



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

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I, Nola Marino, Assistant Minister for Regional Development and Territories, Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, make the following Rules.

Dated                    8 July 2020

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

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## 1 Name

This instrument is the *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020*.

## 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. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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 section 6 of the *Norfolk Island Continued Laws Ordinance 2015*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

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

#### *Norfolk Island Continued Laws Ordinance 2015*

##### 1 Before item 22C of Schedule 1

Insert:

##### 22BD Section 3

Insert:

**COVID-19 period** means the period beginning on the day on which the *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020* commences and ending on 25 September 2020.

**statutory minimum** means:

- (a) during the COVID-19 period—\$20,000; or
- (b) otherwise—\$2,000.

**statutory period** means:

- (a) with respect to a notice issued, or a petition presented, during the COVID-19 period—6 months; or
- (b) otherwise—21 days.

##### 22BE Subparagraph 23(1)(g)(i)

Omit “\$2000.00”, substitute “the statutory minimum”.

##### 22BF At the end of section 25

Add:

- (3) The notice must specify a period for compliance with the notice. That period must be the statutory period, commencing on the day the debtor is served with the notice.

##### 22BG Subsection 26(1)

Omit “21 days of service of the notice upon him or her”, substitute “the statutory period, commencing on the day the debtor is served with the notice,”.

##### 22BH After subsection 27(2)

Insert:

- (2A) Despite subsection (2), a petition must not be presented to the Court during the COVID-19 period unless the debt or total of debts due by a debtor amounts to no less than the statutory minimum.

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## **2 After item 22D of Schedule 1**

Insert:

### **22E Form 2 in Schedule (paragraph 3)**

Omit “21 days after”, substitute “the statutory period, commencing on the day of”.

### **22F Form 2 in Schedule (after paragraph 8)**

Insert:

Note: For notices served before 26 September 2020, that is, during the COVID-19 period, the statutory minimum is \$20,000 and the statutory period is 6 months, commencing on the day the debtor is served with the notice. For notices served from 26 September 2020, the statutory minimum is \$2,000 and the statutory period is 21 days, commencing on the day the debtor is served with the notice (see the *Bankruptcy Act 2006*, section 3).

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

### *Norfolk Island Continued Laws Ordinance 2015*

#### 3 After item 38 of Schedule 1

Insert:

##### 38A Section 6

Insert:

*COVID-19 period* means the period beginning on the day on which the *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020* commences and ending on 25 September 2020.

*statutory minimum* means:

- (a) during the COVID-19 period—\$20,000; or
- (b) otherwise—\$1,000.

*statutory period* means:

- (a) with respect to demands served during the COVID-19 period—6 months; or
- (b) otherwise—21 days.

##### 38B Paragraph 468(2)(a)

Omit “\$1,000”, substitute “the statutory minimum”.

##### 38C Paragraph 468(2)(a)

Omit “21 days”, substitute “the statutory period”.

##### 38D Paragraph 569(2)(a)

Omit “\$1,000”, substitute “the statutory minimum”.

##### 38E Paragraph 569(2)(a)

Omit “3 weeks”, substitute “the statutory period”.

#### 4 After item 42 of Schedule 1

##### 42AA After section 645

Insert:

##### 645A Offence relating to incurring of debts—temporary relief in response to the coronavirus

- (1) Subsection 645(1) does not apply in relation to a person and a debt incurred by a company if the debt is incurred:
  - (a) in the ordinary course of the company’s business; and
  - (b) during the COVID-19 period; and



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- (c) before any appointment during that period of an administrator, or liquidator, of the company.
- (2) A person who wishes to rely on subsection (1) in proceedings against a person for an offence under subsection 645(1) bears an evidential burden in relation to that matter.
- (3) In this section:
- evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## **42AB After Part 29**

Insert:

# **Part 30—Coronavirus economic response measures**

## **Division 1—Meetings**

### **674 Provisions about meetings**

- (1) The operation of the provisions specified in subsection (2) is modified as follows, in relation to each class of persons in relation to whom the provisions apply, subject to the conditions set out in subsection (3):
- (a) a meeting may be held using one or more technologies that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place, and paragraphs (b) to (e) of this subsection apply if the meeting is held in that way;
  - (b) all persons so participating in the meeting are taken for all purposes (for example, a quorum requirement) to be present at the meeting while so participating;
  - (c) a vote taken at the meeting must be taken on a poll, and not on a show of hands, by using one or more technologies to give each person entitled to vote the opportunity to participate in the vote in real time and, where practicable, by recording their vote in advance of the meeting;
  - (d) a requirement to allow an opportunity for persons attending the meeting to speak (for example, by asking questions) may be complied with by using one or more technologies that allow that opportunity;
  - (e) a proxy may be appointed using one or more technologies specified in the notice of the meeting;
  - (f) notice of a meeting may be given, and any other information to be provided with notice of a meeting, or at or in relation to a meeting, may be provided, using one or more technologies to communicate to those entitled to receive notice of the meeting:
    - (i) the contents of the notice and the other information; or
    - (ii) details of an online location where the items covered by subparagraph (i) can be viewed or from where they can be downloaded;

Example: A company has email addresses for some of its members. Under this paragraph the company could send those members an email setting out or attaching notice

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of a meeting, and other material relating to the meeting, or providing a link to where the notice and other material can be viewed or downloaded. To the other members the company could send a letter or postcard setting out a URL for viewing or downloading the notice and other material.

- (2) The provisions specified are each provision of this Act, the regulations and the rules, that:
  - (a) requires or permits a meeting to be held, or regulates giving notice of a meeting or the conduct of a meeting; or
  - (b) gives effect to, or provides a means of enforcing, a provision in the constitution of a company, or in any other arrangement, that requires or permits a meeting to be held, or regulates giving notice of a meeting or the conduct of a meeting.
- (3) The modifications in subsection (1) are subject to the following conditions:
  - (a) the person required or permitted to give notice of a meeting that is held as mentioned in paragraph (1)(a) must include in the notice information about how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so);
  - (b) if notice of the meeting had already been given before the commencement of this section, the person required or permitted to give notice of the meeting must, at least 7 days before the meeting is held, give a fresh notice of the meeting that includes the information referred to in paragraph (a) of this subsection;
  - (c) if a person (the *appointer*) is entitled to attend the meeting, or to vote at the meeting, by proxy, the person conducting the meeting must treat a duly appointed proxy in the same way as the appointer would be entitled or required to be treated if he or she attended the meeting in person.

## Division 2—Execution of company documents

### 675 Methods of executing document

- (1) The operation of section 111 of the Act is modified, as set out in this section, in relation to companies, directors of companies, company secretaries, and persons having dealings with companies.
- (2) In this section:

*document* includes a document in electronic form.
- (3) A company may also execute a document without using a common seal if 2 directors of the company, or a director and a company secretary of the company, as the case requires, either:
  - (a) sign a copy or counterpart of the document that is in a physical form; or
  - (b) comply with subsection (4) of this section in relation to an electronic communication (within the meaning of the *Electronic Transactions Act 1999* of the Commonwealth).

The copy, counterpart or electronic communication must include the entire contents of the document, but need not include the signature of another person signing the document nor any material included in the document because of subsection (4) of this section.

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- (4) A person complies with this subsection if:
- (a) a method is used to identify the person in the electronic communication and to indicate the person's intention in respect of the contents of the document; and
  - (b) the method:
    - (i) is as reliable as appropriate for the purpose for which the company is executing the document, in light of all the circumstances, including any relevant agreement; or
    - (ii) is proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

### **676 Assumptions that can be made about execution of document**

- (1) The operation of section 93 of the Act is modified, as set out in this section, in relation to companies and persons having dealings with companies.
- (2) A reference to a document appearing to have been duly sealed in accordance with paragraph 93(3)(e) of the Act includes a reference to a document (including a document in electronic form) appearing to have been executed in accordance with section 111 of the Act operating as modified by section 675.

## **Division 3—Miscellaneous**

### **677 Effect of modified provisions**

Anything done in accordance with the modified operation of provisions modified by this Part is as valid and effective for all purposes as if it had been done in accordance with those provisions in their unmodified operation.

### **678 Repeal**

This Part is repealed at the start of 6 November 2020.

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## Part 3—Transitional provisions

### *Norfolk Island Continued Laws Ordinance 2015*

#### 5 In the appropriate position in Part 2 of Schedule 1

Insert:

### **Division 19—Transitional provisions relating to the Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020**

#### **407 Definitions**

In this Division:

*amending Rules* means the *Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020*.

*commencement time* means the time at which the amending Rules commence.

#### **408 Application of amendments to the *Bankruptcy Act 2006* (Norfolk Island)**

The amendments of the *Bankruptcy Act 2006* (Norfolk Island) made by the operation of the amending Rules apply to the following:

- (a) bankruptcy notices issued on or after commencement time;
- (b) petitions presented on or after the commencement time.

#### **409 Application of amendments to the *Companies Act 1985* (Norfolk Island)**

The amendments of the *Companies Act 1985* (Norfolk Island) made by the operation of the amending Rules apply to demands that are served on or after the commencement time.

#### **410 Saving of section 677 of the *Companies Act 1985* (Norfolk Island)**

Despite the repeal of section 677 of the *Companies Act 1985* (Norfolk Island) by section 678 of that Act (as inserted by the operation of the amending Rules) at the start of 6 November 2020, section 677 of that Act continues to apply in relation to acts or omissions that occurred before its repeal.