his attorney unless the court otherwise directs.

### ***26. Depositions as evidence***

Where an order has been made for the public examination of persons named in the order pursuant to section 205 of the Act, and it appears from the examination that the persons examined, or some of them, have misapplied or retained, or become liable or accountable for, moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, or any creditor of the company, then, in any proceedings subsequently instituted under section 272 of the Act, for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons, or any of them, the record of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the court as to the manner and extent in and to which the record shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the record, be admissible in evidence against any of the persons against whom the application is made, who, under section 205 of the Act, and the order for public examination, was or had the opportunity of being present at and taking part in the examination:

Provided that—

- (i) before any such record of a public examination shall be used on any such application, the persons intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such record or any part thereof,

specifying the part which it is intended to read against him, and furnish him with copies thereof (except the record of the person's own depositions); and

- (ii) every person against whom the application is made shall be at liberty to cross-examine or re-examine, as the case may be, any person the record of whose examination is read.

***27. Repeal***

The Companies (Winding-Up) Rules, 1952, published in Rhodesia Government Notice, 388 of 1952, are repealed.