

EXPLANATORY STATEMENT

Corporations Law Rules No. 53/2000

Issued by the Authority of the Judges of the
Supreme Court of the Australian Capital Territory

CORPORATIONS LAW RULES AMENDMENT

The resident Judges of the Court (of whom there are currently four, including the Chief Justice) or any two of the resident Judges, may make Rules of Court regulating the practice and procedure of the Court pursuant to section 36 of the *Supreme Court Act 1933*.

These amending rules amend the *Corporations Law Rules 2000* which form part of a national model set of rules regulating the practice and procedure to be applied to a proceeding in the Court under the Corporations Law ("the Law"). The amendments have been agreed to by a representative Monitoring Committee.

The amending rules provide as follows:-

Rule 1 : Commencement : The rules commence on 1 January 2001.

Rule 2 : Rules amended : The rules amend the *Corporations Law Rules 2000*.

Rule 3 : Notice of certain applications to be given to commission (Australian Securities, Investments Commission) : The rule amends the table in Rule 18 which provides a list of the classes of proceeding in respect of which an applicant must serve a copy of the originating or interlocutory process and supporting affidavit in relation to the application on the commission prior to the hearing of the application. Following consultation with the commission a number of classes of proceeding have been eliminated from the table.

Rule 4 : Leave to creditor, contributory or officer to be heard: The rule enables the Court to grant leave to an "interested person" to be heard in a proceeding without that person becoming a party to the proceeding.

Rule 5 : Application of pt 5 : The rule extends the application of Part 5 to any application under Part 2F.1 of the Law.

Rule 6 : Appointment of provisional liquidator (S472 of the Law) – Form 8 : The rule provides that where a provisional liquidator is appointed in respect of part only of the company's property, the Order appointing the provisional liquidator must include a short description of the property that the provisional liquidator may take into custody.

Rule 7 : Substitution of heading : The heading to Rule 55 is amended by including a reference to s.536(2) in the heading.

Rules 8,9,10,11 and 12 : Remuneration of receiver, administrator, provisional liquidator, liquidator and special manager : In Rules 60-63 the reference to "committee of inspection" is changed to correctly refer to "committee of creditors". Further, in respect of each of these rules an affidavit in support of an order for remuneration is required to state, in addition to present requirements, particulars of any objection of which any of these office-holders have received notice.

Rule 9 enables an administrator to apply for an order for remuneration immediately after a meeting of creditors without the previous requirement of waiting 28 days after a meeting of creditors.

Rule 13 : Application for examination or investigation under S411, S423 or S536(3) of the Law : The reference in the heading to s411 and in subrules (1) and (3) is an error. Section 411 does not directly provide for orders for the examination or investigation of a person but paragraph 411(9)(b) invokes section 536 which does so provide. The rule is amended to refer to paragraph 411(9)(b) instead of section 411.

Rule 14 : Application for examination summons (S596A, S596B of the Law – form 17 : Sub-rule 69(2) is amended by making it clear that the application for an examination summons need not name the person against whom the summons is sought as a respondent or defendant to the application.

Rule 15 : Heading to Part 12 : The heading to Part 12 is amended by adding references to "Takeovers" and to "Chapters 6 to 6D of the Law".

Rule 16 : Substitution : A new Rule 78 is substituted to require a plaintiff to serve a copy of the originating process and the supporting affidavit on the commission in relation to proceedings under Chapters 6, 6A, 6B, 6C, 6D of the Law where the commission is not a party to the application.

Rule 17 : Schedule 1 : Parts A and B of forms 2 and 3 are amended by making provision for a time and date for the hearing of the application at the end of Part A in each case rather than in Part B and by adding the words "if any" after "notice to defendant(s)" and "notice to respondent(s)" in Parts B of those forms, respectively.

The note in Part B in each case reflects the requirement in the Supreme Court Rules that a corporate defendant must be represented at a hearing by a legal representative unless the Court otherwise orders.

Rule 18 : Schedule 2 : Section 471B (power to give leave to begin or to proceed with a proceeding against a company being wound up or in relation to its property or enforcement process in relation to such property) is reinstated in the list of Registrar's and Master's powers that may be exercised under the Law.

Rule 19 : Further amendments: The Corporate Law Economic Reform Program Act 1999 amended references to the "ASC Law" to become references to the "ASIC Law". All such references in the *Corporations Law Rules* 2000, are amended accordingly.