



New South Wales

Supreme Court (Corporations) Amendment (No 9) Rules 2008

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 15 October 2008.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Supreme Court (Corporations) Rules 1999* in relation to proceedings under the *Cross-Border Insolvency Act 2008* of the Commonwealth. The amendments are uniform with those made to the *Federal Court (Corporations) Rules 2000*.

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Rule 1 Supreme Court (Corporations) Amendment (No 9) Rules 2008

Supreme Court (Corporations) Amendment (No 9) Rules 2008

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court (Corporations) Amendment (No 9) Rules 2008*.

2 Amendment of Supreme Court (Corporations) Rules 1999

The *Supreme Court (Corporations) Rules 1999* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 2)

[1] Rule 1.3 Application of these Rules and other rules of the Court

Omit rule 1.3 (1) and (2). Insert instead:

- (1) Unless the Court otherwise orders:
 - (a) these Rules apply to a proceeding in the Court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these Rules, and
 - (b) Division 15A applies to a proceeding in the Court under the Cross-Border Insolvency Act.
- (2) The other rules of the Court apply, to the extent that they are relevant and not inconsistent with these Rules:
 - (a) to a proceeding in the Court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these Rules, and
 - (b) to a proceeding in the Court under the Cross-Border Insolvency Act that is commenced on or after the commencement of Division 15A.

[2] Rule 1.5 Definitions for these RulesInsert after the definition of *Corporations Regulations*:

Cross-Border Insolvency Act means the *Cross-Border Insolvency Act 2008* of the Commonwealth including, unless the contrary intention appears, the Model Law.

[3] Rule 1.5, definition of “defendant”

Omit “or the ASIC Act”.

Insert instead “, the ASIC Act or the Cross-Border Insolvency Act”.

[4] Rule 1.5, definition of “Model Law”Insert after the definition of *interlocutory process*:

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in Schedule 1 to the Cross-Border Insolvency Act, with the modifications set out in Part 2 of that Act.

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[5] Rule 1.5, definition of “plaintiff”

Omit “or the ASIC Act”.

Insert instead “, the ASIC Act or the Cross-Border Insolvency Act”.

[6] Division 15A

Insert after Division 15:

Division 15A Proceedings under the Cross-Border Insolvency Act

15A.1 Application of this Division and other rules of the Court

Unless the Court otherwise orders:

- (a) this Division applies to a proceeding in the Court, under the Cross-Border Insolvency Act, involving a debtor other than an individual, and
- (b) the rules in the other Divisions of these Rules, and the other rules of the Court, apply to a proceeding in the Court under the Cross-Border Insolvency Act if they are relevant and not inconsistent with this Division.

Note. See rule 1.5 for definitions of *Cross-Border Insolvency Act* and *Model Law*.

15A.2 Expressions used in the Cross-Border Insolvency Act

- (1) Unless the contrary intention appears, an expression that is used in this Division and in the Cross-Border Insolvency Act, whether or not a particular meaning is given to the expression by the Cross-Border Insolvency Act, has the same meaning in this Division as it has in the Cross-Border Insolvency Act.

Note. The following expressions used in this Division (including in the notes to this Division) are defined in the Model Law as having the following meanings:

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding.

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article.

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant

to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

foreign representative means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

- (2) This Division is to be interpreted in a manner that gives effect to the Cross-Border Insolvency Act.

15A.3 Application for recognition

- (1) An application by a foreign representative for recognition of a foreign proceeding under article 15 of the Model Law must be made by filing an originating process in accordance with Form 2.
- (2) The originating process must:
- (a) be accompanied by the statements referred to in article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act, and
 - (b) name the foreign representative as the plaintiff and the debtor as the defendant, and
 - (c) be accompanied by an affidavit verifying the matters mentioned in paragraphs 2 and 3 of article 15 of the Model Law and in section 13 of the Cross-Border Insolvency Act.
- (3) When filing the originating process, the foreign representative must file, but need not serve, an interlocutory process seeking directions as to service, and the Court may give any directions about service, and make any incidental order, that it thinks just.
- (4) The plaintiff must serve a copy of the originating process and the other documents mentioned in subrule (2):
- (a) unless the Court otherwise orders, in accordance with subrule 2.7 (1), and
 - (b) on any other persons the Court may direct at the hearing of the interlocutory process.
- (5) A person who intends to appear before the Court at the hearing of an application for recognition must file and serve the documents mentioned in rule 2.9.

15A.4 Application for provisional relief under article 19 of the Model Law

- (1) Any application by the plaintiff for provisional relief under article 19 of the Model Law must be made by filing an interlocutory process in accordance with Form 3.

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- (2) Unless the Court otherwise orders, the interlocutory process and any supporting affidavit must be served in accordance with subrule 2.7 (2).

15A.5 Official liquidator's consent to act

If the relief sought in an application under article 15 of the Model Law includes an application for an order under article 19 or 21 to entrust the distribution of the debtor's assets to a person designated by the Court (other than the foreign representative) then, unless the Court otherwise orders, that person must:

- (a) be an official liquidator, and
- (b) have filed a Consent to Act, in accordance with Form 19, that specifies an address for service for the person within New South Wales.

15A.6 Notice of filing of application for recognition

- (1) Unless the Court otherwise orders, the plaintiff in a proceeding mentioned in rule 15A.3 must:
 - (a) send a notice of the filing of the application in accordance with Form 20 to each person whose claim to be a creditor of the defendant is known to the plaintiff, and
 - (b) publish a notice of the filing of the application for recognition of a foreign proceeding in accordance with Form 20, in accordance with rule 2.11.
- (2) The Court may direct the plaintiff to publish a notice in accordance with Form 20 in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.

15A.7 Notice of order for recognition, withdrawal etc

- (1) If the Court makes an order for recognition of a foreign proceeding under article 17 of the Model Law, or makes any order under article 19 or 21 of the Model Law, the plaintiff must, as soon as practicable after the order is made, do all of the following:
 - (a) have the order entered,
 - (b) serve a copy of the entered order on the defendant,
 - (c) send a notice of the making of the order in accordance with Form 21 to each person whose claim to be a creditor of the defendant is known to the plaintiff,
 - (d) publish a notice of the making of the order in accordance with Form 21, in accordance with rule 2.11.

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- (2) The Court may direct the plaintiff to publish the notice in accordance with Form 21 in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.
 - (3) If the application for recognition is withdrawn or dismissed, the plaintiff must, as soon as practicable, do all of the following:
 - (a) for a dismissal, have the order of dismissal entered,
 - (b) serve a copy of the entered order of dismissal or notice of the withdrawal, on the defendant,
 - (c) send a notice of the dismissal or withdrawal in accordance with Form 22 to each person whose claim to be a creditor of the defendant is known to the plaintiff,
 - (d) publish a notice of the dismissal or withdrawal in accordance with Form 22, in accordance with rule 2.11.
 - (4) The Court may direct the plaintiff to publish the notice in accordance with Form 22 in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.

15A.8 Relief after recognition

- (1) If the Court has made an order for recognition of a foreign proceeding, any application by the plaintiff for relief under paragraph 1 of article 21 of the Model Law must be made by filing an interlocutory process, and any supporting affidavit, in accordance with Form 3.
- (2) Unless the Court otherwise orders, an interlocutory process under subrule (1) and any supporting affidavit must be served, in accordance with subrule 2.7 (2), but on the following persons:
 - (a) the defendant,
 - (b) any person that the Court directed be served with the originating process by which the application for recognition was made,
 - (c) any other person that the Court directs.
- (3) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

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15A.9 Application to modify or terminate an order for recognition or other relief

- (1) This rule applies to:
 - (a) an application under paragraph 4 of article 17 of the Model Law for an order modifying or terminating an order for recognition of a foreign proceeding, and
 - (b) an application under paragraph 3 of article 22 of the Model Law for an order modifying or terminating relief granted under article 19 or 21 of the Model Law.
- (2) An application mentioned in subrule (1) must be made by filing an interlocutory process in accordance with Form 3.
- (3) An interlocutory process for an application under subrule (1) and any supporting affidavit must be served on:
 - (a) for an applicant under paragraph (1) (a)—the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for recognition, and
 - (b) for an application under paragraph (1) (b)—the defendant and other persons who were served with, or filed a notice of appearance in relation to, the application for relief under article 19 or 21 of the Model Law.
- (4) Unless the Court otherwise orders, a plaintiff who applies for an order under subrule (1) must:
 - (a) send a notice of the filing of the application in accordance with Form 23 to each person whose claim to be a creditor of the defendant is known to the plaintiff, and
 - (b) publish a notice of the filing of the application in accordance with Form 23, in accordance with rule 2.11.
- (5) The Court may direct the applicant to publish the notice in accordance with Form 23 in a daily newspaper circulating generally in any State or Territory not described in rule 2.11.
- (6) A person who intends to appear before the Court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

[7] Schedule 1 Forms

Omit the heading to Form 2. Insert instead:

Form 2 Originating process

(rules 2.2 and 15A.3)

[8] Schedule 1, Form 2

Omit “This application is made under *section/*regulation [*number*] of the *Corporations Act/*ASIC Act/*Corporations Regulations.”.

Insert instead “This application is made under *section/*regulation [*number*] of the *Corporations Act/*ASIC Act/*Cross-Border Insolvency Act/*Corporations Regulations.”.

[9] Schedule 1, Form 3

Omit the heading to the Form. Insert instead:

Form 3 Interlocutory process

(rules 2.2, 15A.4, 15A.8 and 15A.9)

[10] Schedule 1, Form 3

Omit “This application is made under *section/*regulation [*number*] of the *Corporations Act/*ASIC Act/*Corporations Regulations.”.

Insert instead “This application is made under *section/*regulation [*number*] of the *Corporations Act/*ASIC Act/*Cross-Border Insolvency Act/*Corporations Regulations.”.

[11] Schedule 1, Forms 19–23

Insert after Form 18:

Form 19 Consent to act as designated person

(rule 15A.5)

[*Title*]

I, [*name*], of [*address*], an official liquidator, consent to be appointed by the Court and to act as the person designated by the Court under *article 19/*article 21 of the Model Law to distribute the assets of [*name of company*].

I am not aware of any conflict of interest or duty that would make it improper for me to act as the person designated by the Court.

The hourly rates currently charged in respect of work done as the person designated by the Court by me, and by my partners and employees who may perform work in this administration, are set out below or in the Schedule which is attached to this Consent.

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I acknowledge that my appointment by the Court does not constitute an express or implied approval by the Court of these hourly rates.

Date:

.....
Signature of official liquidator

** Omit if not applicable*

Schedule

[*description of hourly rate(s)*]

Form 20 Notice of filing of application for recognition of foreign proceeding

(rule 15A.6)

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ABN or ACN: [*ABN or ACN of company to which proceeding relates*]

TO all the creditors of [*name of company*].

TAKE NOTICE that:

- 1 An application under the *Cross-Border Insolvency Act 2008* for recognition of a foreign proceeding in relation to [*name of company*] was commenced by the plaintiff, [*name of plaintiff*], on [*date of filing of originating process*] and will be heard by at [*address of Court*] at *am/*pm on Copies of documents filed may be obtained from the plaintiff's address for service.
- 2 The plaintiff's address for service is [*name and address of plaintiff's legal practitioner or, if there is no legal practitioner, address of the plaintiff*].
- 3 Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the plaintiff at the plaintiff's address for service at least 3 days before the date fixed for the hearing.
- 4 If you are a foreign creditor you must file in the registry of the Court at the address mentioned in paragraph 1 an affidavit setting out the details of any claim, secured or unsecured, that you may have against the company above at least 3 days before the date fixed for the hearing.

Date:

Name of plaintiff or plaintiff's legal practitioner: [*name*]

** Omit if not applicable*

Form 21 Notice of making of order under the Cross-Border Insolvency Act 2008

(rule 15A.7)

IN THE *[name of Court]* No. of *[year]*
[Name of company]

ABN or ACN: *[ABN or ACN of company to which proceeding relates]*

TO all the creditors of *[name of company]*.

TAKE NOTICE that:

- 1 On *[date]*, the *[name of Court]* in Proceeding No. of *[year]*, commenced by the plaintiff *[name of plaintiff]*, made the following orders under the *Cross-Border Insolvency Act 2008* in relation to *[name of company]*: *[insert details of order]*.
- 2 The plaintiff's address for service is *[name and address of plaintiff's legal practitioner or, if there is no legal practitioner, address of the plaintiff]*.
- 3 The name and address of the foreign representative is *[insert name and address]*.
- 4 The name and address of the person entrusted with distribution of the company's assets is *[insert name and address]*.*

Date:

Name of plaintiff or plaintiff's legal practitioner: *[name]*

* Omit if not applicable

Form 22 Notice of dismissal or withdrawal of application for recognition of foreign proceeding

(rule 15A.7)

IN THE *[name of Court]* No. of *[year]*
[Name of company]

ABN or ACN: *[ABN or ACN of company to which proceeding relates]*

TO all the creditors of *[name of company]*.

TAKE NOTICE that the application under the *Cross-Border Insolvency Act 2008* for recognition of a foreign proceeding in relation to *[name of company]* commenced by the plaintiff, *[name of plaintiff]*, on *[date of filing of originating process]* was dismissed*/withdrawn* on *[date of dismissal/withdrawal]*.

Date:

Name of person giving notice or of person's legal practitioner *[name]*

* Omit if not applicable

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Form 23 Notice of filing of application to modify or terminate an order for recognition or other relief

(rule 15A.9)

IN THE [name of Court] No. of [year]
[Name of company]

ABN or ACN: [ABN or ACN of company to which proceeding relates]

TO all the creditors of [name of company].

TAKE NOTICE that:

- *1 An application under the *Cross-Border Insolvency Act 2008* for an order *modifying/*terminating an order for recognition of a foreign proceeding in relation to [name of company] was filed by the applicant, [name of applicant], on [date of filing of interlocutory process] and will be heard by at [address of Court] at *am/*pm on Copies of documents filed may be obtained from the applicant's address for service.
- *1 An application under the *Cross-Border Insolvency Act 2008* for an order *modifying/*terminating relief granted under *article 19/*article 21 of the Model Law in relation to [name of company] was filed by the applicant, [name of applicant], on [date of filing of interlocutory process] and will be heard by at [address of Court] at *am/*pm on Copies of documents filed may be obtained from the applicant's address for service.
- 2 The applicant's address for service is [name and address of applicant's legal practitioner or of applicant].
- 3 Any person intending to appear at the hearing must file a notice of appearance (if the person has not already done so), in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice (if applicable) and any affidavit on the applicant at the applicant's address for service at least 3 days before the date fixed for the hearing.

Date:

Name of applicant or applicant's legal practitioner: [name]

* Omit if not applicable

BY AUTHORITY