

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2010 No. 47**

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

#### **Federal Court (Corporations) Amendment Rules 2010 (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*, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the *Federal Court of Australia Act 1976*.

The Federal Court (Corporations) Rules 2000 apply to a proceeding in the Court under the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* commenced on or after 1 January 2000.

The Judges have agreed to amend the Federal Court (Corporations) Rules 2000 to give effect to a recommendation of the Council of Chief Justices' Harmonised Corporations Rules Monitoring Committee.

These Amendment Rules will amend the *Federal Court (Corporations) Rules 2000* by amending Form 19, Consent to Act as designated person, so as to include a reference to the administration and realisation, as well as the distribution, of assets. This change is consequential upon amendments made in 2009 to rule 15A.5 to ensure that it is consistent with the terms of articles 19 and 21 of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law which operates in Australia pursuant to the *Cross-Border Insolvency Act 2009* (Cth).

The amendments have been the subject of consultation with the Insolvency Practitioners Association of Australia and the Law Council of Australia.

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered.

## ATTACHMENT

**Federal Court (Corporations) Amendment Rules 2010 (No. 1)****RULE 1        Name of rules**

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment Rules 2010 (No. 1)*.

**RULE 2        Commencement**

This rule provides that these Rules commence on the day after they are registered.

**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****[1] Form 19**

Form 19 is the prescribed form for consent to act as a designated person. It is required pursuant to rule 15A.5.

Rule 15A.5 provides that if the relief sought in an application under article 15 of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law which operates in Australia pursuant to the *Cross-Border Insolvency Act 2009* (Cth) (the Model Law) includes an order under article 19 or 21 to entrust the administration, realisation or distribution of the debtor's assets to a person designated by the Court (other than the foreign representative), then that person must be an official liquidator and have filed a Consent to Act in accordance with Form 19.

Form 19 is amended by replacing the word 'distribute' with the words '\*administer/\*realise/\*distribute' so that it is consistent with rule 15A and articles 19 and 21 of the Model Law.