

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Insolvency Practice Rules (Corporations) 2016

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

Dated 2016

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Minister for Revenue and Financial Services

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# EXPOSURE DRAFT

## Part 1—Introduction

### Division 1—Introduction

#### 1-1 Name

These are the *Insolvency Practice Rules (Corporations) 2016*.

#### 1-5 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.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of Schedule 1 to the <i>Insolvency Law Reform Act 2016</i> .	

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Note: This table relates only to the provisions of this instrument as originally made.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.

#### 1-10 Authority

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

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## Part 1 Introduction

### Division 5 Definitions

#### Section 5-5

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## Division 5—Definitions

### 5-5 The Dictionary

Note: A number of expressions used in this instrument are defined in section 9 of the Act and section 5-5 of Schedule 2 to the Act.

In this instrument:

*Act* means the *Corporations Act 2001*.

*ARITA* means the Australian Restructuring Insolvency and Turnaround Association, ACN 002 472 362.

*current*, in relation to the registration of a person as a liquidator: see section 5-10.

*disciplinary action*, in relation to a person who is registered as a liquidator, means:

- (a) any action taken by ASIC in relation to the person under Division 40 of the Insolvency Practice Schedule (Corporations), other than:
  - (i) the giving of a direction under subsection 40-10(2) of the Schedule in relation to information that ASIC reasonably suspects is incomplete or incorrect; or
  - (ii) the giving of a notice under section 40-40 of the Schedule (a show-cause notice); or
- (b) the suspension or cancellation, or deemed suspension or cancellation, of the registration of the person as a liquidator, or as a liquidator of a specified body corporate, under the old Act; or
- (c) any action taken in respect of the person as a liquidator, or as a liquidator of a specified body corporate, under paragraph 1292(9)(a), (b) or (c) of the old Act.

*Insolvency Practice Schedule (Corporations)* means Schedule 2 to the Act.

*material personal interest* has a meaning affected by section 5-15.

*old Act* means the *Corporations Act 2001*, as in force immediately before the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* commences.

*Part 2 committee* means a committee convened under one of the following provisions of the Insolvency Practice Schedule (Corporations):

- (a) subsection 20-10(1) (applications for registration);
- (b) subsection 20-45(1) (applications to vary etc. conditions of registration);
- (c) subsection 40-45(1) (disciplinary action);
- (d) subsection 40-75(1) (applications to lift or shorten a suspension).

*resolution*: see sections 75-105, 75-110, 75-120 and 75-190.



## 5-10 What is a *current* registration?

- (1) If, at a particular time:
  - (a) a person is registered as a liquidator; and
  - (b) that registration has not been broken by cancellation of, or a failure to renew, the registration;the registration of the person as a liquidator is *current* at that time.
- (2) The registration is taken to have first begun on the day on which the unbroken chain of registration first began.
- (3) To avoid doubt, the registration of a person as a liquidator is not broken because:
  - (a) the person was registered as a liquidator, or as a liquidator of a specified body corporate, under the old Act; and
  - (b) on the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016*, the person was taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) because of the operation of section 1553 of the *Corporations Act 2001*.

## 5-15 Meaning of *material personal interest*

Without limiting the circumstances in which a member of a Part 2 committee has a *material personal interest* that relates to a matter, a member of a Part 2 committee has a material personal interest that relates to a matter if the matter relates to a related entity of the member.

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Part 2 Registering and disciplining practitioners

Division 15 Register of Liquidators

Section 15-1

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## Part 2—Registering and disciplining practitioners

### Division 15—Register of Liquidators

#### 15-1 Register of Liquidators

- (1) This section is made for the purposes of subsection 15-1(3) of the Insolvency Practice Schedule (Corporations).
- (2) The Register of Liquidators must include each of the following for each person who is registered as a liquidator:
  - (a) the name of the person;
  - (b) the date on which the person's current registration as a liquidator first began;
  - (c) the address of the principal place where the person practises as a registered liquidator;
  - (d) the address of each other place where the person practises as a registered liquidator;
  - (e) if the person practises as a registered liquidator as a member of a firm or under a name or style other than the person's own name—the name of that firm or the name or style under which the person practises;
  - (f) particulars of any disciplinary action taken against the person;
  - (g) a summary of the current conditions imposed on the person as a registered liquidator.
- (3) ASIC may include other information on the Register of Liquidators if it is relevant to:
  - (a) the registration of a person as a liquidator; or
  - (b) a person's practice as a liquidator.
- (4) ASIC must make the information included on the Register of Liquidators under subsection (2) publicly available.
- (5) ASIC may make the information included on the Register of Liquidators under subsection (3) publicly available.

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## Division 20—Registering liquidators

### 20-1 Qualifications, experience, knowledge and abilities required by applicants for registration

- (1) This section is made for the purposes of paragraph 20-20(4)(a) of the Insolvency Practice Schedule (Corporations).
- (2) A committee to which an application for registration as a liquidator is referred under section 20-15 of the Insolvency Practice Schedule (Corporations) must be satisfied that the applicant has each of the following qualifications, experience, knowledge and abilities:
  - (a) the applicant has completed the academic requirements for the award of a tertiary qualification that includes at least 3 years of full-time study (or its equivalent) in commercial law and accounting;
  - (b) the applicant has completed the academic requirements for at least 2 course units accredited under the Australian Qualifications Framework Level 8 (or equivalent study) in the practice of external administrators of companies, receivers, receivers and managers, and trustees under the *Bankruptcy Act 1966*;
  - (c) if the applicant wishes to be registered to practise as an external administrator of companies, receiver and receiver and manager—the applicant has, during the 5 years immediately preceding the day on which the application is made, been engaged in at least 4000 hours of relevant employment at senior level;
  - (d) if the applicant wishes to be registered to practise only as a receiver, and receiver and manager—the applicant has, during the 5 years immediately preceding the day on which the application is made, been engaged in at least 4000 hours of relevant employment at senior level;
  - (e) the applicant has demonstrated the capacity to perform satisfactorily the functions and duties of a registered liquidator;
  - (f) the applicant is able to satisfy any conditions to be imposed under the Insolvency Practice Schedule (Corporations) if the applicant is registered as a liquidator.
- (3) For the purposes of paragraph (2)(c), **relevant employment** means employment that:
  - (a) involves assisting a registered liquidator in the performance of his or her duties as external administrator of companies, receiver or receiver and manager; and
  - (b) involves providing advice in relation to the external administration of companies, receivership or receivership and management; and
  - (c) provides exposure to processes (including bankruptcy) under the *Bankruptcy Act 1966*.
- (4) For the purposes of paragraph (2)(d), **relevant employment** means employment that:

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Part 2 Registering and disciplining practitioners

Division 20 Registering liquidators

## Section 20-5

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- (a) involves assisting a registered liquidator in the performance of his or her duties as receiver and receiver and manager; and
- (b) involves providing advice in relation to receivership or receivership and management; and
- (c) provides exposure to the external administration of companies and processes (including bankruptcy) under the *Bankruptcy Act 1966*.

### **20-5 Conditions on registration of liquidators**

- (1) This section is made for the purposes of section 20-35 of the Insolvency Practice Schedule (Corporations).
- (2) It is a condition on the registration of any person as a liquidator that the person must comply with the continuing professional education requirements (if any) of any relevant professional body of which he or she is a member.
- (3) It is a condition on the registration of any person whose registration as a liquidator has been suspended that the person must, during the period of the suspension, maintain:
  - (a) adequate and appropriate professional indemnity insurance; and
  - (b) adequate and appropriate fidelity insurance;against the liabilities that the liquidator may incur as a result of work carried out as a registered liquidator before the suspension takes effect.

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Registering and disciplining practitioners **Part 2**

Notice requirements **Division 35**

Section 35-5

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## **Division 35—Notice requirements**

### **35-5 Events of which a registered liquidator must notify ASIC**

The following are events in relation to which a registered liquidator must lodge a notice with ASIC under paragraph 35-5(1)(b) of the Insolvency Practice Schedule (Corporations):

- (a) the registered liquidator ceases to practise as such;
- (b) the registered liquidator changes his or her name;
- (c) if the registered liquidator practises as such as a member of a firm, or under a name or style other than the person's own name—the name of the firm, or that other name or style, changes;
- (d) the address of any place where the registered liquidator practises as such changes.

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**Part 2** Registering and disciplining practitioners

**Division 40** Disciplinary and other action

Section 40-1

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## **Division 40—Disciplinary and other action**

### **40-1 Industry bodies that may notify ASIC of grounds for disciplinary action**

The following industry bodies are prescribed for the purposes of section 40-110 of the Insolvency Practice Schedule (Corporations):

- (a) ARITA;
- (b) CPA Australia;
- (c) Chartered Accountants Australia and New Zealand;
- (d) the Institute of Public Accountants;
- (e) the New South Wales Bar Association;
- (f) the Law Society of New South Wales;
- (g) the Victorian Bar Inc.;
- (h) the Law Institute of Victoria;
- (i) the Bar Association of Queensland;
- (j) the Queensland Law Society;
- (k) the Legal Practice Board of Western Australia;
- (l) the Law Society of South Australia;
- (m) the Law Society of Tasmania;
- (n) the Law Society of the Australian Capital Territory;
- (o) the Law Society Northern Territory.

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Registering and disciplining practitioners **Part 2**

Part 2 committees **Division 50**

Section 50-1

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## **Division 50—Part 2 committees**

### **50-1 Authority**

Unless otherwise stated, a provision of this Division is made for the purposes of section 50-25 of the Insolvency Practice Schedule (Corporations).

### **50-3 Part 2 committee may generally determine its own procedures**

Subject to the Insolvency Practice Schedule (Corporations) and these Rules, a Part 2 committee may determine its own procedures.

### **50-5 ARITA may appoint a member of a Part 2 committee**

For the purposes of the following provisions of the Insolvency Practice Schedule (Corporations), the prescribed body is ARITA:

- (a) paragraph 20-10(2)(b) (applications for registration);
- (b) paragraph 20-45(2)(b) (applications to vary etc. conditions of registration);
- (c) paragraph 40-45(2)(b) (disciplinary action);
- (d) paragraph 40-75(2)(b) (applications to lift or shorten a suspension).

### **50-10 Knowledge and experience required of a member of a Part 2 committee appointed by ARITA**

- (1) This section is made for the purposes of paragraph 50-5(2)(a) of the Insolvency Practice Schedule (Corporations).
- (2) A person appointed by ARITA as a member of a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) must have at least 5 years' experience as a registered liquidator.

### **50-15 Chair of a Part 2 committee**

ASIC's delegate to a Part 2 committee is to be the Chair of the committee.

### **50-20 Resignation of Part 2 committee members**

- (1) A member of a Part 2 committee may resign from the committee by giving notice in writing of that fact to the Chair.
- (2) The resignation takes effect on the later of:
  - (a) the day on which the notice is given; and
  - (b) a day specified in the notice.

### **50-25 Part 2 committee to be reconstituted—removing ARITA members**

- (1) This section applies if the Chair of a Part 2 committee is satisfied that a member of the committee chosen by ARITA:

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## Part 2 Registering and disciplining practitioners

### Division 50 Part 2 committees

#### Section 50-27

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- (a) is unable to perform the duties of a member because of physical or mental incapacity; or
  - (b) has neglected his or her duties as a member; or
  - (c) is unable to carry out the duties of a member because of a material personal interest in a matter to be considered by the committee; or
  - (d) has been convicted of an offence involving fraud or dishonesty.
- (2) The Chair must give ARITA notice of that fact as soon as reasonably practicable after becoming satisfied.
  - (3) If ARITA is given notice under subsection (2), the person ceases to be a member of the committee on the day on which the notice is given.

#### **50-27 Part 2 committee to be reconstituted—removing members appointed by the Minister**

- (1) This section applies if the Minister is satisfied that a member of a Part 2 committee appointed by the Minister:
  - (a) is unable to perform the duties of a member because of physical or mental incapacity; or
  - (b) has neglected his or her duties as a member; or
  - (c) is unable to carry out the duties of a member because of a material personal interest in a matter to be considered by the committee; or
  - (d) has been convicted of an offence involving fraud or dishonesty.
- (2) The Minister must give the Chair notice of that fact as soon as reasonably practicable after becoming satisfied.
- (3) If the Chair is given notice under subsection (2), the person ceases to be a member of the committee on the day on which the notice is given.

#### **50-30 Part 2 committee to be reconstituted—replacing members**

- (1) If a person chosen by ARITA to be a member of a Part 2 committee ceases to be a member of the committee, ARITA must choose a replacement in accordance with the Act.
- (2) If a person appointed by the Minister to be a member of a Part 2 committee ceases to be a member of the committee, the Minister must choose a replacement in accordance with the Act.

#### **50-35 Termination of consideration, and transfer, of a matter**

- (1) If the Chair of a Part 2 committee is satisfied that a matter could more efficiently or fairly be dealt with by terminating the consideration of the matter by the committee and transferring the matter to another committee (the *new committee*), the Chair may do so.
- (2) If a matter is transferred under subsection (1), the new committee must deal with the matter afresh.



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## **50-40 Duty to disclose interests**

- (1) A member of a Part 2 committee who has a material personal interest that relates to a matter to be considered by the committee under Part 2 of the Insolvency Practice Schedule (Corporations), must disclose details of that interest to the Chair.
- (2) The member must disclose the details of the interest as soon as practicable after the member becomes aware that the member has the material personal interest that relates to the matter.

## **50-45 Natural justice and rules of evidence**

- (1) A Part 2 committee must observe natural justice.
- (2) A Part 2 committee is not bound by any rules of evidence but may inform itself on any matter as it sees fit.

## **50-50 Decisions made at a meeting**

- (1) A Part 2 committee may make a decision in relation to a matter at a meeting, provided each member of the committee is either present at the meeting, or takes part in the meeting by electronic means.
- (2) Any member of a Part 2 committee may participate in a meeting of the committee by electronic means.
- (3) At a meeting of a Part 2 committee, a matter is to be decided by a majority of the votes of the members.
- (4) A committee must keep minutes of proceedings at its meetings.
- (5) The committee may keep those minutes in electronic form.

## **50-55 Decisions made without a meeting**

- (1) A Part 2 committee may make a decision in relation to a matter without a meeting.
- (2) A Part 2 committee makes a decision in relation to a matter without a meeting if a majority of the members of the committee sign a document that:
  - (a) sets out the terms of the decision; and
  - (b) states that each member signing the document is in favour of the decision.
- (3) A decision under this section is taken to have been made:
  - (a) on the day on which the document is signed; or
  - (b) if the members sign the document on different days—on the day on which the document is signed by the last member to sign the document who makes up the majority.
- (4) Two or more separate documents that are identical in all material respects (apart from signatures), each of which is signed by one or more members of a Part 2

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## Part 2 Registering and disciplining practitioners

### Division 50 Part 2 committees

#### Section 50-57

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committee, are taken for the purposes of subsection (2) to constitute a single document.

#### **50-57 Keeping records of decisions**

A Part 2 committee must keep a written record of its decisions.

#### **50-60 Inquiries by a Part 2 committee**

- (1) A Part 2 committee considering a matter under Part 2 of the Insolvency Practice Schedule (Corporations) may make inquiries of any person for the purposes of making a decision in relation to the matter.
- (2) Inquiries made must be inquiries:
  - (a) that are reasonable, for the purpose of making an informed decision; or
  - (b) that the Chair of the committee believes are appropriate in order for the committee to have sufficient information to make the decision.

#### **50-65 Interviewing applicants**

- (1) This section applies if a Part 2 committee is required to interview an applicant under one of the following provisions of the Insolvency Practice Schedule (Corporations):
  - (a) paragraph 20-20(2)(a) (application for registration as a liquidator);
  - (b) subsection 20-55(2) (application to vary etc. conditions of registration);
  - (c) subsection 40-85(2) (application to lift or shorten a suspension).
- (2) The Chair of the committee must, after consultation with the other members of the committee:
  - (a) fix a date and time for the interview; and
  - (b) fix the manner of the interview (for example, how those communicating by electronic means are to do so); and
  - (c) give written notice of the date, time and manner of the interview to the applicant and the other members of the committee.
- (3) A Part 2 committee must interview the applicant as soon as practicable and, for that purpose:
  - (a) any member of the committee may participate in the interview by electronic means; and
  - (b) the applicant may participate in the interview by electronic means.
- (4) At an interview, the committee may ask the applicant any question that the committee reasonably believes to be related to:
  - (a) the application; or
  - (b) a reference accompanying the application; or
  - (c) any matter that is relevant to the committee's decision in relation to the application.

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## **50-67 Interviewing liquidators—proposed cancellation of registration**

- (1) This section applies if:
  - (a) a Part 2 committee is convened under subsection 40-45(1) of the Insolvency Practice Schedule (Corporations); and
  - (b) the committee is proposing to decide, under paragraph 40-55(1)(c) of the Schedule, that the liquidator's registration should be cancelled.
- (2) The Chair of the Part 2 committee must, after consultation with the other members of the committee:
  - (a) fix a date and time to interview the liquidator; and
  - (b) fix the manner of the interview (for example, how those communicating by electronic means are to do so); and
  - (c) give written notice of the date, time and manner of the interview to the liquidator and the other members of the committee.
- (3) A Part 2 committee must interview the liquidator as soon as practicable and, for that purpose:
  - (a) any member of the committee may participate in the interview by electronic means; and
  - (b) the liquidator may participate in the interview by electronic means.
- (4) At an interview, the committee may ask the liquidator any question that the committee reasonably believes to be related to any matter that is relevant to the committee's proposed decision to cancel the liquidator's registration.

## **50-70 Decisions on disciplinary matters**

If a matter is referred to a Part 2 committee under section 40-50 of the Insolvency Practice Schedule (Corporations), the committee must use its best endeavours to decide the matter within 60 days after the matter is referred to it.

## **50-75 Reports of a Part 2 committee**

- (1) This section applies if a Part 2 committee is required to give a report under one of the following provisions of the Insolvency Practice Schedule (Corporations):
  - (a) section 20-25 (registration);
  - (b) section 20-60 (varying etc. conditions of registration);
  - (c) section 40-60 (disciplinary action);
  - (d) section 40-90 (lifting or shortening suspension).
- (2) The committee must prepare the report in writing.
- (3) The report must include a statement of the reasons of any minority in the decision.
- (4) Each member of the committee must sign the report.

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Part 2 Registering and disciplining practitioners

Division 50 Part 2 committees

Section 50-80

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## **50-80 Industry disciplinary bodies to which a Part 2 committee may disclose information**

The following bodies are prescribed for the purposes of subparagraph 50-35(2)(b)(iv) of the Insolvency Practice Schedule (Corporations):

- (a) ARITA;
- (b) CPA Australia;
- (c) Chartered Accountants Australia and New Zealand;
- (d) the Institute of Public Accountants;
- (e) the New South Wales Bar Association;
- (f) the Law Society of New South Wales;
- (g) the Victorian Bar Inc.;
- (h) the Law Institute of Victoria;
- (i) the Bar Association of Queensland;
- (j) the Queensland Law Society;
- (k) the Legal Practice Board of Western Australia;
- (l) the Law Society of South Australia;
- (m) the Law Society of Tasmania;
- (n) the Law Society of the Australian Capital Territory;
- (o) the Law Society Northern Territory.

# EXPOSURE DRAFT

General rules relating to external administrations **Part 3**  
Remuneration and other benefits received by external administrators **Division 60**

Section 60-1

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## **Part 3—General rules relating to external administrations**

### **Division 60—Remuneration and other benefits received by external administrators**

#### **60-1 External administrator must not derive profit or advantage from the administration of the company—exceptions**

- (1) This section is made for the purposes of subsection 60-20(5) of the Insolvency Practice Schedule (Corporations).
- (2) The following payments made to an external administrator by or on behalf of the Commonwealth or an agency or authority of the Commonwealth are prescribed:
  - (a) a payment from the Assetless Administration Fund administered by ASIC;
  - (b) a payment made for the purposes of administering claims for financial assistance from the Commonwealth in relation to unpaid employment entitlements.

# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 70 Information

#### Section 70-1

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### **Division 70—Information**

#### **70-1 Time for complying with reasonable requests**

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations).
- (2) Subject to subsections (3) and (5), if the external administrator of a company receives a request for information or a report or document under Division 70 of the Insolvency Practice Schedule (Corporations), the external administrator must send the information, report or document within:
  - (a) 5 business days after receiving the request; or
  - (b) such later period as agreed with the person or body making the request.
- (3) If the external administrator is reasonably satisfied that, due to the nature of the request, an extension of time is required to comply with it, the external administrator may, by written notice, extend the period for compliance.
- (4) The notice must:
  - (a) be given to the person or body making the request; and
  - (b) specify the period within which the request will be complied with; and
  - (c) specify the reasons for the extension.
- (5) This section does not apply if, under the Act or these Rules, it is not reasonable for the external administrator to comply with the request.

#### **70-3 Notice requirements for unreasonable requests**

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations) and applies if:
  - (a) a request for information or a report or document is made to the external administrator under Division 70 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 request.
- (2) The external administrator must:
  - (a) notify the person or body making the request that it is not reasonable for the external administrator to comply with the request, 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 request was not complied with, and of the reasons.

#### **70-5 Right of creditors to request information etc. from external administrator**

- (1) This section is made for the purposes of section 70-40 of the Insolvency Practice Schedule (Corporations).

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## *Unreasonable requests*

- (2) It is not reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the creditors if the external administrator, acting in good faith, is of the opinion that:
  - (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
  - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
  - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
  - (d) there is not sufficient available property to comply with the request; or
  - (e) the information, report or document has already been provided; or
  - (f) the information, report or document is required to be provided under the Corporations legislation within 20 business days of the request being made; or
  - (g) the request is vexatious.
- (3) Without limiting paragraph (2)(g), a request may be taken to be vexatious if the external administrator receives the request within 15 business days of receiving a similar request from the creditors.

## *Reasonable requests*

- (4) It is reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the creditors if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the creditors if:
  - (a) the creditors agree to bear the cost of complying with the request; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the request is given to the external administrator before the request is complied with.

## **70-10 Right of individual creditor to request information etc. from external administrator**

- (1) This section is made for the purposes of section 70-45 of the Insolvency Practice Schedule (Corporations).

## *Unreasonable requests*

- (2) It is not reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to a creditor if the external administrator, acting in good faith, is of the opinion that:

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## Part 3 General rules relating to external administrations

### Division 70 Information

#### Section 70-17

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- (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
  - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
  - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
  - (d) the information, report or document has already been provided; or
  - (e) the information, report or document is required to be provided under the Corporations legislation within 20 business days of the request being made; or
  - (f) the request is vexatious.
- (3) Without limiting paragraph (2)(f), a request may be taken to be vexatious if the external administrator receives the request within 15 business days of receiving a similar request from the creditor.

#### *Reasonable requests*

- (4) It is reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to a creditor if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d) or (e), it is also reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the creditor if:
- (a) the creditor agrees to bear the cost of complying with the request; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the request is given to the external administrator before the request is complied with.

#### **70-17 Right of members to request information etc. from external administrator in a members' voluntary winding up**

- (1) This section is made for the purposes of section 70-46 of the Insolvency Practice Schedule (Corporations).

#### *Unreasonable requests*

- (2) In a members' voluntary winding up, it is not reasonable for the external administrator of the company to comply with a request to give information, provide a report or produce a document to the members if the external administrator, acting in good faith, is of the opinion that:
- (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
  - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
  - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or



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- (d) there is not sufficient available property to comply with the request; or
  - (e) the information, report or document has already been provided; or
  - (f) the information, report or document is required to be provided under the Corporations legislation within 20 business days of the request being made; or
  - (g) the request is vexatious.
- (3) Without limiting paragraph (2)(g), a request may be taken to be vexatious if the external administrator receives the request within 15 business days of receiving a similar request from the members.

### *Reasonable requests*

- (4) It is reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the members if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d), (e) or (f), it is also reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the members if:
- (a) the members agree to bear the cost of complying with the request; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the request is given to the external administrator before the request is complied with.

## **70-21 Right of individual member to request information etc. from external administrator in a members' voluntary winding up**

- (1) This section is made for the purposes of section 70-47 of the Insolvency Practice Schedule (Corporations).

### *Unreasonable requests*

- (2) In a members' voluntary winding up, it is not reasonable for an external administrator of the company to comply with a request to give information, provide a report or produce a document to a member of the company if the external administrator, acting in good faith, is of the opinion that:
- (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
  - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
  - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
  - (d) the information, report or document has already been provided; or
  - (e) the information, report or document is required to be provided under the Corporations legislation within 20 business days of the request being made; or
  - (f) the request is vexatious.

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## Part 3 General rules relating to external administrations

### Division 70 Information

#### Section 70-24

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- (3) Without limiting paragraph (2)(f), a request may be taken to be vexatious if the external administrator receives the request within 15 business days of receiving a similar request from the member.

#### *Reasonable requests*

- (4) It is reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the member if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d) or (e), it is also reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the member if:
- (a) the member agrees to bear the cost of complying with the request; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the request is given to the external administrator before the request is complied with.

#### **70-24 Initial information required to be given to creditors in certain administrations**

- (1) This section:
- (a) is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations); and
  - (b) applies to companies under administration, windings up by the Court and voluntary windings up.

#### *Information about creditors' rights to be given*

- (2) The external administrator must give information about the following to as many creditors of the company as reasonably practicable:
- (a) the fact that the external administrator has been appointed in relation to the company;
  - (b) the right of creditors to request information, reports and documents under sections 70-40 and 70-45 of the Insolvency Practice Schedule (Corporations);
  - (c) other than in the case of a voluntary winding up—the right of creditors to direct that a meeting of the creditors be held under section 75-15 of the Insolvency Practice Schedule (Corporations);
  - (d) the right of creditors to give directions to the external administrator under section 85-5 of the Insolvency Practice Schedule (Corporations);
  - (e) the right of the creditors to appoint a reviewing liquidator under section 90-24 of the Insolvency Practice Schedule (Corporations);
  - (f) the right of the creditors to remove and replace the external administrator under section 90-35 of the Insolvency Practice Schedule (Corporations).

#### *Time for giving information etc.*

- (3) The information must be given:
- (a) in writing; and

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- (b) in the case of a company under administration—at the same time as notice of a meeting of the creditors is given under section 75-255; and
- (c) in the case of a winding up by the Court—within 20 business days after the external administrator is appointed; and
- (d) in the case of a voluntary winding up—within 11 days after the day of the meeting of the company at which the resolution for voluntary winding up is passed.

## **70-27 Report about dividends to be given in certain external administrations**

- (1) This section:
  - (a) is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations); and
  - (b) applies if a liquidator has been appointed in relation to a company.
- (2) The liquidator must provide a report to the creditors of the company on the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up.
- (3) The report must be provided within 3 months after the commencement of the winding up.
- (4) A copy of the report must be lodged with ASIC in the approved form at the same time as it is provided to the creditors.

## **70-30 Reports about remuneration to be given before remuneration determinations are made**

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations).

### *Reporting requirements when remuneration to be determined by committee of inspection*

- (2) Before a remuneration determination for an external administrator of a company is made by a committee of inspection under section 60-10 of the Insolvency Practice Schedule (Corporations), the external administrator must:
  - (a) prepare a report setting out such matters as will enable the committee of inspection to make an informed assessment as to whether the proposed remuneration is reasonable; and
  - (b) give a copy of the report to each member of the committee of inspection at the same time as the member is notified of the relevant meeting of the committee.

### *Reporting requirements when remuneration to be determined by creditors*

- (3) Before a remuneration determination for an external administrator of a company is made by resolution of the creditors under section 60-10 of the Insolvency Practice Schedule (Corporations), the external administrator must:

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## Part 3 General rules relating to external administrations

### Division 70 Information

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- (a) prepare a report setting out such matters as will enable the company's creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
- (b) give a copy of the report to each of the company's creditors at the same time as the creditors are notified of the relevant meeting of creditors.

#### *Reporting requirements when remuneration to be determined by company in a members' voluntary winding up*

- (4) Before a remuneration determination for an external administrator of a company in a members' voluntary winding up is made by resolution of the company under section 60-10 of the Insolvency Practice Schedule (Corporations), the external administrator must:
  - (a) prepare a report setting out such matters as will enable the members to make an informed assessment as to whether the proposed remuneration is reasonable; and
  - (b) give a copy of the report to each of the members at the same time as the members are notified of the relevant general meeting of the company.

#### *Time for giving report if proposal put without meeting*

- (5) Despite paragraphs (3) and (4), if the proposed remuneration determination will be put to the creditors in accordance with section 75-40 of the Insolvency Practice Schedule (Corporations) (proposals without meeting), a copy of the report must be given to each of the creditors or members at the same time as notice of the proposal under that section is given.

#### *Contents of report*

- (6) Without limiting paragraph (2)(a), (3)(a) or (4)(a), the report must set out the following:
  - (a) a summary description of the major tasks performed, or likely to be performed, by the external administrator;
  - (b) the costs associated with each of those major tasks;
  - (c) specify the rates at which the remuneration of the external administrator and any other persons assisting, or likely to assist, the external administrator will be calculated;
  - (d) if the external administrator proposes to charge on the basis of a commission on money received by the administrator—the rate of the commission;
  - (e) the periods at which the external administrator proposes to withdraw funds from the administration account in respect of the administrator's remuneration;
  - (f) an estimate of the total amount of the external administrator's remuneration;
  - (g) an explanation of the likely impact of that remuneration on the dividends (if any) to creditors.

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## **70-34 Report about remuneration to be given by provisional liquidators**

- (1) This section is made for the purposes of section 70-50 of the Insolvency Practice Schedule (Corporations).
- (2) Before a determination about remuneration is made by agreement between a provisional liquidator and a committee of inspection under section 60-16 of the Insolvency Practice Schedule (Corporations), the provisional liquidator must:
  - (a) prepare a report setting out:
    - (i) such matters as will enable the committee of inspection to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the provisional liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each member of the committee of inspection at the same time as the members are notified of the relevant meeting of the committee.
- (3) Before a determination about remuneration is made by resolution of the creditors under section 60-16 of the Insolvency Practice Schedule (Corporations), the provisional liquidator must:
  - (a) prepare a report setting out:
    - (i) such matters as will enable the company's creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the provisional liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each of the company's creditors at the same time as the creditors are notified of the relevant meeting of creditors.

## **70-45 Requests for information by the Commonwealth**

- (1) This section is made for the purposes of subsection 70-55(4) of the Insolvency Practice Schedule (Corporations).
- (2) Subject to subsection (3), the Commonwealth must bear the cost of providing information or a report or document requested by the Commonwealth under subsection 70-55(2) of the Insolvency Practice Schedule (Corporations) if, in the opinion of the external administrator, there is not sufficient property available to comply with the request for the information, report or document.
- (3) If:
  - (a) a company is under external administration; and
  - (b) either:
    - (i) a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or

# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 70 Information

#### Section 70-50

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- (ii) the Commonwealth considers that such a claim is likely to be made; and
  - (c) the external administrator of the company has lodged a report under section 533 of the Act; and
  - (d) the Commonwealth requests a copy of the report in accordance with section 70-55 of the Insolvency Practice Schedule (Corporations);
- the Commonwealth must bear the cost of providing a copy of the report to the Commonwealth.

#### **70-50 Reporting to ASIC**

- (1) This section is made for the purposes of section 70-60 of the Insolvency Practice Schedule (Corporations).

##### *Notice of appointment*

- (2) If an external administrator is appointed:
- (a) under subsection 436E(4), subsection 444A(2) or subsection 449C(1), (4) or (6) of the Act; or
  - (b) by the Court under section 90-15 of the Insolvency Practice Schedule (Corporations);

the external administrator must lodge with ASIC a notice of the appointment in the approved form before the end of the next business day after the appointment.

##### *Notice of ending of administration*

- (3) If the administration of a company ends on the happening of an event of a kind mentioned in subsection 435C(2) or (3) of the Act, the external administrator of the company must lodge with ASIC a notice of the happening of the event and the ending of the administration of the company as soon as practicable after the event.
- (4) Subsection (3) does not apply if a notice of the happening of the event is lodged with ASIC in accordance with the Act.

# EXPOSURE DRAFT

## **Division 75—Meetings**

### **Subdivision A—Preliminary**

#### **75-1 Authority**

Unless otherwise specified, this Division:

- (a) is made for the purposes of section 75-50 of the Insolvency Practice Schedule (Corporations); and
- (b) applies in relation to meetings concerning companies under external administration.

### **Subdivision B—Convening meetings**

#### **75-10 Persons to whom notice of meetings to be given**

The convenor of a meeting must give notice in writing of the meeting to as many of the persons appearing on the company's books or otherwise to be:

- (a) in the case of a meeting of members, creditors or contributories of the company—a member, creditor or contributory of the company; or
- (b) in the case of a joint meeting of creditors and members of the company—a member or creditor of the company; or
- (c) in the case of a meeting of a committee of inspection—a member of the committee of inspection; or
- (d) in the case of a meeting of eligible employee creditors—an eligible employee creditor; or
- (e) in the case of a meeting of creditors of companies in a pooled group—the creditors of a company in the group;

as reasonably practicable.

Note: Notice of the meeting must be lodged with ASIC—see section 75-40.

#### **75-15 How notice of meetings to be given**

- (1) Notice of a meeting must:
  - (a) specify the date, time and place of the meeting; and
  - (b) specify the purpose for which the meeting is being convened; and
  - (c) state the effect of section 75-90 (entitlement to vote as creditor at meetings of creditors); and
  - (d) be in the approved form.

Note: For electronic notification, see section 600G of the Act.

- (2) In the absence of evidence to the contrary, a statement in accordance with the approved form by the person convening a meeting (or a person acting on his or her behalf) is sufficient proof of the notice having been sent to a person at the address specified for that person in that notice.

# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 75 Meetings

#### Section 75-20

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##### **75-20 Time for giving notice of meetings**

- (1) The convenor of a meeting must give notice of the meeting not less than 10 business days before the day of the meeting.
- (2) Subsection (1) does not apply to the following meetings:
  - (a) a meeting of creditors under section 436E or 439A, or subsection 449C(4), of the Act;
  - (b) a meeting of eligible employee creditors under section 444DA of the Act;
  - (c) a meeting of the eligible unsecured creditors of each of the companies in a pooled group required to be convened under subsection 577(1A) of the Act;
  - (d) a meeting of a committee of inspection, if the external administrator thinks it appropriate in the circumstances.
- (3) A notice of a joint meeting of the creditors and members of a company must be sent to the creditors of the company at the same time as it is sent to the members of the company.

##### **75-25 Notice about voting by proxy and appointment of attorney**

- (1) A person convening a meeting must:
  - (a) include, with the notice of the meeting, a form for use in appointing a proxy; and
  - (b) ensure that neither the name or description of any proxy is printed or inserted in the body of the form before it is sent out; and
  - (c) include in the notice a statement that, if a creditor wishes to be represented at the meeting by an attorney, the creditor must arrange for the power of attorney to be produced to the external administrator at or before the meeting.
- (2) The form mentioned in paragraph (1)(a) must be in the approved form.

##### **75-30 Time and place of meetings**

- (1) The convenor of a meeting must convene the meeting at the time and place that the convenor thinks are most convenient for the majority of persons entitled to receive notice of the meeting.
- (2) Subsection (1) does not prevent a meeting from taking place at separate venues provided that technology is available at the venues to give all persons attending the meeting a reasonable opportunity to participate.

##### **75-35 Notice of electronic facilities for meetings**

- (1) This section applies if:
  - (a) facilities for participating in meetings by electronic means are expected to be available at the place where a meeting is to be held; and
  - (b) the convenor of the meeting considers that, having regard to all the circumstances, it will be appropriate to use those facilities.



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- (2) The notice of the meeting must:
  - (a) set out the arrangements for using the facilities; and
  - (b) indicate that a person, or the proxy or attorney of a person, who wishes to participate in the meeting using such facilities must give to the convenor, not later than the second-last working day before the day on which the meeting is to be held, a written statement setting out:
    - (i) the name of the person and of the proxy or attorney (if any); and
    - (ii) an address to which notices to the person, proxy or attorney may be sent; and
    - (iii) a method by which the person, proxy or attorney may be contacted for the purposes of the meeting.

## **75-40 Notification of meetings on ASIC website**

- (1) The convenor of a meeting must lodge, with ASIC, a notice of a meeting in accordance with subregulation 5.6.75(4) of the regulations made under the Act.

Note: Subregulation 5.6.75(4) provides for notices to be electronically lodged and published on a website maintained by ASIC.

- (2) The notice must state at least the following information:
  - (a) the name of the company;
  - (b) the ACN of the company;
  - (c) the purpose for which the meeting is being convened;
  - (d) the time, date and place for the meeting;
  - (e) the time and date by which proofs of debt, and proxies for the meeting, are to be submitted;
  - (f) the name and contact details of the convenor of the meeting.
- (3) The notice must be lodged:
  - (a) if the notice is of a meeting convened under section 439A of the Act (meeting to decide future of company under administration)—at least 5 business days before the meeting is held; and
  - (b) in any other case—at least 10 business days before the meeting is held.

## **Subdivision C—Procedures at meetings**

### **75-50 Presiding at meetings**

- (1) If a meeting is convened by an external administrator, the external administrator, or a person nominated by the external administrator, must preside at the meeting.
- (2) In any other case, the persons participating and entitled to vote at a meeting must elect one of their number to preside at the meeting.

### **75-70 Proposed resolutions and amendments of proposed resolutions**

- (1) The person presiding at a meeting must invite the persons participating and entitled to vote at the meeting to propose any relevant resolutions.

# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 75 Meetings

#### Section 75-75

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- (2) The only persons who may propose resolutions, or amendments of proposed resolutions, at a meeting are:
  - (a) the external administrator; and
  - (b) the persons participating and entitled to vote at the meeting.
- (3) A proposed resolution or amendment does not need to be seconded.
- (4) If a resolution is proposed, the person presiding at the meeting must allow a reasonable time for debate on the proposed resolution and on any amendment proposed to the resolution.
- (5) After a reasonable time for debate has elapsed, the person presiding must:
  - (a) if no amendment has been proposed—put the proposed resolution to a vote; or
  - (b) if an amendment or amendments have been proposed, put the amendment or amendments to a vote; and
    - (i) if the amendment or amendments are defeated—put the resolution as originally proposed to a vote; or
    - (ii) if an amendment or amendments are passed—put the proposed resolution as amended to a vote.

#### **75-75 Participating in meetings by electronic means**

- (1) This section applies if:
  - (a) facilities for participating in a meeting of creditors by electronic means will be available for the meeting; and
  - (b) a person, or a person's proxy or attorney has given the trustee a statement in accordance with paragraph 75-35(2)(b).
- (2) The convenor of the meeting must take all reasonable steps to ensure that the facilities are available and operating during the meeting.
- (3) The person, or the person's proxy or attorney, is responsible for accessing the facilities during the meeting.
- (4) A person who, or whose proxy or attorney, participates in the meeting using the facilities is taken to be present in person at the meeting.

#### **75-90 Entitlement to vote at meetings of creditors**

- (1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
- (2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
- (3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
  - (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or

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- (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - (i) those particulars; or
    - (ii) if required—a formal proof of the debt or claim.
- (4) A creditor must not vote in respect of:
  - (a) an unliquidated debt; or
  - (b) a contingent debt; or
  - (c) an unliquidated or a contingent claim; or
  - (d) a debt the value of which is not established;unless a just estimate of its value has been made.
- (5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
  - (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
  - (b) estimate its value;
  - (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
- (6) A person is covered by this subsection if:
  - (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
  - (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
  - (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.
- (7) The external administrator may determine any question that arises as to the entitlement of a person to vote.
- (8) If the external administrator needs a period in which to determine a question referred to in subsection (7), the meeting is to be adjourned to such time, date and place as the meeting resolves (being a date not later than 10 business days after the date of the original meeting) for the purpose of enabling the external administrator to determine the question.

## **75-92 Other persons entitled to vote—persons by whom money is advanced to a company**

- (1) A person by whom money is advanced to a company as described in section 560 of the Act is entitled to one vote at a meeting of creditors.

**Note:** Paragraph 560(c) of the Act provides that a person by whom money is advanced to a company in specified circumstances has the same rights as a creditor of the company in relation to matters set out in Chapter 5 of the Act. This includes voting at a meeting of creditors of the company.

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- (2) Subsection (1) applies whether the person has advanced money to the company:
  - (a) on 1 occasion only; or
  - (b) on more than 1 occasion in respect of the same matter; or
  - (c) on 1 or more occasions in respect of more than 1 matter.

#### **75-93 Votes of secured creditors**

- (1) For the purposes of voting, a secured creditor must state in the creditor's proof of debt or claim:
  - (a) the particulars of his or her security; and
  - (b) the date when it was given; and
  - (c) the creditor's estimate of the value of the security;unless he or she surrenders the security.
- (2) A creditor is entitled to vote only in respect of the balance, if any, due to him or her after deducting the value of his or her security as estimated by him or her.
- (3) If a secured creditor votes in respect of his or her whole debt or claim, the creditor must be taken to have surrendered his or her security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
- (4) This section does not apply to:
  - (a) a meeting of creditors convened under Part 5.3A of the Act; or
  - (b) a meeting held under a deed of company arrangement.

#### **75-94 Admission and rejection of proofs for purposes of voting**

- (1) The person presiding at a meeting has power to admit or reject a proof of debt or claim for the purposes of voting.
- (2) 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.
- (3) 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.

#### **75-95 Quorum**

- (1) Subject to subsection (3), if a quorum is not present, a meeting must not act for any purpose other than the following:
  - (a) the election of a person to preside at the meeting;
  - (b) the proving of debts;
  - (c) the adjournment of the meeting.
- (2) A quorum consists of:

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- (a) if the number of persons entitled to vote exceeds 2—at least 2 of those persons; or
  - (b) if only one person is, or 2 persons are, entitled to vote—that person or those persons;
- present in person or by proxy or attorney.
- (3) A meeting is sufficiently constituted if only one person is present in person at the meeting if the person represents personally or by proxy or otherwise a number of persons sufficient to constitute a quorum.
- (4) If within 30 minutes after the time appointed for a meeting:
- (a) a quorum is not present; or
  - (b) the meeting is not otherwise sufficiently constituted;
- the meeting is adjourned:
- (c) to the same day in the next week at the same time and place; or
  - (d) to the day (not being less than 5 or more than 15 business days after the day on which the meeting is adjourned) and at the time and place that the person presiding appoints.
- (5) The convenor of the meeting, or a person nominated by the convenor, must give notice of the adjournment by the end of the next business day to the persons to whom notice of the meeting must be given under section 75-15.
- (6) A meeting on the date and at the place to which the meeting is adjourned is not to be taken to be incompetent to act only because of a failure to comply with subsection (5) unless the Court, on the application of the convenor of the meeting, or of a creditor or contributory, otherwise declares.
- (7) If within 30 minutes after the time appointed for the adjourned meeting:
- (a) a quorum is not present; or
  - (b) the meeting is not otherwise sufficiently constituted;
- the adjourned meeting lapses.
- (8) Subsection (7) does not apply in relation to a meeting in relation to a voluntary administration.

## **75-97 Manner of voting**

A creditor who participates in a meeting in person or by telephone must cast the creditor's vote personally and not otherwise.

Note: The vote of a creditor who is not participating in a meeting in person or by telephone may be cast by a proxy (see section 75-150) or by the person's attorney (see section 75-165).

## **75-100 Voting on resolutions**

- (1) A resolution put to the vote at a meeting is to be decided:
- (a) if a poll is requested by a person participating and entitled to vote at the meeting—by a poll; or
  - (b) otherwise—on the voices.

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- (2) Despite subsection (1), a vote taken at a joint meeting of creditors and members of a company must be decided on the voices.
- (3) Unless a poll is requested, the person presiding at the meeting must declare that a resolution has been:
  - (a) passed; or
  - (b) passed unanimously; or
  - (c) passed by a particular majority; or
  - (d) lost;on the voices.
- (4) A declaration is conclusive evidence of the result to which it refers, without proof of the number or proportion of the votes recorded in favour of or against the resolution, unless a poll is requested.
- (5) If a poll is requested:
  - (a) the poll must be taken at the same meeting; and
  - (b) the person presiding at the meeting may determine the manner in which the poll is to be taken.
- (6) If a creditor of a company, by contract, surrenders or limits all or some of his or her rights to vote at a meeting of creditors:
  - (a) the creditor must not vote except in accordance with the contract; and
  - (b) any vote which is not in accordance with the contract will not be counted.

#### **75-105 When a resolution is passed at a meeting of creditors**

- (1) A **resolution** is passed at a meeting of creditors of a company if:
  - (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution; and
  - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution.
- (2) A **resolution** is not passed at a meeting of creditors of a company if:
  - (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution; and
  - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution.
- (3) Subject to subsection (7), if no result is reached under subsection (1) or (2) and the resolution does not relate to the remuneration or the removal of the external administrator of the company:
  - (a) the person presiding at the meeting may exercise a casting vote in favour of the resolution, in which case the resolution is passed; or
  - (b) the person presiding at the meeting may exercise a casting vote against the resolution, in which case the resolution is not passed; or
  - (c) if the person presiding at the meeting does not exercise a casting vote, the resolution is not passed.

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- (4) Subject to subsection (7), if no result is reached under subsection (1) or (2) and the resolution relates to remuneration, the resolution is not passed.
- (5) Subject to subsection (7), if no result is reached under subsection (1) or (2) and the resolution relates to the removal of the external administrator of the company:
  - (a) the external administrator may exercise a casting vote in favour of the resolution, in which case the resolution is passed; or
  - (b) if paragraph (a) does not apply—the resolution is not passed.
- (6) If no result is reached under subsection (1) or (2), and the meeting is not a meeting of eligible employee creditors, the person presiding at the meeting must:
  - (a) inform the meeting of the person's reasons for exercising, or not exercising, as the case may be, a casting vote under subsection (3); and
  - (b) include those reasons in the minutes of the meeting.
- (7) In the case of a meeting of eligible employee creditors mentioned in paragraph 444DA(2)(a) of the Act, if no result is reached under subsection (1) or (2), the resolution is not passed.

## **75-110 When a resolution is passed at a meeting of contributories**

- (1) A **resolution** is passed at a meeting of contributories of a company if a majority of the contributories voting (whether in person, by attorney or by proxy) vote in favour of the resolution.
- (2) 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 articles of the company.

## **75-115 Resolution about remuneration must deal only with remuneration**

To be effective, a resolution determining the remuneration of an external administrator under section 60-10 or 60-16 of the Insolvency Practice Schedule (Corporations) must deal exclusively with remuneration of the external administrator.

Note: This means that the resolution must not be bundled with any other resolution.

## **75-120 When a resolution is passed without a meeting of creditors or contributories**

- (1) This section is made for the purposes of paragraphs 75-40(5)(a) and (b) of the Insolvency Practice Schedule (Corporations).
- (2) A proposal put to the creditors of a company by giving notice under section 75-40 of the Insolvency Practice Schedule (Corporations) is taken to have been passed as a **resolution** if:

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- (a) a majority of the creditors whose replies to the notice are received by the external administrator of the company within the time specified in the notice (the *responding creditors*) vote Yes; and
  - (b) a majority in value of the responding creditors vote Yes; and
  - (c) not more than 25% in value of the responding creditors notify the external administrator within the time specified in the notice that they object to the proposal being resolved without a meeting of creditors.
- (3) A proposal put to the contributories of a company by giving notice under section 75-40 of the Insolvency Practice Schedule (Corporations) is taken to have been passed as a *resolution* if:
  - (a) a majority of the contributories whose replies to the notice are received by the external administrator of the company within the time specified in the notice (the *responding contributories*) vote Yes; and
  - (b) a majority of the responding contributories vote Yes; and
  - (c) not more than 25% in value of the responding contributories notify the external administrator within the time specified in the notice that they object to the proposal being resolved without a meeting of contributories.
- (4) For the purposes of subsections (2) and (3) a creditor is not to be counted as a *responding creditor* unless the creditor has submitted particulars of his or her debt or claim to the external administrator on or before the creditor replies to the notice.
- (5) If subsection (2) or (3) does not apply, the proposal is not taken to have been passed as a resolution.
- (6) The external administrator must:
  - (a) make a written record of the outcome of the proposal in the books required to be kept under section 70-10 of the Insolvency Practice Schedule (Corporations); and
  - (b) lodge with ASIC a notice, in the approved form, of the outcome of the proposal.

#### 75-135 Adjournment of meetings of creditors

- (1) A meeting may be adjourned from time to time and from place to place:
  - (a) by resolution; or
  - (b) by the external administrator.
- (2) The meeting must not be adjourned to a day that is more than 15 business days after the first day on which the original meeting was held.
- (3) Despite subsection (2), a meeting convened under section 439A of the Act must not be adjourned to a day that is more than 45 business days after the first day on which the original meeting was held.
- (4) Unless otherwise provided by the resolution by which it is adjourned, the adjourned meeting must be held at the same place as the original meeting.



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- (5) The convenor of the meeting or a person nominated by the convenor must, by the end of the next business day, give notice of the adjournment to the persons to whom notice of the meeting must be given under section 75-10.
- (6) If a meeting is adjourned to a day more than 6 business days after the passing of the resolution by which it is adjourned, the company must cause notice of the day, time and place of the resumption of the meeting to be lodged in accordance with subsection 5.6.75(4) of the regulations made under the Act at least 5 business days before that day.

Note: Subregulation 5.6.75(4) provides for notices to be electronically lodged and published on a website maintained by ASIC.
- (7) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

## **75-140 Minutes of meetings of creditors**

- (1) The person presiding at the meeting must, within the period specified in subsection (2):
  - (a) cause minutes of the proceedings to be drawn up and entered in a record kept for the purpose; and
  - (b) sign the minutes after they have been entered in the record; and
  - (c) lodge with ASIC in the approved form a copy of the minutes, certified by him or her to be a true copy.
- (2) The specified period is:
  - (a) for a meeting other than a meeting convened under section 436E or 439A of the Act—1 month after the end of the meeting; or
  - (b) for a meeting convened under section 436E or 439A of the Act—10 business days after the end of the meeting.
- (3) If the person presiding at a meeting:
  - (a) dies without having complied with paragraph (1)(b) or (c); or
  - (b) otherwise becomes incapable of complying with paragraph (1)(b) or (c);the convenor of the meeting (if the convenor attended the meeting) or a creditor, member or contributory who attended the meeting, may sign the minutes as required by paragraph (1)(b) and may certify and lodge a copy of the minutes as required by paragraph (1)(c).
- (4) A record of the persons present in person, by proxy or by attorney at a meeting must be prepared and kept in the approved form.
- (5) The external administrator, after a meeting of creditors, must cause the minutes and the record of persons present at the meeting to be made available for inspection by creditors or contributories at the principal place at which the external administrator practises.
- (6) If the meeting is a consolidated meeting of creditors of companies that are members of a pooled group, this section does not require the person presiding to:
  - (a) draw up and enter separate minutes for each of the companies to which the meeting relates; or

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- (b) lodge with ASIC separate copies of the minutes for each of the companies to which the meeting relates.

### **Subdivision D—Rules about proxies and attorneys**

#### **75-150 Appointment of proxies**

- (1) A person entitled to vote at a meeting may, in writing, appoint an individual as the person's proxy to attend and vote at the meeting.

Note: The appointment of a proxy must be in the approved form: see section 75-25.

- (2) Subject to subsection (3) and to the instrument of appointment, a proxy appointed under this section has the same right to speak and vote at the meeting as the person who appointed the proxy.
- (3) A person is not entitled to speak or vote as proxy at the meeting unless the instrument of appointment (or a copy) has been given to:
  - (a) the external administrator; or
  - (b) the person named in the notice convening the meeting as the person who is to receive the instrument.

#### **75-165 Person may attend and vote by attorney**

- (1) A person entitled to attend and vote at a meeting may attend and vote at a meeting by the person's attorney.
- (2) A person claiming to be the attorney of a person entitled to attend and vote at a meeting is not entitled to speak or vote as attorney at the meeting unless:
  - (a) the instrument by which the person was appointed as attorney has been produced to the external administrator; or
  - (b) the external administrator is otherwise satisfied that the person claiming to be the attorney of the person entitled to vote is the duly authorised attorney of that person.

### **Subdivision E—Additional rules about pooled groups**

#### **75-180 Meetings of eligible unsecured creditors**

- (1) This section is made for the purposes of subsection 80-26(5) of the Insolvency Practice Schedule (Corporations).
- (2) A meeting of the eligible unsecured creditors of each of the companies in a pooled group required to be convened under subsection 577(1A) of the Act must be convened by giving written notice of the meeting to the creditors.
- (3) The notice given to an eligible unsecured creditor under subsection (2) must be accompanied by:
  - (a) a copy of the pooling determination or variation to the pooling determination (as the case may be); and
  - (b) a written statement:

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- (i) identifying each of the companies in the pooled group; and
  - (ii) setting out the opinion of the external administrator about each of the matters specified in subsection (4), and the reasons of the external administrator for those opinions; and
  - (iii) if the external administrator considers that any eligible unsecured creditors are likely to be disadvantaged by the coming into force of the determination or variation—the reasons (if any) why the external administrator considers that those disadvantaged eligible unsecured creditors should vote for a resolution approving the making of the determination or variation; and
  - (iv) setting out such other information known to the external administrator as will enable the eligible unsecured creditors to make an informed decision about whether to approve the making of the determination or variation.
- (4) For the purposes of subparagraph (3)(b)(ii), the matters are as follows:
- (a) whether it would be in the eligible unsecured creditors' interests generally for the determination or variation to come into force;
  - (b) the extent to which particular eligible unsecured creditors are likely to be disadvantaged by the coming into force of the determination or variation;
  - (c) the extent to which particular companies in the group are likely to be disadvantaged by the coming into force of the determination or variation;
  - (d) the likely return to eligible unsecured creditors if the determination or variation were to come into force;
  - (e) the likely return to eligible unsecured creditors if the determination or variation were not to come into force.

## **75-185 Members' voluntary winding up—copy of notice etc. to be given to each member of the company**

- (1) This section is made for the purposes of subsection 80-26(5) of the Insolvency Practice Schedule (Corporations).
- (2) This section applies if:
  - (a) a company is being wound up under a members' voluntary winding up; and
  - (b) the external administrator of the company convenes a meeting of the eligible unsecured creditors of the company under subsection 577(1A) of the Act.
- (3) The external administrator must, within 5 business days after convening the meeting, give a copy of:
  - (a) the notice referred to in subsection 75-180(2); and
  - (b) the statement referred to in paragraph 75-180(3)(b);to each member of the company, if the member is not a company in the group concerned.

## **75-190 When is a resolution passed at a meeting**

- (1) This section:
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- (a) is made for the purposes of paragraph 80-26(6)(c) of the Insolvency Practice Schedule (Corporations); and
  - (b) applies in relation to resolutions at consolidated meetings of creditors of companies that are members of a pooled group instead of section 75-105.
- (2) A **resolution** is passed at a consolidated meeting of creditors of all the companies that are members of a pooled group if:
- (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution; and
  - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote in favour of the resolution.
- (3) A **resolution** is not passed at a consolidated meeting of creditors of all the companies that are members of a pooled group if:
- (a) a majority of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution; and
  - (b) a majority in value of the creditors voting (whether in person, by attorney or by proxy) vote against the resolution.
- (4) If no result is reached under subsection (2) or (3) and the resolution does not relate to the remuneration or the removal of an external administrator of a company that is a member of the pooled group:
- (a) the person presiding at the meeting may exercise a casting vote in favour of the resolution, in which case the resolution is passed; or
  - (b) the person presiding at the meeting may exercise a casting vote against the resolution, in which case the resolution is not passed; or
  - (c) if the person presiding at the meeting does not exercise a casting vote, the resolution is not passed.
- (5) If no result is reached under subsection (2) or (3) and the resolution relates to remuneration or the removal of an external administrator of a company that is a member of the pooled group, the resolution is not passed.
- (6) If no result is reached under subsection (2) or (3), the person presiding at the meeting must:
- (a) inform the meeting of the person's reasons for exercising, or not exercising, as the case may be, a casting vote under subsection (4); and
  - (b) include those reasons in the minutes of the meeting.

#### **75-195 Directions to external administrator to convene a meeting—when reasonable and not reasonable**

- (1) This section:
- (a) is made for the purposes of subsection 80-27(3) of the Insolvency Practice Schedule (Corporations); and
  - (b) applies in relation to directions to convene a meeting of the members of a pooled group instead of section 75-250.

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## *Unreasonable directions*

- (2) A direction to the external administrator of a company to convene a meeting of the members of a pooled group under section 80-26 of the Insolvency Practice Schedule (Corporations) is not reasonable if the external administrator, acting in good faith, is of the opinion that:
  - (a) complying with the direction would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the direction; or
  - (b) there is not sufficient available property to comply with the direction; or
  - (c) a meeting of the members of the pooled group dealing with the same matters covered by the direction has already been held, or would be held within 15 business days after the direction is made; or
  - (d) the direction for the meeting is vexatious.
- (3) Without limiting paragraph (2)(d), a direction may be taken to be vexatious if it is given within 15 business days after a similar direction was given.

## *Reasonable directions*

- (4) A direction to the external administrator to convene a meeting of the members of a pooled group under section 80-26 of the Insolvency Practice Schedule (Corporations) is reasonable if subsection (2) does not apply to the direction.
- (5) Despite paragraph (2)(b) or (c), a direction to the external administrator of a company to convene a meeting is also reasonable if:
  - (a) the members of the pooled group agree to bear the cost of complying with the direction; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the direction is given to the external administrator before the meeting is convened.

## **Subdivision F—Additional rules for particular kinds of external administration**

### **75-225 Companies under administration—how certain meetings are convened**

- (1) The administrator of a company under administration must convene a meeting under:
  - (a) section 439A of the Act (meeting to decide future of company under administration); or
  - (b) subsection 449C(4) of the Act (vacancy in office of administrator);by written notice given to as many of the company's creditors as reasonably practicable.

Note: Notice of the meeting must be lodged with ASIC—see section 75-40.
- (2) The notice must:
  - (a) be given at least 5 business days before the meeting; and
  - (b) contain the following information:

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- (i) the name of the company;
  - (ii) any business name of the company;
  - (iii) the ACN of the company;
  - (iv) the fact that notice is being given under this section;
  - (v) the time, date and place for the meeting;
  - (vi) the purpose for which the meeting is being convened;
  - (vii) the time and date by which proofs of debt, and proxies for the meeting, are to be submitted;
  - (viii) the name and contact details of the administrator.
- (3) If the meeting is convened under section 439A of the Act, the notice must also include a statement setting out the following:
- (a) whether, in the administrator's opinion, it would be in the creditors' interests for the company to execute a deed of company arrangement;
  - (b) whether, in the administrator's opinion, it would be in the creditors' interests for the administration to end;
  - (c) whether, in the administrator's opinion, it would be in the creditors' interests for the company to be wound up;
  - (d) the reasons for the opinions referred to in paragraphs (a) to (c);
  - (e) such other information known to the administrator as will enable the creditors to make an informed decision about each matter covered by paragraph (a), (b) or (c);
  - (f) whether there are any transactions that appear to the administrator to be voidable transactions in respect of which money, property or other benefits may be recoverable by a liquidator under Part 5.7B of the Act;
  - (g) if a deed of company arrangement is proposed—details of the proposed deed.
- (4) A copy of the following must be lodged with ASIC:
- (a) the notice;
  - (b) if subsection (3) applies—the statement.

### Subdivision G—Other rules about meetings

#### 75-250 Directions to external administrator to convene a meeting—when reasonable and not reasonable

- (1) This section is made for the purposes of section 75-15 of the Insolvency Practice Schedule (Corporations).

##### *Unreasonable directions*

- (2) A direction to the external administrator of a company to convene a meeting of the creditors is not reasonable if the external administrator, acting in good faith, is of the opinion that:
- (a) complying with the direction would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the direction; or

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- (b) there is not sufficient available property to comply with the direction; or
  - (c) a meeting of the creditors dealing with the same matters covered by the direction has already been held, or would be held within 15 business days after the direction is made; or
  - (d) the direction for the meeting is vexatious.
- (3) Without limiting paragraph (2)(d), a direction may be taken to be vexatious if it is given within 20 business days after a similar direction was given.

### *Reasonable directions*

- (4) A direction to the external administrator to convene a meeting of the creditors is reasonable if subsection (2) does not apply to the direction.
- (5) Despite paragraph (2)(b) or (c), a direction to the external administrator of a company to convene a meeting is also reasonable if:
- (a) the creditors agree to bear the cost of complying with the direction; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the direction is given to the external administrator before the meeting is convened.

## **75-260 Requirements relating to meetings to remove external administrator of a company**

- (1) This section applies if the creditors of a company under external administration propose, by resolution at a meeting, to:
- (a) remove the external administrator (the *outgoing administrator*) of the company; and
  - (b) appoint another person (the *incoming administrator*) as the external administrator of the company;
- under section 90-35 of the Insolvency Practice Schedule (Insolvency).
- (2) The outgoing administrator and the incoming administrator have a right to speak at the meeting at which the administrator is proposed to be removed or appointed, as the case may be.
- (3) A written consent to act as administrator signed by the incoming administrator must be tabled at the meeting at which the incoming administrator is proposed to be appointed.
- (4) The incoming administrator must also table a written declaration:
- (a) stating whether any of the following:
    - (i) the incoming administrator;
    - (ii) if the administrator's firm (if any) is a partnership—a partner in that partnership;
    - (iii) if the administrator'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; or
    - (v) an associate of the company; or

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- (vi) a former liquidator, or former provisional liquidator, of the company; or
  - (vii) 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 incoming administrator's reasons for believing that none of those relationships result in the administrator having a conflict of interest or duty.

Note: See also sections 436DA, 449CA and 506A of the Act for declarations in relation to relationships that must be made if incoming administrator is appointed as external administrator of the company.

- (5) The incoming administrator must also table a written declaration:
- (a) stating whether the administrator is or will be, to any extent, indemnified (otherwise than under section 443D of the Act), in relation to the administration, for:
    - (i) any debts for which the administrator is, or may become, liable under Subdivision A of Division 9 of Part 5.3A of the Act; or
    - (ii) any debts for which the administrator is, or may become, liable under a remittance provision as defined in section 443BA of the Act; or
    - (iii) the remuneration to which he or she is entitled under section 60-5 of the Insolvency Practice Schedule (Corporations); and
  - (b) if so, stating:
    - (i) the identity of each indemnifier; and
    - (ii) the extent and nature of each indemnity.

Note: See also sections 436DA, 449CA and 506A of the Act for declarations in relation to indemnities that must be made if incoming administrator is appointed as external administrator of the company.

#### **75-265 Substantial compliance with Division is sufficient**

A meeting, or anything done at a meeting, is not invalid because a requirement of this Division has not been strictly complied with, if the requirement has been substantially complied with.



# EXPOSURE DRAFT

## **Division 80—Committees of inspection etc.**

### **80-5 Eligibility and procedures**

- (1) This section is made for the purposes of subsection 80-30(2) of the Insolvency Practice Schedule (Corporations).

#### *Eligibility*

- (2) A person is not eligible to be appointed as a member of a committee of inspection unless the person is:
- (a) a creditor of the company; or
  - (b) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or
  - (c) a person authorised in writing by a creditor of the company to be a member of the committee of inspection; or
  - (d) a representative of the Commonwealth, if:
    - (i) a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements has been made; or
    - (ii) the Commonwealth considers that such a claim is likely to be made.

#### *Procedures*

- (3) A committee of inspection must meet at such times and places as its members from time to time appoint.
- (4) If a committee of inspection is appointed as a result of a determination of the creditors of the company under section 80-10 of the Insolvency Practice Schedule (Corporations), the external administrator or a member of the committee may convene a meeting of the committee.
- (5) If a committee of inspection is appointed as a result of a resolution under section 80-26 of the Insolvency Practice Schedule (Corporations) (about pooled groups), either:
- (a) the external administrator or external administrators of the companies in the group concerned; or
  - (b) a member of the committee;
- may convene a meeting of the committee.
- (6) A committee of inspection may act by a majority of its members present at a meeting, but must not act unless a majority of its members are present.
- (7) If a member of the committee is a body corporate, the member may be represented at meetings of the committee by an individual authorised in writing by the member for the purposes of this paragraph.

### **80-10 Resignation, removal and vacancies**

- (1) This section is made for the purposes of subsection 80-30(2) of the Insolvency Practice Schedule (Corporations).
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# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 80 Committees of inspection etc.

#### Section 80-15

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- (2) A member of a committee of inspection may resign by notice in writing signed by the member and delivered to the external administrator.
- (3) The office of a member of a committee of inspection becomes vacant if the member:
  - (a) becomes an insolvent under administration; or
  - (b) is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself or herself represent the creditors.
- (4) A member of the committee who represents creditors may be removed by a resolution at a meeting of creditors of which 7 days' notice has been given stating the object of the meeting.
- (5) A person may be appointed at the meeting referred to in subsection (4) to fill a vacancy caused by the removal of a member of the committee.
- (6) A vacancy in the committee may be filled by the appointment of a person by a resolution at a meeting of the creditors of which 7 days' notice has been given.
- (7) A vacancy in the committee that is not filled as provided by subsection (5) or (6) may be filled by the appointment of a person by the committee and a person so appointed represents the creditors.
- (8) If:
  - (a) there is a vacancy in the membership of a committee of inspection; and
  - (b) there are at least 2 remaining members of the committee;the remaining members may continue to act despite the vacancy.

#### **80-15 Reasonable requests for information etc.**

- (1) This section is made for the purposes of subsection 80-40(3) of the Insolvency Practice Schedule (Corporations).

##### *Unreasonable requests*

- (2) It is not reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the committee of inspection if the external administrator, acting in good faith, is of the opinion that:
  - (a) complying with the request would substantially prejudice the interests of one or more creditors or a third party and that prejudice outweighs the benefits of complying with the request; or
  - (b) the information, report or document would be privileged from production in legal proceedings on the ground of legal professional privilege; or
  - (c) disclosure of the information, report or document would found an action by a person for breach of confidence; or
  - (d) there is not sufficient available property to comply with the request; or
  - (e) the information, report or document has already been provided; or
  - (f) the request is vexatious.

# EXPOSURE DRAFT

- (3) Without limiting paragraph (2)(f), a request may be taken to be vexatious if it is made within 15 business days of a similar request being made by the committee of inspection.

### *Reasonable requests*

- (4) It is reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the committee of inspection if subsection (2) does not apply to the request.
- (5) Despite paragraph (2)(d) or (e), it is also reasonable for an external administrator of a company to comply with a request to give information, provide a report or produce a document to the committee of inspection if:
- (a) the committee agree to bear the cost of complying with the request; and
  - (b) if required to do so by the external administrator—security for the cost of complying with the request is given to the external administrator before the request is complied with.

## **80-20 Time for complying with reasonable requests**

- (1) This section is made for the purposes of section 80-45 of the Insolvency Practice Schedule (Corporations).
- (2) Subject to subsections (3) and (5), if a request for information or a report or document is made by a committee of inspection under section 80-40 of the Insolvency Practice Schedule (Corporations), the external administrator must give the information, report or document within:
- (a) 5 business days after receiving the request; or
  - (b) such later period as agreed with the committee of inspection.
- (3) If the external administrator is reasonably satisfied that, due to the nature of the request, an extension of time is required to comply with it, the external administrator may, by written notice, extend the period for compliance.
- (4) The notice must:
- (a) be given to the committee of inspection; and
  - (b) specify the period within which the request will be complied with; and
  - (c) specify the reasons for the extension.
- (5) This section does not apply if, under the Act or these Rules, it is not reasonable for the external administrator to comply with the request.

## **80-25 Notice requirements for unreasonable requests**

- (1) This section applies if:
- (a) a request for information or a report or document is made by a committee of inspection under section 80-40 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 request.

# EXPOSURE DRAFT

**Part 3** General rules relating to external administrations

**Division 80** Committees of inspection etc.

## Section 80-25

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- (2) The external administrator must:
- (a) notify the committee of inspection that it is not reasonable for the external administrator to comply with the request, 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 request was not complied with, and of the reasons.

# EXPOSURE DRAFT

General rules relating to external administrations **Part 3**  
Review of the external administration of a company **Division 90**

Section 90-1

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## **Division 90—Review of the external administration of a company**

### **90-1 Authority**

Unless otherwise stated, a provision of this Division is made for the purposes of section 90-29 of the Insolvency Practice Schedule (Corporations).

### **90-4 Appointment of reviewing liquidator by creditors etc.**

- (1) This section is made for the purposes of paragraph 90-24(6)(a) of the Insolvency Practice Schedule (Corporations).
- (2) An agreement to appoint a registered liquidator under subsection 90-24(4) of the Insolvency Practice Schedule (Corporations) must be in writing.

### **90-7 Limits on reviewing remuneration, costs and expenses**

- (1) This section is made for the purposes of subsection 90-26(4) of the Insolvency Practice Schedule (Corporations).
- (2) A reviewing liquidator must not review remuneration of an external administrator unless the remuneration was incurred during the 12-month period ending on the day of the appointment of the reviewing liquidator.
- (3) A reviewing liquidator must not review a cost or expense incurred by an external administrator unless the cost or expense was incurred during the 12-month period ending on the day of the appointment of the reviewing liquidator, unless the external administrator agrees to a longer period.

### **90-12 Notice to be given if ASIC appoints a reviewing liquidator**

If ASIC appoints a reviewing liquidator under Subdivision C of Division 90 of the Insolvency Practice Schedule (Corporations), ASIC must notify the external administrator of the appointment at least 15 business days before the appointment commences.

### **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 liquidator;
    - (ii) if the liquidator's firm (if any) is a partnership—a partner in that partnership;
    - (iii) if the 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:

# EXPOSURE DRAFT

## Part 3 General rules relating to external administrations

### Division 90 Review of the external administration of a company

#### Section 90-18

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- (iv) the company in relation to which the review will be conducted; or
  - (v) an associate of the company; or
  - (vi) the current liquidator of the company; or
  - (vii) the person or body (other than the Court) making the appointment; or
  - (viii) a former liquidator, or former provisional liquidator, 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 liquidator's reasons for believing that none of those relationships result in the liquidator having a conflict of interest or duty.
- (2) The registered liquidator must also make a written declaration:
- (a) stating whether the administrator is or will be, to any extent, indemnified (otherwise than under section 443D of the Act), in relation to the administration, for:
    - (i) any debts for which the administrator is, or may become, liable under Subdivision A of Division 9 of Part 5.3A of the Act; or
    - (ii) any debts for which the administrator is, or may become, liable under a remittance provision as defined in section 443BA of the Act; or
    - (iii) the remuneration to which he or she is entitled under section 60-5 of the Insolvency Practice Schedule (Corporations); and
  - (b) if so, stating:
    - (i) the identity of each indemnifier; and
    - (ii) the extent and nature of each indemnity.
- (3) The declarations must be:
- (a) given to the person or body who will make the appointment; and
  - (b) lodged with ASIC.

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

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

*Declarations must be correct and kept up to date*

- (5) If, after the reviewing liquidator has given a declaration under this section:
- (a) the declaration becomes out of date; or
  - (b) the liquidator becomes aware of an error in the declaration;
- the reviewing 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.

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## 90-22 Powers and duties of reviewing liquidators

- (1) In carrying out a review under Subdivision C of Division 90 of the Insolvency Practice Schedule (Corporations), a reviewing liquidator has the following powers:
  - (a) if the review relates to the remuneration of the external administrator of the company or a cost or expense incurred by the external administrator of the company:
    - (i) to engage one or more industry or other relevant experts to assist with assessing the remuneration or costs incurred; and
    - (ii) to direct the external administrator to provide itemised invoices for work undertaken by the external administrator in the form, and within the period, specified by the reviewing liquidator;
  - (b) to interview any of the parties to the review;
  - (c) to direct any of the parties to the review to give a written statement about a specified matter in the form, and within the period, specified by the reviewing liquidator;
  - (d) to direct the external administrator to produce specified books relating to the external administration;
  - (e) any other power necessary for, or reasonably incidental to, carrying out a review.
- (2) A period specified for the purposes of paragraph (1)(c) must be reasonable.
- (3) In carrying out a review, a reviewing liquidator has the following duties:
  - (a) if a person is given a direction under subsection (1) but fails to comply with it—to carry out the review on the basis of the information available to the reviewing liquidator;
  - (b) to act independently and in the interests of creditors;
  - (c) to avoid actual and apparent conflicts of interest.
- (4) For the purposes of subsection (1), the *parties to the review* are the following:
  - (a) the external administrator;
  - (b) any employees or other persons providing services to or for the administrator in relation to the external administration;
  - (c) any third parties in relation to whom an expense relating to the external administration has been incurred.

## 90-24 Reporting by reviewing liquidators

- (1) The report on a review must be prepared in the manner, and with the content, as agreed between the reviewing liquidator and the person or body who made the appointment. Notice that the report has been prepared must be given to the creditors by the reviewing liquidator as soon as practicable.
- (2) Subject to subsections (3) and (4), copies of the report must be:
  - (a) provided to the external administrator, the committee of inspection (if any) and ASIC; and
  - (b) tabled at the next meeting of creditors (if any).

# EXPOSURE DRAFT

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- (3) If the reviewing liquidator was appointed by ASIC, the report must not be provided to a committee of inspection without the approval of ASIC.
- (4) If the reviewing liquidator was appointed by the Court, the report is to be provided to the persons or bodies, and in the manner, as ordered by the Court.