

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Corporations Act 2001

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

Section 105–1 of the Insolvency Practice Schedule in Schedule 2 to the *Corporations Act 2001* provides that the Minister may make rules providing for matters required or permitted by the Insolvency Practice Schedule to be provided, or necessary or convenient to be provided for carrying out or giving effect to the Insolvency Practice Schedule. These rules are contained in the *Insolvency Practice Rules (Corporations) 2016* (the Insolvency Practice Rules).

The purpose of the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021* is to make minor amendments to the *Insolvency Practice Rules (Corporations) 2016* to ensure the reforms relating to virtual meetings undertaken as part of the 2020 corporate insolvency reforms operate as intended.

The *Insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020* (the corporate insolvency reforms) amended the Insolvency Practice Rules to allow meetings during an external administration to be held virtually. The corporate insolvency reforms further provided a framework to allow all documents required or permitted to be given during an external administration to be given using electronic means. The exposure draft Rules make a number of enhancements to the virtual meetings framework for insolvency to ensure the process is suitable for an external administration and to ensure the new framework operates as intended.

The amendments apply in relation to virtual meetings if the meeting is held on or after the day the exposure draft Rules commence. The amendments apply to each document relating to the meeting that is required or permitted to be given to a person under the Corporations Act that is given on or after the commencement day.

The amendments apply in relation to information kept before, on or after the day the exposure draft Rules commence.

The Corporations Act specifies no conditions that need to be satisfied before the power to make the exposure draft Rules may be exercised.

Details of the exposure draft Rules are set out in the Attachment.

The exposure draft Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The exposure draft Rules commence on the day after they are registered on the Federal Register of Legislation.

Details of the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021*

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2021* (the exposure draft Rules).

Section 2 – Commencement

Schedule 1 to the Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Instrument is made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

New definition of ‘show of hands’

Item 1 inserts a new definition of *show of hands* into section 5-5, which clarifies that votes at meetings may be taken by a show of hands using any electronic mechanism. This definition is necessary to ensure that a show of hands may be used at a virtual meeting as an alternative to a poll.

Part 2 committee meetings

Voting

Item 2 repeals the rule in subsection 50-6(4) which allowed members of a Part 2 committee to record a vote in advance of a meeting (at the election of the member) and substitutes a new subsection 50-6(4). Under the new rule, where virtual meeting technology is used in holding the meeting, each member must be given the opportunity to participate in the vote in real time. This prevents Part 2 committee members from deciding on an application or a disciplinary matter without first hearing the application or evidence at the meeting. Where Part 2 committees decide matters at a meeting, the matter must be decided by a majority of the members’ votes.

The new rule in subsection 50-6(4) does not require any matter to be decided at a particular meeting. It merely specifies that if a vote is considered necessary, then that vote must be in real time.

Tabling of documents

Item 3 repeals the rule in subsection 50-6(7) and inserts a new subsection 50-6(7) governing when documents are taken to be tabled at meetings. The new rule allows documents to be tabled at meetings if they are made accessible to the attendees in any form. This includes using ‘screen sharing’ technology to share the document during a virtual meeting and providing an electronic or physical copy of the document before or during the meeting.

Keeping minutes

Items 4 and 5 amend subsection 50-7(2) which contains a rule for keeping minutes of Part 2 committee meetings in electronic form. Part 2 committees are required to keep minutes of the proceedings at their meetings under subsection 50-60(4). These minutes may be kept in electronic form under subsection 50-7(2). The amendments remove the requirement to keep the minutes at a particular place, where they may be open for inspection. This allows minutes of Part 2 committee meetings to be kept confidential due to the sensitive and often personal nature of the matters discussed at committee meetings.

Other miscellaneous amendment

Item 6 amends subparagraphs 50-85(2)(c)(i) and (ii) to correct a drafting error. The new provisions now correctly refer to interviewing a liquidator, whereas previously they referred to interviewing an applicant.

General rules for meetings

Place of a meeting

Items 7, 9 and 12 amend subparagraph 75-15(1)(a)(iii), paragraph 75-40(2)(db) and paragraph 75-75(6)(a) to establish a new rule for deeming the place of a virtual meeting where none of the attendees are entitled to attend in person. Previously, the deemed place of an entirely virtual meeting was the registered office of the company under external administration, or the contact address specified in the pooling determination in the case of a pooled group. The new rule allows the convenor of the meeting to nominate a physical address in Australia in the notice of the meeting. This provides the convenor with the flexibility to nominate the place that is most appropriate for the stakeholders in an external administration.

Notice of meeting

Subparagraph 75-15(1)(a)(iii) previously required the notice of a meeting, if virtual meeting technology was to be used, to include sufficient information to allow the persons entitled to attend the meeting to participate by means of the technology. This effectively replicated a rule in section 75-35 that applies to all meetings held using virtual meeting technology. The redundant rule in subparagraph 75-15(1)(a)(iii) has been replaced with a requirement to include the notional place of the meeting in the meeting notice, while section 75-35 will continue to apply if virtual meeting technology is to be used.

Voting

Items 8, 10, 14 and 15 amend paragraph 75-15(1)(b), subsection 75-75(3), subparagraph 75-110(1)(a)(i) and subsections 75-110(2), (3), (4) and (5A) to allow the default voting procedures at a virtual meeting to be specified in the notice of the

meeting. Previously, resolutions put to the vote at virtual meetings were required to be decided on a poll. Under the new rule, the convenor must specify in the notice of the meeting whether the vote must be taken on a poll. If the notice does not require votes to be taken on a poll, votes must be taken on a show of hands unless a poll is requested.

A show of hands may include electronic mechanisms to indicate a voter's intention in respect of a resolution (see item 1A).

Item 11 alters the requirements in subsection 75-75(4) for votes taken at virtual meetings. Formerly, all persons who were participating in the meeting and entitled to vote, had to be given the opportunity at the election of the voter to participate in the vote in real time, or to record a vote in advance of the meeting where it was practicable. Under the new rule, persons entitled to vote at the meeting must in all cases be given the opportunity to participate in the vote in real time. The convenor of the meeting may also give attendees the opportunity to record a vote in advance of the meeting (at the election of the voter). This change allows convenors of meetings to extend the opportunity to vote on some matters in advance of the meeting, but to also restrict voting on other matters to real-time votes. However, this rule does not prevent any person entitled to vote from appointing a proxy for the meeting under section 75-150 of the Insolvency Practice Rules, including a specific proxy.

Tabling of documents

Item 13 repeals subsection 75-75(7) and substitutes a new 75-75(7) regarding tabling documents at virtual meetings. The new rule provides greater flexibility and parallels the new rule that applies to Part 2 committee meetings (see item 3).

Transitional matters

Items 16 and 17 amend paragraph 120-5(b) and inserts sections 125-1, 125-5 and 125-10 which set out transitional matters and applications provisions for virtual meetings and the keeping of information after the exposure draft Rules commence.

The amendments apply in relation to virtual meetings if the meeting is held on or after the day the exposure draft Rules commence. The amendments apply to each document relating to the meeting that is required or permitted to be given to a person under the Corporations Act (including the Insolvency Practice Schedule and Insolvency Practice Rules due to the amendment made by item 16) that is given on or after the commencement day.

The amendments apply in relation to information kept before, on or after the day the exposure draft Rules commence.