



Insolvency Practice (Bankruptcy) Amendment (Minor Amendments) Rules 2017

I, George Brandis QC, Attorney-General, make the following rules.

Dated 25 August 2017

George Brandis QC
Attorney-General

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1 Name

This instrument is the *Insolvency Practice (Bankruptcy) Amendment (Minor Amendments) Rules 2017*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 August 2017
2. Schedule 1, items 1 to 5	The day after this instrument is registered.	30 August 2017
3. Schedule 1, items 6 to 49	1 September 2017.	1 September 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Bankruptcy Act 1966*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Insolvency Practice Rules (Bankruptcy) 2016

1 Before section 42-1

Insert:

Subdivision AA—Introduction

2 After section 42-4

Insert:

42-4A Compliance with standards by trustee’s employees

A registered trustee must ensure that his or her employees comply with this Division.

3 Section 42-25

Repeal the section.

4 Section 42-215

Before “Notice of”, insert “(1)”.

5 At the end of section 42-215

Add:

- (2) However, the notice must not include the debtor’s address or occupation if the Inspector-General has, in accordance with an application made under the regulations, decided to not enter that information on the National Personal Insolvency Index.

6 Section 60-25 (heading)

Repeal the heading, substitute:

60-25 Trustee must not derive profit or advantage from the administration of the estate—exceptions

7 At the end of section 70-17

Add:

Deceased debtors

- (6) For the purposes of section 70-56 of the Insolvency Practice Schedule (Bankruptcy), if the regulated debtor is deceased, the legal personal representative of the deceased debtor may request the trustee of the regulated debtor’s estate to:
- (a) give information; or
 - (b) provide a report; or
 - (c) produce a document;
- to the legal personal representative.

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- (7) It is reasonable for the trustee of a regulated debtor's estate to comply with a request under subsection (6) if:
- (a) subsection 70-56(2) of the Insolvency Practice Schedule (Bankruptcy) does not apply to the request; and
 - (b) none of paragraphs (2)(a) to (g) apply to the request.
- (8) Despite paragraph (7)(b), it is also reasonable for the trustee of a regulated debtor's estate to comply with a request under subsection (6) in the circumstances mentioned in paragraph (2)(d), (e) or (f) if:
- (a) the legal personal representative of the deceased debtor agrees to bear the cost of complying with the request; and
 - (b) if required to do so by the trustee—security for the cost of complying with the request is given to the trustee before the request is complied with.

8 Paragraph 70-30(2)(a)

Before “the name”, insert “subject to subsection (2A)—”.

9 After subsection 70-30(2)

Insert:

- (2A) The trustee must not give the regulated debtor's address or occupation to the creditors if the Inspector-General has, in accordance with an application made under the regulations, decided to not enter that information on the National Personal Insolvency Index.

10 Subsection 75-27(1)

Omit “20 business”, substitute “30 business”.

11 Paragraph 75-27(2)(a)

Before “a copy of”, insert “subject to subsection (2A)—”.

12 After subsection 75-27(2)

Insert:

- (2A) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then, for the purposes of paragraph (2)(a), the trustee must not give that information to the creditors.
- (2B) The regulated debtor must, unless prevented by illness or other sufficient cause, attend the meeting. However, a failure of the debtor to attend the meeting does not affect the validity of any resolution passed at the meeting.

13 Section 75-40 (heading)

Repeal the heading, substitute:

75-40 Notification of first meeting to be lodged with Inspector-General etc.

14 Subsection 75-40(1)

Omit “a meeting of creditors”, substitute “the first meeting of creditors of a regulated debtor's estate”.

15 Subsection 75-40(2)

Omit “of a regulated”, substitute “of the regulated”.

16 Paragraph 75-40(3)(d)

Repeal the paragraph, substitute:

- (d) the time and date by which particulars of the creditor’s debt or claim, and proxies for the meeting, are to be submitted;

17 Subsection 75-40(4)

Omit “A notice”, substitute “Details from the notice”.

18 At the end of section 75-40

Add:

- (5) The Inspector-General may include other information regarding the meeting on the website if the Inspector-General considers it is appropriate to do so.

19 Section 75-55

Before “The agenda”, insert “(1)”.

20 At the end of section 75-55

Add:

- (2) Despite paragraph (1)(d), if the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then the trustee must not table that part of the statement of affairs that contains that information.

21 At the end of subsection 75-60(1)

Add:

Note: See section 75-180 for other documents that must be tabled.

22 Paragraph 75-60(2)(a)

Before “a copy of”, insert “subject to subsection (2A)—”.

23 After subsection 75-60(2)

Insert:

- (2A) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then, for the purposes of paragraph (2)(a), the trustee must not table that part of the statement of affairs that contains that information.

24 At the end of section 75-65

Add:

- (6) In the case of a deceased debtor, the trustee must invite the persons participating and entitled to vote at the meeting to ask questions of the debtor’s legal personal representative, if present.

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- (7) The regulated debtor or, in the case of a deceased debtor, the legal personal representative of the deceased debtor, if present, must answer any questions put to him or her to the best of his or her knowledge and ability.

25 Section 75-90

Omit “registered”.

26 Subsections 75-95(1), (2) and (3)

Omit “registered”.

27 Subsection 75-100(2)

Omit “registered”.

28 Subsection 75-130(2)

Before “if:”, insert “at a meeting of creditors”.

29 Paragraph 75-130(4)(a)

After “on or before”, insert “the day”.

30 Paragraph 75-132(1)(a)

Omit “50% of”, substitute “a majority of”.

31 Paragraph 75-132(1)(b)

Before “75% in value”, insert “at least”.

32 Subsection 75-137(2)

Omit “passed as a *special resolution* if”, substitute “taken to have been passed as a *special resolution* at a meeting of creditors if”.

33 Paragraph 75-137(2)(a)

Omit “50% of”, substitute “a majority of”.

34 Paragraph 75-137(2)(b)

Before “75% in value”, insert “at least”.

35 Paragraph 75-137(2)(c)

Repeal the paragraph.

36 Section 75-170 (heading)

Repeal the heading, substitute:

75-170 Joint administrations

37 Subsection 75-170(1)

Omit “kinds of bankruptcy”, substitute “kinds of administration”.

38 At the end of subsection 75-170(1)

Add:

- ; (e) the situation arising out of the signing, by joint debtors for the purposes of section 188 of the Act, of a joint authority or separate authorities for the administration of their joint estate.

39 At the end of section 75-170

Add:

- (3) This section applies in relation to a personal insolvency agreement only if:
 - (a) a joint estate forms part of the property that is to be dealt with under the agreement; and
 - (b) the agreement does not specifically provide for distribution of the joint estate.

40 Section 75-175 (heading)

Repeal the heading, substitute:

75-175 Calling a meeting in relation to compositions or arrangements

41 Paragraph 75-175(2)(b)

Repeal the paragraph, substitute:

- (b) send a copy of the following to the creditors at least 5 business days before the day of the meeting:
 - (i) the proposal and a report on the proposal;
 - (ii) if the meeting is the first meeting of creditors held during the administration of the estate—a copy of the regulated debtor's statement of affairs, or a summary of that statement;
 - (iii) if section 73B of the Act applies in relation to the composition or scheme of arrangement—a copy of the declaration referred to in that section;
 - (iv) a form for the purposes of subsection (5).

42 After subsection 75-175(2)

Insert:

- (2A) If the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then, for the purposes of subparagraph (2)(b)(ii), the trustee must not give that information to the creditors.
- (2B) Before calling the meeting, the trustee may require the regulated debtor to lodge with the trustee an amount that is sufficient to cover:
 - (a) the estimated costs that will be incurred by the trustee in arranging and holding the meeting; and
 - (b) the estimated remuneration that will be payable to the trustee in respect of the meeting.
- (2C) If the amount lodged by the regulated debtor for the purposes of subsection (2B) is more than the actual costs and remuneration, then the trustee must refund the excess to the regulated debtor.
- (2D) The report on the proposal referred to in subparagraph (2)(b)(i) must:

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- (a) indicate whether the proposal would benefit the regulated debtor's creditors generally; and
 - (b) name each creditor who was identified as a related entity of the regulated debtor in the debtor's statement of affairs.

43 Subsection 75-175(3)

Omit "payment to the trustee of accrued fees", substitute "payment of accrued remuneration".

44 Paragraph 75-175(3)(a)

Omit "are owing to the trustee", substitute "is owing".

45 Paragraph 75-175(3)(b)

Repeal the paragraph, substitute:

- (b) if the trustee is a registered trustee—has been determined in accordance with section 60-10 or 60-11 of the Insolvency Practice Schedule (Bankruptcy) before the proposal is considered.

46 Subsection 75-175(4)

Repeal the subsection, substitute:

- (4) The regulated debtor (or, in the case of a deceased regulated debtor, the regulated debtor's legal representative) may, at a meeting of the creditors, amend the terms of his or her proposal, but not in a way that reduces any provision for payment to a trustee of remuneration referred to in subsection (3).
- (5) A creditor who has proved his or her debt may assent to or dissent from the proposal by written notice to that effect given to the trustee of the regulated debtor's estate before the meeting.
- (6) If subsection (5) applies to a creditor, the creditor is taken to have been present at the meeting and to have voted according to his or her assent or dissent.

47 At the end of Subdivision E of Division 75

Add:

75-180 Documents to be tabled at meeting in relation to compositions or arrangements*Scope*

- (1) This section applies to a meeting that is called under section 75-175.

Statement of affairs

- (2) The trustee of the regulated debtor's estate must table at the meeting a copy of the regulated debtor's statement of affairs.

Note: A copy of the regulated debtor's proposal must also be tabled: see subsection 75-60(1).

- (3) If:
 - (a) the regulated debtor had been required, immediately before the start of the meeting, to prepare a statement of affairs; and

(b) that statement would have differed in one or more material respects from the statement a copy of which was tabled under subsection (2); the regulated debtor must table at the meeting a written statement identifying those differences.

- (4) Despite subsections (2) and (3), if the approved form for a statement of affairs indicates that particular information in the statement will not be made available to the public, then that part of the statement that contains that information must not be tabled at the meeting.

Proposed trustee's declaration of relationships

- (5) If the proposal provides that a person (the *proposed trustee*) other than the trustee of the regulated debtor's estate is to become the trustee of the composition or scheme of arrangement, the trustee of the regulated debtor's estate must table at the meeting a copy of the declaration made by the proposed trustee under subsection 73B(2) of the Act.

- (6) Subsection (7) applies if:

- (a) the proposal provides that a person (the *proposed trustee*) other than the trustee of the regulated debtor's estate is to become the trustee of the composition or scheme of arrangement; and
- (b) assuming that the proposed trustee had been required, immediately before the start of the meeting, to make a declaration stating whether the regulated debtor is a related entity of:
- (i) the proposed trustee; or
- (ii) a related entity of the proposed trustee;

that declaration would have differed in one or more material respects from the declaration made by the proposed trustee under subsection 73B(2) of the Act.

- (7) If this subsection applies, the proposed trustee must table at the meeting a written statement identifying those differences.

Composition or scheme of arrangement must be available for inspection if proposal accepted

- (8) If, at a meeting of the creditors, the proposal is accepted by special resolution by the creditors, the trustee must make the composition or scheme of arrangement available for inspection by the creditors.

48 Paragraph 75-265(4)(b)

Omit "administrator" (wherever occurring), substitute "trustee".

49 At the end of Division 90

Add:

Subdivision D—Other matters

90-85 Notification to Official Receiver if former trustee is reappointed

- (1) If the Court makes an order under subsection 90-35(5) of the Insolvency Practice Schedule (Bankruptcy) that the former trustee be reappointed as trustee of the regulated debtor's estate, the former trustee must notify the Official Receiver of the reappointment within 2 business days after the order being made.

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty: 1 penalty unit.

90-90 Official Receiver must issue certificate of appointment in certain cases

If the Court appoints a person as a trustee under subsection 90-15(1) or 90-35(5) of the Insolvency Practice Schedule (Bankruptcy), the Official Receiver must issue the person with a certificate of appointment.