

# EXPOSURE DRAFT



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## **Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021**

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I, Michael Sukkar, Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, make the following rules.

Dated 2021

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]

Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

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## 1 Name

This instrument is the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Schedule 1—Amendments

### *Insolvency Practice Rules (Corporations) 2016*

#### **1 Section 5-5**

Insert:

*show of hands*: a vote taken on a show of hands includes a vote taken using any electronic mechanism that indicates the intentions of a person in respect of the vote.

#### **2 Subsection 50-6(4)**

Repeal the subsection, substitute:

- (4) If virtual meeting technology is used in holding the meeting, each member must be given the opportunity to participate in the vote in real time.

#### **3 Subsection 50-6(7)**

Repeal the subsection (not including the heading), substitute:

- (7) If:
- (a) virtual meeting technology is used in holding a meeting; and
  - (b) a document is required or permitted to be tabled at the meeting;
- the document is taken to have been tabled at the meeting if a copy of the document is made reasonably accessible to persons attending the meeting, for example by:
- (c) giving a copy of the document before the meeting to the persons entitled to attend the meeting; or
  - (d) giving a copy of the document during the meeting to the persons attending the meeting; or
  - (e) screencasting the document in a reasonable way during the meeting to the persons attending the meeting, as a whole.

#### **4 Subsection 50-7(2)**

Omit “at a place”.

#### **5 Paragraph 50-7(2)(a)**

Repeal the paragraph, substitute:

- (a) the minutes are kept in electronic form; and

#### **6 Subparagraphs 50-85(2)(c)(i) and (ii)**

Omit “applicant”, substitute “liquidator”.

#### **7 Subparagraph 75-15(1)(a)(iii)**

Repeal the subparagraph, substitute:

- (iii) if virtual meeting technology is to be used in holding the meeting and none of the persons entitled to attend the meeting is entitled to physically attend—the physical address in this jurisdiction nominated by the convenor of the meeting for the purposes of paragraph 75-75(6)(a) (the notional place for the meeting); and

## **8 After paragraph 75-15(1)(b)**

Insert:

- (ba) if virtual meeting technology is to be used in holding the meeting—specify whether votes at the meeting must be taken on a poll; and

## **9 Paragraph 75-40(2)(db)**

Repeal the paragraph, substitute:

- (db) if virtual meeting technology is to be used in holding the meeting:
  - (i) that virtual meeting technology is to be used in holding the meeting; and
  - (ii) that sufficient information has been given to persons who are entitled to attend the meeting to participate in the meeting by means of the technology; and
  - (iii) if none of the persons entitled to attend the meeting is entitled to physically attend the meeting—the physical address in this jurisdiction nominated by the convenor of the meeting for the purposes of paragraph 75-75(6)(a) (the notional place for the meeting);

## **10 Subsection 75-75(3)**

Repeal the subsection, substitute:

- (3) A vote taken at the meeting must be taken:
  - (a) on a poll, if:
    - (i) the notice of the meeting specifies that votes taken at the meeting must be taken on a poll; or
    - (ii) a poll is requested by the person presiding at the meeting or by a person participating and entitled to vote at the meeting; or
  - (b) otherwise—on a show of hands.

Note: A vote on a show of hands may be taken using electronic mechanisms: see the definition of *show of hands* in section 5-5.

## **11 Subsection 75-75(4)**

Repeal the subsection, substitute:

- (4) All persons so participating in the meeting who are entitled to vote at the meeting:
  - (a) must be given the opportunity to participate in the vote in real time; and
  - (b) may be given the opportunity to record a vote in advance of the meeting at the election of the voter.

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## Schedule 1 Amendments

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### 12 Paragraph 75-75(6)(a)

Repeal the paragraph, substitute:

- (a) the place for the meeting is taken to be the physical address in this jurisdiction nominated by the convenor of the meeting in the notice of the meeting; and

### 13 Subsection 75-75(7)

Repeal the subsection (not including the heading), substitute:

(7) If:

- (a) virtual meeting technology is used in holding a meeting; and
- (b) a document is required or permitted to be tabled at the meeting;

the document is taken to have been tabled at the meeting if a copy of the document is made reasonably accessible to persons attending the meeting, for example by:

- (c) giving a copy of the document before the meeting to the persons entitled to attend the meeting; or
- (d) giving a copy of the document during the meeting to the persons attending the meeting; or
- (e) screencasting the document in a reasonable way during the meeting to the persons attending the meeting, as a whole.

### 14 Subsection 75-110(1)

Repeal the subsection, substitute:

(1) A resolution put to the vote at a meeting is to be decided:

- (a) if virtual meeting technology is not used in holding the meeting:
  - (i) if a poll is requested by the person presiding at the meeting or by a person participating and entitled to vote at the meeting—on a poll; or
  - (ii) otherwise—on the voices; or
- (b) if virtual meeting technology is used in holding the meeting—in accordance with subsection 75-75(3).

### 15 Subsection 75-110(2)

Omit “subparagraph (1)(a)(ii)”, substitute “subparagraph (1)(a)(i)”.

### 16 Paragraph 120-5(b)

After “this Act”, insert “(as defined in section 9 of the Act)”.

### 17 At the end of Part 5

Add:



## **Division 125—Transitional matters relating to Schedule 1 to the Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021**

### **125-1 Definitions**

In this Division:

*amending Rules* means the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021*.

*commencement day* means the day on which Schedule 1 to the amending Rules commences.

### **125-5 Application—virtual meetings**

The amendments made by Schedule 1 to the amending Rules apply in relation to a meeting if:

- (a) the meeting is held on or after the commencement day; and
- (b) each document that relates to the meeting that is required or permitted to be given to a person under this Act (as defined in section 9 of the Act) is given on or after the commencement day.

### **125-10 Application—keeping of information**

The amendments made by Schedule 1 to the amending Rules apply in relation to information kept before, on or after the commencement day.