

NORTHERN TERRITORY OF AUSTRALIA  
AMENDMENTS OF CORPORATIONS LAW RULES

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Regulations 2001, No. 35

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## SCHEDULE



# NORTHERN TERRITORY OF AUSTRALIA

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Regulations 2001, No. 35\*

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## **Rules under the *Corporations (Northern Territory) Act***

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 51 of the *Corporations (Northern Territory) Act*, make the following rules of court.

Dated 6 June 2001.

B. F. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

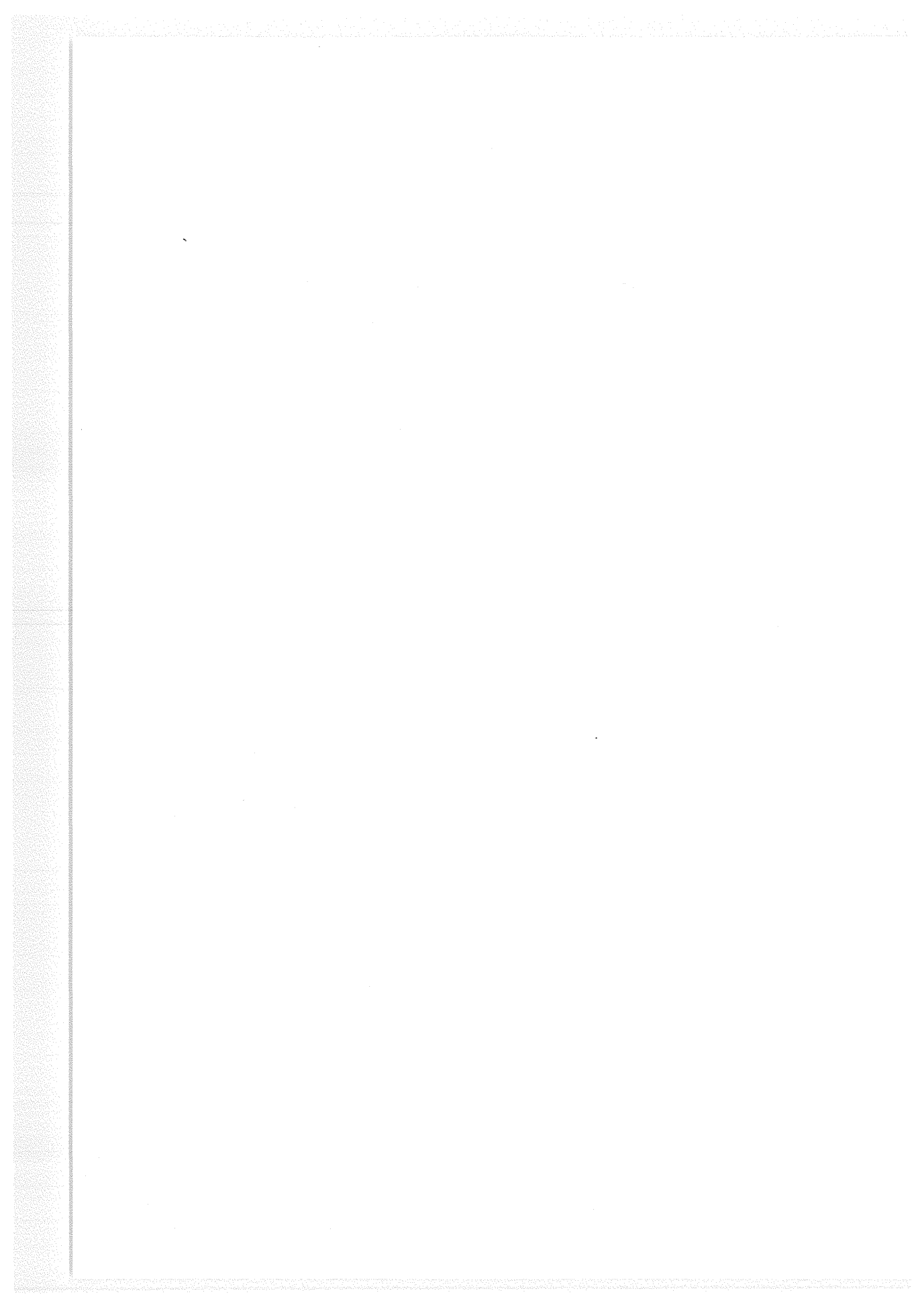
S. G. THOMAS J

S. R. BAILEY J

T. J. RILEY J

Judges of the Supreme Court  
of the Northern Territory of Australia

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**AMENDMENTS OF CORPORATIONS LAW RULES**

**1. Principal Rules**

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

**2. Commencement**

These Rules come into operation on a date fixed by the Chief Justice of the Court by notice in the *Gazette*.

**3. Supporting affidavit**

Rule 2.4 of the Principal Rules is amended by omitting from subrule (2) "An" and substituting "Subject to rule 2.4A, an".

**4. New rule**

The Principal Rules are amended by inserting after rule 2.4 the following:

**"2.4A Application for order setting aside statutory demand (s 459G of the Law)**

"(1) This rule applies, and subrule 2.4(2) does not apply, to an application by a company under section 459G of the Law for an order setting aside a statutory demand served on the company.

"(2) The plaintiff may file with the originating process seeking the order a copy of the statutory demand and a copy of any affidavit that accompanied the statutory demand.

"(3) The plaintiff must –

- (a) no earlier than 7 days before the originating process is filed, and no later than the day before the hearing of the application, carry out a search of the records maintained by the Commission in relation to the plaintiff; and
- (b) either –
  - (i) annex the record of the search to the affidavit in support of the originating process; or
  - (ii) file the record of the search before or tender it on the hearing of the application."

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### **5. Notice of certain applications to be given to Commission**

Rule 2.8 of the Principal Rules is amended by omitting subrule (3) and substituting the following:

"(3) Unless the Court otherwise orders, if a person makes an application under a provision of the Law mentioned in Column 1 of an item of the following table, the person must serve on the Commission, a reasonable time before the hearing of the application, a copy of the originating process, or interlocutory process, and supporting affidavit in respect of the application.

Column 1		Column 2
Item	Provision	Description of application
1.	Section 480	For the release of a liquidator of a company and the deregistration of the company
2.	Subsection 482(1)	For the stay of a compulsory winding up
3.	Subsection 509(6)	For the deregistration of a company
4.	Subsection 536(1)	For an inquiry into the conduct of a liquidator
5.	Subsection 601AH(2)	To reinstate the registration of a company
6.	Subsection 601CC(8)	To restore the name of an Australian body to the register
7.	Subsection 601CL(9)	To restore the name of a foreign company to the register
8.	Chapter 6, 6A, 6B, 6C, 6D or 7	Any application under these Chapters
9.	Subsections 1317S(2), (4) and (5)	For the relief from liability for contravention of a civil penalty provision

### **6. Leave to creditor, contributory or officer to be heard**

Rule 2.13 of the Principal Rules is amended –

### *Corporations Law Rules*

- (a) by omitting from paragraph (1)(a) "or" (last occurring);
- (b) by omitting from paragraph (1)(b) "corporation," and substituting "corporation; or"; and
- (c) by inserting after paragraph (1)(b) the following:
  - "(c) any other interested person,".

#### **7. Order for meetings to identify proposed scheme**

Rule 3.3 of the Principal Rules is amended –

- (a) by omitting "An" and substituting "(1) An"; and
- (b) by adding at the end the following:

"(2) Unless the Court otherwise orders, a meeting of members ordered under section 411 of the Law must be convened, held and conducted in accordance with –

- (a) the provisions of Part 2G.2 of the Law that apply to the members of a company; and
- (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with Part 2G.2 of the Law.

"(3) Unless the Court otherwise orders, a meeting of a class of holders of convertible securities ordered under section 411 of the Law must be convened, held and conducted as if –

- (a) the holders were a separate class of members; and
- (b) the meeting were a meeting of members convened, held and conducted under subrule (2),

but in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued."

#### **8. Application of Division 5**

Rule 5.1 of the Principal Rules is amended by omitting paragraph (1)(a) and substituting the following:

- "(a) an application for an order under Part 2F.1 of the Law;".

## *Corporations Law Rules*

### **9. Appointment of provisional liquidator (s 472 of the Law) – Form 8**

Rule 6.1 of the Principal Rules is amended by omitting subrule (3) and substituting the following:

- "(3) If –
- (a) an order is made appointing a provisional liquidator; and
  - (b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the property of the company,

the order is to include a short description of the part of the property of the company that the provisional liquidator may take into custody."

### **10. Remuneration of receiver (s 425(1) of the Law) – Form 16**

Rule 9.1 is amended –

- (a) by omitting the note after subrule (1) and substituting the following:

"*Note* Under paragraph 425(2)(b) of the Law, 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.";

- (b) by omitting from paragraph (6)(c) "and" (last occurring); and
- (c) by omitting paragraph (6)(d) and substituting the following:
  - "(d) state particulars of any objection of which the receiver has received notice; and
  - (e) if the receivership is continuing – give details of any matters delaying the completion of the receivership."

### **11. Remuneration of administrator (s 449E(1) of the Law) – Form 16**

Rule 9.2 is amended –

- (a) by omitting subrule (2) and substituting the following:

"(2) The administrator must not apply for the order until after the date of the meeting of creditors mentioned in paragraph 449E(1)(a) of the Law.";

- (b) by omitting from paragraph (3)(b) "committee of inspection" and substituting "committee of creditors";
- (c) by omitting from paragraph (7)(c) "and" (last occurring); and



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(d) by omitting paragraph (7)(d) and substituting the following:

"(d) state particulars of any objection of which the administrator has received notice; and

(e) if the administration is continuing – give details of any matters delaying the completion of the administration."

**12. Remuneration of provisional liquidator (s 473(2) of the Law) – Form 16**

Rule 9.3 of the Principal Rules is amended –

(a) by omitting from paragraph (3)(b) "committee of inspection" (twice occurring) and substituting "committee of creditors";

(b) by omitting from paragraph (7)(c) "and" (last occurring); and

(c) by omitting paragraph (7)(d) and substituting the following:

"(d) state particulars of any objection of which the provisional liquidator has received notice; and

(e) if the winding up proceeding has not been determined – give details of –

(i) any reasons known to the provisional liquidator why the winding up proceeding has not been determined; and

(ii) any reasons why the provisional liquidator's remuneration should be determined before the determination of the winding up proceeding."

**13. Remuneration of liquidator (s 473(3) of the Law) – Form 16**

Rule 9.4 of the Principal Rules is amended –

(a) by omitting from paragraph (2)(b) "the end of 28 days after";

(b) by omitting from paragraph (3)(b) "committee of inspection" and substituting "committee of creditors";

(c) by omitting from paragraph (7)(c) "and" (last occurring); and

(d) by omitting paragraph (7)(d) and substituting the following:

"(d) state particulars of any objection of which the liquidator has received notice; and

*Corporations Law Rules*

- (e) if the winding up is continuing – give details of any matters delaying the completion of the winding up."

**14. Remuneration of special manager (s 484(2) of the Law) – Form 16**

Rule 9.5 of the Principal Rules is amended –

- (a) by omitting from paragraph (3)(b) "committee of inspection" (twice occurring) and substituting "committee of creditors";
- (b) by omitting from paragraph (7)(c) "and" (last occurring); and
- (c) by omitting paragraph (7)(d) and substituting the following:
  - "(d) state particulars of any objection of which the special manager has received notice; and
  - (e) if the special management is continuing – give details of any matters delaying the completion of the special management."

**15. Application for examination or investigation under s 411(9)(b), s 423 or s 536(3) of the Law**

Rule 11.2 of the Principal Rules is amended –

- (a) by omitting from subrule (1) "section 411 or 423" and substituting "paragraph 411(9)(b), section 423";
- (b) by omitting subrule (2) and substituting the following:
  - "(2) The application may be made without notice to any person."; and
- (c) by omitting from subrule (3) "section 411 or 423" and substituting "paragraph 411(9)(b), section 423".

**16. Application for examination summons (s 596A, s 596B of the Law) – Form 17**

Rule 11.3 of the Principal Rules is by omitting subrule (2) and substituting the following:

- "(2) The application may be made without notice to any person."

**17. Heading to Division 12**

The heading to Division 12 is omitted the following substituted:

***"Division 12 – Takeovers, acquisitions of shares etc. (Chapters 6 to 6D of the Law) and Securities (Chapter 7 of the Law)".***

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**18. Repeal and substitution**

Rule 12.1 is repealed and the following substituted:

**"12.1 Service on Commission in relation to proceedings under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Law**

"If the Commission is not a party to an application made under Chapter 6, 6A, 6B, 6C, 6D or 7 of the Law, the plaintiff must serve a copy of the originating process and the supporting affidavit on the Commission as soon as practicable after filing the originating process."

**19. Schedule**

The Schedule to the Principal Rules is amended –

(a) by omitting Parts A and B from Form 2 and substituting the following:

**"A. DETAILS OF APPLICATION**

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

[*State briefly the nature of the proceeding, eg application for winding-up on ground of insolvency; or complaint about a receiver.*]

On the facts stated in the supporting affidavit(s), the plaintiff claims:

1

2

etc

AND

Date:

.....  
*Signature of plaintiff or  
plaintiff's legal practitioner*

This application will be heard by ..... at  
[*address of Court*] at .....\*am/\*pm on .....

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**B. NOTICE TO DEFENDANT(S) (IF ANY)**

TO: *[name and address of each defendant (if any)]*

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

*\* Omit if not applicable.\**

- (b) by omitting Parts A and B from Form 3 and substituting the following:

**"A. DETAILS OF INTERLOCUTORY APPLICATION**

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

On the facts stated in the supporting affidavit(s), the plaintiff, *[name]*, applies for the following interlocutory relief:

1

2

etc

AND

Date:

.....  
*Signature of applicant making this application or  
applicant's legal practitioner*

This interlocutory application will be heard by  
..... at *[address of Court]* at .....\*am/\*pm  
on .....

*Corporations Law Rules*

**B. NOTICE TO RESPONDENT(S) (IF ANY)**

TO: *[name and address of each respondent to this interlocutory process (if any). If applicable, also state the respondent's address for service.]*

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

*Note* Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

\* *Omit if not applicable.*";

(c) by omitting paragraph 1 from Form 7 and substituting the following:

"1 I am *[state deponent's relationship to the creditor(s), e.g. "the creditor", "(name), one of the creditors", "a director of the creditor", "a director of (name), one of the creditors"]* in respect of *\*a debt of \$[amount]/\*debts totalling \$[amount] owed by [name of debtor company] to \*it/\*them relating to [state nature of debt, or debts, ensuring that what is stated corresponds with the description of the debt, or debts, to be given in the proposed statutory demand, with which this affidavit is to be served on the debtor company]."*;

(d) by omitting paragraph 4 from Form 7 and substituting the following:

"4 *\*The debt/\*The total of the amounts of the debts, mentioned in paragraph 1 of this affidavit, is due and payable by the debtor company.*";

(e) by omitting the heading to Form 17 and substituting the following:

**"Form 17 Summons for examination"**; and

(f) by omitting Part B from Form 17 and substituting the following:

**"B. NOTICE TO PERSON TO BE EXAMINED**

The Court may order that the questions put to you and the answers given by you at the examination are to be recorded in writing and signed by you.

If you do not attend the examination in accordance with this summons, without reasonable cause, you may be arrested and imprisoned without further notice.

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This summons is issued at the request of [name] whose address for service is [address of person's legal practitioner or of person].

\* *Omit if not applicable*".

**20. Further amendments**

The Principal Rules are amended as set out in the Schedule.

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**SCHEDULE**

Rule 20

Provision	Amendment	
	omit	substitute
Subrules 1.3(1) and (2)	"ASC Law"	"ASIC Law"
Subrule 1.3(3)	"ASC Law" (twice occurring)	"ASIC Law"
Rule 1.5 – definitions of "defendant" and "plaintiff"	"ASC Law"	"ASIC Law"
Paragraph 1.8(a)	"ASC Law"	"ASIC Law"
Rule 1.10	"ASC Law"	"ASIC Law"
Subparagraphs 2.2(3)(b)(i) and (4)(b)(i)	"ASC Law"	"ASIC Law"
Division 15 – the heading	" <i>ASC Law</i> "	" <i>ASIC Law</i> "
Rules 15.1, 15.2 and 15.3	"ASC Law"	"ASIC Law"

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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 provisions specified in the table are altered as set out in the table.

Provision	Amendment	
	omit	substitute
Rule 7.11	the whole heading	<b>"Inquiry into conduct of liquidator (s 536(1) and (2) of the Law"</b>
Rules 15.1, 15.2 and 15.3	<b>"ASC Law"</b>	<b>"ASIC Law"</b>