

FOREIGN PROCEEDINGS (INTERNATIONAL CO-OPERATION) LIQUIDATION RULES, 2012

Arrangement of Rules

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THE COMPANIES ACT

(CHAPTER 308)

FOREIGN PROCEEDINGS (INTERNATIONAL CO-OPERATION) LIQUIDATION RULES, 2012

In exercise of the powers conferred by section 252 of the Companies Act, Ch. 308, the Liquidation Rules Committee makes the following Rules—

1. Citation, application and interpretation.

- (1) These Rules may be cited as the Foreign Proceedings (International Co-Operation) Liquidation Rules, 2012.
- (2) An individual rule may be cited using the abbreviation “FPLR” (Foreign Proceedings (International Co-operation) Rules.)
- (3) These Rules shall come into operation on the same day appointed by the Minister for bringing the Companies (Winding up Amendment) Act, 2011 into operation.
- (4) These Rules shall apply to every application made pursuant to Part VIIA of the Companies Act, Ch. 308 (the Act) as amended by the Companies (Winding up Amendment) Act, 2011.
- (5) Words and expressions used in the Act shall have the same meaning when used in these Rules.
- (6) The forms contained in the Appendix to these Rules shall be used where applicable, with such variations as the circumstances of the particular case may require.

2. Application for declaratory order.

- (1) An application by a foreign representative made under section 254(1)(a) of the Act for a declaratory order recognizing his right to act on behalf of a debtor shall be made by petition in accordance with RSC Order 9.
- (2) A petition presented under this rule is required to be served only on such persons as the Court may direct.
- (3) A petition under this rule shall state—
 - (a) particulars of the debtor's incorporation;
 - (b) the nature and place of the debtor's business;

- (c) the court or other authority by which the foreign representative was appointed;
 - (d) the powers and duties of the foreign representative under the law of the place of his appointment; and
 - (e) the reasons for seeking a declaratory order.
- (4) A petition under this rule shall be verified by an affidavit sworn by the foreign representative.
 - (5) A certified copy of the order of the court or other authority by which the foreign representative was appointed shall be exhibited to the verifying affidavit.
 - (6) A petition under this rule shall be supported by an affidavit of foreign law which explains the powers and duties of the foreign representative under the law of the place of his appointment.
 - (7) A declaratory order granted under this rule shall be in Form 1 and shall be gazetted.

3. Application of ancillary order.

- (1) An application by a foreign representative made under section 254(1)(b)–(f) of the Act shall be made by originating summons in accordance with RSC Order 7.
- (2) An originating summons under this rule is required to be served on each respondent.
- (3) An originating summons under this rule shall be supported by an affidavit which contains—
 - (a) an affidavit sworn by the foreign representative containing full particulars of—
 - (i) the facts and matters referred to in rule 2(3),
 - (ii) the facts and matters relied upon in support of the allegation that the respondent is a “relevant person” within the meaning of section 198(1) of the Act,
 - (iii) the reasons for seeking an ancillary order against the respondent; and
 - (b) an affidavit of foreign law which explains the powers and duties of the foreign representative under the law of the place of his appointment and addresses the matters referred to in section 255(1) of the Act.
- (4) An ancillary order under this rule shall be in Form 2, 3, 4 or 5 as may be appropriate.

4. Notice of foreign proceedings.

- (1) Whenever a company which is incorporated under Part II of the Act or registered under section 172 of the Act is made the subject of a foreign proceeding, notice of this fact shall be filed with the Registrar and published in the Gazette.
- (2) The notice required to be filed with the Registrar shall be in Form 6 and shall have annexed to it a certified copy of the order, notice or other document which evidences the commencement and existence of the foreign proceeding and, if such document is in a language other than English, an English translation of it.
- (3) The notice in Form 6 shall be published without its annexures in the Gazette not later than 21 days after the date on which notice was filed with the Registrar.

APPENDIX—PRESCRIBED FORMS

Form No. 1

Declaratory Order

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

20

COMMERCIAL DIVISION

No.

The Honourable Mr. Justice []

IN THE MATTER OF Part VIIA of the Companies Act Ch. 308

AND IN THE MATTER OF [state name of debtor]

DECLARATORY ORDER

UPON hearing counsel for [state name and address of foreign representative] upon his petition dated [state date] for a declaratory order recognising his right to act in The Bahamas on behalf of or in the name of [state name of debtor] (the “Debtor”).

AND UPON hearing counsel for [any persons upon whom the petition was served]

AND UPON reading [set out details of all the relevant affidavits]

IT IS ORDERED AND DECLARED that [name of foreign representative] is hereby recognised as the only person entitled to act in The Bahamas on behalf of [or in the name of] the debtor.

Dated the _____ day of _____ 20__

Filed the _____ day of _____ 20__

The Honourable Mr. Justice [name of assigned Judge]

JUDGE OF THE SUPREME COURT

This Order was filed by [state name, address and contact details of the counsel and attorneys acting on behalf of the petitioner].

Form No. 2

Injunction

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

20

COMMERCIAL DIVISION

No.

The Honourable Mr. Justice []

IN THE MATTER OF Part VIIA of the Companies Act, Ch. 308

AND IN THE MATTER OF [state name of debtor]

BETWEEN [State name of foreign representative]
Plaintiff

AND: []
Defendant

INJUNCTION

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [state date] for an injunction restraining the Defendant from commencing proceedings against [state name of debtor].

Defendant

ORDER FOR EXAMINATION

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [state date] for an order that the Respondent be examined about the business or affairs of [state name of debtor].

AND UPON reading [set out details of all the relevant affidavits]

IT IS ORDERED that:

1. The Respondent shall deliver up to the Plaintiff all of the documents specified in the Schedule One to this order on or before [state date].
2. The Respondent shall attend at [state address] on [state date] at [state time] (or at such other place and on such other date and time as may be agreed with the Plaintiff) to be examined orally by or on behalf of the Plaintiff about the business and affairs of the Debtor more particularly described in Schedule Two to this order.
3. The examination may be adjourned from time to time. Each session of the examination shall last no more than four (4) hours and the examination shall not last longer than [state time] in total without a further order of the Court.
4. [further or other directions]

Dated the _____ day of _____ 20__

Filed the _____ day of _____ 20__

The Honourable Mr. Justice [name of assigned Judge]

JUDGE OF THE SUPREME COURT

This Order was filed by [state name, address and contact details of the counsel and attorneys acting on behalf of the petitioner].

Form No. 5

Order for Delivery Up of Property

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT 20

COMMERCIAL DIVISION No.

The Honourable Mr. Justice []

IN THE MATTER OF Part VIIA of the Companies Act, Ch. 308

AND IN THE MATTER OF [state name of debtor]

BETWEEN [State name of foreign representative]
Plaintiff

AND: [State name of examinee]
Respondent

ORDER FOR DELIVERY UP OF PROPERTY

UPON hearing counsel for the parties upon the Plaintiff's originating summons dated [state date] for an order that the Respondent deliver up to the Plaintiff property belonging to [state name of debtor].

AND UPON reading [set out details of all the relevant affidavits]

IT IS ORDERED that:

1. The Respondent shall deliver up to the Plaintiff all of the property belonging to [state name of debtor] specified in this Schedule to this order on or before [state date].
2. [Further or other directions about the method by which the property is to be delivered or title to the property transferred].

Dated the _____ day of _____ 20__

Filed the _____ day of _____ 20__

The Honourable Mr. Justice [name of assigned Judge]

JUDGE OF THE SUPREME COURT

This Order was filed by [state name, address and contact details of the counsel and attorneys acting on behalf of the petitioner].

Form No. 6

Notice of Foreign Proceedings

THE COMPANIES ACT, CH. 308

NOTICE OF FOREIGN PROCEEDINGS

[Name of company]

Registration No. _____

To: The Registrar of Companies

TAKE NOTICE that the above-named Company was made the subject of [describe the foreign proceeding] for its liquidation on [state commencement date] by order of [identify the court or other authority]. Certified copies of [the relevant orders, notices or other documents evidencing the commencement and existence of the foreign proceedings].

AND FURTHER TAKE NOTICE that [state name of foreign representative] of [state address and contact details] has been appointed [identify the nature of any appointment such as a trustee in bankruptcy, official liquidator or receiver].

Dated this _____ day of _____ 20____.

[Signature of Foreign Representative or Director, as the case may be]

[Full name, address and contact details of the person filing this form]

Dated the _____ day of _____, 2012.

Chairman

Insolvency Rules Committee