



REPUBLIC OF VANUATU

COMPANIES (INSOLVENCY AND RECEIVERSHIP) ACT NO. 3 OF 2013

Companies (Insolvency and Receivership) Regulation Order No. 111 of 2015

In exercise of the powers conferred on me by subsection 80(1) of the Companies (Insolvency and Receivership) Act No. 3 of 2013, I, the Honourable WILLIE JIMMY TAPANGARARUA, Minister of Finance and Economic Management, make the following Order.

1 Interpretation

In this Regulation unless a contrary intention appears,

Act means the Companies (Insolvency and Receivership) Act No. 3 of 2013.

2 Claims by unsecured creditor

A claim by an unsecured creditor under subclause 6(1) of Schedule 7 of the Act must be in the form set out in Schedule 1.

3 Secured creditor valuing security and claiming as unsecured creditor for balance due

A valuation and claim by a secured creditor under clause 9 of Schedule 7 of the Act must be in the form set out in Schedule 2.

4 Remuneration of liquidators

Unless the Court otherwise orders under subclause 14(2) of Schedule 3 of the Act, the remuneration of a liquidator appointed under section 13, 14, 15 or 16 of the Act, is to be calculated on an hourly rate in the following manner:

- (a) for work undertaken by the liquidator, VT30,000 per hour or part of an hour; or
- (b) for work undertaken by an accountant or solicitor employed by the liquidator, VT30,000 per hour or part of an hour; or
- (c) for work undertaken by any other employee of the liquidator, VT20,000 per hour or part of an hour.

5 Application of Schedules 1 to 3

- (1) Schedules 1 to 3 apply in respect of every application made to the Court:

- (a) for putting a company into liquidation; or
- (b) for an order under section 99 of the Companies Act No. 25 of 2012.

- (2) Clause 34 of Schedule 2 of this Regulation applies to a notice under paragraph 8(1)(a) of Schedule 6 of the Act.


- (3) The Civil Procedure Rules Order No. 49 of 2002 applies to:

- (a) an application made under subclause (1); and
- (b) a notice made under subclause (2),

except in so far as they are modified by or inconsistent with Schedules 2 and 3 of this Regulation or the Act, as the case may be.

- (4) In Schedules 2 to 4 of this Regulation, **Registrar** means the Registrar of the Supreme Court appointed under section 40 of the Judicial Services and Courts Act [CAP 270] and includes any person appointed as the acting Registrar or assistant Registrars.

Made at Port Vila this 28th day of 8, 2015.



Honourable WILLIE JIMMY TAPANGARARUA
Minister of Finance and Economic Management



SCHEDULE 1

LIQUIDATION FORMS

Subclause 6(1) of Schedule 7 of the Act

Form 1 Unsecured creditor's claim

[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.]

Name of company in
liquidation

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Details of Creditor

Name		Email*	
Address		*Optional	
		Telephone	
		Facsimile*	
		*Optional	

Details of person completing this form

Completed by		Email*	
Address		*Optional	
		Telephone	
		Facsimile*	
		*Optional	

I [name] *[if claim is made on behalf of creditor, specify relationship to creditor and authority.]*
claim that the company was at the date it was put into liquidation indebted to the above named
creditor for the sum of *[Amount in words and figures.]*:

Either: I hold no security for the amount claimed; or

I am surrendering my security and I am claiming as an unsecured creditor

[Omit whichever does not apply]

Full particulars of the claim are set out, and any supporting documents that substantiate the claim are identified, on the reverse of this form.

[The liquidator may require the production of a document under clause 6(2) of Schedule 7 of the Act. You are not required to attach any supporting documents at this stage, but you may attach them now, if you think it would expedite the processing of the claim.]

Signed: Date:

Warning

It is an offence under clause 6(6) of Schedule 7 of the Act to—

- make, or authorise the making of, a claim under that clause that is false or misleading in a material particular knowing it to be false or misleading; or
- omit, or authorise the omission, from a claim under that clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

Reserved for office use

Claim received: Signed:	Date:
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Claim admitted for voting purposes:

Signed: Date:

Claim rejected for voting purposes:

Signed: Date:

Claim rejected for payment: Signed:	Date:
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Claim admitted for payment: Signed:	Date:
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Preferential claim for:

Ordinary claim for:

Deferred claim for:

VT

VT

VT

Signed	
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Liquidator:	Date:
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Particulars of claim

Date	Details of claim and identification of documents that evidence or substantiate the claim	Amount VT
	<p>If applicable, less retention of title for goods supplied by creditor to the company [describe goods]</p>	VT
	<p>If applicable, less debts owed by creditor to the company [describe debts]</p>	VT

Form 2

Subclause 9(1) of Schedule 7 of the Act

Secured creditor's valuation and claim

[If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the prescribed format.]

Name of company in
liquidation

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Details of Creditor

Name		Email*	
Address		*Optional	
		Telephone	
		Facsimile*	
		*Optional	

Details of person completing this form

Completed by		Email*	
Address		*Optional	
		Telephone	
		Facsimile*	
		*Optional	

I [name] [if claim is made on behalf of creditor, specify relationship to creditor and authority] claim that after valuing the security as at the date the company was put into liquidation the above named creditor is an unsecured creditor for the sum of [Amount in words and figures.]:

Full particulars of the valuation, claim, and charge are set out, and any supporting documents that substantiate the claim and the charge are identified, on the reverse of this form.

[The liquidator may require the production of a document under clause 9(2) of Schedule 7 to the Act. You are not required to attach any supporting documents at this stage, but you may attach them now, if you think it would expedite the processing of the claim.]

Signed:

Date:

Warning

It is an offence under clause 13 of Schedule 7 to the Act to—

- make, or authorise the making of, a claim under that clause that is false or misleading in a material particular knowing it to be false or misleading; or
- omit, or authorise the omission, from a claim under that clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

Reserved for office use

Claim received: Signed:	Date:
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Claim admitted for voting purposes:

Signed:

Date:

Claim rejected for voting purposes:

Signed:

Date:

Claim rejected for payment: Signed:	Date:
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Claim admitted for payment: Signed:	Date:
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Preferential claim for:

Ordinary claim for:

VT

VT

Signed Liquidator:	Date:
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Valuation of security

Particulars of the charge:
<p>Description of charge:</p> <p>Description and location of property subject to charge:</p> <p>Date charge given [<i>or date of acquisition of property subject to the charge</i>]:</p> <p>If applicable, details of registration (including date):</p>

Particulars of the valuation:
<p>Amount security valued at:</p> <p>Particulars of valuation:</p>

<p>Identification of any documents that substantiate the claim and the charge: <i>[If not already supplied in either of above boxes]</i></p>

SCHEDULE 2

COURT PROCEEDINGS

Content

- 1 Hearing of applications
 - 2 Applications to be made by claim
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 - 8 Power to stay liquidation proceedings
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 - 33 Liquidator's notice to set aside voidable transaction or voidable charge
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1 Hearing of applications

Unless the Court otherwise directs, every application to which this Schedule applies must be heard in open Court.

2 Applications to be made by claim

- (1) An application to the Court to put a company into liquidation under section 15 of the Act must be made by claim in form 3 of Schedule 3.
- (2) An application to the Court under section 99 of the Companies Act No. 25 of 2012 must be made by claim in form 4 of Schedule 3.

3 Notice of proceeding and verifying sworn statement

- (1) The following documents must be filed and served with a claim filed under clause 2:
 - (a) a notice of proceeding in form 5 of Schedule 3; and
 - (b) a sworn statement in form 6 of Schedule 3 or form 7 of Schedule 3 verifying the allegations in the claim.
- (2) The sworn statement may be made by:
 - (a) the claimant, or by 1 of the claimants, if more than 1; or
 - (b) if the proceeding is being brought by a corporation, by a person who meets the requirements of subclause (3).
- (3) A person may make a sworn statement on behalf of a corporation or body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office) if the person:
 - (a) knows the relevant facts; and
 - (b) is authorised to make the sworn statement.
- (4) The sworn statement is sufficient prima facie evidence of the statements in the claim.

4 Date of hearing

- (1) On the filing of a claim under clause 2, the Registrar of the Court must, as soon as practicable, appoint the time and place at which the proceeding is

to be heard, taking into account the notice periods provided for in this Schedule.

- (2) The notice of the time and place appointed for hearing the application must be included in the notice of proceeding in form 5 of Schedule 3, and the Registrar may, at any time before public notice of the proceeding has been given, alter the time appointed and fix another time.

5 Directions

The powers of the Court to give directions in respect of the conduct of proceedings apply, with all necessary modifications, in relation to every proceeding commenced by the filing of a claim under clause 2.

6 Public notice of a claim

- (1) Subject to clause 7 and to any order made on an application under clause 8, public notice of every proceeding commenced by a claim filed under clause 2 must be given at least 7 days before the hearing.
- (2) A public notice may be in form 8 of Schedule 3 or form 9 of Schedule 3, as the case may require.
- (3) A public notice must:
 - (a) state the day on which the application to put the defendant company into liquidation was filed; and
 - (b) state the name and address of the claimant and of the claimant's solicitor (if any); and
 - (c) state the claimant's address for service; and
 - (d) state the place, date, and time of the hearing of the application; and
 - (e) state that the claim and the verifying sworn statement may be inspected at the registry of the Court or at the claimant's address for service; and
 - (f) state that any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before the day appointed for the hearing of the application.

- (3) If the claimant or the claimant's solicitor does not within the time prescribed, or within such extended time as the Registrar may allow, duly give public notice of the proceeding in the manner prescribed by this rule, the appointment of the time and place at which the proceeding is to be heard must be cancelled by the Registrar and the proceeding must be removed from the list, unless the defendant company has been served, or the Court otherwise directs.
- (4) For the purposes of this clause, **public notice** has the same meaning as in the Companies Act No. 25 of 2012.

7 Restriction on giving public notice of proceeding

If a claim filed under clause 2 is filed by the defendant company, no person may, unless the Court otherwise directs, publish any public notice required by clause 6 or any other information relating to that claim until at least 7 days after the date on which the claim in the proceeding is served on the defendant company.

8 Power to stay liquidation proceedings

- (1) If a claim is filed under clause 2:
 - (a) the defendant company; or
 - (b) with the leave of the Court, a creditor or of that company; or
 - (c) the Registrar of Companies,may, within 21 days after the date of the service of the claim on the defendant company, apply to the Court for an order restraining publication of any public notice required by clause 6 or any other information relating to that claim and staying any further proceedings in relation to the liquidation.
- (2) The Court must deal with every application under subclause (1) as if it were an application for an interim injunction and, if it makes the order sought, may make it on such terms as the Court thinks fit.
- (3) To avoid doubt this regulation does not limit the inherent jurisdiction of the Court.

9 Service of proceeding

- (1) A claim filed under clause 2 must, unless the claimant is the defendant company, be served together with a sworn statement and notice of

proceeding on the defendant company at the registered office of the defendant company.

- (2) Service under this rule must be effected not less than 21 days before the date of hearing appointed or fixed under clause 4.

10 Sworn statement of service

- (1) The claimant must, before the hearing, file a sworn statement of service as set out in form 10 of Schedule 3, showing proof of service of the statement of claim, sworn statement, and notice of proceeding on the defendant company.
- (2) Subclause (1) does not apply:
 - (a) if the claimant is the defendant company; or
 - (b) on any person who, before the hearing, files a defence.

11 Evidence of public notices

The claimant must, before the hearing, file in the office of the Court:

- (a) copies of the public notices published in accordance with clause 6; and
- (b) a statement of the dates on which the public notices appeared.

12 Entitlement to copy of claim

- (1) A claimant must, on the request of the Registrar of companies or the shareholders or creditors of a defendant company, within 24 hours of receiving the request, provide the copy of the claim, sworn statement and notice of proceedings.
- (2) A claimant may charge a fee of not exceeding VT50 per page, of the copy of the claim, the sworn statement and the notice of proceedings.

13 Defence

- (1) The provisions of the Court rules relating to the time within which a defence must be filed do not apply to a proceeding commenced by the filing of a claim under clause 2.

- (2) Any person who, being the defendant company or a creditor or shareholder of that company, intends to defend a proceeding commenced by a claim filed under clause 2, must file a defence in the office of the Court named in the notice of proceeding.
- (3) A person who files a defence must serve a copy of that defence on:
 - (a) the claimant; and
 - (b) any other person who, when the defence is filed, has filed a defence in the proceeding.
- (4) If the defendant company has filed a defence, any defence filed by a creditor or shareholder of that company must state specifically any grounds of opposition that are additional to those appearing in the company's defence.

14 Time for filing defence

If any person to whom subclause 13(2) applies is a person on whom the claim is served, that person must file a defence within 14 days after the date on which the claim is served upon that person.

15 Appearance

A person who, other than the defendant company, intends to appear at the hearing of the proceeding may, without filing a defence, file an appearance in form 11 of Schedule 3:

- (a) stating that he or she person intends to appear; and
- (b) indicating whether he or she supports or opposes the claim or the application for an order under section 99 of the Companies Act No. 25 of 2012.

16 Time for filing appearance

An appearance must be filed not later than the second working day before the day appointed for the hearing.

17 Effect of failure to file defence or appearance

If a person who is entitled to file a defence or an appearance in a proceeding commenced by the filing of a claim under clause 2, fails to file a defence or an appearance within the time prescribed by these rules, that person is not, without an

order for extension of time granted on application made under clause 19 or the special leave of the Court, allowed to appear on the hearing of the proceeding.

18 Evidence as to unpaid debts

- (1) A certificate by the solicitor for the claimant that, after having made due inquiries, the solicitor is satisfied that any debt remains unpaid may be accepted by the Court as sufficient prima facie evidence that that debt remains unpaid.
- (2) Subject to any direction of the Court, evidence that any debt remains unpaid may be given by a sworn statement sworn by or on behalf of the claimant and so sworn not earlier than the third day before the day of the hearing of the proceeding.

19 Interlocutory applications

- (1) If a proceeding is commenced by the filing of a claim under clause 2, no interlocutory application (other than an application made with the leave of the Court) may be made to the Court before the date of hearing specified in the notice of proceeding served with that claim unless that application is:
 - (a) an application for an extension or abridgment of time; or
 - (b) an application under subclause 4(2) or clause 8; or
 - (c) an application for the appointment of an interim liquidator; or
 - (d) an application for directions; or
 - (e) an application to excuse non-compliance with any provision of this Regulation.
- (2) If a defence is filed in a proceeding commenced by the filing of a claim under clause 2 and the hearing of that proceeding is adjourned for a fixture on a defended basis, the Court rules apply as if the proceeding had been commenced by a claim filed under the Court rules and not by a claim filed under clause 2.
- (3) To avoid doubt, this clause does not limit the inherent jurisdiction of the Court.

20 Power to appoint interim liquidator

- (1) If a proceeding for putting a company into liquidation has been commenced by the filing of a claim under clause 2(1), the claimant and any person entitled to apply to the Court for the appointment of a liquidator under section 15 of the Act may apply to the Court for the appointment of an interim liquidator.
- (2) If, on an application under subclause (1), the Court is satisfied, upon proof by sworn statement, that there is sufficient ground for the appointment of an interim liquidator, it may make the appointment, and may limit the rights and powers of the interim liquidator in such manner as it thinks fit.

21 Additional and substituted claimants in liquidation proceeding

- (1) This clause applies to any person, who is entitled to make an application to the Court for putting the company into liquidation under section 15 of the Act.
- (2) If a proceeding to put a company into liquidation has been commenced, a person to whom this rule applies may become a claimant in that proceeding, not later than the second working day before the day appointed for the hearing of the proceeding, by filing in the registry of the Court and serving on all the other parties to the proceeding, in the same manner as if that person were commencing the proceeding:
 - (a) a claim in form 3 of Schedule 3; and
 - (b) a notice of proceeding in form 5 of Schedule 3; and
 - (c) a sworn statement in form 6 of Schedule 3.
- (3) If a person to whom this rule applies has filed an appearance under clause 15 in a proceeding to put a company into liquidation and, on the day appointed for the hearing, or on any day to which the hearing has been adjourned, no claimant wishes to proceed, on that day, with the hearing of the application to put the company into liquidation, the Court may, on the oral application of that person, but subject to subclause (4):
 - (a) add that person as a claimant in the proceeding; or
 - (b) substitute that person for the claimant or claimants or any of the claimants in the proceeding.
- (4) The addition or substitution of a person as a claimant under subclause (3) is subject to the condition that the person must file in the office of the Court

and serve on all the other parties to the proceeding, within 7 days after the day on which the addition or substitution is made:

- (a) a claim in form 3 of Schedule 3; and
 - (b) a notice of proceeding in form 5 of Schedule 3; and
 - (c) a sworn statement in form 6 of Schedule 3.
- (5) If a person to whom subclause 13(2) applies, is a person to whom the claim is served pursuant to this rule, that person must file a defence within 14 days after the date on which the claim is served on that person.

22 Consolidation of proceedings

- (1) If 2 or more proceedings have been commenced in respect of the same company by the filing of claims under clause 2, the Court may order those proceedings to be consolidated on any terms that it thinks just.
- (2) This clause does not limit the power of the Court to make orders or give directions in respect of the consolidation of the proceedings.

23 Discontinuance of proceeding

A proceeding commenced by the filing of a claim under clause 2 may be discontinued only with the leave of the Court.

24 Requirements in relation to order appointing interim liquidator

An order appointing the interim liquidator must:

- (a) bear the number of the proceeding; and
- (b) state the nature and a short description of the property of which the interim liquidator is ordered to take possession;
- (c) state the duties to be performed by the interim liquidator; and
- (d) state how the remuneration of the interim liquidator is to be calculated if it differs from the remuneration set out in Regulation 6.

25 Costs, charges, and expenses of interim liquidator

Subject to any order of the Court, if:

- (a) no order for putting the defendant company into liquidation is made in the proceeding; or
- (b) an order for putting the defendant company into liquidation is rescinded; or
- (c) all proceedings for putting the defendant company into liquidation are stayed,

the person holding office as interim liquidator is entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person as interim liquidator.

26 Obligation to send notice of order appointing liquidator or interim liquidator of company

- (1) If the Court makes an order to appoint a person to be the liquidator or interim liquidator of a company prior to making an order for putting the company into liquidation, the Registrar must, on the same day, notify the liquidator or interim liquidator of his or her appointment.
- (2) The claimant or the claimant's solicitor must provide the relevant information for the notice on that same day, to enable the Registrar to comply with subclause (1).
- (3) The notices referred to in this clause are in form 12 of Schedule 3 or in form 13 of Schedule 3, as the case may require, with such variations as circumstances may require.

27 Order and copies to be sealed

The claimant or the claimant's solicitor must, at latest on the second working day after the day on which an order putting a company into liquidation is pronounced in Court:

- (a) leave the order and 2 copies thereof at the registry of the Court for sealing; and
- (b) serve a copy upon the Registrar of Companies.

28 Contents of order putting company into liquidation

- (1) An order putting a company into liquidation may be in form 14 of Schedule 3.

- (2) An order for the appointment of an interim liquidator may be in form 15 of Schedule 3.

29 Transmission of order putting company into liquidation

If an order that a company be put into liquidation or an order for the appointment of an interim liquidator is made:

- (a) 1 copy of the order sealed with the seal of the Court must immediately be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be, by the claimant or the claimant's solicitor;
- (b) 1 copy of the order sealed with the seal of the Court must be served by the claimant or the claimant's solicitor upon the company in accordance with the Act; and
- (c) 1 copy of the order sealed with the seal of the Court must immediately be sent by post by the claimant or the claimant's solicitor, to the Registrar of Companies.

30 Service of order made under section 99 of the Companies Act 2012

If an order is made under section 99 of the Companies Act No. 25 of 2012, a copy of the order must, unless the Court otherwise orders, be served by the claimant or the claimant's solicitor on:

- (a) the defendant company in accordance with the Act;
- (b) the Registrar of Companies.

31 Service of notice of company being put into liquidation

A notice given for the purposes of Schedule 4 of the Act being:

- (a) a notice that an application has been made to the Court to appoint a liquidator; or
- (b) a notice that the Court has made an order appointing a liquidator; or
- (c) a notice that the Court has appointed an interim liquidator; or
- (d) a notice of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or

- (e) a notice that a special resolution has been passed appointing a liquidator;
or
- (f) a notice of the calling of a meeting of the board at which a resolution is
proposed to appoint a liquidator; or
- (g) a notice that a resolution has been passed appointing a Liquidator,

must be in writing and must be addressed to the officer charged with the execution, and may be served by being delivered by hand or by registered post at the office of the officer charged with the execution.

32 Procedure in respect of miscellaneous applications

- (1) Subject to subclauses (2) and (3), if the Act provides for an application to be made to the Court in respect of:
 - (a) a company that is the defendant company in relation to an application made for putting that company into liquidation under section 15 of the Act; or
 - (b) a company in respect of which a liquidator has been appointed under section 15 of the Act; or
 - (c) a company in respect of which an application under section 99 of the Companies Act No. 25 of 2012 is pending, as the case may be,

the application to be made to the Court must, unless any provision of those Acts or some other provision of this Regulation otherwise requires or the Court otherwise directs, be made to the Court in accordance with the Court rules as if that application were an interlocutory application.

- (2) Every application to which subclause (1) applies must show, in addition to any matters required by the Court rules, the same intitlement as the intitlement shown on the application for putting the company into liquidation or for the order under section 99 of the Companies Act No. 25 of 2012.

33 Liquidator's notice to set aside voidable transaction or voidable charge

A notice under clause 8 of Schedule 6 of the Act must:

- (a) contain the heading in form 16 of Schedule 3; and
- (b) be in form 17 in Schedule 3 or form 18 of Schedule 3, as the case may require.

34 Filing of notices under clause 8 of Schedule 6 of the Act

A notice under clause 8 of Schedule 6 of the Act must be filed in the Court registry under the same file number as the liquidation file number (even if the heading of the notice is different).

SCHEDULE 3

COURT FORMS

Form 1	General heading for documents filed in liquidation proceeding
Form 2	Memorandum to be subscribed to first document filed by party
Form 3	Claim in proceeding for putting company into liquidation
Form 4	Claim in proceeding for order under section 99 of Companies Act 2012
Form 5	Notice of proceeding for putting company into liquidation (or for order under section 99 of Companies Act 2012)
Form 6	Verifying sworn statement
Form 7	Sworn statement verifying claim of limited company
Form 8	Public notice of application for putting company into liquidation
Form 9	Public notice of application for order under section 99 of Companies Act 2012
Form 10	Sworn statement of service
Form 11	Appearance in support of (or in opposition to) application for putting a company into liquidation (or for making of order under section 99 of Companies Act 2012)
Form 12	Notification to liquidator of order putting company into liquidation
Form 13	Notification to interim liquidator of appointment
Form 14	Order putting company into liquidation
Form 15	Order appointing interim liquidator
Form 16	General heading for notices in forms 17 and 18
Form 17	Notice to set aside voidable transaction under Companies (Insolvency and Receivership) Act 2013
Form 18	Notice to set aside voidable charge under <i>Companies (Insolvency and Receivership) Act 2013</i>
Form 19	Notice objecting to setting aside of transaction or charge

Form 1

General heading for documents filed in a proceeding

In the Supreme Court of Vanuatu

No [number]

Under the Companies (Insolvency and
Receivership) Act 2013
[if appropriate]

In the matter of
[if appropriate]

Between [full name], of [place of residence], [occupation],
Claimant

And [full name], of [place of residence], [occupation],
Defendant

Form 2

Memorandum to be subscribed to first document filed by party

This document is filed by the above-named claimant (*or* defendant, etc) in person. The address for service of the above-named claimant (*or* defendant, etc) is

or

This document is filed by [*name*], solicitor for the above-named claimant (*or* defendant, etc), of the firm of [*name*]. The address for service of the above-named claimant (*or* defendant, etc) is [*address*].

Documents for service on the above-named claimant (*or* defendant, etc) may be left at that address for service or may be—

- (a) posted to the solicitor at [*Post Office box address*]; or
- (b) transmitted to the solicitor by facsimile to [*facsimile number*].

Form 3

Claim in proceeding for putting company into liquidation

[General heading in form 1.]

The claimant says:

1 The *[Name]* (the defendant company) was in *[month and year]* incorporated under the Companies Act 2012.

2 The registered office of the defendant company is at *[full address of registered office]*.

[Set out in consecutive numbered paragraphs the facts on which the claimant relies.]

The claimant therefore seeks an order that the defendant company be put into liquidation by the Court under the Companies (Insolvency and Receivership) Act 2013.

[memorandum in form 2.]

Form 4

Claim in proceeding for order under section 99 of Companies Act No. 25 of 2012

[General heading in form 1.]

The claimant says:

1 The *[name]* (the defendant company) was in *[month and year]* incorporated under the Companies Act 2012.

2 The registered office of the defendant company is at *[full address of registered office]*.

3 The affairs of the defendant company have been (*or are being or are likely to be*) conducted in a manner that is oppressive (*or unfairly discriminatory or unfairly prejudicial*) to the claimant in the claimant's capacity as a shareholder of the defendant company (*or [any other capacity]*).

or

3 An act (*or acts*) of the defendant company have been (*or are being or are likely to be*) oppressive (*or unfairly discriminatory or unfairly prejudicial*) to the claimant in the claimant's capacity as a shareholder of the defendant company (*or [any other capacity]*).

[Set out in paragraphs the facts on which the claimant relies.]

The claimant therefore seeks the following relief:

[Set out in paragraphs the relief sought under section 99 of the Companies Act 2012.]

[memorandum in form 2.]

Form 5

Notice of proceeding for putting company into liquidation (or for order under section 99 of Companies Act 2012)

[General heading in form 1.]

To [name] (the defendant company)

and

[if a liquidator or interim liquidator has been appointed.]

To [name], [address], [description], the [liquidator][interim liquidator] of the defendant company

Take notice that the claimant is, by a claim, making application for an order that the defendant company be put into liquidation under the Companies (Insolvency and Receivership) Act 2013 (or for an order in respect of the defendant company under section 99 of the Companies Act 2012).

A copy of the claim is served with this notice.

The application will be heard in this Court at [place] at [time] am/pm on [date].

Take notice that unless, within 14 days after the date on which this notice is served on you, you file in this office of this Court a statement of your defence to the claimant's claim, a copy of which is served, the claimant may proceed to a hearing and an order may be made for the liquidation of the defendant company by the Court under the Companies (Insolvency and Receivership) Act 2013 (or an order may be made in respect of the defendant company under section 99 of the Companies Act 2012).

Dated at [place] on [date].

.....
Claimant

(or Solicitor for claimant)

Your attention is directed to the endorsed or attached memorandum.

Memorandum

Advice

1 If the defendant company wishes to oppose this application or to appear at the hearing, it is essential that it consult a lawyer without delay. A company cannot carry on proceedings in the Court except through a lawyer.

Public notice

2 Public notice of the application to put the defendant company into liquidation under the Companies (Insolvency and Receivership) Act 2013 (or for the making in respect of the defendant company of an order under section 99 of the Companies Act 2012) is to be given.

3 Public notice will not be given until at least 7 days after the date on which the claim is served on the defendant company.

**Power of Court to restrain advertising and stay proceedings*

**Delete if not applicable.*

*4 The Court has power to make an order restraining the giving of public notice and staying any further proceedings in relation to the liquidation.

**Delete if not applicable.*

*5 The defendant company or, with the leave of the Court, any creditor or shareholder of the defendant company may apply for such an order within 7 days after the date of the service of the claim on the defendant company.

**Delete if not applicable.*

Defence

6 If the last day for filing your defence falls on a day on which the office of the Court is closed, you may file your defence on the next day on which that office is open.

7 If you file a defence, you must also, within the time limited for filing it in the registry of the Court, serve a copy of the statement on the claimant and on any other person who, when the defence is filed, has filed a defence in the proceeding.

8 If a defence is not filed on behalf of the defendant company within the time prescribed, a lawyer for the defendant company will not, without an order for extension of time or special leave of the Court, be allowed to appear on the hearing. A company cannot appear in person. If it wishes to appear on the hearing, it must appear by a lawyer.

Appearance by persons other than the defendant company

9 Any person (other than the defendant company) who intends to appear on the hearing of the application must file an appearance—

- (a) stating that the person intends to appear; and
- (b) indicating whether the person supports or opposes the appointment of a liquidator by the Court (or the making in respect of the defendant company of an order under section 99 of the Companies Act 2012).

10 Any person who files an appearance need not file a defence.

11 Every appearance must be filed not later than the second working day before the day appointed for the hearing.

12 If you fail to file an appearance within the time prescribed, neither you nor a lawyer acting on your behalf will, without an order for extension of time or the special leave of the Court, be allowed to appear on the hearing.

Office hours

13 The office hours of the Court are from [time] am to [time] pm except on Court holidays.

Dated at [place] on [date].

.....
(Deputy) Registrar

Form 6

Verifying sworn statement

[General heading in form 1.]

I [name] of [residence], [occupation], swear that such of the allegations in the claim (a copy of which is attached, and marked with the letter "A") as relate to my own acts and deeds [or, if the claimant is a firm, the acts and deeds of my firm] are true and such of those allegations as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at [place] on [date]

Before me —

.....
[A person authorised to administer
an oath in Vanuatu]

Form 7

Sworn statement verifying claim of limited company

[General heading in form 1.]

I, [name] of [residence], [occupation], swear:

1 I have knowledge of the facts stated in this sworn statement and am duly authorised by the claimant in the above matter to make this sworn statement on its behalf.

2 The statements in the claim (a copy of which is attached and marked with the letter “A”) that relate to the acts and deeds of the claimant are true, and the statements that relate to the acts and deeds of any other person or persons I believe to be true.

Sworn at [place] on [date]

Before me—

.....
[A person authorised to administer
an oath in Vanuatu]

Form 8

Public notice of application for putting company into liquidation

[General heading in form 1.]

Take notice that on *[date]* an application for putting *[name]* into liquidation was filed in the Supreme Court of Vanuatu.

The application is to be heard before the Supreme Court on *[date]* at *[time]* am/pm.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The claimant is *[name]* whose address for service is *[address]*.

Further particulars may be obtained from the registry of the Court or from the claimant or the claimant's solicitor.

.....
(Solicitor for) Claimant

Form 9

Public notice of application for order under section 99 of the Companies Act No. 25 of 2012

[General heading in form 1.]

Take notice that on [date] an application for an order under section 99 of the Companies Act 2012 in respect of [name] was filed in the Supreme Court of Vanuatu.

The order sought is an order [nature of order sought].

The application is to be heard before the Supreme Court on [date] at [time] am/pm.

Any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than the second working day before that day.

The claimant is [name] whose address for service is [address].

Further particulars may be obtained from the registry of the Court or from the claimant or the claimant's solicitor.

.....
(Solicitor for) Claimant

Form 10

Sworn statement of service

[General heading in form 1.]

I [name] of [residence], [occupation] swear:

*1 On [date] I served the defendant company with—

- (a) the claim in this proceeding; and
- (b) the verifying sworn statement made by [name] and dated [date]; and
- (c) the notice of proceeding dated [date].

*Delete if not applicable.

or

*1 On [date] I served the defendant company with a claim, verifying sworn statement, and notice of proceeding (true copies of which are attached and marked “A”, “B”, and “C” respectively).

*Delete if not applicable.

2 I served the documents on the defendant company at [place] in Vanuatu by [method of service].

.....
Signature of deponent

Sworn at [place] on [date]

Before me—

.....
[A person authorised to administer
an oath in Vanuatu]

Form 11

Appearance in support of (or in opposition to) application for putting a company into liquidation (or for making of order under section 99 of Companies Act No. 25 of 2012

[General heading in form 1]

I *[name]* of *[address]*, *[occupation]* intend to appear on the hearing of this proceeding.

I support (*or* oppose) the application for putting the defendant into liquidation by the Supreme Court (or the application for an order under section 99 of the Companies Act 2012).

I am a creditor for VT[amount]* in the defendant company.

*Delete if not applicable.

*I am a shareholder holding *[number and class of shares]* shares in the defendant company.

*Delete if not applicable.

Dated at *[place]* on *[date]*.

.....
(Solicitor *or* Counsel for)
Person filing the appearance

[Memorandum in form 2.]

Form 12

Notification to liquidator of order putting company into liquidation

[General heading in form 1.]

To [name], liquidator [address].

Order made this day by the Honourable Justice [name] under the Companies (Insolvency and Receivership) Act 2013 that [name] be appointed as liquidator before any order putting the company into liquidation is made.

Order made this day by the Honourable Justice [name] that the defendant company be put into liquidation by the Court under the Companies (Insolvency and Receivership) Act 2013.

Name of company	Registered office of company	Claimant's solicitor	Date of filing of sworn statement

Form 13

Notification to interim liquidator of appointment

[General heading in form 1.]

To [name], interim liquidator [address].

Order made this day by the Honourable Justice [name] under the Companies (Insolvency and Receivership) Act 2013 that [name] be appointed as interim liquidator before any order putting the company into liquidation is made.

Order made this day by the Honourable Justice [name] that the defendant company be put into liquidation by the Court under the Companies (Insolvency and Receivership) Act 2013.

Name of company	Registered office of company	Claimant's solicitor	Date of filing of sworn statement

Form 14

Order putting company into liquidation

[General heading in form 1.]

Before the Honourable Justice *[name]* *[date]* *[time]*.

On the application of the claimant on *[date]* and on hearing *[name]* for the claimant, and *[name]* for *[party]* and on reading the claim and the sworn statement of *[name]* verifying the allegations in the claim, this Court orders that the defendant company be put into liquidation by this Court under the Companies (Insolvency and Receivership) Act 2013, and that *[name]* be appointed liquidator.

And it is ordered that the cost of *[amount]* of the application be paid out of the assets of the defendant company.

By the court,

.....
(Deputy) Registrar

Form 15
Order appointing interim liquidator

[General heading in form 1.]

Proceeding number:

Before the Honourable Justice *[name]* *[date]* *[time]*.

On the application, etc, and on reading, etc, the Court appoints *[name]* to be interim liquidator of the defendant company.

[describe the nature and a short description of the property of which the interim liquidator is ordered to take possession.]

[state the duties to be performed by the interim liquidator]

[state how the remuneration of the interim liquidator is to be calculated if it differs from the remuneration set out in Regulation 6]

By the Court,

.....
(Deputy) Registrar

Form 16

General heading for notices in forms 17 and 18

In the Supreme Court of Vanuatu

File no: *[number]*

The Companies (Insolvency and Receivership) Act 2013

In the matter of the liquidation of
[name of company in liquidation]

Between *[name]*, liquidator

And *[name, residence, and occupation of intended recipient of notice]*

Form 17

Notice to set aside voidable transaction under Companies (Insolvency and Receivership) Act No. 3 of 2013

[General heading in form 16.]

Take notice that—

1 [name], the liquidator of [name of company in liquidation] (the **company**) wishes to have set aside the following transaction by the company that is voidable under clause 2 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013:

[details of transaction to be set aside, including dates, amounts, and nature].

2 The company was put into liquidation by the appointment of a liquidator on [date and time] by—

- *special resolution of those shareholders entitled to vote and voting on the question
*Delete if not applicable.
- *the board of the company on the occurrence of an event specified in the rules
*Delete if not applicable.
- *the Supreme Court under proceeding no. [number], as a result of an application for the appointment of a liquidator that was filed on [date].
*Delete if not applicable.

3 The property or value that the liquidator wishes to recover is [details of property or value].

4 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of clause 2 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013.

5 A person may give notice objecting to the transaction being set aside if the person—

- (a) would be affected by the setting aside of the transaction; and
- (b) considers that the transaction is not voidable.

6 In the case of a transaction that is voidable under clause 2 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013, the transaction is set aside on the 20th working day after the date of service of this notice unless, **before** that date,

you file in the Court and serve on the liquidator a notice objecting to the transaction being set aside.

Dated at [place] on [date]

.....
(Solicitor or Counsel for)
The liquidator

To the Registrar of the Supreme Court of Vanuatu

And

To [names of the parties to be served]

[Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 2].

Important information for recipient of notice

Legal advice

1 Although it is not essential to employ a lawyer for the purpose of this notice, you are recommended to consult a lawyer about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a lawyer without delay. A company or other corporation cannot carry on proceedings in the Court except through a lawyer.

Notice objecting to transaction being set aside

2 You may file in the Court a notice objecting to the transaction being set aside under clause 8(2) of Schedule 6 of the Act. The notice must be in form 19.

Last day for filing application

3 The notice must be filed in the Court and served on the liquidator within 20 working days after the date of service of this notice.

Office hours

4 The office hours of the Court are from [time] am to [time] pm except on Court holidays.

Definition of working day (Companies (Insolvency and Receivership) Act No. 3 of 2013)

5 **Working day** means a day of the week other than—

- (a) Saturday and Sunday;
- (b) a day that is defined as, or declared to be, a public holiday under any Act.

Form 18

Notice to set aside voidable charge under Companies (Insolvency and Receivership) Act No. 3 of 2013

[General heading in form 16.]

Take notice that—

1 [name], the liquidator of [name of company in liquidation] (the **company**) wishes to have set aside the following charge by the company that is voidable under clause 4 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013:

[details of charge to be set aside, including dates, amounts, and nature].

2 The company was put into liquidation by the appointment of a liquidator on [date and time] by—

- *special resolution of those shareholders entitled to vote and voting on the question
*Delete if not applicable.
- *the board of the company on the occurrence of an event specified in the rules
*Delete if not applicable.
- *the Supreme Court under proceeding no. [number], as a result of an application for the appointment of a liquidator that was filed on [date].
*Delete if not applicable.

3 The property or value that the liquidator wishes to recover is [details of property or value].

4 In giving this notice, the liquidator relies on the following grounds:

Note: Here specifically and separately address each element of clause 4 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013.

5 A person may file in the Court a notice objecting to the charge being set aside if the person—

- (a) would be affected by the setting aside of the charge; and
- (b) considers that the charge is not voidable.

6 In the case of a charge that is voidable under clause 4 of Schedule 6 of the Companies (Insolvency and Receivership) Act No. 3 of 2013, the charge is set aside on the 20th working day after the date of service of this notice unless, **before** that date, you

file in the Court and serve on the liquidator a notice objecting to the charge being set aside.

Dated at [place] on [date]

.....
(Solicitor or Counsel for)
The liquidator

To the Registrar of the Supreme Court of Vanuatu

And

To [names of the parties to be served]

[Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 2].

Important information for recipient of notice

Legal advice

1 Although it is not essential to employ a lawyer for the purpose of this notice, you are recommended to consult a lawyer about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a lawyer without delay. A company or other corporation cannot carry on proceedings in the Court except through a lawyer.

Application for order that transaction not be set aside

2 You may file in the Court a notice objecting to the charge being set aside. The notice must be in form 19.

Last day for filing application

3 The notice must be filed in the Court and served on the liquidator within 20 working days after the date of service of this notice.

Office hours

4 The office hours of the Court are from [time] am to [time] pm except on Court holidays.

Definition of working day (Companies (Insolvency and Receivership) Act No. 3 of 2013)

5 Working day means a day of the week other than—

(a) Saturday and Sunday;

(b) a day that is defined as, or declared to be, a public holiday under any Act.

Form 19

**Notice objecting to setting aside of transaction or charge under the
Companies (Insolvency and Receivership) Act No. 3 of 2013**

[General heading in form 16.]

Take notice that—

1 *[Name]* objects to the setting aside of the transaction or charge referred to in the liquidator's notice dated *[date]*.

2 *[Name]* would be affected by the setting aside of the transaction or charge because *[name]* is a party to the charge (or *[state other reasons why person giving notice would be so affected]*).

3 *[Name]* considers that the transaction or charge is not voidable because:

[Here specifically and separately address each relevant element of clause 2 or clause 4 (as the case may require) of Schedule 6 of the Companies (insolvency and Receivership) Act No. 3 of 2013.]

Dated at *[place]* on *[date]*

.....
(Solicitor or Counsel for)
[Name]

To the Registrar of the Supreme Court of Vanuatu

And

To *[names of the parties to be served]*

[Here insert details as to who is filing this document and as to his or her address for service. This information should be in the form set out in form 2].

SCHEDULE 4

COURT FEES

Content

- 1 Fees of Court
- 2 Power to waive fees
- 3 Payment of fee may be postponed pending determination of application for waiver
- 4 Recovery of postponed fee
- 5 Power to refund fees
- 6 Fees payable by liquidators of companies without assets

1 Fees of Court

The fees specified in the following table are payable, and must be taken by the proper officer of the Court, in proceedings to which this Regulation applies in respect of the matters so specified:

	Matter	Fee
1	Filing a claim for an application to put a company into liquidation	VT20,000
2	Filing: (a) a defence; or (b) an amended defence; or (c) an amended claim; or (d) an appearance	No fee
3	Determination of setting down date for an application to put a company into liquidation	No fee
4	Hearing fee for legal practitioner for each half-day or part half-day after the first day for an application to put a company into liquidation	VT50,000 plus VAT

2 Power to waive fees

- (1) A person (the applicant) otherwise responsible for the payment of a fee required in connection with a proceeding or an intended proceeding may apply to the Registrar for a waiver of the fee.

- (2) The Registrar may waive the fee payable by the applicant if satisfied that the applicant would otherwise suffer undue financial hardship if he or she paid the fee.
- (3) An application under subclause (1) must be made in a form approved for the purpose by the Registrar.

3 Payment of fee may be postponed pending determination of application for waiver

- (1) The Registrar may, on application by a person who is awaiting the determination of an application under subclause 2(1), postpone the payment of the fee to which the application relates until the date on which the person is notified of the determination.
- (2) The Registrar may exercise the power under subclause (1) if satisfied that the person awaiting the determination of his or her application would be prejudiced if the matter to which the fee relates did not proceed before the determination.
- (3) An application under subclause (1) must be made in a form approved for the purpose by the Registrar.

4 Recovery of postponed fee

- (1) This clause applies to a fee that has been postponed under clause 3.
- (2) If the effect of a determination under clause 2 is that the fee is not to be waived, the fee:
 - (a) must be paid, without delay, to the Registrar; and
 - (b) is recoverable as a debt due to the Government in any court of competent jurisdiction.
- (3) Following a determination that has the effect referred to in subclause (2), the person responsible for paying the fee may not take a step in the proceeding to which the fee relates unless the fee is paid.

5 Power to refund fees

- (1) The Registrar may, on application, refund a fee that has already been paid if he or she is satisfied that:
 - (a) no application, under clause 2, for a waiver of the fee was made; and

- (b) the fee would have been waived, in accordance with clause 2, had that application been made; and
 - (c) the criteria that would have justified that waiver still apply at the date of the application for the refund.
- (2) An application under subclause (1) must be made in a form approved for the purpose by the Registrar.

6 Fees payable by liquidators of companies without assets

If the liquidator of a company gives the Registrar a certificate stating that the company has no immediately available assets out of which to pay the full fees for a proceeding or matter relating to the liquidation of the company, no fee (other than sheriffs' fees and the fee referred to in item 1 of the table in clause 1 for an application to put a company into liquidation) is payable in the Supreme Court for that proceeding or matter.