

**Reprint
as at 31 August 2012**



**Companies (Voluntary
Administration) Regulations
2007**

(SR 2007/296)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 24th day of September 2007

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 395(1) of the Companies Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

- 1 Title**

These regulations are the Companies (Voluntary Administration) Regulations 2007.
- 2 Commencement**

These regulations come into force on 1 November 2007.
- 3 Prescribed provisions included in deed of arrangement**
 - (1) Section 239ACN(3) of the Companies Act 1993 provides that the deed of company arrangement is treated as including any prescribed provisions, except those prescribed provisions that the deed expressly excludes.
 - (2) The prescribed provisions for the purposes of section 239ACN(3) are the provisions set out in Schedule 1.
- 4 Prescribed form for administrator's accounts**
 - (1) Section 239ACZ(3) of the Companies Act 1993 requires that the administrator's 6-monthly account filed with the Registrar must be in the prescribed form.
 - (2) For the purposes of section 239ACZ(3), the prescribed form is the form set out in Schedule 2.

Schedule 1

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Deed of company arrangement—prescribed provisions

Status and powers of deed administrator

1 Deed administrator deemed agent of company

In exercising the powers conferred by this deed and carrying out the duties arising under this deed, the deed administrator is taken to act as agent for and on behalf of the company.

2 Deed administrator's power to carry on business of company

The deed administrator has all powers necessary for carrying on the business of the company.

3 Deed administrator's specific powers

Without limiting clause 2, the deed administrator has the power to—

- (a) commence, continue, discontinue, and defend legal proceedings:
- (b) appoint a lawyer:
- (c) pay any class of creditors in full:
- (d) make a compromise or an arrangement with creditors, or persons claiming to be creditors, who have alleged a claim against the company, whether that claim is present or future, actual or contingent, or ascertained or not:
- (e) compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, or ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the administration of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge:
- (f) sell or otherwise dispose of the property of the company:

- (g) act in the name and on behalf of the company and enter into deeds, contracts, and arrangements in the name and on behalf of the company:
- (h) prove, rank, and claim in the bankruptcy or insolvency of a shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:
- (i) draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business:
- (j) borrow money on the security of the company's assets:
- (k) take out, in his or her name as deed administrator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from a shareholder, or his or her estate, which cannot be conveniently done in the name of the company, and in all such cases the money due is, for the purpose of enabling the deed administrator to take out the letters of administration or recover the money, deemed to be due to the deed administrator:
- (l) call a meeting of creditors or shareholders for—
 - (i) the purpose of informing creditors or shareholders of progress in the administration:
 - (ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the administration:
 - (iii) any other purpose connected with the administration as the deed administrator deems fit:
- (m) appoint an agent to do anything that the deed administrator is unable to do:
- (n) change the registered office or address for service of the company.

Creditors' claims

4 Priority of claims

- (1) The deed administrator must apply the assets of the company coming under his or her control under the deed in accordance with the priorities specified in Schedule 7 of the Companies Act 1993 as if the company were in liquidation and the deed administrator were the liquidator.
- (2) Section 313 of the Companies Act 1993 applies with all necessary modifications as if the company were in liquidation and the deed administrator were the liquidator.

5 Discharge of debts or claims

- (1) Each creditor of the company accepts that person's entitlement under the deed in full satisfaction and complete discharge of all debts or claims that, as at the date when the administration began, were due or payable, or claimed to be due or payable, to the creditor.
- (2) A creditor must, if required to do so, execute and deliver to the deed administrator a written release, in the form specified by the deed administrator, of all the creditor's debts or claims.

6 Debts or claims extinguished

The payment by the deed administrator of the full entitlement of a creditor under this deed extinguishes all debts or claims, present or future, actual or contingent, due or which may become due by the company to that creditor as a result of anything done or omitted by or on behalf of the company before the administration began.

7 Bar to creditors' debts or claims

- (1) This deed may be pleaded by the company against any creditor as a bar to any debt or claim that is admissible under this deed.
- (2) Whether or not the debt or claim of a creditor is admitted or established under this deed, a creditor must not, before the termination of this deed,—
 - (a) except for a purpose, and to the extent, provided by this deed, institute or prosecute any legal proceedings in relation to any debt incurred, or alleged to have been in-

- curred, by the company before the administration began; or
- (b) exercise any right of set-off or counterclaim to which the creditor would not have been entitled if the company had been placed in liquidation when the administration began; or
 - (c) commence or take any further step in any arbitration against the company to which the company is a party.
- (3) This provision is subject to section 239ACT of the Companies Act 1993.

8 Creditors' claims

- (1) Sections 302 to 304, 305(1) to (10), 306 to 311 of the Companies Act 1993 apply, with all necessary modifications, to creditors' claims in the administration of a company.
- (2) For the purposes of subclause (1), references to liquidation and liquidator must be read respectively as administration and deed administrator.

Creditors' meetings

9 Creditors' meetings

- (1) Schedule 5 of the Companies Act 1993 applies with all necessary modifications to meetings of creditors under the deed.
- (2) For the purposes of subclause (1), a reference to the liquidator must be read as a reference to the deed administrator.

Creditors' committees

10 Provisions that apply if creditors' committee appointed

Clauses 11 to 15 are taken to be included in the deed if the creditors appoint a creditors' committee.

11 Membership of creditors' committee

- (1) The creditors' committee must consist of not less than 3, and not more than 5, persons who are—
 - (a) creditors; or
 - (b) persons holding general powers of attorney from creditors; or

- (c) authorised directors or representatives of companies that are creditors of the company in administration.
- (2) A company must not have more than 1 representative on the committee at any one time.
- (3) A member of the committee may resign by notice in writing signed by him or her and delivered to the deed administrator.

12 Meetings of creditors' committee

- (1) The creditors' committee must meet at those times as it from time to time appoints, and the deed administrator or a member of the committee may also call a meeting of the committee as and when necessary.
- (2) The committee may act by a majority of its members present at a meeting, but may not act unless a majority of the committee are present.

13 Removal of member

A member of the creditors' committee may be removed by a resolution carried at a meeting of creditors of which 5 working days' notice has been given, stating the object of the meeting.

14 Vacancy in office of member

- (1) If a member of the creditors' committee becomes bankrupt, compounds or arranges with his or her creditors, or is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors, the office of that member becomes vacant.
- (2) A vacancy in the committee may be filled by the appointment by the committee of—
 - (a) the same or another creditor; or
 - (b) a person holding a general power of attorney from, or being an authorised director or representative of, a creditor.
- (3) The continuing members of the committee, if not less than 2, may act even though a vacancy exists in the committee.

15 Minutes of meetings

- (1) The creditors' committee must ensure that—

- (a) minutes are kept of the proceedings and resolutions of each meeting of the committee; and
 - (b) those minutes are properly entered in a minute book that must be provided by the deed administrator.
- (2) The minutes of a meeting of the committee are prima facie evidence of the matters contained in them if they purport to be signed by—
- (a) the chairperson of the meeting at which the resolutions were passed or the proceedings taken; or
 - (b) the chairperson of the next meeting of the committee.
- (3) Unless the contrary is proved, a meeting of the committee is taken to have been duly convened and held, and all proceedings taken and resolutions passed at the meeting are taken to have been duly taken and passed.

Miscellaneous

16 Performance and termination of deed

- (1) The deed administrator must execute a notice of certification of performance of the deed when the deed administrator—
- (a) has applied all of the proceeds of the realisation of the assets available to the payment of the creditors' debts or claims; or
 - (b) has paid to the creditors the sum of 100 cents in the dollar on their debts or claims or any lesser sum determined by the creditors in general meeting.
- (2) The notice must be in the following form:
- [Name of company in administration]*
I *[name and address of deed administrator]*, as administrator of the deed of company arrangement executed on *[date of execution of deed]* certify that the deed has been performed.
- (3) The deed automatically terminates under section 239ADC(1)(c) of the Companies Act 1993 when the deed administrator executes the notice.
- (4) The deed administrator must lodge the deed with the Registrar of Companies within 20 working days after execution.

- (5) Nothing in this clause affects the deed administrator's obligations under section 239ACZ or 239ADT of the Companies Act 1993.

Schedule 1 clause 16(3): amended, on 31 August 2012, by section 12(2) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

17 Deed administrator may cease to carry on business of company

- (1) If the deed administrator or the creditors' committee determines that it is no longer practicable or desirable either to carry on the business of the company or to implement this deed, the deed administrator—
- (a) may cease to carry on the business of the company, except as may be necessary for the liquidation of the company; and
 - (b) must convene a meeting of creditors to consider a resolution to cease to carry on the business of the company or to terminate the deed; and
 - (c) must send to each creditor not less than 10 working days before the meeting the following information:
 - (i) an up-to-date report as to the position of the company; and
 - (ii) any financial statements that the deed administrator thinks fit; and
 - (iii) a statement that—
 - (A) the deed administrator does not think it practicable or desirable to carry on the business of the company or to continue this deed; and
 - (B) a resolution by the creditors that the company cease to carry on business or to terminate the deed has the effect of automatically terminating the deed under section 239ADC(1)(c) of the Companies Act 1993.
- (2) If the creditors at the meeting referred to in subclause (1) resolve either that the company cease to carry on business or that this deed terminate, this deed is automatically terminated under section 239ADC(1)(c) of the Companies Act 1993.

Schedule 1 clause 17(1)(c)(iii)(B): amended, on 31 August 2012, by section 12(3) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 1 clause 17(2): amended, on 31 August 2012, by section 12(4) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 2
**Prescribed form for administrator's
accounts**

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Form
Accounts of company in administration
Section 239ACZ(3), Companies Act 1993

Company name:

Company number:

1 Details of administrator*

Date of appointment:

Name:

Address:

* If there are joint administrators, details for each.

2 Details of accounts

Are the accounts final? Yes/No

If **yes**, provide date when you vacated office and the period for which the accounts and statements are made up.

Date of vacation of office: [day/month/year]

Accounts and statements made up from [day/month/year] to [day/month/year]

If **no**, provide period for which the accounts and statements are made up from [day/month/year] to [day/month/year]

Form—*continued*

3 Payments to creditors

Your estimate of total creditors at the date of this account.

Estimated number of priority creditors:

Estimated value:

Estimated number of secured creditors:

Estimated value:

Estimated number of unsecured creditors:

Estimated value:

Estimated number of deferred creditors:

Estimated value:

Payments made to creditors from the date of your appointment to the date of this account.

Priority creditors

Date paid:

Total paid:

Rate of payment (cents in the \$):

Secured creditors

Date paid:

Total paid:

Rate of payment (cents in the \$):

Unsecured creditors

Date paid:

Total paid:

Rate of payment (cents in the \$):

Deferred creditors

Date paid:

Total paid:

Rate of payment (cents in the \$):

Form—*continued***4 Secured lenders**

Amount owing under instrument at the date of appointment:

Amount owing under instrument at the date of this account:

Estimated value of property subject to the instrument at the date of this account:

5 Summary of professional fees

Remuneration paid to you during the period for which this account is made up:

Remuneration paid to you from the date of your appointment on the date to which this account is made up (inclusive of goods and services tax):

Amount received by you in respect of expenses during the period for which this account is made up (inclusive of goods and services tax):

Amount received by you in respect of expenses from the date of your appointment to the date to which this account is made up (inclusive of goods and services tax):

6 Amount of receipts and payments since the date of appointment**Receipts**

Date of receipts	Receipts from	Nature of receipts/ explanation	Amount (\$)
[specify]	[specify]	[specify]	[specify]
Total receipts:			[specify]

Payments

Date of payments	Payments to	Nature of payments/ explanation	Amount (\$)
[specify]	[specify]	[specify]	[specify]
Total payments:			[specify]

Form—*continued*

7 Reconciliation of money held

Cash in hand:

Credit as per bank statement:

Less unrepresented cheques:

Plus outstanding deposits:

Equals cash at bank:

Amounts invested and not converted to cash:

Total balance of money held:

8 Estimated completion date (if accounts not final)

Month and year by which you expect this appointment will be completed:

At the date of this account, how long have you been appointed? [*year/months*]

Details of causes which may delay the termination of your appointment:

9 Your verification of this account and statement

[*Complete this section for all appointments*]

I/We declare that the statements below are correct [*delete whichever is inapplicable*]:

Statement

The information given in the statement is true to the best of my/our knowledge and belief at the date of signing.

If there are receipts and payments

The account of receipts and payments set out in the annexure marked [] of [] pages contains a full and true account of my/our receipts and payments in this period and I/we have not, nor has any other person by my/our order or for my/our use during that period, received or paid any money on account of the company other than and except for the items mentioned and specified in that account.

Form—*continued*

If there are no receipts and payments

I/We have not, nor has any other person by my/our order or for my/our use during that period, received or paid any money on account of the company.

Signed by:

Signature:

Name:

Date signed:

Signature:

Name:

Date signed:

Post your completed form to:
National Processing Centre
Companies Office

Diane Morcom,
Clerk of the Executive Council.

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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Companies (Voluntary Administration) Regulations 2007. The reprint incorporates all the amendments to the regulations as at 31 August 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Companies Amendment Act (No 2) 2012 (2012 No 60): section 12
