

EXPOSURE DRAFT



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Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2020

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

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1 Name

This instrument is the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> commences.	
3. Schedule 2	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 2 to the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> commences.	
3. Schedule 3	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 3 to the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> commences.	
4. Schedule 4	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 4 to the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

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4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Restructuring of a company

Corporations Regulations 2001

1 After Part 5.3A

Insert:

Part 5.3B—Restructuring of a company

Division 1—Preliminary

5.3B.01 Definitions

In this Part, unless the contrary intention appears:

accepted, in relation to a proposal to make a restructuring plan, has the meaning given by subregulation 5.3B.23(1).

admissible debt or claim, in relation to a company's restructuring plan, means a debt or claim that would be admissible to proof against the company under subsection 553(1) of the Act if:

- (a) the company were wound up; and
- (b) the relevant date were the beginning of the restructuring that ends if or when the plan is made;

but does not include:

- (c) a contingent debt or claim; or
- (d) a debt or claim that would be admissible to proof under subsection 553(1A) of the Act.

affected creditor means:

- (a) in relation to a proposal to vary or terminate a company's restructuring plan—a creditor of the company who is a party (as creditor) to the plan; or
- (b) in relation to a proposal by a company to make a restructuring plan—a person who would be a party to the restructuring plan if it were made.

excluded creditor, in relation to a company under restructuring, means a creditor of the company who:

- (a) is the restructuring practitioner for the company; or
- (b) was, at the time the restructuring began, a related creditor of the company; or
- (c) was, on becoming an affected creditor, a related entity of the restructuring practitioner.

make, in relation to a restructuring plan, has the meaning given by regulation 5.3B.24.

proposal period, in relation to a company under restructuring, has the meaning given by regulation 5.3B.15.

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propose, in relation to a restructuring plan, has the meaning given by regulation 5.3B.12.

related creditor of a company means a person who is a related entity, and a creditor, of the company.

restructuring proposal statement means a statement made by a company under regulation 5.3B.14.

Division 2—Restructuring

Subdivision A—Restructuring generally

5.3B.02 When restructuring ends

- (1) For the purposes of paragraph 453A(b) of the Act, the restructuring of a company ends if:
 - (a) the company makes a declaration under subregulation (2);
 - (b) the company fails to propose a restructuring plan within the proposal period; or
 - (c) the company's proposal to make a restructuring plan lapses under regulation 5.3B.18; or
 - (d) the restructuring practitioner for the company terminates the restructuring under section 453J of the Act; or
 - (e) the Court orders that the restructuring of the company is to end; or
 - (f) an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or
 - (g) a liquidator or provisional liquidator of the company is appointed; or
 - (h) if the company is a general insurer (within the meaning of the *Insurance Act 1973*)—management of the general insurer vests in a judicial manager of the company appointed by the Federal Court under Part VB of the *Insurance Act 1973*; or
 - (i) if the company is a life company (within the meaning of the *Life Insurance Act 1995*)—management of the life company vests in a judicial manager of the life company appointed by the Federal Court under Part 8 of the *Life Insurance Act 1995*; or
 - (j) the company makes a restructuring plan.
- (2) The directors of a company under restructuring may:
 - (a) make a declaration in writing that the restructuring of the company is to end on a specified day for any reason; and
 - (b) give a copy of the declaration to:
 - (i) the company's restructuring practitioner; and
 - (ii) the company's creditors; and
 - (iii) ASIC;before the day specified in the declaration.

5.3B.03 Eligibility criteria for restructuring

- (1) For the purposes of paragraph 453C(1)(a) of the Act, the test for eligibility is that the total liabilities of the company on the day the restructuring begins must not exceed \$1 million.
- (2) For the purposes of paragraph 453C(1)(b) of the Act, a period of 7 years is prescribed.
- (3) For the purposes of paragraph 453C(1)(c) of the Act, a period of 7 years is prescribed.
- (4) For the purposes of paragraph 453C(2)(b) of the Act, a prescribed circumstance is that:
 - (a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and
 - (b) the other company is, or has been:
 - (i) under restructuring; or
 - (ii) the subject of a simplified liquidation process; and
 - (c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began; and
 - (d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the restructuring of the company in relation to which the eligibility criteria are to be met began.

Definitions

- (5) In this regulation:

liability means any liability or obligation that is not contingent.

5.3B.04 Transactions or dealings in the ordinary course of business

- (1) For the purposes of subsection 453L(4) of the Act, this regulation prescribes the circumstances in which entering into a transaction or dealing by a company is to not be treated as in the ordinary course of the company's business.
- (2) The circumstances are as follows:
 - (a) subject to subregulation (3)—the transaction or dealing is for the purposes of satisfying a debt or claim in relation to the company, other than a contingent debt or claim, that arises because of a contract or an arrangement entered into by the company before the restructuring of the company begins;
 - (b) the transaction or dealing relates to the transfer or sale of the whole or a part of the business;
 - (c) the transaction or dealing relates to the payment of a dividend.
- (3) Paragraph (2)(a) does not apply if the transaction or dealing relates to the payment of the entitlements of the company's employees.

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5.3B.05 Consent to transactions or dealings outside the ordinary course of business

- (1) This regulation applies if the restructuring practitioner for a company under restructuring consents to a transaction or dealing under paragraph 453L(2)(b) of the Act.
- (2) The consent must be given:
 - (a) in writing; or
 - (b) if the restructuring practitioner is satisfied that the delay caused by giving a written consent would not be in the best interests of the company's creditors as a whole—orally.
- (3) Within 2 business days of giving the consent, the restructuring practitioner must:
 - (a) make a written record of the consent and any conditions imposed on the consent; and
 - (b) provide a copy of the written record to the company within 2 business days after the day on which the consent is given.
- (4) A record of the consent must be kept by the company for 5 years.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.06 Termination of restructuring

For the purposes of paragraph 453J(3)(b) of the Act, the following information is prescribed:

- (a) the following details about the company:
 - (i) the name of the company;
 - (ii) any trading name of the company;
 - (iii) the ACN of the company;
 - (iv) the address of the company's registered office;
 - (v) any website maintained by or on behalf of the company;
 - (vi) the company's email address (if any);
- (b) the following details about the restructuring practitioner:
 - (i) the restructuring practitioner's name;
 - (ii) the address and telephone number of the principal place where the restructuring practitioner practises as a registered liquidator;
 - (iii) if the restructuring practitioner 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;
 - (iv) the Registered Liquidator Number for the restructuring practitioner as specified on the Register of Liquidators;
- (c) the day on which the restructuring of the company began;
- (d) the day on which the notice is given to the company;
- (e) the reason for terminating the restructuring of the company;
- (f) the signature of the restructuring practitioner;
- (g) any other information that the restructuring practitioner considers appropriate.

Subdivision B—Restructuring practitioner for company under restructuring

5.3B.07 Authority

This Subdivision is made for the purposes of subsection 453E(2) of the Act.

5.3B.08 Powers of restructuring practitioner for company under restructuring

The restructuring practitioner for a company under restructuring has the power to investigate the company's business, property, affairs and financial circumstances for the purposes of:

- (a) preparing a certificate under regulation 5.3B.16; or
- (b) deciding whether to terminate the restructuring of the company; or
- (c) resolving a disagreement under regulation 5.3B.20; or
- (d) performing or exercising any other function, duty or power as restructuring practitioner for the company.

5.3B.09 Restructuring practitioner has qualified privilege

A person who is or has been the restructuring practitioner for a company under restructuring has qualified privilege in respect of a statement that the person has made, whether orally or in writing, in the course of performing or exercising any of the person's functions and powers as restructuring practitioner for the company.

5.3B.10 Restructuring practitioner for company not liable for things done in good faith etc.

The restructuring practitioner for a company under restructuring is not liable to an action or other proceeding for damages in respect of any thing done by the restructuring practitioner, in good faith and without negligence, in the performance or exercise, or purported performance or exercise, of any of the restructuring practitioner's functions, powers or duties as restructuring practitioner for the company.

Division 3—Restructuring plan

Subdivision A—Preliminary

5.3B.11 Authority

Unless otherwise specified, this Division is made under section 455B of the Act.

Subdivision B—Proposing a restructuring plan

5.3B.12 How a restructuring plan is *proposed*

- (1) A company under restructuring *proposes* a restructuring plan if:
 - (a) the company prepares:

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- (i) a restructuring plan that complies with the requirements in regulation 5.3B.13; and
 - (ii) a restructuring proposal statement that complies with the requirements in regulation 5.3B.14; and
 - (b) the company executes the restructuring plan during the proposal period; and
 - (c) the company's restructuring practitioner prepares and signs a certificate in accordance with regulation 5.3B.16; and
 - (d) the restructuring practitioner gives the restructuring plan and certificate in accordance with regulation 5.3B.19; and
 - (e) immediately before the restructuring practitioner gives the plan and certificate in accordance with regulation 5.3B.19, regulation 5.3B.22 is satisfied in relation to the company.
- (2) For the purposes of subsection 455A(3) of the Act, the company is taken to have proposed the restructuring plan on the day the company's restructuring practitioner does the things mentioned in paragraph (1)(d).

5.3B.13 Contents of restructuring plan

- (1) A company under restructuring must prepare a restructuring plan that complies with the requirements of this regulation.
- (2) The restructuring plan must:
- (a) be in the approved form; and
 - (b) identify the company's property that is to be dealt with; and
 - (c) specify how the property is to be dealt with; and
 - (d) provide for the remuneration of the restructuring practitioner for the plan; and
 - (e) specify the date on which the restructuring plan was executed.
- (3) The restructuring plan may:
- (a) authorise the restructuring practitioner for the plan to deal with the identified property in the way specified in the plan; and
 - (b) provide for any matter relating to the company's financial affairs; and
 - (c) be expressed to be conditional on the occurrence of a specified event within a specified period of no longer than 10 business days after the proposal to make the restructuring plan is accepted.
- (4) The restructuring plan must not:
- (a) provide for the transfer of property (other than money) to a creditor; or
 - (b) provide for the company to make payments under the plan, in respect of an admissible debt or claim, after 5 years beginning on the day the plan is made.

5.3B.14 Restructuring proposal statement

- (1) A restructuring plan must be accompanied by a restructuring proposal statement.
- (2) The restructuring proposal statement must:
- (a) include a schedule of debts and claims; and

- (b) be in the prescribed form; and
- (c) contain such information as the form requires.

Note: Under section 350 of the Act, a document that the Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in these Regulations, be in that prescribed form; and
- (b) if a form for the document is not prescribed in these Regulations but ASIC has approved a form for the document, be in that approved form.

5.3B.15 Meaning of *proposal period*

- (1) The *proposal period*, in relation to a company that is under restructuring, is the period of 20 business days beginning on the day the restructuring begins.
- (2) The company's restructuring practitioner may, on application by the company, extend the proposal period by no more than 10 business days if the restructuring practitioner is satisfied on reasonable grounds that requiring the company to give a restructuring plan within the proposal period would not be reasonable in the circumstances.
- (3) The restructuring practitioner may not extend the proposal period more than once under subregulation (2).
- (4) The Court may, on application by the company, order an extension of the proposal period.

5.3B.16 Restructuring practitioner must certify restructuring plan

- (1) As soon as practicable after a company executes a restructuring plan, the company's restructuring practitioner must prepare a certificate in accordance with this regulation.
- (2) The certificate must:
 - (a) if the restructuring practitioner believes on reasonable grounds that:
 - (i) the eligibility criteria for restructuring are met in relation to the company; and
 - (ii) if the restructuring plan is made, the company is likely to be able to discharge the obligations created by the plan as and when they become due and payable;state that; and
 - (b) if the restructuring practitioner believes on reasonable grounds that all information required to be set out in the company's restructuring proposal statement has been set out in that statement—state that; and
 - (c) if the restructuring practitioner does not believe on reasonable grounds a matter mentioned in paragraph (a) or (b)—identify the matter in relation to which a belief on reasonable grounds could not be formed and set out the reasons for that conclusion; and
 - (d) if a person (the *broker*) referred the company to the restructuring practitioner—set out details of the relationship between the broker and the restructuring practitioner and details of any payments made, or to be made, to the broker by the restructuring practitioner in connection with that referral; and

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- (e) if, at the time a person became an affected creditor, the person was a related entity of the restructuring practitioner—specify the name of the affected creditor and the nature of the relationship between the affected creditor and the restructuring practitioner.

Note: A certificate must not be false or misleading in a material particular, or omit anything that would render it materially false or misleading: see section 1308 of the Act.

- (3) The certificate must be signed by the restructuring practitioner.

Offence

- (4) The restructuring practitioner for a company commits an offence if:
 - (a) the restructuring practitioner prepares a certificate under this regulation; and
 - (b) the restructuring practitioner does not:
 - (i) make reasonable inquiries into the company's business, property, affairs and financial circumstances; or
 - (ii) take reasonable steps to verify the company's business, property, affairs and financial circumstances.

Penalty: 50 penalty units.

- (5) An offence based on subregulation (4) is an offence of strict liability.

5.3B.17 Restructuring practitioner must notify company of defect in restructuring plan

- (1) The restructuring practitioner for a company under restructuring commits an offence if:
 - (a) at any time before the restructuring practitioner prepares a certificate under regulation 5.3B.16 in relation to the company's restructuring plan:
 - (i) the restructuring practitioner becomes aware that the information in the plan, or in the restructuring proposal statement that accompanies the plan, is incomplete or inaccurate; and
 - (ii) the restructuring practitioner has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company's ability to meet its obligations under the plan; and
 - (b) the restructuring practitioner does not, as soon as practicable after becoming so aware:
 - (i) notify the company of the incompleteness or inaccuracy; and
 - (ii) provide an opportunity for the company to address the incompleteness or inaccuracy.

Penalty: 50 penalty units.

- (2) An offence based on subregulation (1) is an offence of strict liability.

5.3B.18 Proposal to make restructuring plan lapses

- (1) A company's proposal to make a restructuring plan lapses if:

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Restructuring of a company **Schedule 1**

- (a) the restructuring plan is not accepted in accordance with subregulation 5.3B.23(1); or
 - (b) the company's restructuring practitioner cancels the proposal to make the plan in accordance with subregulation (2).
- (2) The restructuring practitioner for a company may cancel the company's proposal to make a restructuring plan if, before the restructuring plan is made, the restructuring practitioner:
- (a) becomes aware that the information in the plan is incomplete or inaccurate, and has reasonable grounds to believe that, if the plan is made, the matter to which the incompleteness or inaccuracy relates is likely to affect the company's ability to meet its obligations under the plan; or
 - (b) becomes aware that one or more affected creditors were not disclosed in the company's restructuring proposal statement; or
 - (c) becomes aware that the company's restructuring proposal statement was deficient because it omitted a material particular or because it was incorrect in a material particular; or
 - (d) becomes aware of a material change in the company's circumstances that:
 - (i) was not foreshadowed in the company's restructuring proposal statement; and
 - (ii) in the opinion of the restructuring practitioner, is capable of affecting an affected creditor's decision whether or not to accept the restructuring plan.

5.3B.19 Proposing a restructuring plan to creditors

- (1) As soon as practicable after a company executes a restructuring plan, the restructuring practitioner for the company must do the following:
- (a) give to as many of the company's affected creditors as reasonably practicable a copy of:
 - (i) the company's restructuring plan; and
 - (ii) the restructuring plan standard terms; and
 - (iii) the company's restructuring proposal statement; and
 - (iv) the certificate prepared by the practitioner under regulation 5.3B.16;
 - (b) ask each creditor to:
 - (i) give a written statement setting out whether or not the restructuring plan should be accepted; and
 - (ii) if the creditor agrees with the company's assessment of the amount of the creditor's admissible debts or claims—verify the creditor's admissible debts or claims as set out in the schedule of debts and claims included with the restructuring proposal statement; and
 - (iii) if the creditor disagrees with the company's assessment of the amount of the creditor's admissible debts or claims—notify the restructuring practitioner in accordance with regulation 5.3B.20;
 - (c) inform each creditor of the person to whom the statement should be given and of the need to give the statement before the end of the acceptance period.
- (2) Paragraphs (1)(b) and (c) do not apply in relation to an excluded creditor.

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Definitions

(3) In this regulation:

acceptance period means:

- (a) the period of 15 business days beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1); or
- (b) if creditors are given a notice under paragraph 5.3B.20(5)(b)—the longer of:
 - (i) the period of 15 business days beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1) of this regulation; and
 - (ii) the period beginning on the day the company's restructuring practitioner gives documents in accordance with subregulation (1) of this regulation and ending on the last day of the period of 5 business days after the day on which the notice under paragraph 5.3B.20(5)(b) is given; or
- (c) such other period as the Court orders under regulation 5.3B.51.

restructuring plan standard terms means the terms specified in subregulation 5.3B.25(1).

5.3B.20 Creditors may dispute schedule of debts and claims

- (1) This regulation applies if:
 - (a) a company proposes to make a restructuring plan; and
 - (b) the plan has not been made; and
 - (c) a creditor of the company disagrees with the company's assessment of:
 - (i) the creditor's admissible debts or claims; or
 - (ii) the creditor's status as an excluded creditor;as set out in the schedule of debts and claims included with the company's restructuring proposal statement.
- (2) The creditor must notify the company's restructuring practitioner of the disagreement:
 - (a) if the creditor received a copy of the plan—within 5 business days of receiving the plan; and
 - (b) if the creditor otherwise became aware of the plan—within 5 business days of becoming so aware.
- (3) A notice under subregulation (2) must:
 - (a) if the disagreement relates to the creditor's admissible debts or claims:
 - (i) include detailed particulars of the debt or claim sought to be proved; and
 - (ii) in the case of a debt, include a statement of account; and
 - (iii) specify the vouchers (if any) by which the statement can be substantiated; and
 - (b) if the disagreement relates to the creditor's status as an excluded creditor—include detail sufficient to resolve the disagreement.

- (4) The restructuring practitioner may, after receiving a notice under subregulation (2), request that the creditor or the directors of the company:
 - (a) give the restructuring practitioner information about the company's business, property, affairs and financial circumstances; and
 - (b) verify the information by statutory declaration.
- (5) The restructuring practitioner must, within 5 business days of receiving a notice under subregulation (2):
 - (a) give a notice in writing to the company and the creditor:
 - (i) setting out the restructuring practitioner's recommendations for resolving the disagreement; and
 - (ii) giving reasons for the recommendations; and
 - (b) if the restructuring practitioner recommends that the schedule of debts and claims be varied and is of the opinion that the variation is significant—give notice in writing to the company and as many of the company's creditors as is reasonably practicable:
 - (i) stating that fact; and
 - (ii) outlining the creditors' rights under regulation 5.3B.21.
- (6) If the restructuring practitioner recommends that the schedule of debts and claims be varied, the company must vary the schedule in accordance with the recommendation as soon as practicable.

5.3B.21 Creditors may change vote if proposal is varied

- (1) This regulation applies if:
 - (a) a company proposes to make a restructuring plan; and
 - (b) either:
 - (i) the restructuring practitioner for the company gives notice under paragraph 5.3B.20(5)(a) of a recommendation to vary the schedule of debts and claims included with the company's restructuring proposal statement; or
 - (ii) the Court makes an order under subregulation 5.3B.51(2) to vary the schedule of debts and claims included with the company's restructuring proposal statement; and
 - (c) before the notice was given, an affected creditor of the company gave a statement under paragraph 5.3B.19(1)(b) in relation to the restructuring plan.
- (2) The creditor may, within 5 business days after the day on which the creditor receives the notice:
 - (a) withdraw the statement; and
 - (b) give a new statement under paragraph 5.3B.19(1)(b) in relation to the restructuring plan.

5.3B.22 Company under restructuring must do certain things

This regulation is satisfied in relation to a company under restructuring if:

- (a) the company has:
 - (i) paid the entitlements of its employees that are payable, other than contingent entitlements; and

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- (ii) given returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*); or
 - (b) the company is substantially complying with the matter concerned.
- Note: Employee *entitlements* are defined in subsections 596AA(2) and (3) of the Act and include superannuation contributions payable by the company.

Subdivision C—Accepting a proposal for a restructuring plan

5.3B.23 Acceptance of restructuring plan

When restructuring plan is accepted

- (1) A company's restructuring plan is **accepted** if a majority in value of the company's affected creditors who reply before the end of the acceptance period state that the restructuring plan should be accepted.
- (2) For the purposes of subsection (1):
 - (a) the value of an affected creditor is to be worked out:
 - (i) by reference to the value of the creditor's admissible debts or claims that are known at the time the restructuring began; or
 - (ii) if a person is an affected creditor because the person purchased another creditor's admissible debts or claims—by reference to the value of the purchase price; and
 - (b) where there have been mutual credits, mutual debts or other mutual dealings between the company and an affected creditor:
 - (i) an account is to be taken of what is due from the one party to the other in respect of those mutual dealings; and
 - (ii) the sum due from the one party is to be set off against any sum due from the other party; and
 - (iii) the value of the affected creditor is to be worked out only by reference to the balance of the account; and
 - (c) disregard an affected creditor who is an excluded creditor.

Offence

- (3) A person commits an offence if:
 - (a) the person gives, or agrees or offers to give, to an affected creditor any valuable consideration; and
 - (b) the person does so with the intention of securing the affected creditor's acceptance or non-acceptance of the restructuring plan.

Penalty: 50 penalty units.

- (4) An offence based on subregulation (3) is an offence of strict liability.

Definitions

- (5) In this regulation:

acceptance period has the same meaning as in subregulation 5.3B.19(3).

5.3B.24 How a restructuring plan is *made*

- (1) If a company's proposal to make a restructuring plan is accepted in accordance with regulation 5.3B.23, the company is taken to have *made* the restructuring plan.
- (2) The restructuring plan is taken to have been *made*:
 - (a) if the plan is expressed to be conditional on the occurrence of a specified event within a specified period and the event occurs within that period—on the day after the end of that period; and
 - (b) otherwise—on the day after the end of the acceptance period.

Definitions

- (3) In this regulation:

acceptance period has the same meaning as in subregulation 5.3B.19(3).

5.3B.25 Standard terms for restructuring plans

- (1) A restructuring plan made by a company is taken to include all of the following terms:
 - (a) all admissible debts and claims rank equally;
 - (b) if the total amount paid by the company under the plan in respect of those debts or claims is insufficient to meet those debts or claims in full, those debts or claims will be paid proportionately;
 - (c) a creditor is not entitled to receive, in respect of an admissible debt or claim, more than the amount of the debt or claim;
 - (d) the amount of an admissible debt or claim will be ascertained as at the time immediately before the restructuring began; and
 - (e) if a creditor is a secured creditor:
 - (i) if the creditor does not realise the creditor's security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent (if any) by which the amount of the creditor's admissible debt or claim exceeds the value of the creditor's security interest; and
 - (ii) if the creditor realises the creditor's security interest while the plan is in force, the creditor is taken, for the purposes of working out the amount payable to the creditor under the plan, to be a creditor only to the extent of any balance due to the creditor after deducting the net amount realised.
- (2) A restructuring plan is void to the extent that it is inconsistent with any of the matters set out in subregulation (1).

5.3B.26 Parties to restructuring plan

The parties to a restructuring plan are:

- (a) the company to which the plan relates; and
- (b) any person who has an admissible debt or claim in relation to the plan.

5.3B.27 Effect of restructuring plan

- (1) This regulation applies on and after the day on which a restructuring plan is made in relation to a company.
- (2) The plan is binding on:
 - (a) subject to subregulations (3) and (4)—a creditor of the company to the extent that the creditor has an admissible debt or claim in relation to the plan; and
 - (b) the company; and
 - (c) the company’s officers and members; and
 - (d) the restructuring practitioner for the plan.
- (3) If a creditor of the company is a secured creditor, the plan is binding on the creditor:
 - (a) if the value of the creditor’s security interest is less than the value of the creditor’s admissible debts or claims—only to the extent of the difference between the values; and
 - (b) if the value of the creditor’s security interest is equal to or more than the value of the creditor’s admissible debts or claims—only to the extent that the creditor consents to be bound by the plan.
- (4) The fact that a restructuring plan has been made does not prevent a secured creditor from realising or otherwise dealing with the security interest, unless:
 - (a) the secured creditor accepted the proposal to make the plan and the plan prevents the secured creditor from doing so; or
 - (b) the Court so orders under regulation 5.3B.55.

5.3B.28 Protection of company’s property from persons bound by restructuring organisation plan

- (1) Until a restructuring plan terminates, this regulation applies to a person bound by the plan.
 - (2) A person bound by the plan cannot:
 - (a) make an application for an order to wind up the company on the basis of an admissible debt or claim; or
 - (b) proceed with such an application made before the plan became binding on the person.
 - (3) A person bound by the plan cannot:
 - (a) begin or proceed with a proceeding against the company or in relation to any of its property to recover an admissible debt or claim; or
 - (b) begin or proceed with an enforcement process in relation to property of the company to recover an admissible debt or claim;except:
 - (c) with the leave of the Court; and
 - (d) in accordance with such terms (if any) as the Court imposes.
 - (4) In subsection (3):
property of a company includes:
-

-
- (a) any PPSA retention of title property of the company; and
 - (b) any other property used or occupied by, or in the possession of, the company.

Note: See sections 9 (definition of *property*) and 51F (definition of *PPSA retention of title property*) of the Act.

5.3B.29 Rights of creditors not included in schedule of debts and claims

- (1) This regulation applies in relation to a person if:
 - (a) the person is an affected creditor of a company that has made a restructuring plan that has not terminated; and
 - (b) the person is not a related creditor of the company; and
 - (c) the person becomes aware that the person's admissible debts or claims are not specified in the schedule of debts and claims included with the company's restructuring proposal statement.
- (2) As soon as reasonably practicable after becoming so aware, the person must notify the restructuring practitioner for the plan of the omission.
- (3) A notice under subregulation (2) must:
 - (a) include detailed particulars of the debt or claim sought to be proved; and
 - (b) in the case of a debt, include a statement of account; and
 - (c) specify the vouchers (if any) by which the statement can be substantiated.
- (4) The restructuring practitioner may, after receiving a notice under subregulation (2), request that the person or the directors of the company:
 - (a) give the restructuring practitioner information about the company's business, property, affairs and financial circumstances; and
 - (b) verify the information by statutory declaration.
- (5) The restructuring practitioner must, within 5 business days of receiving a notice under subregulation (2), give a notice in writing to the company and the person:
 - (a) setting out whether the restructuring practitioner has decided to admit or reject the debt or claim; and
 - (b) giving reasons for the decision.
- (6) The restructuring practitioner must reject the debt or claim if the restructuring practitioner is satisfied that the person is a related creditor of the company.
- (7) If the restructuring practitioner decides to admit the debt or claim:
 - (a) the restructuring practitioner must:
 - (i) give notice to each of the parties to the plan of the decision; and
 - (ii) deal with the debt or claim in accordance with the terms of the plan; and
 - (b) the company is not ineligible to continue the restructuring merely because the eligibility criteria for restructuring would not have been met in relation to the company if the debt or claim had been added at the beginning of the restructuring that ended when the plan was made.

5.3B.30 When restructuring plan terminates

- (1) A company's restructuring plan terminates:

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- (a) on the day on which all of the following conditions are satisfied:
 - (i) the company's obligations under the plan have been fulfilled;
 - (ii) the obligations of any other party to the plan have been fulfilled;
 - (iii) all admissible debts or claims have been dealt with in accordance with the plan; or
- (b) if the Court makes an order under regulation 5.3B.54 terminating the plan—on the day the Court determines and specifies in the order; or
- (c) if both of the following conditions are satisfied:
 - (i) the plan is expressed to be subject to the occurrence of a specified event within a specified period of no longer than 10 business days after the plan is made;
 - (ii) the event does not occur within that period;
on the next business day after the end of that period; or
- (d) if both of the following conditions are satisfied:
 - (i) there has been a contravention of the plan by a person bound by the plan;
 - (ii) the contravention has not been rectified within the period of 30 business days beginning on the day the contravention occurred;
on the next business day after the end of that period; or
- (e) on the day on which an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or
- (f) on the day on which a liquidator or provisional liquidator of the company is appointed;

whichever happens first.

- (2) If a company's restructuring plan terminates under paragraph (1)(a):
 - (a) the company is entitled to any property that was subject to the plan but that was not required by the plan to be distributed to creditors; and
 - (b) the company is released from all admissible debts or claims.
- (3) If a company's restructuring plan terminates because of the happening of an event mentioned in paragraph (1)(b), (c), (d), (e) or (f):
 - (a) the company must, within 1 business day of the happening of the event, notify the restructuring practitioner of the termination; and
 - (b) any admissible debt or claim that has not been dealt with in accordance with the plan is taken to be due and payable on the business day after the day on which the termination occurs.

5.3B.31 Effect of termination or avoidance

The termination or avoidance, in whole or in part, of a restructuring plan does not affect the validity of anything that was done in good faith under the plan by a person before the person had notice of the termination or avoidance.

Subdivision D—Restructuring practitioner for a restructuring plan

5.3B.32 Appointment of restructuring practitioner for restructuring plan

If a company under restructuring makes a restructuring plan, the company's restructuring practitioner is to be the restructuring practitioner for the

restructuring plan unless the company, by resolution, appoints someone else to be restructuring practitioner for the plan.

5.3B.33 Functions of restructuring practitioner for restructuring plan

The functions of the restructuring practitioner for a company's restructuring plan are:

- (a) to receive money from, and hold money on trust for, the company; and
- (b) to pay the money to creditors in accordance with the plan; and
- (c) if requested to do so by the company's directors:
 - (i) to realise the property of the company that is available to pay creditors in accordance with the plan; and
 - (ii) to distribute the proceeds of the realisation of the property among the creditors in accordance with the plan; and
- (d) to answer questions about the performance or exercise of any of the restructuring practitioner's functions and powers as restructuring practitioner for the plan; and
- (e) to do anything that is incidental to the performance or exercise of the those functions and powers; and
- (f) to do anything else that is necessary or convenient for the purpose of administering the plan.

5.3B.34 When restructuring practitioner may dispose of encumbered property

- (1) The restructuring practitioner for a company's restructuring plan must not dispose of:
 - (a) property of the company that is subject to a security interest; or
 - (b) property (other than PPSA retention of title property) that is used or occupied by, or is in the possession of, the company but of which someone else is the owner or lessor.

Note: PPSA retention of title property is subject to a PPSA security interest, and so is covered by paragraph (a) (see definition of *PPSA retention of title property* in section 51F of the Act).

- (2) Subregulation (1) does not prevent a disposal:
 - (a) in the ordinary course of the company's business; or
 - (b) with the written consent of the secured party, owner or lessor, as the case may be; or
 - (c) with the leave of the Court.
- (3) The Court may only give leave under paragraph (2)(c) if satisfied that arrangements have been made to adequately protect the interests of the secured party, owner or lessor, as the case may be.
- (4) If the restructuring practitioner proposes to dispose of property under paragraph (2)(a), the Court may, by order, direct the restructuring practitioner not to carry out that proposal.
- (5) The Court may only make an order under subregulation (4) on the application of:
 - (a) if paragraph (1)(a) applies—the secured party; or
 - (b) if paragraph (1)(b) applies—the owner or lessor, as the case may be.

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- (6) The Court may only make an order under subregulation (4) if it is not satisfied that arrangements have been made to protect adequately the interests of the applicant for the order.
- (7) If:
- (a) a company has made a restructuring plan that has not terminated; and
 - (b) property of the company is subject to a security interest; and
 - (c) the restructuring practitioner disposes of the property;
- the disposal extinguishes the security interest.
- (8) For the purposes of paragraph (2)(a), if:
- (a) property is used or occupied by, or is in the possession of, a company; and
 - (b) another person is the owner of the property; and
 - (c) either:
 - (i) the property is PPSA retention of title property; or
 - (ii) the property is subject to a retention of title clause under a contract;and
 - (d) the owner demands the return of the property;
- a disposal of the property that occurs after the demand is made does not mean that the disposal is not in the ordinary course of the company's business.

5.3B.35 Restructuring practitioner acts as company's agent

When performing a function or duty, or exercising a power, as restructuring practitioner for a company's restructuring plan, the restructuring practitioner is taken to be acting as the company's agent.

5.3B.36 Restructuring practitioner has qualified privilege

A person who is or has been the restructuring practitioner for a company's restructuring plan has qualified privilege in respect of a statement that the person has made, whether orally or in writing, in the course of performing or exercising any of his or her functions and powers as restructuring practitioner for the plan.

5.3B.37 Restructuring practitioner for plan not liable for things done in good faith etc.

The restructuring practitioner for a restructuring plan is not liable to an action or other proceeding for damages in respect of any thing done by the restructuring practitioner, in good faith and without negligence, in the performance or exercise, or purported performance or exercise, of any of the restructuring practitioner's functions, powers or duties as restructuring practitioner for the plan.

5.3B.38 Right of indemnity

A person who is or has been the restructuring practitioner for a company's restructuring plan is entitled to be indemnified out of the company's property (other than any PPSA retention of title property subject to a PPSA security interest that is perfected within the meaning of the *Personal Property Securities Act 2009*) for:

- (a) any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the restructuring practitioner:
 - (i) in the performance or purported performance of the restructuring practitioner's functions or duties; or
 - (ii) in the exercise or purported exercise of the restructuring practitioner's powers; and
- (b) the remuneration to which the restructuring practitioner is entitled under Insolvency Practice Rules made under Subdivision DA of Division 60 of Schedule 2 to the Act.

5.3B.39 Right of indemnity has priority over other debts

General rule

- (1) Subject to section 556 of the Act, a right of indemnity under regulation 5.3B.38 has priority over:
 - (a) all the company's unsecured debts; and
 - (b) any debts of the company secured by a PPSA security interest in property of the company if, when the restructuring of the company begins, the security interest is vested in the company because of the operation of any of the following provisions:
 - (i) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);
 - (ii) section 588FL of the Act (collateral not registered within time); and
 - (c) subject otherwise to this section—debts of the company secured by a circulating security interest in property of the company.

Debts secured by circulating security interests—receiver appointed before the beginning of restructuring etc.

- (2) A right of indemnity under regulation 5.3B.38 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party agrees, if:
 - (a) before the making of the restructuring plan, the secured party:
 - (i) appointed a receiver of property of the company under a power contained in an instrument relating to the security interest; or
 - (ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or
 - (iii) entered into possession, or assumed control, of property of the company for that purpose; or
 - (iv) appointed a person so as to enter into possession or assume control (whether as agent for the secured party or for the company); and
 - (b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

Debts secured by circulating security interests—receiver appointed after restructuring plan made etc.

- (3) Subregulation (4) applies if:
 - (a) debts of the company are secured by a circulating security interest in property of the company; and

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- (b) after the company's restructuring plan is made, the secured party, consistently with Part 5.3B of the Act:
 - (i) appoints a receiver of property of the company under a power contained in an instrument relating to the security interest; or
 - (ii) obtains an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or
 - (iii) enters into possession, or assumes control, of property of the company for that purpose; or
 - (iv) appoints a person to enter into possession or assume control (whether as agent for the secured party or for the company).
- (4) A right of indemnity of the restructuring practitioner under regulation 5.3B.38 has priority over those debts only in so far as it is a right of indemnity for debts incurred, or remuneration accruing, before written notice of the appointment, or of the entering into possession or assuming of control, as the case may be, was given to the restructuring practitioner.

Debts secured by circulating security interests—priority over right of indemnity in relation to repayment of money borrowed etc.

- (5) A right of indemnity under regulation 5.3B.38 does not have priority over debts of the company that are secured by a circulating security interest in property of the company, except so far as the secured party consents in writing, to the extent that the right of indemnity relates to debts incurred for:
 - (a) the repayment of money borrowed; or
 - (b) interest in respect of money borrowed; or
 - (c) borrowing costs.

5.3B.40 Lien to secure indemnity

- (1) To secure a right of indemnity under regulation 5.3B.38, the restructuring practitioner has a lien on the company's property.
- (2) A lien under subsection (1) has priority over another security interest only in so far as the right of indemnity under regulation 5.3B.38 has priority over debts secured by the other security interest.

Division 4—The restructuring practitioner

5.3B.41 Authority

This Division is made for the purposes of subsection 456G(1) of the Act.

5.3B.42 Company must notify restructuring practitioner of certain matters

- (1) The directors of a company that has made a restructuring plan that has not terminated must notify the restructuring practitioner for the plan of an event mentioned in subregulation (2) within 5 business days of the event.
- (2) The events that must be notified are as follows:
 - (a) the directors become aware that the company is not likely to be able to discharge the obligations created by the plan as and when they fall due;

- (b) an administrator of the company is appointed under section 436A, 436B or 436C of the Act; or
- (c) a liquidator or provisional liquidator of the company is appointed;
- (d) all of the following conditions are satisfied:
 - (i) the company's obligations under the plan have been fulfilled;
 - (ii) the obligations of any other party to the plan have been fulfilled;
 - (iii) all creditors' admissible debts or claims under the plan have been dealt with in accordance with the plan.

Division 5—Information, reports, documents etc.

Subdivision A—Preliminary

5.3B.43 Authority

This Division is made for the purposes of section 457A of the Act.

Subdivision B—Information, reports, documents etc. during restructuring

5.3B.44 Declaration by directors—eligibility to be under restructuring and other matters

- (1) Within 5 business days after the restructuring of a company begins or such longer period as the company's restructuring practitioner allows, the directors of the company must give to the restructuring practitioner a declaration in the prescribed form in accordance with this regulation.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

- (2) The declaration must:
 - (a) state whether the company has entered into a transaction that would be voidable under section 588FE of the Act if:
 - (i) the company were being wound up because the company had resolved by special resolution that it be wound up voluntarily; and
 - (ii) the resolution had been passed on the day on which the declaration is given; and
 - (iii) the company were under restructuring immediately before the company passed the resolution; and
 - (iv) the relation-back day were the day on which the restructuring of the company began;
other than a transaction that would be an unfair preference; and
 - (b) state whether, in the directors' opinion, there are reasonable grounds to believe that the eligibility criteria for restructuring were met in relation to the company at the time the restructuring began, and set out the reasons for that opinion.

Note: A declaration must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see section 1308 of the Act.

- (3) The declaration must be signed by each director of the company.

5.3B.45 Notice of appointment of restructuring practitioner

- (1) Within 1 business day after a restructuring practitioner for a company is appointed, the restructuring practitioner must lodge a notice of the appointment with ASIC in accordance with subregulation 5.6.75(4).

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

- (2) Within 1 business day after a restructuring practitioner for a company is appointed, the restructuring practitioner must give information about the following to as many of the company's creditors as reasonably practicable:
- (a) the fact that the restructuring practitioner has been appointed in relation to the company; and
 - (b) the name of the company;
 - (c) any trading name of the company;
 - (d) the ACN of the company;
 - (e) the name and contact details of the restructuring practitioner;
 - (f) the date on which the restructuring practitioner was appointed;
 - (g) the restructuring process and the process of making a restructuring plan, including:
 - (i) the proposal period in relation to the company; and
 - (ii) the amount of time in which an affected creditor may decide whether a proposed restructuring plan should be accepted; and
 - (iii) how an affected creditor may verify or dispute the creditor's admissible debts or claims;
 - (h) how a person may obtain further information about the restructuring process and the process of making a restructuring plan;
 - (i) the right of creditors to request information, reports and documents under sections 70-40 and 70-45 of Schedule 2 to the Act.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.46 Notice of lapsing of proposal to make restructuring plan

If a company's proposal to make a restructuring plan lapses under regulation 5.3B.18, the restructuring practitioner for the company must, within 5 business days of the day on which the plan lapsed:

- (a) give written notice of the following to as many of the company's creditors as reasonably practicable:
 - (i) the lapsing of the restructuring plan;
 - (ii) the reason for the lapsing; and
- (b) lodge with ASIC notice in the prescribed form of the lapsing of the restructuring plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Subdivision C—Information, reports, documents etc. once restructuring plan is made

5.3B.47 Notice of making of restructuring plan

If a company makes a restructuring plan, the restructuring practitioner for the plan must, within 5 business days after the day on which the plan was made:

- (a) give to as many of the company's creditors as reasonably practicable a written notice:
 - (i) stating that the plan has been made; and
 - (ii) specifying the day on which the plan was made; and
- (b) lodge with ASIC notice in the prescribed form of the making of the plan, including information about the total value of the debts and claims set out in the schedule of debts and claims included with the company's restructuring proposal statement.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.48 Notice of contravention of restructuring plan

Director to notify restructuring practitioner

- (1) If a director of a company that has made a restructuring plan becomes aware that:
 - (a) there has been a contravention of the plan by a person bound by the plan (who may be the director); or
 - (b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the director);

the director must, as soon as practicable after becoming aware of the contravention or likely contravention, give notice of the contravention or likely contravention to the restructuring practitioner for the plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Restructuring practitioner to notify company's creditors

- (2) If the restructuring practitioner for a restructuring plan becomes aware that:
 - (a) there has been a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner); or
 - (b) there is likely to be a contravention of the plan by a person bound by the plan (who may be the restructuring practitioner);

the restructuring practitioner must, as soon as practicable after becoming aware of the contravention or likely contravention, give notice of the contravention or likely contravention to as many of the company's creditors as reasonably practicable. The notice must be lodged with ASIC and must be in the prescribed form (if any).

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

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5.3B.49 Notice of termination of restructuring plan

- (1) If a company's restructuring plan terminates because of paragraph 5.3B.30(1)(a), the restructuring practitioner for the plan must, within 5 business days of the day on which the plan terminated:
 - (a) give written notice of the termination of the plan to:
 - (i) the company; and
 - (ii) as many of the company's creditors as reasonably practicable; and
 - (b) lodge with ASIC notice in the prescribed form of the termination of the plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

- (2) If a company's restructuring plan terminates otherwise than because of paragraph 5.3B.30(1)(a), the restructuring practitioner for the plan must, within 5 business days of the day on which the plan terminated:
 - (a) give written notice of the following to the company and as many of the company's creditors as reasonably practicable:
 - (i) the termination of the plan;
 - (ii) the reason for the termination; and
 - (b) lodge with ASIC notice in the prescribed form of the termination of the plan.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Division 6—Powers of Court

5.3B.50 Authority

This Division is made for the purposes of subsection 458B(1) of the Act.

5.3B.51 Court may make orders in relation to creditor disputes

- (1) This regulation applies if:
 - (a) a company proposes to make a restructuring plan; and
 - (b) a creditor of the company notifies the restructuring practitioner for the plan under regulation 5.3B.20 that the creditor disagrees with the company's assessment of:
 - (i) the creditor's admissible debts or claims; or
 - (ii) the creditor's status as an excluded creditor;as set out in the schedule of debts and claims included with the company's restructuring proposal statement; and
 - (c) the restructuring practitioner makes, or refuses to make, a recommendation under regulation 5.3B.20 to vary the schedule of debts and claims.
- (2) The Court may, on the application of the creditor, make an order to do one or more of the following:
 - (a) vary the schedule of debts and claims as set out in the order;
 - (b) extend the acceptance period for the proposal to make the restructuring plan.

- (3) If the Court makes an order under subregulation (2), the restructuring practitioner for the plan must, within 5 business days after the day on which the order is made:

- (a) give to as many of the company's creditors as is reasonably practicable written notice:
- (i) setting out the terms of the order; and
 - (ii) outlining the creditors' rights under regulation 5.3B.21; and
- (b) lodge with ASIC notice in the prescribed form of the order.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

5.3B.52 When Court may vary restructuring plan

- (1) A restructuring plan that has been made by a company must not be varied except in accordance with this regulation.
- (2) The Court may make an order varying a restructuring plan:
- (a) on its own initiative; or
 - (b) on the application of:
 - (i) the company; or
 - (ii) an affected creditor; or
 - (iii) the company's restructuring practitioner; or
 - (iv) ASIC.

5.3B.53 When Court may void or validate restructuring plan

Voiding of restructuring plan

- (1) The Court may make an order declaring that all or part of a company's restructuring plan is void if the Court is satisfied that:
- (a) there are reasonable grounds to believe that the plan, or a part of the plan, was not made in accordance with, or does not comply with, the Act or these regulations;
 - (b) the restructuring practitioner for the plan has committed a breach of duty in relation to the plan;
 - (c) the restructuring practitioner for the plan has breached a condition of the restructuring practitioner's registration as a liquidator;
 - (d) the restructuring practitioner for the plan has breached a condition imposed under section 20-35 of Schedule 2 to the Act, to the extent that the condition relates to restructuring plans.
- (2) The Court may make any other order that it thinks appropriate in relation to the declaration.

Validity of plan despite contravention

- (3) The Court may make an order declaring that all or part of a company's restructuring plan is valid, despite a contravention of a provision of the Act or these regulations, if the Court is satisfied that:
- (a) the provision was substantially complied with; and

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- (b) no injustice will result for anyone bound by the plan if the contravention is disregarded.

Applications for orders under this regulation

- (4) The Court may make an order under this regulation on the application of:
 - (a) the company; or
 - (b) an affected creditor; or
 - (c) the company's restructuring practitioner; or
 - (d) ASIC.
- (5) However, an application for an order under this regulation must not be made if the plan has terminated because of paragraph 5.3B.30(1)(a).

5.3B.54 When Court may terminate restructuring plan

- (1) The Court may make an order terminating a company's restructuring plan if the Court is satisfied that:
 - (a) information about the company's business, property, affairs or financial circumstances that:
 - (i) was false or misleading; and
 - (ii) can reasonably be expected to have been material to the affected creditors in deciding whether to accept the plan;
was contained in the plan or the restructuring proposal statement that accompanied the plan; or
 - (b) there was an omission from the plan or statement and the omission can reasonably be expected to have been material to such creditors in so deciding; or
 - (c) there has been a material contravention of the plan by a person bound by the plan; or
 - (d) effect cannot be given to the plan without injustice or undue delay; or
 - (e) the plan or a provision of it is, an act or omission done or made under the plan was, or an act or omission proposed to be so done or made would be contrary to the interests of the creditors of the company as a whole; or
 - (f) the plan should be terminated for some other reason.
- (3) The Court may make an order under this regulation:
 - (a) on its own initiative; or
 - (b) on the application of:
 - (i) the company; or
 - (ii) an affected creditor; or
 - (iii) the restructuring practitioner for the company or for the plan; or
 - (iv) ASIC.

5.3B.55 Court may limit rights of secured creditor or owner or lessor

- (1) This regulation applies where:
 - (a) a company is under restructuring; or
 - (b) a company makes a restructuring plan that has not terminated.

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Restructuring of a company **Schedule 1**

- (2) Subject to subsection 454C(3) of the Act, the Court may order a secured creditor of the company not to realise or otherwise deal with the security interest, except as permitted by the order.
- (3) The Court may only make an order under subregulation (2) if satisfied that:
 - (a) for the creditor to realise or otherwise deal with the security interest would have a material adverse effect on achieving the purposes of the plan; and
 - (b) having regard to:
 - (i) the terms of the plan; and
 - (ii) the terms of the order; and
 - (iii) any other relevant matter;the creditor's interests will be adequately protected.
- (4) The Court may order the owner or lessor of property that is used or occupied by, or is in the possession of, the company not to take possession of the property or otherwise recover it.
- (5) Subregulation (4) does not apply in relation to PPSA retention of title property of the company.
- (6) The Court may only make an order under subregulation (4) if satisfied that:
 - (a) for the owner or lessor to take possession of the property or otherwise recover it would have a material adverse effect on achieving the purposes of the plan; and
 - (b) having regard to:
 - (i) the terms of the plan; and
 - (ii) the terms of the order; and
 - (iii) any other relevant matter;the interests of the owner or lessor will be adequately protected.
- (7) An order under this regulation may be made subject to conditions.
- (8) An order under this regulation may only be made on the application of:
 - (a) if paragraph (1)(a) applies—the restructuring practitioner for the company; or
 - (b) if paragraph (1)(b) applies—the restructuring practitioner for the plan.

2 Paragraph 5.6.75(1)(a)

After “5.3A,”. insert “5.3B,”.

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Schedule 2—Temporary relief for companies seeking a restructuring practitioner

Corporations Regulations 2001

1 Before regulation 5.4.01

Insert:

5.4.01AAA Temporary increase to the statutory minimum and statutory period—companies eligible for temporary restructuring relief

- (1) For the purposes of paragraph (a) of the definition of statutory minimum in section 9 of the Act, the amount prescribed is:
 - (a) in relation to a company that is eligible for temporary restructuring relief—\$20,000; and
 - (b) otherwise—\$2,000.
- (2) For the purposes of paragraph (a) of the definition of statutory period in section 9 of the Act, the period prescribed is:
 - (a) in relation to a company that is eligible for temporary restructuring relief—6 months; and
 - (b) otherwise—21 days.
- (3) This regulation is repealed at the end of 31 July 2021.

2 Form 509H (note 2) of Schedule 2

Repeal the note, substitute:

2. The amount of the debt or, if there is more than one debt, the total of the amounts of the debts, must exceed the statutory minimum. The statutory minimum is \$2,000 or a greater amount prescribed by the regulations. For a 7-month period in 2021, a greater amount of \$20,000 is prescribed in relation to a company that is eligible for temporary restructuring relief (see the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

3 Form 509H (note 5) of Schedule 2

Repeal the note, substitute:

5. The statutory period is 21 days or a longer period prescribed by the regulations. For a 7-month period in 2021, a longer period of 6 months is prescribed in relation to a company that is eligible for temporary restructuring relief (see the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

Schedule 3—Simplified liquidation

Corporations Regulations 2001

1 Before regulation 5.5.01

Insert:

Division 1—Resolution for winding up

2 At the end of Part 5.5

Add:

Division 2—Simplified liquidation process

Subdivision A—Preliminary

5.5.02 Declaration about eligibility for simplified liquidation process and other matters

For the purposes of subsection 498(3) of the Act, the following information is prescribed:

- (a) whether the company has entered into a transaction that would be voidable under section 588FE of the Act, other than a transaction that would be an unfair preference; and
- (b) whether, in the directors' opinion, there are reasonable grounds to believe that, on the declaration being given, the eligibility criteria for the simplified liquidation process will be met in relation to the company, and the reasons for that opinion.

5.5.03 Eligibility criteria for simplified liquidation process

- (1) For the purposes of paragraph 500AA(1)(d) of the Act, the test for eligibility is that the total liabilities of the company on the day on which the triggering event occurred must not exceed \$1 million.
- (2) For the purposes of paragraph 500AA(1)(e) of the Act, a period of 7 years is prescribed.
- (3) For the purposes of paragraph 500AA(1)(f) of the Act, a period of 7 years is prescribed.
- (4) For the purposes of paragraph 500AA(2)(b) of the Act, a prescribed circumstance is that:
 - (a) the other company is a related body corporate of the company in relation to which the eligibility criteria are to be met; and
 - (b) the other company is, or has been:
 - (i) under restructuring; or
 - (ii) the subject of a simplified liquidation process; and
 - (c) if subparagraph (b)(i) applies—the restructuring practitioner for the other company was appointed no more than 20 business days before the day on

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which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process; and

- (d) if subparagraph (b)(ii) applies—the other company began to follow the simplified liquidation process no more than 20 business days before the day on which the company in relation to which the eligibility criteria are to be met began to follow the simplified liquidation process.
- (5) For the purposes of paragraph 500AA(2)(c) of the Act, a prescribed circumstance is that:
- (a) the company has been under restructuring; and
 - (b) the restructuring terminated no more than 20 business days before the day on which the company began to follow the simplified liquidation process.

Definitions

- (6) In this regulation:

liability means any liability or obligation that is not contingent.

Subdivision B—Simplified liquidation process

5.5.04 Transactions that are not voidable

- (1) For the purposes of paragraph 500AE(3)(b) of the Act, this regulation prescribes circumstances in which a transaction is not voidable despite section 588FE of the Act.
- (2) An unfair preference of a company is not voidable despite subsection 588FE(2) of the Act, provided:
- (a) the transaction was not entered into, and no act was done for the purpose of giving effect to it:
 - (i) during the 3 months ending on the relation-back day; or
 - (ii) after that day but on or before the day when the winding up began; and
 - (b) no creditor under the transaction is a related entity of the company; and
 - (c) either:
 - (i) the transaction results in the creditor receiving from the company no more than \$30,000 in value; or
 - (ii) if the transaction forms part of a series of related transactions, all of the related transactions result in the creditor receiving from the company no more than \$30,000 in value;
 - (d) the company is subject to the simplified liquidation process.

5.5.05 Reports by liquidator

- (1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act and applies in relation to the liquidator of a company that is subject to the simplified liquidation process.
- (2) If, in the opinion of the liquidator, there are reasonable grounds to believe that:
- (a) a past or present officer or employee, or a member or contributory, of the company; or

- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the company;
may have engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole, the liquidator must:
 - (c) as soon as practicable, and in any event within 6 months, after first forming the opinion, lodge a report with respect to the matter and state in the report whether the liquidator proposes to make an application for an examination or order under section 597 of the Act; and
 - (d) give ASIC such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as ASIC requires.
- (3) The liquidator may also, if the liquidator thinks fit, lodge further reports specifying any other matter that, in his or her opinion, it is desirable to bring to the notice of ASIC.
- (4) If it appears to the Court, in the course of winding up a company, that:
 - (a) a person mentioned in paragraph (2)(a) or (b) has engaged in conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company that has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole; and
 - (b) the liquidator has not lodged with ASIC a report with respect to the matter; the Court may, on the application of a person interested in the winding up, direct the liquidator so to lodge such a report.

5.5.06 Notice of adoption of simplified liquidation process

- (1) This regulation is made for the purposes of paragraph 500AE(3)(f) of the Act.
- (2) If the liquidator of a company adopts the simplified liquidation process, the liquidator must, within 5 business days, lodge with ASIC notice in the prescribed form of the adoption.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Subdivision C—Ceasing of simplified liquidation process

5.5.07 Liquidator must cease to follow the simplified liquidation process

- (1) For the purposes of paragraph 500AC(1)(b) of the Act, a prescribed circumstance is that the liquidator believes on reasonable grounds that:
 - (a) the company, or a director of the company, has engaged in conduct; and
 - (b) the conduct involved fraud or dishonesty; and
 - (c) the conduct has had, or is likely to have, a material adverse effect on the interests of the creditors as a whole or of a class of creditors as a whole.
- (2) The liquidator is taken to have ceased to follow the simplified liquidation process on the day on which the liquidator first held the belief.

5.5.08 Transition from simplified liquidation process

- (1) This regulation is made for the purposes of subsection 500AC(2) of the Act.

Notice of cessation of process

- (2) If the liquidator of a company ceases to follow the simplified liquidation process, the liquidator must, within 5 business days, lodge with ASIC notice in the prescribed form of the cessation.

Note: Failure to comply with this subregulation is an offence: see subsection 1311(1) of the Act.

Validity of things done during process

- (3) Subject to this regulation, the cessation of the simplified liquidation process in relation to a company does not affect the validity of anything that was done in good faith in relation to the company before the cessation.

Reports by liquidator

- 43) If, at any time during the simplified liquidation process, it appeared to the liquidator that one or more of the circumstances in paragraph 533(1)(a), (b) or (c) existed, section 533 of the Act applies in relation to the liquidator as if paragraph 533(1)(d) were modified by omitting “within 6 months” and substituting “within 6 months of the day on which the simplified liquidation process in relation to the company ended”.

5.5.09 Working out whether the 25% in value of creditors test met

For the purposes of paragraph 500AD(b) of the Act, a person who is a related entity, and a creditor, of the company is not to be taken into account.

3 Before subregulation 5.6.39(1)

Insert:

*Companies not subject to the simplified liquidation process***4 Subregulation 5.6.39(1)**

Omit “A liquidator”, substitute “Subject to subregulations (1A) and (1B), a liquidator”.

5 After subregulation 5.6.39(1)

Insert:

Companies subject to the simplified liquidation process

- (1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.
- (1B) A liquidator of a company that is subject to the simplified liquidation process must fix a single day that is 14 days after the day on which notice is given in accordance with subregulation (2), on or before which a creditor may submit particulars of his or her debt or claim.

6 Before subregulation 5.6.39(2)

Insert:

Notice requirements

7 Subregulations 5.6.39(2) and (3)

Omit “The notice”, substitute “A notice under subregulation (1) or (1B)”.

8 Paragraph 5.6.39(3)(d)

After “subregulation (1)”, insert “or (1B), as the case requires”.

9 At the end of regulation 5.6.39

Add:

- (4) A notice under subregulation (1B) may include a requirement that all, or a specified class, of debts or claims must be proved formally.

10 Before subregulation 5.6.48(1)

Insert:

Companies not subject to the simplified liquidation process

11 Subregulation 5.6.48(1)

Omit “A liquidator”, substitute “Subject to subregulation (1A), a liquidator”.

12 After subregulation 5.6.48(1)

Insert:

Companies subject to the simplified liquidation process

- (1A) Subregulation (1) does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

Note: A notice given under subregulation 5.6.39(1B) may include a requirement that the creditors of a company that is subject to the simplified liquidation process must formally prove all or a specified class of debts or claims (see subsection 5.6.39(4)).

13 Before subregulation 5.6.48(2)

Insert:

Notice requirements

14 Subregulation 5.6.48(2)

Omit “the notice”, substitute “a notice under subregulation (1)”.

15 Subregulation 5.6.48(3)

Omit “The notice”, substitute “A notice under subregulation (1)”.

16 Before subregulation 5.6.48(4)

Insert:

Failure to comply with liquidator's requirements

17 Subregulation 5.6.65(1)

Omit “The liquidator”, substitute “Subject to subregulation (1A), the liquidator”.

18 After subregulation 5.6.65(1)

Insert:

- (1A) The requirement in subregulation (1) that the notice must be given not more than 2 months before the intended date does not apply in relation to a liquidator of a company that is subject to the simplified liquidation process.

19 After regulation 5.6.67

Insert:

5.6.67A Single declaration and distribution of dividend for companies in simplified liquidation

The liquidator of a company that is subject to the simplified liquidation process may declare and distribute a dividend only once among creditors whose debts or claims have been admitted.

20 At the end of regulation 5.6.68

Add:

- (3) This regulation does not apply in relation to a creditor of a company that is subject to the simplified liquidation process.

21 In the appropriate position in Chapter 10

Insert:

Part 10.43—Application provisions relating to simplified liquidation process under the Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020

10.43.01 Application of amendments relating to the simplified liquidation process

- (1) The amendments made by Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* apply in relation to the winding up of a company because of a triggering event that occurs on or after the commencement of that Schedule.

- (2) In this regulation:

triggering event has the same meaning as in section 489F of the Act (as in force on the commencement of Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020*).

Schedule 4—Virtual meetings and electronic communications

Corporations Regulations 2001

1 Regulation 5.6.11A

Repeal the regulation.

2 Subregulation 5.6.48(2) (note)

Repeal the note.

3 Subregulation 5.6.53(1) (note)

Repeal the note.

4 Subregulation 5.6.54(1) (note)

Repeal the note.

5 Subregulation 5.6.55(3) (note)

Repeal the note.

6 Subregulation 5.6.59(1) (note)

Repeal the note.

7 Subregulation 5.6.62(1) (note)

Repeal the note.

8 Subregulation 5.6.65(1) (note)

Repeal the note.

9 Subregulation 5.6.66(1) (note)

Repeal the note.

10 Subregulation 5.6.66(3) (note)

Repeal the note.

11 Subregulation 5.6.75(6)

Repeal the regulation.