



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

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I, Kelly O'Dwyer, Minister for Revenue and Financial Services, make the following rules.

Dated this 23<sup>rd</sup> day of August 2017

Kelly O'Dwyer  
Minister for Revenue and Financial Services

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## **Part 1—Preliminary**

### **1 Name**

This instrument is the *Insolvency Practice Rules (Corporations) Amendment 2017 (No.1)*.

### **2 Commencement**

This instrument commences immediately after the commencement of Part 3 of the *Insolvency Practice Rules (Corporations) 2016*.

### **3 Authority**

This instrument is made under the *Corporations Act 2001*.

### **4 Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## **Schedule 1—Amendments**

### ***Insolvency Practice Rules (Corporations) 2016***

#### **1 Paragraph 70-30(2)(c)**

Omit “voluntary winding up”, substitute “voluntary administration”.

#### **2 Subsection 70-40(3)**

Omit “commencement of the winding up”, substitute “date of the liquidator's appointment”.

#### **3 Subsection 75-40(3)**

Repeal the subsection, substitute:

- (3) The notice must be lodged:
- (a) if the notice is of a meeting covered by subparagraphs (4) (a)-(c) – at least 5 business days before the meeting is held;
  - (b) if the notice is of a meeting covered by subparagraph (4)(d) – at least 5 business days before the meeting is held, or, if that is not practicable, as soon as practicable;
  - (c) in any other case – at least 10 business days before the meeting is held.

#### **4 Paragraph 75-40(4)(d)**

Omit “, if the external administrator thinks it appropriate in the circumstances”.

#### **5 Section 75-88**

Repeal the section.

#### **6 Section 75-97**

After “A person acting under a” insert “general”.

#### **7 Subsections 75-100(3) and (4)**

Repeal the subsections, substitute:

- (3) If the person presiding is in doubt whether a proof of debt or claim should be admitted or rejected, he or she must mark that proof as objected to and allow the creditor to vote, subject to the vote being declared invalid if the objection is sustained.
- (4) A decision by the person presiding to admit or reject a proof of debt or claim for the purposes of voting may be appealed against to the Court within 10 business days after the decision.

#### **8 Paragraph 75-120(2)(b)**

Omit “articles of the company” substitute “company's constitution”.

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**9 Paragraph 75-130(6)(b)**

After "proposal" insert "within 5 business days of the outcome being known".

**10 Paragraph 75-135(2)(b)**

Omit the paragraph.

**11 Paragraph 75-135(2)(c)**

Omit "(c)" insert "(b)".

**12 After subsection 75-135(2)**

Insert

(2A) In counting the majority, regard must be made to:

- (a) the number of votes cast for or against the resolution; and
- (b) the number of votes to which each contributory is entitled by the Act or the company's constitution.

**13 Paragraph 75-135(5)(b)**

After "proposal" insert "within 5 business days of the outcome being known".

**14 Paragraph 75-195(5)(a)**

Omit "members of the pooled group agree" insert "person or body giving the direction agrees".

**15 After section 75-195**

Insert

**75-200 Notice requirements for unreasonable directions**

- (1) This section is made for the purposes of section 80-27(3) of the Insolvency Practice Schedule (Corporations) and applies instead of section 75-250 in relation to directions to convene a meeting of the members of a pooled group if:
  - (a) a direction to convene a meeting of the members of a pooled group is given to the external administrator under Division 80 of the Insolvency Practice Schedule (Corporations); and
  - (b) under the Act or these Rules, it is not reasonable for the external administrator to comply with the direction.
- (2) The external administrator must:
  - (a) notify the person or body giving the direction that it is not reasonable for the external administrator to comply with the direction, and of the reasons why it is not reasonable; and
  - (b) make a written record in the books required to be kept under section 70 10 of the Insolvency Practice Schedule (Corporations) of the fact that the direction was not complied with, and of the reasons.

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## **16 Subsection 75-225(4)**

After "ASIC" insert "within 2 business days of the notice being sent to creditors".

## **17 Subsection 75-265(6)**

Repeal the subsection, substitute:

- (6) The registered liquidator who is the external administrator of the company following the meeting referred to in subsection (1) must lodge copies of the documents referred to in subsection (5) within 5 business days of the meeting.

## **18 Section 90-18**

Repeal the section, substitute:

### **90-18 Declaration of relevant relationships of proposed reviewing liquidator**

*Declaration to be given before consenting to appointment*

- (1) Before consenting to an appointment as a reviewing liquidator under Division 90 of the Insolvency Practice Schedule (Corporations), a registered liquidator must make a written declaration:
  - (a) stating whether any of the following:
    - (i) the registered liquidator;
    - (ii) if the registered liquidator's firm (if any) is a partnership—a partner in that partnership;
    - (iii) if the registered liquidator's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;has, or has had within the preceding 24 months, a relationship with:
    - (iv) the company in relation to which the review will be conducted; or
    - (v) an associate of the company; or
    - (vi) the current external administrator of the company; or
    - (vii) the person or body (other than the Court) making the appointment; or
    - (viii) a former external administrator of the company; or
    - (ix) a person who is entitled to enforce a security interest in the whole, or substantially the whole, of the company's property (including any PPSA retention of title property); and
  - (b) if so, stating the registered liquidator's reasons for believing that none of those relationships result in the registered liquidator having a conflict of interest or duty.
- (2) The declaration must be:



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- (a) given to the person or body who will make the appointment;  
and
  - (b) lodged with ASIC within 5 business days of the registered liquidator's appointment as a reviewing liquidator.

*Copy of declaration to be given to as many creditors as reasonably practicable*

- (3) As soon as practicable after being appointed, a reviewing liquidator must give a copy of the declaration to as many of the company's creditors as reasonably practicable.

*Declaration must be correct and kept up to date*

- (4) If, after the registered liquidator has given a declaration under this section:
  - (a) the declaration becomes out of date; or
  - (b) the registered liquidator becomes aware of an error in the declaration;the registered liquidator must, as soon as practicable:
  - (c) give a replacement declaration to as many of the company's creditors as soon as reasonably practicable; and
  - (d) lodge a replacement declaration with ASIC as soon as reasonably practicable