

15 December 2021

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MiscAmendments@treasury.gov.au

Dear Mr Haines

Miscellaneous amendments to Treasury portfolio laws 2022

Thank you for the opportunity to lodge a submission in relation to proposed amendments to the Insolvency Practice Rules (**IPR**) included as part of the miscellaneous amendments to Treasury portfolio laws consultation.

ARITA is the preeminent professional body for professionals practicing in the area of insolvency and as such we have only considered the proposed amendments to the IPR. You can read more about ARITA at the end of this letter.

Having reviewed the proposed amendments, we are supportive of the changes, particularly allowing for voting via a means other than a poll at meetings using virtual meeting technology. However, we have two issues we wish to raise.

1. Definition of show of hands

We are not convinced that the definition of show of hands is appropriate for situations where creditors are attending via telephone, which is a form of virtual meeting technology per the definition in section 9 of the Corporations Act 2001 (**Act**).

Often creditors' meetings in external administrations can be quite small, and several creditors may attend by telephone (even in pre-COVID times). Due to their size, it was easy for the external administrator and their staff to manage adjudication of the voting "on the voices". However, an external administrator will not be able to see the hands of creditors attending by telephone, nor is it likely that there will be other electronic mechanisms available, though this may come with time.

Further, electronic mechanisms is not a defined term, so there is a measure of doubt as to what it captures. Instead, a reference to “virtual meeting technology” provides great clarity as it is a defined term.

Alternatively, we suggest the removal of the word “electronic” from the definition of *show of hands*, so that it reads:

“a vote taken on a show of hands includes a vote taken using any mechanism that indicates the intentions of a person in respect of the vote.”

This will allow an external administrator to use an appropriate mechanism to determine the intentions of a person in respect of the vote considering the size of and technology used at the particular meeting.

2. Notice of meeting for meetings held using virtual meeting technology

Both IPR 75-35 and 75-40 (as amended) refer to notice of the meeting including sufficient information to allow a person entitled to attend the meeting to participate in the meeting by means of the technology for meetings held using virtual meeting technology.

We are aware that often when video conferencing facilities are used for meetings, passwords are used to ensure that only people entitled to attend the meeting are in attendance. As such, external administrators require creditors to contact their staff to register for the meeting and provide their proofs of debt and proxies; and then obtain the relevant link and password to access the meeting. This also ensures that an attendance register is able to be kept as only registered creditors will be able to access the meeting, and that proofs of debts and proxies (where relevant) are received for all creditors wishing to vote. It would not be appropriate for meeting links and passwords to be publicly available in meeting notices and reports.

We want to ensure that this practice, which we feel is appropriate for the proper conduct of the meetings of external administrations, fits within the requirements of the IPRs. If not, the IPRs need to be amended to allow for this to occur.

3. Notional place for the meeting

There are several references in the amended IPRs to a notional place for the meeting (75-15(1)(a)(iii), 75-40(2)(db), 75-75(6)(a) (though not specifically referred to as notional place for the meeting)) where a meeting is to be held and no persons are eligible to physically attend the meeting.

We are concerned that providing an address, even a notional address, will risk people attending that address expecting to be able to physically attend the meeting. Although an address is required for record keeping purposes and to be able to properly determine the time of the meeting, the address of the meeting does not need to be disclosed.

The following changes will be required:

- IPR 75-15(1)(a)(iii) should instead reference IPR 75-35.
- IPR 75-40(2)(db)(iii) should be removed.
- IPR 75-75(6)(a) remove the reference to “in the notice of the meeting”. The convenor can nominate and record the physical address in the administration files.

Should you wish to discuss any of these matters further with ARITA, please do not hesitate to contact Ms Kim Arnold on 02 8004 4340.

Yours sincerely



John Winter
Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2020, ARITA delivered 70 professional development sessions to over 8,200 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2020.