

NORTHERN TERRITORY OF AUSTRALIA
CORPORATIONS LAW AMENDMENT RULES 2008

Subordinate Legislation No. 36 of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 36 of 2008*

Corporations Law Amendment Rules 2008

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

Dated 31 July 2008

B. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

S. G. THOMAS J

T. J. RILEY J

S. R. SOUTHWOOD J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 17 December 2008.

1 Citation

These Rules may be cited as the *Corporations Law Amendment Rules 2008*.

2 Rules amended

These Rules amend the *Corporations Law Rules*.

3 Amendment of rule 1.4 (Expressions used in the Corporations Act)

(1) Rule 1.4, note

insert (in alphabetical order)

ASIC – see section 9

(2) Rule 1.4, note, definition **Commission**

omit

4 Amendment of rule 9.1 (Remuneration of receiver (Corporations Act s 425(1)) – Form 16)

(1) Rule 9.1(1), note

omit, substitute

Notes for subrule (1)

1 Under paragraph 425(2)(b) of the Corporations Act, 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.

2 The amendment to section 425 of the Corporations Act made by the Corporations Amendment (Insolvencies) Act 2007 applies in relation to a receiver appointed on or after 31 December 2007 – see Corporations Act s 1480(5).

(2) Rule 9.1(6)

omit, substitute

(6) An affidavit in support of the originating process, or interlocutory process, seeking the order must:

(a) include evidence of the matters mentioned in subsection 425(8) of the Corporations Act; and

(b) state the nature of the work performed or likely to be performed by the receiver; and

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- (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the receiver; and
 - (e) state particulars of any objection of which the receiver has received notice; and
 - (f) if the receivership is continuing – give details of any matters delaying the completion of the receivership.

5 Repeal and substitution of rule 9.2

Rule 9.2

repeal, substitute

9.2 Determination by Court of remuneration of administrator (Corporations Act s 449E(1)(c) and (1A)(c)) – Form 16

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under paragraph 449E(1)(c) or (1A)(c) of the Corporations Act determining the administrator's remuneration.
- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice in accordance with Form 16 of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons:
 - (a) each creditor who was present, in person or by proxy, at any meeting of creditors;
 - (b) each member of any committee of creditors or committee of inspection;
 - (c) if there is no committee of creditors or committee of inspection, and no meeting of creditors has been convened and held, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.

-
- (4) If the administrator does not receive a notice of objection within the period mentioned in subrule (3):
- (a) the administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the order stating:
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
 - (b) the administrator may endorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
 - (c) the application may be so dealt with.
- (5) If the administrator receives a notice of objection within the period mentioned in subrule (3), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must:
- (a) include evidence of the matters mentioned in subsection 449E(4) of the Corporations Act; and
 - (b) state the nature of the work performed or likely to be performed by the administrator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the administrator; and
 - (e) state particulars of any objection of which the administrator has received notice; and
 - (f) if the administration is continuing – give details of any matters delaying the completion of the administration.

9.2A Review of remuneration of administrator (Corporations Act s 449E(2))

- (1) This rule applies to an application for review of the amount of the remuneration of an administrator under subsection 449E(2) of the Corporations Act.

Note for subrule (1)

The amendment to section 449E of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 applies in relation to an administrator appointed on or after 31 December 2007 – see Corporations Act s 1480(6).

- (2) The application may be made only after the remuneration has been determined under paragraph 449E(1)(a) or (b) or (1A)(a) or (b) of the Corporations Act.
- (3) At least 21 days before filing the originating process, or the interlocutory process, applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons:
- (a) if there is a committee of creditors or a committee of inspection – each member of the committee;
 - (b) if the remuneration of the administrator was determined by the creditors – each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice:
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).

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- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served such a notice.
- (7) The administrator must file an affidavit stating the following matters:
- (a) the matters mentioned in subsection 449E(4) of the Corporations Act;
 - (b) the nature of the work performed or likely to be performed by the administrator;
 - (c) the amount of remuneration claimed by the administrator if that amount is different from the amount of remuneration that has been determined;
 - (d) a summary of the receipts taken and payments made by the administrator;
 - (e) particulars of any objection to the remuneration as determined, of which the administrator has received notice;
 - (f) if the administration is continuing – details of any matters delaying the completion of the administration.
- (8) The affidavit mentioned in subrule (7) must annex a copy of the report that the administrator was required to prepare before remuneration was determined.
- (9) The plaintiff or applicant must:
- (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of any such notice.

6 Amendment of rule 9.3 (Remuneration of provisional liquidator (Corporations Act s 473(2)) – Form 16)

- (1) Rule 9.3(3)(b)

omit (all references)

of creditors

substitute

of inspection

-
- (2) Rule 9.3(7)(a)
omit
carried out
substitute
performed or likely to be performed
- (3) Rule 9.3(7)(c)
omit
for the period for which remuneration is claimed
- (4) After rule 9.3(7)
insert
- (8) The affidavit must also provide evidence of the matters mentioned in subsection 473(10) of the Corporations Act:
- (a) to the extent that they may be relevant to a provisional liquidator; and
 - (b) as if references in that subsection to a liquidator were references to a provisional liquidator.
- 7 Amendment of rule 9.4 (Remuneration of liquidator (Corporations Act s 473(3)) – Form 16)**
- (1) Rule 9.4, heading
omit, substitute
- 9.4 Determination by Court of liquidator's remuneration (Corporations Act s 473(3)(b)(ii))**
- (2) Rule 9.4(1)
omit
subsection 473(3)
substitute
subparagraph 473(3)(b)(ii)

-
- (3) After rule 9.4(1)

insert

Note for subrule (1)

The amendment to section 473 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 applies in relation to a liquidator appointed on or after 31 December 2007 – see Corporations Act s 1480(7).

- (4) Rule 9.4(3)(a)

omit

the meeting of creditors

substitute

any meeting of creditors at which the remuneration of the liquidator was considered

- (5) Rule 9.4(3)(b)

omit

creditors

substitute

inspection

- (6) Rule 9.4(3)(c)

omit, substitute

(c) if there is no committee of inspection, and no meeting of creditors has been convened and held – each of the 5 largest (measured by amount of debt) creditors of the company;

(d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

- (7) Rule 9.4(7)

omit, substitute

- (7) An affidavit in support of the interlocutory process seeking the order must:

(a) include evidence of the matters mentioned in subsection 473(10) of the Corporations Act; and

-
- (b) state the nature of the work performed or likely to be performed by the liquidator; and
 - (c) state the amount of remuneration claimed; and
 - (d) include a summary of the receipts taken and payments made by the liquidator; and
 - (e) state particulars of any objection of which the liquidator has received notice; and
 - (f) if the winding up is continuing – give details of any matters delaying the completion of the winding up.

8 New rule 9.4A

After rule 9.4

insert

9.4A Review of remuneration of liquidator (Corporations Act s 473(5) and (6) and 504(1))

- (1) This rule applies to an application for review of the amount of the remuneration of a liquidator under subsection 473(5) or (6) or 504(1) of the Corporations Act.

Note for subrule (1)

The amendment to section 504 of the Corporations Act made by the Corporations Amendment (Insolvency) Act 2007 applies in relation to a liquidator appointed on or after 31 December 2007 – see Corporations Act s 1480(7).

- (2) The application may be made only after remuneration has been determined under paragraph 473(3)(a) or subparagraph 473(3)(b)(i), or fixed under subsection 495(1) or 499(3), of the Corporations Act.
- (3) At least 21 days before filing the originating process or interlocutory process applying for a review, the plaintiff or applicant must serve a notice, in accordance with Form 16A, of intention to apply for the review and a copy of any affidavit on which the plaintiff or applicant intends to rely (other than an affidavit required by subrule (9)), on the following persons:
 - (a) if there is a committee of inspection – each member of the committee;
 - (b) if the remuneration of the liquidator was determined or fixed by the creditors – each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration

-
- was determined or fixed;
- (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any person on whom the notice has been served may serve on the plaintiff or applicant a notice:
- (a) stating the person's intention to appear at the hearing of the application for review; and
 - (b) setting out the issues that the person seeks to raise before the Court.
- (5) A person mentioned in subrule (3) is entitled to be heard on the application for review, but only (unless the Court otherwise orders) if the person has served on the plaintiff or applicant a notice in accordance with subrule (4).
- (6) If the plaintiff or applicant is served with a notice in accordance with subrule (4), the plaintiff or applicant must serve a copy of the originating process or interlocutory process applying for the review on each person who has served such a notice.
- (7) The liquidator must file an affidavit stating the following matters:
- (a) for an application under subsection 473(5) or (6) of the Corporations Act – the matters mentioned in subsection 473(10) of the Corporations Act;
 - (b) for an application under subsection 504(1) of the Corporations Act – the matters mentioned in subsection 504(2) of the Corporations Act;
 - (c) the nature of the work performed or likely to be performed by the liquidator;
 - (d) the amount of remuneration claimed by the liquidator if that amount is different from the amount of remuneration that has been determined or fixed;
 - (e) a summary of the receipts taken and payments made by the liquidator;
 - (f) particulars of any objection to the remuneration as determined or fixed of which the liquidator has received notice;
 - (g) if the winding up is continuing – details of any matters delaying the completion of the winding up.

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- (8) The affidavit under subrule (7) must annex a copy of the report that the liquidator was required to prepare before remuneration was determined or fixed.

Note for subrule (8)

For the requirement to prepare a report, see subsections 473(11) and (12), 495(5) and 499(6) and (7) of the Corporations Act.

- (9) The plaintiff or applicant must:
- (a) file an affidavit stating whether any notice or notices under subrule (4) has or have been served; and
 - (b) annex or exhibit to the affidavit a copy of any such notice.

9 New Division 11A

After rule 11.11

insert

Division 11A Warrants (Corporations Act s 486B and Part 5.4B, Division 3, Subdivision B)

11A.1 Arrest of person (Corporations Act s 486B) – Form 17A

- (1) An application for the issue of a warrant under subsection 486B(1) of the Corporations Act for the arrest of a person must state the grounds for the issue of the warrant.
- (2) The application must be accompanied by an affidavit stating the facts in support of the application.
- (3) The warrant must be in accordance with Form 17A.
- (4) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to the Registrar.

Note for rule 11A.1

Sections 489A to 489E of the Corporations Act, inserted by the Corporations Amendment (Insolvency) Act 2007, apply in relation to a warrant issued on or after 31 December 2007 – see Corporations Act s 1481(3).

10 Amendment of Schedule 1

- (1) Schedule 1, Form 5, heading

omit

the Commission

substitute

ASIC

- (2) Schedule 1, Form 5, signature block

omit

the Commission

substitute

ASIC

- (3) Schedule 1, Form 8, after "of the company."

insert

EITHER

I am not aware of any relevant relationship mentioned in subsection 60(2) of the *Corporations Act*.

OR

I have, or have had within the preceding 24 months, the following relevant relationships mentioned in subsection 60(2) of the *Corporations Act*:

[Set out all relevant relationships]

- (4) Schedule 1, Form 8, after "these hourly rates."

insert

Note

The requirement to disclose hourly rates should not be taken to imply that remuneration on an hourly basis is the most desirable or appropriate arrangement in every case. The Corporations Act acknowledges that another method of calculating remuneration may be appropriate (see, for example, s 473(2) and (3)).

(5) Schedule 1, after Form 16

insert

Form 16A Notice of intention to apply for review of remuneration

(rules 9.2A, 9.4A)

IN THE MATTER OF *[company name]*

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

TO: *[name and address of person to whom notice is given]*

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, *[name and address of plaintiff or applicant]*, **[the *administrator/*liquidator of the above company,]* intend to apply to the Court to review **the remuneration of/*my remuneration as the *administrator/*liquidator of the above company.*

The amount of the remuneration that has been determined or fixed is *[state the amount]*. The remuneration was determined or fixed by *[state who determined or fixed the remuneration]* on *[state the date when the remuneration was determined or fixed]*.

I intend to apply for an order to **confirm/*increase/*reduce* the remuneration.

[Set out the grounds upon which an order or orders will be sought. If an order to increase or reduce the remuneration is sought, set out the amount by which the remuneration is sought to be increased or reduced.]

If you wish to appear at the hearing of the application, in order to raise any issues before the Court, you must, within 21 days after being served with this notice, serve on me a notice under rule **9.2A(4)/*9.4A(4)* of the *Corporations Law Rules*, stating your intention to appear at the hearing and setting out the issues that you seek to raise before the Court.

Date:

.....
Signature of plaintiff or applicant

** Omit if not applicable*

(6) Schedule 1, after Form 17

insert

Form 17A Arrest warrant

(*Corporations Act* s 486B and rule 11A.1)

[*Title*]

TO: All members and special members of the Australian Federal Police and to all officers of the police force of the State or Territory in which [*name of person*] is found, and to the Sheriff of that State or Territory and all of that Sheriff's officers.

WHEREAS:

*[*name of company*] (the Company) is being wound up in insolvency;

*[*name of company*] (the Company) is being wound up by the Court;

*an application has been made for [*name of company*] (the Company) to be wound up;

AND THE COURT IS SATISFIED THAT [*name of person*]:

*is about to leave [**the name of the jurisdiction/*Australia*] in order to avoid:

*paying money payable to the company;

*being examined about the company's affairs;

*complying with an order of the Court, or some other obligation, under Chapter 5 of the *Corporations Act* in connection with the winding up;

*has concealed or removed property of the Company in order to prevent or delay the taking of the property into the liquidator's custody or control;

*has destroyed, concealed or removed books of the Company or is about to do so;

THIS WARRANT THEREFORE requires and authorises you to take [*name of person*] and to bring *him/*her before the Court at [*address of court*] and to keep *him/*her there pending the making of a further order by the Court.

THIS WARRANT ALSO requires and authorises you to seize any property or books of the company in the possession of [*name of person*] and to deliver them into the custody of the Registrar of the Court to be kept by the Registrar until the Court makes an order for their disposal.

Date:

.....
Judge

* *Omit if not applicable*

Note for Form 17A

Section 489A of the Corporations Act provides that if the Court issues a warrant under section 486B for a person to be arrested and brought before the Court, and the person is not in prison, then the person named in the warrant may be arrested by an officer of the police force of the State or Territory in which the person is found, or the Sheriff of that State or Territory or any of the Sheriff's officers, or a member or special member of the Australian Federal Police.

11 Further amendments

The Schedule has effect.

Schedule Further amendments of Corporations Law Rules

rule 11

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
rules 2.4(2) and 2.4A(3)(a)	the Commission	ASIC
rule 2.8, heading	Commission	ASIC
rule 2.8	the Commission (all references)	ASIC
rule 2.8(3), table, item 2	of a compulsory	or termination of a
rule 2.10, heading	Commission	ASIC
rule 2.10	the Commission (all references)	ASIC
rule 2.15	regulations 5.6.12	regulations 5.6.11
rule 3.5, heading	Commission	ASIC
rules 3.5(b), 6.2(2)(a), 7.1(1), 7.2(2)(a), 7.5(1)(b) and (3)(e), (g)(i) and (h), 7.7(2)(c) and (3) and 7.11(2) and (4)	the Commission (all references)	ASIC
rule 9.5(3)(b)	or, creditors,	or committee of inspection or, creditors or committee of inspection,
rule 9.5(7)(a)	carried out	performed or likely to be performed
rule 9.5(7)(c)	for the period for which remuneration is claimed	

rules 11.2(1)(a) and (b), 11.3(6), 11.5(3)(b) and 11.8	the Commission (all references)	ASIC
rule 11.11, note	<i>the Commission</i>	<i>ASIC</i>
rule 12.1, heading	Commission	ASIC
rule 12.1	the Commission (all references)	ASIC
rule 15.1, heading	Commission	ASIC
rule 15.1	the Commission	ASIC
rule 16.3(1)	a judge under rule 77.05	the Court of Appeal under Order 85
rule 16.3(2)	Rule 77.05	Order 85
