

1979 No. 209

COMPANIES

The Companies (Winding-up) (Amendment) Rules 1979

Made - - - - - *21st February 1979*

Laid before Parliament *7th March 1979*

Coming into Operation *1st April 1979*

The Lord Chancellor, in exercise of the powers conferred on him by section 365(1) of the Companies Act 1948(a), with the concurrence of the Secretary of State for Trade, and after consulting the committee appointed under section 10 of the Insolvency Act 1976(b), hereby makes the following Rules:—

1.—(1) These Rules may be cited as the Companies (Winding-up) (Amendment) Rules 1979 and shall come into operation on 1st April 1979.

(2) The amendments set out in these Rules shall be made to the Companies (Winding-up) Rules 1949(c).

2. Sub-paragraph (c) of Rule 5(1) shall be omitted.

3. For Rule 28 there shall be substituted the following Rule:—

“28.—(1) Unless the Court otherwise directs, every petition shall be advertised once in the London Gazette not less than seven clear days after it has been served on the company and not less than seven clear days before the day fixed for the hearing.

(2) The advertisement shall be in Form 6 or Form 6A with such variations as the circumstances may require.”

4. For Rule 30 there shall be substituted the following Rule:—

“30.—(1) Every petition shall be verified by an affidavit in Form 8A with such variations as the circumstances may require.

(a) 1948 c. 38.

(b) 1976 c. 60.

(c) S.I. 1949/330. Relevant amending instruments are S.I. 1967/1341 and 1977/1395.

(2) The affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or by some person, such as a director, company secretary or similar officer, or a solicitor, who has been concerned in the matter on behalf of the petitioner.

(3) The affidavit shall be filed within seven days after the petition is presented and shall be *prima facie* evidence of the statements in the petition.”

5. In Rule 36(1) for the words “seven days” there shall be substituted the words “fourteen days” and in Rule 36(2) for the words “three days” there shall be substituted the words “seven days”.

6. In Rule 68(1) for the words “eight days” there shall be substituted the words “fourteen days”.

7. For paragraph (1) of Rule 75 there shall be substituted the following paragraph:—

“(1) (a) An application for leave to disclaim any property of a company under section 323(1) of the Act shall be made by summons to which all persons interested who have not consented to leave to disclaim being granted shall be made respondents.

(b) Where all persons interested have consented to leave to disclaim being granted, the application may be made by *ex parte* summons.

(c) A summons under this Rule shall be supported by an affidavit stating the names and addresses of all persons interested and the nature of their interests, and verifying any relevant consents.

(d) The applicant shall serve the summons and a copy of the affidavit upon every respondent not less than seven clear days before the day named in the summons for the hearing of the application.

(e) Where an application under this Rule is made by originating summons, no appearance need be entered to the summons.”

8. In Rule 91 for the words “the Judge” there shall be substituted the words “the Court”.

9. For Rule 202 there shall be substituted the following Rule:—

“202. In a voluntary winding-up an application by the Secretary of State for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 343 of the Act shall be made to the High Court.”

10. For Form No. 6 in the Appendix there shall be substituted the following Form:

No. 6 (Rule 28)

ADVERTISEMENT OF PETITION

(TITLE)

A petition to wind up the above-named company(a)

presented on

19

(a) If the winding-up is to be subject to supervision insert "subject to the supervision of the Court".

by (b)

of

claiming to be a

(b) Insert name and address of the petitioner.

[creditor] [contributory] of the Company will be heard [at the Royal

Courts of Justice, Strand, London, WC2A 2LL] [by the

County Court sitting at

]

on

19

Any creditor or contributory wishing to oppose or support must ensure that written notice reaches the undersigned by 1600 hours on (c)

19

(c) If the day of the hearing of the petition is a Monday then the previous Friday: otherwise the day before the day of the hearing (Rule 34).

A copy of the petition will be supplied by the undersigned on payment of the prescribed charge.

of

(d) To be signed by the solicitor to the petitioner or by the petitioner if he has no solicitor.

Solicitor for/the Petitioner(e)

(e) Delete as appropriate.

11. For Form No. 6A in the Appendix there shall be substituted the following Form:

No. 6A (Rule 28)

ADVERTISEMENT OF PETITION BY MINORITY
SHAREHOLDER

(TITLE)

(a) Insert summary only of remedy sought in prayer of petition.

A petition for an Order that (a)

or such other order as shall be just, presented on

(b) Insert name and address of the petitioner.

19 by (b)

of

will be heard [at the Royal Courts of Justice, Strand, London, WC2A 2LL] [by the County Court sitting at .]

on 19 .

Any creditor or contributor wishing to oppose or support must ensure that written notice reaches the undersigned by 1600 hours on (c)

(c) If the day of the hearing of the petition is a Monday then the previous Friday: otherwise the day before the day of the hearing (Rule 34).

19 .

A copy of the petition will be supplied by the undersigned on payment of the prescribed charge.

(d) To be signed by the solicitor to the petitioner or by the petitioner if he has no solicitor.

(d)

of

(e) Delete as appropriate.

Solicitor for/the Petitioner (e)

12. For Forms Nos. 9 and 10 in the Appendix there shall be substituted the following Form:

No. 8A (Rule 30)

AFFIDAVIT VERIFYING PETITION

(TITLE)

I, A.B. of _____ make oath and say

as follows:—

1. [I am the petitioner in the above matter] [I am (state capacity) of the petitioner in the above matter. I have been concerned in this matter in such capacity and am duly authorised by the said petitioner to make this affidavit on his/its behalf.]

2. Such of the statements in the petition now produced and shown to me and marked with the letter “A” as relate to the acts and deeds of [myself] [my firm] [the petitioner] are true and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn etc.

Dated 19th February 1979.

Elwyn-Jones C.

I concur,

John Smith,
Secretary of State for Trade.

Dated 21st February 1979.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Companies (Winding-up) Rules 1949, principally as follows:—

- (i) by removing the requirement that applications in the High Court under section 343 of the Companies Act 1948 may be heard only by the judge (Rules 2 and 9).
- (ii) by enabling advertisements of petitions to be confined to the London Gazette; restraining advertisement until after service; and providing for a shorter form of advertisement (Rules 3, 10 and 11).
- (iii) by affording guidance as to who may verify petitions by affidavit on behalf of a petitioner (Rule 4).
- (iv) by extending the time for filing affidavits verifying the petition and the time for filing affidavits in opposition and in reply (Rules 4 and 5).
- (v) by extending the time for service of notice of applications by or against delinquent directors (Rule 6).
- (vi) by simplifying the procedure in regard to applications for leave to disclaim (Rule 7).
- (vii) by removing the requirement that directions of the Court dispensing with proofs of debt may be given only by the judge (Rule 8).

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