

## PRACTICE NOTE SC Eq 4

### Supreme Court Equity Division – Corporations List

#### Introduction

1 This Practice Note relates to the structure and operation of the Corporations List in the Equity Division.

2 All proceedings and applications in the Corporations List (except those in the Corporations Registrar's List) will be case managed by the Corporations List Judge with the aim of achieving a speedy resolution of the real issues in the proceedings. There will also be a Corporations Duty Judge available at all times to hear any urgent applications in Corporations Matters.

#### Commencement

3 This Practice Note was issued on 10 May 2011 and commences on 1 June 2011. It replaces former Practice Note SC Eq 4 issued on 5 November 2010.

#### Application

4 This Practice Note applies to new and existing Corporations Matters in the Equity Division.

#### Definitions

5 In this Practice Note:

**Corporations Judges** means the List Judge and each other Judge of the Equity Division for the time being listed to hear Corporations Matters

**Corporations List** means the List administered by the List Judge

**Corporations Matters** include any proceedings or applications pursuant to or in respect of any matter relating to the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth), the *Cross-Border Insolvency Act 2008* (Cth) or the *Supreme Court (Corporations) Rules 1999* and any proceedings or applications relating to other incorporated bodies such as co-operatives and incorporated associations

**List Judge** means the Corporations List Judge

**Corporations Registrar** includes the Registrar in Equity and a Deputy or Assistant Registrar

**Corporations Registrar's List** means the List into which matters referred to in paragraph 11 of this Practice Note are entered

**Rules** means the *Supreme Court (Corporations) Rules 1999*

**Statutory Demand cases** means applications under s 459G of the *Corporations Act 2001* (Cth).

#### Corporations Judges

6 The List Judge and at least one other Judge of the Equity Division will be listed on a continuing basis to hear Corporations matters exclusively (the Corporations Judges).

7 The identity of the Corporations Judges and the dates upon which they are listed to hear Corporations matters will be notified on the Court's Corporations Matters webpage at [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc) (click on Practice and Procedure on the left-hand side menu and then click the Corporations Matters link).

#### Corporations Duty Judge

8 A Corporations Judge will be available as the Corporations Duty Judge to deal with urgent applications in Corporations Matters.

9 Contact should be made in the first instance with the Associate to the List Judge (or the Acting List Judge in the List Judge's absence) by telephone or email (email is preferable during court hours, as the Associate can deal with emails while in court). The Associate will indicate which Corporations Judge should be approached.

### **Entry into the Lists**

10 All Corporations Matters, except those mentioned in paragraph 11, will be made returnable before the List Judge in the Corporations List on Mondays.

11 Statutory Demand cases and matters wholly within the delegated powers of the Registrar under s 13 of the *Civil Procedure Act* (see Schedule 1 to this Practice Note) will be returnable in the Corporations Registrar's List on any day of the week.

12 Any matter to be entered in the Corporations Registrar's List must include the words "Corporations Registrar's List" prominently on the front sheet of any Originating Process or Interlocutory Process.

### **Schemes of Arrangement**

13 In any proposed applications under Part 5.1 of the *Corporations Act 2001* and any other matters in which it is considered commercially important to obtain definite hearing dates before filing, contact may be made with the Associate to the List Judge for those dates.

### **Process and Affidavits**

14 The form of Originating Process, Interlocutory Process and affidavits in Corporations Matters are as provided for in the Rules.

### **Case Management**

15 The List Judge will case manage matters in the Corporations List on Monday of each week with the aim of ensuring the speedy resolution of the real issues between the parties. Interlocutory applications will be listed at 9:30 am for the purpose of calling through the matters in that list and, if appropriate, allocating a hearing time on that day before one of the Corporations Judges. Directions will be listed from 10 am.

16 When matters in the Corporations List, other than those matters to be heard on Mondays, are ready for the allocation of a hearing date the List Judge will fix the matter for hearing and make the Usual Order for Hearing in Annexure A to Practice Note SC Eq 1 unless the matter would be more efficiently and cost effectively prepared for hearing by making some modifications to the Usual Order for Hearing.

17 Where a matter is placed in the Corporations List on Monday solely for the allocation of a hearing date, the parties, *acting together*, may, instead of appearing, forward to the List Judge's Associate by 12 noon on Friday:

Hearing); any agreed directions for the hearing (which should include or adopt in substance the Usual Order for  
Hearing);  
an *agreed* estimate of the time required;  
the *mutually* available dates *during the following three months* of all legal representatives who are to  
appear, and  
the email addresses of all legal representatives.

The List Judge will then allocate hearing dates in Chambers instead of requiring attendance in Court. Dates so allocated will be notified to the legal representatives by email, usually within three working dates. This procedure will be appropriate only where the *parties are agreed* that the matter is ready for hearing and on the directions to be made.

18 All matters in the Corporations Registrar's List will be listed on each day of the week at 9.00am.

19 The Court's expectation of Practitioners appearing in Corporations Matters includes that:

19.1 Agreement will be reached on a timetable for the preparation of matters for trial and/or mediation and/or reference out and Consent Orders will be handed up during the directions hearing;

19.2 If there is slippage in an agreed timetable, further agreement will be reached without the need for the intervention of the Court and Consent Orders will be filed with the List Judge;

19.3 Requests for Court intervention in relation to timetabling will only be sought rarely when, for good reason, agreement has proved to be impossible;

19.4 Trial Counsel will be briefed at the earliest possible time;

19.5 Careful review of the case will be made as early as practicable for the purpose of informing the Court of its suitability for mediation, for reference out of all or some of the issues, and/or for the use of a single expert, or a Court appointed expert or the use of an appropriate concurrent expert evidence process;

19.6 Agreement will be reached on the real issues in dispute between the parties so that a speedy resolution of those issues may be achieved;

19.7 Trial Counsel will appear at the directions hearing when the matter is set down for hearing and provide to the Court a considered opinion of the realistic estimate of the time required for trial; and if a stopwatch system for trial is to apply, a considered opinion as to the appropriate allocation of time for evidence and submissions.

20 To facilitate the just, quick and cheap resolution of Corporations Matters, by written application to the List Judge's Associate, the List Judge will make Consent Orders in Chambers on days other than Monday. When Consent Orders varying a timetable are to be made either in Chambers or in Court, it is imperative that those orders include the vacation of any date for directions hearings, or the hearing of interlocutory applications, that the parties no longer wish to maintain. If the proceedings settle, rather than filing Terms of Orders with the Registry, the List Judge must make Orders finalising the litigation. These orders may also be made by consent in Chambers.

21 When Consent Orders varying a timetable are to be made either in Chambers or in Court, it is imperative that those orders include the vacation of any date for directions hearings, or the hearing of interlocutory applications that the parties no longer wish to maintain. If the proceedings settle, it is necessary to have the List Judge make Order finalising the litigation, rather than filing Terms or Orders with the Registry. Those orders may also be made by consent in Chambers.

22 The Corporations List closes at 12 noon on Friday. Any application to add a matter to the List or remove a matter from the List must be made prior to 12 noon on Friday. Such applications are to be made in writing to the List Judge's Associate.

23 Unless otherwise ordered paragraphs 27 to 32 of Practice Note SC Eq3 apply to discovery in Corporations Matters.

24 Unless otherwise ordered paragraphs 33 to 36 of Practice Note SC Eq 3 apply to evidence in Corporations Matters.

25 Unless otherwise ordered paragraphs 50 to 53 of Practice Note SC Eq 3 apply to Stopwatch Hearings of Corporations Matters.

26 Unless otherwise ordered paragraph 56 of Practice Note SC Eq 3 applies to Proportionate Liability in Corporations Matters.

27 Unless otherwise ordered paragraph 62 of Practice Note SC Eq 3 applies to applications for Summary Judgment in Corporations Matters.

### **Statutory Demand cases**

28 All Statutory Demand cases will be entered into the Corporations Registrar's List for case management, Consent Orders and/or if necessary, referral to the List Judge.

29 The parties to a Statutory Demand case must agree on a timetable that makes it ready for hearing promptly after its first return date before the Corporations Registrar.

30 A plaintiff in a Statutory Demand case must include in its outline of submissions:

(a) in a genuine dispute case under s 459H(1)(a), a succinct statement of:

(i) its understanding of the basis on which the debt is alleged by the defendant to be owing, due and payable in the amount stated in the demand; and  
(ii) why that basis is disputed; and

(b) in an offsetting claim case under s 459H(1)(b), a succinct statement of:

(i) the precise facts and circumstances giving rise to the claim; and  
(ii) the amount of the claim and the way in which it is calculated.

### **Court Appointment of Liquidators**

31 The arrangements outlined in Schedule 2 to this Practice Note apply to the appointment of liquidators by the Court.

### **Schemes of Arrangement**

30. When making an order under subsection 411(1) of the *Corporations Act 2001* (Cth) the Court will require that the explanatory statement or a document accompanying the explanatory statement prominently display a notice in the following form or to the following effect:

“IMPORTANT NOTICE ASSOCIATED WITH COURT ORDER UNDER SUBSECTION 411(1) OF *CORPORATIONS ACT 2001* (Cth)

The fact that under subsection 411(1) of the *Corporations Act 2001* (Cth) the Court has ordered that a meeting be convened and has approved the explanatory statement required to accompany the notices of the meeting does not mean that the Court:

(a) has formed any view as to the merits of the proposed scheme or as to how members/creditors should vote (on this matter members/creditors must reach their own decision); or

(b) has prepared, or is responsible for the content of, the explanatory statement.”

JJ Spigelman AC  
Chief Justice of NSW  
10 May 2011

### **Related information**

Practice Note SC Gen 1 Supreme Court - Application of Practice Notes

Practice Note SC Eq 1 Supreme Court Equity Division – Case Management

Practice Note SC Eq 3 Supreme Court Equity Division – Commercial List and Technology and Construction List

Practice Note SC Eq 6 Supreme Court Equity Division - Cross Border Insolvency: Cooperation with Foreign Courts or Foreign Representatives

*Corporations Act 2001* (Cth)

*Australian Securities and Investments Commission Act 2001* (Cth),

*Cross-Border Insolvency Act 2008* (Cth)

*Civil Procedure Act 2005*

*Uniform Civil Procedure Rules 2005*

*Supreme Court (Corporations) Rules 1999*

### **Amendment History:**

10 May 2011: the Practice Note issued on 5 November 2010 is replaced; paragraphs 17, 20 and 21 are altered to dispense with the need for court attendance when seeking orders and hearing dates by consent.

5 November 2010: the Practice Note issued on 12 April 2010 is replaced; paragraph 30 is added to Practice Note SC Eq 4.

12 April 2010: an amended version of Practice Note SC Eq 4 is issued announcing substantial changes in case management practices with effect from 31 May 2010.

11 March 2009: paragraph 32 of Practice Note SC Eq 4 deleted following the commencement of Practice Note SC Eq 6 - Cross Border Insolvency: Cooperation with Foreign Courts or Foreign Representatives.

17 October 2008: provisions about remuneration of insolvency practitioners were removed from Practice Note SC Eq 4 following the enactment of the *Corporations Amendment (Insolvency) Act 2007* (Cth), facilitating co-operation

between courts in light of the Cross-Border Insolvency Act 2008 (Cth), and reflecting new arrangements in the Registrar's Corporations List.

27 April 2006: Practice Note SC Eq 4 was amended to reflect new arrangements consequent on the assignment of a Judge of the Equity Division to Corporations matters as Corporations Judge on a full-time basis with effect from 1 May 2006

16 November 2005: paragraphs 26-30 added to Practice Note SC Eq 4

19 October 2005: formal errors corrected

17 August 2005: Practice Note SC Eq 4 replaced former Practice Note Nos. 111, 117 and 126.

## **SCHEDULE 1 REGISTRARS' POWERS**

<b>Applications</b>	<b><i>Corporations Act 2001</i></b>
Remuneration of receiver, etc	section 425
Extending the period for a report	section 429 (3)
Leave to proceed against a company under administration (provided the claim against the company is, or includes, a claim for damages for personal injury)	section 440D(1)
Remuneration of an administrator	section 449E (1)
Winding up of a company in Insolvency	section 459A
Extending the period for determination of a winding up application	section 459R
Substitution of applicants for winding up	section 465B
Leave to proceed against a company in liquidation (provided the claim against the company is, or includes, a claim for damages for personal injury)	section 471B
Removal of liquidator appointed by the Court (where the application is not opposed)	section 473(1)
Remuneration of provisional liquidator	section 473(2)
Remuneration of a liquidator	section 473(3)
Liquidator's vacancy (where the application is not opposed)	section 473(3)
Release and deregistration	sections 480 and 481(1)

Remuneration of a special manager	section 484(2)(b)
Inspection of books of the company in the winding up by the Court	section 486
Granting of leave to proceed against a company after the passing of a resolution for voluntary winding up	section 500(2)
Voluntary winding up (on an application to exercise the power of the Court under section 486)	section 511
Destruction of books	section 542(3)
Examination of persons about corporations	section 596A, 596B and 596F
Examination of persons concerned with corporations (except subsection (15))	section 597
Reinstatement (where the originating process by which the application is made has been served on ASIC and not opposed by ASIC)	section 601AH(2)
Ordering security for costs that may be payable by a plaintiff corporation	section 1335

## **SCHEDULE 2**

### **COURT APPOINTMENT OF LIQUIDATORS**

The Registrar maintains a list of registered official liquidators who have consented in writing to accept all appointments as liquidator made by the Court. This list is sorted alphabetically by firm for liquidators located in metropolitan Sydney, and by individuals located in regional centres;

The plaintiff in winding-up proceedings may nominate for appointment a registered official liquidator whose name appears in the Court's list. A nomination is effected by filing with the originating process a consent in Form 8 of the Rules, signed by the nominee, certifying that he or she is not aware of any conflict of interest or duty and making proper disclosure of fee rates, and serving it in accordance with Rule 5.5(3)(b);

The Court appoints the plaintiff's nominee in the normal case, but is not obliged to do so. An obvious ground for the Court declining to appoint the plaintiff's nominee is that the Court considers there is an actual or potential conflict between the duties of a liquidator and the nominee's personal interest or some other duty (for example, a person who has acted as receiver and manager of the company for a secured creditor will almost never be appointed liquidator);

Unless the consent in proper form of a registered official liquidator whose name appears in the Court's list is filed with the originating process for winding up, the Registry will select a liquidator by rotation from the Court's list. The plaintiff must obtain the consent in proper form of the liquidator selected by the Court, and file and serve that consent in accordance with Rule 5.5(3);

If the liquidator declines to consent to the appointment (which the liquidator may do, after having given his or her consent to accept all court appointments, only on grounds such as conflict of interest), the plaintiff must:

Nominate a registered official liquidator, whose name appears on the Court's list, by filing and serving the liquidator's consent in accordance with Rule 5.5(3); or approach the Registry for selection of another liquidator by rotation, and then file and serve that liquidator's consent in accordance with Rule 5.5(3).