

— PART 1 —

JUSTICE

JU301

Supreme Court Act 1935
Corporations (Ancillary Provisions) Act 2001
Corporations Act 2001 (Commonwealth)

Supreme Court (Corporations) (WA) Amendment Rules 2021

SL 2021/121

Made by the judges of the Supreme Court.

1. Citation

These rules are the *Supreme Court (Corporations) (WA) Amendment Rules 2021*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

These rules amend the *Supreme Court (Corporations) (WA) Rules 2004*.

4. Rule 1.5 amended

In rule 1.5(1) insert in alphabetical order:

Insolvency Practice Schedule or *IPS* means the Corporations Act Schedule 2;

5. Rule 1.7 amended

In rule 1.7(2) delete “a registrar” and insert:

the Principal Registrar

6. Rule 2.8 amended

In rule 2.8(3) in the Table:

(a) in item 3 in the 2nd column delete “s. 509(6)” and insert:

s. 509(2)

(b) delete item 4;

(c) after item 9 insert:

- | | | |
|-----|-----------------|---|
| 10. | IPS s. 45-1(3) | For an order under IPS s. 45-1(1) in relation to a registered liquidator |
| 11. | IPS s. 90-10(1) | For an inquiry into the external administration of a company |
| 12. | IPS s. 90-20 | For an order under IPS s. 90-15 in relation to the external administration of a company |

7. Rule 3.4 amended

In rule 3.4(2) delete “application.” and insert:

application —

- (a) for an application in relation to one Part 5.1 body — in a daily newspaper circulating generally in the State or Territory where the Part 5.1 body has its principal, or last known, place of business; or
- (b) for an application in relation to 2 or more Part 5.1 bodies — in a daily newspaper circulating generally in each State or Territory where any of the Part 5.1 bodies has its principal, or last known, place of business.

8. Rule 4.2 inserted

At the end of Part 4 insert:

4.2. Order or inquiry in relation to registered liquidator or external administration of company

An application to the Court —

- (a) under the Insolvency Practice Schedule section 45-1 for an order in relation to a registered liquidator; or
- (b) under the Insolvency Practice Schedule section 90-10 for an inquiry into the external administration of a company; or
- (c) under the Insolvency Practice Schedule section 90-20 for an order in relation to the external administration of a company,

must be made —

- (d) in the case of a winding-up by the Court — by an interlocutory process seeking the inquiry or order; or
- (e) in any other case — by an originating process seeking the inquiry or order.

Note: An application for an order or inquiry in relation to the external administration of a company ordered to be wound up by a court is normally made to the court that made the winding-up order.

9. Rule 5.5 amended

- (1) In rule 5.5(2) delete “an official liquidator” and insert:

a registered liquidator

- (2) In rule 5.5(3)(a) delete “an official liquidator” and insert:

a registered liquidator

10. Rule 5.6 replaced

Delete rule 5.6 and insert:

5.6. Notice of application for winding-up (Form 9)

- (1) If a person applies for a company to be wound up and the application is not made under the Corporations Act section 459P, 462 or 464, the person must, unless the Court otherwise orders, cause a notice of the

application to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 9.

Note: If a person applies under the Corporations Act section 459P, 462 or 464 for a company to be wound up, the person must cause a notice, setting out the information prescribed by the Corporations Regulations regulation 5.4.01A, to be published in the manner provided by the Corporations Act section 1367A and the Corporations Regulations regulation 5.6.75: see the Corporations Act section 465A(1).

- (2) A notice under subrule (1), or under the Corporations Act section 465A(1)(c), of an application for a company to be wound up must be published —
- (a) at least 3 days after the originating process is served on the company; and
 - (b) at least 7 days before the date fixed for the hearing of the application.

11. Rule 5.9 amended

- (1) In rule 5.9:
- (a) delete “After” and insert:
 - (1) After
 - (b) in paragraph (a) —
 - (i) delete “the Principal Registrar” and insert:
a master
 - (ii) delete “Principal Registrar; and” and insert:
Principal Registrar, or another officer of the Court to whom the Principal Registrar has delegated this function; and
 - (c) in paragraph (b) delete “the Principal Registrar” and insert:
the master
- (2) At the end of rule 5.9 insert:
- (2) For the purposes of these rules, a function performed by a delegate of the Principal Registrar under

subrule (1)(a) is taken to be a function performed by the Principal Registrar.

Note: The heading to amended rule 5.9 is to read:

Appearance before master

12. Rule 5.10 amended

Delete rule 5.10(2)(b) and insert:

- (b) unless otherwise directed by the Court, published —
 - (i) at least 7 days before the date fixed for the hearing of the application; and
 - (ii) in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

13. Rule 5.11 amended

- (1) In rule 5.11(1) delete “an official liquidator” and insert:

a registered liquidator

- (2) Delete rule 5.11(3) and (4) and insert:

- (3) If the winding-up order results from an application other than an application under the Corporations Act section 459P, 462 or 464, the liquidator must cause a notice of the winding-up order and the liquidator’s appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 11.

Note: If the winding-up order results from an application under the Corporations Act section 459P, 462 or 464, the liquidator must cause a notice, setting out the information prescribed by the Corporations Regulations regulation 5.4.01B, to be published in the manner provided by the Corporations Act section 1367A and the Corporations Regulations regulation 5.6.75: see the Corporations Act section 465A(2).

- (4) A notice under subrule (3), or under the Corporations Act section 465A(2), of a winding-up order must be published as soon as practicable after the liquidator is informed of the appointment.

14. Rule 6.1 amended

In rule 6.1(1) —

- (a) delete “an official liquidator” and insert:

a registered liquidator

- (b) delete “official liquidator.” and insert:

registered liquidator.

15. Rule 6.2 amended

- (1) In rule 6.2(1) delete “an official liquidator” and insert:

a registered liquidator

- (2) Delete rule 6.2(3) and (4) and insert:

- (3) If the order results from an application other than an application under the Corporations Act section 459P, 462 or 464, the provisional liquidator must cause a notice of the provisional liquidator’s appointment to be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business. The notice must be in accordance with Form 12.

Note: If the order results from an application under the Corporations Act section 459P, 462 or 464, the provisional liquidator must cause a notice, setting out the information prescribed by the Corporations Regulations regulation 5.4.01B, to be published in the manner provided by the Corporations Act section 1367A and the Corporations Regulations regulation 5.6.75: see the Corporations Act section 465A(2).

- (4) A notice under subrule (3), or under the Corporations Act section 465A(2), of a provisional liquidator’s appointment must be published as soon as practicable after the relevant order is made.

16. Rule 7.1 deleted

Delete rule 7.1.

17. Rule 7.2 replaced

Delete rule 7.2 and insert:

7.2. Vacancy in office of liquidator (Corporations Act s. 473A and 499(3) and Insolvency Practice Schedule s. 90-15)

If, for any reason, there is no liquidator of a company under external administration, the Court may appoint a registered liquidator whose written consent in accordance with Form 8 has been filed.

Note: The Court may make the appointment —

- (a) on its own initiative, during proceedings before the Court; or
- (b) on application under the Insolvency Practice Schedule section 90-20.

See the Insolvency Practice Schedule section 90-15(2).

18. Rule 7.3 amended

(1) Before rule 7.3(1) insert:

(1A) In this rule —

liquidator includes a provisional liquidator.

(2) Delete rule 7.3(4) and insert:

(4) Unless the Court otherwise orders, a report filed by a liquidator under the Corporations Act section 475(7) is not available for inspection by any person.

Note: A report filed by a liquidator under the Corporations Act section 475(7) may include commercial-in-confidence information that may not be inspected: see the Corporations Act section 1274(4G).

19. Rule 7.5 amended

Delete rule 7.5(3)(e) and insert:

- (e) whether ASIC has caused books in relation to the company to be audited under the Insolvency Practice Schedule section 70-15;

20. Rule 7.7 amended

- (1) In rule 7.7(2)(a)(i) delete “Principal Registrar” and insert:

Principal Registrar, or another officer of the Court to whom the Principal Registrar has delegated this function,

- (2) After rule 7.7(3) insert:

- (4) For the purposes of these rules, a function performed by a delegate of the Principal Registrar under subrule (2)(a)(i) is taken to be a function performed by the Principal Registrar.

21. Rule 7.9 amended

In rule 7.9(2) delete “application.” and insert:

application in a daily newspaper circulating generally in the State or Territory where the relevant company has its principal, or last known, place of business.

22. Rule 7.11 replaced

Delete rule 7.11 and insert:

7.11. Appointment of reviewing liquidator (Insolvency Practice Schedule s. 90-23(8))

- (1) An application to the Court under the Insolvency Practice Schedule section 90-23(8) to appoint a registered liquidator to carry out a review into a matter relating to the external administration of a company must be made —
- (a) in the case of a winding-up by the Court — by filing an interlocutory process seeking the relevant orders; or
 - (b) in the case of a voluntary winding-up — by filing an originating process seeking the relevant orders.
- (2) The application must be accompanied by the written declaration made by the proposed reviewing liquidator under the *Insolvency Practice Rules (Corporations) 2016* (Commonwealth) section 90-18.

23. Rule 9.2 replaced

Delete rule 9.2 and insert:

9.2. Determination of remuneration of external administrator (Insolvency Practice Schedule s. 60-10(1)(c) and (2)(b)) (Form 16)

- (1) This rule applies in relation to an application for a determination under the Insolvency Practice Schedule section 60-10(1)(c) or (2)(b) specifying remuneration that an external administrator of a company is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration.

Note: The Insolvency Practice Schedule section 60-10 does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under the Corporations Act section 489EC: see the Insolvency Practice Schedule section 60-2.

- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the determination, the external administrator must serve a notice in accordance with Form 16 of the external administrator's intention to apply for the determination, and a copy of any affidavit on which the external administrator intends to rely, on the following persons —
- (a) each creditor who was present, in person or by proxy, at any meeting of creditors;
 - (b) each member of any committee of inspection;
 - (c) if there is no committee of inspection, and no meeting of creditors has been convened and held — each of the 5 largest (measured by amount of debt) creditors of the company;
 - (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the external administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the external administrator does not receive a notice of objection within the period mentioned in subrule (3) —
- (a) the external administrator may file an affidavit, made after the end of that period, in support of

- the originating process, or interlocutory process, seeking the determination stating —
- (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the external administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3);
- and
- (b) the external administrator may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the external administrator; and
 - (c) the application may be so dealt with.
- (5) If the external administrator receives a notice of objection within the period mentioned in subrule (3), the external administrator must serve a copy of the originating process, or interlocutory process, seeking the determination on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the determination must —
- (a) include evidence of the matters mentioned in the Insolvency Practice Schedule section 60-12; and
 - (b) state the nature of the work performed or likely to be performed by the external administrator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the external administrator; and
 - (e) state particulars of any objection of which the external administrator has received notice; and
 - (f) if the external administration is continuing — give details of any matters delaying the completion of the external administration.

24. Rule 9.2A amended

- (1) Delete rule 9.2A(1) and (2) and insert:

- (1) This rule applies in relation to an application under the Insolvency Practice Schedule section 60-11(1) for a review of a remuneration determination for an external administrator of a company.

Note 1: The Insolvency Practice Schedule section 60-11 does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under the Corporations Act section 489EC: see the Insolvency Practice Schedule section 60-2.

Note 2: An application may not be made under the Insolvency Practice Schedule section 60-11(1) for a review of a remuneration determination made by the Court under section 60-10(1)(c) or (2)(b) of that Schedule: see section 60-11(5) of that Schedule.

- (2) In rule 9.2A(3):

- (a) in paragraph (a) delete “a committee of creditors or”;
- (b) in paragraph (b) before “administrator” insert:

external

- (3) In rule 9.2A(7):

- (a) before “administrator” insert:

external

- (b) delete paragraph (a) and insert:

- (a) the matters mentioned in the Insolvency Practice Schedule section 60-12;

- (c) in paragraphs (b) to (d) after “by the” (each occurrence) insert:

external

- (d) in paragraph (e) before “administrator” insert:

external

- (e) in paragraph (f) before “administration” (each occurrence) insert:

external

- (4) Delete rule 9.2A(8).

Note: The heading to amended rule 9.2A is to read:

**Review of remuneration determination for external administrator
(Insolvency Practice Schedule s. 60-11(1))**

25. Rule 9.3 amended

- (1) Delete rule 9.3(1) and insert:

(1) This rule applies in relation to an application by a provisional liquidator of a company for a determination under the Insolvency Practice Schedule section 60-16(1) of the remuneration the provisional liquidator is entitled to receive.

- (2) In rule 9.3(8):

(a) delete “Corporations Act section 473(10) —” and insert:

Insolvency Practice Schedule section 60-12 —

(b) in paragraph (b) delete ““liquidator”” and insert:

“external administrator”

- (3) In the provisions listed in the Table delete “order” (each occurrence) and insert:

determination

Table

rule 9.3(3)	rule 9.3(5)(a)
rule 9.3(6)	rule 9.3(7)

Note: The heading to amended rule 9.3 is to read:

**Remuneration of provisional liquidator (Insolvency Practice
Schedule s. 60-16) (Form 16)**

26. Rules 9.4 and 9.4A deleted

Delete rules 9.4 and 9.4A.

27. Rule 9.5 amended

In rule 9.5(3)(b) delete “committee of creditors or” (each occurrence).

28. Part 11 heading replaced

Delete the heading to Part 11 and insert:

**Part 11 — Inquiries, examinations,
investigations, and orders against person
concerned with corporation**

29. Rule 11.2 replaced

Delete rule 11.2 and insert:

11.2. Inquiries, examinations and investigations under Corporations Act s. 411(9)(b) or 423(3) or Insolvency Practice Schedule Div. 90 Subdiv. B

- (1) An application for an order for an examination or investigation under the Corporations Act section 423(3) in relation to a controller of property of a corporation may be made by any of the following —
- (a) a person with a financial interest in the administration of the corporation;
 - (b) an officer of the corporation;
 - (c) if the committee of inspection (if any) so resolves — a creditor, on behalf of the committee;
 - (d) ASIC.

Note: An application:

- (a) under the Corporations Act section 411(9)(b) for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry; or
 - (b) under the Insolvency Practice Schedule Division 90 Subdivision B for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry,
- may be made by a person mentioned in the Insolvency Practice Schedule section 90-10(2): see the Corporations Act section 411(9)(b) and the Insolvency Practice Schedule section 90-10(1).
- (2) The following applications may be made without notice to any person —
- (a) an application under the Corporations Act section 411(9)(b) for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with such an inquiry;
 - (b) an application for an order for an examination or investigation under the Corporations Act section 423(3);

- (c) an application under the Insolvency Practice Schedule Division 90 Subdivision B for an inquiry into the external administration of a company or an examination or investigation in connection with such an inquiry.
- (3) The provisions of this Part that apply to an examination under the Corporations Act Part 5.9 Division 1 apply, with any necessary adaptations, to an inquiry, examination or investigation under the Corporations Act section 411(9)(b) or 423(3) or the Insolvency Practice Schedule Division 90 Subdivision B.

30. Rule 11.8 amended

In rule 11.8(1) delete “section 411, 423 or 536 of the Corporations Act” and insert:

the Corporations Act section 411 or 423 or the Insolvency Practice Schedule Division 90 Subdivision B

Note: The heading to amended rule 11.8 is to read:

Inspection of record or transcript of examination or investigation under Corporations Act s. 411 or 423 or Insolvency Practice Schedule Div. 90 Subdiv. B

31. Part 14 heading replaced

Delete the heading to Part 14 and insert:

Part 14 — Appeals authorised by the Corporations Act

32. Rule 15A.5 amended

In rule 15A.5(c) delete “an official liquidator; and” and insert:

a registered liquidator; and

Note: The heading to amended rule 15A.5 is to read:

Registered liquidator’s consent to act

33. Schedule 1 amended

(1) In Schedule 1 Form 2:

- (a) delete “by at [*address of Court*] at*a.m./*p.m. on” and insert:

by a *judge/*master at the time, on the date and in the place specified in the attached listing notification.

- (b) delete section D and insert:

D. FILING

This originating process is filed by [*name*] for the plaintiff.

Date of filing:

- (2) In Schedule 1 Form 3 delete “by at [*address of Court*] at*a.m./*p.m. on” and insert:

by a *judge/*master at the time, on the date and in the place specified in the attached listing notification.

- (3) In Schedule 1 Form 8:

- (a) delete the reference after the heading and insert:

[rules 5.5, 6.1 and 7.2]

- (b) delete “an official liquidator,” and insert:

a registered liquidator,

- (c) delete “hourly” (each occurrence) and insert:

time-cost

- (d) delete the note and insert:

Note: The remuneration that an external administrator is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration of a company is regulated by the Insolvency Practice Schedule Division 60.

- (e) delete “*Signature of official liquidator*” and insert:

Signature of registered liquidator

- (f) in the Schedule delete “[*description of hourly rate(s)*]” and insert:

[*description of time-cost rate(s)*]

- (4) In Schedule 1 Form 16 delete the reference after the heading and insert:

[rules 9.1, 9.2, 9.3 and 9.5]

- (5) In Schedule 1 Form 16A:

- (a) delete the reference after the heading and insert:

[rule 9.2A]

- (b) delete “*[*administrator/liquidator*]” and insert:

*[*external administrator/liquidator*]

- (c) delete “*[*administrator/liquidator*]” and insert:

**external administrator/liquidator*

- (d) delete “rule *9.2A(4)/*9.4A(4)” and insert:

rule 9.2A(4)

- (6) In Schedule 1 Form 17:

- (a) delete “beforeat [*address of Court*] at*a.m./*p.m. on,” and insert:

before a *judge/*master at the time, on the date and in the place specified in the attached listing notification,

- (b) delete “Date:”.

- (7) In Schedule 1 Form 18:

- (a) delete “before the at [*address of Court*] at*a.m./*p.m. on,” and insert:

before a *judge/*master at the time, on the date and in the place specified in the attached listing notification

- (b) delete “Date:”.

- (8) In Schedule 1 Form 19:
- (a) delete “an official liquidator,” and insert:

a registered liquidator,
 - (b) delete “The hourly rates” and insert:

The time-cost rates
 - (c) delete “these hourly rates.” and insert:

these time-cost rates.
 - (d) delete “Signature of official liquidator” and insert:

Signature of registered liquidator
 - (e) in the Schedule delete “[*description of hourly rate(s)*]” and insert:

[*description of time-cost rate(s)*]

34. Schedule 2 amended

In Schedule 2:

- (a) in item 6 in the 3rd column delete “(s. 410-415A)” and insert:

(s. 410-415F)
 - (b) delete item 8;
 - (c) after item 12 insert:
13. IPS s. 45-1 Orders relating to registered liquidators
14. IPS s. 90-10 and 90-15 Inquiries and orders relating to administration

Notes:

1. The heading to rule 12.2 is to read:
Application for summons for appearance of person (Corporations Act s. 1071D(4)) (Form 18)

2. The heading to rule 14.1 is to read:
Appeals against acts, omissions or decisions

The Hon. Chief Justice Peter Quinlan
Chief Justice of Western Australia
Supreme Court of Western Australia

Date 8 July, 2021.
