



Corporations Law Amendment (No 1) Rules 2000

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 18 December 2000.

Nicholas Flaskas

Acting Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Corporations Law Rules* so as:

- (a) to specify the applications made under the Corporations Law in respect of which the applicant must give the Australian Securities and Investments Commission copies of initiating processes and supporting affidavits (Schedule 1 [1]), and
- (b) to enable the Court to grant an interested person leave to be heard in a proceeding without becoming a party to the proceeding (Schedule 1 [2] and [3]), and
- (c) to provide that an order appointing a provisional liquidator to take custody of only part of a company's property must have a short description of the part of the property concerned (Schedule 1 [5]), and
- (d) to require affidavits in support of applications by receivers, administrators, liquidators, special managers and provisional liquidators for orders fixing their remuneration to state particulars of any objection to the remuneration claimed that is received by them (Schedule 1 [8], [11], [14], [17], [20]), and

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- (e) to remove the requirement that an administrator or liquidator wait for at least 28 days after a meeting of creditors mentioned in paragraph 449E (1) (a) or 473 (4) of the Corporations Law before the administrator or liquidator can apply for an order fixing his or her remuneration (Schedule 1 [9] and [15]),
- (f) to provide that an application for the issue of an examination summons need not name the person whose examination is sought as a respondent to the application (Schedule 1 [23]), and
- (g) to provide for the commencement of proceedings under the *Federal Courts (State Jurisdiction) Act 1999* (Schedule 1 [27]), and
- (h) to update forms relating to originating process, interlocutory process and summonses for examination (Schedule [28], [29], [30] and [31]), and
- (i) to replace references to committees of inspectors with references to committees of creditors (Schedule 1 [10], [12], [13], [16], [18] and [19]), and
- (j) to replace outdated references to the ASC Law with references to the ASIC Law (Schedule 1 [32]) and
- (k) to make other minor amendments in the nature of law revision (Schedule 1 [4], [6], [7], [21], [22], [24], [25], [26]).

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1 Name of Rules

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

2 Commencement

These Rules commence on 1 January 2001.

3 Amendment of Corporations Law Rules

The *Corporations Law Rules* are amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of these Rules.

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Schedule 1 Amendments

Schedule 1 Amendments

(Rule 3)

[1] Rule 2.8 (3)

Omit the subrule. Insert instead:

- (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

[2] Rule 2.13 (1) (b)

Insert “or” after “corporation,”.

[3] Rule 2.13 (1) (c)

Insert after rule 2.13 (1) (b):

- (c) any other interested person,

[4] Rule 5.1 (a)

Omit the paragraph. Insert instead:

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

[5] Rule 6.1 (3)

Omit the subrule. Insert instead:

(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.

[6] Rule 7.11, heading

Omit the heading. Insert instead:

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

[7] Rule 9.1 (1), note

Omit the note to the subrule. Insert instead:

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.

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[8] Rule 9.1 (6) (d) and (e)

Omit rule 9.1 (6) (d). Insert instead:

- (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.

[9] Rule 9.2 (2)

Omit the subrule. Insert instead:

- (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.

[10] Rule 9.2 (3) (b)

Omit “committee of inspection,”. Insert instead “committee of creditors,”.

[11] Rule 9.2 (7) (d) and (e)

Omit rule 9.2 (7) (d). Insert instead:

- (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.

[12] Rule 9.3 (3) (b)

Omit “committee of inspection” where firstly occurring.
Insert instead “committee of creditors”.

[13] Rule 9.3 (3) (b)

Omit “committee of inspection,”. Insert instead “committee of creditors,”.

[14] Rule 9.3 (7) (d) and (e)

Omit rule 9.3 (7) (d). Insert instead:

- (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.

[15] Rule 9.4 (2) (b)

Omit “the end of 28 days after”.

[16] Rule 9.4 (3) (b)

Omit “committee of inspection,”. Insert instead “committee of creditors,”.

[17] Rule 9.4 (7) (d) and (e)

Omit rule 9.4 (7) (d). Insert instead:

- (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.

[18] Rule 9.5 (3) (b)

Omit “committee of inspection” where firstly occurring.

Insert instead “committee of creditors”.

[19] Rule 9.5 (3) (b)

Omit “committee of inspection,”. Insert instead “committee of creditors,”.

[20] Rule 9.5 (7) (d) and (e)

Omit rule 9.5 (7) (d). Insert instead:

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

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

[21] Rule 11.2, heading

Omit the heading. Insert instead:

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

[22] Rules 11.2 (1) and (3)

Omit “section 411 or 423” wherever occurring.
Insert instead “paragraph 411 (9) (b), section 423”.

[23] Rule 11.3 (2)

Omit the subrule. Insert instead:

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

[24] Rule 11.3 (8)

Omit “is to be”. Insert instead “must be”.

[25] Division 12, heading

Omit the heading. Insert instead:

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

[26] Rule 12.1

Omit the rule. Insert instead:

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.

[27] Division 17

Insert after Division 16:

Division 17 Proceedings under the Federal Courts (State Jurisdiction) Act 1999

17.1 Form for initiating proceeding

- (1) Subject to subrule (2) and any direction of the Court, a proceeding for relief under section 7, 10 or 11 of the *Federal Courts (State Jurisdiction) Act 1999* must be initiated by filing an originating process.
- (2) If:
 - (a) in a proceeding, the Federal Court of Australia has made an order for the winding up of a company, and
 - (b) the order is an ineffective judgment within the meaning of the *Federal Courts (State Jurisdiction) Act 1999*,
an application under the *Federal Courts (State Jurisdiction) Act 1999* in relation to the winding up of the company may be made by filing an interlocutory process.
- (3) An interlocutory process filed under subrule (2) must state the proceeding number of the Federal Court proceeding.

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Schedule 1 Amendments

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

Omit the Parts. Insert instead:

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

Omit the Parts. Insert instead:

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*

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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

Omit the heading. Insert instead:

Form 17 Summons for examination

(rule 11.3)

[31] Schedule 1, Form 17, Part B

Insert after Part A:

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] Rules 1.3 (1), (2) and (3), rule 1.5, definitions of “defendant” and “plaintiff”, rule 1.8 (a), rule 1.10, rule 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

Omit “ASC Law” wherever occurring. Insert instead “ASIC Law”.