



**HIGH COURT AMENDMENT RULES (NO. 2) 1999**

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MICHAEL HARDIE BOYS, Governor-General

**ORDER IN COUNCIL**

At Wellington this 1st day of November 1999

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51C of the Judicature Act 1908 and section 13 of the Insolvency Act 1967, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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SCHEDULE

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RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules (No. 2) 1999, and are part of the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908 (“the High Court Rules”).

(2) These rules come into force on 1 February 2000.

**2. New Part 16 added**—The High Court Rules are amended by adding, as Part 16, the following Part:

“PART 16

“INSOLVENCY PROCEEDINGS

“*Preliminary Provisions*

“819. **Interpretation**—(1) In this Part, unless the context otherwise requires, ‘Act’ means the Insolvency Act 1967.

“(2) Expressions not defined in this Part but defined in the Act have, in this Part, the meanings so defined.

Cf. S.R. 1970/245, r. 2

“820. **Application of Part**—This Part applies to all matters arising under the Act or Part IV of the Administration Act 1969, and to all proceedings taken in any such matter in the Court, whether commenced before, on, or after the date of commencement of this Part.

Cf. S.R. 1970/245, r. 3

“821. **Application of general rules and practice of Court**—The other Parts of these rules, and the general practice of the Court, apply where this Part applies except in so far as they are modified by or inconsistent with the Act or this Part.

Cf. S.R. 1970/245, r. 4

“*Proceedings Generally*

“822. **Forms**—(1) The prescribed forms must be used wherever appropriate.

“(2) Forms set out in the Schedule that are not specifically prescribed by these rules must be used in the circumstances to which they relate.

“(3) If a form has not been prescribed for any application under this Part to the Court, the application must be in the form of an interlocutory application and any order made on that application must be in the form prescribed for an order made on an interlocutory application under these rules.

“(4) If subclause (3) does not apply, the parties may frame a form for the special purpose of the particular case or the Court may frame the form.

“(5) Variations to a prescribed form are permitted if the circumstances of any particular case so require.

Cf. S.R. 1970/245, r. 5

“823. **Notices**—(1) Every notice required by the Act or this Part must be in the prescribed form.

“(2) If no form is prescribed, a notice must contain sufficient details to inform the recipient fairly of its substance.

Cf. S.R. 1970/245, r. 7

“824. **General requirements of documents filed in Court**—Every document filed in Court in proceedings under the Act must—

“(a) Comply with rules 23 to 40 so far as they are applicable and with any necessary modifications; and

“(b) Be headed by the words ‘In the matter of the Insolvency Act 1967, and in the Matter of the Bankruptcy (or Proposal, as the case may be) of’.

“825. **Advertising of notices or proceedings**—An advertisement of a notice or proceeding that is published in a newspaper circulating in the area in which the proceeding is pending complies with any advertising requirements of the Act or this Part.

Cf. S.R. 1970/245, r. 6

“826. **Discretion of Court as to method of taking evidence**—Except as otherwise provided in this Part, the Court may in any proceeding take all or any part of the evidence either orally before the Court or by written interrogatories or on affidavit or by commission, as the Court in any case thinks fit.

Cf. S.R. 1970/245, r. 34

#### *“Bankruptcy Notices*

“827. **Request for issue of bankruptcy notice**—The creditor must file, with every request for a bankruptcy notice in form 89,—

“(a) A bankruptcy notice in form 90, together with a service copy; and

“(b) A certified copy of the judgment or order on which the bankruptcy notice is based.

Cf. S.R. 1970/245, r. 40 (1), (2)

“828. **Service of bankruptcy notice in New Zealand**—A bankruptcy notice that is to be served in New Zealand must be served within 1 month from the date of its issue.

Cf. S.R. 1970/245, r. 41 (6)

“829. **Registrar may extend time for serving bankruptcy notice**—(1) If the Registrar is satisfied that reasonable efforts have been made to serve a bankruptcy notice within the prescribed period, and service has not been effected,—

“(a) The Registrar may, at the request in writing of the judgment creditor made not later than 1 month after the end of the prescribed period, extend the time for a further period of 1 month or for successive periods of 1 month; and

“(b) The Registrar must, in each case, mark the notice with the word ‘renewed’ and the date of the renewal.

“(2) A notice must not, without the Court’s consent, be extended for a period exceeding 3 months from the date on which the notice was first issued.

Cf. S.R. 1970/245, r. 42

“830. **Setting aside bankruptcy notice**—(1) Every application to set aside a bankruptcy notice must comply with rules 234 to 269 so far as they are applicable and with any necessary modifications.

“(2) If the application to set aside the bankruptcy notice cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the time is deemed to have been extended until the application has been heard and determined.

“(3) Until the application has been heard and determined, an act of bankruptcy is not committed by reason only of non-compliance with the notice.

Cf. S.R. 1970/245, r. 43

*“Commencement of Adjudication Proceedings*

“831. **Application for adjudication**—(1) Every application for adjudication must be commenced by filing in the Court a petition in form 91 or form 92, as the case may require.

“(2) An affidavit in form 93 and a summons to debtor in form 94 must be filed (in duplicate) with a creditor’s petition.

Cf. S.R. 1970/245, r. 44

“832. **Verification of creditor’s petition**—A creditor’s petition must be verified by affidavit of the creditor or some other person having knowledge of the facts.

Cf. S.R. 1970/245, r. 46

“833. **Where bankruptcy petition to be filed**—A bankruptcy petition must be filed,—

“(a) If the debtor is resident in New Zealand, in the office of the High Court nearest by the most practicable route to the place in which the debtor has resided or carried on business for the longest period during the 6 months immediately before the time when the petition is filed:

“(b) If the debtor is in custody, in the office of the High Court nearest by the most practicable route to the place in which the debtor is in custody:

“(c) If the debtor is absent from New Zealand or the petitioning creditor cannot ascertain the debtor’s place of residence, in the office of the High Court nearest by the most practicable route to the place in which the petitioning creditor resides or carries on business:

“(d) If a debtor has never been resident in New Zealand, in the office of the High Court nearest by the most practicable route to the place in which the petitioning creditor resides or carries on business:

“(e) If any act of bankruptcy relied on by the petitioning creditor is specified in section 19 (1)(c) of the Act, in any office of the Court.

Cf. S.R. 1970/245, r. 49

*“Hearing Date for Creditor’s Petition*

“834. **Registrar to fix hearing date for creditor’s petition**—(1) The Registrar must fix a hearing date for the petition and insert the date in the summons to the debtor before releasing the summons to the creditor for service.

“(2) If the petition and summons have not been served, the Registrar may, from time to time, alter the first date appointed for the hearing and appoint another date.

Cf. S.R. 1970/245, r. 50

“835. **Court may alter hearing date for creditor’s petition**—If it is proved to the Court’s satisfaction that the debtor has absconded or there is any other good reason, the Court may, on any terms it thinks fit to impose, hear the creditor’s petition on any date the Court considers expedient.

*“Service of Creditor’s Petition*

“836. **Service of creditor’s petition on debtor**—(1) A copy of the creditor’s petition and the summons to the debtor must be served on the debtor.

“(2) If the debtor dies before service of the creditor’s petition and summons, the Court may order service to be effected on the debtor’s administrator or such other person as it thinks fit.

Cf. S.R. 1970/245, r. 54

“837. **Service of creditor’s petition on trustee or supervisor**—A copy of the creditor’s petition and the summons to debtor must be served personally on the trustee or supervisor, as the case may be,—

“(a) If the act of bankruptcy alleged is that the debtor has made a disposition of all or substantially all of the debtor’s property to a trustee for the benefit of all or any of the debtor’s creditors; or

“(b) If, at the time of the filing of the petition, a proposal under Part XV of the Act has been approved by the Court or a summary instalment order has been made under Part XVI of the Act.

Cf. S.R. 1970/245, r. 51

*“Debtor’s Opposition to Adjudication*

“838. **Debtor’s notice of intention to oppose adjudication**—A debtor who intends to oppose the making of an order of adjudication must, by 1 pm on the last working day before the hearing of the creditor’s petition,—

“(a) File in Court a notice of opposition in form 95, together with an affidavit in support of the opposition; and

“(b) Serve a copy of those documents on the petitioning creditor.

Cf. S.R. 1970/245, r. 55

*“Evidence Relating to Creditor’s Petition*

“839. **Affidavit evidence of petitioning creditor**—(1) Unless the Court otherwise directs, a petitioning creditor’s evidence of a debt, an act of bankruptcy, or any other material statements may be given by affidavit.

“(2) The affidavit must be sworn by or on behalf of the petitioning creditor at least 3 days before the date of the hearing of the petition.

Cf. S.R. 1970/245, r. 34A (1)

**“840. Petitioning creditor’s solicitor’s certificate as to unpaid debt**—A certificate by the petitioning creditor’s solicitor to the effect that, after having made due inquiries, the solicitor is satisfied that the debt remains unpaid, may be accepted by the Court as sufficient prima facie evidence that the debt remains unpaid.

Cf. S.R. 1970/245, r. 34A (2)

*“Continuation of Proceedings*

**“841. Death of debtor against whom petition filed**—If a debtor against whom a bankruptcy petition is filed dies, the proceedings in the matter must, unless the Court otherwise orders, be continued as if the debtor were alive.

Cf. S.R. 1970/245, r. 54

*“Appointment of Official Assignee as Receiver and Manager*

**“842. Applicant to deposit sum for Official Assignee’s expenses**—The person who has applied for an order appointing the Official Assignee to be a receiver and manager of all or any part of the debtor’s estate must, before the order is made, deposit with the Official Assignee any sum that the Court directs for the Official Assignee’s expenses.

Cf. S.R. 1970/245, r. 10 (1)

**“843. Official Assignee may seek additional sum where original deposit insufficient**—(1) If the sum deposited for the Official Assignee’s expenses under rule 842 is insufficient, the person who paid the deposit must deposit with the Official Assignee any additional sum as the Court may, on the application of the Official Assignee, from time to time direct.

“(2) If the additional sum is not deposited within 24 hours after the making of the order, the order appointing the Official Assignee as receiver and manager may, on the Official Assignee’s application, be discharged by the Court.

Cf. S.R. 1970/245, r. 10 (2)

**“844. Notification of order appointing Official Assignee as receiver and manager**—(1) The Registrar must, immediately after the order appointing the Official Assignee as receiver and manager has been made, forward 2 copies of the order to the Official Assignee.

“(2) If the debtor is in New Zealand, the Official Assignee must cause a copy of the order appointing the Official Assignee as receiver and manager to be served on the debtor.

“(3) The Official Assignee must advertise the Official Assignee’s appointment as receiver and manager within 5 working days after the making of the order.

Cf. S.R. 1970/245, r. 10 (5) to (7)

**“845. Repayment of deposits after order of adjudication**—(1) If an order of adjudication is made after the Official Assignee is appointed receiver and manager, the Official Assignee must repay to the creditor the deposits made under rules 842 and 843 out of the proceeds of the estate.

“(2) If there are insufficient proceeds in the estate to pay the Official Assignee’s fees and expenses as receiver and manager, the Official Assignee may keep all or any part of the deposits as payment of those fees and expenses.

Cf. S.R. 1970/245, r. 10 (3)

**“846. Dismissal of petition after order appointing Official Assignee as manager and receiver—**If, after an order has been made appointing the Official Assignee as receiver and manager, the petition upon which the order was made is dismissed,—

“(a) The Court must, on an application made within 15 working days from the date of the dismissal, make an order relating to any damages or claim arising out of the Official Assignee’s appointment; and

“(b) The Court may make any other order it thinks fit.

Cf. S.R. 1970/245, r. 10 (4)

*“Arrest of Debtor After Bankruptcy Petition Filed*

**“847. Application for warrant under section 63 of Act—**(1) An application for a warrant under section 63 of the Act must be in form 96, and need not be verified by affidavit unless required by the Court.

“(2) Two copies of the warrant in form 97 must be lodged with the application.

Cf. S.R. 1970/245, r. 28 (2)

**“848. Custody of arrested debtor—**(1) A debtor who is arrested under a warrant issued under section 63 of the Act must be placed into the custody of the superintendent of the prison specified in the warrant.

“(2) The superintendent of the prison must produce the debtor before the Court as it may from time to time direct, until the debtor is discharged by the Court.

Cf. S.R. 1970/245, r. 29 (2)

*“Examination of Persons Before Court During Bankruptcy*

**“849. Apprehended person to be brought before Court—**(1) The officer who apprehends a person under a warrant in form 100 must immediately bring the person before the Court for examination.

“(2) If the examination cannot be held immediately—

“(a) The apprehending officer must deliver the apprehended person into the custody of the superintendent of the prison specified in the warrant; and

“(b) The superintendent of the prison must receive and keep that person, and must produce the person before the Court as required by the Court.

Cf. S.R. 1970/245, r. 31 (1)

**“850. Apprehending officer to report to Court—**(1) The apprehending officer must notify the Court immediately after a person has been apprehended under section 68 (4) of the Act or delivered into custody, as the case may be.

“(2) The Court must appoint the earliest practicable day for the examination of the apprehended person.

“(3) The superintendent of the prison must produce the person for examination at the place and time appointed.

Cf. S.R. 1970/245, r. 31 (2)

*“Contributions From Bankrupt Towards Payment of Debts*

**“851. Application for order under section 45—**A creditor who intends to make an application under section 45 of the Act must give at

least 10 working days' notice of that intention to the Official Assignee and to the bankrupt.

Cf. S.R. 1970/245, r. 39 (1)

**“852. Official Assignee’s report—**(1) If an application is made for an order under section 45 of the Act, the Official Assignee must prepare a report as to the circumstances of the bankruptcy, the bankrupt’s conduct, and the bankrupt’s earning power, responsibilities, and prospects.

“(2) At least 5 working days before the time fixed for the hearing, the Official Assignee must lodge the report in the Court, and forward a copy of the report to the bankrupt, and to the applicant, if the applicant is a creditor.

Cf. S.R. 1970/245, r. 39 (2), (3)

**“853. Official Assignee to notify employer, etc, about proposed assignment or charge—**If it is proposed that an order be made assigning to, or charging in favour of, the Official Assignee any money due or becoming due to the bankrupt by way of wages or salary or from any other source,—

“(a) The Official Assignee must notify the employer or other person against whom the assignment or charge is proposed; and

“(b) The person who is notified may be heard.

Cf. S.R. 1970/245, r. 39 (4)

**“854. Official Assignee to serve order of assignment, etc—**The Official Assignee must serve a duplicate of any order assigning or charging in favour of the Official Assignee any money due or becoming due to the bankrupt on the employer or other person against whom the assignment or charge was given.

Cf. S.R. 1970/245, r. 39 (5)

*“Compositions During Bankruptcy*

**“855. Application for order approving composition—**(1) The Official Assignee may apply to the Court to approve a composition (whether or not the Official Assignee reports in favour of it) if—

“(a) The creditors have confirmed the composition; or

“(b) In any other case, the bankrupt does not within 3 working days from the date of the confirmation apply to the Court for approval of the composition.

“(2) The Official Assignee is not by making the application deemed to approve of the composition.

Cf. S.R. 1970/245, r. 66

**“856. Notice to Official Assignee of application to approve composition—**Any person, other than the Official Assignee, who applies to the Court to approve a composition must, at least 10 working days before the day appointed for hearing the application, serve notice of the application on the Official Assignee.

Cf. S.R. 1970/245, r. 67

**“857. Notice of application to approve composition or scheme—**If an application is made to the Court to approve a composition or scheme, the Official Assignee must, at least 5 working days before the day appointed for hearing the application, send notice of the application to every creditor whose debt has been proved.

Cf. S.R. 1970/245, r. 68

**“858. Official Assignee to account when composition approved—** If a composition is approved by the Court, the Official Assignee must account to the bankrupt, or, as the case may be, to the trustee.

Cf. S.R. 1970/245, r. 71

*“Discharge of Bankrupt*

**“859. Filing and service of objection to discharge—**(1) An objection to a discharge under section 107 (3) of the Act is entered by filing in the Court an objection in form 101.

“(2) A creditor who enters an objection to a discharge must serve the objection on the Official Assignee.

Cf. S.R. 1970/245, r. 73

**“860. Service, etc, of notice of application for discharge—**At least 15 working days before the hearing date, the bankrupt must—

“(a) Serve on the Official Assignee, and every creditor whose debt has been proved, notice of application for discharge under section 108 of the Act; and

“(b) Cause notice of the application and of the hearing date to be advertised.

Cf. S.R. 1970/245, r. 75

**“861. Report of Official Assignee—**At least 5 working days before the time fixed for the hearing, the Official Assignee must—

“(a) Lodge in the Court a copy of the Official Assignee’s report under section 109 (2) of the Act; and

“(b) Serve a copy of the report on the bankrupt and every creditor known to the Official Assignee.

Cf. S.R. 1970/245, r. 76

**“862. Opposition by creditor to discharge—**A creditor who intends to oppose the discharge of a bankrupt on grounds other than those specified in the Official Assignee’s report must file and serve on the Official Assignee and the bankrupt a notice of the creditor’s intended opposition by 1 pm on the day before the hearing.

Cf. S.R. 1970/245, r. 77

**“863. Conditions affecting salary, etc, after order of discharge—**(1) The Official Assignee must notify the bankrupt’s employer of the Official Assignee’s intention to ask the Court to impose a condition that affects any salary or wages that may, after the date of the order of discharge, become due to the bankrupt.

“(2) Before the Official Assignee may receive payment of any of the bankrupt’s salary or wages under an order made under section 110 of the Act, the Official Assignee must notify the employer by whom the money is payable to the bankrupt of the order.

Cf. S.R. 1970/245, r. 78

*“Annulment of Adjudication*

**“864. Annulment of adjudication to be advertised—**The Official Assignee must immediately cause a notice of every order annulling an adjudication to be advertised.

Cf. S.R. 1970/245, r. 82

*“Proposals*

“865. **Proposal and statement of affairs and affidavit**—A proposal under Part XV of the Act must be in form 103 and must be accompanied by a statement of affairs and affidavit in form 104.

Cf. S.R. 1970/245, r. 83

“866. **Trustee’s report on proposal**—The trustee must file a report in form 105 with the application for approval under section 143 of the Act.

Cf. S.R. 1970/245, r. 85

*“Insolvent Deceased Estates*

“867. **Application for order to administer under Part XVII of Act**—An application for an order to administer under Part XVII of the Act must be by originating application.

Cf. S.R. 1970/245, r. 87

“868. **Application by creditor or beneficiary**—(1) Notice of an application under section 155 of the Act must be given by serving on the administrator, or, if no administrator has been appointed, on such persons as the Court directs, a copy of the application together with a copy of any supporting affidavit.

“(2) The Court may, within such time as the Court requires, direct the administrator to file the account in form 106 if—

“(a) An application is made by a creditor, or any person beneficially interested after a request has been made to an administrator; and

“(b) The administrator has failed to make an application within 21 working days.

Cf. S.R. 1970/245, r. 89

“869. **Duty of Registrar where order made**—If an order is made under section 157 or section 158 of the Act, the Registrar must send to the appointee and to the Commissioner of Inland Revenue a copy of the order and of the account specified in section 154 (3) of the Act.

Cf. S.R. 1970/245, r. 92

“870. **Duty of administrator where order made**—If an order has been made under section 157 or section 158 of the Act,—

“(a) The administrator must immediately send to the appointee, an account of the administrator’s dealings and administration of the deceased estate; and

“(b) The administrator must, at the same time, give particulars of the affairs of the deceased as may be required by the appointee.

Cf. S.R. 1970/245, r. 93

“871. **Person who has intermeddled in estate may be ordered to give particulars**—The Court may, on an appointee’s application, direct that an account be made, verified, and given by any person whom the Court considers has administered or otherwise intermeddled with all or any part of deceased’s property, if—

“(a) An order has been made under section 157 or section 158 of the Act; and

“(b) It appears to the Court that no administrator exists and the appointee is unable to find any person willing to give the particulars required by rule 870.

Cf. S.R. 1970/245, r. 94

*“Appeals, Etc*

**“872. Applications to vary or discharge order or decision of Registrar or District Court Judge—**(1) Every application to a Judge to vary or discharge the order or decision of a Registrar or District Court Judge made under section 6 of the Act must be filed,—

- “(a) If it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the making of the order or the giving of the decision; or  
 “(b) If it is made by a party who was not then present or represented, within 5 working days after the receipt by the party of notice of the order or decision.

“(2) The application does not stay proceedings unless a Judge, the Registrar, or the District Court Judge otherwise orders.

Cf. S.R. 1970/245, r. 16

**“873. Appeals to Court of Appeal—**(1) The Court of Appeal (Civil) Rules 1997, so far as they are applicable and with any necessary modifications, apply to appeals to the Court of Appeal under section 8 of the Act.

“(2) The Official Assignee of the bankrupt’s property is a party to any appeal.

Cf. S.R. 1970/245, r. 65 (3), (6)

*“Official Assignee*

**“874. Applications to Court by Official Assignee—**Applications by the Official Assignee to the Court may be made personally, by counsel, or by any agent duly appointed under section 71 (p) of the Act.

Cf. S.R. 1970/245, r. 8

**“875. Official Assignee’s liability for costs—**Unless the Court otherwise directs, the Official Assignee is not personally liable for costs if—

- “(a) Proceedings are brought against the Official Assignee representing the estate of the bankrupt; or  
 “(b) The Official Assignee is made a party to a proceeding on the application of any other party.

Cf. S.R. 1970/245, r. 11

*“Miscellaneous*

**“876. Filing decisions of District Court—**(1) If, under the Act, an application relating to bankruptcy may be filed in a District Court, the Registrar of that Court must forward to the nearest High Court a certified copy of the decision of the District Court.

“(2) The certified copy of the decision of the District Court must be filed by the Registrar and forms part of the proceedings of the High Court.

Cf. S.R. 1970/245, r. 14”.

**3. New forms inserted—**The First Schedule of the High Court Rules is amended by inserting, in their appropriate numerical order, the forms set out in the Schedule of these rules.

**4. Revocations**—The following rules are revoked:

- (a) The Insolvency Rules 1970 (S.R. 1970/245):
  - (b) The Insolvency Rules 1970, Amendment No. 1 (S.R. 1985/327):
  - (c) The Insolvency Rules 1970, Amendment No. 2 (S.R. 1992/186).
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Rule 3

## SCHEDULE

NEW FORMS 89 TO 107 INSERTED IN FIRST SCHEDULE OF HIGH COURT  
RULES

Rule 827

“Form 89

REQUEST FOR ISSUE OF BANKRUPTCY NOTICE

*[General heading as in form 1 and rule 824]*

1. I, *[Full name, address, and description of judgment creditor]* request that a bankruptcy notice be issued by this Court against *[Full name, address, and description of judgment debtor]*.

2. *[Full name of judgment debtor]* has for the greater part of the past 6 months resided at *[Full address]* OR carried on business at *[Full address]* within the district of this Court OR, as the case may be, following rule 833.

3. I produce a certified copy of a final judgment against *[Name of judgment debtor]*, obtained by me in the *[Name]* Court on *[Date]*.

4. Execution on the judgment has not been stayed.

Dated at *[Place]* *[Date]*.

.....  
(Solicitor for) Judgment Creditor.

To the Registrar of the High Court at *[Place]*.

*Note:* If the judgment debtor resides at a place other than the debtor's place of business, both addresses should be inserted.

Rule 827 (a)

Form 90

BANKRUPTCY NOTICE

*[General heading as in form 1 and rule 824]*

To *[Full name and address of judgment debtor]*.

Take notice that within *[14 days]* OR, if the notice is served outside New Zealand, *[Period specified in the order for service]* after service of this notice on you (excluding the day of the service)—

- (a) You must pay to *[Full name and address of judgment creditor]* either in person or at the address for service of the (solicitor for) judgment creditor the amount of *[Amount]* claimed by the judgment creditor as being the amount due or so much as remains unpaid on a final judgment or final order obtained by the judgment creditor against you in the *[Name]* Court on *[Date]* on which execution has not been stayed.

SCHEDULE—continued

Form 90—continued

OR

(b) You must secure or compound for the amount referred to in paragraph (a) to the judgment creditor’s satisfaction or the satisfaction of the Court.

OR

(c) You must satisfy the Court that you have a counterclaim, set-off, or cross-demand against [Name of judgment creditor]—  
(i) That equals or exceeds the amount claimed by the creditor; and  
(ii) That you could not set up in the action or proceedings in which the judgment or order was obtained.

Dated at [Place] [Date].

.....  
(Deputy) Registrar.

**Memorandum**

Your attention is particularly directed to the following information:

*Consequences of not complying with notice*

1. If you do not comply with this notice you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

*Procedure for counterclaiming, etc*

2. You must, within [14 days] OR, if the notice is served outside New Zealand, [Period specified in the order for service], apply to the Court to set aside this notice, if you have a counterclaim, set-off, or cross-demand—

- (a) That equals or exceeds the amount claimed by the creditor in respect of the judgment or order together with costs; and
- (b) That you could not set up in the action in which the judgment or order was obtained.

3. The application must be supported by affidavit.

4. You must also serve a copy of the application and supporting affidavit within the relevant period referred to in clause (2) of this memorandum.

This notice is issued by [Full name and address for service of judgment creditor] in person OR by [Full name and address for service of solicitor for judgment creditor].



SCHEDULE—continued

Rule 831 (1)

Form 91

DEBTOR'S PETITION

[General heading as in form 1 and rule 824]

1. I, [Full name, address, and description of debtor] petition to be adjudged a bankrupt, as I am unable to pay my debts.

2. I have previously resided at [Full addresses within last 12 months].

3. I have carried on business within the last 12 months under [Name of business].

4. The majority of my creditors are in [Place].

Dated at [Place] [Time and Date].

.....  
Debtor

Witness:

.....  
(Deputy) Registrar or Solicitor or  
Justice of the Peace.

Rule 831 (1)

Form 92

CREDITOR'S PETITION

[General heading as in form 1 and rule 824]

I, [Full name, address, and description of creditor] say:

1. [Full name, address, and description of debtor] ("the debtor") has for the greater part of the past 6 months resided at [Full address] OR carried on business at [Full address] within the district of this Court OR, as the case may be, following rule 833.

2. The debtor owes me [Amount and particulars of debt, including when payable].

3. The debtor has committed an available act of bankruptcy, as follows:  
[Particulars (including date) of the act of bankruptcy].

4. I have no security for the debt OR I am a secured creditor as follows:  
[Particulars of the security].

The creditor seeks:

(a) An order adjudicating [Full name of debtor] bankrupt:

(b) Costs.

SCHEDULE—*continued*

Form 92—*continued*

Dated at [Place] [Date].

.....  
Petitioning Creditor.

.....  
(Deputy) Registrar *or* Solicitor *or*  
Justice of the Peace.

Form 93

Rule 831 (2)

AFFIDAVIT VERIFYING PETITION

[General heading as in form 1 and rule 824]

I, [Full name, address, and description of petitioning creditor], the petitioner named in the petition swear that the several statements in the accompanying petition are to the best of my knowledge, information, and belief, true.

OR

I [Full name, address, and description], being a person having knowledge of the facts to which the accompanying petition relates) swear that the several statements in the petition are to the best of my knowledge, information, and belief, true.

Sworn at [Place] [Date].

.....  
Petitioning Creditor/Deponent.

Before me:

.....  
A Solicitor of the High Court of  
New Zealand *or* (Deputy) Registrar  
of the High Court of New Zealand  
*or* Notary Public.

*Note:* If the petitioner cannot depose that the several statements in the petition are to the best of the petitioner’s knowledge and belief true, the petitioner must set out the statements to the truth of which the petitioner can depose, and file a further affidavit by some person or persons who can depose to the truth of the remaining statement.

SCHEDULE—continued

Rule 831 (2)

Form 94

SUMMONS TO DEBTOR

[General heading as in form 1 and rule 824]

To [Full name, address, and description of debtor].

1. You are summoned to attend before the High Court at [Place] at [Time and date].

2. [Full name, address, and description of petitioner] (“the petitioner”) has filed a petition in this Court to adjudge you bankrupt.

3. The Court will consider whether you should be adjudged bankrupt—

(a) On the following grounds:

(i) [Ground];

(ii) [Ground];

(iii) [Ground]; AND

(b) On the evidence contained in the affidavit filed in support of the petition.

4. The petitioner will be entitled to ask the Court to adjudge you bankrupt if the following amounts are not paid to the petitioner either in person or at the address for service of the (solicitor for the) petitioner:

(a) [Amount referred to in the petition];

(b) [Filing fee on the petition];

(c) [Petitioner’s costs].

5. You are not required to attend in person and no warrant will be issued if you do not attend, but if you do not attend then the Court will proceed in your absence.

Dated at [Place] [Date].

.....  
(Deputy) Registrar.

This summons is issued by [Full name and address for service of petitioner] in person OR by [Full name and address for service of solicitor for petitioner].



SCHEDULE—continued

Form 95

Rule 838 (a)

NOTICE BY DEBTOR OF INTENTION TO OPPOSE PETITION

[General heading as in form 1 and rule 824]

Take notice that—

1. I, [Full name, address, and description of debtor] intend to oppose the making of an order of adjudication as sought in the petition.

2. I intend to dispute the petitioning creditor’s debt OR the act of bankruptcy, as the case may be,—

(a) On the following grounds:

(i) [Ground];

(ii) [Ground];

(iii) [Ground]; AND

(b) On the evidence contained in the affidavit filed in support of this notice.

Dated at [Place] [Date].

.....  
Debtor.

To [Full name and address for service of (solicitor for the) petitioner].

And to the Registrar of the Court at [Place].

Form 96

Rule 847 (1)

APPLICATION FOR WARRANT

[General heading as in form 1 and rule 824]

I, [Full name, address, and description of creditor] OR Official Assignee apply for a warrant under [section reference] of the Insolvency Act 1967—

(a) On the following grounds:

(i) [Ground];

(ii) [Ground];

(iii) [Ground]; AND

(b) On the evidence contained in the affidavit filed in support of this application.

Dated at [Place] [Date].

.....  
Creditor/Official Assignee.

To the Registrar of the High Court at [Place].

SCHEDULE—continued

Rule 847 (2)

Form 97

WARRANT FOR ARREST OF DEBTOR OR BANKRUPT

[General heading as in form 1 and rule 824]

To every constable or to a bailiff of the District Court at [Place].

And to the superintendent of the prison at [Place].

1. The Official Assignee OR [Full name, address, and description of creditor] has satisfied the Court that [Full name, address, and description of debtor or bankrupt] (“the debtor”) is about to go abroad or quit the debtor’s place of residence with a view to defeating, delaying, or embarrassing proceedings under the Insolvency Act 1967.

2. You, the executing constable or bailiff, must—

- (a) Take the debtor into custody; AND
- (b) Deliver the debtor to the superintendent of the above-named prison.

3. You, the superintendent, must—

- (a) Receive the debtor; AND
- (b) Produce the debtor before the Court as it may from time to time direct; AND
- (c) Keep the debtor safely in the prison until the debtor finds sureties to the satisfaction of the Court that the debtor will appear; AND
- (d) Attend from time to time as the Court may order until the debtor is discharged by the Court.

Dated at [Place] [Date].

.....  
(Deputy) Registrar.

Note: If the warrant is issued during a vacation, or the absence of the Judge, etc, the Registrar should state the fact.

Form 98

WARRANT OF SEIZURE UNDER SECTION 64 (1) OR SECTION 65 (1) OF INSOLVENCY ACT 1967

[General heading as in form 1 and rule 824]

To [Name of authorised person].

1. [Full name, address, and description of bankrupt] was adjudicated a bankrupt on [Date] OR [Full name, address, and description of creditor] has filed a bankruptcy petition against [Full name, address, and description of debtor].

2. You and your assistants are authorised to—

- (a) Seize all or any part of the property of the bankrupt OR debtor (as the case may be) in the custody or possession of that person or of any other person; AND

SCHEDULE—*continued*Form 98—*continued*

(b) If necessary to effect that seizure,—

(i) To break open any building or room of the bankrupt or debtor where the bankrupt or debtor is supposed to be; AND

(ii) To break open any building or receptacle of the bankrupt or debtor where any of the bankrupt's or debtor's property is supposed to be; AND

(iii) To seize and take possession of that property.

3. You must safely detain and keep in your possession anything that you have seized until it is disposed of or dealt with by the Official Assignee in accordance with the provisions of the Insolvency Act 1967.

Dated at [Place] [Date].

.....  
(Deputy) Registrar.

—  
Form 99

## SEARCH WARRANT UNDER SECTION 65 (2) OF INSOLVENCY ACT 1967

[General heading as in form 1 and rule 824]

To [Name of authorised person].

1. The Court believes that the property of the bankrupt OR any book, paper or document relating to the affairs or property of the bankrupt, as the case may be, is concealed in [Description of building, aircraft, ship, carriage, vehicle, premises or place.]

2. You and your assistants are authorised to—

(a) Enter and search the [Description of building, etc]; AND

(b) Seize and take possession of any property, books, papers, or documents to be disposed of and dealt with according to the provisions of the Insolvency Act 1967; AND

(c) If necessary, to—

(i) Use force for making entry, whether by breaking open doors or otherwise; AND

(ii) Break open any box or receptacle in [Description of building, etc] by force.

Dated at [Place] [Date].

.....  
(Deputy) Registrar.

SCHEDULE—*continued*

Rule 849 (1)

Form 100

## WARRANT TO APPREHEND

*[General heading as in form 1 and rule 824]***To** every constable or bailiff of the *[Name of]* Court at *[Place]*.**And to** the superintendent of the prison at *[Place]*.

1. *[Full name, address, and description of person summoned to attend Court]* was required to appear before the *[Name]* Court at *[Place]* on *[Date]*, to be examined.

2. The summons dated *[Date]* was served on *[Full name and address of person on whom summons was served]*.

3. The prescribed sum was tendered to *[Full name and address of person]* for expenses.

4. *[Full name]* has not informed the Court of any reasonable excuse for not appearing as required by the summons.

5. You, the executing constable or bailiff, must—

(a) Take *[Full name]* into custody and bring *[Full name]* immediately before this Court to be examined; AND

(b) If *[Full name]* cannot immediately be brought up for examination, deliver *[Full name]* into the custody of the superintendent of the above-named prison and report what you have done to this Court.

6. You, the superintendent, must receive and keep safe *[Full name]* in prison and produce *[Full name]* before the Court as it directs.

Dated at *[Place]* *[Date]*.

.....  
(Deputy) Registrar.

—

SCHEDULE—continued

Form 101

Rule 859 (1)

NOTICE OF OBJECTION

[General heading as in form 1 and rule 824]

**Take notice** that I, Official Assignee OR [Full name, address, and description of creditor] object to the discharge of the above-named bankrupt.

*Note:* Attached to this notice is a copy of the order of the Court granting leave to object to the discharge.\*

\*Delete if objection by Official Assignee.

Dated at [Place] [Date].

.....  
(Deputy) Official Assignee/Creditor.

—  
Form 102

NOTICE OF INTENTION TO HOLD PUBLIC EXAMINATION UNDER SECTION 109 OF THE INSOLVENCY ACT 1967

[General heading as in form 1 and rule 824]

**Notice** is given that a public examination of the bankrupt concerning the bankrupt’s discharge, is fixed for [Date and time] at the sitting of the High Court at [Place].

Dated at [Place] [Date].

.....  
(Deputy) Official Assignee.

—  
Form 103

Rule 865

PROPOSAL

[General heading as in form 1 and rule 824]

I, [Full name, address, and description of insolvent] (“the insolvent”) submit the following proposal under the Insolvency Act 1967.

1. That payment of the claims of the secured creditors will be made in the following manner:

[Terms of proposal in respect of secured claims].

2. That payment of all claims directed by the Insolvency Act 1967 to be paid in priority to all other claims in the distribution of the property of a bankrupt will be made as follows:

[Terms of proposal in respect of preferred claims].

SCHEDULE—continued

Form 103—continued

3. That provision for payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal will be made in the following manner:

[Terms of proposal in respect of the fees and expenses of the trustee].

4. That a dividend of [Amount] cents in the dollar will be paid on all unsecured claims.

OR [Terms of proposal in respect of unsecured claims].

5. That the money payable under this proposal will be paid over to the trustee, [Full name and address] and the payment of the money will be secured in the following manner:

[Full names and addresses of sureties, if any, and complete particulars of all securities intended to be given].

6. That [Full name and address] is willing to act as trustee in terms of this proposal.

Dated at [Place] [Date].

.....  
Insolvent.

I am willing to act as trustee in terms of this proposal.

.....  
Trustee.

Rule 865

Form 104

STATEMENT OF AFFAIRS AND AFFIDAVIT

[General heading as in form 1 and rule 824]

Statement showing the assets, debts, and liabilities of [Full name, address, and description of insolvent person].

**Assets**

- Stock-in-trade at [Place], estimated at \$ .....
- Book debts, estimated to produce
- Cash in hand
- Cash in Bank of
- Furniture and other personal property according to list attached marked "A"
- Real property according to list attached marked "B"
- Surplus from securities in hands of secured creditors
- Other assets
- Total assets** \$ .....

SCHEDULE—*continued*Form 104—*continued***Debts and Liabilities**

Unsecured creditors according to list attached, marked “C”	\$ .....
Secured creditors according to list attached, marked “D”	
Less estimated value of securities	
Surplus	\$ .....
Other liabilities, according to list attached, marked “E”	
<b>Total debts</b>	<b>\$ .....</b>

I, [Full name, address, and description of insolvent person] swear that the above statement and the lists marked “A”, “B”, “C”, “D” and “E” are a true statement of my assets and liabilities, the names and addresses of my creditors, and the securities held by them respectively.

Sworn at [Place] [Date].

.....  
Insolvent person.

Before me:

.....  
A Solicitor of the High Court of  
New Zealand or (Deputy) Registrar  
of the High Court of New Zealand  
or Notary Public).

Form 105

Rule 866

## REPORT OF TRUSTEE ON PROPOSAL

[General heading as in form 1 and rule 824]

I, [Full name, address, and description of trustee], the trustee acting in the proposal of [Full name, address, and description of insolvent] (“the insolvent”) report to the Court as follows:

1. The insolvent on [Date] lodged in the Court a proposal, a true copy of which (marked “A”) is attached.

2. On [Date], I gave notice to every known creditor affected by the proposal and whose name and address marked “B” are attached to this report, of the calling of a meeting of creditors to be held on [Date] to consider the proposal.

3. The notice was accompanied by the following:

(a) A statement of the assets and liabilities of the insolvent:

SCHEDULE—*continued*Form 105—*continued*

- (b) A list of the insolvent's creditors affected by the proposal and showing the amounts of their claims:
- (c) A copy of the debtor's proposal, a form of proof of debt, and a voting letter.

4. True copies of the notice, the statement of affairs, and the list of creditors marked "C", "D", and "E" are attached.

5. The meeting of creditors was held on [Date] and was presided over by [Full name].

6. The proposal was—

- (a) Accepted by the required majority of creditors.

OR

- (b) Amended at the meeting and as so amended was accepted by the required majority of creditors.

7. A true copy of the resolution of the meeting marked "F" is attached.

8. My opinion is as follows:

- (a) That the assets of the insolvent and their fair realisable value are as follows:

*[Details of assets, giving the value as carried on the books of the insolvent and the trustee's estimate in each case of their realisable value].*

- (b) That the liabilities of the insolvent are as follows:

*[Details of liabilities, including whether secured, preferred, or unsecured, pointing out discrepancies, if any, between the liabilities as declared by the insolvent and as subsequently proved and admitted by the trustee].*

- (c) That the debtor's proposal is an advantageous one for the creditors OR otherwise, as the case may be, for the following reasons:

*[Full reasons of the trustee].*

Dated at [Place] [Date].

.....  
Trustee.

SCHEDULE—continued

Form 106

Rule 868 (2)

ACCOUNT OF ASSETS, DEBTS, ETC, OF DECEASED PERSON VERIFIED BY AFFIDAVIT

[General heading as in form 1 and rule 824]

Statement showing the assets, debts, and liabilities of the estate of [Full name and former address of deceased] (“the deceased”).

**Assets**

- Stock-in-trade at [Place] estimated at \$ .....
- Book debts according to list attached marked “A”
- Cash in hand
- Cash in Bank of
- Household furniture and effects
- Real property according to list attached marked “B”
- Surplus from securities in hands of secured creditors
- Any other assets according to list attached marked “C”
- Total assets** \$ .....

**Debts and Liabilities**

- Unsecured creditors, according to list attached, marked “D”
- Secured creditors according to list attached, marked “E”
- Less estimated value of securities
- Surplus \$ .....
- Other liabilities, according to list attached, marked “F”
- Total debts** \$ .....

According to the above statement there appears to be a deficiency in the estate amounting to [Amount] [Other particulars necessary to explain the account].

I, [Full name, address, and description of administrator] swear:

1. That I am the administrator of the estate.
2. That the above statement and the lists marked “A”, “B”, “C”, “D”, “E” and “F” respectively show the assets, debts, and liabilities of the deceased so far as they are known to me.

SCHEDULE—*continued*Form 106—*continued*

Dated at [Place] [Date].

.....  
Administrator.

Before me:

.....  
A Solicitor of the High Court of  
New Zealand or (Deputy) Registrar  
of the High Court of New Zealand  
or Notary Public.

—  
Form 107

CERTIFICATE BY PUBLIC TRUSTEE OR MAORI TRUSTEE OF ELECTION TO  
ADMINISTER UNDER PART XVII OF THE INSOLVENCY ACT 1967

[General heading as in form 1 and rule 824]

The Public Trustee or the Maori Trustee, as the case may be, certifies as follows:

1. The Public Trustee or the Maori Trustee is—

(a) The executor under the will of the deceased, which was proved in this Court on [Date].

OR

(b) The administrator of the estate of the deceased under an order to administer the estate granted to the Public Trustee or the Maori Trustee on [Date].

2. As the executor or administrator, the Public Trustee or the Maori Trustee is possessed of the estate, and is satisfied that the assets of the deceased available, or reasonably likely to be available, are not sufficient to meet the several claims on the estate (or as the facts may justify), and that the estate is apparently insolvent.

3. Under the circumstances, the Public Trustee or the Maori Trustee elects to administer the estate under the provisions of Part XVII of the Act, and makes this certificate accordingly.

SCHEDULE—*continued*Form 107—*continued*

Dated at [Place] [Date].

.....  
 Signed by the Public Trustee or the  
 Maori Trustee and sealed with the  
 seal of office in the presence of:

.....  
 Witness.  
 [Name, Address, and description].”

MARIE SHROFF,  
 Clerk of the Executive Council.

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 EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 1 February 2000, amend the High Court Rules.

*Rule 2* adds *new Part 16*, which replaces the Insolvency Rules 1970.

*Rule 3* adds new insolvency forms to the First Schedule.

*Rule 4* contains consequential revocations.

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These rules are administered in the Department for Courts.