

Corporations Law Amendment Rules 2000 (No. 1) 2000 No. 333

EXPLANATORY STATEMENT

Statutory Rule 2000 No. 333

Issued by the authority of the Judges of the Federal Court of Australia

Corporations Law Amendment Rules 2000 (No. 1)

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59 (4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the Acts *Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

DIVISION 1 PRELIMINARY

RULE 1.1 Name of rules

This rule provides that the Rules are to be cited as the *Corporations Law Amendment Rules 2000 (No. 1)*.

RULE 1.2 Commencement

This rule provides that these Rules commence on 1 January 2001.

RULE 1.3 Amendment of *Corporations Law Rules 2000*

This rule provides that the *Corporations Law Rules 2000* are amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

Citation

[1] Rule 1.1

This amendment provides that, from 1 January 2001, the *Corporations Law Rules 2000* are to be cited as the *Federal Court (Corporations) Rules 2000*.

Notice of certain applications to be given to Commission

[2] Subrule 2.8 (3)

Subrule 2.8 (3) provides that, unless the Court otherwise orders, a person making an application under a provision of the Law specified in the subrule must serve on the Commission, a reasonable time before the hearing of the application, a copy of the originating or interlocutory process and the supporting affidavit.

This amendment amends the list of applications to which the subrule applies. Under the amendment, the subrule applies to applications for the release a liquidator of a company and deregistration of the company; for the stay of a compulsory winding-up; for the deregistration of a company; for an inquiry into the conduct of a liquidator; to reinstate the registration of a company; to restore the name of an Australian body to the register; to restore the name of a foreign company to the register; and for relief from liability for contravention of a civil penalty provision. The subrule also applies to any application under Chapter 6 (Takeovers), Chapter 6A (Compulsory acquisition and buy-outs), Chapter 6B (Rights and liabilities in relation to Chapter 6 and 6A matters), Chapter 6C (Information about ownership of listed companies and managed investment schemes), Chapter 6D (Fundraising) or Chapter 7 (Securities).

Leave to creditor, contributory or officer to be heard

[3] Paragraph 2.13 (1) (b)

[4] After paragraph 2.13 (1) (b)

The effect of these amendments is to add "any other interested person" to the list of persons to whom the Court may grant leave to be heard in a proceeding without becoming a party to it. The aim of each amendment is to avoid argument about whether or not a person is a "creditor".

Application of Division 5 - Winding up proceedings (including oppression proceedings where winding up is sought)

[5] Paragraph 5.1 (a)

This amendment replaces the reference to applications for the winding up of a company under section 246AA of the Law with a reference to applications for the winding up of a company under Part 2.5F of the Law. The amendment is consequential to amendments to the Corporations Law.

Appointment of provisional liquidator (s 472 of the Law)

[6] Subrule 6.1 (3)

Subrule 6.1 (3) is amended so that an order appointing a provisional liquidator must include a short description of the property that may be taken into the provisional liquidator's custody only when the order provides that the provisional liquidator is to take less than the whole of the property.

Inquiry into conduct of liquidator (s 536 of the Law)

[7] Rule 7.11, heading

The heading to rule 7. 11 is amended to "Inquiry into the conduct of liquidator (s 536 (1) and (2) of the Law)" so as to avoid any confusion with the heading to rule 11.2.

Remuneration of receiver (s 425 (1) of the Law)

[8] Subrule 9.1 (1), note

This amendment makes it clear that the Court's power under paragraph 425 (2) (b) of the Law allows it to fix the remuneration of a receiver appointed under an instrument even if the receiver has died, or ceased to act, before the making of the order or the application for the order.

[9] Paragraph 9.1 (6) (d)

Subrule 9.1 (6) sets out the information that must be included in an affidavit in support of an originating process or interlocutory process seeking an order under subsection 425 (1) of the Law fixing a receiver's remuneration.

This amendment inserts a new requirement to the effect that the affidavit in support must state particulars of any objection to the remuneration of which the receiver has received notice.

Remuneration of administrator (s 449E (1) of the Law)

[10] Subrule 9.2 (2)

This amendment omits the 28 day time limit set out in subrule 9.2 (2). Under the amended subrule, an administrator must not apply for an order fixing the administrator's remuneration until after the date when a meeting of creditors mentioned in paragraph 449E (1) (a) was held.

[11] Paragraph 9.2 (3) (b)

Subrule 9.2 (3) provides that an administrator must, at least 21 days before filing an originating process or interlocutory process seeking an order fixing the administrator's remuneration, serve a notice in accordance with Form 16, and a copy of any affidavit on which the administrator intends to rely, on the people set out in paragraphs (a), (b) and (c) of the subrule.

This amendment replaces the reference in paragraph (b) to "any committee of inspection" with a reference to "any committee of creditors".

[12] Paragraph 9.2 (7) (d)

Subrule 9.2 (7) sets out the information that must be included in an affidavit in support of an originating process or interlocutory process seeking an order under subsection 449E (1) of the Law fixing an administrator's remuneration.

This amendment inserts a new requirement to the effect that the affidavit in support must state particulars of any objection to the remuneration of which the administrator has received notice.

Remuneration of provisional liquidator (s 473 (2) of the Law)

[13] Paragraph 9.3 (3) (b)

[14] Paragraph 9.3 (3) (b)

Subrule 9.3 (3) provides that a provisional liquidator must, at least 21 days before filing an interlocutory process seeking an order fixing the provisional liquidator's remuneration, serve a notice in accordance with Form 16, and a copy of any affidavit on which the provisional liquidator intends to rely, on the people set out in paragraphs (a), (b) and (c) of the subrule.

These amendments replace each reference in paragraph (b) to "any committee of inspection" with a reference to "any committee of creditors".

[15] Paragraph 9.3 (7)

Subrule 9.3 (7) sets out the information that must be included in an affidavit in support of an originating process or interlocutory process seeking an order under subsection 473 (2) of the Law fixing a provisional liquidator's remuneration.

This amendment inserts a new requirement to the effect that the affidavit in support must state particulars of any objection to the remuneration of which the provisional liquidator has received notice.

Remuneration of liquidator (s 473 (3) of the Law)

[16] Paragraph 9.4 (2) (b)

This amendment omits the 28 day time limit set out in subrule 9.4 (2) (b). Under the amended paragraph, a liquidator must not apply for the order until after the date when a meeting of creditors mentioned in subsection 473 (4) of the Law was held.

[17] Paragraph 9.4 (3) (b)

Subrule 9.4 (3) provides that a liquidator must, at least 21 days before filing an interlocutory process seeking an order fixing the liquidator's remuneration, serve a notice in accordance with Form 16, and a copy of any affidavit on which the liquidator intends to rely, on the people set out in paragraphs (a), (b) and (c) of the subrule.

This amendment replaces the reference in paragraph (b) to "any committee of inspection" with a reference to "any committee of creditors".

[18] Paragraph 9.4 (7) (d)

Subrule 9.4 (7) sets out the information that must be included in an affidavit in support of an originating process or interlocutory process seeking an order under subsection 473 (3) of the Law fixing a liquidator's remuneration.

This amendment inserts a new requirement to the effect that the affidavit in support must state particulars of any objection to the remuneration of which the liquidator has received notice.

Remuneration of special manager (s 484 (2) of the Law)

[19] Paragraph 9.5 (3) (b)

[20] Paragraph 9.5 (3) (b)

Subrule 9.5 (3) provides that a special manager must, at least 21 days before filing an interlocutory process seeking an order fixing the special manager's remuneration, serve a notice in accordance with Form 16, and a copy of any affidavit on which the special manager intends to rely, on the people set out in paragraphs (a), (b) and (c) of the subrule.

These amendments replace each reference in paragraph (b) to "any committee of inspection" with a reference to "any committee of creditors".

[21] Paragraph 9.5 (7) (d)

Subrule 9.5 (7) sets out the information that must be included in an affidavit in support of the originating process or interlocutory process seeking an order under subsection 484 (2) of the Law fixing a special manager's remuneration.

This amendment inserts a new requirement to the effect that the affidavit in support must state particulars of any objection to the remuneration of which the special manager has received notice.

Application for examination or investigation under s 411, s 423 or s 536 (3) of the Law

[22] Rule 11.2, heading

This amendment changes the heading of rule 11.2 to "Application for examination or investigation under s 411 (9) (b), s 423 or s 536 (3) of the Law". The amended heading more accurately describes the provisions of the Law relating to applications for examinations and investigations.

[23] Subrules 11.2 (1) and (3)

Subrules 11.2 (1) and (3) are amended by replacing the references to "section 411 or 423" with references to "paragraph 411 (9) (b), section 423". The amended subrules more accurately describe the provisions of the Law relating to applications for examinations and investigations.

Application for examination summons (s 596A, s 596B of the Law) - Form 17

[24] Subrule 11.3 (2)

Under subrule 11.3 (1), an application for the issue of an examination summons must be made by filing an originating process or interlocutory process, as the case requires. The amendment substitutes a new subrule 11.3 (2) which provides that an application need not name the person whose examination is sought as a respondent to the application. That is, the person whose examination is sought is not a party to the application for the examination summons.

[25] Subrule 11.8 (3)

This amendment makes it clear that an examination summons must be in accordance with Form 17.

Acquisition of shares and securities

[26] Division 12, heading

This amendment alters the heading to Division 12 to refer to Chapters 6 to 6D of the Law. It is consequential to amendments made to the Corporations Law by the *Corporations Law Economic Reform Program Act 1999* (Act No 156 of 1999).

[27] Rule 12.1

This amendment replaces the reference in rule 12.1 to "Chapter E" with a reference to "Chapters 6, 6A, 6B, 6C, and 6D". It is consequential to amendments made to the Corporations Law by the *Corporations Law Economic Reform Program Act 1999* (Act No 156 of 1999).

Schedule 1

[28] Schedule 1, Form 2, Parts A and B

This amendment

- * replaces the reference to the "ASC Law" with a reference to the "ASIC Law";
- * relocates the information about the time, date and location of the hearing from Part B to Part A; and

* makes it clear that Part B need not be completed if there is no Defendant to the application, such as where the application is for an examination summons.

[29] Schedule 1, Form 3, Parts A and B

This amendment

* replaces the reference to the "ASC Law" with a reference to the "ASIC Law";

* relocates the information about the time, date and location of the hearing from Part B to Part A; and

* makes it clear that Part B need not be completed if there is no Respondent to the application, such as where the application is for an examination summons.

[30] Schedule 1, Form 17, heading

This amendment removes the reference to "public" from the heading of Form 17. The new heading is consistent with the provisions of the Law that examinations may be conducted in public or in private.

[31] Schedule 1, Form 17, Part B

The effect of this amendment is to include in Form 17 the name and address for service of the person at whose request the examination summons is issued.

Further amendments

[32] Further amendments - ASIC Law

These amendments replace each reference in the Rules to "ASC Law" with a reference to "ASIC Law". They are consequential to amendments made by the *Corporations Law Economic Reform Program Act 1999* (Act No 156 of 1999).