

NOTICE TO PRACTITIONERS

COMMERCIAL COURT

1 As from 1 January 2009 there will be a Commercial Court within the Commercial and Equity Division of the Trial Division of the Court.

THE COMMERCIAL COURT

2 The Commercial Court will comprise a specialist team of judges and associate judges within the Commercial and Equity Division of the Trial Division of the Court appointed by the Chief Justice from time to time to manage and try commercial proceedings within the meaning of that expression in RSC Ch II Order 2 and corporations cases brought under the provisions of the Corporations Act or the ASIC Act.

3 A proceeding in the Commercial Court will be allocated to a docket of one of five lists. A judge and an associate judge will be assigned to each list and will manage and try the cases within that list. The lists within the Commercial Court and the judicial officers allocated to them together with their contact details appear on the Court website, www.supremecourt.vic.gov.au. These judicial officers and the contact details of their associates are the following:

List A

List Judge: the Honourable Justice Pagone (Tel 9603 6627; Tel 9603 6239)
Associate Judge: the Honourable Associate Justice Efthim (Tel 9603 9427)

List B

List Judge: the Honourable Justice Judd (Tel 9603 6128)
Associate Judge: the Honourable Associate Justice Gardiner (Tel 9603 9019)

List C

List Judge: the Honourable Justice Byrne (Tel 9603 6054; Tel 9603 6358)
Associate Judge: the Honourable Associate Justice Kings (Tel 9603 9322)

List D

List Judge: the Honourable Justice Hargrave (Tel 9603 6209; Tel 6209 7040)
Associate Judge: the Honourable Associate Justice Daly (Tel 9603 9054)

List E

List Judge: the Honourable Justice Robson (Tel 9603 6669)
Associate Judge: the Honourable Associate Justice Efthim (Tel 9603 9427)
the Honourable Associate Justice Gardiner (Tel 9603 9019)

- 4 An officer in the office of the Prothonotary whose identity and contact details may be found on the Court website at www.supremecourt.vic.gov.au will perform the functions of registrar of the Commercial Court. The Deputy Prothonotary, Mr Rod Ratcliffe (Tel 9603 9300), has been appointed to that position.
- 5 Communications to the Court should be directed to:
- a) the registrar; where the communication concerns a registry matter;
 - b) the associate of the list judge; where the communication concerns a matter in a list or if this is not possible, to the associate of the list associate judge; or
 - c) to the associate of the list A judge otherwise.
- 6 Enquiries regarding urgent applications which have not yet been allocated to a list should be directed to the associate of the list A judge.

THE BUSINESS OF THE COMMERCIAL COURT

- 7 Generally, any commercial proceeding or corporations case may be entered in the Commercial Court unless it is a case more suitable to be entered into one of the other specialist lists in the Trial Division. Nevertheless a case which is entered in the Commercial Court may be directed by the list judge to be removed from the Commercial Court if it is or at any time has become one which, by reason of its size or otherwise, is more appropriately managed and tried in the Commercial and Equity Division outside the Commercial Court. A commercial proceeding will not be refused entry by reason only that it is expected to require a trial of more than 10 days or that it is a group proceeding.

8 All cases presently in the Commercial List or the list of Corporations Cases will be automatically entered in the Commercial Court without further entry fee or order, and any documents prepared for use in the Commercial Court after 1 January 2009 should comply with the preceding paragraph. Existing Corporations Cases will be included in Commercial Court list E; existing Commercial List cases presently allocated to Justice Pagone’s list will be included in list A and those allocated to the list of Justice Hollingworth will be included in list B.

9 A case may be entered into the Commercial Court by including in the heading of the initiating document at the time of commencement the words “Commercial Court” or by order of a Commercial Court judicial officer. Practitioners should not specify in this document the list to which the case may be allocated; the allocation will be made by the Court and the parties advised.

10 The heading to court documents filed in the Commercial Court and used in the Commercial Court will not contain the words “Commercial List” or “Corporations Cases” or a folio number, as at present. The heading will include the words “Commercial Court” and should include the list to which the case has been allocated. An example appears in the annexure to this notice. The formal requirements for the heading of court documents in RSC Ch I r 27.02 should otherwise be observed.

11 Cases, other than corporations cases, entered into the Commercial Court will be treated as Commercial List cases in accordance with RSC Ch II O2 and will attract the payment of the entry fee payable in respect of Commercial List cases.¹ The entry fee payable in respect of corporations cases will not be affected by the inclusion of these cases in the Commercial Court.

¹ See Scale of Fees Item 1.8

THE MANAGEMENT OF COMMERCIAL COURT CASES

- 12 Practitioners seeking to make an urgent application before commencement of a proceeding to be entered in the Commercial Court should apply to the associate to the list A judge for an appointment. If this be not practicable they should apply to the associate to any list judge or to the associate to the judge in the Practice Court
- 13 When a case is entered in the Commercial Court upon commencement, the registrar will appoint a date for the initial directions hearing before the list judge. The initial directions hearing may be conducted by the list judge or, if the list judge so directs, by the list associate judge or by both provided that, if any party so requires, the initial directions hearing will be conducted by the list judge.
- 14 Further directions hearings and applications will be heard by the list judge or the list associate judge as the list judge directs.
- 15 A case in the Commercial Court may be managed or tried by any list judge or list associate judge and may be transferred from one to list to another list by order of the list judge in the transferor list.
- 16 An application before a list judge may be referred to the list associate judge and an application, other than an application referred by a list judge to a list associate judge, may be referred to the list judge.
- 17 Parties should expect that, in the appropriate case, an application, a directions hearing and the trial of a proceeding or of a question in a proceeding pursuant to Ch I r 47.04 may be referred to a list associate judge.
- 18 It is intended that an appeal to a judge from any order of a list associate judge upon an interlocutory matter shall be permitted only by leave of a list judge. An appeal from the order of a list associate judge upon trial of a matter referred by a list judge shall be to the Court of Appeal. Wherever practicable appeals from the Commercial Court will be heard by the Court of Appeal constituted by at least one of the Chief Justice, the President, Justices Buchanan, Nettle, Dodds-Streeton and Weinberg and

such other judges as directed by the President. Appeals will be granted expedition when practicable and appropriate.

- 19 A characteristic of practice in the Commercial Court will be its flexibility; directions will be tailored and may vary to suit the management appropriate to specific disputes and the views of the judicial officers to whom cases have been allocated so as to achieve the objective of providing for the just and efficient determination of commercial disputes. The Commercial Court will seek to ensure that the cost of and the work involved in any procedure adopted will be proportional to the issues and the amount at stake. The Court will expect that the lawyers will co-operate creatively in this endeavour.
- 20 Cases other than corporations cases will be managed, generally, according to the practice currently adopted for Commercial List cases. Lawyers should expect that the following departures from the Green Book practice may be made:
- a) Group proceedings may be commenced in the Commercial Court.
 - b) Pleadings may be dispensed with in the appropriate case.
 - c) Notwithstanding para 10.1, witness statements may not be the norm.
 - d) Parties will be encouraged to present routine interlocutory applications to the Court for determination on the papers without hearing.
 - e) The Court may be ready to fix the costs awarded upon interlocutory applications to save the parties the cost and time of preparing a taxable bill. To this end the Court may, from time to time, publish a document setting out the ordinary range of party and party costs which might be ordered upon such applications.
- 21 Corporations cases will, subject to the provisions of this notice, be managed, generally, according to the practice currently adopted for corporations cases.

THE TRIAL OF COMMERCIAL COURT CASES

- 22 The Commercial Court will normally sit on Monday to Thursday, reserving Fridays for directions and applications. Directions dates for each list are published in the Court website.
- 23 Parties should expect that a trial fixed for hearing will commence on the date fixed and that a trial which is not finished within the estimated duration will be adjourned to the next available date which is convenient to the Court.

Vivienne Macgillivray

Executive Associate to the Chief justice

12 December 2008

Heading to Proceeding in the Commercial Court

Non-Corporations Case

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

Not Restricted

COMMERCIAL COURT

LIST

No. xxxx of 2009

AB

Plaintiff

V

XY

Defendant

Corporations Case²

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

Not Restricted

COMMERCIAL COURT

LIST

No. xxxx of 2009

IN THE MATTER OF XY Pty Ltd (ACN 111 111 111)

AB

Plaintiff

v.

XY

Defendant

² RSC Ch V Form 1