

SUPREME COURT OF TASMANIA

CIRCULAR TO PRACTITIONERS

No. 4 of 2015

7 May 2015

Corporations Act 2001 - Proceedings

Practitioners are advised that proceedings under the *Corporations Act 2001* will be listed for hearing on the first return date, not for directions or mention.

Proceedings under the *Corporations Act 2001* are commenced by "originating process" pursuant to rule 2.2(1)(a) of the *Federal Court (Corporations) Rules 2000*. The *Federal Court (Corporations) Rules 2000* are incorporated into the *Supreme Court (Corporations) Rules 2008* by operation of rule 4.

Rule 2.3 of the *Federal Court (Corporations) Rules 2000* requires that such originating process must be endorsed with a date for "hearing".

Adjournment of the hearing on the first return will not be granted as a matter of course. For example, on a winding-up in insolvency application based on a defendant company's failure to comply with a statutory demand the company is presumed to be insolvent and a court will not readily grant an adjournment allowing the company to continue to trade unless it is established by evidence that there are good prospects of recovery and the future solvency of the company is demonstrated. See *Commonwealth of Australia v Maclean Bay Pty Ltd* [2013] FCA 86.

A party seeking directions or orders prior to the hearing may apply by letter to the Registrar submitted in sufficient time to enable the application for directions to be heard before the return of the originating process.

Note : Practice Direction 1/2015 (Case Management) does not apply to proceedings under the *Corporations Act 2001* to which the *Supreme Court (Corporations) Rules 2008* apply.

J A CONNOLLY
REGISTRAR