

## **Companies (Court) Rules, 1959**

### **PART I : GENERAL**

**1. Short title and commencement.-** These Rules shall be cited as 'The Companies (Court) Rules, 1959' and shall come into force on the 1st day of October, 1959.

**2. Interpretation.-** In these Rules, unless the context or subject matter otherwise requires,-

(1) 'The Act' means the Companies Act, 1956.

(2) 'Advocate' means, in the case of a High Court having ordinary original jurisdiction, every person entitled to appear and plead in such jurisdiction of such High Court, and includes an Attorney of such Court, and in the case of every other High Court, every person entitled to appear and plead in such High Court, and in the case of a District Court, every person entitled to appear and plead in such Court:

**Provided that** in respect of the service of notices and processes which under these rules may be served on an Advocate on behalf of any party, or the filing of an appearance on behalf of any party, 'Advocate' shall mean only a person entitled to act for a party under the rules of the Court, whether or not he is entitled also to plead.

(3) 'Certified' means, in relation to a copy, certified as provided in section 76 of the Indian Evidence Act, 1872.

(4) 'Code' means the Code of Civil Procedure, 1908.

(5) 'Court' means the Court having jurisdiction under the Act.

(6) 'Filed' means filed in the Office of the Registrar.

(7) 'High Court' and 'District Court' means respectively the High Court and District Court having jurisdiction under the Act.

(8) 'Judge' means, in the High Court, the Judge for the time being exercising the jurisdiction of the High Court under the Act, and in the District Court, the Judge of that Court exercising jurisdiction under the Act.

(9) 'Judge's summons' means a summons returnable before the Judge in Chambers or in Court.

(10) 'Prescribed' means prescribed by these Rules; and 'prescribed charges' and 'prescribed fees' means charges or fees prescribed by these Rules and where they are not so prescribed, prescribed by the Rules of the Court in respect of analogous matter in its other proceedings.

(11) 'Registrar' means, in the High Court, the Registrar of the High Court, and includes the Prothonotary, Master and Assistant Master, and such other officer as may be authorised by the Chief Justice to perform all or any of the duties assigned to the Registrar under these Rules, and in the District Court, such officer of that Court as may be authorised by the High Court to perform all or any of the duties assigned to the Registrar under these Rules.

(12) 'Reserve Bank' means the Reserve Bank of India and includes its branches and agencies.

(13) 'The Rules' means these Rules, and includes the prescribed forms.

(14) 'Sealed' means sealed with the seal of the Court.

(15) 'Section' means section of the Act. Save as aforesaid, and unless the context otherwise requires, words and expressions contained in these Rules, shall bear the same meaning as in the Act, and the General Clauses Act, 1897 (X of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament

**3. Proceedings to be neat and legible.-** All petitions, applications, affidavits and other proceedings presented to the Court shall be written, typewritten, cyclostyled, or printed neatly and legibly on substantial paper of foolscap size, and separate sheets shall be stitched together. Numbers and dates shall be expressed in figures, and where dates given are not according to the English Calendar, the corresponding English dates shall also be given.

**4. Form of proceedings.-** Every proceeding shall be dated and shall be instituted in the matter of the Companies Act, 1956, and in the matter of the company to which it relates. The contents shall be divided into separate paragraphs which shall be numbered serially. The general heading in all proceedings before the Court, and in all advertisements and notices, shall be in Form No. 1.

**5. Language of proceedings.-** Every petition, application, affidavit or other proceeding shall be in the language of the High Court, and except in so far as the Court may otherwise order, no document in a language other than the language of the High Court shall be accepted for use in any proceeding, unless translated into the language of the High Court in accordance with the rules and practice of the Court.

**6. Practice and procedure of the Court and provisions of the Code to apply.-** Save as provided by the Act or by these Rules, the practice and procedure of the Court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these Rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these Rules or the practice and procedure of the Court.

**7. Power of Court to enlarge or abridge time.-** The Court may, in any case in which it shall deem fit, extend or abridge the time appointed by these Rules or fixed by an order of the Court for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

**8. Computation of time.-** (a) Where any particular number of days not expressed to be clear days is prescribed, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continue to be closed.

(b) Where any particular number of days expressed to be clear days, is prescribed the same shall be reckoned exclusively of both the first and the last day.

**9. Inherent powers of Court.-** Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court

**10. Applications how made.-** Unless otherwise provided by these rules or permitted by the judge, all applications under the Act shall be made by a petition or by a Judge's summons as hereinafter provided.

**11. Petitions.-** (a) The following applications shall be made by petition :

- (1) Applications under section 17 to confirm an alteration of the memorandum of association.
- (2) Applications under section 79 to sanction issue of shares at a discount.
- (3) Applications under section 101 to confirm reduction of share capital.
- (4) Applications under section 107 to cancel any variation of the rights of holders of any class of shares.
- (5) Applications under section 141 for rectification of the register of charges.
- (6) Applications under section 155 for rectification of the Register of Members.
- (7) Applications under section 186 by a Director or Member of a Company for calling a meeting of the company.
- (8) Applications under section 203 to restrain a fraudulent person from managing companies, or for leave by a person restrained to be a director of, or to manage, a company.
- (9) Applications under section 237 for an order that the affairs of a company ought to be investigated.
- (10) Applications under section 391(2) to sanction a compromise or arrangement.
- (11) Applications under section 395(1) or 395(2) for the purpose of preventing, or settling the terms of, the acquisition by a transferee company of the shares of a dissenting shareholder.
- (12) Applications under section 397 for relief against oppression.
- (13) Applications under section 398 for relief in case of mismanagement.
- (14) Applications under section 407(1)(b) by a director, or manager, whose agreement is terminated for leave to act as the managing or other director or manager of the company.
- (15) Applications under section 439 for the winding-up of a company, or under section 583 for the winding-up of an unregistered company, or under section 584 for the winding-up of a foreign company.

(16) Applications under section 517 to set aside an arrangement between a company about to be or in the course of being wound-up (voluntary) and its creditors.

(17) Applications under section 522 to continue a voluntary winding-up subject to the supervision of the Court.

(18) Applications for a declaration under section 542 (XI Schedule) in the course of proceedings under section 397 or 398 that a person who was knowingly a party to carrying on business in a fraudulent manner shall be personally liable for all or any of the debts or other liabilities of the company.

(19) Applications by a creditor or member under section 543 (XI Schedule) in the course of proceedings under section 397 or 398, to enquire into the conduct of any of the persons mentioned in section, 543 (XI Schedule) and compel him to repay or restore any money or property to the company or pay compensation.

(20) Applications under section 559 for declaring the dissolution of a company void.

(21) Applications under section 560(6) to restore a company's name to the Register of companies.

(22) Applications under section 579 to confirm the alteration in the form of the constitution of a company by substituting a memorandum and articles for a deed of settlement.

(23) Applications under section 633(2) by an officer of a company for relief.

(b) Judge's summons: - All other applications under the Act or under these rules shall be made by a Judge's summons, returnable to the judge sitting in Court or in Chambers as hereinafter provided

**12. Matters to be heard in open Court and in Chambers.-** (a) The following matters shall be heard in open Court:- (1) Petitions.

(2) Applications under section 43 for relief in case of default by a private company in complying with the provisions of its articles.

(3) Applications under section 75(4) for relief in case of default in delivering documents to the Registrar of Companies.

(4) Applications under section 89(3) for directions regarding termination of disproportionately excessive voting rights in existing companies.

(5) Applications under section 250 for a direction, that shares or debentures shall cease to be subject to restrictions imposed by the Central Government under the said section.

(6)[omitted] (7) [omitted]

(8) Applications under section 391(1) for convening meetings of creditors and/or members of a company or any class of them.

(9) Proceedings under section 394 for reconstruction or amalgamation of companies.

(10) Public examination under section 478 or section 519.

(11) Applications for a declaration under section 542 that a person who was knowingly a party to carrying on business in a fraudulent manner shall be personally liable for all or any of the debts or other liabilities of the company.

(12) Applications under section 543 to enquire into the conduct of a promoter, director , etc., and compel him to repay or restore any money or property to the company or pay compensation.

(13) Applications under section 545(1) for prosecution of delinquent officers and members of a company.

(14) Applications under section 555(7) by a person claiming to be entitled to any money paid into the Companies Liquidation Account.

(15) Applications for committal of any person for contempt.

(16) Appeals from any act or decision of the Official Liquidator.

(17) Applications relating to the admission or rejection of proofs.

(18) Such other matters and applications as the Judge may from time to time by general or special order direct to be heard in open Court:

**Provided that** the Court may, if it thinks fit, direct that the hearing or any part of the hearing of any of the said matters shall be held in Chambers.

(b) Every other matter or application may be heard and determined in Chambers provided that the Judge may adjourn any such matter into Court.

**13. Registers to be kept.- There shall be kept, in every Court, the following Registers, relating to proceedings under the Act and these Rules:-**

(1) Company Petitions Register in which shall be entered and numbered serially all the petitions filed under the Act or these Rules with particulars as to :- (1) Date of presentation,

(2) Name of Company,

(3) Names of parties and their Advocates,

(4) Provision of law under which the petition is made,

(5) Nature of relief sought,

(6) Date and nature of order made,

(7) Date of filing of appeal, if any,

(8) Date of disposal of appeal, and

(9) Result of judgment in appeal.

(2) Company Applications Register in which shall be entered and numbered serially all applications other than petitions with particulars as to:-

(1) Date of presentation,

(2) Name of Company,

(3) Number of main proceeding, if any, to which the application relates,

(4) Names of parties and their Advocates,

(5) Provision of law, if any, under which the application is made,

(6) Nature of relief sought,

(7) Date and nature of order made,

(8) Date of filing of appeal, if any,

(9) Date of disposal of appeal, and

(10) Result of judgment in appeal.

(3) Liquidations Register in which shall be entered companywise, under a separate heading for each company ordered to be wound-up, briefly and in chronological order, all proceedings in winding-up until conclusion of the winding-up.

(4) Company documents Register in which shall be entered under a separate heading for each company any valuable securities such as negotiable instruments, documents of title and the like that may be filed in proceedings before the Court.

(5) Appearance Book in which shall be entered the appearances filed by or on behalf of any creditor or contributory under rule 230(2) of these Rules. Nothing in this Rule shall affect the discretion of the Court to direct the keeping of any other Register that may be deemed necessary.

**14. Serial number of proceedings.-** Every petition or application shall bear its distinctive and serial number, and an interlocutory application shall bear, besides its own serial number, the serial number of the main proceeding to which it relates. Every order made, process issued or document filed, shall bear the serial number of the proceeding to which it relates.

**15. Process to be sealed.-** All petitions, applications and affidavits, upon being filed and all orders, summonses, warrants or processes of any kind (including notices issued by Court) and certified copies of any proceedings, shall be sealed.

**16. Inspection and copies of proceedings.-** Save as otherwise provided in these Rules, the rules of the Court for the time being in force relating to search and to the certification and grant of copies, including the fees and said charges payable, for the same, shall apply to proceedings under the Act and these Rules, as they apply to other proceedings in the Court.

**17. Forms.-** The Forms set forth in Appendix I, where applicable, shall be used with such variations as circumstances may require.

**18. Affidavits.-** (a) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and the place of abode of the deponent. It shall be signed by the deponent and sworn to in the manner prescribed by the Code or by the rules and practice of the Court.

(b) Every exhibit annexed to an affidavit shall be marked with the number of the proceeding, to which it relates, and shall be initialled and dated by the authority before whom it is sworn.

(c) Except with the leave of the Judge, no affidavit having an interlineation, alteration or erasure, shall be filed in Court unless such interlineation or alteration is initialled by the authority before whom it is sworn, or, in the case of an erasure, the words and figures written on the erasure are rewritten in the margin and initialled by such authority.

**19. Form of Judge's summons and service thereof.-** (1) A Judge's summons shall be in Form No. 2 and shall, unless otherwise provided by these rules or permitted by the Judge, be supported by an affidavit.

(2) The summons, together with a copy of the affidavit, shall be served upon every person against whom an order is sought and such other person as the Judge may direct, in person or by pre-paid registered post, or upon his Advocate; where he appears by Advocate, or in such other manner as the Judge may direct.

(3) Unless otherwise provided by these rules or by an order of Court, a summons which is an interlocutory application in a proceeding, shall be served not less than 4 clear days before the day named in the summons for the hearing thereof, and where the summons is other than interlocutory, it shall be served not less than fourteen days before the date fixed for the hearing thereof

**20. Issue of summons.-** Every summons, together with duplicates of the same for service thereof, shall be prepared by the applicant or his Advocate and issued from the office of the Registrar.

**21. Affidavit verifying petition.-** Every petition shall be verified by an affidavit made by the petitioner or by one of the petitioners, where there are more than one, and in the case the petition is presented by a body corporate, by a director, secretary or other principal officer thereof; such affidavit shall be filed along with the petition and shall be in Form No. 3 :

**Provided that** the judge or Registrar may, for sufficient reason, grant leave to any other person duly authorised by the petitioner to make and file the affidavit.

**22. Enclosures to petition.-** Unless dispensed with by the Judge or Registrar, every petition and application mentioned in Appendix II hereof, shall be accompanied by the documents set opposite thereto in column 4 of

the said Appendix. [Note.- Where the minute book of the company is required to be produced, a copy of the relevant minute, certified by the company to be a true copy, may be filed along with the minute book, and after the copy has been checked with the original, the Registrar may return the minute book to the company on its undertaking to produce the same when required. Before returning the minute book, the Registrar shall initial the relevant page or pages of the book for subsequent identification.]

**23. Summons for directions.-** (a) Where a petition is presented under paragraphs (1), (3), (4), (22) and (23) of rule 11, an application shall, in every case, be made by summons to the Judge in Chambers for directions as to the advertisement of the petition, the notices to be served and the proceedings to be taken. Except where, in any particular case, a different form is prescribed by these Rules, such summons shall be in Form No. 4.

(b) The summons shall be posted for hearing before the Judge in Chambers at the next Chamber sittings, and the Judge may make such orders thereon and may give such directions as may seem to him appropriate.

(c) No summons for directions shall be necessary in the case of other petitions, but the petition shall, upon admission, be placed before the Judge in Chambers for fixing the date of hearing and directions as to the advertisement of the petition and the notices to be served, and such other directions as may be necessary.

**24. Advertisement of petition.-** (1) Where any petition is required to be advertised, it shall, unless the Judge otherwise orders, or these rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the Official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily newspaper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the Judge.

(2) Except in the case of a petition to wind-up a company, the Judge may if he thinks fit, dispense with any advertisement required by these Rules.

**25. Contents of advertisement.-** Except as otherwise provided in these rules, such advertisement shall be in Form No. 5, and shall state the date on which the petition was presented, the name and address of the petitioner and his advocate, the nature of the petition and the date fixed for hearing. It shall, unless otherwise ordered, further state that any person who intends either to oppose or support the petition at the hearing should send notice of his intention to the petitioner or his advocate so as to reach him not later than two days previous to the day fixed for the hearing, and in the case of a

petition for winding-up, not later than 5 days previous to the day fixed for the hearing of the petition.

**26. Service of petition.-** Every petition shall be served on the respondent, if any, named in the petition and on such other persons as the Act or these rules may require or as the Judge or the Registrar may direct. Unless otherwise ordered, a copy of the petition shall be served along with the notice of the petition.

**27. Notice of petition and time of service.-** Notice of every petition required to be served upon any person shall be in Form No. 6, and shall, unless otherwise ordered by Court or provided by these Rules, be served not less than 14 days before the date of hearing: Provided always that such notice when by the Act or under these Rules is required to be served on the Central Government, the same shall, unless otherwise ordered by the court, be served not less than 28 clear days before the date of hearing.

**28. Service on company.-** (1) Where a petition is presented against a Company, it shall be accompanied by a notice of the petition in the prescribed Form together with a copy of the petition for service on the company and an envelope addressed to the company at its registered office or its principal place of business and sufficiently stamped for being sent by registered post for acknowledgement. The Registrar shall immediately on the admission of the petition send the notice together with the copy of the petition to the company by registered post.

(2) Every petition and, save as otherwise provided by these Rules or by an order of Court, every application, shall, unless presented by the Company, be served on the company at its registered office, or if there is no registered office at its principal or last known principal place of business, by leaving a copy thereof with an officer or employee of the company, and in case no such person is available, in such manner, as the Judge or Registrar may direct, or, by sending a copy thereof by prepaid registered post addressed to the company at its registered office, or, if there is no registered office, at its principal or last known principal place of business, or to such person and at such address as the Judge or Registrar may direct.

Where the company is being wound-up, the petition or application shall also be served on the liquidator, if any, appointed for the purpose of winding-up the affairs of the company.

**29. Petitioner to effect service.-** Save as otherwise provided by these Rules and subject to any directions of the Judge or Registrar, the petitioner, applicant or any other person having the conduct of proceedings in Court,

shall be responsible for the service of all notices, summons and other processes and for the advertisement and publication of notices, required to be effected by these Rules or by order of Court.

**30. Affidavit of service.-** (1) An affidavit or affidavits stating whether the petition has been advertised as prescribed by rule 24 and whether the notices, if any have been duly served upon the persons required to be served shall be filed not less than 3 days before the date fixed for hearing. Such proof of the advertisement or of the service, as may be available, shall be filed along with the affidavit.

(2) An affidavit of service on a company or its liquidator shall be in Form No. 7 or 8 as the case may be.

**31. Procedure on default of compliance as regards advertisement and service of notice.-** In default or compliance with the requirements of the Rules or the directions of the Judge or Registrar, as regards the advertisement and service of the petition, the petition shall, on the date fixed for hearing be posted for orders of the Judge and the Judge may either dismiss the petition or give such further directions as he thinks fit.

**32. Mode of service and service when deemed to be effected.-** (1) Save as otherwise provided by these Rules or by an order of Court, all notices, summonses, and other documents required to be served on any person, may be served either personally by delivering a copy thereof to such person, or upon his advocate where he appears by advocate or, except where personal service is required, by pre-paid registered post for acknowledgement due addressed to the last known address of such person. In the case of service by registered post where no acknowledgement signed by the addressee or his duly authorised agent is received, orders of Court shall be obtained as to the sufficiency of service or as to the further steps to be taken for service as the Court may direct:

**Provided that** where a notice, summons or other document has to be served on any class of persons such as shareholders, debenture holders, creditors and the like, the same may be sent by pre-paid registered post, or by ordinary post under certificate of posting, as may be provided by these Rules or by an order of Court, and unless otherwise ordered by the Court, the service shall be deemed to be effected at the time when the said notice, summons or other documents ought to be delivered in the ordinary course of post by the post office, and notwithstanding the same is returned undelivered by the post office.

(2) Where notice of any petition, application, summons or other proceeding

has to be given to the Central Government under these rules, it shall be addressed to and served on the Secretary to Government of India, Department of Company Law Administration, New Delhi, or such other officer as the Central Government may authorise to receive notices on its behalf.

(3) Where any person has to be served at an address outside India, the notice or other process to be served on him shall, subject to orders of the Court, be sent to such address by pre-paid air-mail registered post for acknowledgment due.

**33. Validity of service and of proceedings.-** No service under these Rules shall be deemed invalid by reason of any defect in the name or description of a person in the list of contributories or in the petition, summons, notice or other proceeding. provided that the Court is satisfied that such service is in other respects sufficient; and no proceedings under the Act or these Rules shall be invalidated by reason of any formal defect or irregularity, unless the Judge before whom the objection is taken is of the opinion that substantial injustice has been caused by such defect or irregularity and that the injustice cannot be remedied by an order of Court.

**34. Notice to be given by persons intending to appear at the hearing of petition.-** Every person who intends to appear at the hearing of a petition, whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement. The notice shall contain the address of such person, and be signed by him or his advocate, and save as otherwise provided by these Rules shall be served (or if sent by post, shall be posted in such time as to reach the addressee) not later than two days previous to the day of bearing, and in the case of a petition for winding-up, not later than five days previous to the day of hearing. Such notice shall be in Form No. 9, with such variations as the circumstances may require, and where such person intends to oppose the petition, the grounds of his opposition, or a copy of his affidavit, if any, shall be furnished along with the notice. Any person who has failed to comply with this Rule shall not, except with the leave of the Judge, be allowed to appear at the hearing of the petition.

**35. List of persons, intending to appear, to be filed.-** The petitioner or his advocate shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear at the hearing of the petition. Such list shall be In Form No. 10, and shall be filed in Court before the hearing of the petition.

**36. Procedure at hearing of petition.-** At the hearing of the petition, the

Judge may either dispose of the petition finally, or give such directions as may be deemed necessary for the filing of counter affidavits and reply affidavits, if any, and for service of notice on any person who, in his opinion, has been omitted to be served or has not been properly served with the notice of the petition and may adjourn the petition to enable the parties to comply with his directions. Except as otherwise ordered by the Judge, it shall not be necessary to give notice of the adjourned hearing to any person.

**37. Order to be drawn up.-** (1) Every order, whether made in Court or in Chambers, shall be drawn up by the Registrar, unless in any proceeding or class of proceedings the Judge or the Registrar shall direct that the order need not be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order signed or initialled by the Judge making the order or by the Registrar shall be sufficient evidence of the order having been made. The date of every order shall be the date on which it was actually made, notwithstanding that it is drawn up and issued on a later date.

(2) Where costs are awarded to a party in any proceeding and such costs have to be taxed, the order shall direct that the party liable to pay the costs shall pay the same when taxed, and where the costs have been fixed by the Court or ascertained by taxation prior to the drawing up of the order, the order shall direct the payment of the amount of such costs by the party liable to pay the same.

## **PART II : PROCEEDINGS IN MATTERS OTHER THAN WINDING-UP**

**38. Form of petition under section 17 and Summons for directions.-** A petition under section 17 to confirm an alteration of the memorandum of a company shall set out succinctly particulars of its registration, its share capital where it has a share capital, the original objects and the alterations proposed to be effected, the passing of the special resolution and the reasons for the alteration, the debentures, if any, issued by the company and its present financial position. The petition shall be in Form No. 11. It shall be accompanied by a summons for directions and shall be supported by an affidavit in Form No. 12.

**39. Directions at hearing of summons.-** Upon the hearing of the summons for directions, the Court shall give such directions as it may think fit for the advertisement of the petition, and the service of notices on the debenture holders and creditors of the company, if any, and such other persons whose interests will, in the opinion of the Court, be affected by the

alteration. The order on the summons shall be in Form No. 13. The notice shall be in Form No. 14. Where the Court thinks fit to dispense with the notice required by section 17(3)(a) in the case of any person or class of persons it shall record its reasons for doing so.

**40. Notice to Registrar of Companies and Central Government.-**

Notice of the petition and the date of the hearing thereof shall in every case be given to the Registrar of Companies, and where the petitioner is a limited company, registered without the word 'limited' under section 25, such notice shall also be given to the Central Government.

**41. Procedure where creditors are entitled to object.-**

Where the Court is of the opinion that the creditors or any class of them are entitled to object to the proposed alteration, the Court may give such directions as it may think fit with respect to the settlement of the list of creditors, service and publication of notices hearing of objections and the adjudication of claims, etc., and the provisions of rules 49 to 61 of these rules applicable in respect of a petition for confirming the reduction of share capital, shall, if the Court so directs, and to the extent specified in such direction apply with such variations as may be necessary.

**42. Order confirming alteration.-** An order confirming an alteration in the memorandum of association shall be in Form No. 15 with such variations as may be necessary. Confirmation of Alteration in the Constitution of a Company

**43. Petition under section 579.-** A petition under section 579 to confirm an alteration in the constitution of a company by substituting a memorandum and articles for a deed of settlement shall be in Form No. 16, and rules 38 to 42 relating, to a petition under section 17 shall apply mutatis mutandis to a petition under section 579. 2Issue of Shares at a Discount (Section 79)

**44. Petition for sanctioning the issue of shares at a discount.-** A petition under section 79 to sanction the issue of shares at a discount, shall be in Form No. 17, and where the rate of discount proposed is higher than ten per cent, it shall be accompanied by the order of the Central Government sanctioning the higher rate in addition to the documents set out in Appendix II.

**45. Order sanctioning issue to be delivered to Registrar of Companies.-** Unless in any particular case the Court shall otherwise direct,

every order sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such order be delivered to the Registrar of Companies for registration within one month from the date of the order, and that the order shall not take effect until such certified copy has been so delivered.

Reduction of share capital

(Sections 100 to 105)

**46. Form of petition for reduction of share capital and summons for directions.-** A petition to confirm a reduction of the share capital of a company shall be in Form No. 18, and shall be accompanied by a summons for directions in Form No. 19.

**47. Procedure on hearing of summons.-** Upon the hearing of the summons, if the Judge is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital, and does not think fit to direct that the procedure prescribed in section 101(2) shall apply, he shall fix a date for the hearing of the petition and have such directions as he may think fit as to the advertisement of the petition. The petition shall be posted for hearing on the date fixed, and upon the hearing thereof, the Judge may confirm the reduction on such terms and conditions as he may think fit.

**48. Directions at the hearing of summons.-** Where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Judge thinks fit to direct that the procedure prescribed in section 101(2) shall apply the Judge may, upon the hearing of the summons or upon any adjourned hearing thereof, or upon the hearing of any subsequent application, give such directions as he may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say-

(a) the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with observance of the provisions of section 101(2) as regards any class or classes of creditors;

(b) fixing the date with reference to which the list of such creditors is to be made out;

(c) the publication of notices; and

(d) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter. The order made upon the summons under this rule shall be in Form 20, with such variations as the circumstances may require.

**49. List of creditors.-** The company shall, within the time allowed by the Judge, file a list in Form No. 21 made out by an officer of the company competent to make the same, containing the names and addresses of the creditors of the company to whom the enquiry extends, as on the date fixed by the Judge under the last preceding Rule, and the respective amounts due to them in respect of debts, claims or liabilities to which the enquiry extends, or, in case of any such debt 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.

**50. Affidavit verifying list of creditors.-** Such list shall be verified by an affidavit made by an officer of the company competent to make the same, who, in such affidavit, shall state his belief that the list verified by such affidavit is correct, that the estimated values, as given in the list, of the debts payable on a contingency or not ascertained, or of any claims admissible to proof in a winding-up, are just and proper estimates of the values of such debts and claims respectively, and that there was not, at the date fixed by the Judge under rule 48, 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 and liabilities set forth in such list and any debts, claims or liabilities to which the enquiry does not extend, and shall state the source of his knowledge or information and the grounds of his belief regarding the matters deposed to in such affidavit. Such affidavit shall be in Form No. 22 with such variations as the circumstances of the case may require.

**51. Inspection of list of creditors.-** Copies of such list shall be kept at the registered office of the company and at the office of the advocate for 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 one rupee.

**52. Notice to creditors.-** The company shall, within seven days after the filing of the list of creditors referred to in rule 49 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 of the presentation of the petition and of the said list, stating the amount of the proposed reduction of capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time, as fixed by the Judge, within which if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his advocate if any, to the advocate of the company. Such notice shall be in Form No. 23, and shall, unless the Judge otherwise directs be sent by pre-paid registered post for acknowledgement addressed to each creditor at his last known address or place of abode:

**Provided that** where his address is not known to the company, the Judge may direct notice to be given to such creditor in such manner as he may think fit.

**53. Advertisement of petition and list of creditors.-** Notice of the presentation of the petition and of the list of creditors under rule 49, shall, within seven days after the filing of the said list or such further or other times as the Judge may allow, be advertised by the company in such manner as the Judge shall direct. 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 as fixed by the Judge within which creditors of the company who are not entered but claim to be entitled to be entered on the said list, must send in their names and addresses and the particulars of their debts or claims and the names and addresses of their advocates, if any, to the advocate of the company. Such notice shall be in Form No. 24.

**54. Affidavit of service.-** The company shall, as soon as may be, file an affidavit proving the despatch and publication of the notices referred to in rule 52 and 53. Such affidavit shall be in Form No. 25.

**55. Affidavit by company as to the result of rules 52 and 53.-** The company shall, within the time fixed by the Judge, file a statement signed and verified by the advocate of the company stating the result of the notices mentioned in rules 52 and 53 respectively and verifying a list containing the names and addresses of the persons, if any, who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively,

and the amounts of such debts or claims. Such statement shall be accompanied by an affidavit made by a competent officer or officers of the company who 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 enquiry. 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. Such statement and affidavit shall be in Form No. 26.

**56. Procedure where claim is not admitted, and proof of debt.-** If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company is willing to set apart and 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 in Form No. 27, that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claim or such part thereof as is not admitted by the company on the day fixed by the Judge. Such notice shall be served not less than four clear days before the date fixed by the Judge. An affidavit by a creditor in proof of his debt shall be in Form No. 28. Where the creditor is for good reason personally unable to make the affidavit, his authorised agent may make the same.

**57. Costs of proof.-** The costs of proof of a debt or claim or any enquiry under the preceding rules shall be in the discretion of the Judge.

**58. Certificate by the Judge as to creditors.-** The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the advocate of the company and signed by the Judge. Such certificate shall-

(1) specify the debts or claims (if any) which have been disallowed;

(2) distinguish (a) the debts of claims, the full amount of which the company is willing to set apart and appropriate; (b) the debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in the manner provided by section 101(2) and these rules; and (c) the debts or claims (if any) the full amount of which the company does not admit or is not willing to set apart and appropriate or the amount of which has not been fixed by enquiry and adjudication as aforesaid; and

(3) show (a) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them; and (b) the total amount of the debts or claims the payment of which has been secured in the manner provided by section 101(2) and the persons to or by whom the same are due or claimed. The said certificate shall also state what creditors have under rule 56 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 enquiry 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.

**59. Hearing of petition.-** After the expiry of not less than fourteen days from the filing of the certificate mentioned in the preceding rule, the petition shall be set down for hearing. Notice of the date fixed for the hearing of the petition shall be advertised within such time and in such newspaper or newspapers as the Judge may direct and shall be in Form No. 29.

**60. Who may appear and oppose.-** Any creditor included in the certificate whose debt or claim has not, before the hearing of the petition, been discharged or determined or been secured in the manner provided by section 101(2)(c) and who has not before the hearing consented in writing to the proposed reduction of capital may, if he thinks fit, upon giving two clear days' notice to the advocate for the company of his intention to do so, appear at the hearing of the petition and oppose it. The costs of his appearance shall be in the discretion of the Judge.

**61. Directions at hearing.-** At the hearing of the petition the Judge may, if he thinks fit, give such directions as may seem proper with reference to securing in the manner mentioned in section 101(2)(c) the debts or claims of any creditors who do not consent to the proposed reduction, and the

further hearing of the petition may be adjourned to enable the company, to comply with such directions.

**62. Order on petition.-** Where the Judge makes an order confirming a reduction, such order shall include directions-

(a) as to the manner in which, the times at which and the newspaper or newspapers in which, notice of the registration of the order and of the minute as approved by the Judge under rule 63 shall be published;

(b) as to the period commencing on or after the date of the order, during which the words 'and reduced' shall be added to the name of the company as the last words thereof, in case the Court thinks fit to direct under section 102(2)(a) that the words shall be so added; and

(c) as to the publication, if the Judge so directs, of the reasons for reduction or the causes that led to it or such other information in relation thereto as the Judge may require to be published under section 102(2)(b).

**63. Minute.-** Unless the form of the minute has been approved by the Judge at the time of making the order confirming the reduction, the Company shall, within 7 days from the date of the said order, file for the approval of the Judge a draft of the minute containing the particulars required by section 103(1)(b), and shall take an appointment for approval of the same. The advocate for the company shall attend when the minute comes up before the Judge for approval. The order confirming the reduction of capital and approving the minute shall be in Form No. 30, with such variations as may be necessary.

**64. Advertisement of reasons for reduction of capital.-** Where the Judge makes an order under section 102(2)(b) directing the company to publish the reasons for the reduction or such other information in regard thereto as the Court may direct, unless the form of the statement to be published has been approved by the Judge at the time of making the order, the Company shall, within seven days of the order, file, for the approval of the Judge, a draft of the statement and shall take an appointment for approval of the same. The advocate for the Company shall attend when the statement comes up for approval before the Judge. The statement as approved shall be published in the same newspapers in which notice of the registration of the order and the minute had been directed to be published.

**65. Form of minute and notice of registration.-** The minute may be in Form No. 31, and the notice of registration of the order and the minute shall be in Form No. 32.

Variation of rights of any class of shareholders

(Section 107)

**66. Petition to cancel variation of rights.-** (1) Where a petition to cancel a variation of the rights attaching to any class of shares is made on behalf of the shareholders of that class entitled to apply for cancellation under section 107 by one or more of them, the letter of authority signed by the shareholders so entitled, authorising the petitioner or petitioners to present the petition on their behalf, shall be annexed to the petition, and the names and addresses of all the said shareholders and the number of shares held by each of them shall be set out in the Schedule to the petition.

(2) The petition shall set out the particulars of registration and the share capital, the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares, the provisions of the memorandum or articles authorising the variation of the rights attached to the various classes of shares, the total number of shares of the class whose rights have been varied, the nature of the variation made, and, so far as may have been ascertained by the petitioner, the number of shareholders of the class who gave their consent to the variation or voted in favour of the resolution for variation and the number of shares held by them, the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them, and the date or dates on which the consent was given or the resolution was passed, and the reasons for opposing the variation.  
Compromise or Arrangement under sections 391 to 394

**67. Summons for directions to convene a meeting.-** An application under section 391 (1) for an order convening a meeting of creditors and/or members or any class of them shall be by a Judge's summons supported by an affidavit. A copy of the proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto. Save as provided in rule 68 hereunder, the summons shall be moved ex parte. The summons shall be in Form No. 33, and the affidavit in support thereof in Form No. 34.

**68. Service on company.-** Where the company is not the applicant, a copy of the summons and of the affidavit shall be served on the company, or,

where the company is being wound-up, on its liquidator, not less than 14 days before the date fixed for the hearing of the summons.

**69. Directions at hearing of summons.-** Upon the hearing of the summons or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss the summons, give such directions as he may think necessary in respect of the following matters :-

(1) determining the class or classes of creditors and/or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement ;

(2) fixing the time and place of such meeting or meetings ;

(3) appointing a Chairman or Chairmen for the meeting or meetings to be held, as the case may be ;

(4) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy ;

(5) determining the values of the creditors and/or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held ;

(6) notice to be given of the meeting or meetings and the advertisement of such notice ;

(7) the time within which the Chairman of the meeting is to report to the Court the result of the meetings ; and such other matters as the Court may deem necessary. The order made on the summons shall be in Form No. 35 with such variations as may be necessary.

**70. Proxies.-** (1) Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting.

(2) Where a body corporate which is a member or creditor (including holder of debentures) of a company authorises any person to act as its representative at the meeting of the members or creditors of the company, or of any class of them, as the case may be, a copy of the resolution of the Board of Directors or other governing body of such body corporate authorising such person to act as its representative at the meeting, and certified to be a true copy by a director, the manager, the secretary, or

other authorised officer of such body corporate, shall be lodged with the company at its registered office not later than 48 hours before the meeting.

(3) Rules 227 to 229 of these rules relating to proxies shall also apply to proxies lodged under this rule.

**71. Application for stay.-** An application under sub-section (6) of section 391 for stay of the commencement or continuation of any suit or proceeding against the company may be moved by a Judge's summons ex parte, provided that where a petition for winding-up the company or a petition under section 397 or 398 is pending, notice of the application shall be given to the petitioner in such petition.

**72. Application to vacate or vary order of stay.-** Where an order has been made staying the commencement or continuation of any suit or proceeding under subsection (6) of section 391, any person aggrieved by such order may apply to the Court by a Judge's summons to vacate or vary such order. Notice of the application shall be given to the applicant at whose instance the order of stay was made and to such other persons as the Court may direct.

**73. Notice of meeting.-** The notice of meeting to be given to the creditors and/or members, or to the creditors or members of any class, as the case may be, shall be in Form No. 36, and shall be sent to them individually by the Chairman appointed for the meeting, or, if the Court so directs, by the company (or its Liquidator), or any other person as the Court may direct, by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting. It shall be accompanied by a copy of the proposed compromise or arrangement and of the statement required to be furnished under section 393, and a form of proxy in Form No. 37.

**74. Advertisement of the notice of meeting.-** The notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No. 38.

**75. Copy of compromise or arrangement to be furnished by the company.-** Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge and within 24 hours of a requisition being made for the same with a copy of the proposed

compromise or arrangement together with a copy, of the statement required to be furnished under section 393, unless the same had been already furnished to such member or creditor

**76. Affidavit of service.-** The Chairman appointed for the meeting or the Company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit not less than 7 days before the date fixed for the holding of the meeting or the holding of the first of the meetings as the case may be, showing that the directions regarding the issue of notices and the advertisement have been duly complied with. In default thereof, the summons shall be posted before the Judge for such orders as he may think fit to make.

**77. Result of the meeting to be decided by poll.-** The decisions of the meeting or meetings held in pursuance of the order made under rule 69 on all resolutions shall be ascertained only by taking a poll.

**78. Report of the result of the meeting.-** The Chairman of the meeting, (or where there are separate meetings, the Chairman of each meeting) shall, within the time fixed by the Judge, or where no time has been fixed, within seven days after conclusion of the meeting, report the result thereof to the Court. The report shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted. The report shall be in Form No. 39.

**79. Petition for confirming compromise or arrangement.-** Where the proposed compromise or arrangement is agreed to, with or without modification, as provided by sub-section (2) of section 391, the company, (or its liquidator, as the case may be), shall within 7 days of the filing of the report by the Chairman, present a petition to the Court for confirmation of the compromise or arrangement. The petition shall be in Form No. 40. Where a compromise or arrangement is proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 394. Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or contributory as the case may be, with the leave of the Court, to present the

petition and the company shall be liable for the costs thereof. Where no petition for confirmation of the compromise or arrangement is presented, or where the compromise or arrangement has not been approved by the requisite majority under section 391(2) and consequently no petition for confirmation could be presented, the report of the Chairman as to the result of the meeting made under the preceding rule shall be placed for consideration before the Judge for such orders as may be necessary.

**80. Date and notice of hearing.-** The Court shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same papers in which the notice of the meeting was advertised, or in such other papers as the Court may direct, not less than 10 days before the date fixed for the hearing.

**81. Order on petition.-** Where the Court sanctions the compromise or arrangement, the order shall include such directions in regard to any matter and such modifications in the compromise or arrangement as the Judge may think fit to make for the proper working of the compromise or arrangement. The order shall direct that a certified copy of the same shall be filed with the Registrar of companies within 14 days from the date of the order, or such other time as may be fixed by the Court. The order shall be in Form No. 41, with such variations as may be necessary.

**82. Application for directions under section 394.-** Where the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the Court under section 394, by a summons supported by affidavit, for directions of the Court as to the proceedings to be taken. Notice of the summons shall be given in such manner and to such persons as the Court may direct.

**83. Directions at hearing of applications.-** Upon the hearing of the summons or upon any adjourned hearing thereof the Court may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of the reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the

transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as to the Court may seem just.

**84. Order under section 394.-** An order made under section 394 shall be in Form No. 42 with such variation as the circumstances may require.

**85. Compromise or arrangement involving reduction of capital.-**

Where a proposed compromise or arrangement involves a reduction of capital of the company, the procedure prescribed by the Act and these Rules relating to the reduction of capital, and the requirements of the Act and these Rules in relation thereto, shall be complied with, before the compromise or arrangement so far as it relates to reduction of capital, is sanctioned.

**86. Report on working of compromise or arrangement.-** At any time after the passing of the order sanctioning the compromise or arrangement, the Court may, either of its own motion or the application of any person interested, make an order directing the company, or, where the company is being wound-up, the liquidator, to submit to the Court within such time as the Court, may fix, a report on the working of' the said compromise or arrangement. On a consideration of the report, the Court may pass such orders or give such directions as it may think fit.

**87. Liberty to apply.-** (1) The Company, or any creditor or member thereof, or in case of a company which is being wound-up, the liquidator, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Court for the determination of any question relating to the working of the compromise or arrangement.

(2) The application shall in the first instance be posted before the Court for directions as to the notices and the advertisement, if any to issue, as the Court may direct.

(3) The Court may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case. Relief in case of oppression or mismanagement (Sections 397 to 407)

**88. Petition under section 397 or 398.-** (1) Where a petition is presented under section 397 or 398 on behalf of any members of a company entitled to

apply under section 399(1), by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the petitioner or petitioners to present the petition on their behalf, shall be annexed to the petition, and the names and addresses of all the members on whose behalf the petition is presented shall be set out in a Schedule to the petition, and where the company has a share capital, the petition shall state whether the petitioners have paid all calls and other sums due on their respective shares. Where the petition is presented by any member or members authorised by the Central Government under section 399(4), the order of the Central Government authorising such member or members to present the petition shall be similarly annexed to the petition. A petition under section 397 shall be in Form No. 43, and a petition under section 398 shall be in Form No. 44.

(2) A petition under section 397 or 398 shall not be withdrawn without leave of the Court, and where the petition has been presented by a member or members authorised by the Central Government under sub-section (4) of section 399, notice of the application for leave to withdraw shall be given to the Central Government.

**89. Notice to Central Government.-** Save where a petition is presented by or on behalf of the Central Government under section 401, notice shall be given to the Central Government of every petition under section 397 or 398, and a copy of the petition shall be served on the Central Government along with the notice of the date of hearing, not less than 14 clear days before the date fixed for the hearing of the petition.

**90. Order involving reduction of capital or alteration of memorandum.-** Where an order under section 397 or 398 involves a reduction of capital or alteration of the memorandum of association, the provisions of the Act and these Rules relating to such matters shall apply as the Court may direct.