

## EXPLANATORY STATEMENT

### **Issued by authority of the Minister for Revenue and Financial Services**

*Corporations Act 2001*

*Insolvency Practice Rules (Corporations) Amendment 2017 (No. 1)*

Section 105-1 of Schedule 2 to the *Corporations Act 2001* (the Act) provides that the Minister may make rules prescribing matters required or permitted by Schedule 2 of the Act to be prescribed or necessary or convenient to be prescribed.

The insolvency provisions of the Act were amended by the *Insolvency Law Reform Act 2016* (the Amending Act) to implement the Australian Government's corporate insolvency reforms. A number of legislative instruments, including the *Insolvency Practice Rules (Corporations) 2016* (the Rules) were made as part of the reforms.

The Rules were made by the Minister on 12 December 2016. Parts 1 and 2 of the Rules commenced immediately after the commencement (on 1 March 2017) of Schedule 1 to the Amending Act, and Part 3 of the Rules will commence on 1 September 2017. The *Insolvency Practice Rules (Corporations) Amendment 2017 (No. 1)* (the Instrument) makes minor technical amendments to clarify the operation of the rules.

#### **Overview of the Instrument**

The Instrument makes a number of minor technical amendments to Part 3 of the Rules to clarify their operation.

The Instrument amends the Rules to:

- specify the timeframe within which certain reports, notices and declarations must be lodged with ASIC;
- clarify the scope of voting restrictions on proxy holders;
- align the operation of rules governing the admission of proofs of debt for the purposes of voting, the rules about counting a majority of votes, and the rules about the giving of notice when an external administrator considers a direction to convene a meeting is unreasonable; and
- clarify the operation of some provisions.

Details of the Instrument are set out in [Attachment A](#).

The amendments have been informed by feedback on the operation of the Rules received from the Australian Restructuring and Turnaround Association and the Australian Securities and Investments Commission.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commences immediately after Part 3 of the Rules commence.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the Instrument.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Insolvency Practice Rules (Corporations) Amendment 2017 (No. 1)***

The *Insolvency Practice Rules (Corporations) Amendment 2017 (No. 1)* (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Instrument**

The Instrument makes minor technical amendments to Part 3 of *the Insolvency Practice Rules (Corporations) 2016* (the Rules) to clarify their operation. The Instrument will commence immediately after the commencement of Part 3 of the Rules on 1 September 2017.

The instrument amends the rules to:

- specify the timeframe within which certain reports, notices and declarations must be lodged with ASIC;
- clarify the scope of voting restrictions on proxy holders;
- align and make internally consistent, the operation of rules governing the admission of proofs of debt for the purposes of voting, the rules about counting a majority of votes, and the rules about the giving of notice when an external administrator considers a direction to convene a meeting is unreasonable;
- clarify the operation of some provisions.

#### **Conclusion**

The Instrument does not affect or limit any human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Details of the *Insolvency Practice Rules (Corporations) Amendment 2017 (No.1)***

This Attachment sets out further details of the *Insolvency Practice Rules (Corporations) Amendment 2017 (No.1)* (the Instrument). All references are to the Instrument unless otherwise stated.

**Section 1 – Name**

This section provides that the title of the Instrument is the *Insolvency Practice Rules (Corporations) Amendment 2017 (No.1)*.

**Section 2 – Commencement**

This section provides that the Instrument will commence immediately after the commencement of Part 3 of the *Insolvency Practice Rules (Corporations) 2016* (the Rules).

**Section 3 – Authority**

This section provides that the Instrument is made under the *Corporations Act 2001*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 of the Instrument sets out amendments to the Rules as follows:

*Item 1 – paragraph 70-30(2)(c)*

Item 1 of Schedule 1 substitutes the reference to 'voluntary winding up' in paragraph 70-30(2)(c) with 'voluntary administration'.

*Item 2 – subsection 70-40(3)*

Item 2 of Schedule 1 amends subsection 70-40(3) to clarify that a liquidator is required to provide reports about dividends within three months of the liquidator's appointment rather than the commencement of the winding up of a company. This amendment is necessary to address cases where there is a deemed commencement of the winding up of a company because a voluntary administration preceded the liquidator's appointment.

*Items 3 and 4 – subsections 75-40(3) and 75-40(4)*

Items 3 and 4 of Schedule 1 clarify that the lodgement of a notice for a meeting of a committee of inspection is required at least 5 business days before the meeting is held unless it is not practicable, in which case the lodgement must be made as soon as practicable (which may be after the meeting has been held).

*Items 5 and 7 – section 75-88 and subsections 75-100(3) and (4)*

Items 5 and 7 of Schedule 1 reconcile rules for the admission and rejection of proofs of debt for the purposes of voting at meetings.

*Item 6 – section 75-97*

Item 6 of Schedule 1 clarifies that only holders of general proxies are prohibited from exercising a proxy in the specified circumstances in section 75-97.

*Item 8 – paragraph 75-120(2)(b).*

Item 8 of Schedule 1 substitutes the reference to ‘articles of the company’ in paragraph 75-120(2)(b) with ‘company’s constitution’.

*Item 9 – paragraph 75-130(6)(b)*

Item 9 of Schedule 1 provides for a five day lodgement period for a notice of the outcome of a proposal put to creditors without a meeting. Prior to the amendment, there was no lodgement period specified for this notice.

*Items 10 and 11- paragraph s75-135(2)(b) and (c)*

Item 10 of Schedule 1 omits paragraph 75-135(2)(b), as that paragraph repeated the requirement in paragraph 75-135(2)(a) in relation to the passing of a resolution by a majority of contributories without a meeting.

*Item 12 – after subsection 75-135(2)*

Item 12 of Schedule 1 inserts a new subsection 75-135(2A) after subsection 75-135(2). The new provision provides for the manner in which a majority is counted for a proposal put to contributories without a meeting of contributories. The provision replicates the substance of subsection 75-120(2).

*Item 13 – paragraph 75-135(5)(b)*

Item 13 of Schedule 1 imposes a 5 business day time period within which a notice of the outcome of a proposal put to contributories without a meeting must be lodged with ASIC.

*Item 14 – paragraph 75-195(5)(a)*

Item 14 of Schedule 1 amends an incorrect reference in paragraph 75-195(5)(a) to clarify that it is the person or body that gives a direction to an external administrator to convene a meeting that may agree to bear the costs of compliance with that direction in order for the direction to be deemed reasonable.

*Item 15 – after section 75-195*

Item 15 of Schedule 1 inserts a new section that provides for a notice and recordkeeping requirement where an external administrator considers that a direction to convene a meeting of a pooled group is unreasonable.

The notice must be given to the person or body giving the direction, and state that it is not reasonable to comply with the direction and the reasons why. A written record of the fact that the direction was not complied with and the reasons must be recorded in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Corporations).

The notice requirements imposed under this new provision are equivalent to the existing notice obligations relating to directions to convene a meeting of creditors under section 75-255.

*Item 16 – subsection 75-225(4)*

Item 16 of Schedule 1 imposes a 2 business day time period within which notices to creditors to convene a meeting and the related external administrator's report must be lodged with ASIC.

*Item 17 – subsection 75-265(6)*

Item 17 of Schedule 1 clarifies the person who must lodge copies of the documents relating to meetings to remove an external administrator and appoint another person as external administrator, and the timeframe for doing so. The provision provides those documents must be lodged within 5 business days of the meeting, by the person who is the external administrator following the meeting.

Prior to the amendment made by this item the subsection was silent about the timeframe for lodgement, and about the person responsible for the lodgement.

*Item 18 – section 90-18*

Item 18 of Schedule 1 replaces a number of references to an "external administrator" and a "reviewing liquidator" with references to "registered liquidator", for clarity.