

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (01/10/2020)

Corporations Amendment (Corporate Insolvency Reforms) Bill 2020

No. , 2020

(Treasury)

**A Bill for an Act to amend the law in relation to
insolvency, and for related purposes**

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1 **A Bill for an Act to amend the law in relation to**
2 **insolvency, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Corporations Amendment (Corporate Insolvency*
6 *Reforms) Act 2020*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	The day after this Act receives the Royal Assent.	
4. Schedule 3	The day after this Act receives the Royal Assent.	
5. Schedule 4, Part 1	The day after this Act receives the Royal Assent. However, the provisions do not commence at all if [<i>the Chapter 2G reforms</i>] commences before the time this Act commences.	
6. Schedule 4, Part 2	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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Restructuring of a company **Schedule 1**
Core provisions **Part 1**

1 **Schedule 1—Restructuring of a company**

2 **Part 1—Core provisions**

3 *Corporations Act 2001*

4 **1 After Part 5.3A**

5 Insert:

6 **Part 5.3B—Restructuring of a company**

7 **Division 1—Preliminary**

8 **452A Object of this Part**

9 The object of this Part, and Schedule 2 to the extent that it relates
10 to this Part, is to provide for a restructuring process for eligible
11 companies that allows the companies:

- 12 (a) to retain control of the business, property and affairs while
13 developing a plan to restructure with the assistance of a small
14 business restructuring practitioner; and
15 (b) to enter into a restructuring plan with creditors.

16 Note: Schedule 2 contains additional rules about the restructuring process.

17 **452B Definitions**

18 In this Part, unless the contrary intention appears:

19 *property* of a company includes any PPSA retention of title
20 property of the company.

21 Note: See sections 9 (definition of *property*) and 51F (PPSA retention of
22 title property). An extended definition of *property* applies in
23 subsection 444E(3) (see subsection 444E(4)).

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Schedule 1 Restructuring of a company

Part 1 Core provisions

1 **Division 2—Restructuring**

2 **Subdivision A—When restructuring begins and ends**

3 **453A When restructuring begins and ends**

4 The *restructuring* of a company:

- 5 (a) begins when a restructuring practitioner of the company is
6 appointed under section 453B; and
7 (b) ends in the circumstances prescribed by the regulations.

8 **Subdivision B—Appointment of restructuring practitioner**

9 **453B Appointing a restructuring practitioner**

- 10 (1) A company may, by writing, appoint a small business restructuring
11 practitioner for the company if:
12 (a) the eligibility criteria for restructuring are met in relation to
13 the company on the day the appointment is made; and
14 (b) the board has resolved to the effect that:
15 (i) the directors voting for the resolution have reasonable
16 grounds for suspecting that the company is insolvent, or
17 is likely to become insolvent at some future time; and
18 (ii) a restructuring practitioner for the company should be
19 appointed.
- 20 (2) A company must not appoint a restructuring practitioner under
21 subsection (1) if:
22 (a) the company is already under restructuring; or
23 (b) the company is under administration; or
24 (c) the company has executed a deed of company arrangement
25 that has not yet terminated; or
26 (d) a person holds an appointment as liquidator, provisional
27 liquidator or administrator of the company.

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1 **453C Eligibility criteria for restructuring**

- 2 (1) The *eligibility criteria* for restructuring are met in relation to a
3 company if, on the day on which a restructuring practitioner for the
4 company is appointed:
- 5 (a) in a case where the regulations prescribe a test for eligibility
6 based on the liabilities of the company—that test is satisfied
7 on that day; and
- 8 (b) no person who:
- 9 (i) is a director of the company; or
10 (ii) has been a director of the company within the 12
11 months immediately preceding that day;
12 has been a director of another company that has been under
13 restructuring or been the subject of a simplified liquidation
14 process within a period prescribed by the regulations, unless
15 exempt under regulations made for the purposes of
16 subsection (2).
- 17 (2) The regulations may prescribe:
- 18 (a) tests for eligibility based on the liabilities of companies for
19 the purposes of paragraph (1)(a); and
20 (b) circumstances in which the directors of companies are
21 exempt from the requirement in paragraph (1)(b).

22 **453D Declaration by restructuring practitioner—relevant** 23 **relationships**

- 24 (1) As soon as practicable after being appointed, a restructuring
25 practitioner must make a declaration of relevant relationships.
- 26 Note: Failure to comply with this subsection is an offence (see
27 subsection 1311(1)).
- 28 (2) The restructuring practitioner must give a copy of the declaration
29 under subsection (1) to as many of the company's creditors as
30 reasonably practicable.
- 31 Note: Failure to comply with this subsection is an offence (see
32 subsection 1311(1)).

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Schedule 1 Restructuring of a company

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1 (3) As soon as practicable after making a declaration under
2 subsection (1), the restructuring practitioner must lodge a copy of
3 the declaration with ASIC.

4 Note: Failure to comply with this subsection is an offence (see
5 subsection 1311(1)).

6 (4) If:

7 (a) at a particular time, the restructuring practitioner makes a
8 declaration of relevant relationships under subsection (1) or
9 this subsection; and

10 (b) at a later time:

11 (i) the declaration has become out-of-date; or

12 (ii) the restructuring practitioner becomes aware of an error
13 in the declaration;

14 the restructuring practitioner must, as soon as practicable, make a
15 replacement declaration of relevant relationships.

16 Note: Failure to comply with this subsection is an offence (see
17 subsection 1311(1)).

18 (5) The restructuring practitioner must give a copy of the replacement
19 declaration under subsection (4) to as many of the company's
20 creditors as reasonably practicable.

21 Note: Failure to comply with this subsection is an offence (see
22 subsection 1311(1)).

23 (6) As soon as practicable after making a replacement declaration
24 under subsection (5), the restructuring practitioner must lodge a
25 copy of the replacement declaration with ASIC.

26 Note: Failure to comply with this subsection is an offence (see
27 subsection 1311(1)).

28 (7) In a prosecution for an offence constituted by a failure to include a
29 particular matter in a declaration under this section, it is a defence
30 if the defendant proves that:

31 (a) the defendant made reasonable enquiries; and

32 (b) after making these enquiries, the defendant had no reasonable
33 grounds for believing that the matter should have been
34 included in the declaration.

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Restructuring of a company **Schedule 1**
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1 **Subdivision C—Role of the restructuring practitioner during**
2 **restructuring**

3 **453E Functions, duties and powers of the restructuring practitioner**

4 (1) The functions of the restructuring practitioner for a company under
5 restructuring are:

- 6 (a) to provide advice to the company on matters relating to
7 restructuring; and
8 (b) to assist the company to prepare a restructuring plan; and
9 (c) to make a declaration to creditors in accordance with the
10 regulations in relation to a restructuring plan proposed to the
11 creditors; and
12 (d) any other functions given to the restructuring practitioner
13 under this Act.

14 (2) The regulations may make provision for and in relation to the
15 following:

- 16 (a) the functions of the restructuring practitioner for a company
17 under restructuring;
18 (b) the duties of the restructuring practitioner for a company
19 under restructuring;
20 (c) the powers of the restructuring practitioner for a company
21 under restructuring;
22 (d) the rights and liabilities of a person who is or has been the
23 restructuring practitioner for a company arising out of the
24 performance of the functions and duties, and the exercise of
25 the powers, of the person as restructuring practitioner.

26 **453F Directors to help restructuring practitioner**

27 (1) A director of a company under restructuring must:

- 28 (a) attend on the restructuring practitioner; and
29 (b) give the restructuring practitioner information about the
30 company's business, property, affairs and financial
31 circumstances; and
32 (c) allow the restructuring practitioner to inspect and take copies
33 of the company's books;

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Schedule 1 Restructuring of a company

Part 1 Core provisions

1 at the times and in the manner reasonably required by the
2 restructuring practitioner.

3 (2) A person must not fail to comply with subsection (1).

4 Penalty: 120 penalty units.

5 (3) An offence based on subsection (1) is an offence of strict liability.

6 Note: For strict liability, see section 6.1 of the *Criminal Code*.

7 (4) Subsection (3) does not apply to the extent that the person has a
8 reasonable excuse.

9 Note: A defendant bears an evidential burden in relation to the matter in
10 subsection (4), see subsection 13.3(3) of the *Criminal Code*.

11 **453G Restructuring practitioner's right to inspect books held by** 12 **other persons**

13 If the books of a company under restructuring are held by a person
14 other than the company, that person must permit the restructuring
15 practitioner for the company to inspect and make copies of the
16 company's books at any reasonable time.

17 **453H Restructuring practitioner acts as company's agent**

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

22 **453J Restructuring practitioner may terminate restructuring**

23 (1) The restructuring practitioner for a company under restructuring
24 may, at any time, terminate the restructuring of the company:

25 (a) if the restructuring practitioner believes on reasonable
26 grounds that:

27 (i) the company does not meet the eligibility criteria for
28 restructuring; or

29 (ii) it would not be in the interests of the creditors to make a
30 restructuring plan; or

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- 1 (iii) it would be in the interests of the creditors for the
2 restructuring to end; or
3 (iv) it would be in the interests of the creditors for the
4 company to be wound up; or
5 (b) on any other grounds prescribed by the regulations.
- 6 (2) The restructuring practitioner for a company under restructuring
7 terminates the restructuring of the company by giving notice in
8 accordance with this section.
- 9 (3) The notice must:
10 (a) be in writing; and
11 (b) include all information prescribed by the regulations; and
12 (c) be given to:
13 (i) the company; and
14 (ii) as many of the company's creditors as reasonably
15 practicable.
- 16 (4) The termination takes effect on the day on which notice under this
17 section is given to the company.

18 **Subdivision D—Conduct of company during restructuring**

19 **453K Control of company under restructuring**

- 20 (1) Subject to this Part, while a company is under restructuring the
21 company has control of the company's business, property and
22 affairs.
- 23 (2) While a company is under restructuring, a receiver or controller
24 appointed for the purposes of Part 5.2 (whether under an
25 instrument relating to a security interest or a court order) may only
26 perform the functions and exercise the powers of a receiver or
27 controller in relation to a security interest if:
28 (a) section 454C, 454D or 454E applies to the enforcement of
29 the security interest; or
30 (b) section 454K or 454L applies to the enforcement of a right,
31 or the performance or exercise of a function or power, over
32 property to which the security interest relates.

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1 **453L Conducting the business of the company during restructuring**

2 *Transactions and dealings affecting property*

- 3 (1) A person contravenes this section if:
- 4 (a) a company is under restructuring; and
- 5 (b) the person is a director of the company; and
- 6 (c) either:
- 7 (i) the company purports to enter into a transaction or
- 8 dealing affecting the property of the company; or
- 9 (ii) the person purports to enter into a transaction or dealing
- 10 affecting the property of the company on behalf of the
- 11 company.

12 Note: Failure to comply with this subsection is an offence (see

13 subsection 1311(1)).

14 *Circumstances in which transactions and dealings may occur*

- 15 (2) Subsection (1) does not apply if:
- 16 (a) entering into the transaction or dealing was in the ordinary
- 17 course of the company's business; or
- 18 (b) the restructuring practitioner has consented to the transaction
- 19 or dealing and, if any conditions are imposed on that consent,
- 20 those conditions are met; or
- 21 (c) the transaction or dealing was entered into under an order of
- 22 the Court.
- 23 (3) Subsection (1) does not apply to a payment made:
- 24 (a) by an Australian ADI out of an account kept by the company
- 25 with the ADI; and
- 26 (b) in good faith and in the ordinary course of the ADI's banking
- 27 business; and
- 28 (c) after the restructuring began and on or before the day on
- 29 which:
- 30 (i) the restructuring practitioner gives to the ADI written
- 31 notice of the appointment that began the restructuring;
- 32 or
- 33 (ii) publishes a notice of the appointment that began the
- 34 restructuring in accordance with the regulations;
-

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Part 1 Core provisions

1 **453M Effect of things done during restructuring of company**

2 A payment made, transaction entered into, or any other act or thing
3 done, in good faith by:

4 (a) the restructuring practitioner for a company under
5 restructuring; or

6 (b) a company under restructuring with the consent of the
7 restructuring practitioner for the company; or

8 (c) a company under restructuring in compliance with an order
9 of the Court;

10 is valid and effectual for the purposes of this Act, and is not liable
11 to be set aside in a winding up of the company.

12 **453N Effect of restructuring on company's members**

13 *Transfer of shares*

14 (1) A transfer of shares in a company that is made while the company
15 is under restructuring is void except if:

16 (a) both:

17 (i) the restructuring practitioner gives written consent to
18 the transfer; and

19 (ii) that consent is unconditional; or

20 (b) all of the following subparagraphs apply:

21 (i) the restructuring practitioner gives written consent to
22 the transfer;

23 (ii) that consent is subject to one or more specified
24 conditions;

25 (iii) those conditions have been satisfied; or

26 (c) the Court makes an order under subsection (4) authorising
27 the transfer.

28 (2) The restructuring practitioner may only give consent under
29 paragraph (1)(a) or (b) if the restructuring practitioner believes on
30 reasonable grounds that the transfer is in the best interests of the
31 company's creditors as a whole.

32 (3) If the restructuring practitioner refuses to give consent under
33 paragraph (1)(a) or (b) to a transfer of shares in the company:

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- 1 (a) the prospective transferor; or
2 (b) the prospective transferee; or
3 (c) a creditor of the company;
4 may apply to the Court for an order authorising the transfer.
- 5 (4) If the Court is satisfied, on an application under subsection (3), that
6 the transfer is in the best interests of the company's creditors as a
7 whole, the Court may, by order, authorise the transfer.
- 8 (5) If the restructuring practitioner gives consent under
9 paragraph (1)(b) to a transfer of shares in the company:
10 (a) the prospective transferor; or
11 (b) the prospective transferee; or
12 (c) a creditor of the company;
13 may apply to the Court for an order setting aside any or all of the
14 conditions to which the consent is subject.
- 15 (6) If the Court is satisfied, on an application under subsection (5), that
16 any or all of the conditions covered by the application are not in
17 the best interests of the company's creditors as a whole, the Court
18 may, by order, set aside any or all of the conditions.
- 19 (7) The restructuring practitioner is entitled to be heard in a proceeding
20 before the Court in relation to an application under subsection (3)
21 or (5).

Alteration in the status of members

- 22
- 23 (8) An alteration in the status of members of a company that is made
24 while the company is under restructuring is void except if:
25 (a) both:
26 (i) the restructuring practitioner gives written consent to
27 the alteration; and
28 (ii) that consent is unconditional; or
29 (b) all of the following subparagraphs apply:
30 (i) the restructuring practitioner gives written consent to
31 the alteration;
32 (ii) that consent is subject to one or more specified
33 conditions;
34 (iii) those conditions have been satisfied; or
-

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- 1 (c) the Court makes an order under subsection (12) authorising
2 the alteration.
- 3 Note: An alteration in the status of members of a company that is made
4 while a company is under restructuring may not be void if it is made
5 for the purposes of the conversion and write-off provisions determined
6 by APRA (see Subdivision B of Division 1A of Part II of the *Banking*
7 *Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and
8 Division 1A of Part 10A of the *Life Insurance Act 1995*).
- 9 (9) The restructuring practitioner may only give consent under
10 paragraph (8)(a) or (b) if the restructuring practitioner believes on
11 reasonable grounds that the alteration is in the best interests of the
12 company's creditors as a whole.
- 13 (10) The restructuring practitioner must refuse to give consent under
14 paragraph (8)(a) or (b) if the alteration would contravene Part 2F.2.
- 15 (11) If the restructuring practitioner refuses to give consent under
16 paragraph (8)(a) or (b) to an alteration in the status of members of
17 a company:
18 (a) a member of the company; or
19 (b) a creditor of the company;
20 may apply to the Court for an order authorising the alteration.
- 21 (12) If the Court is satisfied, on an application under subsection (11),
22 that:
23 (a) the alteration is in the best interests of the company's
24 creditors as a whole; and
25 (b) the alteration does not contravene Part 2F.2;
26 the Court may, by order, authorise the alteration.
- 27 (13) If the restructuring practitioner gives consent under
28 paragraph (8)(b) to an alteration in the status of members of a
29 company:
30 (a) a member of the company; or
31 (b) a creditor of the company;
32 may apply to the Court for an order setting aside any or all of the
33 conditions to which the consent is subject.
- 34 (14) If the Court is satisfied, on an application under subsection (13),
35 that any or all of the conditions covered by the application are not
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1 in the best interests of the company's creditors as a whole, the
2 Court may, by order, set aside any or all of the conditions.

3 (15) The restructuring practitioner is entitled to be heard in a proceeding
4 before the Court in relation to an application under subsection (11)
5 or (13).

6 **Subdivision E—Effect on company etc. during restructuring**

7 **453P Winding up company**

8 (1) The Court is to adjourn the hearing of an application for an order to
9 wind up a company if the company is under restructuring and the
10 Court is satisfied that it is in the interests of the company's
11 creditors for the company to continue under restructuring rather
12 than be wound up.

13 (2) The Court is not to appoint a provisional liquidator of a company if
14 the company is under restructuring and the Court is satisfied that it
15 is in the interests of the company's creditors for the company to
16 continue under restructuring rather than have a provisional
17 liquidator appointed.

18 **453Q Restrictions on exercise of third party property rights**

19 *General rule*

20 (1) During the restructuring of a company, the restrictions set out in
21 the table at the end of this section apply in relation to the exercise
22 of the rights of a person (the *third party*) in property of the
23 company, or other property used or occupied by, or in the
24 possession of, the company, as set out in the table.

25 Note: The property of the company includes any PPSA retention of title
26 property of the company (see section 452B).

27 *Exception—consent of restructuring practitioner or leave of court*

28 (2) The restrictions set out in the table at the end of this section do not
29 apply in relation to the exercise of a third party's rights in property
30 if the rights are exercised:

31 (a) with the restructuring practitioner's written consent; or

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1 (b) with the leave of the Court.

2 *Possessory security interests—continued possession*

3 (3) If a company's property is subject to a possessory security interest,
4 and the property is in the lawful possession of the secured party,
5 the secured party may continue to possess the property during the
6 restructuring of the company.

7

Restrictions on exercise of third party rights

Item	If the third party is ...	then ...
1	a secured party in relation to property of the company, and is not otherwise covered by this table	the third party cannot enforce the security interest.
2	a secured party in relation to a possessory security interest in the property of the company	the third party cannot sell the property, or otherwise enforce the security interest.
3	a lessor of property used or occupied by, or in the possession of, the company, including a secured party (a <i>PPSA secured party</i>) in relation to a PPSA security interest in goods arising out of a lease of the goods	the following restrictions apply: (a) distress for rent must not be carried out against the property; (b) the third party cannot take possession of the property or otherwise recover it; (c) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.
4	an owner (other than a lessor) of property used or occupied by, or in the possession of, the company, including a secured party (a <i>PPSA secured party</i>) in relation to a PPSA security interest in the property	the following restrictions apply: (a) the third party cannot take possession of the property or otherwise recover it; (b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.

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1 **453R Stay of proceedings**

- 2 (1) During the restructuring of a company, a proceeding in a court
3 against the company or in relation to any of its property cannot be
4 begun or proceeded with, except:
5 (a) with the restructuring practitioner's written consent; or
6 (b) with the leave of the Court and in accordance with such
7 terms (if any) as the Court imposes.
- 8 (2) Subsection (1) does not apply to:
9 (a) a criminal proceeding; or
10 (b) a prescribed proceeding.

11 **453S Suspension of enforcement process**

- 12 During the restructuring of a company, no enforcement process in
13 relation to property of the company can be begun or proceeded
14 with, except:
15 (a) with the leave of the Court; and
16 (b) in accordance with such terms (if any) as the Court imposes.

17 **453T Duties of court officer in relation to property of company**

- 18 (1) This section applies where an officer of a court (the *court officer*),
19 being:
20 (a) a sheriff; or
21 (b) the registrar or other appropriate officer of the court;
22 receives written notice of the fact that a company is under
23 restructuring.
- 24 (2) During the restructuring, the court officer cannot:
25 (a) take action to sell property of the company under a process of
26 execution; or
27 (b) pay to a person (other than the restructuring practitioner):
28 (i) proceeds of selling property of the company (at any
29 time) under a process of execution; or
30 (ii) money of the company seized (at any time) under a
31 process of execution; or

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- 1 (iii) money paid (at any time) to avoid seizure or sale of
2 property of the company under a process of execution;
3 or
4 (c) take action in relation to the attachment of a debt due to the
5 company; or
6 (d) pay to a person (other than the restructuring practitioner)
7 money received because of the attachment of such a debt.
- 8 (3) The court officer must deliver to the restructuring practitioner any
9 property of the company that is in the court officer's possession
10 under a process of execution (whenever begun).
- 11 (4) The court officer must pay to the restructuring practitioner all
12 proceeds or money of a kind referred to in paragraph (2)(b) or (d)
13 that:
14 (a) are in the court officer's possession; or
15 (b) have been paid into the court and have not since been paid
16 out.
- 17 (5) The costs of the execution or attachment are a first charge on
18 property delivered under subsection (3) or proceeds or money paid
19 under subsection (4).
- 20 (6) In order to give effect to a charge under subsection (5) on proceeds
21 or money, the court officer may retain, on behalf of the person
22 entitled to the charge, so much of the proceeds or money as the
23 court officer thinks necessary.
- 24 (7) The Court may, if it is satisfied that it is appropriate to do so,
25 permit the court officer to take action, or to make a payment, that
26 subsection (2) would otherwise prevent.
- 27 (8) A person who buys property in good faith under a sale under a
28 process of execution gets a good title to the property as against the
29 company and the restructuring practitioner, despite anything else in
30 this section.

31 **453U Lis pendens taken to exist**

- 32 (1) This section has effect only for the purposes of a law about the
33 effect of a lis pendens on purchasers or mortgagees.
-

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1 (2) During the restructuring of the company, an application to wind up
2 the company is taken to be pending.

3 (3) An application that is taken because of subsection (2) to be
4 pending constitutes a *lis pendens*.

5 **453V Restructuring not to trigger liability of director or relative** 6 **under guarantee of company's liability**

7 (1) During the restructuring of a company:

8 (a) a guarantee of a liability of the company cannot be enforced,
9 as against:

10 (i) a director of the company who is a natural person; or

11 (ii) a spouse or relative of such a director; and

12 (b) without limiting paragraph (a), a proceeding in relation to
13 such a guarantee cannot be begun against such a director,
14 spouse or relative;

15 except with the leave of the Court and in accordance with such
16 terms (if any) as the Court imposes.

17 (2) While subsection (1) prevents a person (the *creditor*) from:

18 (a) enforcing as against another person (the *guarantor*) a
19 guarantee of a liability of a company; or

20 (b) beginning a proceeding against another person (the
21 *guarantor*) in relation to such a guarantee;

22 section 1323 applies in relation to the creditor and the guarantor as
23 if:

24 (c) a civil proceeding against the guarantor had begun under this
25 Act; and

26 (d) the creditor were the only person of a kind referred to in that
27 section as an aggrieved person.

28 Note: Under section 1323, the Court can make a range of orders to ensure
29 that a person can meet the person's liabilities.

30 (3) The effect that section 1323 has because of a particular application
31 of subsection (2) is additional to, and does not prejudice, the effect
32 the section otherwise has.

33 (4) In this section:

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1 *guarantee*, in relation to a liability of a company, includes a
2 relevant agreement (as defined in section 9) because of which a
3 person other than the company has incurred, or may incur, whether
4 jointly with the company or otherwise, a liability in respect of the
5 liability of the company.

6 *liability* means a debt, liability or other obligation.

7 **453W Property subject to a banker’s lien—exemption from this** 8 **Subdivision**

9 If:

- 10 (a) a company is under restructuring; and
11 (b) property of the company consists of:
12 (i) cash in the form of notes or coins; or
13 (ii) a negotiable instrument; or
14 (iii) a security (as defined by subsection 92(1)); or
15 (iv) a derivative (as defined in Chapter 7); and
16 (c) the property is subject to a possessory security interest; and
17 (d) the secured party is:
18 (i) an ADI (within the meaning of the *Banking Act 1959*);
19 or
20 (ii) the operator of a clearing and settlement facility (within
21 the meaning of section 768A);

22 this Subdivision does not apply to the property.

23 **Subdivision F—Rights of secured party, owner or lessor during** 24 **restructuring**

25 **454A Application of Subdivision**

26 Except as expressly provided, nothing in this Subdivision limits the
27 generality of anything else in it.

28 **454B Application of sections 454C to 454H—PPSA security interests**

29 Sections 454C to 454H only apply in relation to the enforcement of
30 a PPSA security interest if the security interest is perfected, within

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1 the meaning of the *Personal Property Securities Act 2009*, at the
2 time the enforcement starts.

3 **454C Secured party acts before or during decision period**

4 *Scope*

5 (1) This section applies if:

- 6 (a) the whole, or substantially the whole, of the property of a
7 company under restructuring is subject to a security interest;
8 and
9 (b) before or during the decision period, the secured party
10 enforced the security interest in relation to all property
11 (including any PPSA retention of title property) of the
12 company subject to the security interest, whether or not the
13 security interest was enforced in the same way in relation to
14 all that property.

15 (2) This section also applies if:

- 16 (a) a company is under restructuring; and
17 (b) the same person is the secured party in relation to each of 2
18 or more security interests in property (including PPSA
19 retention of title property) of the company; and
20 (c) the property of the company (the *secured property*) subject to
21 the respective security interests together constitutes the
22 whole, or substantially the whole, of the company's property;
23 and
24 (d) before or during the decision period, the secured party
25 enforced the security interests in relation to all the secured
26 property:
27 (i) whether or not the security interests were enforced in
28 the same way in relation to all the secured property; and
29 (ii) whether or not any of the security interests was enforced
30 in the same way in relation to all the property of the
31 company subject to that security interest; and
32 (iii) in so far as the security interests were enforced in
33 relation to property of the company by a receiver or
34 controller appointed for the purposes of Part 5.2
35 (whether under an instrument relating to the security
36 interest or a court order)—whether or not the same
-

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1 person was appointed in respect of all of the
2 last-mentioned property.

3 *Power of enforcement by secured party, receiver or controller*

4 (3) Nothing in section 453K, 453Q, 453S, 453T or 454P, or in an order
5 under subsection 454Q(1), prevents any of the following from
6 enforcing the security interest, or any of the security interests:

7 (a) the secured party;

8 (b) a receiver or controller appointed for the purposes of Part 5.2
9 (whether under an instrument relating to the security interest
10 or a court order, and even if appointed after the decision
11 period).

12 **454D Where enforcement of security interest begins before** 13 **restructuring**

14 (1) This section applies if, before the beginning of the restructuring of
15 a company, a secured party, receiver or other person:

16 (a) entered into possession, or assumed control, of property of
17 the company; or

18 (b) entered into an agreement to sell such property; or

19 (c) made arrangements for such property to be offered for sale
20 by public auction; or

21 (d) publicly invited tenders for the purchase of such property; or

22 (e) exercised any other power in relation to such property;

23 for the purpose of enforcing a security interest in that property.

24 (2) Nothing in section 453K, 453Q, 453S, 453T or 454P, or in an order
25 made under subsection 454Q(1), prevents the secured party,
26 receiver or other person from enforcing the security interest in
27 relation to that property.

28 **454E Security interest in perishable property**

29 *Scope*

30 (1) This section applies if perishable property of a company under
31 restructuring is subject to a security interest.

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1 *Power of enforcement by secured party, receiver or controller*

- 2 (2) Nothing in section 453K, 453Q or 454P, or in an order made under
3 subsection 454Q(1), prevents any of the following from enforcing
4 the security interest, so far as it is a security interest in perishable
5 property:
6 (a) the secured party;
7 (b) a receiver or controller appointed for the purposes of Part 5.2
8 (whether under an instrument relating to the security interest
9 or a court order, and even if appointed after the decision
10 period).

11 **454F Court may limit powers of secured party etc. in relation to**
12 **secured property**

- 13 (1) This section applies if:
14 (a) for the purpose of enforcing a security interest in property of
15 a company, the secured party, or a receiver or other person,
16 does or proposes to do an act of a kind referred to in a
17 paragraph of subsection 454D(1); and
18 (b) the company is under restructuring when the secured party,
19 receiver or other person does or proposes to do the act, or the
20 company later begins to be under restructuring;
21 but does not apply in a case where section 454C applies.
- 22 (2) On application by the restructuring practitioner, the Court may
23 order the secured party, receiver or other person not to perform
24 specified functions, or exercise specified powers, except as
25 permitted by the order.
- 26 (3) The Court may only make an order if satisfied that the secured
27 party's interests will be adequately protected during the
28 restructuring of the company.
- 29 (4) An order may only be made, and only has effect, during the
30 restructuring.
- 31 (5) An order has effect despite sections 454D and 454E.

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1 **454G Giving a notice under a security agreement etc.**

2 Nothing in section 453K, 453Q or 454P, or in an order made under
3 subsection 454Q(1), prevents a person from giving a notice under
4 the provisions of an agreement or instrument under which a
5 security interest is created or arises.

6 **454H Sale of property subject to a possessory security interest**

7 *Scope*

8 (1) This section applies if:

- 9 (a) a company is under restructuring; and
10 (b) property of the company is subject to a possessory security
11 interest; and
12 (c) the property is in the possession of the secured party; and
13 (d) either:
14 (i) there is no other security interest in the property; or
15 (ii) there are one or more other security interests in the
16 property, but none of the debts secured by those other
17 security interests has a priority that is equal to or higher
18 than the priority of the debt secured by the possessory
19 security interest; and
20 (e) the secured party sells the property.

21 *Distribution of proceeds of sale*

22 (2) The secured party is entitled to retain proceeds of the sale as
23 follows:

- 24 (a) if the net proceeds of sale equals the debt secured by the
25 possessory security interest—the secured party is entitled to
26 retain the net proceeds;
27 (b) if the net proceeds of sale exceeds the debt secured by the
28 possessory security interest—the secured party is entitled to
29 retain so much of the net proceeds as equals the amount of
30 the debt secured by the security interest, but must pay the
31 excess to the restructuring practitioner on behalf of the
32 company;

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- 1 (c) if the net proceeds of sale fall short of the debt secured by the
2 possessory security interest—the secured party is entitled to
3 retain the net proceeds.

4 **454J Scope of sections 454K to 454N**

5 Sections 454K to 454N do not apply in relation to the enforcement
6 of a right, or the performance or exercise of a function or power, if
7 the enforcement, performance or exercise is authorised by (or
8 because of) a transaction or dealing that gives rise to a security
9 interest in the property concerned.

10 Example: An example of a transaction or dealing in relation to which sections
11 454K to 454N do not apply because of this section is a commercial
12 consignment of personal property. Such a transaction gives rise to a
13 PPSA security interest because of section 12 of the *Personal Property*
14 *Securities Act 2009*. The consigned property is PPSA retention of title
15 property of the company (see sections 51F and 452B).

16 Note: Sections 454C to 454H (property subject to security interests) may
17 apply in relation to transactions or dealings to which this Subdivision
18 does not apply because of this section. For example, sections 454C to
19 454H would apply in relation to a commercial consignment of
20 personal property, because such a transaction gives rise to a PPSA
21 security interest.

22 **454K Where recovery of property begins before restructuring**

- 23 (1) This section applies if, before the beginning of the restructuring of
24 a company, a receiver or other person:
25 (a) entered into possession, or assumed control, of property used
26 or occupied by, or in the possession of, the company; or
27 (b) exercised any other power in relation to such property;
28 for the purpose of enforcing a right of the owner or lessor of the
29 property to take possession of the property or otherwise recover it.
30 (2) Nothing in section 453K or 453Q prevents the receiver or other
31 person from performing a function, or exercising a power, in
32 relation to the property.

33 **454L Recovering perishable property**

34 Nothing in section 453K or 453Q prevents a person from taking
35 possession of, or otherwise recovering, perishable property.

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1 **454M Court may limit powers of receiver etc. in relation to property**
2 **used by company**

3 (1) This section applies if:

4 (a) for the purpose of enforcing a right of the owner or lessor of
5 property used or occupied by, or in the possession of, a
6 company to take possession of the property or otherwise
7 recover it, a person:

8 (i) enters into possession, or assumes control, of the
9 property; or

10 (ii) exercises any other power in relation to the property;
11 and

12 (b) the company is under restructuring when the person does so,
13 or the company later begins to be under restructuring.

14 (2) On application by the restructuring practitioner, the Court may
15 order the person not to perform specified functions, or exercise
16 specified powers, in relation to the property, except as permitted by
17 the order.

18 (3) The Court may only make an order if satisfied that the interests of
19 the owner or lessor will be adequately protected during the
20 restructuring of the company.

21 (4) An order may only be made, and only has effect, during the
22 restructuring.

23 (5) An order has effect despite sections 454K and 454L.

24 **Subdivision G—Enforcement rights triggered by restructuring**

25 **454P Stay on enforcing rights merely because the company is under**
26 **restructuring etc.**

27 *Stay on enforcing rights*

28 (1) A right cannot be enforced against a company for:

29 (a) the reason that the company has come or is under
30 restructuring; or

31 (b) the company's financial position, if the company is under
32 restructuring; or

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- 1 (c) a reason, prescribed by the regulations for the purposes of
2 this paragraph, that relates to:
3 (i) the company coming, or possibly coming, under
4 restructuring; or
5 (ii) the company's financial position;
6 if the company later comes under restructuring; or
7 (d) a reason that, in substance, is contrary to this subsection;
8 if the right arises for that reason by express provision (however
9 described) of a contract, agreement or arrangement.

10 Note: This result is subject to subsections (5) and (7), and to any order under
11 section 454Q.

12 Example: A right to terminate a contract will not be enforceable to the extent
13 that those rights are triggered by the company coming under
14 restructuring.

15 *Period of the stay*

- 16 (2) The right cannot be enforced as described in subsection (1) during
17 the period (the *stay period*) starting when the restructuring of the
18 company begins and ending at the later of the following:
19 (a) when the restructuring ends;
20 (b) if one or more orders are made under subsection (3) for the
21 company as the result of an application made before the
22 restructuring ends—when the last made of those orders
23 ceases to be in force;
24 (c) if the company ceases to be under restructuring because of a
25 resolution or order for the company to be wound up—when
26 the company's affairs have been fully wound up.
- 27 (3) The Court:
28 (a) may order an extension of the stay period for the company if
29 the Court is satisfied that the extension is appropriate having
30 regard to the interests of justice; and
31 (b) before deciding an application for an order under
32 paragraph (a), may grant an interim order, but must not
33 require the applicant to give an undertaking as to damages as
34 a condition for doing so.

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1 *Enforcing rights after the stay for reasons relating to earlier*
2 *circumstances*

- 3 (4) The right is unenforceable against the company indefinitely after
4 the end of the stay period to the extent that a reason for seeking to
5 enforce the right:
6 (a) is the company's financial position before the end of the stay
7 period; or
8 (b) is the company having come or been under restructuring
9 before the end of the stay period; or
10 (c) is a reason, prescribed by the regulations for the purposes of
11 this paragraph, relating to circumstances in existence during
12 the stay period; or
13 (d) is a reason referred to in paragraph (1)(c) or (d).

14 *Rights not subject to the stay*

- 15 (5) Subsection (1) does not apply to the right if it is:
16 (a) a right under a contract, agreement or arrangement entered
17 into after the company comes under restructuring; or
18 (b) a right contained in a kind of contract, agreement or
19 arrangement:
20 (i) prescribed by the regulations for the purposes of this
21 subparagraph; or
22 (ii) declared under paragraph (6)(a); or
23 (c) a right of a kind:
24 (i) prescribed by the regulations for the purposes of this
25 subparagraph; or
26 (ii) declared under paragraph (6)(b); or
27 (d) a right of a kind declared under paragraph (6)(c), and the
28 circumstances specified in that declaration exist.
- 29 (6) For the purposes of subsection (5), the Minister may, by legislative
30 instrument:
31 (a) declare kinds of contracts, agreements or arrangements
32 referred to in a specified law of the Commonwealth; or
33 (b) declare kinds of rights to which subsection (1) does not
34 apply; or

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1 (c) declare kinds of rights to which subsection (1) does not apply
2 in specified circumstances.

3 (7) Subsection (1) does not apply to the right to the extent that:

4 (a) the restructuring practitioner for the company; or

5 (b) if an administrator of the company, or an administrator of a
6 deed of company arrangement executed by the company, is
7 appointed after the restructuring ends—the administrator; or

8 (c) if a liquidator of the company is appointed after the
9 restructuring ends—the liquidator;

10 has consented in writing to the enforcement of the right.

11 *Stay on company's right to new advance of money or credit*

12 (8) If:

13 (a) one or more rights of an entity cannot be enforced against a
14 company for a period because of subsection (1); and

15 (b) the company has a right under a contract, agreement or
16 arrangement against the entity for a new advance of money
17 or credit;

18 that right of the company cannot be enforced during the same
19 period.

20 **454Q Lifting the stay on enforcing rights**

21 (1) The Court may order that subsection 454P(1) does not apply for
22 one or more rights against a company if the Court is satisfied that
23 this is appropriate in the interests of justice.

24 (2) An application for the order may be made by the holder of those
25 rights.

26 **454R Order for rights to be enforceable only with leave of the Court**

27 *Orders*

28 (1) The Court may order that one or more rights under a contract,
29 agreement or arrangement are enforceable against a company only:

30 (a) with the leave of the Court; and

31 (b) in accordance with such terms (if any) as the Court imposes.

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1 Example: The order could be sought for a right to terminate for convenience.

2 (2) The Court may make the order if:

3 (a) the company is under restructuring; and

4 (b) the Court is satisfied that:

5 (i) the rights are being exercised; or

6 (ii) the rights are likely to be exercised; or

7 (iii) there is a threat to exercise the rights;

8 because of one or more reasons referred to in paragraphs

9 454P(1)(a) to (d); and

10 (c) an application for the order is made by the restructuring
11 practitioner for the company.

12 (3) An order under subsection (1) must specify the period for which it
13 applies. In working out the period, the Court must have regard to:

14 (a) subsections 454P(2), (3) and (4); and

15 (b) the interests of justice.

16 (4) Subsection (1) does not apply to a right referred to in
17 subsection 454P(5) or (7).

18 Note: An order under subsection (1) also does not restrict certain secured
19 creditors (see Subdivision B of Division 7).

20 *Interim orders*

21 (5) Before deciding an application for an order under subsection (1),
22 the Court may grant an interim order for one or more rights under a
23 contract, agreement or arrangement not to be enforced against a
24 company.

25 (6) The Court must not require an applicant for an order under
26 subsection (1) to give an undertaking as to damages as a condition
27 of granting an interim order.

28 **454S Self-executing provisions**

29 (1) The object of subsection (2) is to ensure that a self-executing
30 provision:

31 (a) cannot start to apply against a company for certain reasons;

32 and

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1 (b) can be the subject of a Court order providing that the
2 provision can only start to apply against a company with the
3 leave of the Court, and in accordance with such terms (if any)
4 as the Court imposes.

5 (2) Sections 454P to 454R also apply in relation to a self-executing
6 provision in a corresponding way to the way they apply in relation
7 to a right. For this purpose, assume those sections apply with such
8 modifications as are necessary, including any prescribed by the
9 regulations for the purposes of this subsection.

10 Note 1: This subsection achieves the object in subsection (1) by extending the
11 application of all of the outcomes, exceptions and powers in
12 sections 454P to 454R.

13 Note 2: These modifications include, for example, treating:

- 14 (a) a reference that a right cannot be enforced (however described)
15 as including a reference that a self-executing provision cannot
16 start to apply; and
17 (b) the words “if the right arises for that reason by express provision
18 (however described) of a contract, agreement or arrangement” as
19 being omitted from subsection 454P(1); and
20 (c) a reference that one or more rights are enforceable as including a
21 reference that one or more self-executing provisions can start to
22 apply; and
23 (d) paragraph 454R(2)(b) as alternatively providing that the Court is
24 satisfied that one or more reasons referred to in paragraphs
25 454P(1)(a) to (d) can cause the self-executing provisions to start
26 to apply.

27 (3) In this section:

28 *self-executing provision* means a provision of a contract,
29 agreement or arrangement that can start to apply automatically:

- 30 (a) for one or more reasons; and
31 (b) without any party to the contract, agreement or arrangement
32 making a decision that the provision should start to apply.

33 **454T When other laws prevail—certain other Commonwealth Acts**

34 If there is any inconsistency between sections 454P and 454S and
35 one of the following Acts, that Act prevails to the extent of the
36 inconsistency:

- 37 (a) the *Payment Systems and Netting Act 1998*;
-

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- 1 (b) the *International Interests in Mobile Equipment (Cape Town*
2 *Convention) Act 2013*.

3 **Division 3—Restructuring plan**

4 **455A Proposing a restructuring plan**

- 5 (1) A company may propose a restructuring plan to its creditors.
6 (2) The company is taken to be *insolvent* if the company does so.
7 (3) The regulations may prescribe the time at which the company is
8 taken to have done so, for the purpose of determining when the
9 company became insolvent under subsection (2).

10 **455B Restructuring plan**

11 *Proposing a restructuring plan*

- 12 (1) The regulations may make provision for and in relation to the
13 following:
14 (a) proposing a restructuring plan;
15 (b) the matters that must or may be included in a restructuring
16 plan;
17 (c) accepting and rejecting a proposal for a restructuring plan;
18 (d) the circumstances in which a proposal for a restructuring plan
19 lapses;
20 (e) the consequences of a proposal for a restructuring plan
21 lapsing.

22 *Making, varying and terminating a restructuring plan*

- 23 (2) The regulations may make provision for and in relation to the
24 following:
25 (a) making a restructuring plan;
26 (b) the consequences of making a restructuring plan;
27 (c) the variation of a restructuring plan;
28 (d) the termination of a restructuring plan;
29 (e) the consequences of a restructuring plan being varied or
30 terminating.

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1

Debts and claims

2

(3) The regulations may make provision for and in relation to the following:

3

4

(a) debts and claims that must or may be dealt with in a restructuring plan;

5

6

(b) the calculation of the value of those debts and claims under a restructuring plan;

7

8

(c) the proof and ranking of those debts and claims under a restructuring plan;

9

10

(d) the property of a company that must or may be used in payment of those debts and claims under a restructuring plan;

11

12

(e) the payment of those debts and claims under a restructuring plan;

13

14

(f) the period within which those debts and claims must be paid under a restructuring plan;

15

16

(g) the treatment of those debts and claims under a restructuring plan if the property of the company is not sufficient to satisfy those debts and claims in full;

17

18

(h) the nature and duration of any moratorium on the enforcement of debts of and claims against a company that makes a restructuring plan;

19

20

21

(i) the effect of a restructuring plan on rights, obligations and liabilities in relation to debts of and claims against a company.

22

23

24

25

Contributories

26

(4) The regulations may make provision for and in relation to the following:

27

28

(a) the identification of contributories of the company;

29

30

(b) the rights, obligations and liabilities of contributories of the company in relation to a restructuring plan.

31

Circumstances in which restructuring plan void

32

(5) The regulations may make provision for and in relation to the following:

33

34

(a) the circumstances in which all or part of a restructuring plan is void;

35

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1 (b) the consequences if all or part of a restructuring plan is void.

2 *Contravention of a restructuring plan*

3 (6) The regulations may make provision for and in relation to the
4 following:

5 (a) the circumstances in which a restructuring plan is
6 contravened;

7 (b) the consequences if a restructuring plan is contravened.

8 *The restructuring practitioner*

9 (7) The regulations may make provision for and in relation to the
10 following:

11 (a) the appointment of a restructuring practitioner for a
12 restructuring plan;

13 (b) the functions of the restructuring practitioner for a
14 restructuring plan;

15 (c) the duties of the restructuring practitioner for a restructuring
16 plan;

17 (d) the powers of the restructuring practitioner for a restructuring
18 plan;

19 (e) the rights, obligations and liabilities of the restructuring
20 practitioner for a restructuring plan arising out of the
21 performance of the functions and duties, and the exercise of
22 the powers, of the restructuring practitioner for the plan.

23 *General*

24 (8) Without limiting anything in this section, the regulations may make
25 provision for and in relation to the following:

26 (a) any information (including personal information within the
27 meaning of the *Privacy Act 1988*), report or other document
28 that must or may be created or given in relation to a proposal
29 for a restructuring plan, or a restructuring plan;

30 (b) powers of the Court in relation to a company that makes a
31 restructuring plan.

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1 *Relationship with this and other Acts*

- 2 (9) Regulations made under this section have effect despite any
3 inconsistency with this or any other Act.

4 **Division 4—The restructuring practitioner**

5 **Subdivision A—Qualifications of restructuring practitioners**

6 **456A Appointee must consent**

7 A person cannot be appointed as restructuring practitioner for a
8 company or for a restructuring plan unless:

- 9 (a) the person has consented in writing to the appointment; and
10 (b) as at the time of the appointment, the person has not
11 withdrawn the consent.

12 **456B Restructuring practitioner must be registered liquidator**

- 13 (1) A person must not consent to be appointed, and must not act as
14 restructuring practitioner for a company or for a restructuring plan.
15 (2) Subsection (1) does not apply if the person is a registered
16 liquidator.

17 Note: A defendant bears an evidential burden in relation to the matter in
18 subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- 19 (3) An offence based on subsection (1) is an offence of strict liability.

20 Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 **456C Disqualification of person connected with company**

- 22 (1) Subject to this section, a person must not, except with the leave of
23 the Court, seek or consent to be appointed as, or act as,
24 restructuring practitioner for a company or for a restructuring plan
25 if:
26 (a) the person, or a body corporate in which the person has a
27 substantial holding, is indebted in an amount exceeding
28 \$5,000 to the company or to a body corporate related to the
29 company; or
-

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- 1 (b) the person is, otherwise than in a capacity as:
2 (i) administrator or liquidator of the company or a related
3 body corporate; or
4 (ii) administrator of a deed of company arrangement
5 executed by the company or a related body corporate; or
6 (iii) restructuring practitioner for the company or a related
7 body corporate; or
8 (iv) restructuring practitioner for a restructuring plan made
9 by the company or a related body corporate;
10 a creditor of the company or of a related body corporate in an
11 amount exceeding \$5,000; or
12 (c) the person is a director, secretary, senior manager or
13 employee of the company; or
14 (d) the person is a director, secretary, senior manager or
15 employee of a body corporate that is a secured party in
16 relation to property of the company; or
17 (e) the person is an auditor of the company; or
18 (f) the person is a partner or employee of an auditor of the
19 company; or
20 (g) the person is a partner, employer or employee of an officer of
21 the company; or
22 (h) the person is a partner or employee of an employee of an
23 officer of the company.
- 24 (2) An offence based on subsection (1) is an offence of strict liability.
25 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 26 (3) For the purposes of paragraph (1)(a), disregard a debt owed by a
27 natural person to a body corporate if:
28 (a) the body corporate is:
29 (i) an Australian ADI; or
30 (ii) a body corporate registered under section 21 of the *Life*
31 *Insurance Act 1995*; and
32 (b) the debt arose because of a loan that the body corporate or
33 entity made to the person in the ordinary course of its
34 ordinary business; and

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- 1 (c) the person used the amount of the loan to pay the whole or
2 part of the purchase price of premises that the person uses as
3 their principal place of residence.
- 4 (4) For the purposes of this section, a person is taken to be a director,
5 secretary, senior manager, employee or auditor of a company if:
6 (a) the person is or has, within the last 2 years, been a director,
7 secretary, senior manager, employee, auditor or promoter of
8 the company or a related body corporate; and
9 (b) ASIC has not directed that the person not be taken to be a
10 director, secretary, senior manager, employee or auditor for
11 the purposes of this section.
12 ASIC may give a direction under paragraph (b) only if it thinks fit
13 in the circumstances of the case.
- 14 (5) For the purposes of paragraphs (1)(g) and (h), *officer* does not
15 include liquidator.

16 **Subdivision B—Removal and replacement of restructuring** 17 **practitioner**

18 **456D Appointment of restructuring practitioner cannot be revoked**

19 The appointment of a person as restructuring practitioner for a
20 company or for a restructuring plan cannot be revoked.

21 **456E Vacancy in office of restructuring practitioner for company**

- 22 (1) Where the restructuring practitioner for a company:
23 (a) dies; or
24 (b) becomes prohibited from acting as restructuring practitioner
25 for the company; or
26 (c) resigns by notice in writing given to the company;
27 the appointer may appoint someone else as restructuring
28 practitioner for the company.
- 29 (2) In subsection (1):
30 *appointer*, in relation to the restructuring practitioner for a
31 company, means:

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- 1 (a) if the restructuring practitioner was appointed by the Court
2 under Division 90 of Schedule 2 (review of the external
3 administration of a company) or subsection (4) of this
4 section—the Court; or
5 (b) the company.
- 6 (3) An appointment under subsection (1) by the company must be
7 made by resolution of the board.
- 8 (4) Where a company is under restructuring, but for some reason no
9 restructuring practitioner is acting, the Court may appoint a person
10 as restructuring practitioner on the application of ASIC or of an
11 officer, member or creditor of the company.

12 **456F Declarations by replacement restructuring practitioner—** 13 **relevant relationships**

14 *Scope*

- 15 (1) This section applies to a restructuring practitioner appointed under
16 subsection 456E(1) otherwise than by the Court.

17 *Declaration of relationships*

- 18 (2) As soon as practicable after being appointed, the restructuring
19 practitioner must make a declaration of relevant relationships.

20 Note: Failure to comply with this subsection is an offence (see
21 subsection 1311(1)).

22 *Notification of creditors*

- 23 (3) The restructuring practitioner must:
24 (a) give a copy of the declaration under subsection (2) to as
25 many of the company's creditors as reasonably practicable;
26 and
27 (b) do so at the same time as notice of the appointment is given
28 under section 457A.

29 Note: Failure to comply with this subsection is an offence (see
30 subsection 1311(1)).

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1 (4) As soon as practicable after making a declaration under
2 subsection (2), the restructuring practitioner must lodge a copy of
3 the declaration with ASIC.

4 Note: Failure to comply with this subsection is an offence (see
5 subsection 1311(1)).

6 *Updating of declaration*

7 (5) If:

8 (a) at a particular time, the restructuring practitioner makes a
9 declaration of relevant relationships under subsection (2) or
10 this subsection; and

11 (b) at a later time:

12 (i) the declaration has become out-of-date; or

13 (ii) the restructuring practitioner becomes aware of an error
14 in the declaration;

15 the restructuring practitioner must, as soon as practicable, make a
16 replacement declaration of relevant relationships.

17 Note: Failure to comply with this subsection is an offence (see
18 subsection 1311(1)).

19 (6) As soon as practicable after making a replacement declaration
20 under subsection (5), the restructuring practitioner must lodge a
21 copy of the replacement declaration with ASIC.

22 Note: Failure to comply with this subsection is an offence (see
23 subsection 1311(1)).

24 *Defence*

25 (7) In a prosecution for an offence constituted by a failure to include a
26 particular matter in a declaration under this section, it is a defence
27 if the defendant proves that:

28 (a) the defendant made reasonable enquiries; and

29 (b) after making these enquiries, the defendant had no reasonable
30 grounds for believing that the matter should have been
31 included in the declaration.

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Part 1 Core provisions

1 **Subdivision C—Rights, obligations and liabilities in relation to**
2 **the restructuring practitioner**

3 **456G Rights, obligations and liabilities of a company and its officers**
4 **in relation to the restructuring practitioner**

- 5 (1) The regulations may make provision for and in relation to the
6 following:
- 7 (a) the rights, obligations and liabilities of a company that is or
8 has been under restructuring in relation to a person who is or
9 has been the restructuring practitioner for the company;
 - 10 (b) the rights, obligations and liabilities of a company that has at
11 any time made a restructuring plan in relation to a person
12 who is or has been the restructuring practitioner for the
13 restructuring plan;
 - 14 (c) the rights, obligations and liabilities of the officers and
15 former officers of a company that is or has been under
16 restructuring in relation to a person who is or has been the
17 restructuring practitioner for the company;
 - 18 (d) the rights, obligations and liabilities of the officers and
19 former officers of a company that has at any time made a
20 restructuring plan in relation to a person who is or has been a
21 restructuring practitioner for the restructuring plan.
- 22 (2) The rights, obligations and liabilities provided for in the
23 regulations are in addition to any other rights, obligations and
24 liabilities provided for under this Act.

25 **456H No liability for consent etc.**

26 A person who is or has been the restructuring practitioner for a
27 company under restructuring is not liable to an action or other
28 proceeding for damages in respect of:

- 29 (a) a decision to terminate, or not to terminate, the restructuring
30 of a company under section 453J; or
- 31 (b) a decision to give, or refuse to give, an approval or consent
32 under this Division.

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Restructuring of a company **Schedule 1**
Core provisions **Part 1**

1 **Subdivision D—Appointment of 2 or more restructuring**
2 **practitioners**

3 **456J Appointment of 2 or more restructuring practitioners of**
4 **company**

- 5 (1) Where a provision of this Act provides for a small business
6 restructuring practitioner for a company to be appointed, 2 or more
7 persons may be appointed as small business restructuring
8 practitioners of the company.
- 9 (2) Where, because of subsection (1), there are 2 or more small
10 business restructuring practitioners of a company:
- 11 (a) a function, duty or power of a restructuring practitioner for
12 the company may be performed or exercised by any one of
13 them, or by any 2 or more of them together, except so far as
14 the instrument appointing them otherwise provides; and
- 15 (b) a reference in this Act to a restructuring practitioner, or to the
16 restructuring practitioner, of a company is, in the case of the
17 first-mentioned company, a reference to whichever one or
18 more of those restructuring practitioners the case requires.

19 **456K Appointment of 2 or more restructuring practitioners of**
20 **restructuring plan**

- 21 (1) Where a provision of this Act provides for a small business
22 restructuring practitioner for a restructuring plan to be appointed, 2
23 or more persons may be appointed as small business restructuring
24 practitioners of the plan.
- 25 (2) Where, because of subsection (1), there are 2 or more small
26 business restructuring practitioners for a restructuring plan:
- 27 (a) a function, duty or power of a restructuring practitioner for
28 the plan may be performed or exercised by any one of them,
29 or by any 2 or more of them together, except so far as the
30 plan, or the instrument appointing them, otherwise provides;
31 and
- 32 (b) a reference in this Act to a restructuring practitioner, or to the
33 restructuring practitioner, for a restructuring plan is, in the

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1 case of the first-mentioned plan, a reference to whichever one
2 or more of those restructuring practitioners the case requires.

3 **Division 5—Information, reports, documents etc.**

4 **457A Regulations may deal with information etc.**

5 The regulations may make provision for and in relation to:

- 6 (a) giving information, providing a report or producing a
7 document to the restructuring practitioner for a company or
8 for a restructuring plan; and
9 (b) giving information, providing a report or producing a
10 document to ASIC in relation to a company under
11 restructuring or a company that has made a restructuring
12 plan; and
13 (c) giving information, providing a report or producing a
14 document to any other person (including creditors) in relation
15 to a company under restructuring or a company that has made
16 a restructuring plan; and
17 (d) publishing information, a report or a document in relation to
18 a company under restructuring or that has made a
19 restructuring plan.

20 **457B Notice in public documents of company**

- 21 (1) A company under restructuring must set out, in every public
22 document, and in every negotiable instrument, of the company,
23 after the company's name where it first appears, the expression
24 ("restructuring practitioner appointed").
25 (2) An offence based on subsection (1) is an offence of strict liability.

26 Note: For strict liability, see section 6.1 of the Criminal Code.

27 **457C Effect of contravention of this Subdivision**

28 A contravention of this Subdivision, or regulations made for the
29 purposes of this Subdivision, does not affect the validity of
30 anything done or omitted under this Part, except so far as a Court
31 otherwise orders.

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Restructuring of a company **Schedule 1**
Core provisions **Part 1**

1 **Division 6—Powers of Court**

2 **458A Powers of the Court**

- 3 (1) The regulations may:
- 4 (a) confer powers on the Court in relation to the restructure of
- 5 companies or restructuring plans; and
- 6 (b) prescribe whether those powers are to be exercised on the
- 7 initiative of the Court or on the application of one or more
- 8 persons; and
- 9 (c) prescribe persons who may apply to the Court for the
- 10 exercise of those powers.
- 11 (2) Without limiting subsection (1), the powers that may be conferred
- 12 on the Court include the power:
- 13 (a) to vary or terminate a restructuring plan; and
- 14 (b) to declare a restructuring plan void.
- 15 (3) The powers conferred on the Court under regulations made for the
- 16 purposes of this section are in addition to any other powers
- 17 conferred on the Court.

18 **Division 7—Other matters**

19 **458B Time for doing act does not run while act prevented by this**
20 **Part**

21 Where:

- 22 (a) for any purpose (for example, the purposes of a law,
- 23 agreement or instrument) an act must or may be done within
- 24 a particular period or before a particular time; and
- 25 (b) this Part prevents the act from being done within that period
- 26 or before that time;
- 27 the period is extended, or the time is deferred, because of this
- 28 section, according to how long this Part prevented the act from
- 29 being done.

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Schedule 1 Restructuring of a company

Part 2 Consequential amendments

1 **Part 2—Consequential amendments**

2 ***Corporations Act 2001***

3 **2 Section 9 (after paragraph (d) of the definition of *Chapter 5***
4 ***body corporate*)**

5 Insert:

6 (da) that is under restructuring; or

7 (db) that has made a restructuring plan that has not yet terminated;

8 or

9 **3 Section 9 (definition of *decision period*)**

10 Repeal the definition, substitute:

11 ***decision period***, for a secured party in relation to a security interest
12 in property (including PPSA retention of title property) of a
13 company means:

14 (a) in relation to a company under administration—the period
15 beginning on the day when:

16 (i) a notice of appointment of the administrator must be
17 given to the secured party under subsection 450A(3)—
18 such notice is so given; or

19 (ii) otherwise—the administration begins;

20 and ending at the end of the thirteenth business day after that
21 day; and

22 (b) in relation to a company under restructuring—the period
23 beginning on the day when:

24 (i) a notice of appointment of the restructuring practitioner
25 must be given to the secured party under the
26 regulations—such notice is so given; or

27 (ii) otherwise—the restructuring begins;

28 and ending at the end of the thirteenth business day after that
29 day.

30 **4 Section 9 (after paragraph (d) of the definition of *eligible***
31 ***applicant*)**

32 Insert:

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- 1 (da) a restructuring practitioner for the corporation; or
2 (db) a restructuring practitioner for a restructuring plan made by
3 the corporation; or

4 **5 Section 9**

5 Insert:

6 *eligibility criteria* for restructuring a company: see section 453C.

7 **6 Section 9 (paragraph (a) of the definition of *examinable*** 8 ***affairs*)**

9 After “administration”, insert “, restructuring”.

10 **7 Section 9 (definition of *firm*)**

11 Omit “administrator or liquidator” (wherever occurring), substitute
12 “administrator, restructuring practitioner or liquidator”.

13 **8 Section 9 (after paragraph (e) of the definition of *officer* of a** 14 **corporation)**

15 Insert:

- 16 (ea) a restructuring practitioner for the corporation; or
17 (eb) a restructuring practitioner for a restructuring plan made by
18 the corporation; or

19 **9 Section 9 (after paragraph (a) of the definition of *property*)**

20 Insert:

21 (aa) in Part 5.3B (restructuring)—has a meaning affected by
22 section 452B; and

23 **10 Section 9 (after paragraph (c) of the definition of** 24 ***remuneration*)**

25 Insert:

- 26 (ca) a restructuring practitioner for the corporation;
27 (cb) a restructuring practitioner for a restructuring plan made by
28 the corporation;

29 **11 Section 9**

30 Insert:

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1 *restructuring*, in relation to a company, has the meaning given by
2 section 453A.

3 *restructuring plan* means a plan executed under Part 5.3B or such
4 a plan as varied and in force from time to time.

5 *restructuring practitioner*:

6 (a) in relation to a company but not in relation to a restructuring
7 plan:

8 (i) means a small business restructuring practitioner for the
9 company appointed under Part 5.3B; and

10 (ii) if 2 or more persons are appointed under that Part as
11 small business restructuring practitioners for the
12 company—has a meaning affected by paragraph
13 456J(2)(b); or

14 (b) in relation to a restructuring plan:

15 (i) means a small business restructuring practitioner for the
16 agreement appointed under Part 5.3B; and

17 (ii) if 2 or more persons are appointed under that Part as
18 small business restructuring practitioners for the
19 agreement—has a meaning affected by paragraph
20 456K(2)(b).

21 **12 After subparagraph 53(d)(ia)**

22 Insert:

23 (iib) the body is under restructuring; or

24 (iic) a restructuring plan made by the body has not yet
25 terminated; or

26 **13 Paragraph 53(d)**

27 After “of an administrator of such a deed of company arrangement,”
28 insert “of a restructuring practitioner for the body, of a restructuring
29 practitioner for such a restructuring plan,”.

30 **14 After subparagraph 60(1)(a)(vi)**

31 Insert:

32 (via) a former restructuring practitioner for the company, or a
33 restructuring plan of the company; or

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1 **15 After subsection 60(1)**

2 Insert:

3 *Restructuring practitioner*

4 (1A) In this Act, a *declaration of relevant relationships*, in relation to a
5 restructuring practitioner for a company under restructuring, means
6 a written declaration:

7 (a) stating whether any of the following:

8 (i) the restructuring practitioner;

9 (ii) if the restructuring practitioner's firm (if any) is a
10 partnership—a partner in that partnership;

11 (iii) if the restructuring practitioner's firm (if any) is a body
12 corporate—that body corporate or an associate of that
13 body corporate;

14 has, or has had within the preceding 24 months, a
15 relationship with:

16 (iv) the company; or

17 (v) an associate of the company; or

18 (vi) *a former liquidator, or former provisional liquidator, of*
19 *the company; or*

20 (vii) a person who is entitled to enforce a security interest in
21 the whole, or substantially the whole, of the company's
22 property (including any PPSA retention of title
23 property); and

24 (b) if so, stating the restructuring practitioner's reasons for
25 believing that none of the relevant relationships result in the
26 restructuring practitioner having a conflict of interest or duty.

27 **16 Subparagraph 60(2)(viii)**

28 Omit “; and”, substitute “; or”.

29 **17 After subparagraph 60(2)(a)(viii)**

30 Insert:

31 (vix) a former restructuring practitioner for the company; or

32 (x) a former restructuring practitioner for a restructuring
33 plan made by the company; and

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1 **18 Section 91 (at the end of the table)**

2 Add:

16 in the case of a company: the section 513CA day in relation to
(a) the Court orders under section 233, 459A, 459B or 461 the restructuring.
that the company be wound up;
and
(b) immediately before the order
was made, the company was
under restructuring; and
(c) the order was made in response
to an application filed at or after
the beginning of the
restructuring;

17 in the case of a company: the day on which that application
(a) the Court orders under section 233, 459A, 459B or 461 was filed.
that the company be wound up;
and
(b) immediately before the order
was made, the company was
under restructuring; and
(c) the order was made in response
to an application filed before the
beginning of the restructuring;

18 in the case of a company: the section 513CA day in relation to
(a) the Court orders under section 233, 459A, 459B or 461 that restructuring.
that the company be wound up;
and
(b) immediately before the order
was made, a restructuring plan
had been made by the company
and had not yet terminated; and
(c) the order was made in response
to an application filed at or after
the beginning of the restructuring
that ended when the plan was
made;

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-
- | | | |
|----|--|---|
| 19 | in the case of a company:
(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and
(b) immediately before the order was made, a restructuring plan had been made by the company and had not yet terminated; and
(c) the order was made in response to an application filed before the beginning of the restructuring that ended when the plan was made; | the day on which that application was filed. |
| 20 | in the case of a company:
(a) the company resolves by special resolution that it be wound up voluntarily; and
(b) immediately before the resolution was passed, the company was under restructuring; and
(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the restructuring, but that application was dismissed or withdrawn before the restructuring commenced; | the section 513CA day in relation to the restructuring. |
| 21 | in the case of a company:
(a) the company resolves by special resolution that it be wound up voluntarily; and
(b) immediately before the resolution was passed, the company was under restructuring; and
(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up | the day on which that application was filed. |
-

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-
- was filed before the beginning of the restructuring; and
- (d) that application had not been dismissed or withdrawn before the restructuring commenced;
-
- 22 in the case of a company: the day on which that application was filed.
- (a) the company resolves by special resolution that it be wound up voluntarily; and
- (b) immediately before the resolution was passed, the company was under restructuring; and
- (c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the restructuring; and
- (d) that application had not been dismissed or withdrawn before the restructuring commenced;
-
- 23 any other case applies; the day on which the winding up is taken, because of Division 1A of Part 5.6, to have begun.

1 **19 After paragraph 12.1 of the small business guide in**
2 **Part 1.5**

3 Insert:

4 *12.1A Restructuring*

5 If a company experiences financial problems, the directors may
6 appoint a small business restructuring practitioner to help the
7 company develop a plan to restructure.

8 If the company's creditors do not agree to the plan, the company
9 may be placed in voluntary administration (see 12.1) or wound up
10 (see 12.3).

11 [Part 5.3B].

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Restructuring of a company **Schedule 1**
Consequential amendments **Part 2**

1 **20 At the end of subsection 95A(2)**

2 Insert:

3 Note: A company is taken to be insolvent if the company proposes a
4 restructuring plan to creditors (see subsection 455A(2)).

5 **21 At the end of subsection 109X(1)**

6 Add:

7 ; or (e) if a restructuring practitioner for the company has been
8 appointed—leaving it at, or posting it to, the address of the
9 restructuring practitioner in the most recent notice of that
10 address lodged with ASIC.

11 **22 After subsection 157A(4)**

12 Insert:

13 *Application by restructuring practitioner*

14 (4A) The restructuring practitioner for a company under restructuring
15 may lodge an application with ASIC to change the name of the
16 company if the restructuring practitioner is satisfied that the
17 proposed change of name is in the interests of the creditors of the
18 company as a whole.

19 *Application by restructuring practitioner for a restructuring plan*

20 (4B) The restructuring practitioner for a restructuring plan for a
21 company may lodge an application with ASIC to change the name
22 of the company if the restructuring practitioner is satisfied that the
23 proposed change of name is in the interests of the creditors of the
24 company as a whole.

25 **23 After subparagraph 161A(1)(a)(iii)**

26 Insert:

27 (iiia) the company is under restructuring;
28 (iiib) the company has made a restructuring plan that has not
29 yet terminated;

30 **24 After subparagraph 161A(1)(b)(iv)**

31 Insert:

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1 (iva) in the case of a company under restructuring—a change
2 of the company’s name took effect during the 6-month
3 period ending immediately before the restructuring
4 began;

5 (ivb) in the case of a company that has made a restructuring
6 plan—a change of the company’s name took effect
7 during the 6-month period ending immediately before
8 the beginning of the restructuring that ended when the
9 plan was made;

10 **25 Subsection 161A(3)**

11 After “subparagraph (1)(b)(ii), (iii), (iv),”, insert “(iva), (ivb),”.

12 **26 After paragraph 161A(6)(c)**

13 Insert:

14 (ca) if subparagraph (1)(b)(iva) applies—the restructuring
15 practitioner for the company; or

16 (cb) if subparagraph (1)(b)(ivb) applies—the restructuring
17 practitioner for the restructuring plan; or

18 **27 Before subsection 198G(3)**

19 Insert:

20 (3A) Subsections (1) and (2) do not apply in relation to a company under
21 restructuring.

22 **28 After paragraph 206D(2)(c)**

23 Insert:

24 (ca) the corporation makes a restructuring plan and creditors are
25 not fully paid or are unlikely to be fully paid; or

26 **29 At the end of subsection 250PAA(1)**

27 Add:

28 ; (d) a specified class of companies under restructuring;

29 (e) a specified class of companies subject to restructuring plans.

30 **30 After subsection 250PAB(3)**

31 Insert:

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1 (3A) The restructuring practitioner for a company under restructuring
2 may lodge an application with ASIC to exempt the company from
3 section 250N.

4 (3B) The restructuring practitioner for a restructuring plan for a
5 company may lodge an application with ASIC to exempt the
6 company from section 250N.

7 **31 After subparagraph 283BG(a)(i)**

8 Insert:

9 (ia) it is under restructuring; or

10 **32 Paragraph 420(2)(r)**

11 Omit “or a scheme of arrangement”, substitute “, a scheme of
12 arrangement or a restructuring plan”.

13 **33 Paragraphs 422(1)(b) and (3)(b)**

14 After “administration,”, insert “restructuring,”.

15 **34 Subparagraph 422(4)(b)(ii)**

16 After “administration,”, insert “restructuring,”.

17 **35 After paragraph 425(5)(c)**

18 Insert:

19 (ca) the restructuring practitioner for the corporation has
20 consented to the application; or

21 (cb) the restructuring practitioner for a restructuring plan made by
22 the corporation; or

23 **36 At the end of paragraph 425(8)(i)**

24 Add:

25 or (vi) one or more restructuring practitioners; or

26 (vii) one or more restructuring practitioners for restructuring
27 plans;

28 **37 Paragraphs 438D(1)(b) and (3)(b)**

29 Omit “administration, management”, substitute “administration,
30 restructuring, management”.

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Schedule 1 Restructuring of a company

Part 2 Consequential amendments

1 **38 Paragraph 448C(1)(b)**

2 Repeal the paragraph, substitute:

3 (b) the person is, otherwise than in a capacity as:

4 (i) administrator of the company or a related body
5 corporate; or

6 (ii) administrator of a deed of company arrangement
7 executed by the company or a related body corporate; or

8 (iii) restructuring practitioner for the company or a related
9 body corporate; or

10 (iv) restructuring practitioner for a restructuring plan made
11 by the company or a related body corporate; or

12 (v) liquidator of the company or a related body corporate;
13 a creditor of the company or of a related body corporate in an
14 amount exceeding \$5,000; or

15 **39 After paragraph 468(2)(ab)**

16 Insert:

17 (ac) a disposition made in good faith by, or with the consent of, a
18 restructuring practitioner for the company; or

19 (ad) a disposition under a restructuring plan made by the
20 company; or

21 **40 At the end of subsection 482(1A)**

22 Add:

23 ; or (d) in the case of a company subject to a restructuring plan—the
24 restructuring practitioner for the plan.

25 **41 After subsection 482(2A)**

26 Insert:

27 (2B) If such an application is made in relation to a company subject to a
28 restructuring plan, then, in determining the application, the Court
29 must have regard to all of the following matters:

30 (a) any report that has been given to the Court by:

31 (i) the restructuring practitioner, or a former restructuring
32 practitioner, for the company; or

33 (ii) the liquidator, or a former liquidator, of the company; or

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- 1 (iii) ASIC;
2 and that contains an allegation that an officer of the company
3 has engaged in misconduct;
4 (b) any report that has been lodged with ASIC by:
5 (i) the restructuring practitioner, or a former restructuring
6 practitioner, for the company; or
7 (ii) the liquidator, or a former liquidator, of the company;
8 and that contains an allegation that an officer of the company
9 has engaged in misconduct;
10 (c) the decision of the company's creditors that the company
11 make a restructuring plan;
12 (d) any notice that has been given to the restructuring
13 practitioner for the restructuring plan or the company's
14 creditors in relation to a contravention of the restructuring
15 plan;
16 (e) whether the restructuring plan is likely to result in the
17 company becoming or remaining insolvent;
18 (f) any other relevant matters.

42 After paragraph 513A(1)(d)

19
20 Insert:

- 21 (da) if, immediately before the order was made, the company was
22 under restructuring—on the section 513CA day in relation to
23 the restructuring; or
24 (db) if:
25 (i) when the order was made, a provisional liquidator of the
26 company was acting; and
27 (ii) immediately before the provisional liquidator was
28 appointed, the company was under restructuring;
29 on the section 513CA day in relation to the restructuring; or
30 (dc) if, immediately before the order was made, a restructuring
31 plan had been made by the company and had not yet
32 terminated—on the section 513CA day in relation to the
33 restructuring that ended when the plan was made; or

43 After paragraph 513B(da)

34
35 Insert:

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1 (db) if, immediately before the resolution was passed, the
2 company was under restructuring—on the section 513CA
3 day in relation to the restructuring; or

4 (dc) if, immediately before the resolution was passed, a
5 restructuring plan had been made by the company but had not
6 yet terminated—on the section 513CA day in relation to the
7 restructuring that ended when the plan was made; or

8 **44 Before paragraph 513C(a)**

9 Insert:

10 (aa) if, immediately before the administration began, the company
11 was under restructuring—the day on which the restructuring
12 began; or

13 (ab) if, immediately before the administration began, a
14 restructuring plan had been made by the company but had not
15 yet terminated—the day on which the restructuring that
16 ended when the plan was made began; or

17 **45 After section 513C**

18 Insert:

19 **513CA Section 513CA day in relation to a restructuring under** 20 **Part 5.3B**

21 The *section 513CA day* in relation to the restructuring of a
22 company is the day on which the restructuring of the company
23 began.

24 **46 Paragraphs 533(1)(b) and (3)(b)**

25 Omit “administration, management”, substitute “administration,
26 restructuring, management”.

27 **47 Paragraphs 553(1A)(a) and (b)**

28 Repeal the paragraphs, substitute:

29 (a) both of the following are satisfied:

30 (i) the circumstances occur at a time when the company is
31 under a deed of company arrangement;

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- 1 (ii) the company is under the deed immediately before the
2 resolution or court order that the company be wound up;
3 or
4 (b) both of the following are satisfied:
5 (i) the circumstances occur at a time when the company is
6 under a restructuring plan;
7 (ii) the company is under the plan immediately before the
8 resolution or court order that the company be wound up.

9 **48 Subsection 553(1A) (note 1)**

10 Repeal the note, substitute:

11 Note 1: See Division 10 of Part 5.3A for provisions dealing with deeds of
12 company arrangement and regulations made under Division 3 of
13 Part 5.3B for provisions dealing with restructuring plans.

14 **49 Subsection 553(1A) (note 3)**

15 Repeal the note, substitute:

16 Note 3: A debt or claim admissible to proof under subsection (1A)(a) will only
17 be covered by paragraph 556(1)(a) if the administrator of the deed is
18 personally liable for the debt or claim (see subsection 556(1AA)).

19 Note 4: A debt or claim admissible to proof under subsection (1A)(b) will
20 only be covered by paragraph 556(1)(b) if the restructuring
21 practitioner for the plan is personally liable for the debt or claim (see
22 subsection 556(1AB)).

23 **50 Subsection 553(1B)**

24 Repeal the subsection, substitute:

25 (1B) For the purposes of applying the other sections of this Division, the
26 relevant date for the debt or claim is:

- 27 (a) if it is a debt or claim that is admissible to proof under
28 paragraph (1A)(a)—the date on which the deed terminates;
29 and
30 (b) if it is a debt or claim that is admissible to proof under
31 paragraph (1A)(b)—the date on which the plan terminates.

32 **51 Subparagraphs 556(1)(ba)(ii), (iii) and (iv)**

33 After “administration”, insert “or restructuring”.

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1 **52 Paragraph 556(1)(c)**

2 Repeal the paragraph, substitute:

3 (c) next:

- 4 (i) the debts for which paragraph 443D(a) or (aa) entitles
5 an administrator of the company to be indemnified
6 (even if the administration ended before the relevant
7 date), except expenses covered by paragraph (a) of this
8 subsection and deferred expenses; and
9 (ii) the debts (if any) for which the restructuring practitioner
10 for the company is entitled to be indemnified under the
11 regulations, and which are prescribed for the purposes
12 of this subparagraph;

13 **53 Paragraph 556(1AA)(b)**

14 Omit “subsection 553(1A)”, substitute “paragraph 553(1A)(a)”.

15 **54 After subsection 556(1AA)**

16 Insert:

17 (1AAA) Paragraph (1)(a) does not apply to expenses:

- 18 (a) incurred by the restructuring practitioner for a restructuring
19 plan; and
20 (b) relating to a debt or claim admissible to proof under
21 paragraph 553(1A)(b);

22 unless the restructuring practitioner is personally liable for the
23 expenses.

24 **55 Subsection 556(2) (at the end of the definition of *relevant*
25 *authority*)**

26 Add:

- 27 ; (e) in any case—a restructuring practitioner for the company,
28 even if the restructuring ended before the winding up began;
29 (f) in any case—a restructuring practitioner for a restructuring
30 plan made by the company, even if the plan terminated
31 before the winding up began.

32 **56 After subsection 588FE(2B)**

33 Insert:

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- 1 (2C) The transaction is voidable if:
2 (a) the transaction is:
3 (i) an uncommercial transaction of the company; or
4 (ii) an unfair preference given by the company to a creditor
5 of the company; or
6 (iii) an unfair loan to the company; or
7 (iv) an unreasonable director-related transaction of the
8 company; and
9 (b) the company was under restructuring immediately before:
10 (i) the company resolved by special resolution that it be
11 wound up voluntarily; or
12 (ii) the Court ordered that the company be wound up; and
13 (c) the transaction was entered into, or an act was done for the
14 purpose of giving effect to it, during the period beginning at
15 the start of the relation-back day and ending:
16 (i) when the company made the special resolution that it be
17 wound up voluntarily; or
18 (ii) when the Court made the order that the company be
19 wound up; and
20 (d) the transaction, or the act done for the purpose of giving
21 effect to it, was not entered into, or done, in the ordinary
22 course of business or by or with the consent of the
23 restructuring practitioner for the company.
- 24 (2D) The transaction is voidable if:
25 (a) the transaction is:
26 (i) an uncommercial transaction of the company; or
27 (ii) an unfair preference given by the company to a creditor
28 of the company; or
29 (iii) an unfair loan to the company; or
30 (iv) an unreasonable director-related transaction of the
31 company; and
32 (b) the company was subject to a restructuring plan immediately
33 before:
34 (i) the company resolved by special resolution that it be
35 wound up voluntarily; or
36 (ii) the Court ordered that the company be wound up; and
-

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- 1 (c) the transaction was entered into, or an act was done for the
2 purpose of giving effect to it, during the period beginning at
3 the start of the relation-back day and ending:
4 (i) when the company made the special resolution that it be
5 wound up voluntarily; or
6 (ii) when the Court made the order that the company be
7 wound up; and
8 (d) the transaction, or the act done for the purpose of giving
9 effect to it, was not entered into, or done:
10 (i) in the ordinary course of business, or by or with the
11 consent of the restructuring practitioner for the
12 company; or
13 (ii) on behalf of the company by or under the authority of
14 the restructuring practitioner for the plan.

15 **57 After subparagraph 588FE(6B)(c)(iii)**

16 Insert:

- 17 (iiia) by a restructuring practitioner for the company; or
18 (iiib) under a restructuring plan made by the company; or

19 **58 Paragraph 588FGB(7)(a)**

20 After “an administrator of the company”, insert “or a restructuring
21 practitioner for the company”.

22 **59 Subparagraph 588FL(1)(a)(iii)**

23 Omit “; and”, substitute “;”.

24 **60 At the end of paragraph 588FL(1)(a)**

25 Add:

- 26 (iv) a restructuring practitioner for the company is appointed
27 under section 453B;
28 (v) a company makes a restructuring plan under Division 3
29 of Part 5.4B; and

30 **61 Subsection 588FL(7) (paragraph (b) of the definition of** 31 ***critical time*)**

32 Repeal the paragraph, substitute:

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- 1 (b) if the company is under administration or is subject to a deed
2 of company arrangement—when, on a day, the event occurs
3 by virtue of which the day is the section 513C day for the
4 company; or
5 (c) if the company is under restructuring or is subject to a
6 restructuring plan—when, on a day, the event occurs by
7 virtue of which the day is the section 513CA day for the
8 company.

9 **62 After paragraphs 588GAB(3)(b) and 588GAC(3)(b)**

10 Insert:

- 11 (ba) under a restructuring plan made by the company; or

12 **63 Paragraph 588GAAA(1)(c)**

13 Omit “administrator, or liquidator,” substitute “administrator,
14 restructuring practitioner or liquidator”.

15 **64 After section 588GAAA**

16 Insert:

17 **588GAAB Safe harbour—companies under restructuring**

18 *Safe harbour*

- 19 (1) Subsection 588G(2) does not apply in relation to a person and a
20 debt incurred by a company if the debt is incurred:
21 (a) during the restructuring of the company; and
22 (b) in the ordinary course of the company’s business, or with the
23 consent of the restructuring practitioner or by order of the
24 Court.
- 25 (2) A person who wishes to rely on subsection (1) in a proceeding for,
26 or relating to, a contravention of subsection 588G(2) bears an
27 evidential burden in relation to that matter.

28 *When the safe harbour does not apply*

- 29 (3) Subsection (1) is taken never to have applied in relation to a person
30 and a debt in the circumstances prescribed by the regulations for
31 the purposes of this subsection.

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1 *Definitions*

2 (4) In this section:

3 *evidential burden*, in relation to a matter, means the burden of
4 adducing or pointing to evidence that suggests a reasonable
5 possibility that the matter exists or does not exist.

6 **65 Subparagraph 588GB(1)(a)(iii)**

7 Repeal the subparagraph, substitute:

8 (iii) subsection 438B(1), paragraph 453F(1)(c), section
9 453G or subsection 477(3) or 530A(1); or

10 **66 Paragraph 588GB(2)(b)**

11 Omit “or subsection 438B(2) or (3),” insert “, subsection 438B(2) or
12 (3), paragraph 453F(1)(b) or subsection”.

13 **67 Subsection 588GB(5)**

14 Omit “or subsection 438B(1) or (2)”, substitute “, subsection 438B(1)
15 or (2), paragraph 453F(1)(c) or subsection”.

16 **68 Paragraph 588H(6)**

17 After “an administrator of the company”, insert “or a restructuring
18 practitioner for the company”.

19 **69 After paragraph 589(1)(ca)**

20 Insert:

21 (cb) that is or has been under restructuring; or

22 (cc) that has made a restructuring plan, even if the plan has since
23 terminated; or

24 **70 Subsection 589(5) (after paragraph (ba) of the definition of**
25 ***appropriate officer*)**

26 Insert:

27 (bb) in relation to a company that is or has been under
28 restructuring—the restructuring practitioner; and

29 (bc) in relation to a company that has made a restructuring plan—
30 the plan’s restructuring practitioner; and

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1 **71 Subsection 589(5) (after paragraph (ba) of the definition of**
2 **relevant day)**

3 Insert:

- 4 (bb) in relation to a company that is or has been under
5 restructuring—the restructuring began;
6 (bc) in relation to a company that has made a restructuring plan—
7 the plan was made;

8 **72 After paragraph 595(1)(c)**

9 Insert:

- 10 (ca) a restructuring practitioner for a company; or
11 (cb) a restructuring practitioner for a restructuring plan made, or
12 to be made, by a company; or

13 **73 After paragraph 596AB(2B)(b)**

14 Insert:

- 15 ; or (c) a restructuring plan made by the company.

16 **74 At the end of paragraph 596AC(7)(a)**

17 Add:

- 18 (iii) a restructuring plan made by the company; or

19 **75 After subparagraph 596A(b)(ii)**

20 Insert:

- 21 (ia) if the corporation is under restructuring—on the section
22 513CA day in relation to the restructuring; or
23 (ib) if the corporation has made a restructuring plan that has
24 not yet terminated—on the section 513CA day in
25 relation to the restructuring that ended when the plan
26 was made; or

27 **76 After subparagraph 597A(1)(b)(ii)**

28 Insert:

- 29 (ia) if the corporation is under restructuring—on the section
30 513CA day in relation to the restructuring; or
31 (ib) if the corporation has made a restructuring plan that has
32 not yet terminated—on the section 513CA day in

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1 relation to the restructuring that ended when the plan
2 was made; or

3 **77 After paragraph 600AA(1)(b)**

4 Insert:

5 (ba) is appointed as the restructuring practitioner for a body
6 corporate under Subdivision B of Division 2 of Part 5.3B; or

7 **78 Subsection 600F(2) (after paragraph (d) of the definition of** 8 ***eligible company*)**

9 Insert:

10 (da) that is under restructuring; or

11 (db) that has made a restructuring plan that has not yet terminated;
12 or

13 **79 Subsection 600F(2) (after paragraph (d) of the definition of** 14 ***relevant authority*)**

15 Insert:

16 (da) the restructuring practitioner for the company; or

17 (db) the restructuring practitioner for the restructuring plan; or

18 **80 Paragraph 600H(1)(a)**

19 After “the administrator”, insert “, the restructuring practitioner”.

20 **81 Subsection 600H(2) (after paragraph (c) of the definition of** 21 ***external administration*)**

22 Insert:

23 (ca) restructuring;

24 (cb) restructuring under a restructuring plan;

25 **82 Section 601FH**

26 Repeal the section, substitute:

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1 **601FH Liquidator etc. of responsible entity entitled to exercise**
2 **indemnity rights**

3 If the company that is a registered scheme's responsible entity is
4 being wound up, is under administration, has executed a deed of
5 company arrangement that has not terminated, is under
6 restructuring or has made a restructuring plan that has not
7 terminated:

- 8 (a) a provision of the scheme's constitution, or of another
9 instrument, is void against the liquidator, the administrator of
10 the company or the deed or the restructuring practitioner for
11 the company or the plan, if it purports to deny the company a
12 right to be indemnified out of the scheme property that the
13 company would have had if it were not being wound up,
14 were not under administration, had not executed a deed of
15 company arrangement, were not under restructuring or had
16 not made a restructuring plan; and
17 (b) a right of the company to be indemnified out of the scheme
18 property may only be exercised by the liquidator, the
19 administrator of the company or the deed or the restructuring
20 practitioner for the company or the plan.

21 **83 After subparagraph 911A(2)(f)(vi)**

22 Insert:

- 23 (via) as a restructuring practitioner of a body corporate;
24 (vib) as a restructuring practitioner for a restructuring plan
25 made by a body corporate;

26 **84 Paragraph 1317S(3)(a)**

27 After "an administrator of the company or Part 5.7 body", insert "or a
28 restructuring practitioner for the company".

29 **85 Section 1-5 of Schedule 2 (paragraph beginning "Under**
30 **this Act")**

31 After "the administrator of a company or of a deed of company
32 arrangement,", insert "the restructuring practitioner for a company or
33 for a restructuring plan,".

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Schedule 1 Restructuring of a company

Part 2 Consequential amendments

1 **86 Section 1-5 of Schedule 2 (paragraph beginning “A**
2 **company”)**

3 After “is the subject of a deed of company arrangement”, insert “, is
4 under restructuring, is the subject of a restructuring plan”.

5 **87 Section 5-5 of Schedule 2 (after paragraph (b) of the**
6 **definition of *end of an external administration*)**

7 Insert:

8 (ba) in relation to a company under restructuring—the day
9 worked out under regulations made for the purposes of
10 paragraph 453A(b); and

11 (bb) in relation to a company subject to a restructuring plan—the
12 day the plan is terminated; and

13 **88 Section 5-5 of Schedule 2 (after paragraph (b) of the**
14 **definition of *start of an external administration*)**

15 Insert:

16 (ba) in relation to a company under restructuring—the day a
17 restructuring practitioner for the company is appointed under
18 section 453B; and

19 (bb) in relation to a company that is subject to a restructuring
20 plan—the day the plan is made; and

21 **89 After paragraph 5-15(b) of Schedule 2**

22 Insert:

23 (ba) the company is under restructuring; or

24 (bb) a restructuring plan has been made in relation to the
25 company; or

26 **90 After paragraph 5-20(b) of Schedule 2**

27 Insert:

28 (ba) the restructuring practitioner for the company; or

29 (bb) the restructuring practitioner for a restructuring plan that has
30 been made in relation to the company; or

31 **91 Section 60-1 of Schedule 2**

32 After:

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1 ; and (f) if the company is under restructuring or has made a
2 restructuring plan—the company.

3 **96 After subsection 70-10(3) of Schedule 2**

4 Insert:

5 (3A) Subsection (2) does not apply if the company is under restructuring
6 or has made a restructuring plan that has not yet terminated.

7 **97 Section 75-1 of Schedule 2**

8 Omit “The external administrator of a company”, substitute “In most
9 cases, the external administrator of a company”.

10 **98 Section 75-1 of Schedule 2**

11 After:

12 The external administrator of a company may convene creditor or
13 company meetings at any time and must convene them in particular
14 circumstances, for example when directed to do so by certain
15 creditors or by ASIC.

16 insert:

17 The restructuring practitioner for a company or for a restructuring
18 plan may convene a meeting of creditors in exceptional
19 circumstances if it is in the interests of creditors to do so.

20 **99 After section 75-20 of Schedule 2**

21 Insert:

22 **75-21 Restructuring and restructuring plans**

23 (1) Sections 75-10, 75-15 and 75-20 do not apply to:
24 (a) a company under restructuring; or
25 (b) a company that has made a restructuring plan that has not yet
26 terminated.

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1 (2) However, the restructuring practitioner for a company, or for a
2 restructuring plan, may convene a meeting of the creditors if the
3 restructuring practitioner is satisfied that:

- 4 (a) there are exceptional circumstances; and
5 (b) it is in the interests of the creditors to do so.

6 **100 Section 80-1 of Schedule 2**

7 Omit “Creditors”, substitute “In most cases, creditors”.

8 **101 Section 80-1 of Schedule 2**

9 After:

10

Creditors of a company under external administration may decide 11 that there is to be a committee of inspection to monitor the 12 administration and to give assistance to the external administrator.

13 insert:

14

Committees of inspection are not appointed for a company that is 15 under restructuring or that has made a restructuring plan.

16 **102 Section 80-5 of Schedule 2 (heading)**

17 Omit “of sections 80-10 to 80-25”.

18 **103 Before subsection 80-5(1) of Schedule 2**

19 Insert:

20 *Application of whole of Division*

21 (1A) This Division does not apply to:

- 22 (a) a company under restructuring; or
23 (b) a company that has made a restructuring plan that has not yet
24 terminated.

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Schedule 1 Restructuring of a company

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1 *Application of sections 80-10 to 80-25*

2 **104 Section 90-1 of Schedule 2**

3 After “to review the external administration of the company”, insert “in
4 most cases”.⁷

5 **105 Section 90-1 of Schedule 2**

6 After:

7

If a provisional liquidator has been appointed for the company, 8 review by another registered liquidator is not available.

9 insert:

10

If the company is under restructuring or has made a restructuring 11 plan that has not yet terminated, a reviewing liquidator can only be 12 appointed by the Court.
--

13 **106 After subsection 90-23(5) of Schedule 2**

14 Insert:

15 (5A) Subsections (1) to (5) do not apply to:

- 16 (a) a company under restructuring; or
17 (b) a company that has made a restructuring plan that has not yet
18 terminated.

19 **107 At the end of section 90-24 of Schedule 2**

20 Add:

21 *Restructuring and restructuring plans*

22 (8) This section does not apply to:

- 23 (a) a company under restructuring; or
24 (b) a company that has made a restructuring plan that has not yet
25 terminated.

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1 **108 Schedule 3 (after table item dealing with**
2 **subsections 450E(1) and (2))**

3 Insert:

Subsections 453D(1), (2), (3), (4), (5) and (6)	20 penalty units
Subsection 453L(1)	6 months imprisonment
Subsection 456B(1)	50 penalty units
Subsection 456C(1)	50 penalty units
Subsections 456F(2), (3), (4), (5) and (6)	20 penalty units
Subsection 457B(1)	20 penalty units

EXPOSURE DRAFT

Schedule 2 Temporary relief for companies seeking a restructuring practitioner

1 **Schedule 2—Temporary relief for companies**
2 **seeking a restructuring practitioner**
3

4 *Corporations Act 2001*

Schedule 3—Simplified liquidation

Corporations Act 2001

1 Section 9

Insert:

eligibility criteria for the simplified liquidation process: see section 500AA.

2 Section 9

Insert:

simplified liquidation process has the meaning given by section 500AE.

3 Section 489F

Insert:

triggering event: each of the following is a *triggering event* in relation to a company:

- (a) a special resolution under section 491 that the company be wound up voluntarily is passed;
- (b) if section 446A applies in relation to the company because of paragraph 446A(1)(a)—the resolution referred to in that paragraph is passed;
- (c) if section 446A applies in relation to the company because of paragraph 446A(1)(b)—the company first contravenes subsection 444B(2);
- (d) if section 446A applies in relation to the company because of paragraph 446A(1)(c)—the resolution referred to in subparagraph 446A(1)(c)(ii) is passed;
- (e) if section 446AA applies in relation to the company because of paragraph 446AA(1)(a)—the Court makes an order under section 445D terminating a deed of company arrangement in relation to the company;
- (f) if section 446AA applies in relation to the company because of paragraph 446AA(1)(b)—the circumstances specified in

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Schedule 3 Simplified liquidation

- 1 the deed of company arrangement in which the deed is to
2 terminate and the company is to be wound up first exist;
3 (g) if regulations made for the purposes of section 446B have the
4 effect that the company is taken to have passed a special
5 resolution under section 491 that the company be wound up
6 voluntarily—that special resolution is taken to have passed,
7 under the regulations.

8 **4 Before section 497**

9 Insert:

10 **Subdivision A—Liquidation process**

11 **5 After section 497**

12 Insert:

13 **498 Declaration that company eligible for the simplified liquidation** 14 **process**

- 15 (1) The directors of a company must give the liquidator of the
16 company a declaration in accordance with this section if the
17 directors believe on reasonable grounds that, on the declaration
18 being given, the eligibility criteria for the simplified liquidation
19 process are met in relation to the company.
- 20 (2) The declaration must:
- 21 (a) be given within 5 business days after the day of the meeting
22 of the company at which the resolution for voluntary winding
23 up is passed; and
- 24 (b) if there is a prescribed form for the declaration—be in the
25 prescribed form; and
- 26 (c) if the regulations prescribe information to be included in the
27 declaration—include that information.
- 28 (3) The regulations may prescribe information to be included in a
29 declaration under this section.

30 **6 At the end of Division 3 of Part 5.5**

31 Add:

1 **Subdivision B—Simplified liquidation process for creditors’**
2 **voluntary winding up of an insolvent company**

3 **500A Liquidator may adopt the simplified liquidation process**

4 (1) The liquidator may adopt the simplified liquidation process for the
5 purpose of winding up the affairs and distributing the property of a
6 company in a creditors’ voluntary winding up, if the liquidator
7 believes on reasonable grounds that the eligibility criteria are met
8 in relation to the company.

9 (2) However, the liquidator must not adopt the simplified liquidation
10 process if:

- 11 (a) more than 20 business days have passed since the day on
12 which the triggering event occurred (see section 489F); or
13 (b) the liquidator has not given each member and creditor of the
14 company notice in accordance with subsection (3); or
15 (c) at least 25% in value of the creditors request the liquidator
16 under section 500AB not to follow the simplified liquidation
17 process in relation to the company.

18 (3) At least 10 business days before adopting the simplified liquidation
19 process, the liquidator must give each member and creditor of the
20 company notice in writing that includes the following:

- 21 (a) a statement that the liquidator believes on reasonable grounds
22 that the eligibility criteria for the simplified liquidation
23 process will be met in relation to the company when the
24 process is adopted;
25 (b) an outline of the simplified liquidation process containing the
26 prescribed information (if any);
27 (c) a statement that the liquidator will not adopt the simplified
28 liquidation process if at least 25% in value of the creditors
29 direct the liquidator in writing not to do so;
30 (d) prescribed information on how a creditor may give a
31 direction in writing not to adopt the simplified liquidation
32 process.

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Schedule 3 Simplified liquidation

1 **500AA Eligibility criteria for the simplified liquidation process**

- 2 (1) The *eligibility criteria* for the simplified liquidation process are
3 met in relation to a company if:
- 4 (a) the company has passed, or is taken to have passed under a
5 provision other than section 489EB, a special resolution
6 under section 491 that the company be wound up voluntarily;
7 and
 - 8 (b) subsection 497(4) (report on company's business affairs etc.)
9 and section 498 (declaration of eligibility for simplified
10 liquidation process) has been complied with, or is taken to
11 have been complied with, in relation to the company; and
 - 12 (c) the company will not be able to pay its debts in full within a
13 period not exceeding 12 months after the day on which the
14 triggering event occurs; and
 - 15 (d) if the regulations prescribe a test for eligibility based on the
16 liabilities of the company—that test is satisfied on the day on
17 which the triggering event occurs; and
 - 18 (e) no person who:
 - 19 (i) is a director of the company; or
 - 20 (ii) has been a director of the company within the 12
21 months immediately preceding the day on which the
22 triggering event occurs;has been a director of another company that has undergone
23 restructuring or been the subject of a simplified liquidation
24 process within a period prescribed by the regulations, unless
25 exempt under regulations made for the purposes of
26 subsection (2) of this section; and
 - 27 (f) the company has given returns, notices, statements,
28 applications or other documents as required by taxation laws
29 (within the meaning of the *Income Tax Assessment Act*
30 *1997*).
31
- 32 (2) The regulations may prescribe:
- 33 (a) tests for eligibility based on the liabilities of companies for
34 the purposes of paragraph (1)(d); and
 - 35 (b) circumstances in which the directors of companies are
36 exempt from the requirement in paragraph (1)(e).
-

1 **500AB Creditors may request liquidator not to follow the simplified**
2 **liquidation process**

3 A creditor may at any time give the liquidator of a company notice
4 in writing requesting the liquidator not to follow the simplified
5 liquidation process in relation to the company.

6 **500AC Liquidator must cease to follow the simplified liquidation**
7 **process**

- 8 (1) The liquidator of a company must cease to follow the simplified
9 liquidation process:
- 10 (a) if the eligibility criteria for the simplified liquidation process
11 are no longer met in relation to a company; or
 - 12 (b) in other circumstances prescribed by the regulations.
- 13 (2) The regulations may deal with the transition from a simplified
14 liquidation process to another process under this Chapter.
- 15 (3) Without limiting subsection (2), regulations made for the purposes
16 of that subsection may deal with:
- 17 (a) proofs of debts and claims in relation to a company that has
18 ceased to be subject to the simplified liquidation process; and
 - 19 (b) ranking debts and claims in relation to a company that has
20 ceased to be subject to the simplified liquidation process; and
 - 21 (c) the identification of contributories in relation to a company
22 that has ceased to be the subject of the simplified liquidation
23 process; and
 - 24 (d) the declaration and payment of a dividend in the winding up
25 of a company that has ceased to be the subject of the
26 simplified liquidation process; and
 - 27 (e) giving information, providing reports and producing
28 documents to ASIC in relation to a company that has ceased
29 to be the subject of the simplified liquidation process.
- 30 (4) Regulations made for the purposes of subsection (2) may provide
31 that this Act has effect with any modifications prescribed by the
32 regulations.

EXPOSURE DRAFT

Schedule 3 Simplified liquidation

1 **500AD Working out whether the 25% in value of creditors test met**

2 For the purposes of paragraph 500A(2)(c):

- 3 (a) the value of the creditors at a particular time is to be worked
4 out by reference to the value of the creditors' claims against
5 the company that are known at that time; and
6 (b) the regulations may prescribe creditors that are, or are not, to
7 be taken into account.

8 **500AE Simplified liquidation process**

9 (1) The *simplified liquidation process* for a creditors' voluntary
10 winding up is the process for a creditors' voluntary winding up set
11 out in this Act, as affected by:

- 12 (a) subsection (2); and
13 (b) regulations made for the purposes of subsection (3).

14 (2) The following provisions do not apply in the simplified liquidation
15 process:

- 16 (a) section 533;
17 (b) section 75-10 of Schedule 2 (external administrator may
18 convene meetings);
19 (c) section 75-15 of Schedule 2 (external administrator must
20 convene meeting in certain circumstances);
21 (d) section 75-20 of Schedule 2 (external administrator must
22 convene meeting if required by ASIC);
23 (e) Division 80 of Schedule 2 (committees of inspection);
24 (f) subsections 90-23(1) to (5) and section 90-24 of Schedule 2
25 (appointment of reviewing liquidator by ASIC, creditors
26 etc.).

27 (3) The regulations may provide for and in relation to the following:

- 28 (a) circumstances in which a transaction is not an unfair
29 preference despite section 588FA;
30 (b) circumstances in which a transaction is not voidable despite
31 section 588FE;
32 (c) proofs of debts and claims in relation to a company that is
33 subject to the simplified liquidation process, including:
-

- 1 (i) the preparation and content of formal and informal
2 proofs of debts and claims in relation to the company;
3 and
4 (ii) the submission of formal and informal proofs of debts
5 and claims to the liquidator of the company; and
6 (iii) the production of documents and information relating to
7 proofs of debts and claims to the liquidator of the
8 company; and
9 (iv) withdrawal and variation of proofs of debts and claims
10 in relation to the company; and
11 (v) the admission and rejection of formal and informal
12 proofs of debts and claims in relation to the company;
13 (d) the identification of contributories in relation to a company
14 that is the subject of the simplified liquidation process;
15 (e) the declaration and payment of a dividend in the winding up
16 of a company that is the subject of the simplified liquidation
17 process;
18 (f) giving information, providing reports and producing
19 documents to ASIC in relation to a company that is the
20 subject of the simplified liquidation process.

21 **7 In the appropriate position in Chapter 10**

22 Insert:

23 **Part 10.54—Application provisions relating to** 24 **simplified liquidation process under the** 25 **Corporations Amendment (Corporate** 26 **Insolvency Reforms) Act 2020**

27 **1681 Application of amendments relating to the simplified** 28 **liquidation process**

29 The amendments made by Schedule 3 to the *Corporations*
30 *Amendment (Corporate Insolvency Reforms) Act 2020* apply in
31 relation to the winding up of a company under a special resolution
32 that has passed, or is taken to have passed, under section 491 on or
33 after 1 January 2021.

EXPOSURE DRAFT

Schedule 3 Simplified liquidation

1 **8 Subsection 20-20(5) of Schedule 2**

2 Repeal the subsection, substitute:

3 (5) The committee may decide that the applicant should be registered
4 even if the committee is not satisfied of a matter mentioned in
5 paragraph (4)(a), (e), (f) or (i), provided the applicant would be
6 suitable to be registered as a liquidator.

7 **9 Subsection 20-20(6) of Schedule 2**

8 Repeal the subsection, substitute:

9 *Registration may be subject to conditions*

10 (6) The committee may decide that the applicant's registration is to be
11 subject to any conditions specified by the committee.

EXPOSURE DRAFT

Virtual meetings and electronic communications **Schedule 4**
General provisions relating to virtual meetings and electronic communications **Part 1**

1 **Schedule 4—Virtual meetings and electronic**
2 **communications**

3 **Part 1—General provisions relating to virtual**
4 **meetings and electronic communications**

5 *Corporations Act 2001*

6 **1 Section 9**

7 Insert:

8 *document* means any record of information, and includes:

- 9 (a) anything on which there is writing; and
10 (b) anything on which there are marks, figures, symbols or
11 perforations having a meaning for persons qualified to
12 interpret them; and
13 (c) anything from which sounds, images or writings can be
14 reproduced with or without the aid of anything else; and
15 (d) a map, plan, drawing or photograph.

16 *electronic communication* means:

- 17 (a) a communication of information in the form of data, text or
18 images by means of guided and/or unguided electromagnetic
19 energy; or
20 (b) a communication of information in the form of speech by
21 means of guided and/or unguided electromagnetic energy,
22 where the speech is processed at its destination by an
23 automated voice recognition system.

24 *nominated electronic address*, in relation to the addressee of an
25 electronic communication, means:

- 26 (a) the most recent electronic address nominated by the
27 addressee to the originator of the electronic communication
28 as the electronic address for receiving electronic
29 communications; or
30 (b) if:
31 (i) the addressee has nominated an electronic address as
32 mentioned in paragraph (a) and the originator knows, or
-

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- 1 from the place where the electronic communication is taken to
2 have been sent under section 105B.
- 3 (4) An electronic communication is *received* when the electronic
4 communication becomes capable of being retrieved by the
5 addressee at the addressee's nominated electronic address.
- 6 (5) It is to be assumed that an electronic communication is capable of
7 being retrieved by the addressee when it reaches the addressee's
8 nominated electronic address.
- 9 (6) Subsection (4) applies even though the place where the information
10 system supporting an electronic address is located may be different
11 from the place where the electronic communication is taken to
12 have been received under section 105B.

13 **105B Place where an electronic communication is sent or received**

- 14 (1) This section applies in relation to an electronic communication
15 unless otherwise agreed between the originator and the addressee
16 of the electronic communication.
- 17 (2) An electronic communication is taken to have been sent:
18 (a) if the addressee is a company or registered scheme and the
19 originator is a member of the company or registered
20 scheme—from the address of the originator as contained on
21 the register of members of the company or registered scheme
22 at the time the communication is sent; and
23 (b) if the originator has a registered office and paragraph (a) does
24 not apply—from the registered office of the originator; and
25 (c) otherwise:
26 (i) from the most recent physical address nominated by the
27 originator to the addressee; or
28 (ii) if the originator has not nominated a physical address as
29 mentioned in subparagraph (i)—from the originator's
30 usual residential address in Australia.
- 31 (3) An electronic communication is taken to have been received:
32 (a) if the originator is a company or registered scheme and the
33 addressee is a member of the company or registered
34 scheme—at the address of the addressee as contained on the

EXPOSURE DRAFT

Schedule 4 Virtual meetings and electronic communications

Part 1 General provisions relating to virtual meetings and electronic communications

- 1 register of members of the company or registered scheme at
2 the time the communication is received; and
3 (b) if the addressee has a registered office and paragraph (a) does
4 not apply—at the registered office of the addressee; and
5 (c) otherwise:
6 (i) at the most recent physical address nominated by the
7 addressee to the originator; or
8 (ii) if the addressee has not nominated a physical address as
9 mentioned in subparagraph (i)—at the addressee’s usual
10 residential address in Australia.

3 At the end of Part 10.53

11 Add:

13 1680C Validation of things done under COVID-19 instruments

- 14 (1) This item applies if, before the commencement day:
15 (a) a thing is done in accordance with:
16 (i) the *Corporations (Coronavirus Economic Response)*
17 *Determination (No. 1) 2020*; or
18 (ii) the *Corporations (Coronavirus Economic Response)*
19 *Determination (No. 3) 2020*; and
20 (b) the thing done would, apart from this item, be invalid or
21 ineffective because it did not satisfy the requirements of this
22 Act.
23 (2) The thing done is as valid and effective, and is taken always to
24 have been as valid and effective, as it would have been had the
25 thing done satisfied the requirements of this Act.

EXPOSURE DRAFT

Virtual meetings and electronic communications **Schedule 4**
Provisions relating to insolvency **Part 2**

1 **Part 2—Provisions relating to insolvency**

2 ***Corporations Act 2001***

3 **4 Subsection 422B(4) (note)**

4 Repeal the note.

5 **5 Subsection 436DA(3) (notes 1 and 2)**

6 Repeal the notes, substitute:

7 Note: Failure to comply with this subsection is an offence (see
8 subsection 1311(1)).

9 **6 Subsection 436E(3) (note)**

10 Repeal the note.

11 **7 Subsection 450A(3) (note)**

12 Repeal the note.

13 **8 Section 450B (note)**

14 Repeal the note.

15 **9 Section 450C (note)**

16 Repeal the note.

17 **10 Section 450D (note)**

18 Repeal the note.

19 **11 Subsection 497(1) (note)**

20 Repeal the note.

21 **12 Subsection 506A(2) (notes 1 and 2)**

22 Repeal the notes, substitute:

23 Note: Failure to comply with this subsection is an offence (see
24 subsection 1311(1)).

25 **13 Subsection 568A(1) (note)**

26 Repeal the note.

EXPOSURE DRAFT

Schedule 4 Virtual meetings and electronic communications

Part 2 Provisions relating to insolvency

1 **14 After paragraph 571(1)(c)**

2 Insert:

3 (ca) determine a contact address for the group; and

4 **15 Subsections 579J(1) and (2) (notes 1 and 2)**

5 Repeal the notes, substitute:

6 Note: For *eligible unsecured creditor*, see section 579Q.

7 **16 Subsection 579K(1) (notes 1 and 2)**

8 Repeal the notes, substitute:

9 Note: For *eligible unsecured creditor*, see section 579Q.

10 **17 Subsection 579K(2) (note)**

11 Repeal the note.

12 **18 Subsection 579K(3) (notes 1 and 2)**

13 Repeal the notes, substitute:

14 Note: For *eligible unsecured creditor*, see section 579Q.

15 **19 Subsection 579K(4) (note)**

16 Repeal the note.

17 **20 Section 600G**

18 Repeal the section, substitute:

19 **600G Electronic communication of documents**

20 (1) Subject to subsection (7), this section applies to any document that
21 is:

22 (a) required or permitted to be given to a person (the *recipient*);
23 or

24 (b) required to be signed by a person;

25 under:

26 (c) this Chapter; or

27 (d) an instrument made for the purposes of a provision of this
28 Chapter; or

EXPOSURE DRAFT

Virtual meetings and electronic communications **Schedule 4**
Provisions relating to insolvency **Part 2**

- 1 (e) a provision relating to the external administration of a
2 company that:
3 (i) is a provision of Chapter 10; or
4 (ii) is a provision of an instrument made for the purposes of
5 a provision of Chapter 10; or
6 (iii) is continued in effect by a provision of Chapter 10; or
7 (iv) is a provision of an instrument made for the purposes of
8 a provision that is continued in effect by a provision of
9 Chapter 10; or
10 (f) Schedule 2; or
11 (g) an instrument made for the purposes of a provision of
12 Schedule 2.

13 *Giving a document*

- 14 (2) The document may be given to the recipient by means of an
15 electronic communication.
- 16 (3) The document may be given by giving the recipient (by means of
17 an electronic communication or otherwise) sufficient information
18 to allow the recipient to access the document electronically.
- 19 (4) However, an electronic communication or electronic access may
20 only be used if, at the time the electronic communication is used or
21 information about the electronic access is given:
22 (a) it is reasonable to expect that the document would be readily
23 accessible so as to be useable for subsequent reference; and
24 (b) there is a nominated electronic address in relation to the
25 recipient.

26 *Signing the document*

- 27 (5) If the document is required to be signed by a person, that
28 requirement is taken to have been met in relation to the electronic
29 communication of the document, or access to the document
30 electronically, if:
31 (a) the person receives a copy or counterpart of the document:
32 (i) that is in a physical form; or
33 (ii) by means of an electronic communication; and

EXPOSURE DRAFT

Schedule 4 Virtual meetings and electronic communications

Part 2 Provisions relating to insolvency

- 1 (b) the copy or counterpart includes the entire contents of the
2 document; and
- 3 (c) the person indicates, by means of an electronic
4 communication, that the person has signed the document; and
- 5 (d) a method is used to identify the person and to indicate the
6 person's intention in respect of the information
7 communicated in the document; and
- 8 (e) the method used was either:
- 9 (i) as reliable as appropriate for the purpose for which the
10 document was generated or communicated, in light of
11 all the circumstances, including any relevant agreement;
12 or
- 13 (ii) proven in fact to have fulfilled the functions described
14 in paragraph (d), by itself or together with further
15 evidence.
- 16 (6) For the purposes of paragraph (5)(b), a copy or counterpart of a
17 document need not include:
- 18 (a) the signature of another person signing the document; or
19 (b) any material included in the document to identify another
20 person signing the document or to indicate another person's
21 intention in respect of the contents of the document.

Application of section to documents given to ASIC

- 22
- 23 (7) Subsections (2) to (4) do not apply to a document that is required
24 or permitted to be given to ASIC.
- 25 (8) If:
- 26 (a) under this Act, the signature of a person is required on a
27 document; and
- 28 (b) the person signs the document in accordance with
29 subsection (5); and
- 30 (c) the person submits the document for lodgement;
31 ASIC must not refuse to receive or register the document on the
32 basis that the document has not been signed.

Definitions

- 33
- 34 (9) In this section:
-

EXPOSURE DRAFT

Virtual meetings and electronic communications **Schedule 4**
Provisions relating to insolvency **Part 2**

1 *external administration* of a company has the same meaning as in
2 Schedule 2.

3 **21 In the appropriate position in Chapter 10**

4 Insert:

5 **Part 10.53—Application and transitional provisions** 6 **relating to meetings and communications** 7 **under the Corporations Amendment** 8 **(Corporate Insolvency Reforms) Act 2020** 9

10 **1680 Definitions**

11 In this Part:

12 *commencement day* means the day on which Part 2 of Schedule 4
13 to the *Corporations Amendment (Corporate Insolvency Reforms)*
14 *Act 2020* commences.

15 **1680A Application of COVID-19 instrument**

16 The modifications of this Act made by the *Corporations*
17 *(Coronavirus Economic Response) Determination (No. 3) 2020* do
18 not apply in relation to:

- 19 (a) a meeting of a committee convened under Part 2 of
20 Schedule 2; or
21 (b) a meeting concerning one or more companies under external
22 administration;
23 that is held on or after the commencement day.

24 **22 Subsection 70-5(6) of Schedule 2 (note)**

25 Repeal the note.

26 **23 Subsection 70-6(4) of Schedule 2 (note)**

27 Repeal the note.

EXPOSURE DRAFT

Schedule 4 Virtual meetings and electronic communications

Part 2 Provisions relating to insolvency

1 **24 Subsection 70-6(5) of Schedule 2 (note)**

2 Repeal the note.