

DEFINITIONS

Definitions

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20.1 The words listed below have the meaning given to them:

[20.1.1] Application of other specific definitions As the *Rules* are a “statutory order” within the meaning of s.12, *Interpretation* [Cap 132], it follows from s.15(2) that the definitions contained in *Judicial Services and Courts* [Cap 270] also apply, unless otherwise provided. Section 1(1) of the latter contains a number of definitions.

[20.1.2] Application of Interpretation Act Section 1(1) of the *Interpretation Act* [Cap 132] causes the Act to apply to the *Rules* more generally. Specifically, s.2 imports the definitions contained in the Schedule.

“agreed documents” means documents that both parties agree should be disclosed;

“application” means an application made in a proceeding;

“applicant” means the person who makes an application;

“assets”, for a person, includes any tangible or intangible property in which the person has a legal or equitable interest;

[20.1.3] Meaning of “assets” See also the definitions of “property” and “immovable property” in the Schedule to the *Interpretation Act* [Cap 132]. As to the goodwill of a business see *Darashah v UFAC* (1982) 79 LSG 678.

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“child” means a person under 18 years of age;

[20.1.4] Application of definition to company The wide definition of “person” in Schedule 2 to the *Interpretation Act* [Cap 132] could lead to the absurdity that a company less than 18 years old is a “child”.

[20.1.5] As to the procedural consequences of childhood, see rr.3.8 and 11.10.

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“claimant” means the person filing the claim;

“conference” means a conference held under Part 6;

“copy”, of a document, means anything into or onto which the contents of the document have been copied by any means, directly or indirectly;

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“defendant” means a person against whom a claim is filed;

“disclose”, for a document, means state that the document exists and identify it;

“document” includes anything in or on which information is recorded by any means;

[20.1.6] Application of definition to magnetic/electronic media The definition is probably wide enough to include audio tape recordings (*Snow v Hawthorn* [1969] NZLR 776 at 777; *Grant v Southwestern & County Properties* [1975] Ch 185 at 198; [1974] 2 All ER 465 at 475; [1974] 3 WLR 221 at 232; *Australian National Airlines Commission v*

Commonwealth (1975) 132 CLR 582 at 594; 6 ALR 433 at 444; 49 ALJR 338 at 344), video tapes (*Konig v Casino Canberra* [2000] ATSC 67; *Boyce v Colins* (2000) 23 WAR 123 at 127, 135, 148; [2000] WASCA 344 at [1], [33], [93]) and computer files (*Derby v Weldon (No9)* [1991] 2 All ER 901 at 906; [1991] 1 WLR 652 at 658). Compare the definitions of “document” and “writing” in the Schedule to the *Interpretation Act* [Cap 132].

“evidence by link” means evidence given by telephone, by video or by another means of communication;

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“lawyer” means a person entitled to practice in Vanuatu as a barrister and solicitor;

[20.1.7] See generally *Legal Practitioners* [Cap 119].

“list” means the list of documents mentioned in rule 8.5;

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“litigation guardian” means a person appointed by the court to represent a person under a legal incapacity in a proceeding;

“old rules” means the High Court (Civil Procedure) Rules 1964 and the Magistrates’ Courts (Civil Procedure) Rules 1976 as in force immediately before the commencement of these Rules;

[20.1.8] History These were made by the Western Pacific High Commission pursuant to the *Western Pacific (Courts) Order in Council* 1961 which was made under the *Foreign Jurisdiction Act* 1890 (UK).

“partnership proceeding” means a proceeding started by or against a partnership including a proceeding against the partnership by one of the partners;

“person” includes the State of Vanuatu and the Government of Vanuatu;

[20.1.9] See also the definition of person in Schedule 2, *Interpretation* [Cap 132].

“person under a legal incapacity” means a child or a person with impaired capacity;

[20.1.10] See also definition of “child” and r.3.8(1).

“person with impaired capacity” means a person who is not capable of making the decisions required to be made by a party to a proceeding to be able to conduct the proceeding;

[20.1.11] Test for impairment The test is whether the party is capable of understanding, with proper explanation from a lawyer, the issues on which decisions need to be made during the course of proceedings: *Masterman-Lister v Brutton* [2003] 3 All ER 162; [2003] 1 WLR 1511; [2002] EWCA Civ 1889 at [55], [57], [64], [68]. [75]. There remains a difference of opinion as to whether this test is to be applied subjectively or objectively: see for example *Brown v Trustee in Bankruptcy* [1999] FCA 1569; (1999) 95 FCR 177 at [16]-[18].

“proof of service” means a sworn statement setting out details of the time and manner in which a document was served on a person;

“sealed”, for a document, means sealed with the seal of the court concerned;

[20.1.12] See further s.64, *Judicial Services and Courts* [Cap 270] and r.18.5.

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