

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Regional Development and Territories,
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport, Cities and Regional Development

Norfolk Island Continued Laws Ordinance 2015

Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020

Authority

Section 6 of the *Norfolk Island Continued Laws Ordinance 2015* (the Ordinance) provides that the Minister may, by legislative instrument, make rules amending this Ordinance so as to amend or repeal a continued law; or to make application, saving or transitional provisions in relation to any amendments or repeals of continued laws.

The *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020* (the Rules) are made under section 6 of the Ordinance.

The Rules amend the Ordinance with the effect of amending two continued Norfolk Island laws, specifically the *Bankruptcy Act 2006* (NI) (the NI Bankruptcy Act) and the *Companies Act 1985* (NI) (the NI Companies Act).

Under section 17 of the *Norfolk Island Act 1979*, Norfolk Island laws continued in force under either section 16 or 16A of the Act may be amended or repealed by an Ordinance made under section 19A.

Purpose and operation

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) received Royal Assent on 24 March 2020 and, as part of a broader legislative package, implemented the Australian Government's economic response to the spread of the Coronavirus. The Act included changes to the *Bankruptcy Act 1966* (the Bankruptcy Act) and the *Corporations Act 2001* (the Corporations Act) intended to provide temporary relief for individuals and businesses in financial distress as a result of the Coronavirus pandemic. Amendments to the Corporations Act also established a temporary mechanism to provide short-term regulatory relief to classes of persons that, due to the Coronavirus, are unable to meet their obligations under the Corporations Act or the *Corporations Regulations 2001*. Accordingly, the Treasurer made the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (the Determination) under s 1362A of the Corporations Act on 5 May 2020. The Determination deals with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic.

Specifically, the Act amended the Bankruptcy Act to temporarily increase the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor from \$5,000 to \$20,000. The amendments:

- temporarily provide debtors more time to respond to a bankruptcy notice: the period is extended from 21 days to six months; and
- temporarily extend the timeframe in which a debtor is protected from enforcement action by a creditor following presentation of a declaration of intention to present a debtor's petition: the period is extended from 21 days to three months.

The Act also amended the Corporations Act to increase the statutory minimum for a creditor to issue a statutory demand to a debtor from \$2,000 to \$20,000. This raised the thresholds for creditor demands that can push businesses into insolvency. The amendments also temporarily provide debtors more time to respond to a statutory demand: the period is extended from 21 days to six months.

Other amendments to the Corporations Act introduced a new ‘safe harbour’ from the directors’ duty to prevent insolvent trading. The new safe harbour provides temporary relief from personal liability for insolvent trading where it applies.

Presently, the Bankruptcy Act and the Corporations Act do not extend to Norfolk Island and these matters are still regulated under ‘continued laws’ enacted by the former Legislative Assembly of Norfolk Island, namely the NI Bankruptcy Act and the NI Companies Act. These Acts contain similar regulatory requirements to the Bankruptcy Act and Corporations Act.

The Rules amend the Ordinance to amend the NI Bankruptcy Act and the NI Companies Act respectively to implement, as appropriate, equivalent Coronavirus relief measures to the measures described above. These relief measures will apply for the same time periods as the relevant Commonwealth relief measures.

Specifically, the amendments to the NI Bankruptcy Act temporarily increase the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor from \$2,000 to \$20,000. The amendments to the NI Bankruptcy Act also temporarily provide debtors more time to respond to a bankruptcy notice: the period is extended from 21 days to six months.

Amendments to the NI Companies Act also increase the statutory minimum for a creditor to issue a demand to a debtor company from \$1,000 to \$20,000. This raises the thresholds for creditor demands that can push businesses into insolvency and also temporarily provide Norfolk Island companies more time to respond to a statutory demand: the period is extended from 21 days to six months. Consistent with the Commonwealth measures, the changes to debt arrangements described above will expire on 25 September 2020.

Similar to the temporary ‘safe harbour’ provisions in the Commonwealth measures, other amendments to the NI Companies Act also provide that the offence of incurring debts when there are reasonable grounds to expect that a company is insolvent does not apply to company directors and other managers with respect to debts incurred in the ordinary course of the company’s business during the ‘COVID-19 period’, being the period beginning on the day the Rules commence and also ending on 25 September 2020.

The amendments to the NI Companies Act also deal with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic. The amendments facilitate alternative methods that mean Norfolk Island businesses can keep operating consistently with public health requirements. These amendments also give companies, external administrators and other classes of persons certainty about how they can meet their legal obligations for the next several months.

The amendments to the NI Companies Act ensure that Norfolk Island companies that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings. The amendments enable a quorum, votes, notices and the asking of questions to be facilitated electronically. The amendments also allows for information required for the meeting to be circulated and accessed electronically.

The amendments also alter the operation of the NI Companies Act to give certainty that when company officers sign a document electronically (including an electronic document), the document has been validly executed.

The measures about meetings and document signatures, consistent with the Determination, will expire at the start of 6 November 2020.

Consultation

In order to provide urgent economic relief to the Norfolk Island community consistent with the Commonwealth measures implemented throughout the rest of Australia, community consultation has not been undertaken.

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

The Rules commence the day after registration on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020

This Disallowable Legislative 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 Ordinance

The *Coronavirus Economic Response Package Omnibus Act 2020* (the Act) received Royal Assent on 24 March 2020 and, as part of a broader legislative package, implemented the Australian Government's economic response to the spread of the Coronavirus. The Act included changes to the *Bankruptcy Act 1966* (the Bankruptcy Act) and the *Corporations Act 2001* (the Corporations Act) intended to provide temporary relief for individuals and businesses in financial distress as a result of the Coronavirus pandemic. Amendments to the Corporations Act also established a temporary mechanism to provide short-term regulatory relief to classes of persons that, due to the Coronavirus, are unable to meet their obligations under the Corporations Act or the *Corporations Regulations 2001*. Accordingly, the Treasurer made the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (the Determination) under s 1362A of the Corporations Act on 5 May 2020. The Determination deals with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic.

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Other amendments to the Corporations Act introduced a new 'safe harbour' from the directors' duty to prevent insolvent trading. The new safe harbour provides temporary relief from personal liability for insolvent trading where it applies.

Presently, the Bankruptcy Act and the Corporations Act do not extend to Norfolk Island and these matters are still regulated under 'continued laws' enacted by the former Legislative Assembly of Norfolk Island, namely the NI Bankruptcy Act and the NI Companies Act. These Acts contain similar regulatory requirements to the Bankruptcy Act and Corporations Act.

The Rules amend the Ordinance to amend the NI Bankruptcy Act and the NI Companies Act respectively to implement, as appropriate, equivalent Coronavirus relief measures to the measures described above. These relief measures will apply for the same time periods that the relevant Commonwealth relief measures.

Specifically, the amendments to the NI Bankruptcy Act temporarily increase the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor from \$2,000 to \$20,000. The amendments to the NI Bankruptcy Act also temporarily provide debtors more time to respond to a bankruptcy notice: the period is extended from 21 days to six months.

Amendments to the NI Companies Act also increase the statutory minimum for a creditor to issue a demand to a debtor company from \$1,000 to \$20,000. This raises the thresholds for creditor demands that can push businesses into insolvency and also temporarily provide Norfolk Island companies more time to respond to a statutory demand: the period is extended from 21 days to six months. Consistent with the Commonwealth measures, the changes to debt arrangements described above will expire on 25 September 2020.

Similar to the temporary ‘safe harbour’ provisions in the Commonwealth measures, other amendments to the NI Companies Act also provide that the offence provision against the incurring of debts when there are reasonable grounds to expect that a company is insolvent does not apply to company directors and other managers with respect to debts incurred in the ordinary course of the company’s business during the ‘COVID-19 period’, being the period beginning on the day the Rules commence and also ending on 25 September 2020.

The amendments to the NI Companies Act also deal with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic. The amendments facilitate alternative methods that mean Norfolk Island businesses can keep operating consistently with public health requirements. These amendments also gives companies, external administrators and other classes of persons certainty about how they can meet their legal obligations for the next several months.

The amendments to the NI Companies Act ensure that Norfolk Island companies that are required to or wish to hold a meeting, such as an Annual General Meeting (AGM), may do so using technology rather than face-to-face meetings. The amendments enable a quorum, votes, notices and the asking of questions to be facilitated electronically. The amendments also allows for information required for the meeting to be circulated and accessed electronically.

The amendments also alter the operation of the NI Companies Act to give certainty that when company officers sign a document electronically (including an electronic document), the document has been validly executed.

The measures about meetings and document signatures, consistent with the Determination, will expire at the start of 6 November 2020.

Human Rights implications

Presumption of innocence

The Rules do not limit any of the human rights and freedoms, but in a limited way engage Article 14(2) of the International Covenant on Civil and Political Rights. Article 14(2) recognises that all persons shall be presumed innocent until proven guilty according to the law.

Article 14(2) is engaged because new section 645A of the NI Companies Act provides that the offence of incurring debts when there are reasonable grounds to expect that a company is insolvent does not apply to company directors and other managers with respect to debts

incurred in the ordinary course of the company's business during the relevant period. Directors and managers wishing to rely on the new provision in a proceeding in which the unlawful incurring of debt is alleged, bear an evidential burden in relation to that matter.

These amendments are consistent with Article 14(2) because *evidential burden* is defined to mean the burden of adducing or pointing to evidence that suggests a reasonable possibility that some matter exists or does not exist.

In particular, a director or a manager wishing to rely on the new provisions must point to or adduce some evidence that suggests a reasonable possibility that:

- the debt incurred was in the ordinary course of the company's business;
- the debt was incurred during the 'COVID-19 period', being the period beginning on the day the Rules commence and ending on 25 September 2020; and
- no administrator or liquidator was appointed, within the COVID-19 period, before the debt was incurred.

Consistent with the *Guide to Framing Commonwealth Offences*, it is appropriate for the evidential burden to fall on the director or manager seeking to rely on the new provisions because:

- matters such as whether the debt incurred was in the ordinary course of the company's business, whether and when the debt was incurred or a liquidator or administrator was appointed are peculiarly within the knowledge of the company director or manager; and
- it is significantly more difficult and costly for the prosecution to disprove the fact than for a company director or a manager – that the debt incurred was within the ordinary course of the company's business, the period in which the debt was incurred and whether an administrator or liquidator was appointed before the debt was incurred.

Right to health

The Rules also engage Article 12 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR): the right to health.

Article 12 of the ICESCR protects the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

The Rules promote the right to health by assisting to control the spread of communicable diseases that may cause serious harm to human health. The NI Companies Act requires or permits companies to hold certain meetings at physical venues. The Rules amend the operation of the NI Companies Act so that companies are permitted to hold meetings using one or more technologies. This allows meetings to proceed, without contributing to the spread of communicable diseases that can occur when large numbers of people gather together.

The other measures in the Rules are compatible with human rights as they do not engage or otherwise limit any of the applicable human rights and freedoms.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because, in so far as it engages any of the applicable human rights and freedoms, it promotes the protection of a

human right, namely the right to health, and does not limit any of the applicable human rights and freedoms, namely the presumption of innocence.

**Assistant Minister for Regional Development and Territories,
Parliamentary Secretary to the Deputy Prime Minister and Minister for
Infrastructure, Transport, Cities and Regional Development**

The Hon Nola Marino MP

Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020

Section 1 – Name

This section provides that the title of the Rules is the *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020*.

Section 2 – Commencement

This section provides for the Rules to commence the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Rules are made under section 6 of the *Norfolk Island Continued Laws Ordinance 2015* (the Ordinance).

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1—Amendment of the Bankruptcy Act 2006 (Norfolk Island)

Part 1 of Schedule 1 to the Rules amends the *Norfolk Island Continued Laws Ordinance 2015* (the Ordinance) with the effect of amending the *Bankruptcy Act 2006* (NI) (the NI Bankruptcy Act). The amendments to the NI Bankruptcy Act temporarily increase the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor from \$2,000 to \$20,000. The amendments to the NI Bankruptcy Act also temporarily provide debtors more time to respond to a bankruptcy notice: the period is extended from 21 days to six months.

Norfolk Island Continued Laws Ordinance 2015

Item [1] – Before item 22C of Schedule 1

Item 1 inserts new items 22BD, 22BE, 22BF, 22BG and 22BH into Schedule 1 to the Ordinance.

Item 22BD of Schedule 1 – Section 3

New item 22BD inserts the new definitions of ‘COVID-19 period’, ‘statutory minimum’ and ‘statutory period’ into section 3 of the NI Bankruptcy Act.

The ‘COVID-19 period’ means the period of time beginning on the day on which the Rules commence and ending on 25 September 2020.

The ‘statutory minimum’ is the minimum amount of debt required to be owed before a creditor can initiate bankruptcy proceedings against a debtor. During the ‘COVID-19 period’, that is, the period of time beginning on the day on which the Rules commence and ending on 25 September 2020, this is \$20,000. At any time outside the ‘COVID-19 period’ the ‘statutory minimum’ remains \$2,000.

The ‘statutory period’ is the timeframe in which a debtor must comply with a bankruptcy notice. With respect to a notice issued, or a petition presented during the ‘COVID-19 period’, that is, the period of time beginning on the day on which the Rules commence and ending on 25 September 2020, this timeframe is 6 months. With respect to a notice issued, or a petition presented at any time outside the ‘COVID-19 period’ the ‘statutory period’ remains 21 days.

Item 22BE of Schedule 1 – Subparagraph 23(1)(g)(i)

New item 22BE substitutes the reference to ‘\$2,000’ in subparagraph 23(1)(g)(i) of the NI Bankruptcy Act with a reference to ‘the statutory minimum’.

Item 22BF of Schedule 1 – At the end of section 25

New item 22BF inserts a new subsection 25(3) at the end of section 25 of the NI Bankruptcy Act. New subsection 25(3) of the NI Bankruptcy Act provides that a bankruptcy notice must specify a period for compliance with the notice which must be the statutory period, commencing on the day the debtor is served with the notice. The period is 6 months with respect to a bankruptcy notice served during the ‘COVID-19 period’ and otherwise 21 days with respect to a bankruptcy notice served at any other time.

Item 22BG of Schedule 1 – Subsection 26(1)

New item 22BH substitutes the reference to ‘21 days of service of the notice upon him or her’ in subsection 26(1) of the NI Bankruptcy Act with a reference to ‘the statutory period, commencing on the day the debtor is served with the notice,’.

Item 22BH of Schedule 1 – After subsection 27(2)

New item 22BH inserts a new subsection 27(2A) into the NI Bankruptcy Act. New subsection 27(2A) provides that despite subsection 27(2) of the NI Bankruptcy Act, which deals with creditors’ petitions where there are multiple creditors, that during the COVID-19 period the minimum debt for a creditors’ petition is the ‘statutory minimum’, that is \$20,000, regardless of the number of creditors.

Item [2] – After item 22D of Schedule 1

Item 2 inserts new items 22E and 22F into Schedule 1 to the Ordinance.

Item 22E of Schedule 1 – Form 2 in Schedule (paragraph 3)

New item 22E amends Form 2 in the Schedule to the NI Bankruptcy Act by substituting the reference to ‘21 days after’ with a reference to ‘the statutory period, commencing on the day of’ in paragraph 3. Form 2 is the ‘Bankruptcy Notice’ form for the purposes of section 25 of the NI Bankruptcy Act.

Item 22F of Schedule 1 – Form 2 in Schedule (after paragraph 8)

New item 22F amends Form 2 in the Schedule to the NI Bankruptcy Act by inserting a new note after paragraph 8 which describes the meaning of ‘statutory minimum’ and ‘statutory period’ during the COVID-19 period and afterwards.

Part 2—Amendment of the Companies Act 1985 (Norfolk Island)

Part 2 of Schedule 1 to the Rules amends the Ordinance with the effect of amending the *Companies Act 1985* (NI) (the NI Companies Act). The amendments to the NI Companies Act increase the statutory minimum for a creditor to issue a demand to a debtor company from \$1,000 to \$20,000. This raises the thresholds for creditor demands that can push businesses into insolvency and also temporarily provide Norfolk Island companies more time to respond to a statutory demand: the period is extended from 21 days to six months. Similar to the temporary ‘safe harbour’ provisions in the Commonwealth measures, other amendments to the NI Companies Act also provide that the offence of incurring debts when there are reasonable grounds to expect that a company is insolvent does not apply to company directors and other managers with respect to debts incurred in the ordinary course of the company’s business during the relevant period. Consistent with the Commonwealth measures, these changes to debt arrangements will expire on 25 September 2020.

The amendments to the NI Companies Act also deal with provisions about meetings and document signatures that are not compatible with public health requirements for social distancing during the Coronavirus pandemic. The amendments facilitate alternative methods that mean Norfolk Island businesses can keep operating consistently with public health requirements. These amendments also gives companies, external administrators and other classes of persons certainty about how they can meet their legal obligations for the next several months. The measures about meetings and document signatures, consistent with the Commonwealth measures, will expire at the start of 6 November 2020.

Norfolk Island Continued Laws Ordinance 2015

Item [3] – After item 38 of Schedule 1

Item 3 inserts new items 38A, 38B, 38C, 38D and 38E into Schedule 1 to the Ordinance.

Item 38A of Schedule 1 – Section 6

New item 38A inserts the new definitions of ‘COVID-19 period’, ‘statutory minimum’ and ‘statutory period’ into new section 6 of the NI Companies Act.

The ‘COVID-19 period’ means the period of time beginning on the day on which the Rules commence and ending on 25 September 2020.

The ‘statutory minimum’ is the minimum amount of debt for a creditor to issue a demand to a debtor company. During the ‘COVID-19 period’, that is, the period of time beginning on the day on which the Rules commence and ending on 25 September 2020, this is \$20,000. At any time outside the ‘COVID-19 period’ the ‘statutory minimum’ remains \$1,000.

The ‘statutory period’ is the timeframe in which a debtor must comply with a statutory demand. With respect to demands served during the ‘COVID-19 period’, that is, the period of time beginning on the day on which the Rules commence and ending on 25 September 2020, this timeframe is 6 months. With respect to demands served at any time outside the ‘COVID-19 period’ the ‘statutory period’ remains 21 days.

Item 38B of Schedule 1 – Paragraph 468(2)(a)

New item 38A substitutes the reference to ‘\$1,000’ in paragraph 468(2)(a) of the NI Companies Act with a reference to ‘the statutory minimum’.

Item 38C of Schedule 1 – Paragraph 468(2)(a)

New item 38B substitutes the reference to ‘21 days’ in paragraph 468(2)(a) of the NI Companies Act with a reference to ‘the statutory period’.

Item 38C of Schedule 1 – Paragraph 569(2)(a)

New item 38A substitutes the reference to ‘\$1,000’ in paragraph 569(2)(a) of the NI Companies Act with a reference to ‘the statutory minimum’.

Item 38C of Schedule 1 – Paragraph 468(2)(a)

New item 38B substitutes the reference to ‘3 weeks’ in paragraph 569(2)(a) of the NI Companies Act with a reference to ‘the statutory period’.

Item [4] – After item 42 of Schedule 1

Item 4 inserts new items 42AA and 42AB into Schedule 1 to the Ordinance.

Item 42AA of Schedule 1 – After section 645

New item 42AA inserts new section 645A into the NI Companies Act, ‘Offence relating to incurring of debts—temporary relief in response to the coronavirus’.

New section 645A of the NI Companies Act provides that the offence provision against the incurring of debts when there are reasonable grounds to expect that a company is insolvent does not apply to company directors and other managers with respect to debts incurred in the ordinary course of the company’s business during the COVID-19 period.

A director or manager may rely on this provision in relation to a debt incurred by the company if:

- the debt is incurred in the ordinary course of the company’s business;
- the debt is incurred during the COVID-19 period; and
- the debt is incurred before any appointment of an administrator or liquidator of the company during that period.

A director is taken to incur a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business during the COVID-19 period that begins on the commencement of the Rules. This could include, for example, a director taking out a loan to move some business operations online. It could also include debts incurred through continuing to pay employees during the Coronavirus pandemic.

A person wishing to rely on this provision in proceedings for an offence under subsection 645(1) of the NI Companies Act bears an evidential burden in relation to that matter. Evidential burden means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Item 42AB of Schedule 1 – After Part 29

New item 42AA inserts new Part 30 into the NI Companies Act, ‘Coronavirus economic response measures’ (Division 1, new section 674; Division 2, new sections 675 and 676; Division 3, new sections 677 and 678).

Division 1—Meetings

Section 674 – Provisions about meetings

New section 674 of the NI Companies Act modifies any provision of this Act, the *Companies Regulations 1986* (NI) and the rules that require or permit a meeting to be held, or deal with giving a notice of a meeting or the conduct of a meeting.

New section 674 is intended to allow companies who are required or permitted to hold meetings to hold those meetings remotely as virtual meetings, instead of in person, while public health restrictions are in place.

Companies may seek or be required to hold meetings over this period, including AGMs and creditors' meetings. The modifications in this new section allow them to do so using one or more technologies to enable participation without people needing to be physically present at a venue.

This new section modifies provisions of the NI Companies Act so that a requirement for physical attendance for purposes such as achieving a quorum may be met using technology. All persons participating in the meeting will be taken to be present at the meeting while participating.

New section 674 also modifies a requirement to allow those attending the meeting to speak, so that this can be done using technology. A proxy may also be appointed using technology.

New section 674 modifies requirements about registering a vote. A show of hands may not be used where a meeting is being facilitated using technology. Votes must be taken by a poll and each person entitled to vote must be given the opportunity to vote in real time and if practicable ahead of the meeting.

Many meetings governed by the NI Companies Act require notices to be sent in writing where a member has not provided another means of communication such as an email address. New section 674 modifies those requirements to enable notices to be sent to all those entitled to attend using one or more technologies, including where recipients have not provided an email address. In that instance, a company would meet the requirement to give notice and provide documents (such as various reports or resolutions to be put to the meeting) through a letter or postcard setting out where the recipient could view the information online and download it.

New section 674 imposes conditions on companies using these provisions, including that when giving notice of the meeting, the person required to give the notice must include information about how persons entitled to attend and participate in the meeting can do so (including by proxy). The notice must explain how participants can vote and ask questions and must include any other information they need to know to participate using technology.

If a notice of an AGM or other meeting has been sent out before new section 674 comes into force, the person responsible must issue another notice at least seven days before the meeting with information about how to participate in the meeting electronically.

New section 674 also requires the person conducting the meeting to treat a proxy in the same way the person who appointed the proxy would be treated if that person was attending the meeting.

The modifications included in new section 674 and described above also affect the operation of the constitution of a company, or any other arrangement that requires or permits a meeting to be held, or deals with giving notice of a meeting or the conduct of a meeting.

Division 2—Execution of company documents

Section 675 – Methods of executing document

New section 675 of the NI Companies Act modifies section 111 of the NI Companies Act for companies, directors of companies, company secretaries and any persons that have dealings with companies, to allow use of an electronic signature to meet requirements for a signature.

New section 675 extends section 111 of the NI Companies Act to also cover execution of a document in electronic form.

New section 675 provides that a company may execute a document without a common seal if 2 directors of the company, or a director and a company secretary of the company, as the case requires, who sign the document on behalf of the company either:

- sign a copy or counterpart of the document in physical form; or
- use electronic communication which reliably identifies the person and indicates the person's intention about the contents of the document.

In both cases the physical or electronic communication must include the entire contents of the document but does not need to include the signature of another person signing the document physically or electronically.

Electronic communication is defined in the *Electronic Transactions Act 1999* and covers a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy. It also covers electronic voice communication.

In practice, there is a wide variety of means by which officers of a company might sign a document electronically. These include:

- pasting a copy of a signature into a document;
- signing a PDF on a tablet, smartphone or laptop using a stylus or finger;
- cloud-based signature platforms like DocuSign.

The modification means that signatories do not need to sign the same physical document. Instead, a document could be signed and scanned by the first signatory and then printed and signed by the second signatory, or separate electronic signatures could be applied to fully electronic versions of the document.

If these elements are satisfied, then an electronic signature applied under section 111 will be effective to execute a document.

While new section 675 is in effect, there is no need for a single static document in order to satisfy section 111 of the NI Companies Act. The entire process of executing a document can be carried out using electronic communications, so long as a method as reliable as appropriate to the circumstances is used to identify each person and his or her intention to execute the document on behalf of the company.

Section 676 – Assumptions that can be made about execution of document

New section 676 of the NI Companies Act modifies section 93 of the NI Companies Act so that a reference to a document being duly sealed in accordance with paragraph 93(3)(e) of the NI Companies Act includes a document executed in accordance with the modified provisions included in this instrument.

Division 3—Miscellaneous

Section 677 – Effect of modified provisions

New section 677 of the NI Companies Act is intended to give companies and their members the certainty that anything done in accordance with the modified operation of provisions

modified by this new Part 30 of the NI Companies Act is as valid and effective for all purposes as if it had done in accordance with those provisions in their unmodified operation.

Section 678 – Repeal

New section 678 of the NI Companies Act provides that new Part 30 is repealed at the start of 6 November 2020. This is consistent with the expiry of the equivalent Commonwealth relief measures under the Corporations Act.

Part 3—Transitional provisions

Part 3 of Schedule 1 to the Rules deals with transitional matters arising from the amendments to the NI Bankruptcy Act and the NI Companies Act.

Norfolk Island Continued Laws Ordinance 2015

Item [5] – In the appropriate position in Part 2 of Schedule 1

This item inserts new Division 19 into Part 2 of Schedule 1 to the Ordinance, ‘Transitional provisions relating to the Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020’. This new Division contains transitional provisions dealing with the application of amendments made by the Rules to the NI Bankruptcy Act and the NI Companies Act.

Item 407 of Schedule 1 – Definitions

New item 407 of Schedule 1 to the Ordinance contains definitions relevant to the transitional provisions in new Division 19. The definition of ‘amending Rules’ means the Rules and ‘commencement time’ means the time at which the Rules commence.

Item 408 of Schedule 1 – Application of amendments to the Bankruptcy Act 2006 (Norfolk Island)

New item 408 of Schedule 1 to the Ordinance is an application provision which provides that the amendments to the NI Bankruptcy Act apply to bankruptcy notices issued on or after the commencement time and petitions presented on or after the commencement time.

Item 409 of Schedule 1 – Application of amendments to the Companies Act 1985 (Norfolk Island)

New item 409 of Schedule 1 to the Ordinance is an application provision which provides that the amendments of the NI Companies Act apply to demands that are served on or after the commencement time.

Item 410 of Schedule 1 – Saving of section 677 of the Companies Act 1985 (Norfolk Island)

New item 410 of Schedule 1 to the Ordinance is a savings provision which provides that despite the repeal of section 677 of the NI Companies Act by section 678 (on 6 November 2020), this provision continues to apply in relation to acts or omissions that occurred before its repeal.