



BERMUDA

COMPANIES (WINDING-UP) AMENDMENT RULES 2020

BR 120 / 2020

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The Chief Justice of Bermuda, in exercise of the power conferred by section 62 of the Supreme Court Act 1905 and section 288 of the Companies Act 1981, makes the following Rules:

Citation

1 These Rules, which amend the Companies (Winding-Up) Rules 1982, may be cited as the Companies (Winding-Up) Amendment Rules 2020.

Amends rule 2

2 Rule 2(1) is amended by inserting the following definition in its proper alphabetical order—

“liquidator or provisional liquidator” means—

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- (a) a sole liquidator or a provisional liquidator who is resident in Bermuda, and whose credentials are accepted by the Court; or
- (b) where two or more liquidators or provisional liquidators are appointed jointly and severally, unless otherwise ordered by the Court, at least one of them is resident in Bermuda and his credentials are accepted by the Court;”.

Amends rule 11

3 Rule 11 is amended by inserting after “Official Receiver or any” the words “provisional liquidator or”.

Revokes and replaces rule 12

4 Rule 12 is revoked and replaced with the following—

“Inspection of file

12 (1) The following persons may inspect the Court file and obtain copies of any documents thereon upon payment of the prescribed fee—

- (a) the Registrar of Companies and the Official Receiver (free of charge);
- (b) any liquidator or provisional liquidator appointed in the proceedings.

(2) Subject to this rule, the following persons may apply to the Registrar on seven days’ notice to the petitioner and the provisional liquidator or liquidator, if any, to inspect the Court file and obtain copies of any documents thereon upon payment of the prescribed fee—

- (a) any person who provides the Court with a sworn statement confirming that he is a creditor of the company to which the proceedings relate;
- (b) an officer or former officer of the company to which the proceedings relate;
- (c) a member of the company or a contributory in its winding-up;
- (d) any other person who obtains the permission of the Court.

(3) The Court may direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraph (1) or (2) without the permission of the Court.

(4) An application for a direction under paragraph (2) of this rule may be made by—

- (a) the Registrar of Companies;
- (b) the liquidator or provisional liquidator appointed by the Court;

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(c) any person appearing to the Court to have an interest.

(5) An application for a direction under paragraph (2)(d) or paragraph (3) of this rule may apply without giving notice, subject to the Court's right to require notice to be given to another party.”.

Revokes and replaces rule 14

5 Rule 14 is revoked and replaced with the following—

“Service of documents

14 (1) Any document may be served by post, or by leaving the document at a place specified in paragraph (2) or (3).

(2) The provisional liquidator or liquidator shall have an address for service in Bermuda.

(3) Any other party to any proceedings under these Rules shall supply an address for service and any documents may thereafter be served at such address.

(4) Where a party is represented by an attorney of record and supplies no other address for service, documents may be served on the party's attorney.

(5) Where it appears to the Court that there is a good reason to authorize service by a method not permitted by these Rules or any relevant practice direction, the Court may make an order permitting service by an alternative method.

(6) For the avoidance of doubt—

(a) paragraphs (1), (2) and (3) of this rule are without prejudice to rule 20 (Service of petition) and any other relevant requirement that a particular document or class of documents be served in a prescribed manner; and

(b) a requirement under any other rule for service by post shall be read as including service by any other means permitted under this rule.”.

Amends rule 19

6 Rule 19(1) is revoked and replaced with the following—

“(1) Every petition shall be advertised—

(a) if the petitioner is the company itself, not less than seven clear days before the day appointed for the hearing;

(b) otherwise, not less than seven clear days after service of the petition on the company, and not less than seven clear days before the day appointed for the hearing.”.

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Amends rule 20

7 Rule 20 is amended by inserting after “business of the company” the words “in Bermuda”.

Amends rule 21

8 Rule 21 is amended by deleting “sworn after and”.

Revokes and replaces rule 24

9 Rule 24 is revoked and replaced with the following—

“Certificate of compliance with Rules

24 Before the date fixed for the hearing of a petition, the petitioner shall file a certificate of compliance [*Form 9A*] confirming that the prescribed affidavit verifying the statement therein and the affidavit of service, if any, have been duly filed, and that the provisions of the rules as to petitions have been duly complied with by the petitioner. No order shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, complied with this rule.”.

Amends rule 26

10 Rule 26(1) is amended by deleting “the affidavit verifying the petition is filed,” and substituting “the petition is served, in the case of a company, and in any other case, within seven days of advertisement of the petition,”.

Amends rule 28

11 Rule 28 is amended by deleting “Registrar” and substituting “petitioner”.

Revokes and replaces rule 29

12 Rule 29 is revoked and replaced with the following—

“Drawing up of order by petitioner

29 The petitioner shall forthwith draw up the final order when an order for the winding-up of a company or an order under section 111 of the Act has been made.”.

Revokes and replaces rule 30

13 Rule 30 is revoked and replaced with the following—

“Transmission and advertisement of winding-up order

30 (1) When an order has been made that a company be wound up or appointing a provisional liquidator, the petitioner shall serve—

- (a) three sealed copies of the order on the Official Receiver;
- (b) a sealed copy of the order on the company by prepaid letter addressed to—

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- (i) its registered office;
- (ii) its principal or last known principal place of business in Bermuda, if there is no registered office; or
- (iii) such other person or persons, in such other manner as the Court directs.

(2) If the order is that the company be wound up by the Court, the petitioner shall forward a copy of the order to the Registrar of Companies, which by section 167 of the Act is directed to be forwarded by the company, or otherwise as may be prescribed.

(3) The petitioner shall publish forthwith a copy of the order in an appointed newspaper [*Form 14*] and shall send notice of the order to such persons as the Court shall direct.”.

Amends rule 34

14 Rule 34 is amended—

- (a) in paragraph (1) by inserting after the words “Official Receiver”, at the four occurrences, the words “or provisional liquidator”;
- (b) in paragraph (2) by inserting after the words “Official Receiver”, at the four occurrences, the words “or provisional liquidator”.

Amends rule 35

15 Rule 35 is amended by inserting after “Official Receiver” the words “or provisional liquidator”.

Amends rule 36

16 Rule 36 is amended by inserting after “Official Receiver”, at the three occurrences, the words “or provisional liquidator”.

Amends rule 37

17 Rule 37 is amended by inserting after “Official Receiver” the words “or provisional liquidator”.

Amends rule 38

18 Rule 38 is amended—

- (a) by deleting the words “Official Receiver”, at both occurrences, and substituting “Court”;
- (b) by deleting “his” and substituting “its”.

Amends rule 39

19 Rule 39(1) is amended by inserting after “Official Receiver” the words “or provisional liquidator”.

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### Amends rule 40

20 Rule 40 is amended—

- (a) in paragraph (1) by deleting “Official Receiver,” and substituting “Official Receiver or provisional liquidator,”;
- (b) in paragraph (2) by inserting after “Official Receiver”, at both occurrences, the words “or provisional liquidator”;
- (c) by revoking paragraph (3);
- (d) by revoking paragraph (4);
- (e) in paragraph (5) by inserting after “Official Receiver” the words “or provisional liquidator”.

### Amends rule 41

21 Rule 41 is amended—

- (a) in paragraph (a) by deleting “Minister” and substituting “Court”;
- (b) in paragraph (c)—
  - (i) by deleting “Minister” and substituting “Court”;
  - (ii) by deleting “he” and substituting “it”.

### Amends rule 44

22 Rule 44(2) is amended by inserting after “Official Receiver” the words “, provisional liquidator or liquidator”.

### Amends rule 45

23 Rule 45(1) is amended by inserting after “Official Receiver” the words “, provisional liquidator or liquidator”.

### Amends rule 50

24 Rule 50(1) is amended by inserting after “Official Receiver” the words “, provisional liquidator or liquidator”.

### Amends rule 53

25 Rule 53 is amended—

- (a) in the heading by inserting after “Official Receiver” the words “, etc.”;
- (b) in the provision by inserting after “Official Receiver”, at both occurrences, the words “, provisional liquidator or liquidator”.

### Amends rule 58

26 Rule 58(2) is amended by inserting after “Official Receiver” the words “or liquidator”.

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### Amends rule 61

27 Rule 61 is amended by inserting after “to the Court” the words “by the Official Receiver, provisional liquidator or liquidator”.

### Amends rule 64

28 Rule 64 is amended—

- (a) in paragraph (2)—
  - (i) by deleting “Official Receiver or to the liquidator, if a liquidator” and substituting “Official Receiver, or the provisional liquidator or liquidator, if a provisional liquidator or liquidator”;
  - (ii) by inserting after “Official Receiver”, at the second occurrence, the words “, provisional liquidator”;
- (b) in paragraph (3) by inserting after “or the” the words “provisional liquidator or”.

### Amends rule 70

29 Rule 70 is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

### Amends rule 72

30 Rule 72 is amended by inserting after “meeting” the words “, provisional liquidator”.

### Amends rule 79

31 Rule 79 is amended—

- (a) in the heading by deleting all the words and substituting “Powers of the official receiver or provisional liquidator”;
- (b) in the provision by inserting after “Official Receiver” the words “or provisional liquidator”.

### Amends rule 80

32 Rule 80 is amended by inserting after “liquidator”, at both occurrences, the words “or provisional liquidator”.

### Amends rule 81

33 Rule 81 is amended—

- (a) in the heading by inserting after “Official Receiver” the words “or liquidator”;
- (b) in the provision by deleting “as liquidator” and substituting “or liquidator”.

### Revokes and replaces rule 82

34 Rule 82 is revoked and replaced with the following—



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“Time for dealing with proofs by liquidator

82 (1) In a winding-up by the Court, the liquidator is not required to examine proofs of debt lodged by creditors if in his opinion there will be no assets available to declare a dividend to creditors or where it is unclear that there will be sufficient assets available to declare a dividend.

(2) Notwithstanding paragraph (1), the liquidator may examine a particular proof if he is satisfied that the creditor has provided sufficient security to meet the cost of proving his debt.

(3) A creditor may, at any time after twenty-eight days of lodging his proof, apply to the Court for an order that the liquidator either admit or reject the proof, wholly or in part.

(4) Notwithstanding paragraph (3), where the liquidator has given notice of his intention to declare a dividend, he shall within twenty-eight days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject, or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby.

(5) Where a creditor's proof has been admitted the notice of dividend specifying the amount in which it has been admitted shall be a sufficient notification of the admission.”.

Amends rule 83

35 Rule 83 is amended by inserting after “Official Receiver” the words “or liquidator”.

Amends rule 85

36 Rule 85 is amended—

- (a) in paragraph (1) by—
  - (i) deleting “one month or if a special manager has been appointed then within six weeks” and substituting “three months”;
  - (ii) inserting after “Official Receiver” the words “or provisional liquidator”;
- (b) in paragraph (2) by inserting after “Official Receiver”, at the three occurrences, the words “or provisional liquidator”.

Amends rule 86

37 Rule 86 is amended—

- (a) in paragraph (1) by inserting after “Official Receiver”, at both occurrences, the words “, provisional liquidator or liquidator”;
- (b) in paragraph (2) by deleting “Official Receiver”, at both occurrences, and substituting “provisional liquidator or liquidator”.

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Amends rule 89

38 Rule 89(1) is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 90

39 Rule 90 is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 91

40 Rule 91 is amended by inserting after “Official Receiver” the words “, the provisional liquidator”.

Amends rule 95

41 Rule 95 is amended—

- (a) by inserting after “Official Receiver”, at the first occurrence, the words “or provisional liquidator”;
- (b) by inserting after “Official Receiver”, at the second occurrence, the words “, provisional liquidator”.

Amends rule 98

42 Rule 98 is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 102

43 Rule 102 is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 103

44 Rule 103 is amended by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 106

45 Rule 106 is amended—

- (a) in the heading by inserting after “liquidator” the words “or provisional liquidator”;
- (b) in the provision, by inserting after “liquidator”, at both occurrences, the words “or provisional liquidator”.

Amends rule 107

46 Rule 107 is amended—

- (a) in the heading by inserting after “Official Receiver” the words “, provisional liquidator”;

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- (b) in the provision by inserting after “Official Receiver” the words “, provisional liquidator”.

Amends rule 109

47 Rule 109(1) is amended by inserting after “Official Receiver” the words “or provisional liquidator”.

Amends rule 110

48 Rule 110 is amended by inserting after “Official Receiver” the words “, provisional liquidator or liquidator”.

Revokes and replaces rule 112

49 Rule 112 is revoked and replaced with the following—

“Remuneration of liquidator

112 (1) The remuneration of the provisional liquidator or liquidator, unless the Court shall otherwise order, shall be fixed by the committee of inspection, and shall be in the nature of either an agreed scale of fees or a percentage of amounts.

(2) No payment in respect of the fees of the provisional liquidator or liquidator shall be allowed, unless the Court shall otherwise order, without the approval of the committee of inspection.

(3) This rule applies only with respect to a provisional liquidator or liquidator appointed in a winding-up by the Court.”.

Amends rule 119

50 Rule 119 is amended—

- (a) by revoking and replacing paragraph (1) with the following—

“(1) Where—

(a) a person other than the provisional liquidator is appointed as liquidator by the Court; and

(b) a liquidator appointed by the Court has notified his appointment to the Registrar of Companies and has given security,

the provisional liquidator shall forthwith put the liquidator into possession of all property of the company of which the provisional liquidator may have custody:

Provided that such liquidator, before the assets are handed over to him by the provisional liquidator, shall have discharged any balance due to the provisional liquidator on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four per centum per annum, and the liquidator shall pay all fees, costs, and charges of the provisional liquidator which may not have been discharged by the liquidator before being put into possession of

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the property of the company, whether incurred before or after he has been put into such possession.”;

- (b) in paragraph (2) by deleting “Official Receiver” and substituting “provisional liquidator”;
- (c) in paragraph (3) by deleting “Official Receiver” and substituting “provisional liquidator”.

Amends rule 123

51 Rule 123 is amended by deleting the words “Official Receiver”, at the first occurrence, and substituting “provisional liquidator”.

Amends rule 124

52 Rule 124(1) is amended by inserting after “Official Receiver” the words “or provisional liquidator”.

Amends rule 135

53 Rule 135 is amended—

- (a) in the heading by deleting “or liquidator or by Company” and substituting “, etc.”;
- (b) in the provision by inserting after “Official Receiver”, at the four occurrences, the words “, provisional liquidator”.

Amends rule 136

54 Rule 136 is amended—

- (a) by inserting after “Official Receiver”, at the first occurrence, the words “or provisional liquidator”;
- (b) by inserting after “Official Receiver”, at the second occurrence, the words “, provisional liquidator”.

Amends rule 140

55 Rule 140 is amended—

- (a) in paragraph (1)(h) by deleting “Registrar of Companies” and substituting “liquidator”;
- (b) by revoking and replacing paragraph (2) with the following—

“(2) Payments in respect of the charges or expenses of attorneys, managers, accountants, auctioneers, brokers or other persons retained by the provisional liquidator or the liquidator shall be allowed out of the assets of the company if they have been approved by the provisional liquidator or the liquidator, unless the Court directs otherwise.”.

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### Amends rule 144

56 Rule 144(4) is amended in the proviso by inserting after “permission of the Minister” the words “of Finance (referred to in this Part as “Minister”)

### Amends rule 150

57 Rule 150(1) is amended by deleting “Minister” and substituting “Court”.

### Revokes rule 151

58 Rule 151 is revoked.

### Amends Appendix

59 The Appendix to the Rules is amended—

- (a) in Form 9 by inserting after “Official Receiver”, at the second and third occurrences, the words “or provisional liquidator”;
- (b) by inserting Form 9A (set out in the Schedule) after Form 9;
- (c) in Form 13 by inserting after “Official Receiver”, at the second and third occurrences, the words “or provisional liquidator”;
- (d) in Form 14 by deleting “Official Receiver and” and substituting “Official Receiver or”;
- (e) in Form 16 by inserting after “Official Receiver”, at both occurrences, the words “or provisional liquidator”;
- (f) in Form 17 by inserting after “(or as the case may be)” the words “, the provisional liquidator or”;
- (g) in Form 18—
  - (i) in the first paragraph—
    - (A) by deleting “Official Receiver and” and substituting “Official Receiver or”;
    - (B) by deleting “Official Receiver of” and substituting “Official Receiver or provisional liquidator of”;
  - (ii) in the last paragraph by deleting “gazetted and”;
- (h) in Form 19—
  - (i) by deleting “Minister” and substituting “Court”;
  - (ii) by deleting “Minister of Finance” and substituting “Judge”;
- (i) in Form 23 by inserting after “Official Receiver” the words “, provisional liquidator or liquidator”;
- (j) in Form 24 by inserting after “Official Receiver” the words “or provisional liquidator or liquidator”;

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- (k) in Form 25 by inserting after “Official Receiver”, at the four occurrences, the words “, Provisional Liquidator or Liquidator”;
- (l) in Form 30 by deleting “Official Receiver and Liquidator” and substituting “(Official Receiver and) or provisional liquidator or liquidator”;
- (m) in Form 36 by deleting “(Official Receiver and)”;
- (n) in Form 40 by deleting “(Official Receiver and)”;
- (o) in Form 46 by deleting “(Official Receiver and)”, at both occurrences;
- (p) in Form 49 by deleting “(Official Receiver and)”, at the four occurrences;
- (q) in Form 56 by deleting “(Official Receiver and)”, at both occurrences;
- (r) in Form 61—
  - (i) by deleting “(or the liquidator)” and substituting “(or the provisional liquidator or liquidator)”;
  - (ii) by deleting “Official Receiver,” and substituting “Official Receiver, Provisional Liquidator,”;
  - (iii) in the note lettered (b) by deleting “ “Liquidator” ” and substituting “ “Provisional Liquidator” or “Liquidator” ”;
- (s) in Form 62—
  - (i) by deleting “Official Receiver, the liquidator,” and substituting “Official Receiver, the provisional liquidator or the liquidator,”;
  - (ii) in the text to superscript 1 by inserting after “Official Receiver” the words “, Provisional Liquidator or Liquidator”;
- (t) in Form 63—
  - (i) by inserting after “Official Receiver,” at the first occurrence, the words “the provisional liquidator or”;
  - (ii) by inserting after “Official Receiver”, at the second occurrence, the words “or provisional liquidator”;
- (u) in Form 64—
  - (i) by inserting after “Official Receiver”, at the first occurrence, the words “provisional liquidator”;
  - (ii) by inserting after “Official Receiver”, at the second and third occurrence, the words “or provisional liquidator”;
- (v) in Form 65—
  - (i) by inserting after “Official Receiver”, at the first occurrence, the words “or provisional liquidator”;

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- (ii) in the paragraph numbered 1 by inserting after “Official Receiver” the words “or provisional liquidator”;
- (iii) in Notes 1 and 2 by inserting after “Official Receiver” the words “or provisional liquidator”;
- (w) in Form 66—
  - (i) by inserting after “Official Receiver”, at the first occurrence, the words “or provisional liquidator”;
  - (ii) in the Note by inserting after “Official Receiver” the words “or provisional liquidator”.

FORM 9A

(rule 24)

CERTIFICATE OF COMPLIANCE

IN THE MATTER OF *[blank]*

AND IN THE MATTER OF *[blank]*

UPON hearing Counsel for the parties bringing the Petition in the above-mentioned matter,  
I HEREBY CERTIFY that:

1. The Petition in this matter was presented on the *[date]* by *[party]* and is appointed to be heard on the *[date]*.
2. The Affidavit/Affirmation of *[name]* verifying the Petition was sworn/affirmed on *[date]*. A copy of the Affidavit/Affirmation is attached hereto.
3. The Petition was advertised in The Royal Gazette on *[date]*. A copy of the advertisement is attached hereto.
4. There has been compliance in respect of rule 24 of the Companies (Winding-Up) Rules 1982.

DATED this *[blank]* day of *[blank]* 20 *[blank]*

Attorneys for the Petitioner

Made this 12th day of November 2020

Chief Justice  
The Supreme Court of Bermuda

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[Operative Date: 12 November 2020]