



Corporations Amendment Regulations 2007 (No. 13)

Select Legislative Instrument 2007 No. 325

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 26 September 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

CHRISTOPHER JOHN PEARCE
Parliamentary Secretary to the Treasurer

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2007 (No. 13)*.

2 Commencement

These Regulations commence on the commencement of items 1 to 48 of Schedule 1 to the *Corporations Amendment (Insolvency) Act 2007*.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Note The amendments in Schedule 1 make arrangements that are consequential on the *Corporations Amendment (Insolvency) Act 2007*.

4 Transitional

- (1) The following provisions of the *Corporations Regulations 2001*, as in force immediately before the commencement of these Regulations, continue to apply to the extent to which they relate to the winding up or the administration of a company that began before the commencement of these Regulations:
- regulation 5.3A.04
 - paragraphs 5.3A.07 (5) (a) and (b)
 - subregulations 5.6.12 (3), (4) and (5)
 - subregulation 5.6.14 (2)
 - subregulation 5.6.18 (2)
 - subregulation 5.6.26 (3)
 - paragraph 5.6.27 (7) (b).

- (2) Despite the amendment made by item [49] of Schedule 1, for the period of 12 months after the commencement of these Regulations a person may comply with paragraph 459E (2) (e) of the *Corporations Act 2001* in relation to a statutory demand for payment of debt by using:
- (a) Form 509H as in force immediately before the commencement of these Regulations; or
 - (b) Form 509H as in force after the commencement of these Regulations.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 5.3A.07 (4)

omit

[2] Regulations 5.3A.08 and 5.3A.09

omit

[3] After regulation 5.4.01

insert

5.4.02 Compromise of debt by liquidator — prescribed amount

For paragraph 477 (2A) (a) of the Act, the amount of \$100,000 is prescribed.

[4] Regulation 5.6.06*omit*

A liquidator

insert

- (1) A liquidator

[5] After regulation 5.6.06*insert*

- (2) However, if the liquidator is the liquidator of a pooled group:
- (a) subregulation (1) does not require the liquidator to open a separate account for each company in the group; and
 - (b) the liquidator may open a single bank account (to be known as the ***liquidator's general account***) in relation to the group and pay into the account all money received by the liquidator in relation to the liquidation of the companies in the group.

[6] Regulation 5.6.07*after*

the company

insert

(or to any of the companies in a pooled group if paragraph 5.6.06 (2) (b) applies)

[7] Subregulation 5.6.10 (1)*substitute*

- (1) A payment out of the liquidator's general account may be made by cheque or by electronic funds transfer.

[8] Subregulation 5.6.11 (2)

after

Subject to subregulation (3)

insert

and subregulation 5.6.24 (4)

[9] Subparagraph 5.6.11 (2) (a) (iv)

substitute

- (iv) a meeting of a committee of creditors; or
- (v) a meeting of eligible employee creditors; or
- (vi) a meeting, on a consolidated basis, of creditors of companies in a group; and

[10] After regulation 5.6.11

insert

5.6.11A Electronic methods of giving or sending certain notices etc

- (1) This regulation applies if a person (the *notifier*) is authorised or required to give or send a notice, or other document, to a person (the *recipient*) under any of the following provisions:
 - (a) subregulation 5.6.12 (1);
 - (b) subregulation 5.6.16 (6);
 - (c) paragraph 5.6.48 (2) (b);
 - (d) subregulation 5.6.53 (1);
 - (e) subregulation 5.6.54 (1);
 - (f) subregulation 5.6.55 (3);
 - (g) subregulation 5.6.59 (1);
 - (h) subregulation 5.6.62 (1);
 - (i) paragraph 5.6.65 (1) (b);
 - (j) paragraph 5.6.66 (1) (d);
 - (k) paragraph 5.6.66 (3) (a).

- (2) If the recipient nominates an electronic address by which the recipient may be notified of the notice or document, the notifier may give or send the notice or document to the recipient by sending it to that electronic address.
- (3) If the recipient nominates any other electronic means by which the recipient may be notified of such notices or documents, the notifier may give or send the notice or document to the recipient by using that electronic means.
- (4) If the recipient nominates:
 - (a) an electronic means (the ***nominated notification means***) by which the recipient may be notified that such notices or documents are available; and
 - (b) an electronic means (the ***nominated access means***) the recipient may use to access such notices or documents; the notifier may give or send the document to the recipient by notifying the recipient (using the nominated notification means):
 - (c) that the notice or document is available; and
 - (d) how the recipient may use the nominated access means to access the notice or document.
- (5) A notice or document sent to an electronic address, or by other electronic means, is taken to be given or sent on the business day after it is sent.
- (6) A notice or document given or sent under subsection (4) is taken to be given or sent on the business day after the day on which the recipient is notified that the notice or document is available.
- (7) Subregulations (2), (3) and (4) do not limit the provisions mentioned in subsection (1).

[11] Paragraph 5.6.12 (1) (e)

omit

company.

insert

company; or

[12] After paragraph 5.6.12 (1) (e)

insert

- (f) in the case of a meeting mentioned in subparagraph 5.6.11 (2) (a) (v) — an eligible employee creditor; or
- (g) in the case of a meeting mentioned in subparagraph 5.6.11 (2) (a) (vi) — the creditors of a company in a group.

[13] Subregulation 5.6.12 (1), at the foot

insert

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[14] Subregulation 5.6.12 (5)

omit

creditors by

insert

creditors or a meeting of eligible employee creditors by

[15] After subregulation 5.6.14 (2)

insert

- (3) Subregulation (1) does not prevent the convenor convening a meeting to take place at separate venues provided that technology is available at the venues to give all persons attending the meeting a reasonable opportunity to participate.

[16] Regulation 5.6.14A*substitute***5.6.14A Advertisement of a meeting**

- (1) The convenor of a meeting must advertise the meeting in each State and Territory in which the company carries on business, or has carried on business at any time during the 2 years immediately before the day of the meeting, in a daily newspaper circulating generally in that State or Territory.
- (2) However, subregulation (1) does not apply if
 - (a) the meeting is convened under subsection 445F (2) of the Act; or
 - (b) the meeting is a meeting of eligible employee creditors mentioned in paragraph 444DA (2) (a) of the Act.

[17] Subregulation 5.6.16 (5)*omit***[18] Subregulation 5.6.16 (6), at the foot***insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[19] Paragraph 5.6.17 (1) (c)*substitute*

- (c) an administrator of the company under administration or of a deed of company arrangement; or
- (d) a liquidator mentioned in paragraph 579L (1) (e) of the Act;

[20] Subregulation 5.6.21 (4)

omit

If no result

insert

Subject to subregulation (4B), if no result

[21] Paragraph 5.6.21 (4) (b)

omit

carried.

insert

carried; or

[22] After paragraph 5.6.21 (4) (b)

insert

- (c) if the person presiding at the meeting does not exercise a casting vote, the resolution is not carried.

[23] After subregulation 5.6.21 (4)

insert

- (4A) If no result is reached under subregulation (2) or (3), and the meeting is not a meeting of eligible employee creditors, the person presiding at the meeting must include in the minutes of the meeting the reasons for exercising, or not exercising, as the case may be, a casting vote under subregulation (4).
- (4B) In the case of a meeting of eligible employee creditors mentioned in paragraph 444DA (2) (a) of the Act, if no result is reached under subregulation (2) or (3), the resolution is not carried.

[24] After regulation 5.6.23*insert***5.6.23A Voting status of persons by whom money is advanced to a company**

- (1) For this Part, a person by whom money is advanced to a company as described in section 560 of the Act is entitled to one vote at a meeting of creditors.
- (2) Subregulation (1) applies whether the person has advanced money to the company:
 - (a) on 1 occasion only; or
 - (b) on more than 1 occasion in respect of the same matter; or
 - (c) on 1 or more occasions in respect of more than 1 matter.

Note Paragraph 560 (c) of the Act provides that a person by whom money is advanced to a company in specified circumstances has the same rights as a creditor of the company in relation to matters set out in Chapter 5 of the Act. This includes voting at a meeting of creditors of the company.

[25] Subregulation 5.6.24 (4)*substitute*

- (4) This regulation does not apply to:
 - (a) a meeting of creditors convened under Part 5.3A of the Act; or
 - (b) a meeting held under a deed of company arrangement.

[26] Subregulation 5.6.27 (1)*omit*

subregulation (6):

insert

subregulation (7):

[27] After subregulation 5.6.27 (1)

insert

- (1A) However, if the meeting is held on a consolidated basis, subregulation (1) does not require the chairperson to draw up and enter separate minutes for each of the companies to which the meeting relates.

[28] Paragraph 5.6.27 (2) (b)

omit

creditors or debenture holders

insert

creditors, eligible employee creditors or debenture holders

[29] Subregulation 5.6.27 (3)

omit

subregulation (6).

insert

subregulation (7).

[30] After subregulation 5.6.27 (3)

insert

- (3A) However, if the meeting is held on a consolidated basis, subregulation (1) does not require the chairperson to lodge separate copies of the minutes for each of the companies to which the meeting relates.

[31] Subregulation 5.6.28 (3)

substitute

- (3) If a person claims to be:
- (a) the proxy of a person, appointed by an instrument of appointment mentioned in subregulation 5.6.29 (2); and

(b) entitled to attend and vote at a meeting;
the person is not entitled to speak or vote as proxy at the meeting (except in relation to the election of a chairperson) unless:

- (i) the instrument; or
- (ii) a facsimile copy of the instrument; or
- (iii) a copy of the instrument sent by email or similar electronic means;

has been lodged with the person named in the notice convening the meeting as the person who is to receive the instrument, or with the chairperson.

(4) If a person claims to be:

(a) the proxy of a person, appointed by an instrument completed in a way that allows it to be given by electronic means as described in subregulation 5.6.29 (3); and

(b) entitled to attend and vote at a meeting;
the person is not entitled to speak or vote as proxy at the meeting (except in relation to the election of a chairperson) unless the instrument has been given by electronic means to the person named in the notice convening the meeting as the person who is to receive the instrument, or with the chairperson.

[32] Regulation 5.6.29

substitute

5.6.29 Form of proxies

- (1) The appointment of a person as a proxy must be by:
 - (a) an instrument in accordance with Form 532, completed in hard copy in compliance with subregulation (2); or
 - (b) if the person convening the meeting offers an electronic address under paragraph 5.6.31 (2) (a) for the purpose of the receipt of proxy appointments — a copy of the instrument mentioned in paragraph (a), the copy made in a way that allows it to be given by electronic means (such as by email); or

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- (c) if the person convening the meeting offers other electronic means under paragraph 5.6.31 (2) (b) by which a person may give the proxy appointment — an electronic representation equivalent to Form 532 (such as an on-line Form) that may be completed and authenticated in compliance with subregulation (3).
- (2) If Form 532 is to be completed in hard copy:
- (a) the person appointing the proxy must sign the instrument of proxy, or, if incapable of writing, attach his or her mark to it; and
 - (b) the proxy of a person who is blind or incapable of writing must not be accepted unless:
 - (i) the person attaches his or her signature or mark to the instrument appointing the proxy after it has been completed; and
 - (ii) the instrument is read to him or her by a witness to his or her signature or mark (not being the person nominated as proxy) who completes the certificate of witness set out in Form 532.
- Note 1* Form 532 may be lodged by facsimile after being completed in hard copy: see subregulation 5.6.28 (3).
- Note 2* Form 532 may be lodged by email or similar means, in certain circumstances, after being completed in hard copy: see paragraph (1) (b).
- (3) If Form 532 is to be completed in a way that allows it to be given by electronic means, the electronic authentication of the appointment of the proxy must include:
- (a) a method of identifying the person entitled to appoint a proxy; and
 - (b) an indication of the person's approval of the information communicated.
- (4) In this regulation, *electronic means* does not include a facsimile transmission.

[33] Regulation 5.6.31*omit*

A person

insert

- (1) A person

[34] Regulation 5.6.31*insert*

- (2) The form of proxy may specify:
- (a) an electronic address for the purpose of the receipt of proxy appointments; and
 - (b) other electronic means by which a person may give the proxy appointment.

[35] Regulation 5.6.33*substitute***5.6.33 Voting by proxy if financially interested**

A person acting under a general proxy must not vote in favour of any resolution which would directly or indirectly place:

- (a) the person; or
- (b) the person's partner; or
- (c) the person's employer;

in a position to receive any remuneration out of assets of the company except as a creditor rateably with the other creditors of the company.

[36] Paragraph 5.6.48 (2) (a)

substitute

- (a) by advertising the day, in each State and Territory in which the company carried on business at any time during the 2 years immediately preceding the relevant date, in a daily newspaper circulating generally in the State or Territory; and

[37] Paragraph 5.6.48 (2) (b), at the foot

insert

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this paragraph by the nominated electronic means.

[38] Subregulation 5.6.53 (1), at the foot

insert

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[39] Subregulation 5.6.54 (1), at the foot

insert

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[40] Subregulation 5.6.55 (3), at the foot

insert

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[41] Subregulation 5.6.59 (1), at the foot*insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[42] Subregulation 5.6.62 (1), at the foot*insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this subregulation by the nominated electronic means.

[43] Paragraph 5.6.65 (1) (b), at the foot*insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this paragraph by the nominated electronic means.

[44] Paragraph 5.6.66 (1) (d), at the foot*insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this paragraph by the nominated electronic means.

[45] Paragraph 5.6.66 (3) (a), at the foot*insert*

Note The effect of regulation 5.6.11A is that if a recipient has, in accordance with that provision, nominated electronic means to receive notices, the notifier may give or send the notice mentioned in this paragraph by the nominated electronic means.

[46] After regulation 5.6.72

insert

5.6.73 Eligible unsecured creditor

Creditors that are eligible unsecured creditors

- (1) For paragraph 579Q (1) (b) of the Act, the following creditors are specified:
- (a) a creditor to which either of the following applies as a result of a modification of the Act made under paragraph 571 (1) (d) of the Act:
 - (i) a debt payable by a company or companies in a group to any other company or companies in the group is not extinguished;
 - (ii) a claim that a company or companies in a group has against any other company or companies in the group is not extinguished;
 - (b) a creditor that is determined by a Court to be an eligible unsecured creditor.

Creditors that are not eligible unsecured creditors

- (2) For subsection 579Q (2) of the Act, a creditor that is determined by a Court not to be an eligible unsecured creditor is specified.

[47] Subparagraphs 9.1.02 (a) (vii), (d) (vii) and (e) (viii)

omit

, its placement under official management

insert

, its placement under voluntary administration or a deed of company arrangement

[48] Regulation 9.2.04*omit***[49] Schedule 2, Form 509H***substitute***Form 509H**

(paragraph 459E (2) (e))

*Corporations Act 2001***CREDITOR'S STATUTORY DEMAND FOR PAYMENT OF DEBT**

To *(name and A.C.N. or A.R.B.N. of debtor company)* of *(address of the company's registered office)*

1. The company owes *(name)* of *(address)* ("the creditor")
 - *the amount of *\$(insert amount)*, being the amount of the debt described in the Schedule.
 - *the amount of *\$(insert total amount)*, being the total of the amounts of the debts described in the Schedule.
- *2. The amount is due and payable by the company.
- *2. Attached is the affidavit of *(insert name of deponent of the affidavit)*, dated *(insert date of affidavit)*, verifying that the amount is due and payable by the company
3. The creditor requires the company, within 21 days after service on the company of this demand:
 - (a) to pay to the creditor the *amount of the debt/*total of the amounts of the debts; or
 - (b) to secure or compound for the *amount of the debt/*total of the amounts of the debts, to the creditor's reasonable satisfaction.
4. The creditor may rely on a failure to comply with this demand within the period for compliance set out in subsection 459F (2) as grounds for an application to a court having jurisdiction under the *Corporations Act 2001* for the winding up of the company.

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5. Section 459G of the *Corporations Act 2001* provides that a company served with a demand may apply to a court having jurisdiction under the *Corporations Act 2001* for an order setting the demand aside. An application must be made within 21 days after the demand is served and, within the same period:
- (a) an affidavit supporting the application must be filed with the court; and
 - (b) a copy of the application and a copy of the affidavit must be served on the person who served the demand.

A failure to respond to a statutory demand can have very serious consequences for a company. In particular, it may result in the company being placed in liquidation and control of the company passing to the liquidator of the company.

6. The address of the creditor for service of copies of any application and affidavit is (insert the address for service of the documents in the State or Territory in which the demand is served on the company, being, if solicitors are acting for the creditor, the address of the solicitors).

SCHEDULE

Description of the debt <i>(indicate if it is a judgment debt, giving the name of the court and the date of the order)</i>	Amount of the debt
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*Total Amount

Dated:

signed:

Print name: capacity:

Corporation or partnership name (if applicable):

NOTES:

1. The form must be signed by the creditor or the creditor's solicitor. It may be signed on behalf of a partnership by a partner, and on behalf of a corporation by a director or by the secretary or an executive officer of the corporation.
2. The amount of the debt or, if there is more than one debt, the total of the amounts of the debts, must exceed the statutory minimum of \$2,000.
3. Unless the debt, or each of the debts, is a judgment debt, the demand must be accompanied by an affidavit that:
 - (a) verifies that the debt, or the total of the amounts of the debts, is due and payable by the company; and
 - (b) complies with the rules.
4. A person may make a demand relating to a debt that is owed to the person as assignee.
5. This form was amended in 2006 as part of amendments of the *Corporations Regulations 2001*. For the period of 12 months after the commencement of those amendments a person may comply with paragraph 459E (2) (e) of the *Corporations Act 2001* in relation to a statutory demand for payment of debt by using:
 - (a) the version of this form that was in force immediately before the commencement of the amendments; or
 - (b) this version of the form.

*Omit if inapplicable

[50] Schedule 2, Form 529, Type of Meeting, paragraph (f)

substitute

- (f) ☐ creditors of company under administration apart from section 436E
- (g) ☐ creditors of company under a deed of company arrangement

[51] Schedule 2, Form 531B

omit

LIST OF PERSONS PRESENT AT MEETING OF:

*CREDITORS/*DEBENTURE HOLDERS

insert

LIST OF PERSONS PRESENT AT MEETING OF:

*CREDITORS/*ELIGIBLE EMPLOYEE CREDITORS/*DEBENTURE
HOLDERS

[52] Schedule 8A, clause 4

after

section 556

insert

, 560 or 561

[53] Schedule 8A, clauses 8 and 9

substitute

8 Making claims

- (1) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the *Corporations Act 2001* apply to claims made under this deed as if the references to the liquidator were references to the administrator of this deed.
- (2) For subclause (1), the remainder of that Act, and the *Corporations Regulations 2001*, are taken to apply, as far as practicable, as if:
 - (a) a reference that is relevant to the liquidator were a reference in a form that is applicable to the administrator; and
 - (b) a reference that is relevant to any other matter relating to liquidation were a reference in a form that is applicable to the administration of this deed; and

- (c) a reference to a ***relevant date*** were a reference to the date of the administrator's appointment .

[54] Schedule 8A, clause 10

omit

Sections 432 and 434 of the Act apply

insert

Section 434 of the Act applies

[55] Schedule 8A, clause 11

omit

there must be

insert

there may be

[56] Schedule 9, item 27

substitute

27 Perpetual Limited

[57] Further amendments

<i>Provision</i>	<i>omit</i>	<i>insert</i>
regulation 5.3A.04	14 days	10 business days
paragraph 5.3A.07 (5) (a)	7 days	5 business days
paragraph 5.3A.07 (5) (b)	21 days	15 business days
subregulation 5.6.12 (3)	14 days	10 business days
subregulations 5.6.12 (4) and (5)	14 days'	10 business days'
subregulation 5.6.14 (2)	7 days'	5 business days'

<i>Provision</i>	<i>omit</i>	<i>insert</i>
subregulation 5.6.18 (2)	60 days	45 business days
subregulation 5.6.26 (3)	14 days	10 business days
paragraph 5.6.27 (7) (b)	14 days	10 business days
