

Federal Court (Corporations) Amendment Rules 2003 (No. 1) 2003 No. 132

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 132

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

Federal Court (Corporations) Amendment Rules 2003 (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 Name of rules

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment Rules 2003 (No 1)*.

RULE 2 Commencement

This rule provides that these Rules commence on gazettal.

RULE 3 Amendment of *Federal Court (Corporations) Rules 2000*

This rule provides that the *Federal Court (Corporations) Rules 2000* are amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

[1] Subrule 1.3 (3), note

The note at the foot of subrule 1.3 (3) refers to the definition of 'the Law'. This amendment substitutes a new note which states that, by virtue of the definition of 'this Act' in section 9 of the *Corporations Act 2001* (Cth), a reference to the Corporations Act includes a references to the Corporations Regulations.

[2] Rule 1.5, after definition of *applicant*

This amendment inserts definitions of 'ASIC Act', 'Corporations Act' and 'Corporations Regulations'. It is consequential to the amendments to the Rules which replace references to 'the Law' and the 'ASIC Law' with references to the 'Corporations Act' and 'ASIC Act'.

[3] Rule 1.5, definition of *the Law*

This amendment omits the definition of 'the Law'. It is consequential to the amendments to the Rules which replace references to 'the Law' with references to the 'Corporations Act'.

[4] Subrule 2.2 (4), at the foot

This amendment inserts a new note at the foot of subrule 2.2 (4). The new note provides that, in an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (see item [29] below).

[5] Subrule 2.4 (2), at the foot

This amendment inserts a new note at the foot of subrule 2.4 (2). The new note provides that an example of the affidavit in support of an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand is shown in Schedule 3 (see item [29] below).

[6] Subrule 5.4 (2), at the foot

This amendment inserts a new note at the foot of subrule 5.4 (2). The new note provides that an example of the affidavit in support of an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand is shown in Schedule 3 (see item [29] below).

[7] After rule 12.1

This amendment inserts a new rule 12.1A which provides, inter alia, that Order 50 of the Federal Court Rules applies, with any necessary adaptations, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the Court under section 659A of the Corporations Act. Order 50 deals with the form of the referral, and how to identify the party who must have carriage of it before the Court.

[8] Subrule 12.2 (1)

This amendment substitutes a new subrule 12.2 (1) which replaces the reference to subsection 1092 (3) of the Law with a reference to subsection 1071D (4) of the Corporations Act. It is consequential to amendments to the Corporations Act.

[9] Rule 12.3

This amendment substitutes a new rule 12.3 which replaces the reference to section 1094 of the Law with a reference to section 1071F of the Corporations Act. It is consequential to amendments to the Corporations Act.

[10] Division 13

This amendment omits Division 13, which dealt with certain proceedings arising under Chapter 8 of the Corporations Act. The amendment is consequential to the *Financial Services Reform Act 2001* (Cth), which amended the Corporations Act by omitting Chapter 8.

[11] Rule 15.2

This amendment omits rule 15.2, which dealt with a reference of a question of law arising at a hearing by the Corporations and Securities Panel to the Court under section 196 of the ASIC Law. Rule 15.2 is no longer necessary as the ASIC Act replaced the Corporations and Securities Panel

with the Takeovers Panel, and the referral of questions of law to the Court is now dealt with under section 659A of the Corporations Act.

[12] Schedule 1, Form 2, Part A

Form 2 is the prescribed form of originating process.

This amendment replaces the references to the Corporations Law and ASIC Law in Part A of Form 2 with references to the Corporations Act and ASIC Act.

[13] Schedule 1, Form 2, Part C

This amendment replaces the reference to the Corporations Law in Part C of Form 2 with a reference to the Corporations Act.

[14] Schedule 1, Form 2, Part C, at the foot

This amendment inserts two new notes at the foot of Part C of Form 2.

Note 1 provides that, in an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (see item [29] below).

Note 2 provides that an example of the affidavit in support of an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand is shown in Schedule 3 (see item [29] below).

[15] Schedule 1, Form 3, Part A

Form 3 is the prescribed form for an interlocutory process.

This amendment replaces the references to the Corporations Law and ASIC Law in Part A of Form 3 with references to the Corporations Act and ASIC Act.

[16] Schedule 1, Form 8

Form 8 is the prescribed form of consent of a liquidator or provisional liquidator.

This amendment inserts a new note at the foot of the form which provides that the hourly rates charged in respect of work done as liquidator or provisional liquidator by the person giving the consent, and by the partners and employees of that person who may perform work in the administration, are set out at the end of the form or in a Schedule attached to it. The note also states that the appointment of the person as liquidator or provisional liquidator by the Court does not constitute an express or implied approval by the Court of the hourly rates.

[17] Schedule 1, Form 8

This amendment inserts the Schedule referred to in the amendment set out in item [16] above.

[18] Schedule 1, Form 10

Form 10 is the prescribed form for a notice of an application for a winding up order by a substituted plaintiff.

This amendment replaces the requirement for the signature of the person giving notice or that person's legal practitioner with a requirement for the name of the substituted plaintiff or the substituted plaintiff's legal practitioner. The amendment means form 10 is consistent with form 9, which is the prescribed form for a notice of an application for a winding up order.

[19] Schedule 1, Form 17, Part A

Form 17 is the prescribed form for a summons for examination.

This amendment replaces the reference to the Corporations Law in Part A of Form 17 with a reference to the Corporations Act.

[20] Schedule 2, Part 1, heading

Part 1 of Schedule 2 sets out the powers of the Court under the Law that may be exercised by a Registrar.

This amendment, in effect, replaces the reference to the Corporations Law in the heading of Part 1 with a reference to the Corporations Act.

[21] Schedule 2, Part 1, column 2, heading

This amendment replaces the reference to the Corporations Law in the heading of column 2 of Part 1 with a reference to the Corporations Act.

[22] Schedule 2, Part 1, item 4

This amendment replaces item 4 with a new item 4 which refers to the relevant provisions of the Corporations Act.

[23] Schedule 2, Part 1, after item 9

This amendment inserts new items 9A, 9B, 9C, 9D and 9E which refer to powers under the relevant provisions of the Corporations Act. The powers referred to in the new items are the same as the powers under the Law that were referred to in items 102 to 105 of Part 1 of Schedule 2 which have, in effect, been omitted by the amendment in item [24] below.

[24] Schedule 2, Part 1, items 101 to 108

This amendment replaces items 101 to 108 with new items 101 to 103.

New items 101 to 103 refer to powers under the relevant provisions of the Corporations Act. The powers referred to in the new items are the same as the powers under the Law referred to in items 106 to 108 of Part 1 of Schedule 2.

Items 102 to 105 have, in effect, been replaced by the new items 9A to 9E inserted by item [23] above.

Item 101 has, in effect, been replaced by the new item 113A inserted by item [25] below.

[25] Schedule 2, Part 1, after item 113

This amendment inserts new item 113A which refers to the power under section 1325D of the Corporations Act to make an order where contravention of a provision of Chapter 6 was due to inadvertence. The power referred to in the new item is the same as the power under the Law

that was referred to in item 101 of Part 1 of Schedule 2 which has, in effect, been omitted by the amendment in item [24] above.

[26] Schedule 2, Part 1, item 115

This amendment omits item 115, which referred to the powers under section 1457 and 1459 of the Law. The Corporations Act makes no provision for these powers.

[27] Schedule 2, Part 2, heading

Part 2 of Schedule 2 sets out the powers of the Court under the ASIC Law that may be exercised by a Registrar.

This amendment, in effect, replaces the reference to the ASIC Law in the heading of Part 2 with a reference to the ASIC Act.

[28] Schedule 2, Part 2, column 2, heading

This amendment replaces the reference to the ASIC Law in the heading of column 2 of Part 2 with a reference to the ASIC Act.

[29] After Schedule 2

This amendment inserts a new Schedule 3, Notes to these Rules.

Note 1 is referred to in the note to rule 2.2. It sets out how, in an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant might complete Part C of Form 2.

Note 2 is referred to in the note to rule 2.4 and the note to rule 5.4. It is an example of the affidavit in support an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand.

[30] Further amendments - references to *the Law, the Corporations Law and the ASIC Law*

This amendment replaces each reference to 'the Law' with a reference to 'the Corporations Act'; each reference to the 'Corporations Law' with a reference to the 'Corporations Act' and each reference to the 'ASIC Law' with a reference to the 'ASIC Act'.

[31] Further amendments - headings

This amendment replaces a number of headings to Divisions and rules with new headings which refer to the appropriate provisions of the Corporations Act or the ASIC Act, as the case may be.