





# **Corporations Amendment (Insolvency) Act 2007**

**No. 132, 2007**

**An Act to amend the *Corporations Act 2001*, and for  
other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend the *Corporations Act 2001*, and for other purposes**

[Assented to 20 August 2007]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Corporations Amendment  
(Insolvency) Act 2007*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 August 2007
2. Schedule 1, items 1 to 48	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, items 49 and 50	On the first day after the end of the period of 6 months beginning on the day on which the provision(s) covered by table item 2 commence.	
4. Schedule 1, items 51 to 120	At the same time as the provision(s) covered by table item 2.	
5. Schedule 1, item 121	At the same time as the provision(s) covered by table item 3.	
6. Schedule 1, items 122 to 133	At the same time as the provision(s) covered by table item 2.	
7. Schedule 2, items 1 to 10	At the same time as the provision(s) covered by table item 2.	
8. Schedule 2, item 11	At the same time as the provision(s) covered by table item 3.	
9. Schedule 2, item 12	At the same time as the provision(s) covered by table item 2.	
10. Schedules 3 to 6	At the same time as the provision(s) covered by table item 2.	

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

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

## Schedule 1—Improving outcomes for creditors

### Part 1—Enhancing protection of employee entitlements

#### *Corporations Act 2001*

##### 1 Section 9

Insert:

*eligible employee creditor*, in relation to a company, means a creditor whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraph 556(1)(e), (g) or (h) or section 560 or 561.

##### 2 Section 9

Insert:

*superannuation guarantee charge* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

##### 3 Section 9

Insert:

*superannuation guarantee shortfall* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

##### 4 Before section 444E

Insert:

#### **444DA Giving priority to eligible employee creditors**

- (1) A deed of company arrangement must contain a provision to the effect that, for the purposes of the application by the administrator of the property of the company coming under his or her control under the deed, any eligible employee creditors will be entitled to a priority at least equal to what they would have been entitled if the

property were applied in accordance with sections 556, 560 and 561.

- (2) However, the rule in subsection (1) does not apply if:
- (a) at a meeting of eligible employee creditors held before the meeting convened under section 439A, the eligible employee creditors pass a resolution agreeing to the non-inclusion of such a provision; or
  - (b) the Court makes an order under subsection (5) approving the non-inclusion of such a provision.

*Meeting of eligible employee creditors*

- (3) The administrator of the company must convene a meeting under paragraph (2)(a) by giving written notice of the meeting to as many of the eligible employee creditors as reasonably practicable at least 5 business days before the meeting.
- (4) A notice under subsection (3) must be accompanied by a copy of a statement setting out:
- (a) the administrator's opinion whether the non-inclusion of such a provision would be likely to result in the same or a better outcome for eligible employee creditors as a whole than would result from an immediate winding up of the company; and
  - (b) his or her reasons for that opinion; and
  - (c) such other information known to the administrator as will enable the eligible employee creditors to make an informed decision about the matter covered by paragraph (a).

*Court approval*

- (5) The Court may approve the non-inclusion of such a provision if the Court is satisfied that the non-inclusion of the provision would be likely to result in the same or a better outcome for eligible employee creditors as a whole than would result from an immediate winding up of the company.
- (6) The Court may only make an order under subsection (5) on the application of:
- (a) the administrator, or proposed administrator, of the deed; or
  - (b) an eligible employee creditor; or

- (c) any interested person.
- (7) The Court may make an order under subsection (5) before or after the meeting convened under section 439A.

**444DB Superannuation contribution debts not admissible to proof**

*Whole of superannuation contribution debt*

- (1) A deed of company arrangement must contain a provision to the effect that the administrator of the deed must determine that the whole of a debt by way of a superannuation contribution is not admissible to proof against the company if:
  - (a) a debt by way of superannuation guarantee charge:
    - (i) has been paid; or
    - (ii) is, or is to be, admissible to proof against the company; and
  - (b) the administrator of the deed is satisfied that the superannuation guarantee charge is attributable to the whole of the first-mentioned debt.
- (2) If the administrator of a deed of company arrangement determines, under a provision covered by subsection (1), that the whole of a debt is not admissible to proof against the company, the whole of the debt is extinguished.

*Part of superannuation contribution debt*

- (3) A deed of company arrangement must contain a provision to the effect that the administrator of the deed must determine that a particular part of a debt by way of a superannuation contribution is not admissible to proof against the company if:
  - (a) a debt by way of superannuation guarantee charge:
    - (i) has been paid; or
    - (ii) is, or is to be, admissible to proof against the company; and
  - (b) the administrator of the deed is satisfied that the superannuation guarantee charge is attributable to that part of the first-mentioned debt.
- (4) If the administrator of a deed of company arrangement determines, under a provision covered by subsection (3), that a part of a debt is

not admissible to proof against the company, that part of the debt is extinguished.

*Definition*

(5) In this section:

*superannuation contribution* has the same meaning as in section 556.

## **5 After section 553AA**

Insert:

### **553AB Superannuation contribution debts not admissible to proof**

*Whole of superannuation contribution debt*

- (1) In a winding up, the liquidator must determine that the whole of a debt by way of a superannuation contribution is not admissible to proof against the company if:
  - (a) a debt by way of superannuation guarantee charge:
    - (i) has been paid; or
    - (ii) is, or is to be, admissible to proof against the company;and
  - (b) the liquidator is satisfied that the superannuation guarantee charge is attributable to the whole of the first-mentioned debt.
- (2) If the liquidator determines, under subsection (1), that the whole of a debt is not admissible to proof against the company, the whole of the debt is extinguished.

*Part of superannuation contribution debt*

- (3) In a winding up, the liquidator must determine that a particular part of a debt by way of a superannuation contribution is not admissible to proof against the company if:
  - (a) a debt by way of superannuation guarantee charge:
    - (i) has been paid; or
    - (ii) is, or is to be, admissible to proof against the company;and

- (b) the liquidator is satisfied that the superannuation guarantee charge is attributable to that part of the first-mentioned debt.
- (4) If the liquidator determines, under subsection (3), that a part of a debt is not admissible to proof against the company, that part of the debt is extinguished.

*Definition*

- (5) In this section:

*superannuation contribution* has the same meaning as in section 556.

**6 Paragraph 556(1)(e)**

Omit “and superannuation contributions”, substitute “, superannuation contributions and superannuation guarantee charge”.

**7 After subsection 556(1A)**

Insert:

- (1AB) For the purposes of paragraph (1)(e), if:
  - (a) the company has a superannuation guarantee shortfall for a quarter; and
  - (b) the shortfall relates to one or more employees; and
  - (c) the quarter ends before the relevant date;superannuation guarantee charge in respect of the quarter is taken to be payable by the company in respect of services rendered to the company by those employees before the relevant date.
- (1AC) If:
  - (a) the company has a superannuation guarantee shortfall for a quarter; and
  - (b) the shortfall relates to one or more employees; and
  - (c) the relevant date occurs during the quarter; and
  - (d) the relevant date is not the first day of the quarter;then:
  - (e) for the purposes of paragraph (1)(e), so much of the superannuation guarantee charge in respect of the quarter as is attributable to the period before the relevant date is taken to be payable by the company in respect of services rendered

to the company by those employees before the relevant date;  
and

- (f) the remainder of the superannuation guarantee charge in respect of the quarter is taken:
  - (i) to be an expense referred to in paragraph (1)(a); and
  - (ii) not to be an amount of superannuation guarantee charge referred in paragraph (1)(e).

(1AD) If:

- (a) the company has a superannuation guarantee shortfall for a quarter; and
- (b) the shortfall relates to one or more employees; and
- (c) the relevant date is the first day of the quarter;

the superannuation guarantee charge in respect of the quarter is taken:

- (d) to be an expense referred to in paragraph (1)(a); and
- (e) not to be an amount of superannuation guarantee charge referred in paragraph (1)(e).

(1AE) For the purposes of paragraph (1)(e), if:

- (a) the company has a superannuation guarantee shortfall for a quarter; and
- (b) the shortfall relates to one or more employees; and
- (c) the quarter begins after the relevant date; and
- (d) one or more payments were made by the company during the quarter on account of wages payable to those employees in respect of services rendered to the company by those employees before the relevant date; and
- (e) those payments were made as a result of an advance of money by a person after the relevant date for the purpose of making those payments;

then:

- (f) for the purposes of paragraph (1)(e), so much of the superannuation guarantee charge in respect of the quarter as is attributable to those payments is taken to be payable by the company in respect of services rendered to the company by those employees before the relevant date; and
- (g) the remainder of the superannuation guarantee charge in respect of the quarter is taken:
  - (i) to be an expense referred to in paragraph (1)(a); and

- (ii) not to be an amount of superannuation guarantee charge referred in paragraph (1)(e).

(1AF) If:

- (a) the company has a superannuation guarantee shortfall for a quarter; and
- (b) the shortfall relates to one or more employees; and
- (c) the relevant date occurs during the quarter; and
- (d) one or more payments were made by the company during the quarter on account of wages payable to those employees in respect of services rendered to the company by those employees before the relevant date; and
- (e) those payments were made as a result of an advance of money by a person after the relevant date for the purpose of making those payments;

then:

- (f) for the purposes of paragraph (1)(e), so much of the superannuation guarantee charge in respect of the quarter as is attributable to either or both of the following:
  - (i) those payments;
  - (ii) the period before the relevant date;is taken to be payable by the company in respect of services rendered to the company by those employees before the relevant date; and
- (g) the remainder of the superannuation guarantee charge in respect of the quarter is taken:
  - (i) to be an expense referred to in paragraph (1)(a); and
  - (ii) not to be an amount of superannuation guarantee charge referred in paragraph (1)(e); and
- (h) subsections (1AC) and (1AD) do not apply to the superannuation guarantee charge in respect of the quarter.

## **8 Subsection 556(2)**

Insert:

*quarter* has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

## **9 Section 560**

Repeal the section, substitute:

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**560 Advances for company to make priority payments in relation to employees**

If:

- (a) a payment has been made by a company:
  - (i) on account of wages; or
  - (ii) on account of superannuation contributions (within the meaning of section 556); or
  - (iii) in respect of leave of absence, or termination of employment, under an industrial instrument; and
- (b) the payment was made as a result of an advance of money by a person (whether before, on or after the relevant date) for the purpose of making the payment;

then:

- (c) the person by whom the money was advanced has the same rights under this Chapter as a creditor of the company; and
- (d) subject to paragraph (e), the person by whom the money was advanced has, in the winding up of the company, the same right of priority of payment in respect of the money so advanced and paid as the person who received the payment would have had if the payment had not been made; and
- (e) the right of priority conferred by paragraph (d) is not to exceed the amount by which the sum in respect of which the person who received the payment would have been entitled to priority in the winding up has been diminished by reason of the payment.

**10 Paragraph 1364(2)(f)**

After “meetings of creditors,”, insert “meetings of eligible employee creditors,”.

***Superannuation Guarantee (Administration) Act 1992***

**11 Section 52**

Repeal the section.

**12 Subsection 64B(3)**

Omit “An”, substitute “Subject to subsection (3A), an”.

### **13 After subsection 64B(3)**

Insert:

- (3A) The Commissioner may vary an employee's proportion of an amount if the amount of the charge payment has been affected by:
- (a) the application of the monetary limit imposed by subsection 556(1A) of the *Corporations Act 2001* in respect of the employee; or
  - (b) the application of the monetary limit imposed by paragraph 109(1)(e) of the *Bankruptcy Act 1966* in respect of the employee.

### **14 Application—section 52 of the *Superannuation Guarantee (Administration) Act 1992***

The repeal of section 52 of the *Superannuation Guarantee (Administration) Act 1992* by this Schedule, in so far as it relates to a company that is being wound up under the *Corporations Act 2001*, applies if the relevant date (within the meaning of the *Corporations Act 2001*) is on or after the day on which this item commences.

### **15 Application—subsection 64B(3A) of the *Superannuation Guarantee (Administration) Act 1992***

- (1) Paragraph 64B(3A)(a) of the *Superannuation Guarantee (Administration) Act 1992* applies if the relevant date (within the meaning of the *Corporations Act 2001*) is on or after the day on which this item commences.
- (2) Paragraph 64B(3A)(b) of the *Superannuation Guarantee (Administration) Act 1992*, in so far as it relates to a bankruptcy, applies if the date of the bankruptcy is on or after the day on which this item commences.
- (3) Paragraph 64B(3A)(b) of the *Superannuation Guarantee (Administration) Act 1992*, in so far as it relates to a personal insolvency agreement, applies if the relevant authority under section 188 of the *Bankruptcy Act 1966* became effective on or after the day on which this item commences.

## Part 2—Better informing creditor decisions

### *Corporations Act 2001*

#### 16 Section 9

Insert:

*declaration of indemnities*, in relation to an administrator of a company under administration, means a written declaration:

- (a) stating whether the administrator has, to any extent, been indemnified (otherwise than under section 443D), in relation to that administration, for:
  - (i) any debts for which the administrator is, or may become, liable under Subdivision A of Division 9 of Part 5.3A; or
  - (ii) any debts for which the administrator is, or may become, liable under a remittance provision as defined in section 443BA; or
  - (iii) his or her remuneration as determined under section 449E; and
- (b) if so, stating:
  - (i) the identity of each indemnifier; and
  - (ii) the extent and nature of each indemnity.

#### 17 Section 9

Insert:

*declaration of relevant relationships* has the meaning given by section 60.

#### 18 Section 9

Insert:

*firm*, in relation to an administrator or liquidator, means:

- (a) if the administrator or liquidator is a partner or employee of a partnership (the *partnership firm*) that provides advice or other services in relation to externally-administered bodies corporate—the partnership firm; or

- (b) if the administrator or liquidator is an officer or employee of a body corporate (the *body corporate firm*) that provides advice or other services in relation to externally-administered bodies corporate—the body corporate firm.

## 19 After section 59

Insert:

## 60 Declaration of relevant relationships

### *Administrator*

- (1) In this Act, a *declaration of relevant relationships*, in relation to an administrator of a company under administration, means a written declaration:
  - (a) stating whether any of the following:
    - (i) the administrator;
    - (ii) if the administrator's firm (if any) is a partnership—a partner in that partnership;
    - (iii) if the administrator's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;has, or has had within the preceding 24 months, a relationship with:
    - (iv) the company; or
    - (v) an associate of the company; or
    - (vi) a former liquidator, or former provisional liquidator, of the company; or
    - (vii) a person who is entitled to enforce a charge on the whole, or substantially the whole, of the company's property; and
  - (b) if so, stating the administrator's reasons for believing that none of the relevant relationships result in the administrator having a conflict of interest or duty.

### *Liquidator*

- (2) In this Act, a *declaration of relevant relationships*, in relation to a liquidator of a company, means a written declaration:
  - (a) stating whether any of the following:

- (i) the liquidator;
  - (ii) if the liquidator's firm (if any) is a partnership—a partner in that partnership;
  - (iii) if the liquidator's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;
- has, or has had within the preceding 24 months, a relationship with:
- (iv) the company; or
  - (v) an associate of the company; or
  - (vi) a former liquidator, or former provisional liquidator, of the company; or
  - (vii) a former administrator of the company; or
  - (viii) a former administrator of a deed of company arrangement executed by the company; and
- (b) if so, stating the liquidator's reasons for believing that none of the relevant relationships result in the liquidator having a conflict of interest or duty.

## **20 At the end of section 425**

Add:

- (8) In exercising its powers under this section, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:
- (a) the extent to which the work performed by the receiver was reasonably necessary;
  - (b) the extent to which the work likely to be performed by the receiver is likely to be reasonably necessary;
  - (c) the period during which the work was, or is likely to be, performed by the receiver;
  - (d) the quality of the work performed, or likely to be performed, by the receiver;
  - (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the receiver;
  - (f) the extent (if any) to which the receiver was, or is likely to be, required to deal with extraordinary issues;
  - (g) the extent (if any) to which the receiver was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;

- (h) the value and nature of any property dealt with, or likely to be dealt with, by the receiver;
- (i) whether the receiver was, or is likely to be, required to deal with:
  - (i) one or more other receivers; or
  - (ii) one or more receivers and managers; or
  - (iii) one or more liquidators; or
  - (iv) one or more administrators; or
  - (v) one or more administrators of deeds of company arrangement;
- (j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
- (k) if the remuneration is ascertained, in whole or in part, on a time basis:
  - (i) the time properly taken, or likely to be properly taken, by the receiver in performing the work; and
  - (ii) whether the total remuneration payable to the receiver is capped;
- (l) any other relevant matters.

## **21 After section 436D**

Insert:

### **436DA Declarations by administrator—indemnities and relevant relationships**

#### *Scope*

- (1) This section applies to an administrator appointed under section 436A, 436B or 436C.

#### *Declaration of relationships and indemnities*

- (2) As soon as practicable after being appointed, the administrator must make:
  - (a) a declaration of relevant relationships; and
  - (b) a declaration of indemnities.

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

*Notification of creditors*

- (3) The administrator must:
- (a) give a copy of each declaration under subsection (2) to as many of the company's creditors as reasonably practicable; and
  - (b) do so at the same time as the administrator gives those creditors notice of the meeting referred to in section 436E.

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

- (4) The administrator must table a copy of each declaration under subsection (2) at the meeting referred to in section 436E.

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

*Updating of declaration*

- (5) If:
- (a) at a particular time, the administrator makes:
    - (i) a declaration of relevant relationships; or
    - (ii) a declaration of indemnities;under subsection (2) or this subsection; and
  - (b) at a later time:
    - (i) the declaration has become out-of-date; or
    - (ii) the administrator becomes aware of an error in the declaration;
- the administrator must, as soon as practicable, make:
- (c) if subparagraph (a)(i) applies—a replacement declaration of relevant relationships; or
  - (d) if subparagraph (a)(ii) applies—a replacement declaration of indemnities.

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

- (6) The administrator must table a copy of a replacement declaration under subsection (5):

- (a) if:
  - (i) there is a committee of creditors; and
  - (ii) the next meeting of the committee of creditors occurs before the next meeting of the company's creditors;

- at the next meeting of the committee of creditors; or  
(b) in any other case—at the next meeting of the company’s creditors.

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

*Defence*

- (7) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this section, it is a defence if the defendant proves that:
- (a) the defendant made reasonable enquiries; and
  - (b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

**22 Subsection 446A(4)**

Repeal the subsection.

**23 At the end of section 446A**

Add:

Note: See also section 499 (appointment of liquidator).

**24 After section 449C**

Insert:

**449CA Declarations by administrator—indemnities and relevant relationships**

*Scope*

- (1) This section applies to an administrator appointed under subsection 449C(1) otherwise than by the Court.

*Declaration of relationships and indemnities*

- (2) As soon as practicable after being appointed, the administrator must make:
- (a) a declaration of relevant relationships; and
  - (b) a declaration of indemnities.

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

*Notification of creditors*

- (3) The administrator must:
- (a) give a copy of each declaration under subsection (2) to as many of the company's creditors as reasonably practicable; and
  - (b) do so at the same time as the administrator gives those creditors notice of the meeting convened under subsection 449C(4).

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

- (4) The administrator must table a copy of each declaration under subsection (2) at the meeting convened under subsection 449C(4).

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

*Updating of declaration*

- (5) If:
- (a) at a particular time, the administrator makes:
    - (i) a declaration of relevant relationships; or
    - (ii) a declaration of indemnities;under subsection (2) or this subsection; and
  - (b) at a later time:
    - (i) the declaration has become out-of-date; or
    - (ii) the administrator becomes aware of an error in the declaration;
- the administrator must, as soon as practicable, make:
- (c) if subparagraph (a)(i) applies—a replacement declaration of relevant relationships; or
  - (d) if subparagraph (a)(ii) applies—a replacement declaration of indemnities.

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

- (6) The administrator must table a copy of a replacement declaration under subsection (5):

- (a) if:
  - (i) there is a committee of creditors; and
  - (ii) the next meeting of the committee of creditors occurs before the next meeting of the company's creditors; at the next meeting of the committee of creditors; or
- (b) in any other case—at the next meeting of the company's creditors.

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

*Defence*

- (7) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this section, it is a defence if the defendant proves that:
  - (a) the defendant made reasonable enquiries; and
  - (b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

**25 Subsection 449E(1)**

Repeal the subsection, substitute:

- (1) The administrator of a company under administration is entitled to receive such remuneration as is determined:
  - (a) by agreement between the administrator and the committee of creditors (if any); or
  - (b) by resolution of the company's creditors; or
  - (c) if there is no such agreement or resolution—by the Court.
- (1A) The administrator of a company under a deed of company arrangement is entitled to receive such remuneration as is determined:
  - (a) by agreement between the administrator and the committee of inspection (if any); or
  - (b) by resolution of the company's creditors; or
  - (c) if there is no such agreement or resolution—by the Court.
- (1B) To be effective, a resolution under paragraph (1)(b) or (1A)(b) must deal exclusively with remuneration of the administrator.

Note: This means that the resolution must not be bundled with any other resolution.

- (1C) The Court may determine remuneration under paragraph (1)(c) even if:
- (a) there has been no meeting of the committee of creditors; or
  - (b) there has been no meeting of the company's creditors.
- (1D) The Court may determine remuneration under paragraph (1A)(c) even if:
- (a) there has been no meeting of the committee of inspection; or
  - (b) there has been no meeting of the company's creditors.

## **26 Subsection 449E(2)**

Omit "fixed under paragraph (1)(a)", substitute "determined under paragraph (1)(a) or (b) or paragraph (1A)(a) or (b)".

## **27 Subsection 449E(2)**

After "on the application", insert "of ASIC,".

## **28 At the end of section 449E**

Add:

- (4) In exercising its powers under subsection (1), (1A) or (2), the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:
- (a) the extent to which the work performed by the administrator was reasonably necessary;
  - (b) the extent to which the work likely to be performed by the administrator is likely to be reasonably necessary;
  - (c) the period during which the work was, or is likely to be, performed by the administrator;
  - (d) the quality of the work performed, or likely to be performed, by the administrator;
  - (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the administrator;
  - (f) the extent (if any) to which the administrator was, or is likely to be, required to deal with extraordinary issues;
  - (g) the extent (if any) to which the administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;

- (h) the value and nature of any property dealt with, or likely to be dealt with, by the administrator;
  - (i) whether the administrator was, or is likely to be, required to deal with:
    - (i) one or more receivers; or
    - (ii) one or more receivers and managers;
  - (j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
  - (k) if the remuneration is ascertained, in whole or in part, on a time basis:
    - (i) the time properly taken, or likely to be properly taken, by the administrator in performing the work; and
    - (ii) whether the total remuneration payable to the administrator is capped;
  - (l) any other relevant matters.
- (5) Before remuneration is determined under paragraph (1)(a), the administrator must:
- (a) prepare a report setting out:
    - (i) such matters as will enable the committee of creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the administrator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each member of the committee of creditors at the same time as the member is notified of the relevant meeting of the committee.
- (6) Before remuneration is determined under paragraph (1A)(a), the administrator must:
- (a) prepare a report setting out:
    - (i) such matters as will enable the committee of inspection to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the administrator; and
    - (iii) the costs associated with each of those major tasks; and

- (b) give a copy of the report to each member of the committee of inspection at the same time as the member is notified of the relevant meeting of the committee.
- (7) Before remuneration is determined under paragraph (1)(b) or (1A)(b), the administrator must:
- (a) prepare a report setting out:
    - (i) such matters as will enable the company's creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the administrator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each of the company's creditors at the same time as the creditor is notified of the relevant meeting of creditors.

## **29 After subsection 473(4)**

Insert:

(4A) If:

- (a) no remuneration has been fixed under paragraph (3)(a) or (b); and
- (b) a meeting of the company's creditors is convened; and
- (c) a resolution under subparagraph (3)(b)(i) cannot be passed because of the lack of a quorum; and
- (d) there has been no previous application of this subsection to the remuneration of the liquidator;

the creditors are taken to have passed a resolution under subparagraph (3)(b)(i) determining that the liquidator is entitled to remuneration of:

- (e) whichever is the greater of the following amounts:
    - (i) \$5,000;
    - (ii) if an amount is specified in regulations for the purposes of this subparagraph—that amount; or
  - (f) if the liquidator determines a lesser amount—that lesser amount.
- (4B) Subsection (4A) does not limit the Court's powers under subsection (6).

### **30 At the end of section 473**

Add:

- (10) In exercising its powers under subsection (3), (5) or (6), the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:
- (a) the extent to which the work performed by the liquidator was reasonably necessary;
  - (b) the extent to which the work likely to be performed by the liquidator is likely to be reasonably necessary;
  - (c) the period during which the work was, or is likely to be, performed by the liquidator;
  - (d) the quality of the work performed, or likely to be performed, by the liquidator;
  - (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the liquidator;
  - (f) the extent (if any) to which the liquidator was, or is likely to be, required to deal with extraordinary issues;
  - (g) the extent (if any) to which the liquidator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
  - (h) the value and nature of any property dealt with, or likely to be dealt with, by the liquidator;
  - (i) whether the liquidator was, or is likely to be, required to deal with:
    - (i) one or more receivers; or
    - (ii) one or more receivers and managers;
  - (j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
  - (k) if the remuneration is ascertained, in whole or in part, on a time basis:
    - (i) the time properly taken, or likely to be properly taken, by the liquidator in performing the work; and
    - (ii) whether the total remuneration payable to the liquidator is capped;
  - (l) any other relevant matters.
- (11) Before remuneration is determined under paragraph (3)(a), the liquidator must:

- (a) prepare a report setting out:
    - (i) such matters as will enable the committee of inspection to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each member of the committee of inspection at the same time as the member is notified of the relevant meeting of the committee.
- (12) Before remuneration is determined under subparagraph (3)(b)(i), the liquidator must:
- (a) prepare a report setting out:
    - (i) such matters as will enable the company's creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each of the company's creditors at the same time as the creditor is notified of the relevant meeting of creditors.

### **31 At the end of section 495**

Add:

- (5) Before remuneration is fixed under subsection (1), the liquidator or liquidators, or the proposed liquidator or proposed liquidators, must:
  - (a) prepare a report setting out:
    - (i) such matters as will enable the members to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks likely to be performed by the liquidator or liquidators, or the proposed liquidator or proposed liquidators, as the case may be; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) table the report at the relevant general meeting.

### **32 Subsection 499(3)**

Repeal the subsection, substitute:

- (3) The remuneration to be paid to the liquidator may be fixed:
  - (a) if there is a committee of inspection—by that committee; or
  - (b) by resolution of the creditors.

(3A) If:

- (a) no remuneration has been fixed under subsection (3); and
- (b) a meeting of the company's creditors is convened; and
- (c) a resolution under paragraph (3)(b) cannot be passed because of the lack of a quorum; and
- (d) there has been no previous application of this subsection to the remuneration of the liquidator;

the creditors are taken to have passed a resolution under paragraph (3)(b) determining that the liquidator is entitled to remuneration of:

- (e) whichever is the greater of the following amounts:
  - (i) \$5,000;
  - (ii) if an amount is specified in regulations for the purposes of this subparagraph—that amount; or
- (f) if the liquidator determines a lesser amount—that lesser amount.

### **33 At the end of section 499**

Add:

- (6) Before remuneration is fixed under subsection (3) by the committee of inspection, the liquidator must:
  - (a) prepare a report setting out:
    - (i) such matters as will enable the members of the committee to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each member of the committee at the same time as the member is notified of the relevant meeting of the committee.

- (7) Before remuneration is fixed under subsection (3) by resolution of the creditors, the liquidator must:
- (a) prepare a report setting out:
    - (i) such matters as will enable the creditors to make an informed assessment as to whether the proposed remuneration is reasonable; and
    - (ii) a summary description of the major tasks performed, or likely to be performed, by the liquidator; and
    - (iii) the costs associated with each of those major tasks; and
  - (b) give a copy of the report to each of the creditors at the same time as the creditor is notified of the relevant meeting of creditors.

### **34 Section 504**

Before “Any member”, insert “(1)”.

### **35 At the end of section 504**

Add:

- (2) In exercising its powers under subsection (1), the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:
- (a) the extent to which the work performed by the liquidator was reasonably necessary;
  - (b) the extent to which the work likely to be performed by the liquidator is likely to be reasonably necessary;
  - (c) the period during which the work was, or is likely to be, performed by the liquidator;
  - (d) the quality of the work performed, or likely to be performed, by the liquidator;
  - (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the liquidator;
  - (f) the extent (if any) to which the liquidator was, or is likely to be, required to deal with extraordinary issues;
  - (g) the extent (if any) to which the liquidator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
  - (h) the value and nature of any property dealt with, or likely to be dealt with, by the liquidator;

- (i) whether the liquidator was, or is likely to be, required to deal with:
  - (i) one or more receivers; or
  - (ii) one or more receivers and managers;
- (j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
- (k) if the remuneration is ascertained, in whole or in part, on a time basis:
  - (i) the time properly taken, or likely to be properly taken, by the liquidator in performing the work; and
  - (ii) whether the total remuneration payable to the liquidator is capped;
- (l) any other relevant matters.

### **36 After section 506**

Insert:

#### **506A Declarations by liquidator—relevant relationships**

##### *Scope*

- (1) This section applies if the liquidator of a company is required to convene a meeting under section 497.

##### *Declaration of relevant relationships*

- (2) Before convening the meeting, the liquidator must make a declaration of relevant relationships.

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

##### *Notification of creditors*

- (3) The liquidator must:
  - (a) give a copy of each declaration under subsection (2) to as many of the company's creditors as reasonably practicable; and
  - (b) do so at the same time as the liquidator gives those creditors notice of the meeting.

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

- (4) The liquidator must table a copy of each declaration under subsection (2) at the meeting.

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

*Updating of declaration*

- (5) If:
- (a) at a particular time, the liquidator makes a declaration of relevant relationships under subsection (2) or this subsection; and
  - (b) at a later time:
    - (i) the declaration has become out-of-date; or
    - (ii) the liquidator becomes aware of an error in the declaration;

the liquidator must, as soon as practicable, make a replacement declaration of relevant relationships.

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

- (6) The liquidator must table a copy of a replacement declaration under subsection (4):
- (a) if:
    - (i) there is a committee of inspection; and
    - (ii) the next meeting of the committee of inspection occurs before the next meeting of the company's creditors; or
  - (b) in any other case—at the next meeting of the company's creditors.

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

*Defence*

- (7) In a prosecution for an offence constituted by a failure to include a particular matter in a declaration under this section, it is a defence if the defendant proves that:
- (a) the defendant made reasonable enquiries; and
  - (b) after making these enquiries, the defendant had no reasonable grounds for believing that the matter should have been included in the declaration.

### **37 Paragraph 508(1)(b)**

Repeal the paragraph, substitute:

- (b) in the case of a creditors' voluntary winding up:
  - (i) convene a meeting of the creditors; or
  - (ii) prepare a report that complies with subsection (3), and lodge a copy of the report with ASIC;

Note: The heading to section 508 is altered by omitting "**meeting of creditors**" and substituting "**obligations of liquidator—meeting or report**".

### **38 Subsection 508(1)**

Omit "from the commencement of the winding up", substitute "beginning on the day on which the company resolved that it be wound up voluntarily".

### **39 Subsection 508(1)**

Omit all the words after "each succeeding year".

### **40 Subsection 508(2)**

Repeal the subsection, substitute:

- (2) The liquidator must lay before a meeting convened under paragraph (1)(a) or subparagraph (1)(b)(i) an account of:
  - (a) the liquidator's acts and dealings; and
  - (b) the conduct of the winding up;during that first year or that succeeding year, as the case may be.
- (3) A report referred to in subparagraph (1)(b)(ii) must set out:
  - (a) an account of:
    - (i) the liquidator's acts and dealings; and
    - (ii) the conduct of the winding up;during that first year or that succeeding year, as the case may be; and
  - (b) a description of the acts and dealings that remain to be carried out by the liquidator in order to complete the winding up; and
  - (c) an estimate of when the winding up is likely to be completed.
- (4) If a liquidator prepares a report under subparagraph (1)(b)(ii), the liquidator must, within 14 days of lodging a copy of the report with

ASIC, give each creditor of the company a written notice stating that:

- (a) the liquidator has decided not to convene a meeting of the creditors under subparagraph (1)(b)(i); and
- (b) the liquidator has:
  - (i) prepared a report under subparagraph (1)(b)(ii); and
  - (ii) lodged a copy of the report with ASIC; and
- (c) if the creditor requests the liquidator to give the creditor a copy of the report free of charge, the liquidator will comply with the request.

Note: For electronic notification under this subsection, see section 600G.

- (5) If a request is made as mentioned in paragraph (4)(c), the liquidator must comply with the request as soon as practicable.

## Part 3—Streamlining external administration

### *Corporations Act 2001*

#### **41 Section 9 (paragraph (b) of the definition of *controller*)**

Omit “charge.”, substitute “charge;”.

#### **42 Section 9 (at the end of the definition of *controller*)**

Add:

and has a meaning affected by paragraph 434F(b) (which deals with 2 or more persons appointed as controllers).

#### **43 Section 9 (definition of *liquidator*)**

Repeal the definition, substitute:

*liquidator:*

- (a) has a meaning affected by paragraph 530(b) (which deals with 2 or more persons appointed as liquidators); and
- (b) in Chapter 7, includes a provisional liquidator.

#### **44 Section 9 (paragraph (b) of the definition of *managing controller*)**

Omit “corporation.”, substitute “corporation;”.

#### **45 Section 9 (at the end of the definition of *managing controller*)**

Add:

and has a meaning affected by paragraph 434G(b) (which deals with 2 or more persons appointed as managing controllers).

#### **46 Section 9**

Insert:

*provisional liquidator* has a meaning affected by paragraph 530AA(b) (which deals with 2 or more persons appointed as provisional liquidators).

#### **47 Section 9**

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Insert:

*receiver* has a meaning affected by paragraph 434D(b) (which deals with 2 or more persons appointed as receivers).

**48 Section 9 (at the end of the definition of *receiver and manager*)**

Add “and has a meaning affected by paragraph 434E(b) (which deals with 2 or more persons appointed as receivers and managers)”.

**49 After section 157**

Insert:

**157A Change of name of company under external administration**

*Application by liquidator*

- (1) The liquidator of a company that is being wound up may lodge an application with ASIC to change the name of the company if the liquidator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.
- (2) Subsection (1) does not apply to a members’ voluntary winding up.

*Application by administrator*

- (3) The administrator of a company under administration may lodge an application with ASIC to change the name of the company if the administrator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by deed administrator*

- (4) The administrator of a deed of company arrangement may lodge an application with ASIC to change the name of the company if the administrator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by managing controller*

- (5) If:
  - (a) a person is the managing controller of property of a company; and

(b) the person is entitled to enforce a charge on the whole, or substantially the whole, of the company's property;  
the person may lodge an application with ASIC to change the name of the company if the person is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by receiver*

- (6) If:
- (a) a person is a receiver of property of a company; and
  - (b) the property subject to the receivership consists of, or includes, goodwill in relation to the name of the company;
- the person may lodge an application with ASIC to change the name of the company if the person is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Change of name*

- (7) If:
- (a) an application is lodged under subsection (1), (3), (4), (5) or (6); and
  - (b) the proposed name is available;
- ASIC must change the company's name by altering the details of the company's registration to reflect the change. The change of name takes effect when ASIC alters the details of the company's registration.

Note: For available names, see section 147.

**50 At the end of Division 2 of Part 2B.6**

Add:

**161A Company under external administration—former name to be used on documents**

- (1) This section applies to a company if:
- (a) any of the following conditions is satisfied:
    - (i) the company is being wound up;
    - (ii) the company is under administration;

- (iii) the company has executed a deed of company arrangement that has not yet terminated;
  - (iv) there is a managing controller of property of the company;
  - (v) there is a receiver of property of the company; and
- (b) any of the following conditions is satisfied:
- (i) a change of the company's name takes effect;
  - (ii) in the case of a company that is being wound up—a change of the company's name took effect during the 6-month period ending immediately before the relevant date;
  - (iii) in the case of a company under administration—a change of the company's name took effect during the 6-month period ending immediately before the administration began;
  - (iv) in the case of a company that has executed a deed of company arrangement—a change of the company's name took effect during the 6-month period ending immediately before the beginning of the administration that ended when the deed was executed;
  - (v) in the case of a company where there is a managing controller—a change in the company's name took effect during the 6-month period ending immediately before the appointment of the managing controller;
  - (vi) in the case of a company where there is a receiver—a change in the company's name took effect during the 6-month period ending immediately before the appointment of the receiver.
- (2) If subparagraph (1)(b)(i), (ii), (iv), (v) or (vi) applies, the company must set out its former name on all its public documents and negotiable instruments.
- (3) If subparagraph (1)(b)(iii) applies, then, except with the leave of the Court, the company must set out its former name on all its public documents and negotiable instruments.
- (4) An offence based on subsection (2) or (3) is an offence of strict liability.

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

- (5) The regulations may exempt a specified company, or a class of companies, from the requirement in subsection (2) or (3). The exemption may relate to specified documents or instruments, or a specified class of documents or instruments.
- (6) The Court may only grant leave under subsection (3) on the application of the administrator of the deed of company arrangement.
- (7) The Court may only grant leave under subsection (3) if it is satisfied that the granting of leave will not result in any significant risk to the interests of the company's creditors (including contingent or prospective creditors) as a whole.

## **51 After section 250P**

Insert:

### **250PAA Exemptions by ASIC—class orders relating to externally-administered companies**

- (1) ASIC may, by legislative instrument, make an order exempting any of the following from section 250N:
  - (a) a specified class of companies that are being wound up;
  - (b) a specified class of companies under administration;
  - (c) a specified class of companies subject to deeds of company arrangement.
- (2) The order may be:
  - (a) unconditional; or
  - (b) subject to one or more specified conditions.
- (3) ASIC must cause a copy of the order to be published in the *Gazette*.

### **250PAB Exemptions by ASIC—individual externally-administered companies**

- (1) The liquidator of a company that is being wound up may lodge an application with ASIC to exempt the company from section 250N.
- (2) The administrator of a company under administration may lodge an application with ASIC to exempt the company from section 250N.

- (3) The administrator of a deed of company arrangement may lodge an application with ASIC to exempt the company from section 250N.
- (4) If an application is lodged under subsection (1), (2) or (3), ASIC may, by writing, exempt the company from section 250N.
- (5) The exemption may be:
  - (a) unconditional; or
  - (b) subject to one or more specified conditions.
- (6) ASIC must cause a copy of the exemption to be published in the *Gazette*.

**52 Sub-subparagraph 411(4)(a)(ii)(A)**

Before “passed”, insert “unless the Court orders otherwise—”.

**53 Subsection 421(1)**

Before “controller” (first occurring), insert “managing”.

Note: The heading to section 421 is altered by omitting “**Controller’s**” and substituting “**Managing controller’s**”.

**54 Subparagraph 421(1)(a)(i)**

Before “controller’s”, insert “managing”.

**55 Subparagraph 421(1)(a)(iii)**

Before “controller”, insert “managing”.

**56 Paragraphs 421(1)(b), (c) and (d)**

Before “controller”(wherever occurring), insert “managing”.

**57 Subsection 421(2)**

Before “controller”, insert “managing”.

**58 Subsection 421A(3)**

Repeal the subsection.

**59 Subsection 422(1)**

After “receiver” (first occurring), insert “or managing controller”.

Note: The heading to section 422 is altered by adding at the end “**or managing controller**”.

**60 Subsection 422(1)**

After “receiver” (last occurring), insert “or managing controller”.

**61 Subsection 422(2)**

After “receiver”, insert “or managing controller”.

**62 Subsection 422(2)**

Omit “receiver’s opinion”, substitute “opinion of the receiver or managing controller”.

**63 Paragraph 422(3)(a)**

Omit “under a law referred to in paragraph (1)(a)”.

**64 At the end of section 422**

Add:

(4) If:

- (a) there is a managing controller in relation to property of a corporation; and
- (b) it appears to the Court that:
  - (i) a past or present officer or employee, or a member, of the corporation has been guilty of an offence in relation to the corporation; or
  - (ii) a person who has taken part in the formation, promotion, administration, management or winding up of the corporation has engaged in conduct referred to in paragraph (1)(b) in relation to the corporation; and
- (c) it appears to the Court that the managing controller has not lodged a report about the matter;

the Court may, on the application of a person interested in the appointment of the managing controller, direct the managing controller to lodge such a report.

**65 Subsections 427(1), (1A) and (1B)**

Repeal the subsections, substitute:

(1) A person who:

- (a) obtains an order for the appointment of a receiver of property of a corporation; or

- (b) appoints such a receiver under a power contained in an instrument;  
must, within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be.
- (1A) A person who appoints another person to enter into possession, or take control, of property of a corporation (whether or not as agent for the corporation) for the purpose of enforcing a charge otherwise than as receiver of that property must, within 7 days after making the appointment, lodge notice of the appointment.
- (1B) A person who enters into possession, or takes control, as mentioned in subsection (1A) must, within 7 days after entering into possession or taking control, lodge notice that the person has done so, unless another person:
- (a) appointed the first-mentioned person so to enter into possession or take control; and
  - (b) complies with subsection (1A) in relation to the appointment.

**66 Subsection 427(4)**

Repeal the subsection, substitute:

- (4) A person who ceases to be a controller of property of a corporation must, within 7 days after so ceasing, lodge notice that the person has so ceased.

**67 At the end of Part 5.2**

Add:

**434D Appointment of 2 or more receivers of property of a corporation**

If 2 or more persons have been appointed as receivers of property of a corporation:

- (a) a function or power of a receiver of property of the corporation may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order or instrument appointing them otherwise provides; and

- (b) a reference in this Act to a receiver, or to the receiver, of property of a corporation is, in the case of the first-mentioned corporation, a reference to whichever one or more of those receivers the case requires.

**434E Appointment of 2 or more receivers and managers of property of a corporation**

If 2 or more persons have been appointed as receivers and managers of property of a corporation:

- (a) a function or power of a receiver and manager of property of the corporation may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order or instrument appointing them otherwise provides; and
- (b) a reference in this Act to a receiver and manager, or to the receiver and manager, of property of a corporation is, in the case of the first-mentioned corporation, a reference to whichever one or more of those receivers and managers the case requires.

**434F Appointment of 2 or more controllers of property of a corporation**

If 2 or more persons have been appointed as controllers of property of a corporation:

- (a) a function or power of a controller of property of the corporation may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order or instrument appointing them otherwise provides; and
- (b) a reference in this Act to a controller, or to the controller, of property of a corporation is, in the case of the first-mentioned corporation, a reference to whichever one or more of those controllers the case requires.

**434G Appointment of 2 or more managing controllers of property of a corporation**

If 2 or more persons have been appointed as managing controllers of property of a corporation:

- (a) a function or power of a managing controller of property of the corporation may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order or instrument appointing them otherwise provides; and
- (b) a reference in this Act to a managing controller, or to the managing controller, of property of a corporation is, in the case of the first-mentioned corporation, a reference to whichever one or more of those managing controllers the case requires.

**68 At the end of subsection 436E(3)**

Add:

Note: For electronic notification under paragraph (a), see section 600G.

**69 After subsection 436E(3)**

Insert:

- (3A) A notice under paragraph (3)(b) that relates to a company may be combined with a notice under paragraph 450A(1)(b) that relates to the company.

**70 Section 436G**

Before “A person”, insert “(1)”.

**71 Section 436G**

Omit “he or she”, substitute “the person”.

**72 At the end of section 436G**

Add:

- (2) If a member of such a committee is a body corporate, the member may be represented at meetings of the committee by:
  - (a) an officer or employee of the member; or
  - (b) an individual authorised in writing by the member for the purposes of this subsection.

**73 At the end of subsection 439A(3)**

Add:

Note: For electronic notification under paragraph (a), see section 600G.

**74 At the end of subsection 439A(4)**

Add:

Note: For electronic notification, see section 600G.

**75 Subsection 445F(2)**

Repeal the subsection, substitute:

(2) The deed's administrator must convene the meeting by giving written notice of the meeting:

(a) to as many of the company's creditors as reasonably practicable; and

(b) at least 5 business days before the meeting.

Note: For electronic notification, see section 600G.

**76 Subsection 445F(3)**

Omit "paragraph (2)(a)", substitute "subsection (2)".

**77 At the end of subsection 449C(5)**

Add:

Note: For electronic notification under paragraph (a), see section 600G.

**78 After subsection 450A(1)**

Insert:

(1A) A notice under paragraph (1)(b) that relates to a company may be combined with a notice under paragraph 436E(3)(b) that relates to the company.

**79 At the end of subsection 450A(3)**

Add:

Note: For electronic notification, see section 600G.

**80 Paragraph 450B(b)**

Repeal the paragraph.

**81 At the end of section 450B**

Add:

Note: For electronic notification under paragraph (a), see section 600G.

**82 Paragraph 450C(b)**

Repeal the paragraph, substitute:

- (b) send such a notice to each of the company's creditors.

**83 At the end of section 450C**

Add:

Note: For electronic notification under paragraph (b), see section 600G.

**84 Paragraph 450D(b)**

Omit "creditors; and", substitute "creditors.".

**85 Paragraph 450D(c)**

Repeal the paragraph.

**86 At the end of section 450D**

Add:

Note: For electronic notification under paragraph (b), see section 600G.

**87 Subsection 468(1)**

Omit "and any transfer of shares or alteration in the status of the members of the company".

**88 After section 468**

Insert:

**468A Effect of winding up on company's members**

*Transfer of shares*

- (1) A transfer of shares in a company that is made after the commencement of the winding up by the Court is void except if:
  - (a) both:
    - (i) the liquidator gives written consent to the transfer; and
    - (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the liquidator gives written consent to the transfer;
    - (ii) that consent is subject to one or more specified conditions;

- (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (4) authorising the transfer.
- (2) The liquidator may only give consent under paragraph (1)(a) or (b) if he or she is satisfied that the transfer is in the best interests of the company's creditors as a whole.
- (3) If the liquidator refuses to give consent under paragraph (1)(a) or (b) to a transfer of shares in the company:
  - (a) the prospective transferor; or
  - (b) the prospective transferee; or
  - (c) a creditor of the company;may apply to the Court for an order authorising the transfer.
- (4) If the Court is satisfied, on an application under subsection (3), that the transfer is in the best interests of the company's creditors as a whole, the Court may, by order, authorise the transfer.
- (5) If the liquidator gives consent under paragraph (1)(b) to a transfer of shares in the company:
  - (a) the prospective transferor; or
  - (b) the prospective transferee; or
  - (c) a creditor of the company;may apply to the Court for an order setting aside any or all of the conditions to which the consent is subject.
- (6) If the Court is satisfied, on an application under subsection (5), that any or all of the conditions covered by the application are not in the best interests of the company's creditors as a whole, the Court may, by order, set aside any or all of the conditions.
- (7) The liquidator is entitled to be heard in a proceeding before the Court in relation to an application under subsection (3) or (5).

*Alteration in the status of members*

- (8) An alteration in the status of members of a company that is made after the commencement of the winding up by the Court is void except if:
  - (a) both:
    - (i) the liquidator gives written consent to the alteration; and

- (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the liquidator gives written consent to the alteration;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (12) authorising the alteration.
- (9) The liquidator may only give consent under paragraph (8)(a) or (b) if he or she is satisfied that the alteration is in the best interests of the company's creditors as a whole.
- (10) The liquidator must refuse to give consent under paragraph (8)(a) or (b) if the alteration would contravene Part 2F.2.
- (11) If the liquidator refuses to give consent under paragraph (8)(a) or (b) to an alteration in the status of members of a company:
  - (a) a member of the company; or
  - (b) a creditor of the company;may apply to the Court for an order authorising the alteration.
- (12) If the Court is satisfied, on an application under subsection (11), that:
  - (a) the alteration is in the best interests of the company's creditors as a whole; and
  - (b) the alteration does not contravene Part 2F.2;the Court may, by order, authorise the alteration.
- (13) If the liquidator gives consent under paragraph (8)(b) to an alteration in the status of members of a company:
  - (a) a member of the company; or
  - (b) a creditor of the company;may apply to the Court for an order setting aside any or all of the conditions to which the consent is subject.
- (14) If the Court is satisfied, on an application under subsection (13), that any or all of the conditions covered by the application are not in the best interests of the company's creditors as a whole, the Court may, by order, set aside any or all of the conditions.

- (15) The liquidator is entitled to be heard in a proceeding before the Court in relation to an application under subsection (11) or (13).

**89 Subsection 473(4)**

Omit “to which is attached”, substitute “and”.

**90 At the end of subsection 473(4)**

Add:

Note: For electronic notification, see section 600G.

**91 After subsection 477(3)**

Insert:

- (4) If:
- (a) a company is being wound up under a creditors’ voluntary winding up; and
  - (b) the meeting of creditors has not been held under section 497; the liquidator of the company must not exercise a power conferred by paragraph (1)(b) or (c) or (2)(m), except with the leave of the Court.

**92 Subsection 493(1)**

Omit “(1)”.

**93 Subsection 493(2)**

Repeal the subsection.

**94 After section 493**

Insert:

**493A Effect of voluntary winding up on company’s members**

*Transfer of shares*

- (1) A transfer of shares in a company that is made after the passing of the resolution is void except if:
- (a) both:
    - (i) the liquidator gives written consent to the transfer; and
    - (ii) that consent is unconditional; or

- (b) all of the following subparagraphs apply:
    - (i) the liquidator gives written consent to the transfer;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (4) authorising the transfer.
- (2) The liquidator may only give consent under paragraph (1)(a) or (b) if he or she is satisfied that the transfer is in the best interests of the company's creditors as a whole.
- (3) If the liquidator refuses to give consent under paragraph (1)(a) or (b) to a transfer of shares in the company:
  - (a) the prospective transferor; or
  - (b) the prospective transferee; or
  - (c) a creditor of the company;may apply to the Court for an order authorising the transfer.
- (4) If the Court is satisfied, on an application under subsection (3), that the transfer is in the best interests of the company's creditors as a whole, the Court may, by order, authorise the transfer.
- (5) If the liquidator gives consent under paragraph (1)(b) to a transfer of shares in the company:
  - (a) the prospective transferor; or
  - (b) the prospective transferee; or
  - (c) a creditor of the company;may apply to the Court for an order setting aside any or all of the conditions to which the consent is subject.
- (6) If the Court is satisfied, on an application under subsection (5), that any or all of the conditions covered by the application are not in the best interests of the company's creditors as a whole, the Court may, by order, set aside any or all of the conditions.
- (7) The liquidator is entitled to be heard in a proceeding before the Court in relation to an application under subsection (3) or (5).

*Alteration in the status of members*

- (8) An alteration in the status of members of a company that is made after the passing of the resolution is void except if:
- (a) both:
    - (i) the liquidator gives written consent to the alteration; and
    - (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the liquidator gives written consent to the alteration;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (12) authorising the alteration.
- (9) The liquidator may only give consent under paragraph (8)(a) or (b) if he or she is satisfied that the alteration is in the best interests of the company's creditors as a whole.
- (10) The liquidator must refuse to give consent under paragraph (8)(a) or (b) if the alteration would contravene Part 2F.2.
- (11) If the liquidator refuses to give consent under paragraph (8)(a) or (b) to an alteration in the status of members of a company:
- (a) a member of the company; or
  - (b) a creditor of the company;
- may apply to the Court for an order authorising the alteration.
- (12) If the Court is satisfied, on an application under subsection (11), that:
- (a) the alteration is in the best interests of the company's creditors as a whole; and
  - (b) the alteration does not contravene Part 2F.2;
- the Court may, by order, authorise the alteration.
- (13) If the liquidator gives consent under paragraph (8)(b) to an alteration in the status of members of a company:
- (a) a member of the company; or
  - (b) a creditor of the company;
- may apply to the Court for an order setting aside any or all of the conditions to which the consent is subject.
-

- (14) If the Court is satisfied, on an application under subsection (13), that any or all of the conditions covered by the application are not in the best interests of the company's creditors as a whole, the Court may, by order, set aside any or all of the conditions.
- (15) The liquidator is entitled to be heard in a proceeding before the Court in relation to an application under subsection (11) or (13).

**95 At the end of subsection 496(2)**

Add:

Note: For electronic notification, see section 600G.

**96 Subsection 496(3)**

Omit "\$200", substitute "\$1,000".

**97 Subsection 497(1)**

Repeal the subsection, substitute:

- (1) The liquidator of the company must cause a meeting of the company's creditors to be convened within 11 days after the day of the meeting of the company at which the resolution for voluntary winding up is passed.

**98 Subsection 497(2)**

Omit "The company", substitute "The liquidator".

**99 Subsection 497(2)**

Omit "a meeting", substitute "the meeting of the company's creditors".

**100 Paragraph 497(2)(a)**

Omit "by post".

**101 At the end of subsection 497(2)**

Add:

Note: For electronic notification under paragraph (a), see section 600G.

**102 Subsection 497(3)**

Omit "requires the company", substitute "requires the liquidator".

**103 Subsection 497(3)**

Omit “\$200”, substitute “\$1,000”.

**104 Subsection 497(3)**

Omit “whom the company”, substitute “whom the liquidator”.

**105 Subsection 497(3)**

Omit “the company must”, substitute “the liquidator must”.

**106 Subsection 497(4)**

Repeal the subsection.

**107 Subsection 497(5)**

Repeal the subsection, substitute:

- (5) Within 7 days after the day of the meeting of the company at which the resolution for voluntary winding up is passed, the directors of the company must give the liquidator a statement, in the prescribed form, about the company’s business, property, affairs and financial circumstances.

**108 Subsections 497(6) and (7)**

Repeal the subsections.

**109 Subsection 497(7A)**

Omit “(3), (4), (5) (6) or (7)”, substitute “(5)”.

**110 Subsection 497(8)**

Omit “director appointed under subsection (5)”, substitute “liquidator”.

**111 At the end of section 497**

Add:

- (11) At a meeting of creditors held under this section, the creditors may, by resolution:
  - (a) remove the liquidator from office; and
  - (b) appoint another person as liquidator instead.

**112 Subsections 499(1) and (2)**

Repeal the subsections, substitute:

---

- (1) The company in general meeting must appoint a liquidator for the purpose of winding up the affairs and distributing the property of the company.
- (2) However, subsection (1) does not apply to the company if section 446A applies in relation to the company.
- (2A) If section 446A applies in relation to the company because of paragraph 446A(1)(a):
  - (a) the company's creditors may, at the meeting at which the resolution referred to in that paragraph is passed, appoint a person to be liquidator for the purpose of winding up the affairs and distributing the property of the company; and
  - (b) if an appointment is not made under paragraph (a) of this subsection before the end of the meeting at which the resolution referred to in paragraph 446A(1)(a) is passed:
    - (i) the company's creditors are taken to have appointed the administrator of the company to be liquidator for the purpose of winding up the affairs and distributing the property of the company; and
    - (ii) the appointment under subparagraph (i) of this paragraph takes effect at the end of that meeting.
- (2B) If section 446A applies in relation to the company because of paragraph 446A(1)(b):
  - (a) the company's creditors are taken to have appointed the administrator of the company to be liquidator for the purpose of winding up the affairs and distributing the property of the company; and
  - (b) the appointment takes effect at the time referred to in that paragraph.
- (2C) If section 446A applies in relation to the company because of paragraph 446A(1)(c):
  - (a) the company's creditors may, at the meeting at which the resolution referred to in subparagraph 446A(1)(c)(ii) is passed, appoint a person to be liquidator for the purpose of winding up the affairs and distributing the property of the company; and
  - (b) if an appointment is not made under paragraph (a) of this subsection before the end of the meeting at which the

resolution referred to in subparagraph 446A(1)(c)(ii) is passed:

- (i) the company's creditors are taken to have appointed the administrator of the deed to be liquidator for the purpose of winding up the affairs and distributing the property of the company; and
- (ii) the appointment under subparagraph (i) of this paragraph takes effect at the end of that meeting.

**113 Subsection 506(4)**

Repeal the subsection.

**114 Before section 530A**

Insert:

**530 Appointment of 2 or more liquidators of a company**

If 2 or more persons have been appointed as liquidators of a company:

- (a) a function or power of a liquidator of the company may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order or resolution appointing them otherwise provides; and
- (b) a reference in this Act to a liquidator, or to the liquidator, of a company is, in the case of the first-mentioned company, a reference to whichever one or more of those liquidators the case requires.

**530AA Appointment of 2 or more provisional liquidators of a company**

If 2 or more persons have been appointed as provisional liquidators of a company:

- (a) a function or power of a provisional liquidator of the company may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order appointing them otherwise provides; and
- (b) a reference in this Act to a provisional liquidator, or to the provisional liquidator, of a company is, in the case of the

first-mentioned company, a reference to whichever one or more of those provisional liquidators the case requires.

**115 Paragraph 539(4)(b)**

Omit “1289(2)”, substitute “1289(5)”.

**116 At the end of subsection 539(5)**

Add:

Note: For electronic notification, see section 600G.

**117 At the end of section 549**

Add:

- (4) If a member of the committee is a body corporate, the member may be represented at meetings of the committee by:
- (a) an officer or employee of the member; or
  - (b) an individual authorised in writing by the member for the purposes of this subsection.

**118 At the end of subsection 550(3)**

Add:

Note: For electronic notification, see section 600G.

**119 At the end of subsection 568A(1)**

Add:

Note: For electronic notification under paragraph (b), see section 600G.

**120 At the end of Division 3 of Part 5.9**

Add:

**600G Electronic methods of giving or sending certain notices etc.**

- (1) This section 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) paragraph 436E(3)(a);
  - (b) paragraph 439A(3)(a);
  - (c) subsection 439A(4);
  - (d) subsection 445F(2);

- (e) paragraph 449C(5)(a);
  - (f) subsection 450A(3);
  - (g) paragraph 450B(a);
  - (h) paragraph 450C(b);
  - (i) paragraph 450D(b);
  - (j) subsection 473(4);
  - (k) subsection 496(2);
  - (l) paragraph 497(2)(a);
  - (m) subsection 508(4);
  - (n) subsection 539(5);
  - (o) subsection 550(3);
  - (p) paragraph 568A(1)(b);
  - (q) subsection 574(2);
  - (r) subsection 574(3);
  - (s) subsection 579J(1);
  - (t) subsection 579J(2);
  - (u) subsection 579K(1);
  - (v) subsection 579K(2);
  - (w) subsection 579K(3);
  - (x) subsection 579K(4).
- (2) If the recipient nominates a fax number, or electronic address, 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 sending it to that fax number or 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 a fax number or 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) Subsections (2), (3) and (4) do not limit the provisions mentioned in subsection (1).

**121 Schedule 3 (after table item 20)**

Insert:

- |     |                           |   |
|-----|---------------------------|---|
| 20A | Subsection 161A(2) or (3) | 10 penalty units or imprisonment for 3 months, or both. |
|-----|---------------------------|---|

## Part 4—Facilitating pooling in external administration

### *Corporations Act 2001*

#### 122 Section 9

Insert:

*pooling determination* means a determination under subsection 571(1).

#### 123 Section 9

Insert:

*pooling order* means an order under subsection 579E(1).

#### 124 At the end of subsection 473(3)

Add:

Note: See also section 579L (consolidated meetings of creditors—pooled groups).

#### 125 At the end of section 538

Add:

- (3) Regulations made for the purposes of this section may apply in relation to the winding up of a company that is subject to:
- (a) a pooling determination; or
  - (b) a pooling order.
- (4) Subsection (3) does not limit subsection (2).

#### 126 At the end of section 539

Add:

- (7) If:
- (a) a pooling determination is in force in relation to a group of 2 or more companies; or
  - (b) a pooling order is in force in relation to a group of 2 or more companies;

then:

- (c) the accounts under subsection (1) for the companies in the group may be set out in the same document; and
- (d) the statements under subsection (1) for the companies in the group may be set out in the same document.

### **127 Subsection 548(3)**

After “inspection”, insert “as a result of a determination under subsection (1)”.

Note: The heading to section 548 is altered by adding at the end “—**company not in pooled group**”.

### **128 At the end of section 548**

Add:

- (4) This section does not apply in relation to a company if:
  - (a) either:
    - (i) a pooling determination is in force in relation to a group of 2 or more companies; or
    - (ii) a pooling order is in force in relation to a group of 2 or more companies; and
  - (b) the company is in the group.

### **129 After section 548**

Insert:

#### **548A Convening of meeting for appointment of committee of inspection—pooled group**

- (1) If:
  - (a) either:
    - (i) a pooling determination is in force in relation to a group of 2 or more companies; or
    - (ii) a pooling order is in force in relation to a group of 2 or more companies; and
  - (b) each company in the group is being wound up;  
the liquidator or liquidators must, if requested by a creditor of a company in the group, convene a meeting, on a consolidated basis, of the creditors of the companies in the group for the purposes of determining:

- (c) whether a committee of inspection should be appointed for the group; and
- (d) if a committee of inspection is to be appointed:
  - (i) the number of members to represent the creditors of the companies in the group; and
  - (ii) the persons who are to be members of the committee representing the creditors of the companies in the group.
- (2) The regulations may make provision for or in relation to:
  - (a) the convening of, conduct of, and procedure and voting at, consolidated meetings of creditors; and
  - (b) the number of persons required to constitute a quorum at any such meeting; and
  - (c) the sending of notices of meetings to persons entitled to attend any such meeting; and
  - (d) the lodging of copies of notices of, and of resolutions passed at, any such meeting; and
  - (e) generally regulating the conduct of, and procedure at, any such meeting.
- (3) A person is not eligible to be appointed as a member of a committee of inspection as a result of a determination under subsection (1) unless the person is an eligible unsecured creditor (within the meaning of Division 8) of a company in the group.

Note: For *eligible unsecured creditor*, see section 579Q.
- (4) A committee of inspection for a group of 2 or more companies is taken to be a committee of inspection for each company in the group.
- (5) If:
  - (a) a determination is made under subsection (1); and
  - (b) immediately before the determination was made, a committee of inspection was in existence for a company in the group;the committee mentioned in paragraph (b) ceases to exist when the determination is made.

### **130 Subsection 549(2)**

Omit “The liquidator”, substitute “In the case of a committee of inspection appointed as a result of a determination under subsection 548(1), the liquidator”.

---

### **131 After subsection 549(2)**

Insert:

- (2A) In the case of a committee of inspection appointed as a result of a determination under subsection 548A(1), either:
- (a) the liquidator or liquidators of the companies in the group concerned; or
  - (b) a member of the committee;
- may convene a meeting of the committee.

### **132 Subsection 553(1)**

After “this Division”, insert “and Division 8”.

### **133 After Division 7B of Part 5.6**

Insert:

## **Division 8—Pooling**

### **Subdivision A—Pooling determinations**

#### **571 Pooling determination**

*Making of pooling determination*

- (1) If the following conditions are satisfied in relation to a group of 2 or more companies:
- (a) each company in the group is being wound up;
  - (b) any of the following subparagraphs applies:
    - (i) each company in the group is a related body corporate of each other company in the group;
    - (ii) apart from this section, the companies in the group are jointly liable for one or more debts or claims;
    - (iii) the companies in the group jointly own or operate particular property that is or was used, or for use, in connection with a business, a scheme, or an undertaking, carried on jointly by the companies in the group;
    - (iv) one or more companies in the group own particular property that is or was used, or for use, by any or all of

the companies in the group in connection with a business, a scheme, or an undertaking, carried on jointly by the companies in the group;

the liquidator or liquidators of the companies may, by writing:

- (c) determine that the group is a pooled group for the purposes of this section; and
- (d) if the liquidator or liquidators consider that it is just and equitable, as between the various creditors of the companies in the group, to do so—determine that any or all of the following provisions:
  - (i) subsection (2);
  - (ii) subsection (3);
  - (iii) subsection (4);
  - (iv) subsection (5);
  - (v) subsection (6);
  - (vi) subsection (7);

are modified, as set out in the determination, in their application to the companies in the group.

Note 1: Section 9 provides that *pooling determination* means a determination under subsection (1) of this section.

Note 2: A pooling determination comes into force when it is approved by the eligible unsecured creditors of each of the companies in the group—see section 578.

#### *Consequences of pooling determination*

(2) If a determination under paragraph (1)(c) comes into force in relation to a group of 2 or more companies:

- (a) each company in the group is taken to be jointly and severally liable for each debt payable by, and each claim against, each other company in the group; and
- (b) each debt payable by a company or companies in the group to any other company or companies in the group is extinguished; and
- (c) each claim that a company or companies in the group has against any other company or companies in the group is extinguished.

(3) Subsection (2) applies to a debt or claim:

- (a) whether present or future; and

- (b) whether certain or contingent; and
  - (c) whether ascertained or sounding only in damages.
- (4) Subsection (2) does not apply to a debt payable by, or a claim against, a company in the group unless the debt or claim is admissible to proof against the company.
- (5) If a determination under paragraph (1)(c) comes into force in relation to a group of 2 or more companies, the order of priority applicable under sections 556, 560 and 561 is not altered for a company in the group.
- (6) If:
  - (a) a determination under paragraph (1)(c) comes into force in relation to a group of 2 or more companies; and
  - (b) a secured creditor of a company in the group surrenders the relevant security to the liquidator of the company for the benefit of creditors of the companies in the group generally;the debt may be recovered as a debt that is jointly and severally payable by the companies in the group.
- (7) If:
  - (a) a determination under paragraph (1)(c) comes into force in relation to a group of 2 or more companies; and
  - (b) a secured creditor of a company in the group realises the security;so much of the debt as remains after deducting the net amount realised may be recovered as a debt that is jointly and severally payable by the companies in the group.
- (8) The following provisions have effect subject to any modifications under paragraph (1)(d):
  - (a) subsection (2);
  - (b) subsection (3);
  - (c) subsection (4);
  - (d) subsection (5);
  - (e) subsection (6);
  - (f) subsection (7).
- (9) Subsection (2) does not apply in relation to a secured creditor unless the relevant debt is payable by a company or companies in the group to any other company or companies in the group.

- (10) If:
- (a) a pooling determination comes into force in relation to a group of 2 or more companies; and
  - (b) there are one or more eligible employee creditors of a company in the group;
- those eligible employee creditors are entitled to a priority at least equal to what they would have been entitled if the determination had not been made.

*Section 477 not limited*

- (11) This section does not limit section 477.

### **572 Variation of pooling determination**

If a pooling determination is in force in relation to a group of 2 or more companies, the liquidator or liquidators of the companies may, by writing, vary the determination.

Note: A variation of a pooling determination comes into force when it is approved by the creditors of the companies in the group—see section 578.

### **573 Lodgment of copy of pooling determination etc.**

*Pooling determination*

- (1) Within 7 days after a pooling determination comes into force in relation to a group of 2 or more companies, the liquidator or liquidators of the companies in the group must lodge a copy of the determination with ASIC.

Note: A pooling determination comes into force when it is approved by the eligible unsecured creditors of each of the companies in the group—see section 578.

*Variation of pooling determination*

- (2) Within 7 days after a variation of a pooling determination comes into force in relation to a group of 2 or more companies, the liquidator or liquidators of the companies in the group must lodge a copy of the variation with ASIC.

Note: A variation of a pooling determination comes into force when it is approved by the eligible unsecured creditors of each of the companies in the group—see section 578.

**574 Eligible unsecured creditors must approve the making or variation of a pooling determination**

*Convening of meetings of creditors*

- (1) Within 5 business days after the liquidator or liquidators of a group of 2 or more companies:
  - (a) make a pooling determination in relation to the group; or
  - (b) vary a pooling determination in force in relation to the group;the liquidator or liquidators must convene separate meetings of the eligible unsecured creditors of each of the companies in the group.

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

*Notice of meeting*

- (2) A liquidator of a company must convene a meeting of the eligible unsecured creditors of the company by giving written notice of the meeting to the company's eligible unsecured creditors at least 5 business days before the meeting.

Note: For electronic notification under this subsection, see section 600G.

- (3) The notice given to an eligible unsecured creditor under subsection (2) must be accompanied by:
  - (a) a copy of the determination or variation; and
  - (b) a written statement:
    - (i) identifying each of the companies in the group; and
    - (ii) setting out the opinion of the liquidator about each of the matters specified in subsection (4), and the reasons of the liquidator for those opinions; and
    - (iii) if the liquidator considers that any eligible unsecured creditors are likely to be disadvantaged by the coming into force of the determination or variation—the reasons (if any) why the liquidator considers that those disadvantaged eligible unsecured creditors should vote for a resolution approving the making of the determination or variation; and
    - (iv) setting out such other information known to the liquidator as will enable the eligible unsecured creditors to make an informed decision about whether to approve the making of the determination or variation.

Note: For electronic notification under this subsection, see section 600G.

- (4) For the purposes of subparagraph (3)(b)(ii), the matters are as follows:
- (a) whether it would be in the eligible unsecured creditors' interests generally for the determination or variation to come into force;
  - (b) the extent to which particular eligible unsecured creditors are likely to be disadvantaged by the coming into force of the determination or variation;
  - (c) the extent to which particular companies in the group are likely to be disadvantaged by the coming into force of the determination or variation;
  - (d) the likely return to eligible unsecured creditors if the determination or variation were to come into force;
  - (e) the likely return to eligible unsecured creditors if the determination or variation were not to come into force.

**575 Members' voluntary winding up—copy of notice etc. to be given to each member of the company**

If:

- (a) a company is being wound up under a members' voluntary winding up; and
- (b) the liquidator of the company convenes a meeting of the eligible unsecured creditors of the company under section 574;

the liquidator must, within 5 business days after convening the meeting, give a copy of:

- (c) the subsection 574(2) notice; and
- (d) the paragraph 574(3)(b) statement;

to each member of the company, so long as the member is not a company in the group concerned.

**576 Conduct of meeting**

- (1) At a meeting convened under section 574, the liquidator is to preside.
- (2) A meeting convened under section 574 may be adjourned from time to time.

**577 Eligible unsecured creditors may decide to approve the determination or variation**

- (1) At a meeting convened under section 574, the eligible unsecured creditors may resolve to approve the making of the determination or variation.

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

- (2) A resolution under subsection (1) must be agreed to by a majority in number of the eligible unsecured creditors present and voting, either in person or by proxy, being a majority whose debts or claims against the company amount in the aggregate to at least 75% of the total amount of the debts and claims of the eligible unsecured creditors present and voting in person or by proxy.
- (3) If, at a meeting convened under section 574, the eligible unsecured creditors do not resolve to approve the making of the determination or variation:
- (a) the determination or variation is cancelled at the end of the meeting; and
  - (b) if, as at the end of the meeting, a corresponding resolution has not been considered at another meeting convened under section 574 of the eligible unsecured creditors of another company in the group—that other meeting is cancelled.

**578 When pooling determination comes into force etc.**

*Pooling determination*

- (1) If:
- (a) a pooling determination is made in relation to a group of 2 or more companies; and
  - (b) meetings are convened under section 574 of the eligible unsecured creditors of each company in the group; and
  - (c) at each meeting, the eligible unsecured creditors pass a resolution, in accordance with section 577, approving the making of the determination;
- then:
- (d) if all the resolutions were passed at the same time—the determination comes into force immediately after the resolutions were passed; or

- (e) if the resolutions were passed at different times—the determination comes into force immediately after the last of those times.

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

*Variation of pooling determination*

- (2) If:
  - (a) a pooling determination is in force in relation to a group of 2 or more companies; and
  - (b) the pooling determination is varied; and
  - (c) meetings are convened under section 574 of the eligible unsecured creditors of each company in the group; and
  - (d) at each meeting, the eligible unsecured creditors pass a resolution, in accordance with section 577, approving the making of the variation;

then:

- (e) if all the resolutions were passed at the same time—the variation comes into force immediately after the resolutions were passed; or
- (f) if the resolutions were passed at different times—the variation comes into force immediately after the last of those times.

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

### **579 Duties of liquidator**

- (1) This section applies if:
  - (a) the liquidator or liquidators of a group of 2 or more companies exercise a power conferred by section 571 or 574; and
  - (b) the liquidator or liquidators, in the exercise of that power, acted:
    - (i) with due care; and
    - (ii) in good faith; and
    - (iii) for the benefit of the creditors of the companies in the group, considered as a whole.
- (2) The liquidator or liquidators are taken not to be in breach of:

- (a) any duty to a company in the group concerned (whether under section 180, 181, 182, 183 or 184 or otherwise and whether of a fiduciary nature or not); or
  - (b) any duty to the creditors of a company in the group concerned (whether of a fiduciary nature or not);
- in connection with the exercise of that power.

**579A Court may vary or terminate pooling determination**

- (1) If a pooling determination is in force in relation to a group of 2 or more companies, the Court may make an order varying or terminating the pooling determination if the Court is satisfied that:
  - (a) information that was about the business, property, affairs or financial circumstances of a company in the group, and that:
    - (i) was false or misleading; and
    - (ii) can reasonably be expected to have been material to eligible unsecured creditors of a company in the group in deciding whether to vote in favour of a resolution to approve the making of the pooling determination;was given to:
    - (iii) the liquidator of a company in the group; or
    - (iv) eligible unsecured creditors of a company in the group;or
  - (b) information that was about the business, property, affairs or financial circumstances of a company in the group, and that:
    - (i) was false or misleading; and
    - (ii) can reasonably be expected to have been material to eligible unsecured creditors of a company in the group in deciding whether to vote in favour of a resolution to approve the making of the pooling determination;was contained in a statement under paragraph 574(3)(b) that accompanied a notice of the meeting at which the resolution was passed; or
  - (c) there was an omission from such a statement, and the omission can reasonably be expected to have been material to any of those eligible unsecured creditors in deciding whether to vote in favour of a resolution to approve the making of the pooling determination; or
  - (d) effect cannot be given to the pooling determination without injustice or undue delay; or

- (e) the pooling determination would materially disadvantage an eligible unsecured creditor who is an applicant for the order; or
- (f) the pooling determination would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, an applicant for the order who is an eligible unsecured creditor of a company in the group; or
- (g) the pooling determination would be contrary to the interests of the creditors of the companies in the group, considered as a whole; or
- (h) in a case where a company in the group is being wound up under a members' voluntary winding up:
  - (i) the pooling determination would materially disadvantage a member of the company who is an applicant for the order; or
  - (ii) the pooling determination would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more such members; or
  - (iii) the pooling determination would be contrary to the interests of the members of the company as a whole; or
- (i) the pooling determination should be varied or terminated for some other reason.

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

- (2) An order may only be made on the application of:
  - (a) a creditor of a company in the group; or
  - (b) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group; or
  - (c) any other interested person.

### **579B Court may cancel or confirm variation**

- (1) If:
  - (a) a pooling determination is in force in relation to a group of 2 or more companies; and
  - (b) the determination is varied; and
  - (c) the variation has come into force;

either of the following persons may apply to the Court for an order cancelling the variation:

- (d) a creditor of a company in the group;
  - (e) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group.
- (2) On an application, the Court:
- (a) may make an order cancelling the variation, or confirming it, either wholly or in part, on such conditions (if any) as the order specifies; and
  - (b) may make such other orders as it thinks appropriate.

### **579C When Court may void or validate pooling determination**

- (1) If there is doubt, on a specific ground, whether a pooling determination that relates to a group of 2 or more companies:
- (a) was made, varied or approved in accordance with this Division; or
  - (b) complies with this Division;
- any of the following persons may apply to the Court for an order under this section:
- (c) the liquidator of a company in the group;
  - (d) a creditor of a company in the group;
  - (e) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group;
  - (f) ASIC.
- (2) On an application, the Court may make an order declaring the pooling determination, or a provision of it, to be void or not to be void, as the case requires, on the ground specified in the application or some other ground.
- (3) On an application, the Court may declare the pooling determination, or a provision of it, to be valid, despite a contravention of a provision of this Division, if the Court is satisfied that:
- (a) the provision was substantially complied with; and

- (b) no injustice will result for anyone affected by the pooling determination if the contravention is disregarded.
- (4) If the Court declares a provision of a pooling determination to be void, the Court may, by order, vary the pooling determination.

### **579D Effect of termination or avoidance**

The termination or avoidance, in whole or in part, of a pooling determination does not affect the previous operation of:

- (a) the pooling determination; or
- (b) this Division in so far as it relates to the pooling determination.

## **Subdivision B—Pooling orders**

### **579E Pooling orders**

#### *Making of pooling order*

- (1) If it appears to the Court that the following conditions are satisfied in relation to a group of 2 or more companies:
  - (a) each company in the group is being wound up;
  - (b) any of the following subparagraphs applies:
    - (i) each company in the group is a related body corporate of each other company in the group;
    - (ii) apart from this section, the companies in the group are jointly liable for one or more debts or claims;
    - (iii) the companies in the group jointly own or operate particular property that is or was used, or for use, in connection with a business, a scheme, or an undertaking, carried on jointly by the companies in the group;
    - (iv) one or more companies in the group own particular property that is or was used, or for use, by any or all of the companies in the group in connection with a business, a scheme, or an undertaking, carried on jointly by the companies in the group;

the Court may, if the Court is satisfied that it is just and equitable to do so, by order, determine that the group is a pooled group for the purposes of this section.

Note 1: Section 9 provides that *pooling order* means an order under subsection (1) of this section.

Note 2: See also subsection (12) (just and equitable criteria).

*Consequences of pooling order*

- (2) If a pooling order comes into force in relation to a group of 2 or more companies:
- (a) each company in the group is taken to be jointly and severally liable for each debt payable by, and each claim against, each other company in the group; and
  - (b) each debt payable by a company or companies in the group to any other company or companies in the group is extinguished; and
  - (c) each claim that a company or companies in the group has against any other company or companies in the group is extinguished.

Note: For exemptions, see paragraph 579G(1)(a).

- (3) Subsection (2) applies to a debt or claim:
- (a) whether present or future; and
  - (b) whether certain or contingent; and
  - (c) whether ascertained or sounding only in damages.
- (4) Subsection (2) does not apply to a debt payable by, or a claim against, a company in the group unless the debt or claim is admissible to proof against the company.
- (5) If a pooling order comes into force in relation to a group of 2 or more companies, the order of priority applicable under sections 556, 560 and 561 is not altered for a company in the group.
- (6) If:
- (a) a pooling order comes into force in relation to a group of 2 or more companies; and
  - (b) a secured creditor of a company in the group surrenders the relevant security to the liquidator of the company for the benefit of creditors of the companies in the group generally;
- the debt may be recovered as a debt that is jointly and severally payable by the companies in the group.

- (7) If:
- (a) a pooling order comes into force in relation to a group of 2 or more companies; and
  - (b) a secured creditor of a company in the group realises the security;
- so much of the debt as remains after deducting the net amount realised may be recovered as a debt that is jointly and severally payable by the companies in the group.
- (8) The following provisions have effect subject to any modifications under paragraph 579G(1)(d):
- (a) subsection (2);
  - (b) subsection (3);
  - (c) subsection (4);
  - (d) subsection (5);
  - (e) subsection (6);
  - (f) subsection (7).
- (9) Subsection (2) does not apply in relation to a secured creditor unless the relevant debt is payable by a company or companies in the group to any other company or companies in the group.
- (10) The Court must not make a pooling order in relation to a group of 2 or more companies if:
- (a) both:
    - (i) the Court is satisfied the order would materially disadvantage an eligible unsecured creditor of a company in the group; and
    - (ii) the eligible unsecured creditor has not consented to the making of the order; or
  - (b) all of the following conditions are satisfied:
    - (i) a company in the group is being wound up under a members' voluntary winding up;
    - (ii) the Court is satisfied that the order would materially disadvantage a member of that company;
    - (iii) the member is not a company in the group;
    - (iv) the member has not consented to the making of the order.

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

*Standing*

- (11) The Court may only make a pooling order on the application of the liquidator or liquidators of the companies in the group.

*Just and equitable criteria*

- (12) In determining whether it is just and equitable to make a pooling order, the Court must have regard to all of the following matters:
- (a) the extent to which:
    - (i) a company in the group; and
    - (ii) the officers or employees of a company in the group; were involved in the management or operations of any of the other companies in the group;
  - (b) the conduct of:
    - (i) a company in the group; and
    - (ii) the officers or employees of a company in the group; towards the creditors of any of the other companies in the group;
  - (c) the extent to which the circumstances that gave rise to the winding up of any of the companies in the group are directly or indirectly attributable to the acts or omissions of:
    - (i) any of the other companies in the group; or
    - (ii) the officers or employees of any of the other companies in the group;
  - (d) the extent to which the activities and business of the companies in the group have been intermingled;
  - (e) the extent to which creditors of any of the companies in the group may be advantaged or disadvantaged by the making of the order;
  - (f) any other relevant matters.

*Lodgment of pooling order*

- (13) A pooling order must be lodged with ASIC.

**579F Variation of pooling orders**

- (1) The Court may, by order, vary a pooling order if the Court is of the opinion that it is just and equitable to do so.

- (2) A pooling order may only be varied on the application of:
- (a) the liquidator of a company in the group; or
  - (b) a creditor of a company in the group; or
  - (c) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group.

*Lodgment of order*

- (3) An order under subsection (1) must be lodged with ASIC.

**579G Court may make ancillary orders etc.**

- (1) If the Court makes a pooling order in relation to a group of 2 or more companies, the Court may, if the Court is of the opinion that it is just and equitable to do so, do any or all of the following things:
- (a) by order, exempt:
    - (i) a specified debt or claim; or
    - (ii) a specified class of debts or claims;  
from the application of subsection 579E(2) to the group;
  - (b) by order, transfer, or direct the transfer, of:
    - (i) specified property; or
    - (ii) a specified class of property;  
from a company in the group to another company in the group;
  - (c) by order, transfer, or direct the transfer, of liability for:
    - (i) a specified debt or claim; or
    - (ii) a specified class of debts or claims;  
from a company in the group to another company in the group;
  - (d) by order, modify the application of this Act in relation to the winding up of the companies in the group;
  - (e) make such other orders, and give such directions, in relation to the winding up of the companies in the group, as the Court thinks fit.

*Standing*

- (2) An order or direction under subsection (1) may only be made or given on the application of:
  - (a) the liquidator of a company in the group; or
  - (b) a creditor of a company in the group; or
  - (c) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group.

*Conditional orders etc.*

- (3) An order or direction under subsection (1) may be made or given subject to conditions.
- (4) An order or direction under subsection (1) may provide for different returns for different creditors or classes of creditors.
- (5) An order or direction under subsection (1) may provide for the subordination of the debts and claims of specified creditors or classes of creditors to those of other creditors.
- (6) Subsections (4) and (5) do not limit subsection (1) or (3).

*Rights of secured creditors*

- (7) An order or direction under subsection (1) does not affect the rights of a secured creditor, unless the relevant debt is payable by a company or companies in the group to any other company or companies in the group.

*Lodgment of order or direction*

- (8) An order or direction under subsection (1) must be lodged with ASIC.

**579H Variation of ancillary orders etc.**

*Variation of ancillary order*

- (1) The Court may, by order, vary an order made under subsection 579G(1) if the Court is of the opinion that it is just and equitable to do so.

- (2) An order made under subsection 579G(1) may only be varied on the application of:
- (a) the liquidator of a company in the group; or
  - (b) a creditor of a company in the group, so long as the creditor is not a company in the group; or
  - (c) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group.

*Variation of direction*

- (3) The Court may vary a direction given under subsection 579G(1) if the Court is of the opinion that it is just and equitable to do so.
- (4) A direction given under subsection 579G(1) may only be varied on the application of:
- (a) the liquidator of a company in the group; or
  - (b) a creditor of a company in the group; or
  - (c) in a case where a company in the group is being wound up under a members' voluntary winding up—a member of the company, so long as the member is not a company in the group.

*Lodgment of order or direction*

- (5) An order under subsection (1) must be lodged with ASIC.
- (6) A variation of a direction given under subsection 579G(1) must be lodged with ASIC.

**579J Notice of application for pooling order etc.**

- (1) If the liquidator or liquidators of the companies in a group apply for a pooling order, the liquidator or liquidators must give written notice of:
- (a) the application; or
  - (b) an Internet site where persons can view a copy of the application;
- to:
- (c) each eligible unsecured creditor of each company in the group; and

(d) in a case where a company in the group is being wound up under a members' voluntary winding up—each member of the company, so long as the member is not a company in the group; and

(e) such other persons (if any) as the Court directs.

Note 1: For *eligible unsecured creditor*, see section 579Q.

Note 2: For electronic notification under this subsection, see section 600G.

(2) If:

(a) a pooling order is made in relation to a group of 2 or more companies; and

(b) the liquidator of a company in the group applies for:

(i) an order under subsection 579F(1); or

(ii) an order under subsection 579G(1); or

(iii) an order under subsection 579H(1); or

(iv) a direction under subsection 579G(1); or

(v) a variation of a direction given under subsection 579G(1);

the liquidator must give written notice of:

(c) the application; or

(d) an Internet site where persons can view a copy of the application;

to:

(e) each eligible unsecured creditor of each company in the group; and

(f) in a case where a company in the group is being wound up under a members' voluntary winding up—each member of the company, so long as the member is not a company in the group; and

(g) such other persons (if any) as the Court directs.

Note 1: For *eligible unsecured creditor*, see section 579Q.

Note 2: For electronic notification under this subsection, see section 600G.

**579K Notice of pooling order etc.**

*Notice of pooling order*

- (1) If a pooling order is made in relation to a group of 2 or more companies, the liquidator or liquidators of the companies in the group must:
- (a) give each eligible unsecured creditor of each company in the group a written notice setting out:
    - (i) the order; and
    - (ii) a summary description of the order; or
  - (b) give each eligible unsecured creditor of each company in the group a written notice of an Internet site where persons can view a copy of:
    - (i) the order; and
    - (ii) a summary description of the order.

Note 1: For *eligible unsecured creditor*, see section 579Q.

Note 2: For electronic notification under this subsection, see section 600G.

- (2) If:
- (a) a pooling order is made in relation to a group of 2 or more companies; and
  - (b) a company in the group is being wound up under a members' voluntary winding up;
- the liquidator or liquidators of the companies in the group must:
- (c) give each member of that company a written notice setting out:
    - (i) the order; and
    - (ii) a summary description of the order;so long as the member is not a company in the group; or
  - (d) give each member of that company a written notice of an Internet site where persons can view a copy of:
    - (i) the order; and
    - (ii) a summary description of the order;so long as the member is not a company in the group.

Note: For electronic notification under this subsection, see section 600G.

*Notice of application by liquidator*

- (3) If:
- (a) a pooling order is made in relation to a group of 2 or more companies; and
  - (b) the Court does any of the following on the application of a liquidator of a company in the group:
    - (i) makes an order under subsection 579F(1);
    - (ii) makes an order under subsection 579G(1);
    - (iii) makes an order under subsection 579H(1);
    - (iv) gives a direction under subsection 579G(1);
    - (v) varies a direction given under subsection 579G(1);
- the liquidator must:
- (c) give each eligible unsecured creditor of each company in the group a written notice setting out:
    - (i) the order, direction or variation; and
    - (ii) a summary description of the order, direction or variation; or
  - (d) give each eligible unsecured creditor of each company in the group a written notice of an Internet site where persons can view a copy of:
    - (i) the order, direction or variation; and
    - (ii) a summary description of the order, direction or variation.

Note 1: For *eligible unsecured creditor*, see section 579Q.

Note 2: For electronic notification under this subsection, see section 600G.

- (4) If:
- (a) a pooling order is made in relation to a group of 2 or more companies; and
  - (b) the Court does any of the following on the application of a liquidator of a company in the group:
    - (i) makes an order under subsection 579F(1);
    - (ii) makes an order under subsection 579G(1);
    - (iii) makes an order under subsection 579H(1);
    - (iv) gives a direction under subsection 579G(1);
    - (v) varies a direction given under subsection 579G(1); and

- (c) a company in the group is being wound up under a members' voluntary winding up;
- the liquidator must:
- (d) give each member of that company a written notice setting out:
    - (i) the order, direction or variation; and
    - (ii) a summary description of the order, direction or variation;so long as the member is not a company in the group; or
  - (e) give each member of that company a written notice of an Internet site where persons can view a copy of:
    - (i) the order, direction or variation; and
    - (ii) a summary description of the order, direction or variation;so long as the member is not a company in the group.

Note: For electronic notification under this subsection, see section 600G.

### **579L Consolidated meetings of creditors**

- (1) If:
  - (a) either:
    - (i) a pooling determination is in force in relation to a group of 2 or more companies; or
    - (ii) a pooling order is in force in relation to a group of 2 or more companies; and
  - (b) each company in the group is being wound up;then, unless the Court otherwise orders:
  - (c) instead of convening separate meetings under or for the purposes of a particular provision of this Act, the liquidator or liquidators may convene a meeting under or for the purposes of that provision, on a consolidated basis, of the creditors of the companies in the group; and
  - (d) a resolution passed at a consolidated meeting by those creditors is taken to have been passed by the creditors of each of the companies in the group; and
  - (e) if there are 2 or more liquidators—one of those liquidators is to preside at a consolidated meeting; and
  - (f) notice of a consolidated meeting may be given by the liquidator or liquidators.

Note: See also section 548A (committee of inspection).

- (2) The regulations may make provision for or in relation to:
- (a) the convening of, conduct of, and procedure and voting at, consolidated meetings of creditors; and
  - (b) the number of persons required to constitute a quorum at any such meeting; and
  - (c) the sending of notices of meetings to persons entitled to attend any such meeting; and
  - (d) the lodging of copies of notices of, and of resolutions passed at, any such meeting; and
  - (e) generally regulating the conduct of, and procedure at, any such meeting.

### **Subdivision C—Other provisions**

#### **579M When debts or claims are provable in winding up**

If a debt or claim becomes a debt payable by, or a claim against, a company under any of the following provisions:

- (a) subsection 571(2) (including that subsection as modified by a determination under paragraph 571(1)(d));
- (b) subsection 571(6) (including that subsection as modified by a determination under paragraph 571(1)(d));
- (c) subsection 571(7) (including that subsection as modified by a determination under paragraph 571(1)(d));
- (d) subsection 579E(2) (including that subsection as modified by an order under paragraph 579G(1)(d));
- (e) subsection 579E(6) (including that subsection as modified by an order under paragraph 579G(1)(d));
- (f) subsection 579E(7) (including that subsection as modified by an order under paragraph 579G(1)(d));
- (g) subsection 579G(1);

then, in the winding up of the company, the debt or claim is admissible to proof against the company.

#### **579N Group of companies**

To avoid doubt, for the purposes of:

- (a) this Division; or

(b) any other provision of this Act to the extent to which it relates to this Division;  
a group of 2 or more companies need not be associated with each other in any way (other than a way described in paragraph 571(1)(b) or 579E(1)(b)).

#### **579P Secured debt may become unsecured**

For the purposes of this Division, a secured debt becomes an unsecured debt to the extent that the creditor proves for the debt as an unsecured creditor.

#### **579Q Eligible unsecured creditor**

- (1) Subject to subsection (2), for the purposes of the application of this Division to a group of 2 or more companies, a creditor of a company in the group is an **eligible unsecured creditor** of that company if:
- (a) both:
    - (i) the creditor's debt or claim is unsecured; and
    - (ii) the creditor is not a company in the group; or
  - (b) the creditor is specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) The regulations may provide that, for the purposes of the application of this Division to a group of 2 or more companies, a specified creditor of a company in the group is not an **eligible unsecured creditor** of that company.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

## **Schedule 2—Deterring corporate misconduct**

### ***Australian Securities and Investments Commission Act 2001***

#### **1 After subsection 13(2)**

Insert:

- (3) If ASIC has reason to suspect that a liquidator registered under Division 2 of Part 9.2 of the Corporations Act:
- (a) has not, or may not have, faithfully performed his or her duties; or
  - (b) is not, or may not be, faithfully performing his or her duties;
- ASIC may make such investigation as it thinks expedient for the due administration of the corporations legislation (other than the excluded provisions).

### ***Corporations Act 2001***

#### **2 After subsection 411(6)**

Insert:

- (6A) If:
- (a) the Court has granted its approval to a compromise or arrangement subject to an alteration or condition; and
  - (b) the body concerned contravenes:
    - (i) in the case of an alteration—the provision or provisions of the compromise or arrangement to which the alteration relates; or
    - (ii) in the case of a condition—the condition; and
  - (c) the Court is satisfied that a person suffered loss or damage as a result of the contravention;
- the Court may make such order as it thinks just.
- (6B) The Court may make either or both of the following orders under subsection (6A):
- (a) an order that the body concerned pay compensation to the person of such amount as the order specifies;
  - (b) an order directing the body concerned to comply with:

- (i) in the case of an alteration—the provision or provisions of the compromise or arrangement to which the alteration relates; or
- (ii) in the case of a condition—the condition.

(6C) Subsection (6B) does not limit subsection (6A).

### **3 After the heading to Division 3 of Part 5.4B**

Insert:

#### **Subdivision A—General powers**

##### **4 Subsection 486A(1)**

Omit “On the application of a liquidator or provisional liquidator of a company, the”, substitute “The”.

##### **5 Paragraph 486A(1)(a)**

Omit “the company” (first occurring), substitute “a company”.

##### **6 Paragraphs 486A(1)(b), (c) and (d)**

Omit “the company” (wherever occurring), substitute “a company”.

##### **7 After subsection 486A(2)**

Insert:

- (2A) An order under subsection (1) may only be made on the application of:
- (a) a liquidator or provisional liquidator of the company; or
  - (b) ASIC.

##### **8 Subsections 486A(3), (4) and (5)**

Before “under subsection (1)”, insert “for an order”.

##### **9 At the end of subsection 486B(1)**

Add:

Note: For procedures relating to such a warrant, see Subdivision B.

##### **10 At the end of Division 3 of Part 5.4B**

Add:

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## **Subdivision B—Procedures relating to section 486B warrants**

### **489A Arrest of person subject to warrant**

If:

- (a) the Court issues a section 486B warrant for a person to be arrested and brought before the Court; and
  - (b) the person is not in prison;
- the person named in the section 486B warrant may be arrested by:
- (c) an officer of the police force of the State or Territory in which the person is found; or
  - (d) the Sheriff of that State or Territory, or any of the Sheriff's officers; or
  - (e) a member or special member of the Australian Federal Police.

### **489B Procedure after arrest**

- (1) As soon as practicable after being arrested, the person is to be taken before the Court that issued the section 486B warrant.
- (2) The Court must order:
  - (a) that the person be remanded on bail on condition that the person appear at the Court at such time and place as the Court specifies; or
  - (b) that the person be remanded in such custody or otherwise as the Court specifies, pending the person's appearance at the Court at such time and place as the Court specifies; or
  - (c) that the person be released.
- (3) An order under this section may be subject to other specified conditions.

### **489C Procedure on remand on bail**

- (1) If the Court has made an order under section 489B remanding the person (the *warrant person*) on bail, the Court must prepare, or cause to be prepared, an instrument setting out the conditions to which the grant of bail is subject.
- (2) The instrument must be signed by:

- (a) a judge of the Court, or the person who prepared the instrument; and
  - (b) the warrant person.
- (3) The warrant person must be given a copy of the instrument.
- (4) The Court must revoke the order, and make an order remanding the warrant person in custody, if that person:
- (a) refuses to sign the instrument; or
  - (b) does not comply with a condition to which the grant of bail is subject and that condition is a condition precedent to that person's release on bail.

**489D Court's power to make orders under section 486A, 598 or 1323**

- (1) To avoid doubt, the Court may make an order under section 486A, 598 or 1323 in relation to a person appearing before the Court under:
- (a) a section 486B warrant; or
  - (b) section 489B.
- (2) Subsection (1) does not limit section 486A, 598 or 1323.

**489E Jurisdiction under this Subdivision**

To avoid doubt, a matter arising under this Subdivision is a civil matter for the purposes of Part 9.6A.

**11 Paragraph 533(1)(d)**

After "as soon as practicable", insert ", and in any event within 6 months, after it so appears to him or her,".

**12 After section 1348**

Insert:

**1349 Privilege against exposure to penalty—disqualification etc.**

*Court or Tribunal proceeding*

- (1) In the case of:
- (a) a civil or criminal proceeding under, or arising out of, this Act or the ASIC Act; or

(b) a proceeding before the Tribunal arising out of this Act or the ASIC Act;

a person is not entitled to refuse or fail to comply with a requirement:

- (c) to answer a question or give information; or
- (d) to produce a book or any other thing; or
- (e) to do any other act whatever;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:

- (f) a disqualification under Part 2D.6 of this Act; or
  - (g) a declaration under section 853C of this Act; or
  - (h) a suspension or cancellation under section 915B of this Act; or
  - (i) a suspension or cancellation under section 915C of this Act; or
  - (j) a banning order under section 920A of this Act; or
  - (k) an order under section 921A of this Act; or
  - (l) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or
  - (m) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or
  - (n) a cancellation or suspension under Division 2 of Part 9.2A of this Act.
- (2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

*Statutory requirement*

(3) A person is not entitled to refuse or fail to comply with a requirement under this Act or the ASIC Act:

- (a) to answer a question or give information; or
- (b) to produce a book or any other thing; or
- (c) to do any other act whatever;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:

- (d) a disqualification under Part 2D.6 of this Act; or

- (e) a declaration under section 853C of this Act; or
- (f) a suspension or cancellation under section 915B of this Act;  
or
- (g) a suspension or cancellation under section 915C of this Act;  
or
- (h) a banning order under section 920A of this Act; or
- (i) an order under section 921A of this Act; or
- (j) a cancellation or suspension under Division 3 of Part 9.2 of  
this Act; or
- (k) a requirement to give an undertaking under paragraph  
1292(9)(b) or (c) of this Act; or
- (l) a cancellation or suspension under Division 2 of Part 9.2A of  
this Act.

*Admissibility*

- (4) Paragraph 597(12A)(d) of this Act, and paragraph 68(3)(b) of the  
ASIC Act, do not apply to a proceeding for the imposition of a  
penalty by way of:
  - (a) a disqualification under Part 2D.6 of this Act; or
  - (b) a declaration under section 853C of this Act; or
  - (c) a suspension or cancellation under section 915B of this Act;  
or
  - (d) a suspension or cancellation under section 915C of this Act;  
or
  - (e) a banning order under section 920A of this Act; or
  - (f) an order under section 921A of this Act; or
  - (g) a cancellation or suspension under Division 3 of Part 9.2 of  
this Act; or
  - (h) a requirement to give an undertaking under paragraph  
1292(9)(b) or (c) of this Act; or
  - (i) a cancellation or suspension under Division 2 of Part 9.2A of  
this Act.

*Other provisions*

- (5) Subsections (1) and (3) have effect despite anything in:
    - (a) section 1317L; or
    - (b) any other provision of this Act; or
    - (c) the ASIC Act; or
-

(d) the *Administrative Appeals Tribunal Act 1975*.

*Definition*

(6) In this section:

***penalty*** includes forfeiture.

## **Schedule 3—Improving regulation of insolvency practitioners**

### ***Corporations Act 2001***

#### **1 Subsection 595(1)**

Omit “a member or creditor of a company”, substitute “another person”.

#### **2 Subsection 595(1)**

After “securing the”, insert “first-mentioned”.

#### **3 Subsection 595(1)**

Omit “some other person”, substitute “a third person”.

#### **4 Paragraphs 595(1)(a), (b), (c), (d) and (e)**

Omit “the company”, substitute “a company”.

#### **5 Subparagraph 1282(2)(a)(i)**

Repeal the subparagraph.

#### **6 Subparagraph 1282(2)(a)(iii)**

Omit “(i) or”.

#### **7 Paragraph 1282(2)(b)**

Omit “the winding up of bodies corporate”, substitute “externally-administered bodies corporate”.

#### **8 Section 1284**

Repeal the section, substitute:

#### **1284 Insurance to be maintained by liquidators**

- (1) A person who is registered as a liquidator, or as a liquidator of a specified body corporate, must maintain:
- (a) adequate and appropriate professional indemnity insurance;
  - and
  - (b) adequate and appropriate fidelity insurance;

for claims that may be made against the person in connection with externally-administered bodies corporate.

- (2) If the registration of a person as a liquidator, or as a liquidator of a specified body corporate, came into force before the commencement of this subsection, subsection (1) does not apply to the person at any time before 1 July 2008.

### **9 Subsection 1288(3)**

Omit “3 years” (wherever occurring), substitute “12 months”.

Note: The heading to section 1288 is altered by omitting “**Triennial**” and substituting “**Annual**”.

### **10 After section 1290**

Insert:

#### **1290A Cancellation on certain grounds**

- (1) If a person who is registered as a liquidator, as a liquidator of a specified body corporate or as an official liquidator:
  - (a) becomes an insolvent under administration; or
  - (b) becomes disqualified from managing corporations under Part 2D.6; or
  - (c) contravenes subsection 1284(1);

ASIC may cancel the registration of that person as a liquidator, as a liquidator of that body corporate or as an official liquidator, as the case may be.

- (2) If ASIC decides under subsection (1) to cancel the registration of a person as a liquidator, as a liquidator of a specified body corporate or as an official liquidator:
  - (a) ASIC must, not later than 14 days after the decision, give the person a written notice:
    - (i) setting out the decision; and
    - (ii) the reasons for it; and
  - (b) the decision comes into effect at the end of the day on which that notice is given to the person.
- (3) A failure of ASIC to comply with subsection (2) does not affect the validity of the decision.

- (4) Subsection (1) does not limit section 1291 or 1292.
- (5) Sections 1291 and 1292 do not limit subsection (1) of this section.

## **11 After section 1294**

Insert:

### **1294A Pre-hearing conference**

- (1) If subsection 1294(1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Chairperson of the Board may, if he or she considers that it would assist in the conduct of the hearing to do so, convene one or more conferences with the person.
- (2) The Chairperson of the Board may allow any of the following persons to attend a conference:
  - (a) a representative of ASIC;
  - (b) a representative of APRA;
  - (c) any other person.
- (3) The Chairperson of the Board must give written notice of a conference to ASIC and APRA at least 14 days before the conference.
- (4) At a conference, the Chairperson of the Board may, on behalf of the Board:
  - (a) fix a date or dates for the hearing; and
  - (b) give directions about the time within which submissions are to be made to the Board in relation to the matter; and
  - (c) give directions about the time within which evidence is to be brought before the Board in relation to the matter; and
  - (d) give directions as to the procedure to be followed at or in connection with the hearing.

## **12 After subsection 1296(1A)**

Insert:

- (1B) If the Board:
    - (a) decides to exercise any of its powers under section 1292 in relation to a person; or
-

(b) decides that it is required to make an order under subsection 1292(7) in relation to a person;

then, in addition to meeting the requirements of subsection (1), the Board may take such steps as it considers reasonable and appropriate to publicise:

- (c) the decision; and
- (d) the reasons for the decision.

Without limiting this, the Board may make the decision and reasons available on the Internet.

(1C) If:

- (a) the Board decides to exercise the power under section 1292, or makes the order under subsection 1292(7), on the basis of particular conduct engaged in by the person; and
- (b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;

a publication under subsection (1B) may identify the audit firm or audit company.

### **13 Subsection 1297(1)**

Omit all the words after “specified body corporate”, substitute:  
comes into effect:

- (a) at the end of the day on which there is given to the person a paragraph 1296(1)(a) notice of the decision pursuant to which the order is made; or
- (b) at the end of such longer period (not exceeding 90 days) as the Board determines.

### **14 At the end of Division 3 of Part 9.2**

Add:

#### **1298A Transfer of books**

(1) If:

- (a) the registration of a person as a liquidator, as a liquidator of a specified body corporate or as an official liquidator is cancelled or suspended; and
- (b) immediately before the cancellation or suspension, as the case may be, came into effect, the person had in his or her

possession one or more books relating to an externally administered body corporate; and

- (c) any of the following subparagraphs applies:
  - (i) the person was a liquidator of the externally administered body corporate;
  - (ii) the person was a receiver, or a receiver and manager, of property of the externally administered body corporate;
  - (iii) the person was the administrator of the externally administered body corporate;
  - (iv) the person was the administrator of a deed of company arrangement for the externally administered body corporate; and
- (d) another person is or becomes:
  - (i) a liquidator of the externally administered body corporate; or
  - (ii) a receiver, or a receiver and manager, of property of the externally administered body corporate; or
  - (iii) the administrator of the externally administered body corporate; or
  - (iv) the administrator of a deed of company arrangement for the externally administered body corporate;

the first-mentioned person must, as soon as practicable, transfer those books to that other person.

- (2) If the books are in electronic form, they may be transferred electronically.

## **Schedule 4—Fine-tuning voluntary administration**

### **Part 1—General**

#### *Corporations Act 2001*

##### **1 Section 9 (definition of *decision period*)**

Omit “tenth”, substitute “thirteenth”.

##### **2 Subsection 436A(2)**

Omit “that is already being wound up”, substitute “if a person holds an appointment as liquidator, or provisional liquidator, of the company”.

##### **3 Subsections 436B(2) and (3)**

Repeal the subsections, substitute:

- (2) A liquidator or provisional liquidator of a company must not appoint any of the following persons under subsection (1):
- (a) himself or herself;
  - (b) if he or she is a partner of a partnership—a partner or employee of the partnership;
  - (c) if he or she is an employee—his or her employer;
  - (d) if he or she is an employer—his or her employee;
  - (e) if he or she is a director, secretary, employee or senior manager of a corporation—a director, secretary, employee or senior manager of the corporation;
- unless:
- (f) at a meeting of the company’s creditors, the company’s creditors pass a resolution approving the appointment; or
  - (g) the appointment is made with the leave of the Court.

##### **4 Subsection 436C(2)**

Omit “that is already being wound up”, substitute “if a person holds an appointment as liquidator, or provisional liquidator, of the company”.

##### **5 Subsection 436E(2)**

Omit “5”, substitute “8”.

**6 Subsection 436E(3)**

Omit “2”, substitute “5”.

**7 Subsection 436E(4)**

Repeal the subsection, substitute:

- (4) At the meeting, the company’s creditors may also pass a resolution:
  - (a) removing the administrator from office; and
  - (b) appointing someone else as administrator of the company.

**8 Section 437F**

Repeal the section, substitute:

**437F Effect of administration on company’s members**

*Transfer of shares*

- (1) A transfer of shares in a company that is made during the administration of the company is void except if:
  - (a) both:
    - (i) the administrator gives written consent to the transfer; and
    - (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the administrator gives written consent to the transfer;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (4) authorising the transfer.
- (2) The administrator may only give consent under paragraph (1)(a) or (b) if he or she is satisfied that the transfer is in the best interests of the company’s creditors as a whole.
- (3) If the administrator refuses to give consent under paragraph (1)(a) or (b) to a transfer of shares in the company:

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

*Alteration in the status of members*

- (8) An alteration in the status of members of a company that is made during the administration of the company is void except if:
- (a) both:
    - (i) the administrator gives written consent to the alteration; and
    - (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the administrator gives written consent to the alteration;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the Court makes an order under subsection (12) authorising the alteration.

- (9) The administrator may only give consent under paragraph (8)(a) or (b) if he or she is satisfied that the alteration is in the best interests of the company's creditors as a whole.
- (10) The administrator must refuse to give consent under paragraph (8)(a) or (b) if the alteration would contravene Part 2F.2.
- (11) If the administrator refuses to give consent under paragraph (8)(a) or (b) to an alteration in the status of members of a company:
  - (a) a member of the company; or
  - (b) a creditor of the company;may apply to the Court for an order authorising the alteration.
- (12) If the Court is satisfied, on an application under subsection (11), that:
  - (a) the alteration is in the best interests of the company's creditors as a whole; and
  - (b) the alteration does not contravene Part 2F.2;the Court may, by order, authorise the alteration.
- (13) If the administrator gives consent under paragraph (8)(b) to an alteration in the status of members of a company:
  - (a) a member of the company; or
  - (b) a creditor of the company;may apply to the Court for an order setting aside any or all of the conditions to which the consent is subject.
- (14) If the Court is satisfied, on an application under subsection (13), that any or all of the conditions covered by the application are not in the best interests of the company's creditors as a whole, the Court may, by order, set aside any or all of the conditions.
- (15) The administrator is entitled to be heard in a proceeding before the Court in relation to an application under subsection (11) or (13).

**9 Subsection 438B(2)**

Omit "7 days", substitute "5 business days".

**10 At the end of Division 4 of Part 5.3A**

Add:

### **438E Administrator's accounts**

*Accounts to be lodged*

- (1) The administrator of a company under administration must, within one month after:
  - (a) the end of the 6-month period beginning on the date of his or her appointment; and
  - (b) the end of each subsequent 6-month period during which he or she is the administrator of the company;lodge an account that:
  - (c) is in the prescribed form; and
  - (d) is verified by a written statement; and
  - (e) shows his or her receipts and payments during the relevant 6-month period; and
  - (f) in the case of the second or subsequent account lodged under this subsection—also shows the aggregate amount of receipts and payments during all preceding 6-month periods since his or her appointment.
  
- (2) A person who ceases to be the administrator of a company under administration must, within one month after the cessation, lodge an account that:
  - (a) is in the prescribed form; and
  - (b) is verified by a written statement; and
  - (c) if he or she has previously been required to lodge an account under subsection (1)—shows his or her receipts and payments during the period:
    - (i) beginning at the end of the 6-month period to which the most recent account under subsection (1) related; and
    - (ii) ending at the cessation; and
  - (d) if he or she has previously been required to lodge an account under subsection (1)—also shows the aggregate amount of receipts and payments during all previous 6-month periods since his or her appointment; and
  - (e) if he or she has not previously been required to lodge an account under subsection (1)—shows his or her receipts and payments during the period beginning on:
    - (i) the date of his or her appointment; and
    - (ii) ending at the cessation.

*Audit*

- (3) If an account is lodged under subsection (1) or (2), ASIC may cause the account to be audited by a registered company auditor.
- (4) The auditor must prepare a report on the account.
- (5) For the purposes of the audit under subsection (3), the administrator or former administrator must give the auditor such books and information as the auditor requires.
- (6) If ASIC causes an account to be audited under subsection (3):
  - (a) ASIC must give the administrator or former administrator a copy of the report by the auditor; and
  - (b) subsection 1289(5) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.
- (7) The costs of an audit under this section are to be fixed by ASIC and form part of the expenses of administration.

**11 Subsection 439A(2)**

Omit “within 5 business days after”, substitute “within 5 business days before, or within 5 business days after,”.

**12 Paragraph 439A(4)(b)**

Omit “his or her reasons for those opinions; and”, substitute:  
also setting out:

- (iv) his or her reasons for those opinions; and
- (v) such other information known to the administrator as will enable the creditors to make an informed decision about each matter covered by subparagraph (i), (ii) or (iii); and

**13 Paragraph 439A(5)(a)**

Omit “if the administration begins on a day that”, substitute “if the day after the administration begins”.

**14 Paragraph 439A(5)(a)**

Omit “28 days” (wherever occurring), substitute “25 business days”.

**15 Paragraph 439A(5)(a)**

Omit all the words after “beginning”, substitute:

on:

- (i) that day; or
- (ii) if that day is not a business day—the next business day;  
or

**16 Paragraph 439A(5)(b)**

Omit “21 days”, substitute “20 business days”.

**17 Paragraph 439A(5)(b)**

Omit all the words after “beginning”, substitute:

on:

- (i) the day after the administration begins; or
- (ii) if that day is not a business day—the next business day.

**18 Subsection 439A(6)**

Omit “within”, substitute “during or after”.

**19 At the end of section 439A**

Add:

- (7) If an application is made under subsection (6) after the period referred to in paragraph (5)(a) or (b), as the case may be, the Court may only extend the convening period if the Court is satisfied that it would be in the best interests of the creditors if the convening period were extended in accordance with the application.
- (8) If an application is made under subsection (6) after the period referred to in paragraph (5)(a) or (b), as the case may be, then, in making an order about the costs of the application, the Court must have regard to:
  - (a) the fact that the application was made after that period; and
  - (b) any other conduct engaged in by the administrator; and
  - (c) any other relevant matters.

**20 Subsection 439B(2)**

Omit all the words after “but”, substitute “the period of the adjournment, or the total of the periods of adjournment, must not exceed 45 business days.”.

**21 Subsections 443B(2) and (3)**

Omit “7 days”, substitute “5 business days”.

**22 After paragraph 443D(a)**

Insert:

- (aa) any other debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the administrator in the performance or exercise, or purported performance or exercise, of any of his or her functions or powers as administrator; and

**23 Subsection 444A(3)**

Omit “deed” (first occurring), substitute “company”.

**24 Subsection 444B(2)**

Omit “21 days” (wherever occurring), substitute “15 business days”.

**25 Subsection 444B(5)**

After “The”, insert “proposed”.

**26 Subsection 444B(6)**

After “deed’s”, insert “proposed”.

**27 At the end of section 444D**

Add:

- (4) Section 231 does not prevent a creditor of the company from becoming a member of the company as a result of the deed requiring the creditor to accept an offer of shares in the company.

**28 Paragraph 444F(1)(a)**

Repeal the paragraph, substitute:

- (a) at a meeting convened under section 439A, a company’s creditors have resolved that the company execute a deed of company arrangement; or

**29 After section 444G**

Insert:

**444GA Transfer of shares**

- (1) The administrator of a deed of company arrangement may transfer shares in the company if the administrator has obtained:
  - (a) the written consent of the owner of the shares; or
  - (b) the leave of the Court.
- (2) A person is not entitled to oppose an application for leave under subsection (1) unless the person is:
  - (a) a member of the company; or
  - (b) a creditor of the company; or
  - (c) any other interested person; or
  - (d) ASIC.
- (3) The Court may only give leave under subsection (1) if it is satisfied that the transfer would not unfairly prejudice the interests of members of the company.

**30 At the end of Division 10 of Part 5.3A**

Add:

**444J Guarantees and indemnities**

Section 444H does not affect a creditor's rights under a guarantee or indemnity.

**31 At the end of paragraph 445C(c)**

Add "or".

**32 After paragraph 445C(c)**

Insert:

- (d) the administrator of the deed executes a notice of termination of the deed in accordance with section 445FA;

**33 After section 445C**

Insert:

**445CA When creditors may terminate deed**

The creditors are not entitled to pass a resolution under paragraph 445C(b) unless:

- (a) there has been a breach of the deed; and
- (b) the breach has not been rectified before the resolution is passed.

**34 After paragraph 445D(2)(b)**

Insert:

- (ba) ASIC; or

**35 After section 445F**

Insert:

**445FA Notice of termination of deed**

- (1) If a company is subject to a deed of company arrangement, and:
  - (a) the administrator of the deed has applied all of the proceeds of the realisation of the assets available for the payment of creditors; or
  - (b) the administrator of the deed has paid to the creditors:
    - (i) the sum of 100 cents in the dollar; or
    - (ii) any lesser sum determined by the creditors at a general meeting; or
  - (c) all of the following conditions are satisfied:
    - (i) the company's obligations under the deed have been fulfilled;
    - (ii) the obligations of any other party to the deed have been fulfilled;
    - (iii) creditors' claims under the deed have been dealt with in accordance with the deed;the administrator of the deed must:
  - (d) certify to that effect in writing; and
  - (e) within 28 days, lodge with ASIC a notice of termination of the deed.
- (2) The notice of termination must be in the prescribed form.

Note: For termination of the deed, see section 445C.

**36 After Division 11 of Part 5.3A**

Insert:

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## **Division 11A—Deed administrator’s accounts**

### **445J Deed administrator’s accounts**

*Accounts to be lodged*

- (1) The administrator of a deed of company arrangement must, within one month after:
  - (a) the end of the 6-month period beginning on the date of his or her appointment; and
  - (b) the end of each subsequent 6-month period during which he or she is the administrator of the deed;lodge an account that:
  - (c) is in the prescribed form; and
  - (d) is verified by a written statement; and
  - (e) shows his or her receipts and payments during the relevant 6-month period; and
  - (f) in the case of the second or subsequent account lodged under this subsection—also shows the aggregate amount of receipts and payments during all preceding 6-month periods since his or her appointment.
  
- (2) A person who ceases to be the administrator of a deed of company arrangement must, within one month after the cessation, lodge an account that:
  - (a) is in the prescribed form; and
  - (b) is verified by a written statement; and
  - (c) if he or she has previously been required to lodge an account under subsection (1)—shows his or her receipts and payments during the period:
    - (i) beginning at the end of the 6-month period to which the most recent account under subsection (1) related; and
    - (ii) ending at the cessation; and
  - (d) if he or she has previously been required to lodge an account under subsection (1)—also shows the aggregate amount of receipts and payments during all previous 6-month periods since his or her appointment; and
  - (e) if he or she has not previously been required to lodge an account under subsection (1)—shows his or her receipts and payments during the period beginning on:

- (i) the date of his or her appointment; and
- (ii) ending at the cessation.

*Audit*

- (3) If an account is lodged under subsection (1) or (2), ASIC may cause the account to be audited by a registered company auditor.
- (4) The auditor must prepare a report on the account.
- (5) For the purposes of the audit under subsection (3), the administrator or former administrator must give the auditor such books and information as the auditor requires.
- (6) If ASIC causes an account to be audited under subsection (3):
  - (a) ASIC must give the administrator or former administrator a copy of the report by the auditor; and
  - (b) subsection 1289(5) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.
- (7) The costs of an audit under this section are to be fixed by ASIC, and are payable by the company.

**37 Paragraph 446A(5)(a)**

Omit “7 days”, substitute “5 business days”.

**38 Paragraph 446A(5)(b)**

Omit “21 days”, substitute “15 business days”.

**39 At the end of section 448C**

Add:

- (4) For the purposes of paragraphs (1)(g) and (h), *officer* does not include liquidator.

**40 Section 449B**

After “creditor”, insert “, liquidator or provisional liquidator”.

**41 Subsection 450E(2)**

Omit “Until a”, substitute “Except with the leave of the Court, until a”.

**42 At the end of section 450E**

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Add:

- (4) The Court may only grant leave under subsection (2) on the application of:
  - (a) the administrator of the deed of company arrangement; or
  - (b) any interested person.
- (5) The Court may only grant leave under subsection (2) if it is satisfied that the granting of leave will not result in any significant risk to the interests of the company's creditors (including contingent or prospective creditors) as a whole.

#### **43 At the end of subsection 482(1A)**

Add:

- ; or (c) in the case of a company subject to a deed of company arrangement—the administrator of the deed.

#### **44 After subsection 482(2)**

Insert:

- (2A) If such an application is made in relation to a company subject to a deed of company arrangement, then, in determining the application, the Court must have regard to all of the following matters:
  - (a) any report that has been given to the Court by:
    - (i) the administrator, or a former administrator, of the company; or
    - (ii) the liquidator, or a former liquidator, of the company; or
    - (iii) ASIC;and that contains an allegation that an officer of the company has engaged in misconduct;
  - (b) any report that has been lodged with ASIC by:
    - (i) the administrator, or a former administrator, of the company; or
    - (ii) the liquidator, or a former liquidator, of the company;and that contains an allegation that an officer of the company has engaged in misconduct;
  - (c) the decision of the company's creditors to resolve that the company execute a deed of company arrangement;

- (d) the statement that was given under paragraph 439A(4)(b) when the company was under administration;
- (e) whether the deed of company arrangement is likely to result in the company becoming or remaining insolvent;
- (f) any other relevant matters.

**45 Paragraph 556(1)(c)**

After “443D(a)”, insert “or (aa)”.

**46 After subsection 708(17)**

Insert:

*Deed of company arrangement*

- (17A) An offer of securities does not need disclosure to investors under this Part if:
- (a) it is made to any or all of the company’s creditors under a deed of company arrangement; and
  - (b) it does not require the provision of consideration other than the release of the company from a debt or debts; and
  - (c) in a case where the offer is specified in the deed otherwise than as a result of a resolution passed at a meeting convened under section 445F—the subsection 439A(3) notice given in relation to the administration of the company was accompanied by a statement:
    - (i) that set out all relevant information about the offer that was within the knowledge of the administrator of the company; and
    - (ii) that stated that the statement is not a prospectus and may contain less information than a prospectus; and
  - (d) in a case where the offer is specified in the deed as a result of a resolution passed at a meeting convened under section 445F—the subsection 445F(2) notice given in relation to the resolution was accompanied by a statement:
    - (i) that set out all relevant information about the offer that was within the knowledge of the administrator of the deed; and
    - (ii) that stated that the statement is not a prospectus and may contain less information than a prospectus.

## **Part 2—Rights to property during administration**

### *Corporations Act 2001*

#### **47 Section 9**

Insert:

*retention of title clause*: if:

- (a) a contract for the sale of property contains a provision the effect of which is that the seller retains title in the property until the purchase price, or other amount, has been paid in full; and
- (b) the purchase price, or the other amount, as the case may be, has not been paid in full;

the property is subject to a *retention of title clause* under that contract.

#### **48 After section 440B**

Insert:

##### **440BA Liens and pledges**

If:

- (a) a company is under administration; and
- (b) property of the company is subject to a lien or pledge; and
- (c) the property is in the lawful possession of the holder of the lien or pledge;

then, during the administration of the company, the holder of the lien or pledge:

- (d) may continue to possess the property; and
- (e) cannot sell the property, or otherwise enforce the lien or pledge, except:
  - (i) with the administrator's written consent; or
  - (ii) with the leave of the Court.

##### **440BB Distress for rent must not be carried out**

If:

- (a) a company is under administration; and
  - (b) the company is the lessee of property;
- then, during the administration of the company, distress for rent must not be carried out against the property, except:
- (c) with the administrator's written consent; or
  - (d) with the leave of the Court.

**49 At the end of Division 6 of Part 5.3A**

Add:

**440JA Property subject to a banker's lien—exemption from this Division**

If:

- (a) a company is under administration; and
- (b) property of the company consists of:
  - (i) cash in the form of notes or coins; or
  - (ii) a negotiable instrument; or
  - (iii) a security (as defined by subsection 92(1)); or
  - (iv) a derivative (as defined in Chapter 7); and
- (c) the property is subject to a lien or pledge; and
- (d) the holder of the lien or pledge is:
  - (i) an ADI (within the meaning of the *Banking Act 1959*);  
or
  - (ii) the operator of a clearing and settlement facility (within the meaning of section 768A);

this Division does not apply to the property.

**50 Division 7 of Part 5.3A (heading)**

Repeal the heading, substitute:

**Division 7—Rights of chargee, lienee, pledgee, owner or lessor**

**51 Subsection 441A(3)**

Omit "or 440B", substitute ", 440B, 440F or 440G".

**52 Subsection 441B(2)**

Omit “or 440B”, substitute “, 440B, 440F or 440G”.

**53 Paragraphs 441D(1)(a) and (b)**

After “does”, insert “or proposes to do”.

**54 After section 441J**

Insert:

**441JA Sale of property subject to a lien or pledge**

If:

- (a) a company is under administration; and
- (b) property of the company is subject to a lien or pledge; and
- (c) the property is in the possession of the holder of the lien or pledge; and
- (d) either:
  - (i) there is no other security over the property; or
  - (ii) there are one or more other securities over the property, but none of the debts secured by those other securities has a priority that is equal to or higher than the priority of the debt secured by the lien or pledge; and
- (e) the holder of the lien or pledge sells the property;

then:

- (f) if the net proceeds of sale equals the debt secured by the lien or pledge—the holder is entitled to retain the net proceeds; or
- (g) if the net proceeds of sale exceeds the debt secured by the lien or pledge—the holder is entitled to retain so much of the net proceeds as equals the amount of the debt secured by the lien or pledge, but must pay the excess to the administrator on behalf of the company; or
- (h) if the net proceeds of sale fall short of the debt secured by the lien or pledge—the holder is entitled to retain the net proceeds.

**55 Paragraph 442C(1)(a)**

After “charge”, insert “, lien or pledge”.

**56 Paragraph 442C(2)(b)**

After “chargee,”, insert “lienee, pledgee.”.

**57 Subsection 442C(3)**

After “chargee,”, insert “lienee, pledgee,”.

**58 At the end of section 442C**

Add:

- (4) If the administrator proposes to dispose of property of the company under paragraph (2)(a), the Court may, by order, direct the administrator not to carry out that proposal.
- (5) The Court may only make an order under subsection (4) on the application of:
  - (a) if paragraph (1)(a) applies—the chargee, lienee or pledgee, as the case may be; or
  - (b) if paragraph (1)(b) applies—the owner or lessor, as the case may be.
- (6) The Court may only make an order under subsection (4) if it is not satisfied that arrangements have been made to protect adequately the interests of the applicant for the order.
- (7) If:
  - (a) a company is under administration or is subject to a deed of company arrangement; and
  - (b) property of the company is subject to a charge, lien or pledge; and
  - (c) the administrator disposes of the property;  
the disposal extinguishes the charge, lien or pledge.
- (8) For the purposes of paragraph (2)(a), if:
  - (a) property is used or occupied by, or is in the possession of, a company; and
  - (b) another person is the owner of the property; and
  - (c) the property is subject to a retention of title clause under a contract; and
  - (d) the owner demands the return of the property;  
a disposal of the property that occurs after the demand is made does not mean that the disposal is not in the ordinary course of the company’s business.

**59 After section 442C**

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Insert:

**442CA Property subject to a lien or pledge—inspection or examination by potential purchasers etc.**

(1) If:

- (a) a company is under administration; and
- (b) property of the company is subject to a lien or pledge; and
- (c) the administrator is entitled to dispose of the property by way of sale;

the holder of the lien or pledge must, if requested to do so by the administrator, give potential purchasers a reasonable opportunity to inspect or examine the property.

(2) If:

- (a) a company is under administration; and
- (b) property of the company is subject to a lien or pledge; and
- (c) the administrator disposes of the property by way of sale;

the administrator is entitled to obtain possession of the property in order to effect the sale.

**442CB Property subject to a lien or pledge or to a retention of title clause—administrator’s duty of care in exercising power of sale**

(1) If:

- (a) a company is under administration; and
- (b) property of the company is subject to a lien or pledge; and
- (c) the administrator is entitled to dispose of the property by way of sale;

then, in exercising a power of sale in respect of the property, the administrator must act reasonably.

(2) If:

- (a) a company is under administration; and
- (b) property is used or occupied by, or is in the possession of, the company; and
- (c) another person is the owner of the property; and
- (d) the property is subject to a retention of title clause under a contract; and

- (e) the administrator is entitled to dispose of the property by way of sale;  
then, in exercising a power of sale in respect of the property, the administrator must act reasonably.
- (3) Subsections (1) and (2) do not limit section 180, 181, 182, 183 or 184.

#### **442CC Proceeds of sale of property**

*Property subject to a lien or pledge*

- (1) If:
  - (a) a company is under administration; and
  - (b) property of the company is subject to a lien or pledge; and
  - (c) the administrator disposes of the property by way of sale;then:
  - (d) if the net proceeds of sale equals or exceeds the total of the debts secured by:
    - (i) the lien or pledge; and
    - (ii) any other security over the property, where the debt secured by the security has a priority that is equal to or higher than the priority of the debt secured by the lien or pledge;the administrator must:
    - (iii) set aside so much of the net proceeds as equals the total of those debts; and
    - (iv) apply the amount so set aside in paying those debts; or
  - (e) if the net proceeds of sale fall short of the total of the debts secured by:
    - (i) the lien or pledge; and
    - (ii) any other security over the property, where the debt secured by the security has a priority that is equal to or higher than the priority of the debt secured by the lien or pledge;then:
    - (iii) the administrator must set aside the net proceeds; and
    - (iv) the administrator must apply the amount so set aside in paying those debts in order of priority, on the basis that

- if the amount is insufficient to fully pay debts of the same priority, they must be paid proportionately; and
- (v) if any of those debts is not fully paid—so much of the debt as remains unpaid may be recovered from the company as an unsecured debt.

*Property subject to a retention of title clause*

- (2) If:
- (a) a company is under administration; and
  - (b) property is used or occupied by, or is in the possession of, the company; and
  - (c) another person is the owner of the property; and
  - (d) the property is subject to a retention of title clause under a contract (the **original contract**); and
  - (e) the administrator disposes of the property by way of sale;
- then:
- (f) if the net proceeds of sale equals or exceeds the total of:
    - (i) so much of the purchase price, or other amount, under the original contract as remains unpaid; and
    - (ii) if there are one or more securities over the property—the debts secured by the securities;the administrator must:
    - (iii) set aside so much of the net proceeds as equals that total; and
    - (iv) apply the amount so set aside in paying that total; or
  - (g) if the net proceeds of sale fall short of the total of:
    - (i) so much of the purchase price, or other amount, under the original contract as remains unpaid; and
    - (ii) if there are one or more securities over the property—the debts secured by the securities;then:
    - (iii) the administrator must set aside the net proceeds; and
    - (iv) the administrator must apply the amount so set aside in paying those debts in order of priority, on the basis that if the amount is insufficient to fully pay debts of the same priority, they must be paid proportionately; and

**Schedule 4** Fine-tuning voluntary administration  
**Part 2** Rights to property during administration

---

- (v) if any of those debts is not fully paid—so much of the debt as remains unpaid may be recovered from the company as an unsecured debt.

## **Part 3—Liquidation following administration**

### *Corporations Act 2001*

#### **60 At the end of subsection 443A(1)**

Add:

- ; or (d) the repayment of money borrowed; or
- (e) interest in respect of money borrowed; or
- (f) borrowing costs.

#### **61 Paragraph 443E(1)(b)**

Omit “and (3)”, substitute “, (3) and (4)”.

#### **62 At the end of section 443E**

Add:

(4) If:

- (a) debts of a company under administration are secured by a floating charge on property of the company; and
- (b) the administrator has a right of indemnity under section 443D;

the right of indemnity, to the extent to which it relates to debts incurred for:

- (c) the repayment of money borrowed; or
- (d) interest in respect of money borrowed; or
- (e) borrowing costs;

does not have priority over the debts mentioned in paragraph (a), except so far as the chargee consents in writing.

#### **63 At the end of Division 12 of Part 5.3A**

Add:

#### **446C Liquidator may require submission of a report about the company's affairs**

##### *Scope*

- (1) This section applies if:
  - (a) at a particular time (the *liquidation time*), a company resolves by special resolution that it be wound up voluntarily; and
  - (b) immediately before the liquidation time:
    - (i) the company was under administration; or
    - (ii) the company was subject to a deed of company arrangement.

##### *Report*

- (2) The liquidator may, by written notice given to a person who is or has been an officer of the company, require the person to:
  - (a) give the liquidator a report containing such information as is specified in the notice about:
    - (i) the affairs of the company, as at a date specified in the notice; or
    - (ii) if one or more of the affairs of the company are specified in the notice—those affairs, as at a date specified in the notice; and
  - (b) verify the report by a statement in writing in the prescribed form.
- (3) The following provisions have effect:
  - (a) if subparagraph (1)(b)(i) applies—the date specified in the subsection (2) notice must not be earlier than the beginning of the administration;
  - (b) if subparagraph (1)(b)(ii) applies—the date specified in the subsection (2) notice must not be earlier than the beginning of the administration that ended when the deed was executed.

##### *Deadline for giving report to liquidator*

- (4) If a person is given a notice under subsection (2), the person must give the liquidator the report required by the notice:
  - (a) within 14 days after the notice was given; or

- (b) if the liquidator, by written notice given to the person, allows a longer period—within that longer period.
- (5) The liquidator may allow a longer period under paragraph (4)(b) only on written application made within the period of 14 days mentioned in paragraph (4)(a).
- (6) The liquidator may allow a longer period under paragraph (4)(b) only if the liquidator believes there are special reasons for doing so.

*Report to be lodged with ASIC*

- (7) The liquidator must, within 7 days after receiving a report under subsection (2), lodge a copy of the report with ASIC.

*Cost of preparation of report*

- (8) If:
- (a) a person is required to give a report under subsection (2); and
  - (b) the person incurs costs or expenses in relation to the preparation or giving of the report;
- the person is entitled to be paid by the liquidator out of the property of the company, so much of those costs and expenses as the liquidator considers reasonable.

*Reasonable excuse*

- (9) Subsection (4) does not apply to the extent that the person has a reasonable excuse.

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

*Strict liability*

- (10) An offence against subsection 1311(1) that relates to subsection (4) of this section is an offence of strict liability.

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

**64 At the end of subsection 553(1A)**

Add:

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

### **65 After paragraph 556(1)(b)**

Insert:

(ba) if:

- (i) during the period of 12 months ending when the winding up commenced, an application (the *first application*) was made under section 459P for the company to be wound up in insolvency; and
- (ii) when the first application was made, the company was not under administration; and
- (iii) the company began to be under administration at a time after the first application was made; and
- (iv) the first application was not withdrawn or dismissed before the administration began; and
- (v) the Court did not, in response to the first application, make an order under section 459A that the company be wound up in insolvency;

next, the costs in respect of the first application;

### **66 After paragraph 556(1)(da)**

Insert:

- (daa) if the company resolved by special resolution that it be wound up voluntarily—next, costs and expenses that are payable under subsection 446C(8) out of the company's property;

### **67 After subsection 556(1)**

Insert:

(1AA) Paragraph (1)(a) does not apply to expenses:

- (a) incurred by the administrator of a deed of company arrangement; and
- (b) relating to a debt or claim admissible to proof under subsection 553(1A);

unless the administrator is personally liable for the expenses.

### **68 After subsection 588FE(2)**

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Insert:

(2A) The transaction is voidable if:

- (a) the transaction is:
  - (i) an uncommercial transaction of the company; or
  - (ii) an unfair preference given by the company to a creditor of the company; or
  - (iii) an unfair loan to the company; or
  - (iv) an unreasonable director-related transaction of the company; and
- (b) the company was under administration immediately before:
  - (i) the company resolved by special resolution that it be wound up voluntarily; or
  - (ii) the Court ordered that the company be wound up; and
- (c) the transaction was entered into, or an act was done for the purpose of giving effect to it, during the period beginning at the start of the relation-back day and ending:
  - (i) when the company made the special resolution that it be wound up voluntarily; or
  - (ii) when the Court made the order that the company be wound up; and
- (d) the transaction, or the act done for the purpose of giving effect to it, was not entered into, or done, on behalf of the company by, or under the authority of, the administrator of the company.

(2B) The transaction is voidable if:

- (a) the transaction is:
  - (i) an uncommercial transaction of the company; or
  - (ii) an unfair preference given by the company to a creditor of the company; or
  - (iii) an unfair loan to the company; or
  - (iv) an unreasonable director-related transaction of the company; and
- (b) the company was subject to a deed of company arrangement immediately before:
  - (i) the company resolved by special resolution that it be wound up voluntarily; or
  - (ii) the Court ordered that the company be wound up; and

- (c) the transaction was entered into, or an act was done for the purpose of giving effect to it, during the period beginning at the start of the relation-back day and ending:
  - (i) when the company made the special resolution that it be wound up voluntarily; or
  - (ii) when the Court made the order that the company be wound up; and
- (d) the transaction, or the act done for the purpose of giving effect to it, was not entered into, or done, on behalf of the company by, or under the authority of:
  - (i) the administrator of the deed; or
  - (ii) the administrator of the company.

**69 Paragraph 588FF(3)(a)**

Repeal the paragraph, substitute:

- (a) during the period beginning on the relation-back day and ending:
  - (i) 3 years after the relation-back day; or
  - (ii) 12 months after the first appointment of a liquidator in relation to the winding up of the company;whichever is the later; or

**70 Paragraph 588FF(3)(b)**

Omit “within those 3 years”, substitute “during the paragraph (a) period”.

**71 Schedule 3 (after table item 124)**

Insert:

- |      |                    |   |
|------|--------------------|---|
| 124A | Subsection 446C(4) | 25 penalty units or imprisonment for 6 months, or both. |
|------|--------------------|---|

## **Schedule 5—Miscellaneous**

### *Australian Securities and Investments Commission Act 2001*

#### **1 Subsection 13(2)**

Omit “Part 6.12”, substitute “Part 6.10”.

#### **2 Paragraph 69(2)(a)**

Omit “under official management or being wound up—the official manager or liquidator of the body”, substitute “being wound up—the liquidator of the body”.

### *Corporations Act 2001*

#### **3 Section 9 (definition of *administration*)**

Omit all the words after “given”, substitute “by section 435C.”.

#### **4 Section 9 (definition of *official manager*)**

Repeal the definition.

#### **5 After subsection 256B(1)**

Insert:

(1A) To avoid doubt, a cancellation of a partly-paid share is taken to be for consideration.

#### **6 Paragraph 443D(a)**

Omit “443BA(3)”, substitute “443BA(2)”.

#### **7 Section 512**

Repeal the section.

#### **8 Paragraph 533(1)(a)**

Omit “and”, substitute “or”.

#### **9 Paragraph 556(1)(d)**

Repeal the paragraph.

**10 Paragraph 556(1)(dc)**

Repeal the paragraph.

**11 Subsection 539(3)**

Omit “with”.

**12 Subsection 556(2) (definition of *official manager*)**

Repeal the definition.

**13 Subsection 556(2) (paragraph (b) of the definition of *relevant authority*)**

Repeal the paragraph.

**14 Subsection 565(2)**

Omit all the words after “person”, substitute “is the relation-back day.”.

**15 Paragraph 597A(1)(b)**

Omit “examinable officer of the corporation or was such an officer”, substitute “officer or provisional liquidator of the corporation or was such an officer or provisional liquidator”.

## Schedule 6—Transitional

### *Corporations Act 2001*

#### 1 At the end of Chapter 10

Add:

### **Part 10.9—Transitional provisions relating to the Corporations Amendment (Insolvency) Act 2007**

#### **1479 Definition**

In this Part:

*amending Act* means the *Corporations Amendment (Insolvency) Act 2007*.

#### **1480 Schedule 1 to the amending Act (improving outcomes for creditors)**

- (1) The amendment made by item 4 of Schedule 1 to the amending Act, in so far as it relates to a company subject to a deed of company arrangement, applies if the administration that ended on the execution of the deed began on or after the day on which that item commences.
- (2) The amendments made by items 5 to 9 of Schedule 1 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.
- (3) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.

- (4) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company to which section 433 applies, apply if the relevant date (within the meaning of that section) is on or after the day on which those items commence.
- (5) The amendment made by item 20 of Schedule 1 to the amending Act applies in relation to a receiver appointed on or after the day on which that item commences.
- (6) The amendments made by items 21, 24, 25, 26 and 28 of Schedule 1 to the amending Act apply to the administrator of a company if the administrator is appointed on or after the day on which those items commence.
- (7) The amendments made by items 30, 31, 32, 33, 35, 36, 37, 38, 39 and 40 of Schedule 1 to the amending Act apply in relation to the liquidator of a company if the winding up of the company begins on or after the day on which those items commence.
- (8) The amendment made by item 52 of Schedule 1 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.
- (9) The amendments made by items 53, 54, 55, 56 and 57 of Schedule 1 to the amending Act do not apply in relation to an account opened before the day on which that item commences.
- (10) The amendments made by items 59, 60, 61, 62 and 64 of Schedule 1 to the amending Act apply in relation to a managing controller of property of a corporation if:
  - (a) the managing controller is appointed on or after the day on which those items commence; or
  - (b) the managing controller enters into possession, or takes control, of property of the corporation on or after the day on which those items commence.
- (11) Despite the amendments made by items 65 and 66 of Schedule 1 to the amending Act:
  - (a) subsection 427(1) continues to apply, in relation to an order obtained, or an appointment made, before the day on which

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- those items commence, as if those amendments had not been made; and
- (b) subsection 427(1A) continues to apply, in relation to an appointment made before the day on which those items commence, as if those amendments had not been made; and
  - (c) subsection 427(1B) continues to apply, in relation to an entry into possession, or a taking of control, before the day on which those items commence, as if those amendments had not been made; and
  - (d) subsection 427(4) continues to apply, in relation to a cessation before the day on which those items commence, as if those amendments had not been made.
- (12) The amendments made by items 70, 71 and 72 of Schedule 1 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.
  - (13) The amendment made by item 75 of Schedule 1 to the amending Act applies to a meeting if the meeting is convened on or after the day on which that item commences.
  - (14) The amendments made by items 87, 88, 92, 93 and 94 of Schedule 1 to the amending Act apply to a transfer or alteration that occurs on or after the day on which those items commence.
  - (15) The amendments made by items 91, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 of Schedule 1 to the amending Act apply in relation to a winding up of a company if the winding up begins on or after the day on which those items commence.
  - (16) Despite the repeal of subsection 506(4) by item 113 of Schedule 1 to the amending Act, that subsection continues to apply, in relation to the liquidators of a company where the winding up of the company began before the day on which that item commences, as if that repeal had not happened.
  - (17) Sections 434D, 434E, 434F and 434G apply in relation to persons appointed on or after the day on which those sections commence.
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- (18) Section 530 applies in relation to the liquidators of a company if the winding up of the company begins on or after the day on which that section commences.
- (19) Section 530AA applies to persons appointed on or after the day on which that section commences.
- (20) Subsections 571(1) and 579E(1) of the amended Act apply in relation to a group of 2 or more companies if the winding up of each company in the group begins on or after the day on which those subsections commence.

**1481 Schedule 2 to the amending Act (detering corporate misconduct)**

- (1) The amendment made by item 2 of Schedule 2 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.
- (2) The amendment made by item 11 of Schedule 2 to the amending Act applies in relation to a matter that appears to a person:
  - (a) during the 6-month period ending when that item commences; or
  - (b) on or after the day on which that item commences;where the relevant date is on or after the day on which that item commences.
- (3) Section 489A applies in relation to a section 486B warrant if the warrant is issued on or after the day on which that section commences.

**1482 Schedule 3 to the amending Act (improving regulation of insolvency practitioners)**

- (1) The amendment made by item 7 of Schedule 3 to the amending Act applies to an application for registration if the application was made on or after the day on which that item commences.
- (2) Despite the amendment made by item 9 of Schedule 3 to the amending Act, subsection 1288(3) continues to apply, in relation to

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a 3-year period ending before the day on which that item commences, as if that amendment had not been made.

- (3) Subsection 1288(3) as amended by item 9 of Schedule 3 to the amending Act applies as follows:
- (a) in the case of a person whose first 12 months of registration ends on or after the day on which that item commences—that subsection applies in relation to:
    - (i) the person's first 12 months of registration; and
    - (ii) each subsequent period of 12 months;
  - (b) in the case of a person whose first 12 months of registration ended before the day on which that item commences—that subsection applies as if the reference in paragraph 1288(3)(a) to the day on which the person's registration begins (the *initial registration day*) were a reference to the last anniversary of the initial registration day that occurred before the day on which that item commences.
- For this purpose, a person's *first 12 months of registration* is the period of 12 months beginning on the day on which the person's registration begins.
- (4) The amendment made by item 12 of Schedule 3 to the amending Act applies in relation to a decision made on or after the day on which that item commences.

#### **1483 Schedule 4 to the amending Act (fine-tuning voluntary administration)**

- (1) The amendments made by items 1, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 39, 40, 45, 49, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61 and 62 of Schedule 4 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.
- (2) The amendments made by items 2, 3 and 4 of Schedule 4 to the amending Act apply to an appointment of an administrator if the appointment is made on or after the day on which those items commence.

- (3) The amendment made by item 8 of Schedule 4 to the amending Act applies to a transfer or alteration that occurs on or after the day on which that item commences.
- (4) The amendments made by items 23, 24, 25, 26 and 28 of Schedule 4 to the amending Act, in so far as they apply to a company that is, or is proposed to be, subject to a deed of company arrangement, apply if the administration that ends, or is to end, on the execution of the deed, began on or after the day on which those items commence.
- (5) The amendments made by items 27, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 43, 44, 46, 55, 56 and 57 of Schedule 4 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.
- (6) Items 37 and 38 of Schedule 4 to the amending Act apply in relation to a company if the winding up of the company begins on or after the day on which those items commence.
- (7) The amendments made by items 41 and 42 of Schedule 4 to the amending Act apply in relation to a company subject to a deed arrangement if the administration that ended on the execution of the deed began on or after the day on which those items commence.
- (8) The amendments made by items 63, 65, 66, 67, 69 and 70 of Schedule 4 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.
- (9) Section 440BA, in so far as it relates to a company under administration, applies if the administration begins on or after the day on which that section commences.
- (10) Section 440BB does not apply to distress for rent that began to be carried out before the day on which that section commences.
- (11) Subsections 442C(7) and (8), in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those subsections commence.

- (12) Subsections 442C(7) and (8), in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those subsections commence.
  - (13) Section 446C applies in relation to a company as follows:
    - (a) if the company was under administration immediately before the liquidation time referred to in that section—the administration begins on or after the day on which that section commences;
    - (b) if the company was subject to a deed of company arrangement immediately before the liquidation time referred to in that section—the administration that ended on the execution of the deed began on or after the day on which that section commences.
  - (14) Subsection 588FE(2A) applies in relation to a company if the administration referred to paragraph 588FE(2A)(b) begins on or after the day on which that subsection commences.
  - (15) Subsection 588FE(2B) applies in relation to a company if the administration that ended on the execution of the deed of company arrangement referred to in paragraph 588FE(2B)(b) began on or after the day on which that subsection commences.
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*[Minister's second reading speech made in—  
House of Representatives on 31 May 2007  
Senate on 9 August 2007]*

(99/07)

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