

[LEGAL NOTICE NO. 111]

COMPANIES ACT 2015
(ACT NO. 3 OF 2015)

Companies (High Court) Rules 2015

In exercise of the powers conferred upon me under section 713 of the Companies Act 2015, I hereby make these Rules—

Short title and commencement

- 1.—(1) These Rules may be cited as the Companies (High Court) Rules 2015.
- (2) These Rules shall come into force on 1 January 2016.

Interpretation

- 2.—(1) In these Rules, unless the context otherwise requires—

“Act” means the Companies Act 2015;

“Company” means a company as defined in the Act, and for the purposes of these Regulations includes a Foreign Company to the extent specified under section 513(e) of the Act; and

“Court Registrar” means the Registrar of the Court.

- (2) In these Rules, words and phrases have the same meaning as under the Act unless the context otherwise requires.

Court practice and procedure to apply

3. Any proceeding initiated under these Rules is deemed to be a proceeding within the meaning of the High Court Rules 1988 and the general practice of the Court, including the course of procedure and practice in chambers, applies so far as may be practicable, except if and so far as the Act or these Rules otherwise provide.

Titling of documents

4. Every petition, notice of motion and summons, and every notice, affidavit and other proceedings under any petition, notice of motion or summons, must be intitled in the Court, and in the matter of the Company, showing where applicable, that the Company is in liquidation, in the matter of the Act and in the matter of the particular application.

Certain applications to be by petition

5. The following applications must be made by petition—
 - (a) an application for the restoration of a Foreign Company’s name to the register under section 62(9) of the Act;
 - (b) an application for the setting aside of a variation or cancellation of rights or a modification of the Company’s Articles of Association under section 187(1) of the Act;
 - (c) an application for the validation, or confirmation of the terms, of a purported issue of Shares under section 197 of the Act;

- (d) an application under section 437 of the Act;
- (e) an application for the reinstatement of the registration of a Company under section 609 of the Act.

Application to be by originating motion

6. An application under section 674(5) of the Act must be made by originating motion unless a liquidator has been appointed under the Act, in which case it must be made by summons.

Certain applications to be by notice of motion

7. The following applications must be made by notice of motion—

- (a) an application for relief from the application of section 17(2) of the Act;
- (b) an application for the inspection of books under section 190(1) of the Act;
- (c) an application for the extension of the time for the registration of a Charge under section 376 of the Act;
- (d) an application for the purpose of preventing or settling the terms of the acquisition of Shares under section 440 of the Act;
- (e) an application for relief of a person from liability under section 672(1) of the Act.

Certain applications to be by summons

8. The following applications must be made by summons—

- (a) an application for an order under section 86(14) of the Act for a person who contravenes a condition of the exemption to comply with the condition;
- (b) an application for the extension of the period of disqualification under section 133(5) of the Act;
- (c) an application for the disqualification of a person acting as an Officer of a Company under section 134(1) of the Act;
- (d) an application for a meeting of the Company's Members to be called under section 141(2) of the Act;
- (e) an application in regard to the delivery of certificates or other title documents in connection with the issue of the Specified Security under section 248 of the Act;
- (f) an application for an order for a meeting of any or all of the Debenture Holders to be held under section 318 of the Act;
- (g) an application for facilitating a reconstruction or amalgamation of Companies under section 439 of the Act;
- (h) an application for directions by a Receiver or Manager under section 444 of the Act;
- (i) an application under section 453 of the Act for a Receiver or Manager to make good the default in filing, delivery or making any return, account or other document, or in giving any notice, required by law.

Summons for directions

9.—(1) Where a petition has been presented pursuant to rule 5(a) or 5(e) or where an order is sought under section 439 of the Act, an application must be made by summons to the Judge in chambers for directions as to the proceedings to be taken.

(2) Upon the hearing of the summons or upon any adjourned hearing thereof or any subsequent application, the Judge may make such orders or give such directions as he or she may think fit as to all the proceedings to be taken and more particularly with respect to the following matters—

- (a) the publication of notices; and
- (b) where the Court orders an inquiry as to the debts, claims or liabilities of or affecting a Company or as to any of such debts, claims or liabilities, the proceedings to be taken for settling the list of creditors entitled to object, fixing the date with reference to which the list of such creditors is to be made out, and generally fixing a time for and giving directions as to all other necessary or proper steps in the matter whether expressly mentioned in any of these Rules,

and, in any such case, the first order upon the summons for directions shall be in the form of Form C1 in the Schedule.

Settlement of list of creditors

10. Where the Court has ordered any inquiry under rule 9(2)(b), the following provisions shall apply—

- (a) the Company shall, within 7 days after such order or such further or other time as the Judge may allow, file in the office of the Court Registrar, an affidavit made by some Officer or Officers of the Company competent to make the same, verifying a list containing, so far as possible, the names and addresses of the creditors of the Company to whom such inquiry extends; every such list shall also contain the amounts due to the creditors therein named respectively in respect of debts, claims or liabilities to which the inquiry extends or, in the case of any such debts payable on a contingency or not ascertained or any such claim admissible to proof in a winding-up of the Company, the value, so far as can be justly estimated, of such debt or claim; every such list and a copy of every such affidavit shall be left at the office of the Court Registrar not later than one day after the filing of the affidavit;
- (b) the person making any such affidavit shall state therein his or her belief that the list verified by such affidavit is correct, and that there was not, at the date so fixed as aforesaid, any debt, claim or liability which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, except the debts, claims or liabilities set forth in such list and any debts, claims or liabilities to which the inquiry does not extend, and shall state his or her means of knowledge of the matters deposed to in such affidavit; such affidavit shall be in the form of Form C2 in the Schedule;

- (c) copies of such list containing the names and addresses of such creditors, and the total amount so due to them (including the value of any debts or claims estimated as aforesaid) but omitting the amounts due to them respectively, or (as the Judge thinks fit) complete copies of such list, shall be kept at the Registered Office of the Company and at the office of the legal practitioner of the Company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of \$10;
- (d) the Company shall, within 7 days after the filing of such affidavit or such further or other time as the Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, the effect of the order directing the inquiry and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor is entered in the said list, and the time (such time to be fixed by the Judge) within which, if he or she claims to be entitled to be entered on such list as a creditor for a larger amount, he or she must send in his or her name and address, and the particulars of his or her debt or claim, and the name and address of his or her legal practitioner (if any) to the legal practitioner of the Company; and such notice shall be sent through the post in a prepaid letter addressed to each such creditor at his or her last known address or place of abode, and shall be in the form of Form C3 in the Schedule;
- (e) notice of the presentation of the petition, of the effect of the order directing the inquiry and of the list of creditors shall, after the filing of the affidavit mentioned in paragraph (a), be published at such times, and in such newspapers, as the Judge shall direct; and every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the Company who are not but are entitled to be entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their legal practitioner (if any) to the legal practitioner of the Company; and such notice shall be in the form of Form C4 in the Schedule;
- (f) the Company shall, within such time as the Judge shall direct, file in the office of the Court Registrar an affidavit made by the person to whom the particulars of debts or claims are, by such notices as are mentioned in paragraphs (c) and (d), required to be sent in, stating the result of such notices respectively and verifying a list containing the names and addresses of the persons (if any) who have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent Officer or Officers of the Company shall join in such affidavit, and shall, in such list, distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the Company, and which (if any) of such debts and claims are

wholly, or as to any and what part thereof, disputed by the Company, and which (if any) of such debts and claims are alleged by the Company to be wholly, or as to any and what part thereof, not included in the inquiry; such affidavit shall also state which of the persons who are entered in the list as creditors and which of the persons who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid have been paid or have consented to the proposed reduction; and such affidavit shall be in the form of Form C5 in the Schedule, and such list and a copy of such affidavit shall be left at the office of the Court Registrar within such time as the Judge shall direct;

- (g) 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, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, is not admitted by the Company at its full amount, then and in every such case, unless the Company is willing to appropriate, in such manner as the Judge shall direct, the full amount of such debt or claim, the Company shall, if the Judge thinks fit so to direct, send to the creditor a notice that he or she is required to come in and establish his or her title to be entered on the list or, as the case may be, to come in and prove such debt or claim or such part thereof as is not admitted by the Company, by a day to be therein named, being not less than 4 clear days after such notice, and being the time appointed by the Judge for adjudicating upon such titles, debts and claims, and such notice shall be sent in the manner mentioned in paragraph (d), and shall be in the form of Form C6 in the Schedule;
- (h) the result of the settlement of the list of creditors shall be stated in a certificate by the Court Registrar, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the Company is willing to appropriate, and the debts or claims (if any) the full amount of which the Company does not admit or is not willing to appropriate or the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them, the said certificate shall also state what creditors have, under paragraph (g), come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make, in such certificate, any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the inquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid;
- (i) the consent of any creditor, whether in respect of a debt due or presently due or a debt payable on a contingency or not ascertained or a claim admissible to proof in a winding-up of the Company, may be evidenced in any manner

which the Judge thinks reasonably sufficient, having regard to the amount of his or her debt or claim and all the circumstances of the case;

- (j) the petition shall not be heard until the expiration of at least 8 clear days from the filing of such certificate as is mentioned in paragraph (h);
- (k) before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the Judge directs, and such notices shall be in the form of Form C7 in the Schedule.

Order for transfer of property and liabilities

11. Where an application is made under section 439 of the Act, the order shall be in the form of Form C8 in the Schedule.

Revocation

12. The Companies (High Court) Rules are hereby revoked.

Made this 24th day of December 2015.

A. SAYED-KHAIYUM
Attorney-General and Minister for Finance,
Public Enterprises, Public Service and Communications

SCHEDULE

FORM C1
(Rule 9(2)(b))

IN THE HIGH COURT OF FIJI AT
MISCELLANEOUS CAUSE NO. OF 20

In the Matter of (a)

and

In the Matter of the Companies Act 2015

and

In the Matter of an Application for (b)

ORDER

UPON READING the application of the Petitioner by Summons filed on the day of _____, 20____, the Petition filed on the _____ day of _____, 20____, the affidavit of _____ *[in support of the Petition]*, the affidavit of _____ *[service of notices convening meetings]* and the exhibits therein respectively referred to AND UPON HEARING counsel for the Petitioners AND IT APPEARING that the special resolution for the reduction of the capital of the said Company referred to in the said Petition has been duly passed.

IT IS ORDERED:

That an inquiry be made what are the debts, claims and liabilities of and affecting the said Company on the _____ day of _____, 20____,

That notice of the presentation of the said Petition and *that a list of creditors to whom such inquiry extends is to be made out as of the said _____ day of _____, 20____, to be inserted in (c)

That the said list and an affidavit verifying it be filed and served on the Registrar within _____ days of the date hereof.

*If applicable.

(a) *Insert full name of Company.*
(b) *Insert relief sought.*
(c) *Specify newspapers and dates of publication ordered.*

FORM C2
(Rule 10(b))

[Heading as in Form C1]

AFFIDAVIT

I A.B. of

make oath and say:

1. The paper annexed hereto and marked "A" contains a list of the creditors of and persons having claims on the said Company on the day of 20 , being the date fixed by the order in this matter dated the , 20 together with their respective addresses, and the nature and amount of their, respective debts or claims, and such list is, to the best of my knowledge, information and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.
2. To the best of my knowledge, information and belief there was not, at the date aforesaid, any debt, claim or liability which would, if such date were the commencement of the winding-up of the Company, be admissible in proof against the said Company other than and except the debts, claims and liabilities set forth in the said list and debts, claims and liabilities to which the inquiry directed by the order made herein and dated the day of , 20 , does not extend. I am enabled to make this statement from the facts within my knowledge as the of the said Company, and from information derived upon investigation of the affairs and the books, documents and papers of the said Company.

SWORN etc.

A—LIST OF CREDITORS

<i>Name, Address and Description of Creditors</i>	<i>Nature of Debt or Claim</i>	<i>Amount or estimated Value of Debt or Claim</i>
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FORM C3
(Rule 10(d))

NOTICE TO CREDITORS

[Heading as in Form C1]

To:

You are requested to take notice that a Petition has been presented to the High Court for confirming the reduction of the capital of the above Company from \$ _____ to \$ _____, and that by an order dated _____, 20____, an inquiry was directed as to the debts, claims and liabilities of the said Company on the _____, 20____, *other than the debts, claims and liabilities in respect of (a).

In the list of persons admitted by the Company to have been on the _____ day of _____, 20____, creditors of the Company for debts, claims and liabilities to which the inquiry extends, your name is entered as a creditor (b).

If your claim in respect of such debt, claim or liability to have been on the last-mentioned day a creditor to a larger amount than is stated above you must, on or before the _____ day of _____, 20____, send your name and address, the particulars of your claim and the name and address of your legal practitioner (if any) to the undersigned at _____.

In default of your so doing the above entry in the list of creditors will in all proceedings under the above application to reduce the capital of the Company be treated as correct.

Dated

Legal Practitioner for the Company

*If applicable.

(a) Here set out the nature of debts, etc., to which inquiry does not extend.

(b) Here state the amount of the debt or nature of the claim.

FORM C4
(Rule 10(e))

IN THE HIGH COURT OF FIJI AT

MISCELLANEOUS CAUSE NO. OF 20

(a)

NOTICE is hereby given that a Petition for confirming the reduction of the capital of the above Company from \$ to \$ was on the day of , 20 , presented to the High Court and is now pending. And that by an order dated , 20 , an inquiry was directed as to debts, claims and liabilities of the said Company as on the day of , 20 , *other than debts, claims and liabilities in respect of (b)

A list of the persons admitted to have been creditors of the Company for debts, claims and liabilities to which the said inquiry extends on the day of , 20 , may be inspected at (c) at any time during the usual business hours on payment of the charge of one dollar.

Any person who claims to have been on the said day of , 20 , and still to be, a creditor of the Company in respect of any such debt, claim or liability, and who is not entered on the said list and claims to be so entered, must, on or before the day of , 20 , send his or her name and address, and the particulars of his or her claim and the name and address of his or her Legal Practitioner (if any), to the undersigned at or in default thereof he or she will be precluded from objecting to the proposed reduction of capital.

Dated

Legal Practitioner for the Company

*If applicable.

(a) *Insert full name of the Company.*

(b) *Here set out the nature of debts, claims and liabilities to which the inquiry does not extend.*

(c) *Insert places where it may be inspected.*

FORM C5
(Rule 10(f))

IN THE HIGH COURT OF FIJI AT
MISCELLANEOUS CAUSE NO. OF 20

In the Matter of (a)
and
In the Matter of the Companies Act

AFFIDAVIT

We, CD. etc. a secretary of the Company, E.F. etc.
the Legal Practitioner of the Company, and A.B. etc. Director
of the Company, severally make oath and say:

Rule 10(f)

I the said CD. for myself, say:

1. I did on the _____ day of _____, 20____, in the manner hereinafter mentioned, serve a true copy of the notice annexed and marked "B" upon each of the persons whose names, addresses and descriptions appear in the first column of the list of creditors marked "A" annexed to the affidavit of filed on the _____ day of _____, 20____.
2. I served the copies of the said notice by addressing them to the said persons, affixing the proper postage stamps, and posting them at the Post Office on the _____ day of _____, 20____, at _____ o'clock in the noon. And I the said E.F. for myself, say:
3. A true copy of the notice annexed and marked "C" has appeared (*b*)
4. I have on the paper annexed and marked "D" set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice "B" by persons claiming to be creditors of the said Company for larger amounts than are stated in the list of creditors marked "A" referred to in the affidavit of filed on the _____ day of _____, 20____,
(or)
No person has sent in to me pursuant to the said notice "B" a claim to be entered on the said list for a larger sum than that in respect of which he or she is entered in the said list "A".
5. I have, on the paper annexed and marked "E", set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons claiming to be creditors of the said Company on the _____ day of _____, 20____, not appearing on the said list of creditors marked "A" and who claimed to be entered thereon.

(or)

(a) *Insert full name of the Company.*
(b) *Insert names of newspapers and date of publication.*

No claims have been sent in to me pursuant to the notice referred to in paragraph 3 hereof by persons not entered on the said list "A" and claiming to be so entered. And we CD. and A.B. for ourselves, say:

6. We have in the first part of exhibit "D" and also in the first part of exhibit "E", respectively, set forth such of the said debts and claims as are admitted by the said Company to be due wholly or in part, and how much is admitted to be due in respect of such of the said debts and claims as are not wholly admitted, and such of the said debts and claims as the Company contends are wholly or as to any and what part thereof not included in the inquiry in this matter.
7. We have, in the second parts of exhibits "D" and "E" set forth such of the said debts and claims as are wholly disputed by the said Company, and such of the said debts and claims as the Company contends would even if admitted be wholly or as to any and what part thereof not included in the inquiry in this matter.
8. In the said exhibits "D" and "E" are distinguished such of the debts the full amounts whereof are proposed to be appropriated in such manner as the Judge shall direct. And I the said CD. further say:
9. The exhibit annexed and marked "F" contains the receipts and the written consents of such of the persons named in the said list "A" (and in the exhibits "D" and "E") as have been paid by the said Company or have consented to the proposed reduction of capital.
10. The said Company is willing to set apart and appropriate the full amount of the debts, claims and liabilities specified in the said list "A" (and in the exhibits "D" and "E") in respect of which consents have not been obtained or which the said Company has not paid.
11. All rent, rates, taxes, salaries, wages and other incidental expenses current on the said day of , 20 , and since become due have been paid by the said Company.

SWORN etc.

EXHIBIT "D"

List of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said Company for larger amounts than are stated in the list of creditors made out by the Company.

FIRST PART

Debts and claims wholly or partly admitted by the Company:

Names, addresses and descriptions of creditors	Particulars of debt or claim	Total amount claimed	Amount admitted by the Company to be within the inquiry and due to the creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the Company to be owing but which it is contended are not within the inquiry

SECOND PART

Debts and claims wholly disputed by the Company:

Names, addresses and descriptions of claimants	Particulars of claim	Total amount claimed	Debts proposed to be appropriated in full although disputed	Amounts which even if admitted it is contended would not be within the inquiry

EXHIBIT "E"

List of debts and claims of which the particulars have been sent in to _____ by persons claiming to be creditors of the Company, and to be entered on the list of the creditors made out by the Company.

FIRST PART

Debts and claims wholly or partly admitted by the Company:

Names, addresses and descriptions of creditors	Particulars of debt or claim	Total amount claimed	Amount admitted by the Company to be within the inquiry and due to the creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the Company to be owing but which it is contended are not within the inquiry

SECOND PART

Debts and claims wholly disputed by the Company:

Name, addresses and descriptions of claimants	Particulars of claim	Total amount claimed	Debts proposed to be appropriated in full although disputed	Amounts which even if admitted it is contended would not be within the inquiry

NOTE—The names are to be inserted alphabetically.

FORM C6
(Rule 10(g))

[Heading as in Form C5]

NOTICE TO CREDITOR TO COME IN AND PROVE

To:

You are hereby required to come in and prove the debt claimed by you against the above Company, by filing your affidavit and serving a copy thereof upon the legal practitioner for the Company on or before the _____ day of _____, 20____, and you are to attend by your legal practitioner at the Judge’s Chambers at _____ on the _____ day of _____, 20____, at _____ o’clock in the forenoon being the time appointed for hearing and adjudicating upon the claim and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will *be precluded from objecting to the proposed reduction of the capital of the Company/in all proceedings relative to the proposed reduction of the capital of the Company be treated as a creditor for such amount only as is set out against your name in the list of creditors.

Dated

Legal Practitioner for the Company

FORM C7
(Rule 10(k))

[Heading as in Form C4]

NOTICE is hereby given that a petition presented to the High Court on the day of _____, 20____, for confirming the reduction of the capital of the above Company from \$ _____ to \$ _____, is directed to be heard at _____ on the _____ day of _____, 20____.

Dated

Legal Practitioner for the Company

* Delete whichever is inapplicable.

(Rule 11)

[Heading as in Form C1]

ORDER

UPON READING the application of the Petitioner by Summons filed on the day of , 20 , the Petition filed on the day of , 20 , the affidavit of ‘ *[in the support of the Petition]*, the affidavit of *[service of notices convening meetings]* and the exhibits therein respectively referred to AND UPON HEARING counsel for the Petitioners, AND IT APPEARING that the special resolution for the reduction of the capital of the said Company referred to in the said Petition has been duly passed

IT IS ORDERED:

1. That all the property rights and powers of the transferor Company specified in the first and second schedules hereto and all other property rights and powers of the transferor Company be transferred without further act or deed to the transferee Company and accordingly the same shall pursuant to section 439(2) of the Companies Act 2015 be transferred to and vest in the transferee Company for all the estate and interest of the transferor Company therein but subject nevertheless to all charges now affecting the same *other than (a).
2. That all the liabilities and duties of the transferor Company be transferred without further act or deed to the transferee Company and accordingly the same shall pursuant to section 439(2) of the Companies Act 2015 be transferred to and become the liabilities and duties of the transferee Company.
3. That all proceedings now pending by or against the transferor Company be continued by or against the transferee Company.
4. That the transferee Company do without further application allot to such members of the transferor Company as have not given such notice of dissent as is required by clause of the scheme of compromise or arrangement herein the shares in the transferee Company to which they are entitled under the said scheme.
5. That the transferor Company do within fourteen days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such copy being so delivered the transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor Company and registered with him or her on the file kept by him or her in relation to the transferee Company and the files relating to the said two companies shall be consolidated accordingly.
6. Liberty to apply.

*SCHEDULE 1**[Insert a short description of the real property of the transferor Company.]**SCHEDULE 2**[Insert a short description of all stocks, shares, debentures and other choses in action of the transferor Company]*

** If applicable**(a) Here set out any charges which by virtue of the compromise or arrangement are to cease to have effect.*