

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF CORPORATIONS LAW RULES

Regulations 2003, No. 60

TABLE OF PROVISIONS

Rule

1. Principal Rules
2. Application of these Rules and other rules of the Court
3. Definitions for these Rules
4. References to rules and forms
5. Substantial compliance with forms
6. Originating process and interlocutory process – Forms 2 and 3
7. Supporting affidavit
8. Heading to Division 4
9. Affidavit in support of application for winding up
(Corporations Act s 459P, s 462, s 464)
10. Heading to Division 6
11. Heading to Division 8
12. Heading to Division 11
13. Heading to Division 12
14. New rule
 - 12.1A Reference to Court of question of law arising in proceeding before
Takeovers Panel (Corporations Act s 659A)
15. Application for summons for appearance of person
(Corporations Act s 1071D(4)) – Form 18
16. Repeal and substitution
 - 12.3 Application for orders relating to refusal to register transfer or
transmission of securities (Corporations Act s 1071F)
17. Repeal
18. Heading to Division 14
19. Heading to Division 15
20. Repeal
21. Schedule
22. New schedule
23. Further amendments



NORTHERN TERRITORY OF AUSTRALIA

Regulations 2003, No. 60*

Rules of Court under the *Corporations Reform (Northern Territory) Act*

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 29 of the *Corporations Reform (Northern Territory) Act*, make the following rules of court.

Dated 21 October 2003.

B. F. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

S. R. BAILEY J

T. J. RILEY J

Judges of the Supreme Court
of the Northern Territory of Australia

AMENDMENTS OF CORPORATIONS LAW RULES

1. Principal Rules

The *Corporations Law Rules* are in these Rules referred to as the Principal Rules.

2. Application of these Rules and other rules of the Court

Rule 1.3 of the Principal Rules is amended by omitting the note and substituting the following:

"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."

3. Definitions for these Rules

Rule 1.5 of the Principal Rules is amended –

(a) by inserting after the definition of "applicant" the following:

'ASIC Act' means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

'Corporations Act' means the *Corporations Act 2001* of the Commonwealth;

'Corporations Regulations' means the Corporations Regulations 2001 of the Commonwealth;"; and

(b) by omitting the definition of "the Law".

4. References to rules and forms

Rule 1.6 of the Principal Rules is amended by omitting from paragraph (b) "the Schedule" and substituting "Schedule 1".

5. Substantial compliance with forms

Rule 1.7 of the Principal Rules is amended by omitting from subrule (1) "the Schedule" and substituting "Schedule 1".

6. Originating process and interlocutory process – Forms 2 and 3

Rule 2.2 of the Principal Rules is amended by adding at the end the following:

"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 2 (Notes to these Rules)."

7. Supporting affidavit

Rule 2.4 of the Principal Rules is amended by adding at the end the following:

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 2 (Notes to these Rules)."

8. Heading to Division 4

The heading to Division 4 of the Principal Rules is amended by omitting "*(Part 5.2 of the Law)*" and substituting "*(Corporations Act Part 5.2)*".

9. Affidavit in support of application for winding up (Corporations Act s 459P, s 462, s 464)

Rule 5.4 of the Principal Rules is amended by adding at the end of subrule (2) the following:

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 2 (Notes to these Rules)."

10. Heading to Division 6

The heading to Division 6 of the Principal Rules is amended by omitting "*(Part 5.4B of the Law)*" and substituting "*(Corporations Act Part 5.4B)*".

11. Heading to Division 8

The heading to Division 8 of the Principal Rules is amended by omitting "*(Part 5.4B of the Law)*" and substituting "*(Corporations Act Part 5.4B)*".

12. Heading to Division 11

The heading to Division 11 of the Principal Rules is amended by omitting "*(Part 5.9, Divisions 1 and 2 of the Law)*" and substituting "*(Corporations Act Part 5.9 Divisions 1 and 2)*".

13. Heading to Division 12

The heading to Division 12 of the Principal Rules is amended by omitting "*(Chapters 6 to 6D of the Law) and Securities (Chapter 7 of the Law)*" and substituting "*(Corporations Act Chapters 6 to 6B) and Securities (Corporations Act Chapter 7)*".

14. New rule

The Principal Rules are amended by inserting after rule 12.1 the following:

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

"Order 64 of the Supreme Court Rules 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."

15. Application for summons for appearance of person (Corporations Act s 1071D(4)) – Form 18

Rule 12.2 is amended by omitting subrule (1) and substituting the following:

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

16. Repeal and substitution

Rule 12.3 of the Principal Rules is repealed and the following substituted:

"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."

17. Repeal

Division 13 of the Principal Rules is repealed.

18. Heading to Division 14

The heading to Division 14 of the Principal Rules is amended by omitting "*(Part 9.5 of the Law)*" and substituting "*(Corporations Act Part 9.5)*".

19. Heading to Division 15

The heading to Division 15 of the Principal Rules is amended by omitting "*ASIC Law*" and substituting "*ASIC Act*".

Corporations Law Rules

20. Repeal

Rule 15.2 of the Principal Rules is repealed.

21. Schedule

The Schedule to the Principal Rules is amended –

- (a) by omitting "SCHEDULE" and substituting "SCHEDULE 1";
- (b) by omitting from Part A of Form 2 "This application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations" and substituting "This application is made under *section/*regulation [number] of the *Corporations Act/*ASIC Act/*Corporations Regulations.";
- (c) by omitting from Part C of Form 2 "Corporations Law" (all references) and substituting "Corporations Act";
- (d) by adding at the end of Part C of Form 2 the following:

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 2 (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 2 (Notes to these Rules).";

- (e) by omitting from Part A of Form 3 "This interlocutory application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations." and substituting "This interlocutory application is made under *section/*regulation [number] of the *Corporations Act/*ASIC Act/*Corporations Regulations.";
- (f) by inserting in Form 8 before "Date:" the following:

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

- (g) by inserting after "Omit if not applicable" in Form 8 the following:

"Schedule

[description of hourly rate(s)]";

Corporations Law Rules

- (h) by omitting from Form 10 ".....
*Signature of person giving notice
or of person's legal practitioner*" and
substituting "Name of substituted plaintiff or substituted plaintiff's legal
practitioner: [name]"; and
- (i) by omitting from Part A of Form 17 "Corporations Law" and substituting
"Corporations Act".

22. **New schedule**

The Principal Rules are amended by adding at the end the following:

"SCHEDULE 2

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

Corporations Law Rules

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".

23. Further amendments

The Principal Rules are amended as specified in the Schedule.

Corporations Law Rules

SCHEDULE

Rule 23

Provision	Amendment	
	omit	substitute
Rule 1.3(1), (2) and (3)	Corporations Law, ASIC Law,	Corporations Act, ASIC Act,
Rule 1.4	Corporations Law Corporations Law.	Corporations Act Corporations Act.
Rule 1.4 – Note	Corporations Law	Corporations Act
Rule 1.5 – definitions of "defendant" and "plaintiff"	the Law ASIC Law,	the Corporations Act ASIC Act,
Rules 1.8(a) and 1.10	Corporations Law, ASIC Law,	Corporations Act, ASIC Act,
Rule 2.2(1)	the Law	the Corporations Act
Rule 2.2(3)(b)(i) and (4)(b)(i)	the Law ASIC Law,	the Corporations Act ASIC Act,
Rules 2.4A(1) and 2.8(1) and (3)	the Law	the Corporations Act
Rule 2.9(2)	the Law.	the Corporations Act.
Rule 2.9(3)	the Law	the Corporations Act
Rule 2.9 – Note	the Law,	the Corporations Act,
Rule 2.11 – Note	the Law, the Law	the Corporations Act, the Corporations Act

Corporations Law Rules

Rules 2.15, 3.2 and (d)	the Law,	the Corporations Act,
Rules 3.3(1), (2) and (2)(a)	the Law	the Corporations Act
Rule 3.3(2)(b)	the Law.	the Corporations Act.
Rule 3.3(3)	the Law	the Corporations Act
Rules 3.4(1)(a) and (b) and 3.5	the Law,	the Corporations Act,
Rule 4.1	the Law	the Corporations Act
Rule 5.1(a)	the Law;	the Corporations Act;
Rule 5.1(b)	the Law.	the Corporations Act.
Rules 5.2, 5.4(3) and 5.5(2)	the Law,	the Corporations Act,
Rule 5.9(b)	the Law	the Corporations Act
Rules 5.10(1) and 6.1(1)	the Law,	the Corporations Act,
Rule 7.3(1)	the Law	the Corporations Act
Rules 7.3(3) and 7.5(2)(b)	the Law.	the Corporations Act.
Rule 7.5(2)		
– Note	the Law	the Corporations Act
Rule 7.5(3)(e) and (h)	the Law;	the Corporations Act;
Rule 7.5(3)(m)	the Law –	the Corporations Act –
Rule 7.7(1)	the Law,	the Corporations Act,
Rule 7.7(2)(a)	Corporations Law’;	<i>Corporations Act 2001’;</i>
Rule 7.8	the Law,	the Corporations Act,
Rule 7.10	the Corporations Law, the Law	the Corporations Act, the Corporations Act
Rules 7.11(1), (2) and (4) and 9.1(1)	the Law	the Corporations Act

Corporations Law Rules

Rule 9.1(1)		
- Note	the Law,	the Corporations Act,
Rule 9.2(1)	the Law	the Corporations Act
Rule 9.2(2)	the Law.	the Corporations Act.
Rules 9.3(1) and 9.4(1)	the Law	the Corporations Act
Rule 9.4(2)(b)	the Law.	the Corporations Act.
Rules 9.5(1) and 10.1	the Law	the Corporations Act
Rule 10.2(1)	the Law,	the Corporations Act,
Rules 11.1 and 11.2(1) and (3)	the Law	the Corporations Act
Rule 11.2(3)	the Law.	the Corporations Act.
Rule 11.3(4)(a)	the Corporations Law';	the <i>Corporations Act 2001'</i> ;
Rule 11.3(4)(b)	the Corporations Law'.	the <i>Corporations Act 2001'</i> .
Rules 11.6 and 11.7	the Law,	the Corporations Act,
Rule 11.9(1)(a)	the Law	the Corporations Act
Rule 11.11(1)	the Law.	the Corporations Act.
Rule 12.1	the Law,	the Corporations Act,
Rule 14.1(1) and (2)	the Law	the Corporations Act
Rule 15.1	ASIC Law.	ASIC Act.
Rule 15.3	ASIC Law	ASIC Act
Rule 16.1(1)(a)	the Law	the Corporations Act
Rule 16.1(1)(b)	ASIC Law	ASIC Act

Corporations Law Rules

ALTERATIONS TO RULE HEADINGS

On the day on which the Corporations Law Rules are amended by these Rules, in addition to any alteration to rule headings indicated in the text of these Rules, the headings to the rules specified in the table are omitted and substituted with the heading specified opposite.

Provision	New heading
Rule 1.4	Expressions used in the Corporations Act
Rule 2.4A	Application for order setting aside statutory demand (Corporations Act s 459G)
Rule 2.9	Notice of appearance (Corporations Act s 465C) – Form 4
Rule 2.10	Intervention in proceeding by Commission (Corporations Act s 1330) – Form 5
Rule 3.4	Notice of hearing (Corporations Act s 411 (4), s 413 (1)) – Form 6
Rule 4.1	Inquiry into the conduct of controller (Corporations Act s 423)
Rule 5.2	Affidavit accompanying statutory demand (Corporations Act s 459E (3)) – Form 7
Rule 5.3	Application for leave to apply for winding up in insolvency (Corporations Act s 459P (2))
Rule 5.5	Consent of liquidator (Corporations Act s 532 (9)) – Form 8
Rule 5.10	Order substituting plaintiff in application for winding up (Corporations Act s 465B) – Form 10
Rule 6.1	Appointment of provisional liquidator (Corporations Act s 472) – Form 8
Rule 7.1	Resignation of liquidator (Corporations Act s 473 (1))
Rule 7.2	Filling vacancy in office of liquidator (Corporations Act s 473 (7), s 502)

Corporations Law Rules

- Rule 7.3 **Report to liquidator as to company's affairs
(Corporations Act s 475)**
- Rule 7.4 **Liquidator to file certificate and copy of settled list
of contributories (Corporations Act s 478)**
- Rule 7.5 **Release of liquidator and deregistration of
company (Corporations Act s 480 (c) and (d))**
- Rule 7.7 **Report on accounts of liquidator (Corporations
Act s 481)**
- Rule 7.8 **Application for payment of call (Corporations Act
s 483 (3) (b)) – Form 14**
- Rule 7.9 **Distribution of surplus by liquidator with special
leave of the Court (Corporations Act s 488 (2)) –
Form 15**
- Rule 7.10 **Powers delegated to liquidator by the Court
(Corporations Act s 488)**
- Rule 7.11 **Inquiry into conduct of liquidator (Corporations
Act s 536 (1) and (2))**
- Rule 8.1 **Application for appointment of special manager
(Corporations Act s 484)**
- Rule 8.2 **Security given by special manager (Corporations
Act s 484)**
- Rule 8.3 **Special manager's receipts and payments
(Corporations Act s 484)**
- Rule 9.1 **Remuneration of receiver (Corporations Act
s 425 (1)) – Form 16**
- Rule 9.2 **Remuneration of administrator (Corporations Act
s 449E (1)) – Form 16**
- Rule 9.3 **Remuneration of provisional liquidator
(Corporations Act s 473 (2)) – Form 16**
- Rule 9.4 **Remuneration of liquidator (Corporations Act
s 473 (3)) – Form 16**
- Rule 9.5 **Remuneration of special manager (Corporations
Act s 484 (2)) – Form 16**

Corporations Law Rules

- Rule 10.1 **Determination of value of debts or claims
(Corporations Act s 554A (2))**
- Rule 10.2 **Disclaimer of contract (Corporations Act
s 568 (1A))**
- Rule 10.3 **Winding up Part 5.7 bodies (Corporations Act
s 583, s 585) and registered schemes (Corporations
Act s 601ND)**
- Rule 11.2 **Application for examination or investigation
under s 411 (9) (b), s 423 or s 536 (3) of the
Corporations Act**
- Rule 11.3 **Application for examination summons
(Corporations Act s 596A, s 596B) – Form 17**
- Rule 11.6 **Filing of record of examination (Corporations Act
s 597 (13))**
- Rule 11.7 **Authentication of transcript of examination
(Corporations Act s 597 (14))**
- Rule 11.8 **Inspection of record or transcript of examination
or investigation under s 411, s 423 or s 536 of the
Corporations Act**
- Rule 12.1 **Service on Commission in relation to proceedings
under Chapter 6, 6A, 6B, 6C, 6D or 7 of the
Corporations Act**
- Rule 14.1 **Appeal from act, omission or decision of
administrator, receiver or liquidator etc
(Corporations Act s 554A, s 1321)**
- Rule 15.1 **Reference to Court of question of law arising at
hearing of Commission (ASIC Act s 61)**
- Rule 15.3 **Application for inquiry (ASIC Act s 70, s 201,
s 219)**
-