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## Federal Court (Corporations) Amendment Rules 2003 (No. 1)<sup>1</sup>

Statutory Rules 2003 No. <sup>1</sup>/<sub>2</sub>

132

We, Judges of the Federal Court of Australia, make the following  
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated <sup>1</sup>/<sub>2</sub> 2003

6 June

M.E.J. BLACK C.J.  
M.R. WILCOX J.  
J.E.J. SPENDER J.  
P.R.A. GRAY J.  
D.M. RYAN J.  
R.S. FRENCH J.  
M.C. LEE J.  
J.W. von DOUSSA J.  
D.G. HILL J.  
T.J. HIGGINS J.  
R.E. COOPER J.  
A.P. WHITLAM J.  
C.J.S.M. CARR J.  
M.F. MOORE J.  
C.M. BRANSON J.  
K.E. LINDGREN J.

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B.J.M. TAMBERLIN J.  
R. SACKVILLE J.  
S.M. KIEFEL J.  
R.D. NICHOLSON J.  
R.A. SUNDBERG J.  
S.R. MARSHALL J.  
A.M. NORTH J.  
R.N. MADGWICK J.  
R. MERKEL J.  
J.R. MANSFIELD J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
M.S. WEINBERG J.  
J.A. DOWSETT J.  
P.G. HELY J.  
S.C. KENNY J.  
R.V. GYLES J.  
R.A. CONTI J.  
M.A. STONE J.  
J.L.B. ALLSOP J.  
P.M. JACOBSON J.  
B.M. SELWAY J.  
A.C. BENNETT J.  
Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

**1 Name of Rules**

These Rules are the *Federal Court (Corporations) Amendment Rules 2003 (No. 1)*.

**2 Commencement**

These Rules commence on gazettal.

**3 Amendment of *Federal Court (Corporations) Rules 2000***

Schedule 1 amends the *Federal Court (Corporations) Rules 2000*.

**Schedule 1 Amendments**

(rule 3)

**[1] Subrule 1.3 (3), note**

*substitute*

*Note* By virtue of the definition of *this Act* in section 9 of the Corporations Act, a reference to the Corporations Act includes a reference to the Corporations Regulations.

**[2] Rule 1.5, after definition of *applicant***

*insert*

*ASIC Act* means the *Australian Securities and Investments Commission Act 2001*.

*Corporations Act* means the *Corporations Act 2001*.

*Corporations Regulations* means the *Corporations Regulations 2001*.

**[3] Rule 1.5, definition of *the Law***

*omit*

**[4] Subrule 2.2 (4), at the foot**

*insert*

*Note* In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (Notes to these Rules).

**[5] Subrule 2.4 (2), at the foot**

*insert*

*Note* An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).

**[6] Subrule 5.4 (2), at the foot**

*insert*

*Note* An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).

**[7] After rule 12.1**

*insert*

**12.1A Reference to Court of question of law arising in proceeding before Takeovers Panel (Corporations Act s 659A)**

Order 50 applies, with any necessary adaptations, to a reference of a question of law arising in a proceeding before the Takeovers Panel to the Court under section 659A of the Corporations Act.

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**[8] Subrule 12.2 (1)**

*substitute*

- (1) An application for the issue of a summons under subsection 1071D (4) of the Corporations Act must be made by filing an originating process or an interlocutory process.

**[9] Rule 12.3**

*substitute*

**12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act s 1071F)**

As soon as practicable after filing an originating process under section 1071F of the Corporations Act, the plaintiff must serve a copy of the originating process and the supporting affidavit on:

- (a) the company; and  
(b) any person against whom an order is sought.

**[10] Division 13**

*omit*

**[11] Rule 15.2**

*omit*

**[12] Schedule 1, Form 2, Part A**

*omit*

This application is made under \*section/\*regulation [*number*] of the \*Corporations Law/\*ASIC Law/\*Corporations Regulations.

*insert*

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

**[13] Schedule 1, Form 2, Part C**

*omit each mention of  
Corporations Law*

*insert  
Corporations Act*

**[14] Schedule 1, Form 2, Part C, at the foot**

*insert*

*Note 1* In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (Notes to these Rules).

*Note 2* An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).

**[15] Schedule 1, Form 3, Part A**

*omit*

This interlocutory application is made under \*section/\*regulation [number] of the \*Corporations Law/\*ASIC Law/\*Corporations Regulations.

*insert*

This interlocutory application is made under \*section/\*regulation [number] of the \*Corporations Act/\*ASIC Act/\*Corporations Regulations.

**[16] Schedule 1, Form 8**

*before*

Date:

*insert*

The hourly rates currently charged in respect of work done as \*liquidator/\*provisional liquidator 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.

**[17] Schedule 1, Form 8**

*after*

\* *Omit if not applicable*

*insert*

**Schedule**

*[description of hourly rate(s)]*

**[18] Schedule 1, Form 10**

*omit*

.....

*Signature of person giving notice  
or of person's legal practitioner*

*insert*

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

**[19] Schedule 1, Form 17, Part A**

*omit*

Corporations Law

*insert*

Corporations Act

**[20] Schedule 2, Part 1, heading**

*substitute*

**Part 1 Corporations Act**

**[21] Schedule 2, Part 1, column 2, heading***omit***Corporations Law***insert***Corporations Act****[22] Schedule 2, Part 1, item 4***substitute*

4	section 227	Power to declare that conditions prescribed by Division 3 of Part 2E.1 have been satisfied
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**[23] Schedule 2, Part 1, after item 9***insert*

9A	paragraph 283AE (2) (a)	Power to appoint body corporate as trustee for debenture holders
9B	section 283EC	Power to give directions or determine any question on application of trustee for debenture holders
9C	section 283HA	Power to make an order for meeting of debenture holders to direct trustee
9D	subsection 283HB (1)	Power to make an order in relation to borrowing corporations
9E	paragraph 283HB (1) (c)	Power to order security for debentures to be enforceable

**[24] Schedule 2, Part 1, items 101 to 108***substitute*

101	section 1071D	12.2	Power to make an order in relation to a person summoned
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- |     |                      |  |
|-----|----------------------|--|
| 102 | section 1071F        | Power to make an order in relation to a company's refusal to register a share transfer |
| 103 | subsection 1071H (6) | Power to make an order to remedy default in issuing certificate etc                    |

**[25] Schedule 2, Part 1, after item 113**

*insert*

- |      |               |  |
|------|---------------|--|
| 113A | section 1325D | Power to make an order where contravention of a provision of Chapter 6 due to inadvertence |
|------|---------------|--|

**[26] Schedule 2, Part 1, item 115**

*omit*

**[27] Schedule 2, Part 2, heading**

*substitute*

**Part 2 ASIC Act**

**[28] Schedule 2, Part 2, column 2, heading**

*omit*

**ASIC Law**

*insert*

**ASIC Act**

**[29] After Schedule 2**

*insert*

**Schedule 3 Notes to these Rules**

(rules 2.2, 2.4 and 5.4)

**Note 1 — see rule 2.2 (Form 2 Part C)**

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

1. The plaintiff relies on failure by the defendant to comply with a statutory demand. A copy of the demand, marked A, is attached to this originating process.
2. The demand was [*or* The demand and an accompanying affidavit were] served by X.Y. who delivered it [*or* them] to the registered office of the defendant at [*insert address*] on [*insert date*] [*or, if service was by post, who posted \*it/\*them by ordinary prepaid post to the registered office of the defendant at [*insert address*] on [*insert date*]]. [*If applicable, A copy of the accompanying affidavit, marked B, is attached to this originating process.*]*
3. The defendant failed to pay the amount of the debt demanded [*or* the total of the debts demanded] or to secure or compound for that \*amount/\*total to the plaintiff's reasonable satisfaction within 21 days after the demand was served on the defendant [*or* within 7 days after [*insert date*] when an application by the defendant under section 459G of the Corporations Act was finally determined or otherwise disposed of] [*or if the period for compliance with the demand was extended by order within the period specified in the order of the [*insert name of Court*] on [*insert date of order or, if more than one order, the date of the last such order*] as the period for compliance with the demand. A copy of the order, marked C, is attached to this originating process.*]

**[If the demand was varied by order under subsection 459H (4) of the Corporations Act]**

4. The demand was varied by order of the [*insert name of Court*] on [*insert date of order*]. A copy of the order, marked D [*or as the case may be*], is attached to this originating process.

\* *Omit if not applicable*

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**Note 2 — see rule 2.4 and subrule 5.4 (2) (Affidavit in support)****\*AFFIDAVIT IN SUPPORT/\*AFFIDAVIT IN SUPPORT OF APPLICATION FOR WINDING UP IN INSOLVENCY**

I, [name] of [address and occupation], \*say on oath/\*affirm [or \*make oath and say/\*solemnly and sincerely declare and affirm]:

1. I am the above-named plaintiff [or if the applicant is a corporation, I am \*a/\*the director of the above-named plaintiff which is registered or taken to be registered in [specify State or Territory]. I am duly authorised to make this affidavit on its behalf]. Now produced and shown to me and marked A is a copy of the originating process to be filed in the proceeding.
2. Annexed to this affidavit is a current and historical extract of the records maintained by the Australian Securities and Investments Commission with respect to the defendant.
3. [Where the defendant is registered or taken to be registered in another State or a Territory, state any facts — apart from the defendant's principal place of business — which bear upon jurisdiction being exercised in Victoria rather than in another State or Territory.]
4. The following facts are within my own personal knowledge save as otherwise stated.
5. The defendant was on [state date of statutory demand or other relevant date] indebted to the plaintiff in the sum of \$ [amount] for [state concisely the consideration, for example, goods sold and delivered etc.] which sum was then due and payable.
6. The demand, a copy of which is attached to the originating process, was signed by or on behalf of the plaintiff. I served the demand [or the demand and the accompanying affidavit] as referred to in the originating process [or X.Y. has been instructed to make an affidavit of service of the demand [or the demand and the accompanying affidavit]].
7. The matters stated in the originating process concerning the demand and failure of the defendant to comply with it are true and correct.
8. The sum demanded remains due and payable by the defendant to me [or the plaintiff].

Sworn, etc.

\* Omit if not applicable

**[30] Further amendments — references to *the Law*, the *Corporations Law* and the *ASIC Law***

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subrule 1.3 (1)	Corporations Law,	Corporations Act,
Subrule 1.3 (1)	ASIC Law,	ASIC Act,
Subrule 1.3 (2)	Corporations Law,	Corporations Act,
Subrule 1.3 (2)	ASIC Law,	ASIC Act,
Subrule 1.3 (3)	Corporations Law,	Corporations Act,
Subrule 1.3 (3)	ASIC Law,	ASIC Act,
Rule 1.4	Corporations Law	Corporations Act
Rule 1.4	Corporations Law.	Corporations Act.
Rule 1.4, note	Corporations Law	Corporations Act
Rule 1.5, definition of <i>defendant</i>	the Law	the Corporations Act
Rule 1.5, definition of <i>defendant</i>	ASIC Law,	ASIC Act,
Rule 1.5, definition of <i>plaintiff</i>	the Law	the Corporations Act
Rule 1.5, definition of <i>plaintiff</i>	ASIC Law,	ASIC Act,
Paragraph 1.8 (a)	Corporations Law,	Corporations Act,
Paragraph 1.8 (a)	ASIC Law,	ASIC Act,
Rule 1.10	Corporations Law,	Corporations Act,
Rule 1.10	ASIC Law,	ASIC Act,
Subrule 2.2 (1)	the Law	the Corporations Act
Subparagraph 2.2 (3) (b) (i)	the Law	the Corporations Act
Subparagraph 2.2 (3) (b) (i)	ASIC Law,	ASIC Act,
Subparagraph 2.2 (4) (b) (i)	the Law	the Corporations Act
Subparagraph 2.2 (4) (b) (i)	ASIC Law,	ASIC Act,
Subrules 2.4A (1), 2.8 (1) and 2.8 (3)	the Law	the Corporations Act
Subrule 2.9 (2)	the Law.	the Corporations Act.

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subrule 2.9 (3)	the Law	the Corporations Act
Rule 2.9, note	the Law,	the Corporations Act,
Rule 2.11, note	the Law,	the Corporations Act,
Rule 2.11, note	the Law	the Corporations Act
Rules 2.15 and 3.2 and paragraph 3.2 (d)	the Law,	the Corporations Act,
Subrules 3.3 (1) and (2) and paragraph 3.3 (2) (a)	the Law	the Corporations Act
Paragraph 3.3 (2) (b)	the Law.	the Corporations Act.
Subrule 3.3 (3)	the Law	the Corporations Act
Paragraphs 3.4 (1) (a) and (b) and rule 3.5	the Law,	the Corporations Act,
Rule 4.1	the Law	the Corporations Act
Paragraph 5.1 (a)	the Law;	the Corporations Act;
Paragraph 5.1 (b)	the Law.	the Corporations Act.
Rule 5.2	the Law,	the Corporations Act,
Subrules 5.4 (3) and 5.5 (2)	the Law,	the Corporations Act,
Paragraph 5.9 (b)	the Law	the Corporations Act
Subrules 5.10 (1) and 6.1 (1)	the Law,	the Corporations Act,
Subrule 7.3 (1)	the Law	the Corporations Act
Subrule 7.3 (3)	the Law.	the Corporations Act.
Paragraph 7.5 (2) (b)	the Law.	the Corporations Act.
Subrule 7.5 (2), note	the Law	the Corporations Act
Paragraphs 7.5 (3) (e) and (h)	the Law;	the Corporations Act;
Paragraph 7.5 (3) (m)	the Law —	the Corporations Act —
Subrule 7.7 (1)	the Law,	the Corporations Act,
Paragraph 7.7 (2) (a)	Corporations Law’;	<i>Corporations Act 2001’;</i>

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Rule 7.8	the Law,	the Corporations Act,
Rule 7.10	the Corporations Law,	the Corporations Act,
Rule 7.10	the Law	the Corporations Act
Subrules 7.11 (1), (2) and (4)	the Law	the Corporations Act
Subrule 9.1 (1)	the Law	the Corporations Act
Subrule 9.1 (1), note	the Law,	the Corporations Act,
Subrule 9.2 (1)	the Law	the Corporations Act
Subrule 9.2 (2)	the Law.	the Corporations Act.
Subrules 9.3 (1) and 9.4 (1)	the Law	the Corporations Act
Paragraph 9.4 (2) (b)	the Law.	the Corporations Act.
Subrule 9.5 (1)	the Law	the Corporations Act
Rule 10.1	the Law	the Corporations Act
Subrule 10.2 (1)	the Law,	the Corporations Act,
Rule 11.1	the Law	the Corporations Act
Subrules 11.2 (1) and (3)	the Law	the Corporations Act
Subrule 11.2 (3)	the Law.	the Corporations Act.
Paragraph 11.3 (4) (a)	the Corporations Law’;	<i>the Corporations Act 2001’;</i>
Paragraph 11.3 (4) (b)	the Corporations Law’.	<i>the Corporations Act 2001’.</i>
Rules 11.6 and 11.7	the Law,	the Corporations Act,
Paragraph 11.9 (1) (a)	the Law	the Corporations Act
Subrule 11.11 (1)	the Law.	the Corporations Act.
Rule 12.1	the Law,	the Corporations Act,
Subrules 14.1 (1) and (2)	the Law	the Corporations Act
Rule 15.1	ASIC Law.	ASIC Act.
Rule 15.3	ASIC Law	ASIC Act
Paragraph 16.1 (1) (a)	the Law	the Corporations Act
Paragraph 16.1 (1) (b)	ASIC Law	ASIC Act

**[31] Further amendments — headings**

Each rule or Division of these Rules mentioned in column 1 of the following table is amended by omitting the heading to the rule or Division and inserting the heading mentioned in column 2 for that rule or Division.

<i>Rule or Division</i>	<i>insert</i>
Rule 1.4	<b>1.4 Expressions used in the Corporations Act</b>
Rule 2.4A	<b>2.4A Application for order setting aside statutory demand (Corporations Act s 459G)</b>
Rule 2.9	<b>2.9 Notice of appearance (Corporations Act s 465C) — Form 4</b>
Rule 2.10	<b>2.10 Intervention in proceeding by Commission (Corporations Act s 1330) — Form 5</b>
Rule 3.4	<b>3.4 Notice of hearing (Corporations Act s 411 (4), s 413 (1)) — Form 6</b>
Division 4	<b>Division 4 Receivers and other controllers of corporation property (Corporations Act Part 5.2)</b>
Rule 4.1	<b>4.1 Inquiry into the conduct of controller (Corporations Act s 423)</b>
Rule 5.2	<b>5.2 Affidavit accompanying statutory demand (Corporations Act s 459E (3)) — Form 7</b>
Rule 5.3	<b>5.3 Application for leave to apply for winding up in insolvency (Corporations Act s 459P (2))</b>
Rule 5.4	<b>5.4 Affidavit in support of application for winding up (Corporations Act s 459P, s 462, s 464)</b>
Rule 5.5	<b>5.5 Consent of liquidator (Corporations Act s 532 (9)) — Form 8</b>

<i>Rule or Division</i>	<i>insert</i>
Rule 5.10	<b>5.10 Order substituting plaintiff in application for winding up (Corporations Act s 465B) — Form 10</b>
Division 6	<b>Division 6 Provisional liquidators (Corporations Act Part 5.4B)</b>
Rule 6.1	<b>6.1 Appointment of provisional liquidator (Corporations Act s 472) — Form 8</b>
Rule 7.1	<b>7.1 Resignation of liquidator (Corporations Act s 473 (1))</b>
Rule 7.2	<b>7.2 Filling vacancy in office of liquidator (Corporations Act s 473 (7), s 502)</b>
Rule 7.3	<b>7.3 Report to liquidator as to company's affairs (Corporations Act s 475)</b>
Rule 7.4	<b>7.4 Liquidator to file certificate and copy of settled list of contributories (Corporations Act s 478)</b>
Rule 7.5	<b>7.5 Release of liquidator and deregistration of company (Corporations Act s 480 (c) and (d))</b>
Rule 7.7	<b>7.7 Report on accounts of liquidator (Corporations Act s 481)</b>
Rule 7.8	<b>7.8 Application for payment of call (Corporations Act s 483 (3) (b)) — Form 14</b>
Rule 7.9	<b>7.9 Distribution of surplus by liquidator with special leave of the Court (Corporations Act s 488 (2)) — Form 15</b>
Rule 7.10	<b>7.10 Powers delegated to liquidator by the Court (Corporations Act s 488)</b>
Rule 7.11	<b>7.11 Inquiry into conduct of liquidator (Corporations Act s 536 (1) and (2))</b>
Division 8	<b>Division 8 Special managers (Corporations Act Part 5.4B)</b>



<i>Rule or Division</i>	<i>insert</i>
Rule 8.1	<b>8.1 Application for appointment of special manager (Corporations Act s 484)</b>
Rule 8.2	<b>8.2 Security given by special manager (Corporations Act s 484)</b>
Rule 8.3	<b>8.3 Special manager's receipts and payments (Corporations Act s 484)</b>
Rule 9.1	<b>9.1 Remuneration of receiver (Corporations Act s 425 (1)) — Form 16</b>
Rule 9.2	<b>9.2 Remuneration of administrator (Corporations Act s 449E (1)) — Form 16</b>
Rule 9.3	<b>9.3 Remuneration of provisional liquidator (Corporations Act s 473 (2)) — Form 16</b>
Rule 9.4	<b>9.4 Remuneration of liquidator (Corporations Act s 473 (3)) — Form 16</b>
Rule 9.5	<b>9.5 Remuneration of special manager (Corporations Act s 484 (2)) — Form 16</b>
Rule 10.1	<b>10.1 Determination of value of debts or claims (Corporations Act s 554A (2))</b>
Rule 10.2	<b>10.2 Disclaimer of contract (Corporations Act s 568 (1A))</b>
Rule 10.3	<b>10.3 Winding up Part 5.7 bodies (Corporations Act s 583, s 585) and registered schemes (Corporations Act s 601ND)</b>
Division 11	<b>Division 11 Examinations and orders (Corporations Act Part 5.9, Divisions 1 and 2)</b>
Rule 11.2	<b>11.2 Application for examination or investigation under s 411 (9) (b), s 423 or s 536 (3) of the Corporations Act</b>

<i>Rule or Division</i>	<i>insert</i>
Rule 11.3	<b>11.3 Application for examination summons (Corporations Act s 596A, s 596B) — Form 17</b>
Rule 11.6	<b>11.6 Filing of record of examination (Corporations Act s 597 (13))</b>
Rule 11.7	<b>11.7 Authentication of transcript of examination (Corporations Act s 597 (14))</b>
Rule 11.8	<b>11.8 Inspection of record or transcript of examination or investigation under s 411, s 423 or s 536 of the Corporations Act</b>
Rule 11.11	<b>11.11 Service of application for order in relation to breaches etc by person concerned with corporation (Corporations Act s 598)</b>
Division 12	<b>Division 12 Takeovers, acquisitions of shares etc (Corporations Act Chapters 6 to 6D) and Securities (Corporations Act Chapter 7)</b>
Rule 12.1	<b>12.1 Service on Commission in relation to proceedings under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Corporations Act</b>
Rule 12.2	<b>12.2 Application for summons for appearance of person (Corporations Act s 1071D (4)) — Form 18</b>
Division 14	<b>Division 14 Powers of Courts (Corporations Act Part 9.5)</b>
Rule 14.1	<b>14.1 Appeal from act, omission or decision of administrator, receiver or liquidator etc (Corporations Act s 554A, s 1321)</b>
Division 15	<b>Division 15 Proceedings under the ASIC Act</b>

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<i>Rule or Division</i>	<i>insert</i>
Rule 15.1	<b>15.1 Reference to Court of question of law arising at hearing of Commission (ASIC Act s 61)</b>
Rule 15.3	<b>15.3 Application for inquiry (ASIC Act s 70, s 201, s 219)</b>

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### Notes

1. These Rules amend Statutory Rules 1999 No. 359, as amended by 2000 No. 333; 2001 No. 127/ ; 2002 No. 97
2. Notified in the *Commonwealth of Australia Gazette* on / 2003. 19 June