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Corporations Law Amendment Rules 2000 (No. \surd)¹

Statutory Rules 2000 No. \surd ²

333

We, Judges of the Federal Court of Australia, make the following
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated \surd 2000

4 December

M.E.J. BLACK C.J.
B.A. BEAUMONT J.
M.R. WILCOX J.
J.E.J. SPENDER J.
P.R.A. GRAY J.
J.A. MILES J.
D.M. RYAN J.
R.S. FRENCH J.
M.C. LEE J.
J.W. von DOUSSA J.
D.G. HILL J.
M.F. O'LOUGHLIN J.
T.J. HIGGINS J.
P.C. HEEREY J.
D.P. DRUMMOND J.

R.E. COOPER J.
A.P. WHITLAM J.
C.J.S.M. CARR J.
M.F. MOORE J.
C.M. BRANSON J.
J.H. MATHEWS J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
S.M. KIEFEL J.
R.D. NICHOLSON J.
P.D. FINN J.
R.A. SUNDBERG J.
S.R. MARSHALL J.
J.R.F. LEHANE J.
A.M. NORTH J.
R.N. MADGWICK J.
R. MERKEL J.
J.R. MANSFIELD J.
A.H. GOLDBERG J.
A.R. EMMETT J.
R.A. FINKELSTEIN J.
M.S. WEINBERG J.
J.A. DOWSETT J.
L.S. KATZ J.
P.G. HELY J.
S.C. KENNY J.
R.V. GYLES J.
R.A. CONTI J.
M.A. STONE J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar

1 Name of Rules

These Rules are the *Corporations Law Amendment Rules 2000* (No. *1*).

2 Commencement

These Rules commence on 1 January 2001.

3 Amendment of *Corporations Law Rules 2000*

Schedule 1 amends the *Corporations Law Rules 2000*.

Schedule 1 Amendments

(rule 3)

[1] Rule 1.1

substitute

1.1 Citation

These Rules may be cited as the *Federal Court (Corporations) Rules 2000*.

[2] Subrule 2.8 (3)

substitute

- (3) Unless the Court otherwise orders, if a person makes an application under a provision of the Law mentioned in column 2 of an item of the following table, the person must serve on the Commission, a reasonable time before the hearing of the application, a copy of the originating process, or interlocutory process, and supporting affidavit in respect of the application.

Item	Provision	Description of application
1	Section 480	For the release of a liquidator of a company and the deregistration of the company
2	Subsection 482 (1)	For the stay of a compulsory winding up
3	Subsection 509 (6)	For the deregistration of a company
4	Subsection 536 (1)	For an inquiry into the conduct of a liquidator
5	Subsection 601AH (2)	To reinstate the registration of a company
6	Subsection 601CC (8)	To restore the name of an Australian body to the register
7	Subsection 601CL (9)	To restore the name of a foreign company to the register
8	Chapter 6, 6A, 6B, 6C, 6D or 7	Any application under these Chapters
9	Subsections 1317S (2), (4) and (5)	For relief from liability for contravention of a civil penalty provision

[3] Paragraph 2.13 (1) (b)

after
corporation;

insert
or

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

insert

(c) any other interested person;

[5] Paragraph 5.1 (a)

substitute

- (a) an application for an order under Part 2F.1 of the Law;

[6] Subrule 6.1 (3)

substitute

(3) If:

- (a) an order is made appointing a provisional liquidator; and
(b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the property of the company;

the order must include a short description of the part of the property of the company that the provisional liquidator may take into custody.

[7] Rule 7.11, heading

substitute

7.11 Inquiry into conduct of liquidator (s 536 (1) and (2) of the Law)

[8] Subrule 9.1 (1), note

substitute

Note Under paragraph 425 (2) (b) of the Law, the Court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

[9] Paragraph 9.1 (6) (d)*substitute*

- (d) state particulars of any objection of which the receiver has received notice; and
- (e) if the receivership is continuing — give details of any matters delaying the completion of the receivership.

[10] Subrule 9.2 (2)*substitute*

- (2) The administrator must not apply for the order until after the date of the meeting of creditors mentioned in paragraph 449E (1) (a) of the Law.

[11] Paragraph 9.2 (3) (b)*omit*

committee of inspection;

insert

committee of creditors;

[12] Paragraph 9.2 (7) (d)*substitute*

- (d) state particulars of any objection of which the administrator has received notice; and
- (e) if the administration is continuing — give details of any matters delaying the completion of the administration.

[13] Paragraph 9.3 (3) (b)

omit

committee of inspection

insert

committee of creditors

[14] Paragraph 9.3 (3) (b)

omit

committee of inspection,

insert

committee of creditors,

[15] Paragraph 9.3 (7) (d)

substitute

- (d) state particulars of any objection of which the provisional liquidator has received notice; and
- (e) if the winding up proceeding has not been determined — give details of:
 - (i) any reasons known to the provisional liquidator why the winding up proceeding has not been determined; and
 - (ii) any reasons why the provisional liquidator's remuneration should be determined before the determination of the winding up proceeding.

[16] Paragraph 9.4 (2) (b)

omit

the end of 28 days after

[17] Paragraph 9.4 (3) (b)

omit

committee of inspection;

insert

committee of creditors;

[18] Paragraph 9.4 (7) (d)

substitute

(d) state particulars of any objection of which the liquidator has received notice; and

(e) if the winding up is continuing — give details of any matters delaying the completion of the winding up.

[19] Paragraph 9.5 (3) (b)

omit

committee of inspection

insert

committee of creditors

[20] Paragraph 9.5 (3) (b)

omit

committee of inspection,

insert

committee of creditors,

[21] Paragraph 9.5 (7) (d)

substitute

(d) state particulars of any objection of which the special manager has received notice; and

-
- (e) if the special management is continuing — give details of any matters delaying the completion of the special management.

[22] Rule 11.2, heading

substitute

11.2 Application for examination or investigation under s 411 (9) (b), s 423 or s 536 (3) of the Law

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

omit

section 411 or 423

insert

paragraph 411 (9) (b), section 423

[24] Subrule 11.3 (2)

substitute

- (2) The application need not name the person whose examination is sought as a respondent to the application.

[25] Subrule 11.3 (8)

omit

is to be

insert

must be

[26] Division 12, heading

substitute

Division 12 Takeovers, acquisitions of shares, etc (Chapters 6 to 6D of the Law) and Securities (Chapter 7 of the Law)

[27] Rule 12.1

substitute

12.1 Service on Commission in relation to proceedings under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Law

If the Commission is not a party to an application made under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Law, the plaintiff must serve a copy of the originating process and the supporting affidavit on the Commission as soon as practicable after filing the originating process.

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

substitute

A. DETAILS OF APPLICATION

This application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations.

[State briefly the nature of the proceeding, eg application for winding-up on ground of insolvency; or complaint about a receiver.]

On the facts stated in the supporting affidavit(s), the plaintiff claims:

1

2

etc

AND

Date:

.....
*Signature of plaintiff or
 plaintiff's legal practitioner*

This application will be heard by
 at [address of Court] at *am/*pm on

B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: [*name and address of each defendant (if any)*].

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

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

substitute

A. DETAILS OF INTERLOCUTORY APPLICATION

This interlocutory application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations.

On the facts stated in the supporting affidavit(s), the applicant, [name], applies for the following interlocutory relief:

1

2

etc

AND

Date:

.....
*Signature of applicant making this application or
applicant's legal practitioner*

This interlocutory application will be heard by
..... at [address of Court] at *am/*pm on

B. NOTICE TO RESPONDENT(S) (IF ANY)

TO: [name and address of each respondent to this interlocutory process (if any). If applicable, also state the respondent's address for service.]

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Note Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

[30] **Schedule 1, Form 17, heading**

substitute

Form 17 Summons for examination

(rule 11.3)

[31] **Schedule 1, Form 17, Part B**

substitute

B. NOTICE TO PERSON TO BE EXAMINED

The Court may order that the questions put to you and the answers given by you at the examination are to be recorded in writing and signed by you.

If you do not attend the examination in accordance with this summons, without reasonable cause, you may be arrested and imprisoned without further notice.

This summons is issued at the request of [name] whose address for service is [address of person's legal practitioner or of person].

* *Omit if not applicable*

[32] **Further amendments — ASIC Law**

The following provisions are amended by omitting 'ASC Law' and inserting 'ASIC Law':

- subrules 1.3 (1), (2) and (3)
- subrule 1.5, definitions of *defendant* and *plaintiff*
- paragraph 1.8 (a)
- rule 1.10
- subparagraphs 2.2 (3) (b) (i) and (4) (b) (i)
- Division 15, heading
- rule 15.1, heading
- rule 15.1
- rule 15.2, heading
- rule 15.2

- rule 15.3, heading
- rule 15.3
- paragraph 16.1 (1) (b)
- Schedule 2, Part 2, heading
- Schedule 2, Part 2, table, column 2 heading.

Notes

1. These Rules amend Statutory Rules 1999 No. 359.
2. Notified in the *Commonwealth of Australia Gazette* on / 2000. 8 December