



FEDERAL CIRCUIT COURT OF AUSTRALIA

EXPLANATORY STATEMENT

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

Federal Circuit Court (Bankruptcy) Rules 2016

Authority for Federal Circuit Court Rules

Section 81 of the *Federal Circuit Court of Australia Act 1999* permits the Judges of the Federal Circuit Court of Australia (Federal Circuit 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 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 81(3) of the *Federal Circuit Court of Australia Act 1999*, the *Legislation Act 2003* (other than sections 8, 9, 10 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Circuit Court of Australia Act 1999* 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 Judge 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 120 of the *Federal Circuit Court of Australia Act 1999*.

Background to the Federal Circuit Court (Bankruptcy) Rules 2016

The Federal Circuit Court has jurisdiction under the *Bankruptcy Act 1966* to deal with a range of proceedings and matters which is concurrent with that of the Federal Court of Australia (Federal Court) in bankruptcy. The Family Court of Australia (Family Court) also has jurisdiction under the Bankruptcy Act limited to circumstances where proceedings for property settlement or spousal maintenance under the *Family Law Act 1975* are current in the Family Court.

With effect from 6 February 2006 the Judges of the Federal Circuit Court made the Federal Circuit Court (Bankruptcy) Rules 2006 (existing Bankruptcy Rules) in relation to the practice and procedure to be followed in proceedings in the Federal Circuit Court under the Bankruptcy Act. These Rules were harmonised with the rules for proceedings under the Bankruptcy Act in the Federal Court as well as some rules in the Family Law Rules 2004 relevant to proceedings under the Bankruptcy Act in which the Family Court has jurisdiction.

The current harmonised rules in bankruptcy of the Federal Circuit Court and Federal Court when adopted had been the subject of consultation with the Insolvency and Trustee Service Australia

(now Australian Financial Security Authority) [AFSA]), the Law Council of Australia, legal professional bodies in each State and Territory and a range of insolvency practitioners.

As a result of the operation of the sunset provisions contained in Part 4 of Chapter 3 of the Legislation Act, the current Bankruptcy Rules, as well as the Federal Court (Bankruptcy) Rules 2005, will be automatically repealed on 1 April 2016.

Rewriting of Existing Bankruptcy Rules

The Federal Circuit Court and the Federal Court have developed, in consultation with the Office of Parliamentary Counsel and with significant input from Registrars, replacement harmonised rules for proceedings - save for the Part dealing with proceedings under the *Cross-Border Insolvency Act 2008* for which the Federal Circuit Court does not have jurisdiction - in the Courts in bankruptcy.

The replacement rules:

- reflect the current drafting style for legislative instruments adopted by the Office of Parliamentary Counsel;
- correct obvious errors identified through the drafting process;
- adopt wording more consistent with the relevant enabling provisions of the Bankruptcy Act; and
- clarify, simplify and provide additional guidance where it was felt that this would be useful to court users and do not affect policy.

Adoption of New Rules

The Judges of the Federal Circuit Court have agreed to adopt those rules as the Federal Circuit Court (Bankruptcy) Rules 2016 (the new Bankruptcy Rules).

New Forms and Transitional Arrangements for Forms

Consistent with the approach adopted by the Federal Circuit Court in the Federal Circuit Court Rules 2001 (and similarly by the Federal Court in its Federal Court Rules 2011), the new Bankruptcy Rules do not prescribe forms but provide for the Chief Judge to approve forms for the purposes of the Rules. Modern forms have been developed that are user and word processor friendly. The Federal Circuit Court will publish the approved forms on its internet home page (www.federalcircuitcourt.gov.au) along with other guidance information in bankruptcy.

Transitional provisions of the Federal Circuit Court (Bankruptcy) Repeal Rules 2016, made at the same time as the new Bankruptcy Rules, permit the prescribed forms under the existing Bankruptcy Rules to continue to be used for up to 6 months.

Consultation

The Federal Circuit Court and the Federal Court consulted about the approach taken in the rewriting of the existing harmonised bankruptcy rules with the Harmonised Bankruptcy Rules Monitoring Committee (the Committee), AFSA and the relevant liaison committees for each

Court of the Law Council of Australia. The Committee consists of representatives from the three federal courts (Federal Court, Family Court and Federal Circuit Court) and the legal profession. The time that was available for the development of the replacement harmonised rules did not, however, permit more extensive consultation about the details of those rules. As the rewrite involved no change in policy such detailed consultation was unnecessary.

Human Rights Scrutiny

Subsection 8(8) of the Legislation Act provides that Rules of Court made for the Federal Circuit Court are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

Explanation and Commencement of the Rules

Details of the Rules are in the Attachment.

The Rules commence on 1 April 2016.

Federal Circuit Court (Bankruptcy) Rules 2016**Part 1 – Preliminary**

Part 1 deals with preliminary matters.

Rule 1.01 provides that these Rules are to be cited as the *Federal Circuit Court (Bankruptcy) Rules 2016*.

Rule 1.02 provides that these Rules commence on 1 April 2016.

Rule 1.03 provides that these Rules are made under the *Federal Circuit Court of Australia Act 1999*.

Rule 1.04 provides that these Rules apply to a proceeding in the Court to which the Bankruptcy Act applies; and, in addition, that the other rules of the Court apply to a proceeding in the Court under the Bankruptcy Act but only to the extent that they are relevant and not inconsistent with these Rules. Rule 1.04(1) has been amended to include the words “unless the Court otherwise orders” to accord with the comparable Federal Court rule.

Rule 1.05 defines, for the purposes of these Rules, the meaning of a number of terms used in the Rules and provides that expressions used in both the Rules and in the Dictionary set out in Schedule 1 of the Federal Circuit Court Rules 2001 have the same meaning in these Rules as they do in the Federal Circuit Court Rules 2001. It is substantially the same as rule 1.04 of the existing Bankruptcy Rules.

Rule 1.06 provides that expressions used in these Rules and in the Bankruptcy Act have the same meaning in these Rules as they do in the Bankruptcy Act. For the assistance of court users the rule also contains a non-exhaustive list of terms used in the Rules and in the Bankruptcy Act. It is substantially the same as rule 1.05 of the existing Bankruptcy Rules.

Rule 1.07 provides that the Chief Judge may approve forms for the purposes of these Rules and notes that these will be made available on the Court’s website at www.federalcircuitcourt.gov.au. A reference in the Rules to “Form” followed by the letter “B” and a number (for example “Form B1”) is a reference to an approved form so numbered.

The rule also provides that it is sufficient compliance with these Rules if a document required to be in accordance with an approved form is substantially in accordance with that form with only such variations as the nature of the case requires and that, where no approved form is specified for a particular purpose, a form specified in other rules of the Court for the same purpose may be used but it must use the heading title for bankruptcy proceedings approved by the Chief Judge (Form B1).

Rule 1.07 is similar to rule 1.06 of the existing Bankruptcy Rules but specifies the use of approved forms rather than prescribed forms. It also incorporates the requirements applying

generally to documents filed in the Federal Circuit Court under rule 2.04 of the Federal Circuit Court Rules 2011.

Part 2 – General

Part 2 contains rules dealing with:

- the form and content of an application to commence a proceeding (where this is not otherwise specified in the Rules) and of an interim application in a proceeding that has been commenced (rule 2.01). For the assistance of court users rule 2.01 also contains a non-exhaustive list of applications where the general form of application (Form B2) and form of interim application (Form B3) must be used. The rule is substantially the same as rule 2.01 of the existing Bankruptcy Rules. The non-exhaustive list does not include a reference to an application for review of the exercise of a power made by a Registrar as this must be made by filing a new form B3A in the Federal Circuit Court.
- the powers of the Court that may be exercised by a Registrar under paragraph 102(2)(i) of the Federal Circuit Court of Australia Act if directed by the Court or a Judge (subrule 2.02(1) and Schedule 1). Subrule 2.02(1) is substantially the same as rule 2.02 of the existing Bankruptcy Rules and Schedule 1 is similar to Schedule 2 of the existing Bankruptcy Rules save that it includes, as an additional power which a Registrar may be directed to exercise, the power under section 55(3B) of the Bankruptcy Act to direct the Official Receiver to accept or reject a debtor's petition.
- the making of an application to a Registrar when he or she is exercising the powers of the Court under section 102 of the Federal Circuit Court of Australia Act to arrange for the matter to be heard by the Court (subrule 2.02(2)). Subrule 2.02(2) is substantially the same as subrule 2.03(2) of the existing Bankruptcy Rules.
- the review by the Court under section 102 of the Federal Circuit Court of Australia Act of a decision, direction or act of a Registrar (subrule 2.02(3)). Subrule 2.02(3) is substantially the same as subrule 2.03(1) of the existing Bankruptcy Rules save for specifying that an application for review must be made by filing the new form B3A.
- the Court's power to grant leave, including conditional leave, to be heard in a proceeding by a person who is not a party to the proceeding (rule 2.03). Rule 2.03 is substantially the same as rule 2.04 of the existing Bankruptcy Rules.
- the need for a person who intends to appear at the hearing of an application or petition, or take part in an examination, to file a notice of appearance in accordance with Form B4 (rule 2.04). Rule 2.04 is substantially the same as subrule 2.05(1) of the existing Bankruptcy Rules.
- the inapplicability of rule 10.02 of the Federal Circuit Court Rules 2001 (Adjournment of first court date) to the return date fixed for a creditor's petition (rule 2.05). Rule 2.05 is substantially the same as subrule 2.05(2) of the existing Bankruptcy Rules.
- the need for a person who intends to oppose an application or petition to file a notice of appearance in accordance with Form B4, a notice stating the grounds of opposition in accordance with Form B5 and an affidavit in support and serve the notices and affidavit on the applicant, at least 3 days before the date fixed for the hearing (rule 2.06). Rule 2.06 is substantially the same as rule 2.06 of the existing Bankruptcy Rules.

Part 3 – Bankruptcy notices

Part 3 deals with bankruptcy notices.

Rule 3.01 provides that an application under section 309(2) of the Bankruptcy Act for substituted service of a bankruptcy notice must be accompanied by an affidavit stating the grounds in support of the application to which a copy of the bankruptcy notice must be attached. The Rule is similar to rule 3.01 of the existing Bankruptcy Rules but provides guidance to court users on procedural requirements.

Rule 3.02 provides that:

- an application under the Bankruptcy Act to set aside a bankruptcy notice must be accompanied by an affidavit setting out the grounds in support of the application and the date when the bankruptcy notice was served on the applicant;
- a copy of the bankruptcy notice must be attached to that affidavit;
- if the application is based on the ground that the debtor has a counter-claim, set-off or cross demand mentioned in paragraph 40(1)(g) of the Bankruptcy Act, that affidavit must also include:
 - full details of the counter-claim, set-off or cross-demand; and
 - the amount of the counter-claim, set-off or cross-demand and the amount by which it exceeds the amount claimed in the bankruptcy notice; and
 - why the counter-claim, set-off or cross-demand was not raised in the proceeding that resulted in the judgment or order;
- if the application is based on the ground that the debtor has instituted proceedings to set aside a judgment or order in relation to which the bankruptcy notice was issued, a copy of that application and any material in support must also be attached to that affidavit; and
- the application and supporting affidavit must be served on the creditor within 3 days after the application is filed.

For the assistance of court users notes to rule 3.02 reference the legislative provisions for extension of time for compliance with a bankruptcy notice and deemed extension of time for relevant applications.

Rule 3.02 is similar to rule 3.02 of the existing Bankruptcy Rules but its provisions are reordered and it provides court users with more comprehensive guidance on procedural requirements.

Rule 3.03 deals with an application for an extension of time under subsection 41(6A) of the Bankruptcy Act for compliance with a bankruptcy notice. An application must be accompanied by an affidavit:

- stating the grounds in support of the application and the date when the bankruptcy notice was served on the applicant; and
- a copy of the bankruptcy notice and any application to set aside the judgment or order in relation to which the notice was issued and any material in support of that application must be attached to that affidavit.

The application may be made in the absence of another party and need be heard in open court only if it is for an extension of time to a date after the first directions hearing. If an order extending the time for compliance is made, the application, the order and any supporting documents must be served on the respondent within 3 days after the order is made.

Rule 3.03 is similar to rule 3.03 of the existing Bankruptcy Rules but some of its provisions are reordered and it provides court users with more comprehensive guidance on procedural requirements.

Part 4 – Creditors’ petitions

Part 4 applies in relation to a creditor’s petition seeking a sequestration order against the estate of a debtor (rule 4.01). Rule 4.01 is substantially the same as rule 4.01 of the existing Bankruptcy Rules.

Rule 4.02 deals with the form and content of a creditor’s petition and the documents that must accompany it. It is similar to rule 4.02 of the existing Bankruptcy Rules but some of its provisions are reordered and it provides more comprehensive guidance on procedural requirements.

Rule 4.03 deals with the additional information that must be included in the affidavit verifying a petition which is founded on an act of bankruptcy mentioned in paragraph 40(1)(d) of the Bankruptcy Act. It is substantially the same as rule 4.03 of the existing Bankruptcy Rules.

Rule 4.04 deals with the additional documents that must accompany a creditor’s petition which is founded on an act of bankruptcy mentioned in paragraph 40(1)(g) of the Bankruptcy Act. It is similar to rule 4.04 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 4.05 prescribes the documents that, unless the Court otherwise orders, the applicant creditor must serve on the respondent debtor at least 5 days before the date fixed for the hearing of a creditor’s petition. It is substantially the same as rule 4.05 of the existing Bankruptcy Rules.

Rule 4.06 sets out the additional affidavits that the applicant creditor must file before the hearing of a creditor’s petition. It is similar to rule 4.06 of the existing Bankruptcy Rules but incorporates a definition into the relevant subrule for easier understanding.

Rule 4.07 sets out the times within which the applicant creditor must notify the trustee of, and enter, a sequestration order against the estate of the debtor. It is similar to rule 4.08 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 4.08 sets out the time within which the applicant creditor must enter an order dismissing a creditor’s petition, giving leave for a petition to be withdrawn, or made under subsection 52(5) of the Bankruptcy Act (being an order to extend the time before the petition will lapse). It is similar to rule 4.09 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 4.09 provides that the applicant creditor must serve an order that is entered under rule 4.07 or 4.08 on any person who has consented to act as trustee under section 156A of the Bankruptcy Act and the Official Receiver within 2 days after the entry is stamped. It is substantially the same as rule 4.10 of the existing Bankruptcy Rules.

Part 5 – Debtors’ petitions

Part 5 deals with debtors’ petitions.

Rule 5.01 sets out the procedure in relation to a referral to the Court by the Official Receiver of a debtor’s petition for a direction to accept or reject the petition:

- the referral must be in accordance with Form B8;
- a Registrar must fix a time, date and place for the hearing of the referral;
- the Official Receiver must, at least 3 days before the date fixed, serve a sealed copy of the referral and the notice in accordance with Form B8 of the time, date and place fixed for hearing on all relevant debtors and creditors and, if subsection 56C(4) of the Bankruptcy Act applies, the person administering the relevant proclaimed law.

The rule is substantially the same as rule 5.01 of the existing Bankruptcy Rules.

Part 6 – Examinations

Part 6 sets out the rules in relation to an examination of a debtor, examinable person or relevant person.

Division 6.1 deals with an application to examine a debtor or examinable person under section 50 of the Bankruptcy Act.

Rule 6.01 provides that an application for a debtor, or examinable person in relation to the debtor, to be summoned for an examination under section 50 of the Bankruptcy Act must be in Form B2 and accompanied by an affidavit which:

- identifies the person to be examined and, if that person is an examinable person in relation to a debtor, the debtor in relation to whom the examination is to be conducted;
- if the person sought to be examined is an examinable person, states the facts relied on by the applicant to establish that the person to be summoned is an examinable person; and
- identifies any books that are to be produced and the grounds on which the person is required to produce the books.

A note to subrule 6.01(1) clarifies that more than one application may be included in the same Form B2.

Rule 6.01 is similar to rule 6.02 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 6.02 specifies that an application for a summons under rule 6.01 may be heard in the absence of a party or in closed court. It is substantially the same as rule 6.03 of the existing Bankruptcy Rules.

Rule 6.03 provides that:

- a summons must be in accordance with Form B9;
- a Registrar must sign and affix the stamp of the Court to the summons and give it to the applicant for service; and

- the summons must identify any books that are to be produced pursuant to the summons.

Rule 6.03 is substantially the same as rule 6.04 of the existing Bankruptcy Rules.

Rule 6.04 provides that the applicant must, at least 8 days before the date fixed for the examination:

- serve the summons on the relevant person personally, or as directed by the Court or a Registrar; and
- give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

Rule 6.04 is substantially the same as rule 6.05 of the existing Bankruptcy Rules.

Rule 6.05 provides that a person served with a summons may apply for an order to discharge that summons by filing, at least 3 days before the date fixed for the examination, an interim application in accordance with Form B3 and a supporting affidavit setting out the grounds for the application. Copies of the application and supporting affidavit must be served on the person who applied for the summons and, if that person is not the Official Receiver, also on the Official Receiver as soon as possible. It is substantially the same as rule 6.06 of the existing Bankruptcy Rules.

Division 6.2 deals with an application to examine a relevant person under section 81 of the Bankruptcy Act.

Rule 6.06 provides that an application for a relevant person to be summoned for examination under section 81 of the Bankruptcy Act must be in accordance with Form B10 and must be accompanied by a draft of the summons applied for as well as an affidavit which:

- states whether the applicant is a creditor with a debt provable in the bankruptcy, the trustee of the relevant person's estate or the Official Receiver; and
- identifies the books that are to be produced, if the person is being summoned to produce books, and details of any inquiry by the applicant about those books and any refusal by the relevant person to cooperate with that inquiry.

A note to subrule 6.06(1) clarifies that more than one application may be included in the same Form B10.

Rule 6.06 is similar to rule 6.07 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 6.07 provides that an application for examination summons under rule 6.06 may be heard in the absence of a party or in closed court. It is substantially the same as rule 6.08 of the existing Bankruptcy Rules.

Rule 6.08 provides that:

- a summons must be in accordance with Form B9;
- a Registrar must sign and affix the stamp of the Court to the summons and give it to the applicant for service;
- the summons must identify any books that are to be produced pursuant to the summons.

Rule 6.08 is substantially the same as rule 6.09 of the existing Bankruptcy Rules.

Rule 6.09 provides that the applicant must, at least 8 days before the date fixed for the examination:

- serve the summons on the relevant person personally, or as directed by the Court or a Registrar; and
- give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

Rule 6.09 is substantially the same as rule 6.10 of the existing Bankruptcy Rules.

Rule 6.10 gives the Court or Registrar the power to either adjourn an examination or discharge the summons if the relevant person does not appear for the examination. It is substantially the same as rule 6.11 of the existing Bankruptcy Rules.

Rule 6.11 provides that a person served with a summons may apply for an order to discharge that summons by filing, at least 3 days before the date fixed for the examination, an interim application in accordance with Form B3 and a supporting affidavit setting out the grounds for the application. Copies of the application and supporting affidavit must be served on the person who applied for the summons and, if that person is not the Official Receiver, also on the Official Receiver as soon as possible. It is substantially the same as rule 6.12 of the existing Bankruptcy Rules.

Division 6.3 deals with an application to examine an examinable person under section 81 of the Bankruptcy Act.

Rule 6.12 provides that an application for an examinable person to be summoned for examination under section 81 of the Bankruptcy Act must be in accordance with Form B10 and must be accompanied by a draft of the summons applied for as well as an affidavit which:

- states whether the applicant is a creditor with a debt provable in the bankruptcy, the trustee of the relevant person's estate or the Official Receiver;
- states the facts relied on by the applicant to establish that each person is examinable;
- states the facts relied on by the applicant to establish that the person to be summoned is an examinable person;
- identifies the books that are to be produced, if the person is being summoned to produce books, and details of any inquiry by the applicant about those books and any refusal by the examinable person to cooperate with that inquiry;
- if lodged for filing other than by electronic means, may be filed in a sealed and marked envelope and, in that event, the affidavit cannot then be made available for public inspection; and
- if lodged for filing by electronic means, may be accompanied by a statement that the affidavit is confidential and, in that event, it cannot then be made available for public inspection.

A note to subrule 6.12(1) clarifies that more than one application may be included in the same Form B10.

Rule 6.12 is similar to rule 6.13 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 6.13 provides that an application for examination summons under rule 6.12 may be heard in the absence of a party or in closed court. It is substantially the same as rule 6.14 of the existing Bankruptcy Rules.

Rule 6.14 provides that:

- a summons must be in accordance with Form B9;
- a Registrar must sign and affix the stamp of the Court to the summons and give it to the applicant for service;
- the summons must identify any books that are to be produced pursuant to the summons.

Rule 6.14 is substantially the same as rule 6.15 of the existing Bankruptcy Rules.

Rule 6.15 provides that the applicant must, at least 8 days before the date fixed for the examination:

- serve the summons on the relevant person personally, or as directed by the Court or a Registrar; and
- give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

Rule 6.15 is substantially the same as rule 6.16 of the existing Bankruptcy Rules.

Rule 6.16 provides that a person served with a summons may apply for an order to discharge that summons by filing, at least 3 days before the date fixed for the examination, an interim application in accordance with Form B3 and a supporting affidavit setting out the grounds for the application. Copies of the application and supporting affidavit must be served on the person who applied for the summons and, if that person is not the Official Receiver, also on the Official Receiver as soon as possible. It is substantially the same as rule 6.17 of the existing Bankruptcy Rules.

Rule 6.17 deals with conduct money and witness expenses in relation to an examinable person who attends an examination in accordance with a summons. It provides that the applicant for the summons must, within a reasonable time before the examination, pay to the person:

- enough conduct money to cover the reasonable expenses of travelling to and from the place where the person lives and any reasonable accommodation expenses; and
- reasonable expenses for the person's attendance as a witness.

Rule 6.17 is substantially the same as rule 6.18 of the existing Bankruptcy Rules.

Part 7 – Annulment or review of bankruptcy

Part 7 deals with the annulment or review of bankruptcy.

Division 7.1 deals with the annulment of a bankruptcy.

Rule 7.01 provides that the Division applies to applications:

- under section 153B of the Bankruptcy Act for the annulment of a bankruptcy; and
- under section 252B of the Bankruptcy Act for the annulment of the administration of the estate of a deceased person.

Rule 7.01 is substantially the same as rule 7.01 of the existing Bankruptcy Rules.

Rule 7.02 provides that an application under the Division must:

- set out the grounds on which the annulment is sought; and
- be served on the trustee at least 7 days before the hearing date fixed for the application.

Rule 7.02 is substantially the same as rule 7.02 of the existing Bankruptcy Rules.

Rule 7.03 provides that the applicant must serve a notice in accordance with Form B11 on each known creditor of the bankrupt or of the estate of the deceased person at least 7 days before the date fixed for the application. It is substantially the same as rule 7.03 of the existing Bankruptcy Rules.

Rule 7.04 applies if the Court makes an order annulling a bankruptcy under section 153B of the Bankruptcy Act or annulling the administration of an estate under section 252B of that Act. It provides that:

- an annulment order must, unless it is entered in the Court at the time it is made, be entered within 1 day after it is made; and
- a copy of the order must be given to the trustee and Official Receiver within 2 days of the order being entered.

Rule 7.04 is similar to rule 7.05 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Division 7.2 deals with the review of a sequestration order made by a Registrar.

Rule 7.05 provides that:

- an application for review of a decision by a Registrar to make a sequestration order against the estate of a debtor (the 'bankrupt') must be served on the trustee at least 7 days before the date fixed for the hearing of the application;
- the applicant must give notice (in accordance with Form B12) of the application to each person known to the applicant to be a creditor of the bankrupt; and
- the applicant must serve the notice on each creditor at least 7 days before the date fixed for the hearing of the application.

A note to subrule 7.05(1) clarifies that the form of application and the time for filing the application are specified in rule 2.02.

Rule 7.05 is similar to subrules 7.06(1) to (5) of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Division 7.3 deals with reports by a trustee in applications for an annulment of a bankruptcy or for review of a Registrar's decision to make a sequestration order.

Rule 7.06 applies to applications:

- under section 153B of the Bankruptcy Act for the annulment of a bankruptcy;
- under section 252B of the Bankruptcy Act for the annulment of the administration of the estate of a deceased person; and
- for review of a decision by a Registrar to make a sequestration order against the estate of a debtor.

It provides that a trustee must prepare a report for the periods before and after the bankruptcy or the administration of the estate of a deceased person if directed by the Court to do so. If that report is in relation to a bankrupt, it must include information about the bankrupt's conduct, the bankrupt's examinable affairs and the administration of the bankrupt's estate. If it is in relation to the estate of a deceased person, it must include information about the administration of the deceased person's estate.

The report must be in the form of an affidavit and be filed at least 5 days before the date fixed for the hearing of the application.

Rule 7.06 incorporates the provisions of rule 7.04 and subrule 7.06(6) of the existing Bankruptcy Rules for easier understanding.

Part 8 – Trustees

Part 8 deals with the appointment and removal of trustees.

Rule 8.01 specifies the procedure to be followed in making an application objecting to the appointment of a trustee under subsection 157(6) of the Bankruptcy Act. It provides that:

- an application must be accompanied by an affidavit stating the grounds in support;
- the application and supporting affidavit must be served on the trustee and any petitioning creditor at least 28 days before the hearing date (subrule 8.01(2));
- the application and supporting affidavit must be served on all known creditors at least 14 days before the hearing date.

Rule 8.01 is substantially the same as rule 8.01 of the existing Bankruptcy Rules.

Rule 8.02 deals with an application for acceptance of the resignation or release of a trustee under sections 180 and 183 of the Bankruptcy Act. It provides that:

- the application must be accompanied by a supporting affidavit;
- the affidavit in support of an application for release must have attached a statement of details of the realisation of the bankrupt's property and the distribution of the estate by the trustee as well as a copy of the most recent account;
- the application must be served on the Official Receiver, the bankrupt and anyone else ordered by the Court (subrule 8.02(2));
- any order, unless it is entered in the Court at the time it is made, must be entered within 1 day after it is made;
- a copy of the order must be given to the Official Receiver within 2 days of the order being entered.

Rule 8.02 is similar to rule 8.02 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Part 9 – Debt agreements

Part 9 deals with setting aside debt agreements.

Rule 9.01 provides that the Part applies to:

- an application under section 185Q of the Bankruptcy Act for an order terminating a debt agreement; and
- an application under section 185T of the Bankruptcy Act for an order declaring that all, or part, of a debt agreement is void.

Rule 9.01 is substantially the same as rule 9.01 of the existing Bankruptcy Rules.

Rule 9.02 provides that:

- if the application is for an order terminating a debt agreement, a supporting affidavit must be filed stating the facts relied on to satisfy the relevant prerequisite in subsection 185Q(4) of the Bankruptcy Act for making the order;
- if the application is for an order declaring that all, or a specified part, of a debt agreement is void, a supporting affidavit must be filed stating the facts relied on to establish the relevant ground in subsection 185T(2) of the Bankruptcy Act for applying for the order;
- a copy of the debt agreement must be attached to the relevant affidavit;
- if an application is made by a creditor who is also seeking a sequestration order, that must state as much in the application.

Rule 9.02 is similar to rule 9.02 of the existing Bankruptcy Rules but is reordered and provides more comprehensive guidance on procedural requirements for easier understanding.

Rule 9.03 provides that an application and supporting affidavit must be served on both the debtor (or, if the debtor has died, the debtor's personal representative) and the Official Receiver (if the applicant is not the Official Receiver) at least 5 days before the date fixed for the hearing. It is similar to rule 9.03 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 9.04 provides that the applicant must serve a written notice in accordance with Form B13, of the time, date and place fixed for the hearing on each known creditor at least 5 days before the hearing date. It is substantially the same as rule 9.04 of the existing Bankruptcy Rules.

Rule 9.05 provides that where the Court makes an order under section 185Q or 185U of the Bankruptcy Act:

- the order, unless it is entered in the Court at the time it is made, must be entered within 1 day after it is made;
- a copy of the order must be given to the Official Receiver within 2 days of the order being entered.

Rule 9.05 is similar to rule 9.05 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Part 10 – Personal insolvency agreements

Part 10 deals with applications to set aside or terminate personal insolvency agreements and compositions or schemes of arrangement.

Rule 10.01 sets out, by reference to the relevant sections of the Bankruptcy Act (namely sections 76B, 222 and 222C), the applications to which the Part applies. It is substantially the same as rule 10.01 of the existing Bankruptcy Rules.

Rule 10.02 provides that an application must be accompanied by an affidavit stating the facts relied on to establish the relevant ground for making the order and:

- if the application is for an order under subsection 222(2) of the Bankruptcy Act, it must also state the facts relied on to satisfy the prerequisite in subsection 222(4) for making the order;
- if the application is for an order under subsection 222(5) of the Bankruptcy Act, it must also state the facts relied on to satisfy the prerequisite in subsection 222(7) for making an order;
- if the application is made by a trustee or creditor who also seeks a sequestration order in accordance with subsection 222(10) or 222C(5) of the Bankruptcy Act, that must also be stated in the affidavit.

Rule 10.02 is similar to rule 10.02 of the existing Bankruptcy Rules but is reordered and expanded to provide more comprehensive guidance on procedural requirements and easier understanding.

Rule 10.03 provides that, unless the Court otherwise orders, the application and supporting affidavit must be served on the debtor, trustee and Official Receiver at least 5 days before the hearing date. It is substantially the same as rule 10.03 of the existing Bankruptcy Rules.

Rule 10.04 provides that the applicant must serve a written notice in accordance with Form B13 of the time, date and place fixed for the hearing on each creditor named in the debtor's statement of affairs at least 5 days before the hearing date. It is substantially the same as rule 10.04 of the existing Bankruptcy Rules.

Rule 10.05 provides that where the Court makes an order under subsections 222(1), (2) or (5) or subsection 222C(1) of the Bankruptcy Act:

- the order, unless it is entered in the Court at the time it is made, must be entered as soon as possible after it is made; and
- notes that a copy of the order must be given to the Official Receiver within 2 days of the order being made as a result of subregulations 10.11(3) and (4) of the *Bankruptcy Regulations 1996*.

Rule 10.05 is substantially the same as rule 10.05 of the existing Bankruptcy Rules.

Part 11 – Administration of estates of deceased persons

Part 11 deals with creditors' petitions in relation to the administration of estates of deceased persons.

Rule 11.01 deals with a creditor's petition under section 244 of the Bankruptcy Act and provides that the petition must be:

- in accordance with Form B14; and
- accompanied by the affidavit verifying the petition required by subsection 244(5) of the Bankruptcy Act.

Rule 11.01 is substantially the same as rule 11.01 of the existing Bankruptcy Rules.

Rule 11.02 provides that, unless the Court orders otherwise, the applicant must serve the creditor's petition under section 244 of the Bankruptcy Act, a copy of the verifying affidavit and a copy of any consent to act as trustee filed under section 156A of that Act on the legal representative of the deceased person and on any other person as the Court directs at least 5 days before the date fixed for the hearing of the creditor's petition.

Rule 11.03 sets out the additional affidavits that the applicant creditor must file before the hearing of a creditor's petition under section 244 of the Bankruptcy Act. It is substantially the same as rule 11.02 of the existing Bankruptcy Rules.

Rule 11.04 provides that an administrator's petition under section 247 of the Bankruptcy Act for an order for the administration of a deceased person's estate must:

- be in accordance with Form B15; and
- accompanied by an affidavit verifying the relevant facts.

Rule 11.04 is similar to rule 11.03 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Rule 11.05 provides that, unless the Court orders otherwise, the applicant must serve the petition under section 247 of the Bankruptcy Act, a copy of the verifying affidavit and a copy of the statement of the deceased person's affairs and of the administrator's administration of the deceased person's estate required by subsection 247(1) of the Bankruptcy Act on all known creditors of the estate of the deceased person and such other persons as the Court directs at least 5 days before the date fixed for the hearing of the petition.

Rule 11.06 provides that where the Court makes an order under section 244 or 247 of the Bankruptcy Act:

- the order, unless it is entered in the Court at the time it is made, must be entered as soon as possible after it is made;
- notes that a copy of the order must be given to the Official Receiver within 2 days of the order being made under subsections 244(14) and 247(3) of the Bankruptcy Act.

Rule 11.06 is similar to rule 11.04 of the existing Bankruptcy Rules but provides more comprehensive guidance on procedural requirements.

Part 12 – Warrants

Part 12 deals with warrants to arrest a debtor or bankrupt, apprehend persons failing to attend Court and for seizure of property connected with a bankrupt.

Rule 12.01 provides that:

- an application for the issue of a warrant for the arrest of a debtor or bankrupt under section 78 of the Bankruptcy Act must state the grounds for the issue of the warrant and be accompanied by an affidavit stating the facts in support;
- the warrant must be in accordance with Form B16; and
- if a debtor or bankrupt is arrested under the warrant, the person who carries out the arrest must immediately give notice of the arrest to the Registrar of the Registry from which the warrant was issued.

Rule 12.01 is substantially the same as rule 12.01 of the existing Bankruptcy Rules.

Rule 12.02 provides that a warrant under section 264B(1) of the Bankruptcy Act for the apprehension of a person who fails to comply with a summons to attend Court:

- must be in accordance with Form B17;
- may be kept in the Registry for a stated time and on any conditions which the Court or Registrar thinks appropriate;
- if a person is apprehended under the warrant, the person who carried out the apprehension must immediately give notice of the apprehension to a Registrar of the Registry from which the warrant was issued.

Rule 12.02 is substantially the same as rule 12.02 of the existing Bankruptcy Rules

Rule 12.03 provides that a warrant issued by an eligible judge under subsection 130(2) of the Bankruptcy Act may be in accordance with Form B18. It replaces a note to rule 12.01 of the existing Bankruptcy Rules for easier understanding.

Part 13 – Costs

Part 13 deals with costs in proceedings under the Bankruptcy Act.

Division 13.1 deals with orders for costs.

Rule 13.01 provides that, subject to Division 13.2:

- a person who is entitled to costs in a proceeding to which the Bankruptcy Act applies is entitled to costs in accordance with Part 40 of the Federal Court Rules 2011 unless the Court otherwise orders;
- the Court may fix the amount of the costs when making an order; and
- if the Court fixes the amount of the costs, Part 40 of the Federal Court Rules 2011 does not apply to a bill of costs submitted, except for the issue of a certificate of taxation.

Rule 13.01 is substantially the same as rule 13.01 of the existing Bankruptcy Rules.

Division 13.2 deals with the short form bills of costs.

Rule 13.02 clarifies that Division 13.2 provides for the costs that may be charged by a lawyer for a creditor for work done in relation to a creditor's petition against the estate of a debtor under

section 40(1)(g) of the Bankruptcy Act, but not in cases where the Court fixes the amount of costs.

Rule 13.02 is substantially the same as rule 13.02 of the existing Bankruptcy Rules.

Rule 13.03 provides that:

- if the Court makes a sequestration order against the debtor's estate, the lawyer may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.1 of Schedule 3 to the Federal Court Rules 2011;
- if the petition is dismissed, and the creditor obtains an order for costs, the lawyer may charge for costs the amount, applying on the date when the petition was presented, stated in item 14.2 of Schedule 3 to the Federal Court Rules;
- in addition, if adjournment costs are reserved or awarded on a day, the lawyer may also charge the amount stated in item 1 of Schedule 3 to the Federal Court Rules 2011;
- the lawyer may also charge proper disbursements incurred; and
- if the lawyer charges an amount for costs under subrules 13.03(1) or (2), Part 40 of the Federal Court Rules 2011 does not apply to a bill of costs submitted, except for the issue of a certificate of taxation.

Rule 13.03 is substantially the same as rule 13.03 of the existing Bankruptcy Rules.

Rule 13.04 sets out the procedure to be followed where a legal practitioner wishes to claim costs. It is substantially the same as rule 13.04 of the existing Bankruptcy Rules.

Rule 13.05 provides that a creditor, trustee or a legal practitioner representing the creditor or trustee may attend a taxation of the bill of costs and disbursements only if a taxing officer directs the creditor, trustee or legal practitioner to attend. It is substantially the same as rule 13.05 of the existing Bankruptcy Rules.