


ASIC

Australian Securities & Investments Commission

Insolvency Law Reform Bulletin 1

Guide for registered liquidators: This bulletin is one of a series about implementing changes in the Corporations Amendment (Insolvency) Act 2007, the Corporations Amendment Regulations 2007 and the Australian Securities and Investments Commission Regulations 2007. These changes, collectively referred to as 'insolvency law reform' or 'the amendments', generally come into effect on 31 December 2007.

Forms guide

This bulletin will assist registered liquidators and their staff to comply with their obligations to lodge certain information with ASIC under the Corporations Act (the Act) and the Corporations Regulations (the Regs). The bulletin also outlines transitional arrangements in place until form changes have been incorporated into prescribed and ASIC-approved forms and the electronic lodgement facility known as the Registered Liquidator portal.

Please note that this bulletin does not cover lodgements of **reports** with ASIC, in particular those lodged in compliance with s533, 422 and 438D of the Corporations Act. ASIC expectations of the contents and lodgement of these **reports** is covered in Regulatory Guide 16: *External administrators: reporting and lodging* (RG 16). RG 16 will be updated separately during 2008 as part of the implementation of insolvency law reform.

Your feedback please

This bulletin replaces the information sheet that we currently publish as *External administration: most commonly lodged forms*. We will issue a Forms Guide based on this bulletin as a permanent information sheet, after we have consulted industry about the content and layout.

Please email your feedback on this forms guide to catrina.orr@asic.gov.au by 1 February 2008.

More information

- Visit www.asic.gov.au/insolvency
- Contact the following people if you have a specific request.

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Important note: This bulletin contains general information from ASIC to assist registered liquidators to comply with the amended Corporations Act 2001, Corporations Regulations 2001 and Australian Securities and Investments Commission Regulations 2001 as at 31 December 2007. The information does not purport to be, and is not, a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to the specific circumstances of a registered liquidator or a company subject to an external administration.

1. General information on lodging after 31 December 2007

Lodging forms with ASIC is in Chapter 2P of the Act, and specifically s350.

Types of documents

There are three types of documents recognised by ASIC for lodgement purposes:

Prescribed forms	These are forms prescribed in the regulations (refer sub-reg 1.0.03(1) and Schedule 2 mentioned in column 1 of Schedule 1 as well as reg. 1.0.03A.
ASIC-approved forms	These are forms approved by ASIC under s350 for the purposes of lodging documents under the Corporations Act or Corporations Regulations
Other forms	Some documents must be lodged but have neither a prescribed form nor ASIC-approved form. An example is when a liquidator makes a written notification of the happening of an event or makes a request in writing: there is no corresponding form to record the lodgement of the information in the document onto the corporate database, ASIC assigns a 'form code'.

Many prescribed forms and ASIC-approved forms can be used for different purposes. For example Form 105 is lodged to record a range of different court orders. ASIC allocates codes or sub-form numbers to these forms so that there can be an accurate recording on the corporate database of the type of information that has been lodged.

When information is lodged in writing, and there is no prescribed or ASIC-approved form, an ASIC code is assigned to record the processing of the information on the corporate database. These codes have been included in the flowcharts to improve transparency and to assist liquidators to make inquiries of ASIC about the processing of particular information.

ASIC-preferred lodgements

There are some instances when there is no legal requirement to lodge a particular form or particular information but ASIC would prefer it to be lodged to ensure the completeness and accuracy of the

corporate database. An example is a Form 505 to record that an administrator has ceased to act. These instances are clearly marked in the flowcharts at the end of this bulletin.

Lodging accounts with Form 524

From 31 December 2007 Form 524 is required from a: scheme administrator under Pt5.1; administrator, deed administrator, member's voluntary liquidator, creditors' voluntary liquidator, provisional liquidator, court appointed liquidator, receiver, receiver and manager, controller and managing controller.

A controller (incorporating a receiver, receiver and manager and managing controller as defined in s9) must lodge an account:

- within 1 month of the end of 6 months (or they may choose a *shorter* period) after they become a controller; and
- each subsequent 6 months while they are a controller; and
- within 1 month of ceasing to be a controller.

The timing of lodging accounts is covered in s432 which applies to a scheme administrator under s411(9)(a) of the Corporations Act.

Under s539 all types of liquidators, including provisional liquidators, must lodge accounts:

- within 1 month of the end of 6 months from their appointment; and
- each subsequent 6 months during which they act as liquidator; and
- within 1 month of ceasing to act as liquidator.

A provisional liquidator does not need to include a statement with the accounts (s539(1)(b)).

The wording of the provisions about voluntary administration and the administration of a deed of company arrangement are slightly different.

Under new s438E, the administrator of a company must lodge an account:

- within one month after the end of the 6-month period beginning on the date of their appointment; and
- each subsequent 6 months during which they are the administrator of the company.

An administrator is not required to lodge an account if they have been appointed for less than 6 –months. However, they must, within one month of ceasing, lodge an account that shows receipts and payments during the period they were administrator.

New s445J, applying to deed administrators, is in similar terms.

A strict interpretation of these provisions would suggest that, when a controllership and liquidation runs for less than 6 months, no Form 524 is required to be lodged. In addition, when a voluntary administration or deed administration runs for less than 6 months, only one final Form 524 is required.

For completeness and accuracy of the corporate database records, ASIC prefers that if any type of external administration runs for less than 6 months, the external administrator lodges a final Form 524 covering the period of the external administration.

Changing address with Form 506

A registered liquidator who has current appointments can lodge Form 506 in two ways:

- on paper. In this case they must lodge one paper form for each current appointment; or
- online. In this case they need only lodge one Form 506 and this will automatically be recorded against each company where they have a current appointment.

Lodging through portal for others

A registered liquidator can lodge some forms on behalf of others through the electronic lodgement portal. One example is Form 520, Declaration of Solvency.

Lodging after a company has been reinstated

An external administration continues after reinstatement and the external administrator's role is resurrected:

- if a company is reinstated by court order or by ASIC; and
- if, before the company was deregistered, it had been under external administration and the external administrator had not resigned or been removed.

In this situation, the external administrator must take steps:

- to resign or
- have themselves removed; or
- complete the external administration.

In all instances, the external administrator should complete and lodge the appropriate forms with ASIC or our public database will be incomplete and inaccurate. One such form is Form 505.

2. Transitional arrangements

We are currently: updating all forms that need changing; approving new forms (for example, to record notifications about pooling) and making changes to the Registered Liquidator Portal. We will not have completed these changes by 31 December 2007.

All revised paper forms will be available on, or soon after, 31 December 2007.

Lodging forms before revised forms are available

You can continue to lodge paper and electronic forms if the content of your lodgement is not affected by the amendments. You can lodge existing forms either in paper or electronically as you would have before 31 December 2007.

You should lodge the information manually on the corresponding paper form if:

- the content of your lodgement is affected by the amendments; and
- you cannot lodge through the Registered Liquidator Portal because the content of the form on the portal has not been revised. Lodge forms at an ASIC Business Centre or post them to PO Box 4000 Gippsland Mail Centre VIC 3841.

If you want to lodge information but need an update of a prescribed form that has not yet been revised, please phone 1300 300 630.

3. Forms that can be electronically lodged after the law reform is implemented

Form	Description
EX01	Notification of information requested in Schedule B to Regulatory Guide 16 pursuant to reports under s422, s438D or s533 of the Corporations Act 2001
EX02	Assetless administration funding request (s206F - Director banning)
EX03	Assetless administration funding request (matters other than s206F - Director banning)
205	Notification of resolution
505	Notification of appointment or cessation as an external administrator

506	Notification of change of address of external administrator
507	Report as to affairs
509D	Notice of special resolution to wind up company
509F	Notice of failure to execute deed of company arrangement
509G	Notice of termination of deed of company arrangement
511	Statement verifying report under s430(1) or 475(2)
520	Declaration of solvency
522	Notification of meeting of creditors to consider appointing a new liquidator
523	Notification of final meeting convened by liquidator
524	Presentation of accounts and statement
525	Notice of disclaimer of onerous property
529	Notice of meeting
540	Statement in writing of posting of notices of appointment to settle list or supplementary list of contributories
545	Statement in writing of giving notice to persons placed on the list or supplementary list of contributories
555	Notice of controller extending time to submit report as to affairs
562	Notice of liquidator extending time to submit report as to affairs
564	Schedule A to Practice Note 50 - reports lodged under s476 of the Corporations Act 2001
578	Deregistration request (liquidator not acting or affairs fully wound up)
905A	Notification of change to details of a liquidator
908	Annual statement of a liquidator
5011	Copy of minutes of meeting
5047	Copy of deed of company arrangement
5053	Notice that administration of a company has ended
5056	Notice that deed wholly effectuated
TBA	Notification in relation to Pooling
TBA	Annual Report to creditors in a creditors voluntary winding-up

Maintenance forms

Form	Description
106	Request to withdraw a lodged document
484	Change to company details
492	Request for correction

4. Flowcharts of insolvency forms and processes

Registered liquidators and their staff should be aware of all legal requirements to lodge forms with ASIC and to comply accordingly. The flowcharts are for general guidance only.

Flowcharts do not record all circumstances

The flowcharts for the various external administrations do not record all forms that have to be lodged in all circumstances. Rather, they deal with the most common forms lodged during the course of that particular type of external administration.

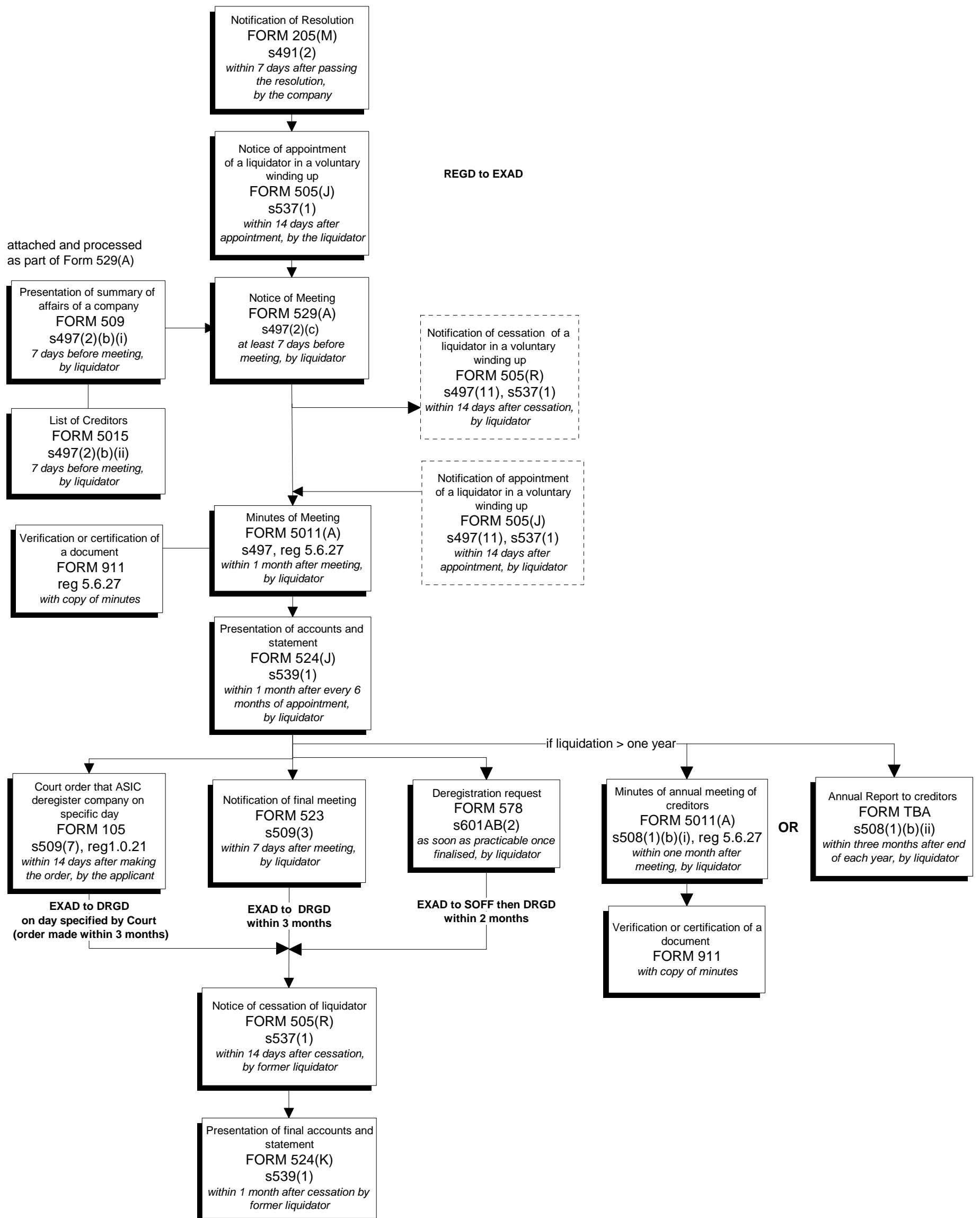
The following are some of the circumstances not covered in the flowcharts:

Circumstance not covered in flow charts	Relevant forms/ASIC code
External administrator ceases to act because of death, resignation, removal or replacement during the course of the external administration.	505
Liquidator appoints a special manager under s484	105/5017
Lodging of minutes for a meeting of a committee of creditors or a committee of inspection	5011A accompanied by a verification/certification 911.
Annual statement of a liquidator	908

List of flowcharts that follow

Flowchart	Activity
IFF 1	Creditors' voluntary winding-up
IFF 2	Creditors' voluntary winding-up following from a company under administration (voluntary administration)
IFF 3	Deed of company arrangement following from a company under administration (voluntary administration)
IFF 4	Company under administration (voluntary administration)
IFF 5	Members' voluntary winding-up
IFF 6	Court winding-up
IFF 7	Provisional liquidation
IFF 8	Controllership: receiver appointed
IFF 9	Controllership: receiver and manager appointed
IFF 10	Controllership: controller appointed
IFF 11	Controllership: managing controller appointed
IFF 12	Scheme administration under Pt 5.1
IFF 13	Early termination of a company under administration (voluntary administration) and deed of company arrangement.
IFF 14	Settling a list of contributories in a liquidation
IFF 15	Pooling in a liquidation

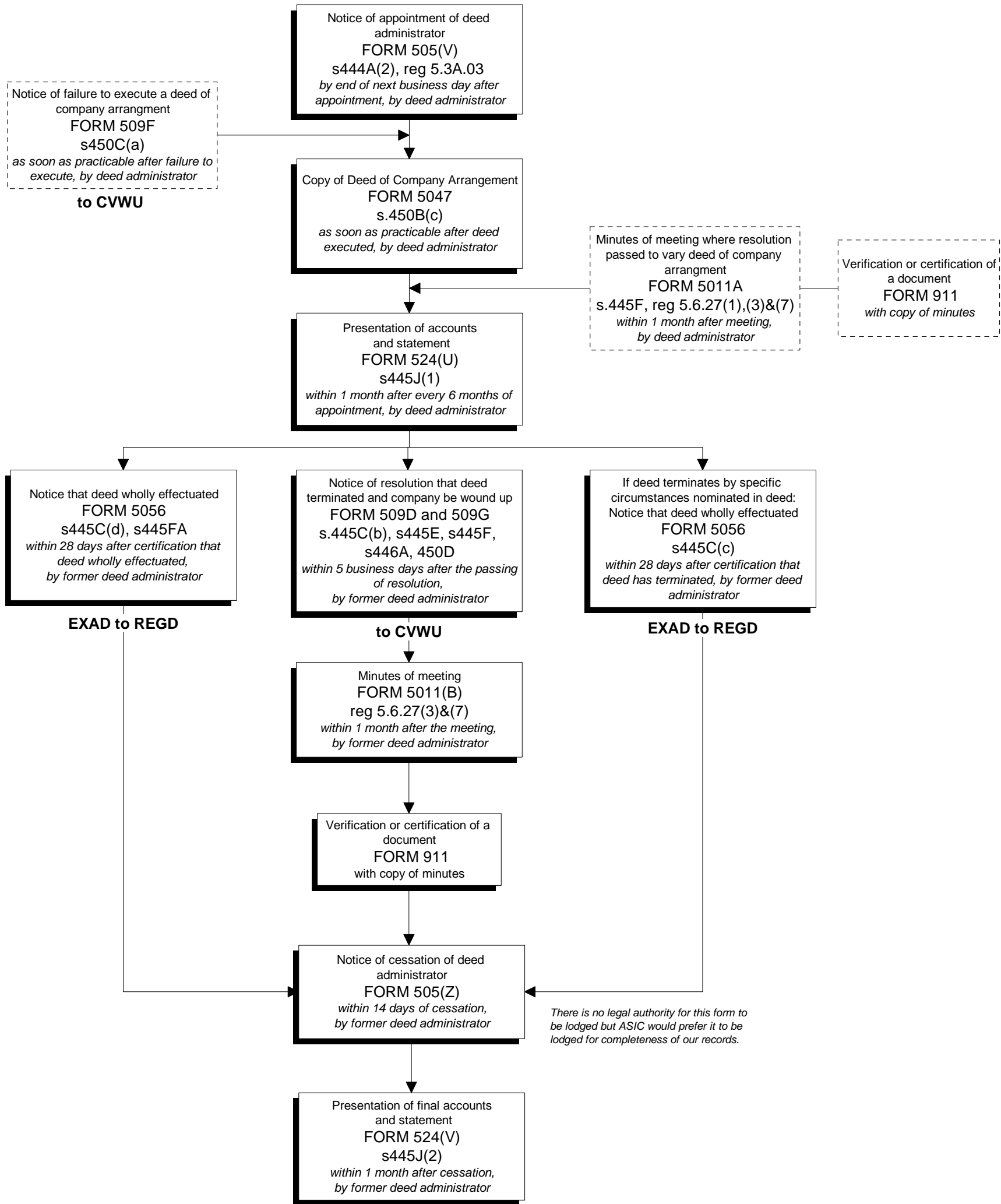
Documents to lodge with ASIC for a CREDITORS VOLUNTARY WINDING-UP (CVWU)



Note: ASIC will generally not agree to a deregistration request in a creditors voluntary winding up if funds were available to hold the final meeting but they have been expended elsewhere.

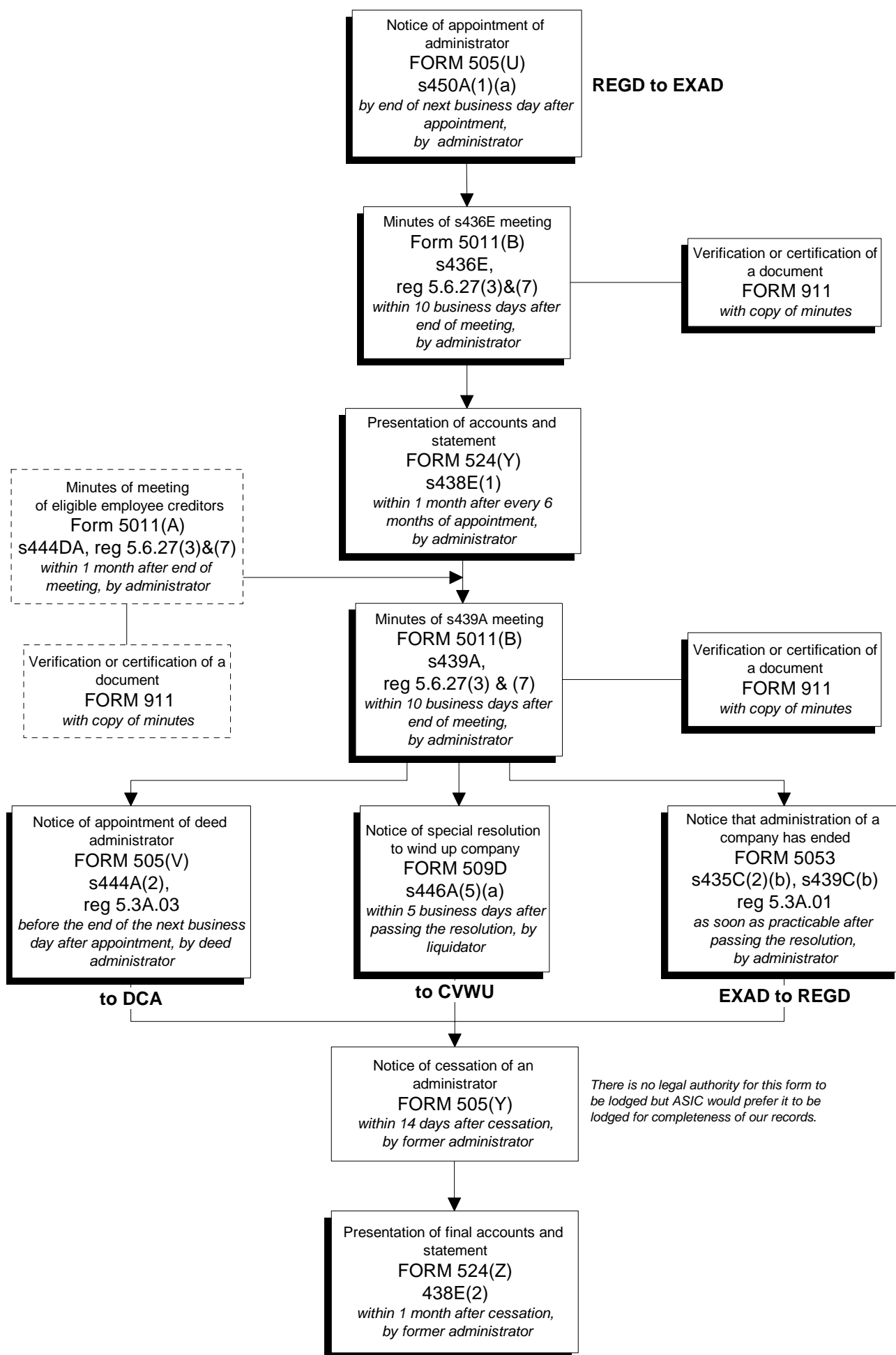
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

Documents to lodge with ASIC for a DEED OF COMPANY ARRANGEMENT (DCA)



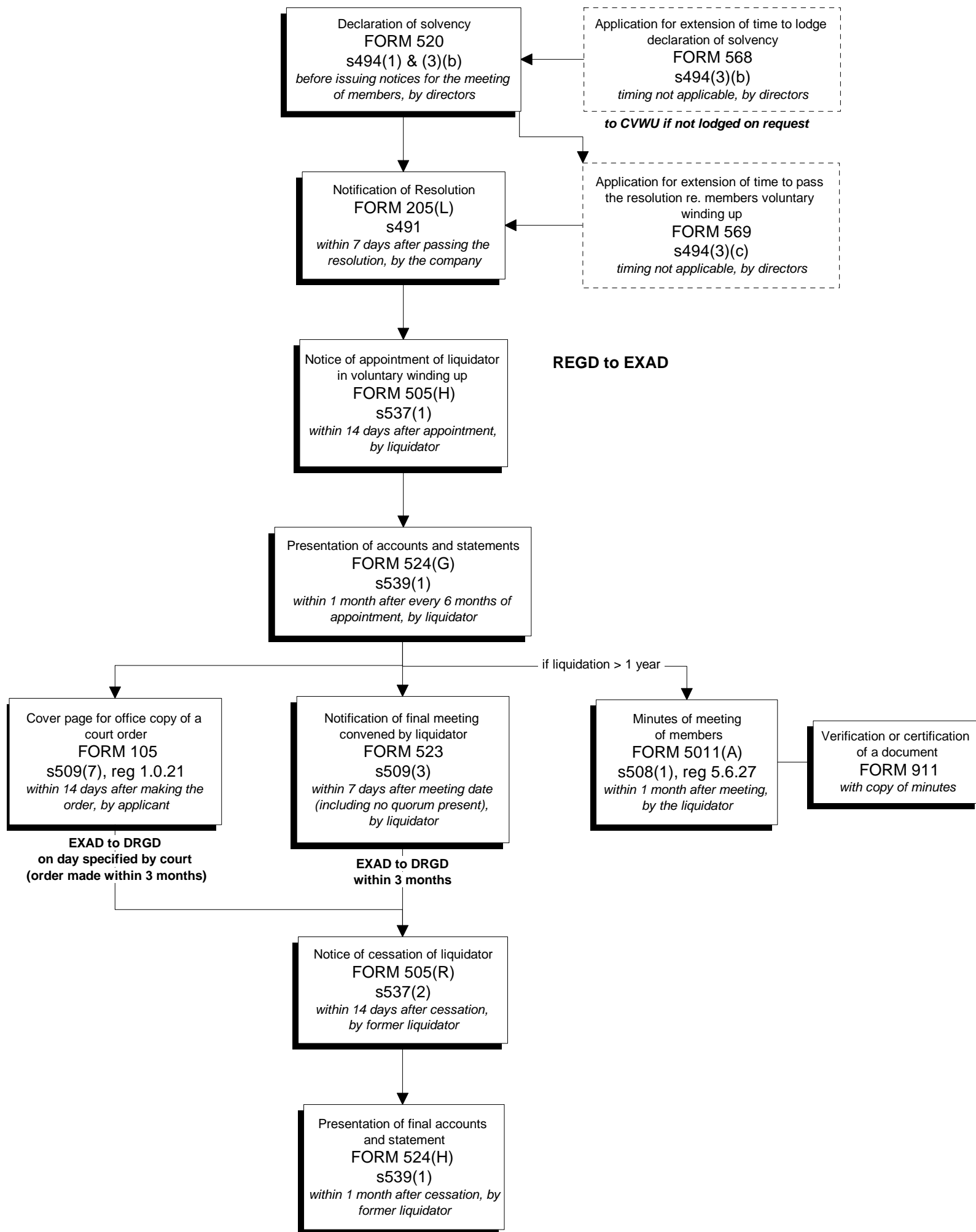
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

**Documents to lodge with ASIC for a
VOLUNTARY ADMINISTRATION - COMPANY UNDER ADMINISTRATION
(CUA)**



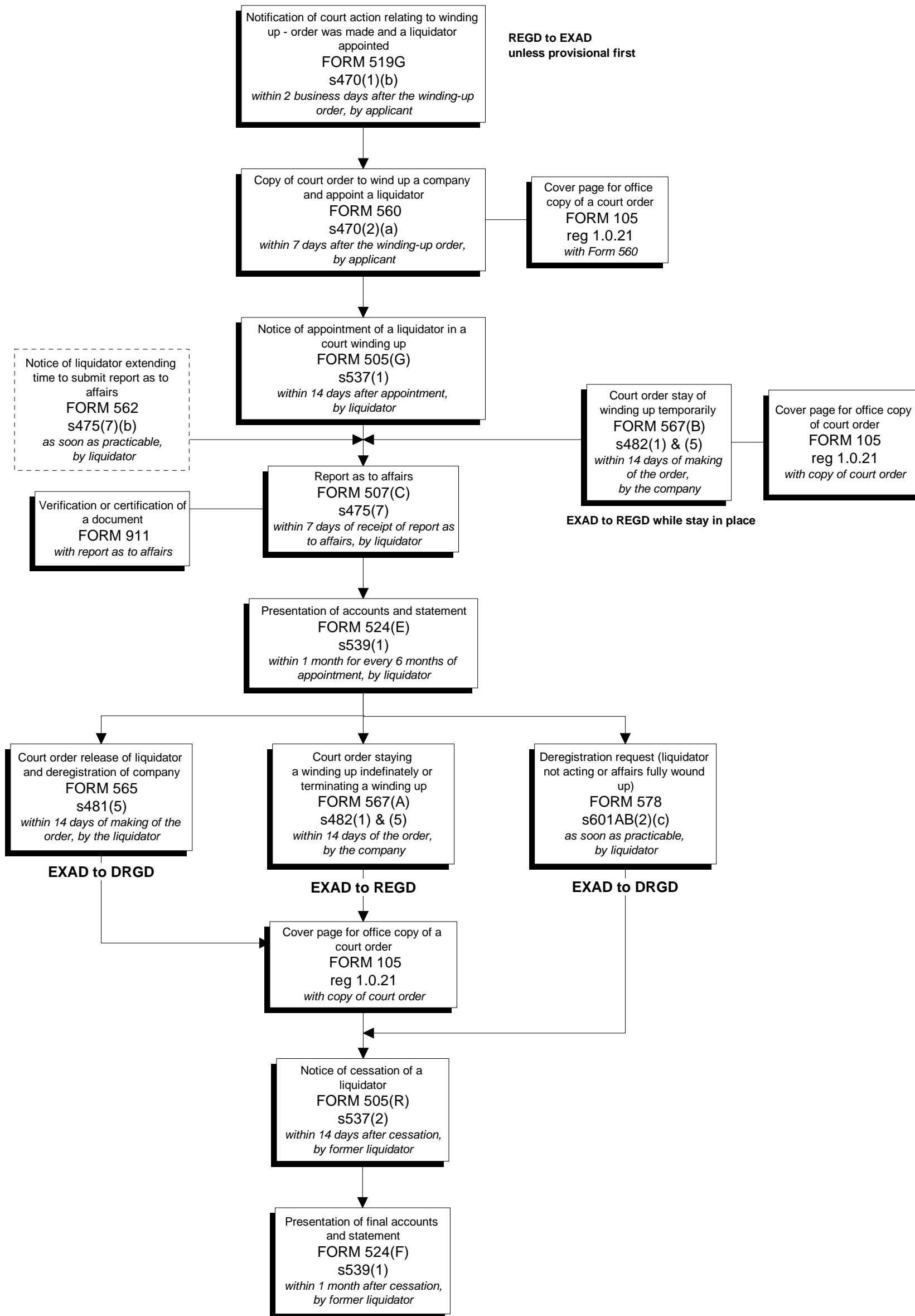
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

Documents to lodge with ASIC for a MEMBERS VOLUNTARY WINDING-UP (MVWU)



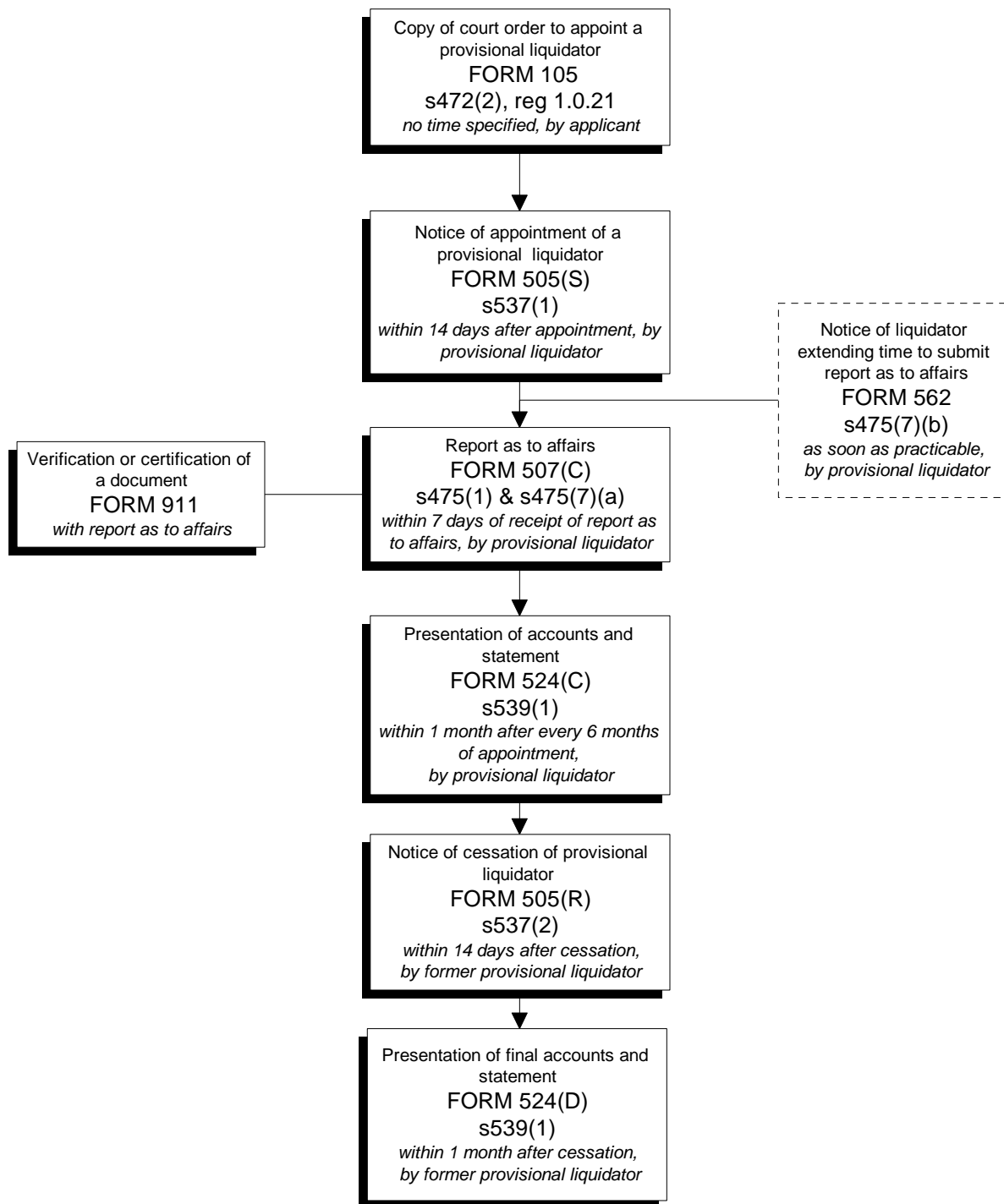
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

Documents to lodge with ASIC for a COURT WINDING-UP (CTWU)



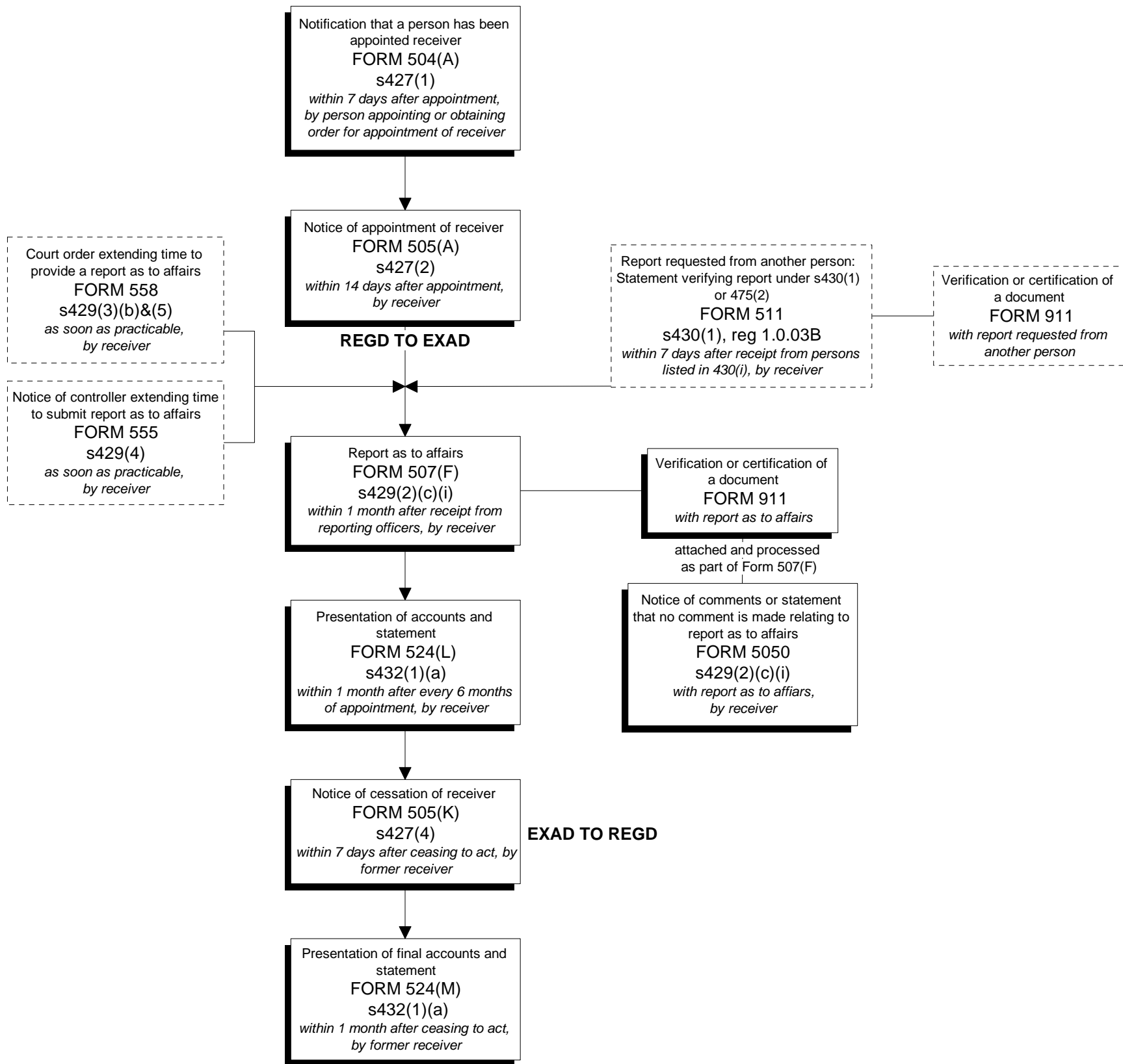
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

**Documents to lodge with ASIC for a
PROVISIONAL LIQUIDATION**



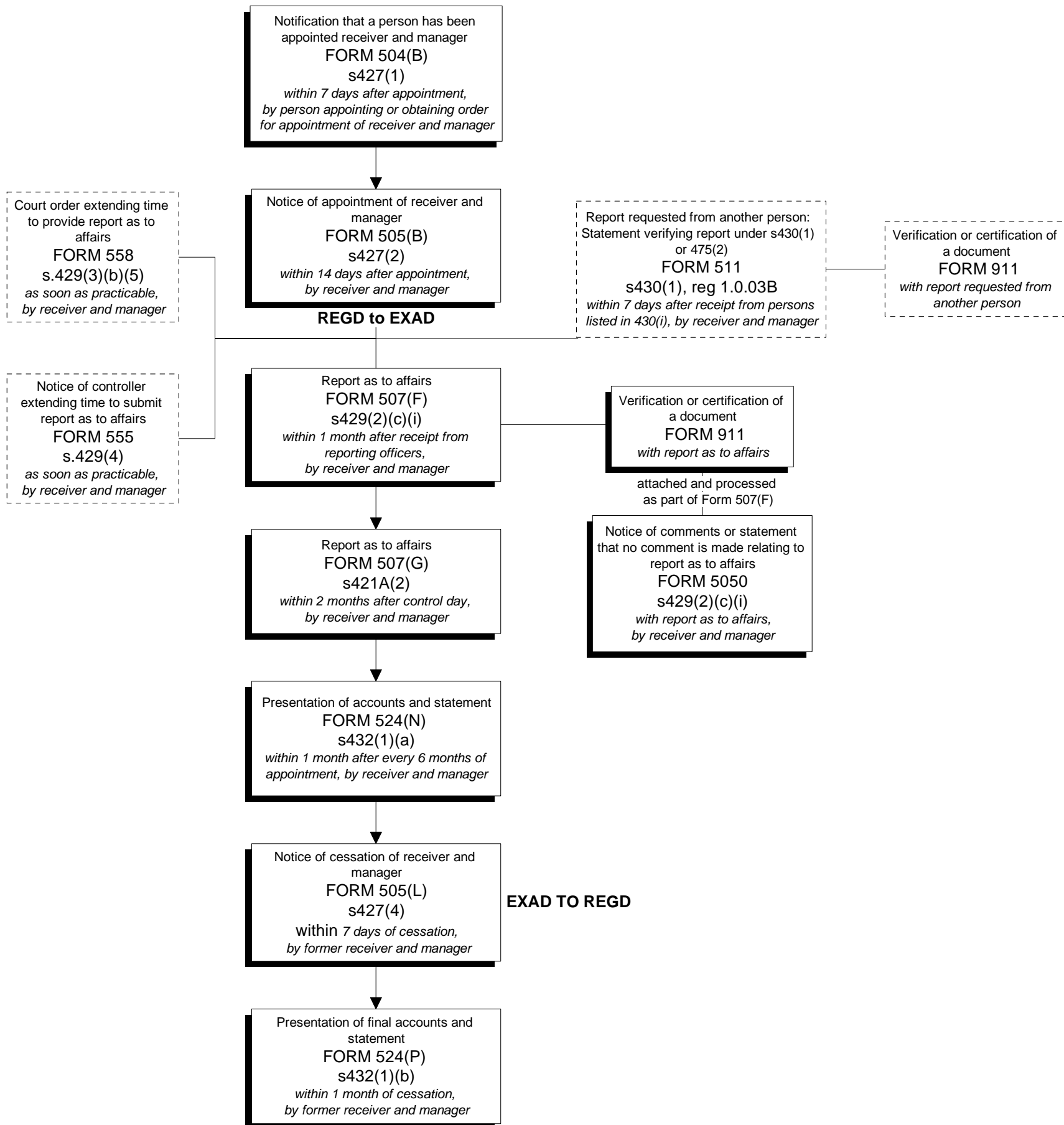
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

Documents to lodge with ASIC for a RECEIVER (PRIVATE APPT)



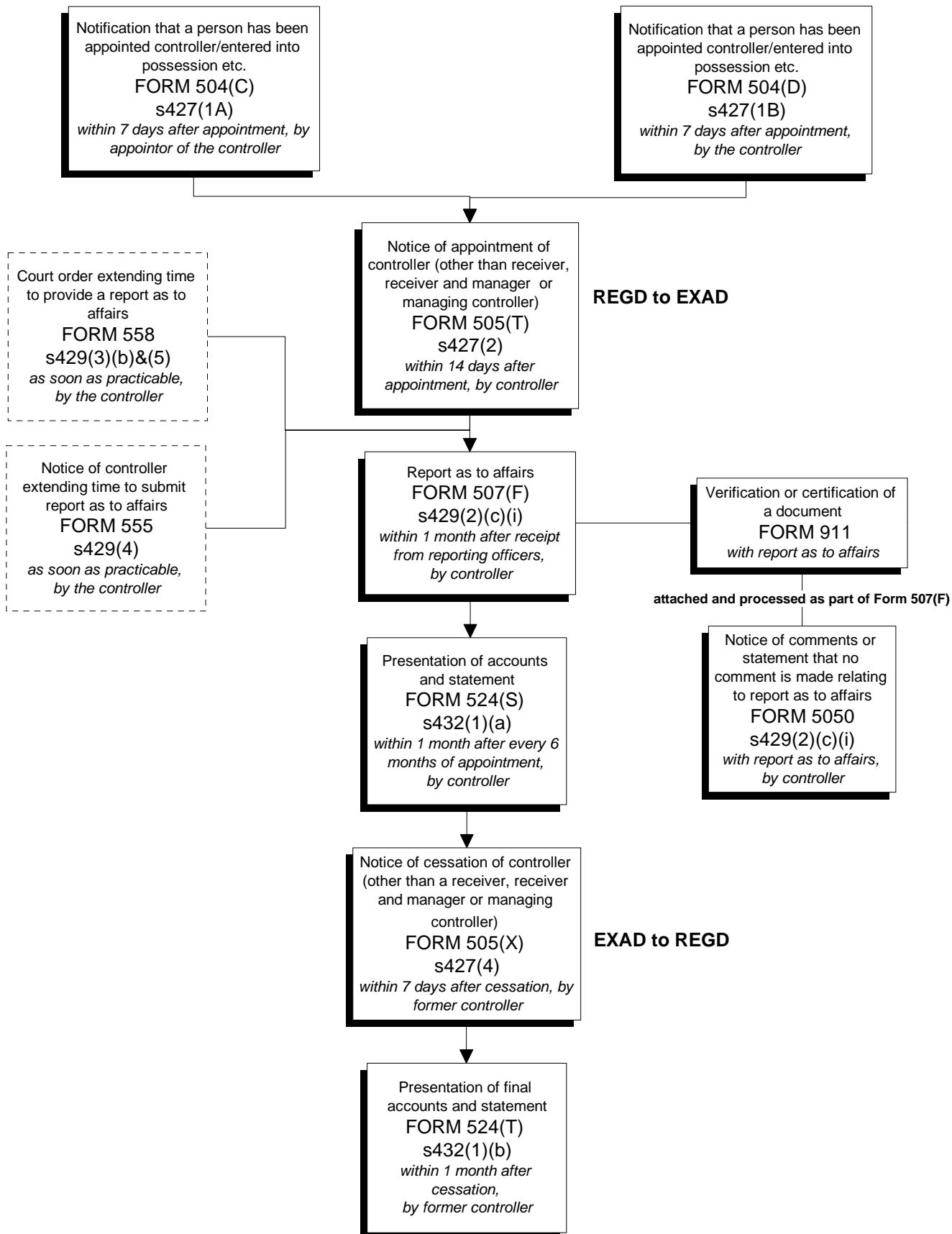
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

Documents to lodge with ASIC for a RECEIVER AND MANAGER (PRIVATE APPT)



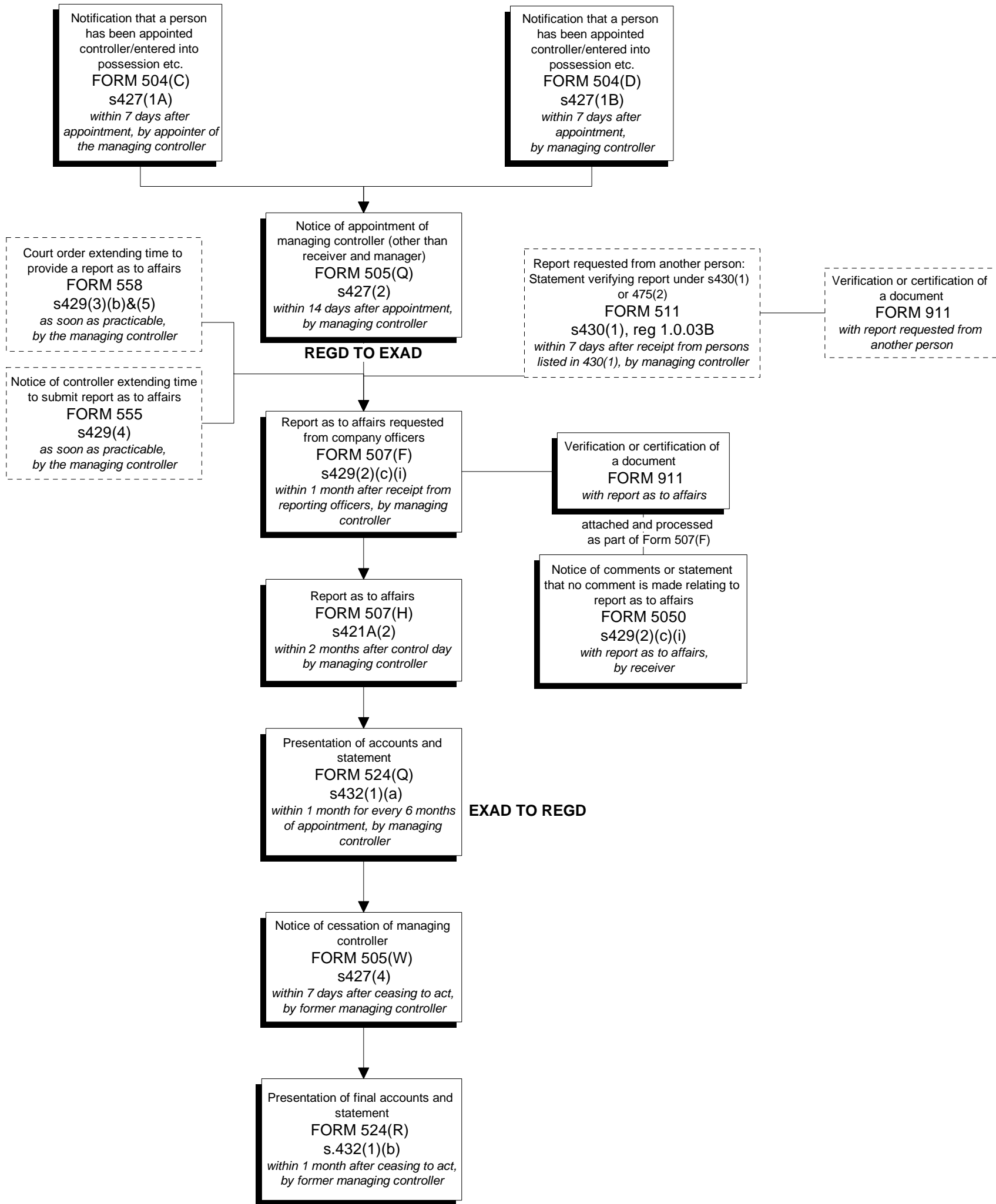
Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

**Documents to lodge with ASIC for a
CONTROLLER
(OTHER THAN A RECEIVER, RECEIVER AND MANAGER OR MANAGING CONTROLLER)
(PRIVATE APPT)**



Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

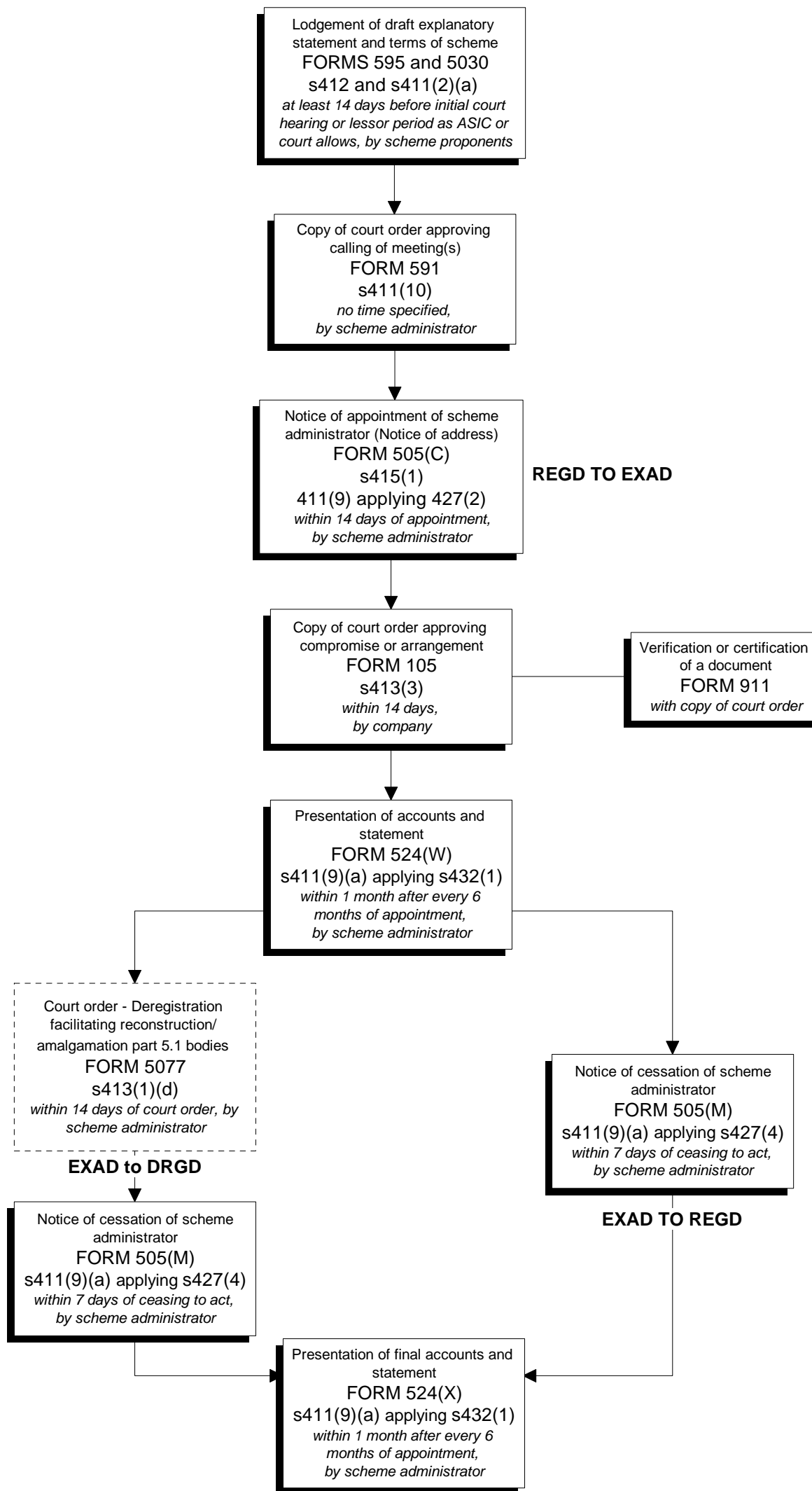
**Documents to lodge with ASIC for a
MANAGING CONTROLLER
(OTHER THAN RECEIVER AND MANAGER)
(PRIVATE APPT)**



EXAD TO REGD

Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

**Documents to lodge with ASIC for a
SCHEME OF ARRANGEMENT OR RECONSTRUCTION
(SCHEME MANAGER)**



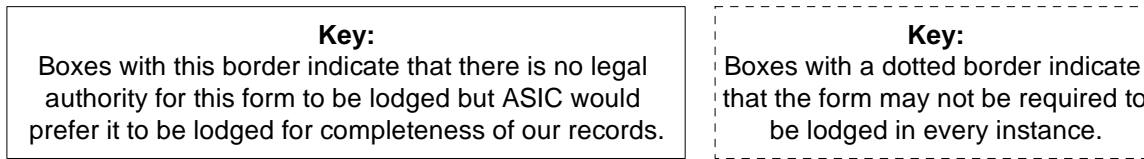
REGD TO EXAD

EXAD to DRGD

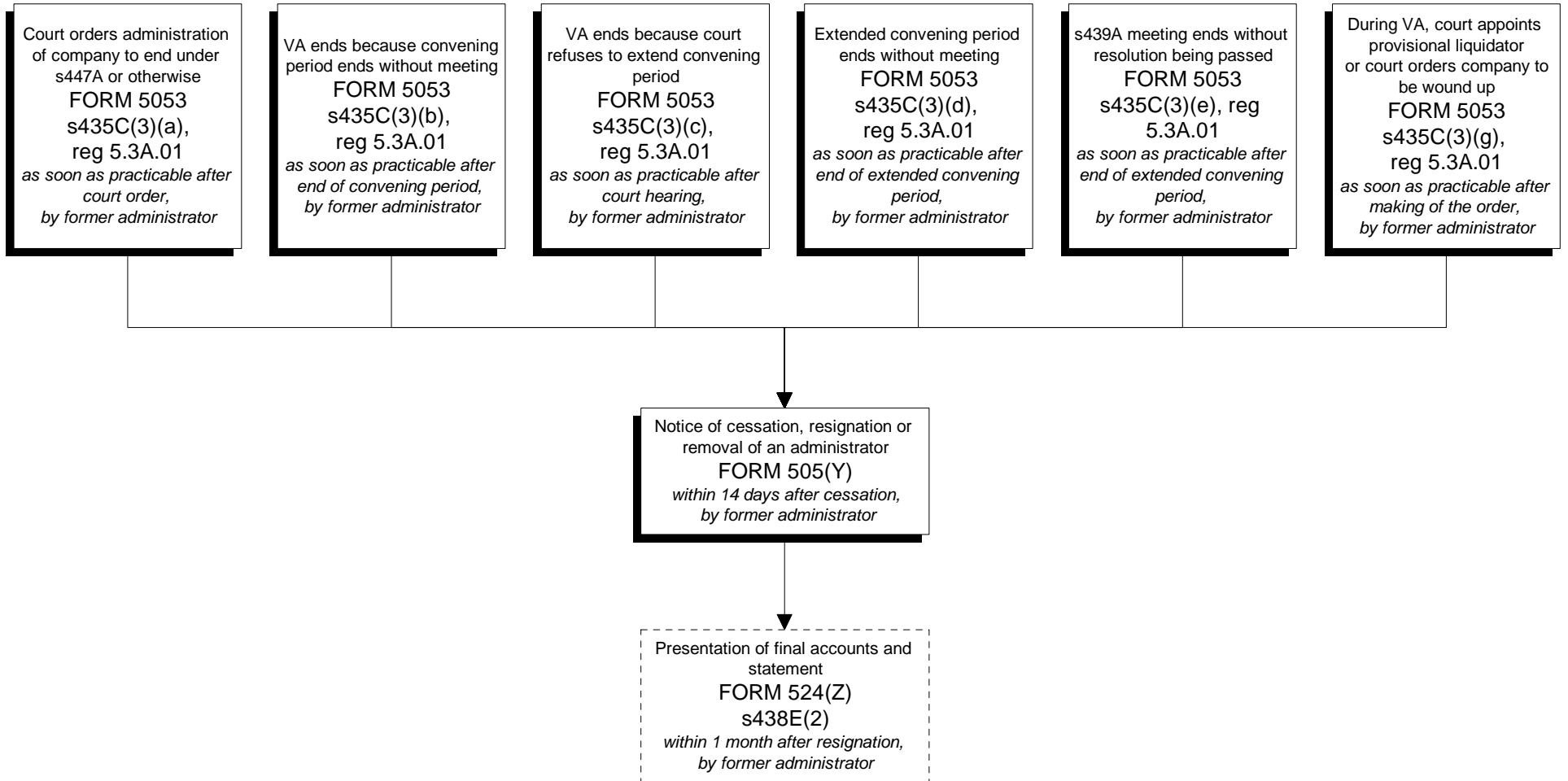
EXAD TO REGD

Key:
Boxes with a dotted border indicate that the form may not be required to be lodged in every instance.

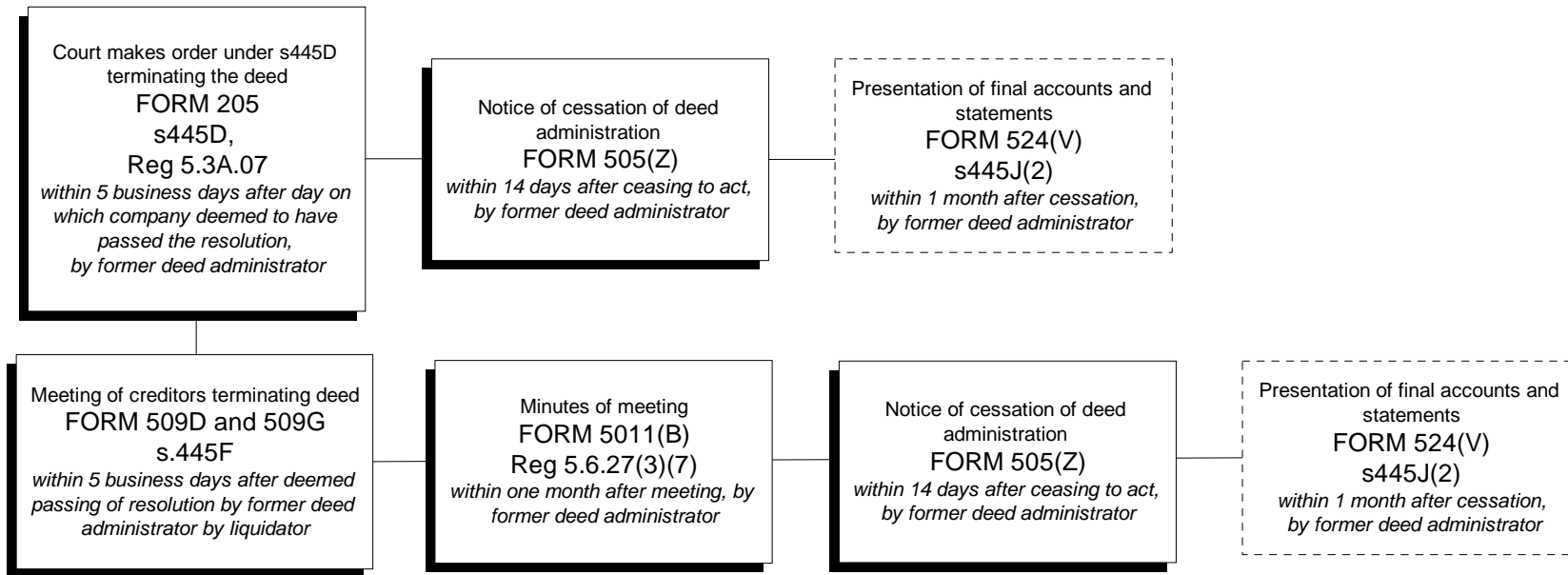
**Documents to lodge with ASIC for early termination of a
VA - COMPANY UNDER ADMINISTRATION (CUA)
or DEED OF COMPANY ARRANGEMENT (DCA)**



Early termination of a VA - COMPANY UNDER ADMINISTRATION (CUA)

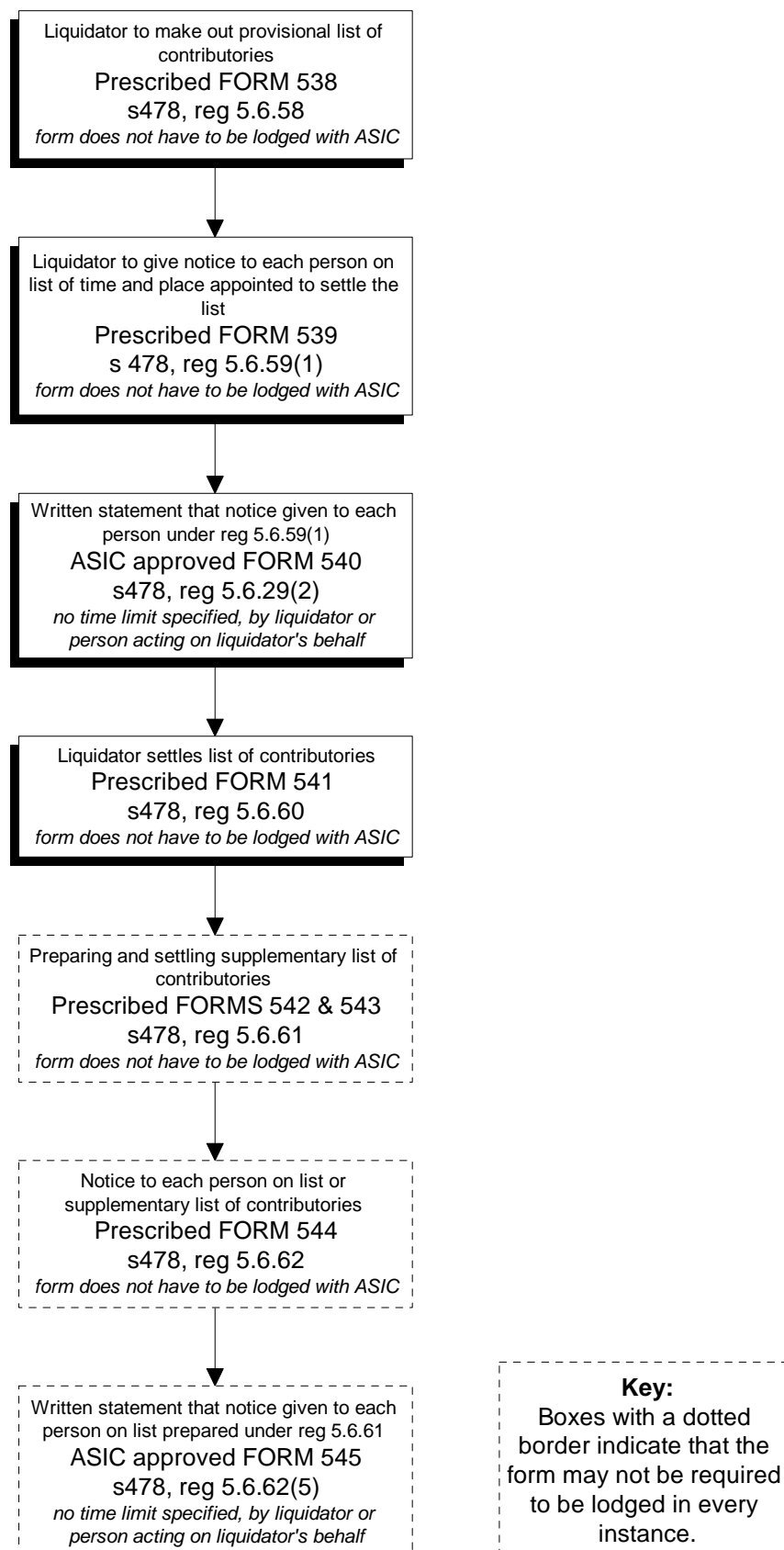


Early termination of a DCA - DEED OF COMPANY ARRANGEMENT (DCA)



CVWU

SETTLING A LIST OF CONTRIBUTORS IN A LIQUIDATION



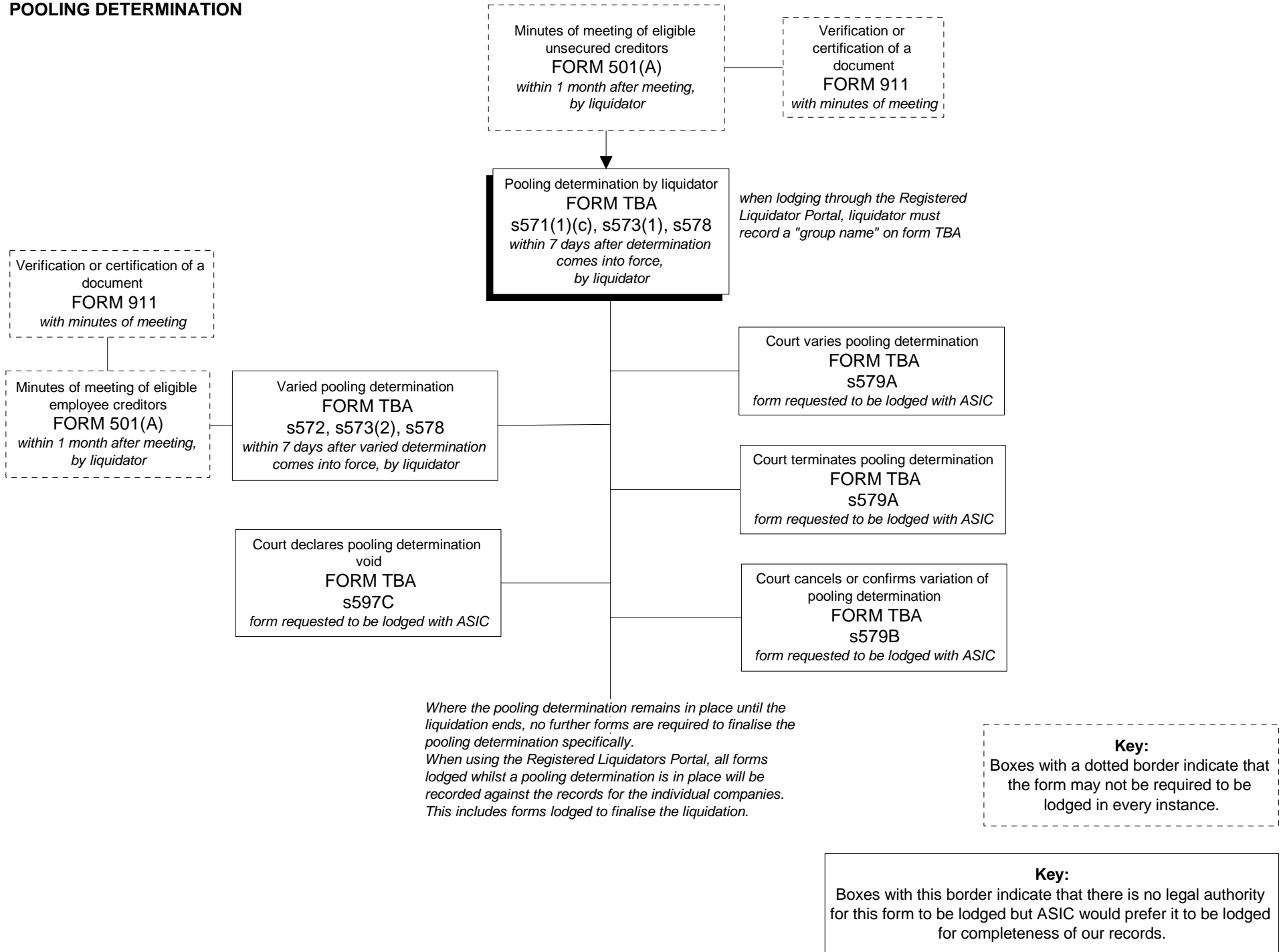
Documents to lodge with ASIC for POOLING IN A LIQUIDATION

This flowchart outlines the procedure for form lodgement when a pooling determination has been made in a liquidation and the liquidator lodges forms electronically through the Registered Liquidator Portal. Where the Portal is not used, separate forms must be lodged for each notification in respect of each company in the group (although, for instance, an identical set of minutes may be attached to Forms 5011A in accordance with sub-regulations 5.6.27(1A) and (3A)).

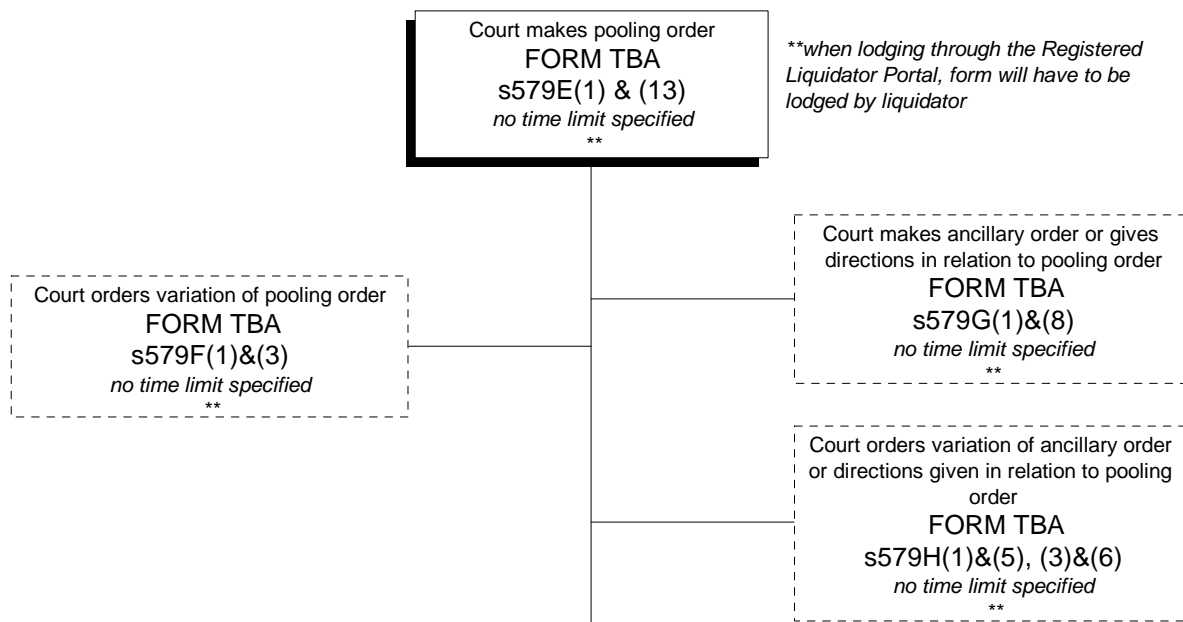
Where the Portal is used, the liquidator will record a "group name" and a copy of all relevant lodgements will automatically be recorded on the company records for all the companies in the pooled group.

Where a pooling determination or a pooling order is varied by adding or removing a company to or from the pooled group the electronic lodgement facility available through the Registered Liquidator Portal can not thereafter be used. From the time of lodging a notice of this type of variation, paper lodgements will need to be made.

POOLING DETERMINATION



POOLING ORDER



*Where the pooling order remains in place until the liquidation ends, no further forms are required to finalise the pooling order specifically.
When using the Registered Liquidators Portal, all forms lodged whilst a pooling order is in place will be recorded against the records for the individual companies. This includes forms lodged to finalise the liquidation.*