

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 102 - THE COMPANIES ORDINANCE

Remarks

1. Definitions (O. 102, r. 1)

In this Order-
“the Ordinance” (條例) means the Companies Ordinance (Cap 32).

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

~~(1) Except in the case of the applications mentioned in rules 3, 4 and 5 and applications made in proceedings relating to the winding up of companies, every application under the Ordinance must, in accordance with Order 5, rule 3, be made by originating summons.~~

Rule 47
Rec 10-16

(1) Except in the case of applications made in proceedings relating to the winding up of companies, applications made pursuant to section 168A of the Ordinance and the applications mentioned in rule 5, every application under the Ordinance may be made by originating summons.

(2) An originating summons under this rule shall be in Form No. 10 in Appendix A unless the application made by the summons is-

- (a) an application under section 167 of the Ordinance for an order to make provision for all or any of the matters mentioned in subsection (1) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or
- (b) an application under section 302 of the Ordinance for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section, or
- (c) an application under section 306 of the Ordinance for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.

(3) (Repealed 28 of 2003 s. 120)

(4) An application under section 168BD of the Ordinance for leave to dispense with the service of a written notice required by that section may be made by ex parte originating summons. (L.N. 80 of 2005)

Remarks**3. — ~~Application to be made by originating summons or motion~~ (O. 102, r. 3)**Rule 48
Rec 10-16

~~(1) — An application under section 100 of the Ordinance for rectification of the register of members of a company may be made by originating summons or originating motion.~~

~~(2) — An originating summons under this rule shall be in Form No. 10 in Appendix A.~~

4. — ~~Applications to be made by originating motion~~ (O. 102, r. 4)Rule 48
Rec 10-16

~~(1) — The following applications under the Ordinance must be made by originating motion, namely, applications—~~

- ~~(a) under section 30 for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company,~~
- ~~(b) under section 45(3) for an order extending the time for delivery to the Registrar of Companies of any document required by that section to be delivered,~~
- ~~(c) under section 143 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Financial Secretary,~~
- ~~(d) under section 145(3) for an inquiry into any such case as is therein mentioned, and~~
- ~~(f) under section 290 for an order declaring a dissolution of a company which has not been wound up to have been void.~~

5. Applications to be made by petition (O. 102, r. 5)

(1) The following applications under the Ordinance must be made by petition, namely applications—

- (a) under section 8 to cancel the alteration of a private company's objects, (28 of 2003 s. 120)
- (b) under section 25A to cancel the alteration of a condition contained in a private company's memorandum, (28 of 2003 s. 120)
- (c) under section 48B to confirm a reduction of the share premium account of a company,
- (d) under section 50 to sanction the issue by a company of shares at a discount,
- (e) under section 49 to confirm a reduction of the capital redemption reserve fund of a company,
- (f) under section 59 to confirm a reduction of the share capital of a company,
- (g) under section 64 to cancel any variation or abrogation of the rights attached to any class of shares in a company,
- (h) under section 166 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,

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- (i) under section 291(7) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company,
- (j) under section 323 to cancel the alteration of the form of a company's constitution, and
- (k) under section 358(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

6. Entitlement of proceedings (O. 102, r. 6)

(2) 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 Ordinance.

Rule 49
Rec 10-16

(3) (Repealed 28 of 2003 s. 120)

7. Summons for directions (O. 102, r. 7)

(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

- (2) The applications referred to in paragraph (1) are-
- (a) an application under section 50 of the Ordinance to sanction the issue by a company of shares at a discount,
 - (b) an application under section 166 of the Ordinance to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 167 of the Ordinance, and
 - (c) an application under section 291(7) of the Ordinance for an order restoring the name of a company to the register.

(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, the share premium account or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions-

- (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

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which the list is to be made;
and the power of the Court under section 59(3) of the Ordinance to direct that section 59(2) thereof shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

8. Inquiry as to debts: company to make list of creditors (O. 102, r. 8)

(1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the Registry 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.

(3) The list must be left at the office mentioned in paragraph (1) not later than one day after the affidavit is filed.

9. Inspection of list of creditors (O. 102, r. 9)

(1) Copies of the list made under rule 8 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 solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of one dollar, to inspect the said list at any such office and to take extracts therefrom.

10. Notice to creditors (O. 102, r. 10)

Within 7 days after filing the affidavit required by rule 8 the company must

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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 solicitor, if any, to the company's solicitor.

11. Advertisement of petition and list of creditors (O. 102, r. 11)

After filing the affidavit required by rule 8 the company must insert, in such newspapers and at such times as the Court directs, a notice stating-

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 7,
- (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 solicitor, if any, and particulars of his debt or claim to the company's solicitor.

12. Affidavit as to claims made by creditors (O. 102, r. 12)

Within such time as the Court directs the company must file in the Registry an affidavit made by the company's solicitor and an officer of the company competent to make it-

- (a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11,
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices 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 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

13. Adjudication of disputed claims (O. 102, r. 13)

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 or in respect of the full amount

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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.

14. Certifying lists of creditors entitled to object to reduction
(O. 102, r. 14)

The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under section 59(2) of the Ordinance shall be certified and filed by the Registrar and his 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 59(2) of the Ordinance and other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said section 59(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 13 and state which of such debts or claims were allowed.

15. Evidence of consent of creditor (O. 102, r. 15)

The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

16. Time, etc. of hearing of petition for confirmation of reduction
(O. 102, r. 16)

(1) A petition for the confirmation of any such reduction as is mentioned in rule 7(4) 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 14.

(2) Before the hearing of such a petition, a notice specifying the day appointed

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for the hearing must be published at such times and in such newspapers as the Court may direct.

17. Restriction on taking effect of order under section 50 (O. 102, r. 17)

Unless the Court otherwise directs, an order under section 50 of the Ordinance sanctioning the issue of shares at a discount shall direct that an office copy of the order be delivered to the Registrar of Companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

(Enacted 1988)

18. Transitional provision relating to rule 48 of Amendment Rules 2007 (O. 102, r. 18)

Rule 50
Rec 10-16

Where, immediately before the commencement of rule 48 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 3(1) or 4(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made.