Corporations Amendment (Corporate Insolvency Reforms) Act 2020

No. 130, 2020

An Act to amend the law in relation to insolvency, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Corporations Amendment (Corporate Insolvency Reforms) Act 2020

No. 130, 2020

An Act to amend the law in relation to insolvency, and for related purposes

[*Assented to 15 December 2020*]

The Parliament of Australia enacts:

1 Short title

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

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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.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 December 2020
2. Schedule 1	1 January 2021.	1 January 2021
3. Schedule 2	Immediately after the commencement of the provisions covered by table item 2.	1 January 2021
4. Schedule 3	1 January 2021.	1 January 2021
5. Schedule 4	The day after this Act receives the Royal Assent.	16 December 2020

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Restructuring of a company

Part 1—Core provisions

Corporations Act 2001

1 After Part 5.3A

Insert:

Part 5.3B—Restructuring of a company

Division 1—Preliminary

452A Object of this Part

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

(a) to retain control of the business, property and affairs while developing a plan to restructure with the assistance of a small business restructuring practitioner; and

(b) to enter into a restructuring plan with creditors.

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

452B Definitions

In this Part, unless the contrary intention appears:

property of a company includes any PPSA retention of title property of the company.

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

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Division 2—Restructuring

Subdivision A—When restructuring begins and ends

453A When restructuring begins and ends

The ***restructuring*** of a company:

(a) begins when a restructuring practitioner for the company is appointed under section 453B; and

(b) ends in the circumstances prescribed by the regulations.

Subdivision B—Appointment of restructuring practitioner

453B Appointing a restructuring practitioner

(1) A company may, by writing, appoint a small business restructuring practitioner for the company if:

(a) the eligibility criteria for restructuring are met in relation to the company on the day the appointment is made; and

(b) the board has resolved to the effect that:

(i) in the opinion of the directors voting for the resolution, the company is insolvent, or is likely to become insolvent at some future time; and

(ii) a restructuring practitioner for the company should be appointed.

(2) A company must not appoint a restructuring practitioner under subsection (1) if:

(a) the company is already under restructuring; or

(b) the company has made a restructuring plan that has not yet terminated; or

(c) the company is under administration; or

(d) the company has executed a deed of company arrangement that has not yet terminated; or

(e) a person holds an appointment as liquidator, provisional liquidator or administrator of the company.

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453C Eligibility criteria for restructuring

(1) The ***eligibility criteria*** for restructuring are met in relation to a company if, on the day on which a restructuring practitioner for the company is appointed:

(a) in a case where the regulations prescribe a test for eligibility based on the liabilities of the company—that test is satisfied; and

(b) no person who:

(i) is a director of the company; or

(ii) has been a director of the company within the 12 months immediately preceding that day;

has been a director of another company that has been under restructuring or been the subject of a simplified liquidation process within a period prescribed by the regulations, unless exempt under regulations made for the purposes of subsection (2); and

(c) the company has not been under restructuring or been the subject of a simplified liquidation process within a period prescribed by the regulations, unless exempt under regulations made for the purposes of subsection (2).

(2) The regulations may prescribe:

(a) tests for eligibility based on the liabilities of companies for the purposes of paragraph (1)(a); and

(b) circumstances in which the directors of companies are exempt from the requirement in paragraph (1)(b); and

(c) circumstances in which companies are exempt from the requirement in paragraph (1)(c).

453D Declaration by restructuring practitioner—relevant relationships

(1) As soon as practicable after being appointed, a restructuring practitioner must make a declaration of relevant relationships.

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

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(2) The restructuring practitioner must give a copy of the declaration under subsection (1) to as many of the company's creditors as reasonably practicable.

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

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

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

(4) If:

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

(b) at a later time:

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

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

the restructuring practitioner 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)).

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

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

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

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

(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

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

Subdivision C—Role of the restructuring practitioner during restructuring

453E Functions, duties and powers of the restructuring practitioner

(1) The functions of the restructuring practitioner for a company under restructuring are:
  (a) to provide advice to the company on matters relating to restructuring; and
  (b) to assist the company to prepare a restructuring plan; and
  (c) to make a declaration to creditors in accordance with the regulations in relation to a restructuring plan proposed to the creditors; and
  (d) any other functions given to the restructuring practitioner under this Act.

(2) The regulations may make provision for and in relation to the following:
  (a) the functions of the restructuring practitioner for a company under restructuring;
  (b) the duties of the restructuring practitioner for a company under restructuring;
  (c) the powers of the restructuring practitioner for a company under restructuring;
  (d) the rights and liabilities of a person who is or has been the restructuring practitioner for a company arising out of the performance of the functions and duties, and the exercise of the powers, of the person as restructuring practitioner.

453F Directors to help restructuring practitioner

(1) A director of a company under restructuring must:
  (a) attend on the restructuring practitioner; and

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(b) give the restructuring practitioner information about the company's business, property, affairs and financial circumstances; and

(c) allow the restructuring practitioner to inspect and take copies of the company's books;

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

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

Penalty: 120 penalty units.

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

(4) Subsection (3) 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 (4), see subsection 13.3(3) of the *Criminal Code*.

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

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

453H Restructuring practitioner acts as company's agent

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

453J Restructuring practitioner may terminate restructuring

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

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

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(i) the company does not meet the eligibility criteria for restructuring; or
(ii) it would not be in the interests of the creditors to make a restructuring plan; or
(iii) it would be in the interests of the creditors for the restructuring to end; or
(iv) it would be in the interests of the creditors for the company to be wound up; or
(b) on any other grounds prescribed by the regulations.

(2) The restructuring practitioner for a company under restructuring terminates the restructuring of the company by giving notice in accordance with this section.

(3) The notice must:
(a) be in writing; and
(b) include all information prescribed by the regulations; and
(c) be given to:
(i) the company; and
(ii) as many of the company's creditors as reasonably practicable.

(4) The termination takes effect on the day on which notice under this section is given to the company.

Subdivision D—Conduct of company during restructuring

453K Control of company under restructuring

(1) Subject to this Part, while a company is under restructuring the company has control of the company's business, property and affairs.

(2) While a company is under restructuring, a receiver or controller appointed for the purposes of Part 5.2 (whether under an instrument relating to a security interest or a court order) may only perform the functions and exercise the powers of a receiver or controller in relation to a security interest if:
(a) section 454C, 454D or 454E applies to the enforcement of the security interest; or

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(b) section 454K or 454L applies to the enforcement of a right, or the performance or exercise of a function or power, over property to which the security interest relates.

453L Conducting the business of the company during restructuring

Transactions and dealings affecting property

(1) A person contravenes this section if:
  (a) a company is under restructuring; and
  (b) the person is a director of the company; and
  (c) either:
    (i) the company purports to enter into a transaction or dealing affecting the property of the company and the person approves of that action; or
    (ii) the person purports to enter into a transaction or dealing affecting the property of the company on behalf of the company.

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

Circumstances in which transactions and dealings may occur

(2) Subsection (1) does not apply if:
  (a) entering into the transaction or dealing was in the ordinary course of the company's business; or
  (b) the restructuring practitioner has consented to the transaction or dealing and, if any conditions are imposed on that consent, those conditions are met; or
  (c) the transaction or dealing was entered into under an order of the Court.

(3) Subsection (1) does not apply to a payment made:
  (a) by an Australian ADI out of an account kept by the company with the ADI; and
  (b) in good faith and in the ordinary course of the ADI's banking business; and
  (c) after the restructuring began and on or before the day on which:

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(i) the restructuring practitioner gives to the ADI written notice of the appointment that began the restructuring; or

(ii) publishes a notice of the appointment that began the restructuring in accordance with the regulations;

whichever happens first.

(4) The regulations may prescribe circumstances in which entering into a transaction or dealing is, or is not, to be treated as in the ordinary course of a company's business.

Transactions and dealings in contravention of subsection (1) void

(5) A transaction or dealing entered into in contravention of subsection (1) is void, unless the Court orders otherwise.

Restructuring practitioner's consent

(6) The restructuring practitioner for a company under restructuring may only give consent under paragraph (2)(b) if the restructuring practitioner believes on reasonable grounds that it would be in the interests of the creditors for the company to enter into the transaction or dealing.

(7) The restructuring practitioner may give consent subject to conditions.

Interpretive provisions

(8) For the purposes of this section, a director who votes in favour of a resolution approving, or who otherwise approves, the company entering into a transaction or dealing affecting the property of the company is taken to have approved the company purporting to take that action.

453M Order for compensation where director involved in void transaction

(1) Where:

(a) a court finds a person guilty of an offence constituted by a contravention of subsection 453L(1); and

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(b) the court is satisfied that the company or another person has suffered loss or damage because of the act or omission constituting the offence;

the court may (whether or not it imposes a penalty) order the first-mentioned person to pay compensation to the company or other person, as the case may be, of such amount as the order specifies.

Note: Section 73A defines when a court is taken to find a person guilty of an offence.

(2) An order under subsection (1) may be enforced as if it were a judgment of the court.

(3) The power of a court under section 1318 to relieve a person from liability as mentioned in that section extends to relieving a person from liability to be ordered under this section to pay compensation.

453N Effect of things done during restructuring of company

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

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

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

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

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

453P Effect of restructuring on company's members

Transfer of shares

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

(a) both:

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

(ii) that consent is unconditional; or

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(b) all of the following subparagraphs apply:
  (i) the restructuring practitioner 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 restructuring practitioner may only give consent under paragraph (1)(a) or (b) if the restructuring practitioner believes on reasonable grounds that the transfer is in the best interests of the company's creditors as a whole.

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

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Alteration in the status of members

(8) An alteration in the status of members of a company that is made while the company is under restructuring is void except if:
  (a) both:
    (i) the restructuring practitioner gives written consent to the alteration; and
    (ii) that consent is unconditional; or
  (b) all of the following subparagraphs apply:
    (i) the restructuring practitioner 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.

Note: An alteration in the status of members of a company that is made while a company is under restructuring may not be void if it is made for the purposes of the conversion and write-off provisions determined by APRA (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of Part 10A of the *Life Insurance Act 1995*).

(9) The restructuring practitioner may only give consent under paragraph (8)(a) or (b) if the restructuring practitioner believes on reasonable grounds that the alteration is in the best interests of the company's creditors as a whole.

(10) The restructuring practitioner must refuse to give consent under paragraph (8)(a) or (b) if the alteration would contravene Part 2F.2.

(11) If the restructuring practitioner 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:

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

Subdivision E—Effect on company etc. during restructuring

453Q Winding up company

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

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

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453R Restrictions on exercise of third party property rights

General rule

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

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

Exception—consent of restructuring practitioner or leave of court

(2) The restrictions set out in the table at the end of this section do not apply in relation to the exercise of a third party's rights in property if the rights are exercised:
  (a) with the restructuring practitioner's written consent; or
  (b) with the leave of the Court.

Possessory security interests—continued possession

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

Restrictions on exercise of third party rights

Item	If the third party is …	then …
1	a secured party in relation to property of the company, and is not otherwise covered by this table	the third party cannot enforce the security interest.
2	a secured party in relation to a possessory security interest in the property of the company	the third party cannot sell the property, or otherwise enforce the security interest.
3	a lessor of property used or occupied by, or in the possession of, the company, including a secured party (a ***PPSA secured party***) in relation to a PPSA security interest in goods	the following restrictions apply: (a) distress for rent must not be carried out against the property; (b) the third party cannot take possession of the property or

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Restrictions on exercise of third party rights		
Item	**If the third party is …**	**then …**
	arising out of a lease of the goods	otherwise recover it; (c) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.
4	an owner (other than a lessor) of property used or occupied by, or in the possession of, the company, including a secured party (a ***PPSA secured party***) in relation to a PPSA security interest in the property	the following restrictions apply: (a) the third party cannot take possession of the property or otherwise recover it; (b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.

453S Stay of proceedings

(1) During the restructuring of a company, a proceeding in a court against the company or in relation to any of its property cannot be begun or proceeded with, except:
  (a) with the restructuring practitioner's written consent; or
  (b) with the leave of the Court and in accordance with such terms (if any) as the Court imposes.

(2) Subsection (1) does not apply to:
  (a) a criminal proceeding; or
  (b) a prescribed proceeding.

453T Suspension of enforcement process

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

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453U Duties of court officer in relation to property of company

(1) This section applies where an officer of a court (the ***court officer***), being:
  (a) a sheriff; or
  (b) the registrar or other appropriate officer of the court;
receives written notice of the fact that a company is under restructuring.

(2) During the restructuring, the court officer cannot:
  (a) take action to sell property of the company under a process of execution; or
  (b) pay to a person (other than the restructuring practitioner):
    (i) proceeds of selling property of the company (at any time) under a process of execution; or
    (ii) money of the company seized (at any time) under a process of execution; or
    (iii) money paid (at any time) to avoid seizure or sale of property of the company under a process of execution; or
  (c) take action in relation to the attachment of a debt due to the company; or
  (d) pay to a person (other than the restructuring practitioner) money received because of the attachment of such a debt.

(3) The court officer must deliver to the restructuring practitioner any property of the company that is in the court officer's possession under a process of execution (whenever begun).

(4) The court officer must pay to the restructuring practitioner all proceeds or money of a kind referred to in paragraph (2)(b) or (d) that:
  (a) are in the court officer's possession; or
  (b) have been paid into the court and have not since been paid out.

(5) The costs of the execution or attachment are a first charge on property delivered under subsection (3) or proceeds or money paid under subsection (4).

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(6) In order to give effect to a charge under subsection (5) on proceeds or money, the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds or money as the court officer thinks necessary.

(7) The Court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or to make a payment, that subsection (2) would otherwise prevent.

(8) A person who buys property in good faith under a sale under a process of execution gets a good title to the property as against the company and the restructuring practitioner, despite anything else in this section.

453V Lis pendens taken to exist

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

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

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

453W Restructuring not to trigger liability of director or relative under guarantee of company's liability

(1) During the restructuring of a company:
  (a) a guarantee of a liability of the company cannot be enforced, as against:
    (i) a director of the company who is a natural person; or
    (ii) a spouse or relative of such a director; and
  (b) without limiting paragraph (a), a proceeding in relation to such a guarantee cannot be begun against such a director, spouse or relative;

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

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

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

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

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

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

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

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

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

(4) In this section:

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

liability means a debt, liability or other obligation.

453X Property subject to a banker's lien—exemption from this Subdivision

If:

(a) a company is under restructuring; 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 possessory security interest; and

(d) the secured party is:

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(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 Subdivision does not apply to the property.

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

454A Application of Subdivision

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

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

Sections 454C to 454H only apply in relation to the enforcement of a PPSA security interest if the security interest is perfected, within the meaning of the *Personal Property Securities Act 2009*, at the time the enforcement starts.

454C Secured party acts before or during decision period

Scope

(1) This section applies if:

(a) the whole, or substantially the whole, of the property of a company under restructuring is subject to a security interest; and

(b) before or during the decision period, the secured party enforced the security interest in relation to all property (including any PPSA retention of title property) of the company subject to the security interest, whether or not the security interest was enforced in the same way in relation to all that property.

(2) This section also applies if:

(a) a company is under restructuring; and

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(b) the same person is the secured party in relation to each of 2 or more security interests in property (including PPSA retention of title property) of the company; and

(c) the property of the company (the ***secured property***) subject to the respective security interests together constitutes the whole, or substantially the whole, of the company's property; and

(d) before or during the decision period, the secured party enforced the security interests in relation to all the secured property:

(i) whether or not the security interests were enforced in the same way in relation to all the secured property; and

(ii) whether or not any of the security interests was enforced in the same way in relation to all the property of the company subject to that security interest; and

(iii) in so far as the security interests were enforced in relation to property of the company by a receiver or controller appointed for the purposes of Part 5.2 (whether under an instrument relating to the security interest or a court order)—whether or not the same person was appointed in respect of all of the last-mentioned property.

Power of enforcement by secured party, receiver or controller

(3) Nothing in section 453K, 453R, 453T, 453U or 454N, or in an order under subsection 454P(1), prevents any of the following from enforcing the security interest, or any of the security interests:

(a) the secured party;

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

454D Where enforcement of security interest begins before restructuring

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

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(a) entered into possession, or assumed control, of property of the company; or
(b) entered into an agreement to sell such property; or
(c) made arrangements for such property to be offered for sale by public auction; or
(d) publicly invited tenders for the purchase of such property; or
(e) exercised any other power in relation to such property;

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

(2) Nothing in section 453K, 453R, 453T, 453U or 454N, or in an order made under subsection 454P(1), prevents the secured party, receiver or other person from enforcing the security interest in relation to that property.

454E Security interest in perishable property

Scope

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

Power of enforcement by secured party, receiver or controller

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

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

(1) This section applies if:
(a) for the purpose of enforcing a security interest in property of a company, the secured party, or a receiver or other person,

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does or proposes to do an act of a kind referred to in a paragraph of subsection 454D(1); and

(b) the company is under restructuring when the secured party, receiver or other person does or proposes to do the act, or the company later begins to be under restructuring;

but does not apply in a case where section 454C applies.

(2) On application by the restructuring practitioner, the Court may order the secured party, receiver or other person not to perform specified functions, or exercise specified powers, except as permitted by the order.

(3) The Court may only make an order if satisfied that the secured party's interests will be adequately protected during the restructuring of the company.

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

(5) An order has effect despite sections 454D and 454E.

454G Giving a notice under a security agreement etc.

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

454H Sale of property subject to a possessory security interest

Scope

(1) This section applies if:

(a) a company is under restructuring; and

(b) property of the company is subject to a possessory security interest; and

(c) the property is in the possession of the secured party; and

(d) either:

(i) there is no other security interest in the property; or

(ii) there are one or more other security interests in the property, but none of the debts secured by those other

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security interests has a priority that is equal to or higher than the priority of the debt secured by the possessory security interest; and

(e) the secured party sells the property.

Distribution of proceeds of sale

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

(a) if the net proceeds of sale equals the debt secured by the possessory security interest—the secured party is entitled to retain the net proceeds;

(b) if the net proceeds of sale exceeds the debt secured by the possessory security interest—the secured party is entitled to retain so much of the net proceeds as equals the amount of the debt secured by the security interest, but must pay the excess to the restructuring practitioner on behalf of the company;

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

454J Scope of sections 454K to 454M

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

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

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

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454K Where recovery of property begins before restructuring

(1) This section applies if, before the beginning of the restructuring of a company, a receiver or other person:
  (a) entered into possession, or assumed control, of property used or occupied by, or in the possession of, the company; or
  (b) exercised any other power in relation to such property;
for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it.

(2) Nothing in section 453K or 453R prevents the receiver or other person from performing a function, or exercising a power, in relation to the property.

454L Recovering perishable property

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

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

(1) This section applies if:
  (a) for the purpose of enforcing a right of the owner or lessor of property used or occupied by, or in the possession of, a company to take possession of the property or otherwise recover it, a person:
    (i) enters into possession, or assumes control, of the property; or
    (ii) exercises any other power in relation to the property; and
  (b) the company is under restructuring when the person does so, or the company later begins to be under restructuring.

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

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

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

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

Subdivision G—Enforcement rights triggered by restructuring

454N Stay on enforcing rights merely because the company is under restructuring etc.

Stay on enforcing rights

(1) A right cannot be enforced against a company for:
  (a) the reason that the company has come or is under restructuring; or
  (b) the company's financial position, if the company is under restructuring; or
  (c) a reason, prescribed by the regulations for the purposes of this paragraph, that relates to:
    (i) the company coming, or possibly coming, under restructuring; or
    (ii) the company's financial position;
  if the company later comes under restructuring; or
  (d) a reason that, in substance, is contrary to this subsection;
if the right arises for that reason by express provision (however described) of a contract, agreement or arrangement.

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

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

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Period of the stay

(2) The right cannot be enforced as described in subsection (1) during the period (the ***stay period***) starting when the restructuring of the company begins and ending at the later of the following:
  (a) when the restructuring ends;
  (b) if one or more orders are made under subsection (3) for the company as the result of an application made before the restructuring ends—when the last made of those orders ceases to be in force;
  (c) if the company ceases to be under restructuring because of a resolution or order for the company to be wound up—when the company's affairs have been fully wound up.

(3) The Court:
  (a) may order an extension of the stay period for the company if the Court is satisfied that the extension is appropriate having regard to the interests of justice; and
  (b) before deciding an application for an order under paragraph (a), may grant an interim order, but must not require the applicant to give an undertaking as to damages as a condition for doing so.

Enforcing rights after the stay for reasons relating to earlier circumstances

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

Rights not subject to the stay

(5) Subsection (1) does not apply to the right if it is:

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(a) a right under a contract, agreement or arrangement entered into after the company comes under restructuring; or
(b) a right under a contract, agreement or arrangement entered into before 1 July 2018; or
(c) a right contained in a kind of contract, agreement or arrangement:
(i) prescribed by the regulations for the purposes of this subparagraph; or
(ii) declared under paragraph (6)(a); or
(d) a right of a kind:
(i) prescribed by the regulations for the purposes of this subparagraph; or
(ii) declared under paragraph (6)(b); or
(e) a right of a kind declared under paragraph (6)(c), and the circumstances specified in that declaration exist.

(6) For the purposes of subsection (5), the Minister may, by legislative instrument:
(a) declare kinds of contracts, agreements or arrangements referred to in a specified law of the Commonwealth; or
(b) declare kinds of rights to which subsection (1) does not apply; or
(c) declare kinds of rights to which subsection (1) does not apply in specified circumstances.

(7) Subsection (1) does not apply to the right to the extent that:
(a) the restructuring practitioner for the company; or
(b) if an administrator of the company, or an administrator of a deed of company arrangement executed by the company, is appointed after the restructuring ends—the administrator; or
(c) if a liquidator of the company is appointed after the restructuring ends—the liquidator;
has consented in writing to the enforcement of the right.

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

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

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

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

454P Lifting the stay on enforcing rights

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

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

454Q Order for rights to be enforceable only with leave of the Court

Orders

(1) The Court may order that one or more rights under a contract, agreement or arrangement are enforceable against a company only:
  (a) with the leave of the Court; and
  (b) in accordance with such terms (if any) as the Court imposes.

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

(2) The Court may make the order if:
  (a) the company is under restructuring; and
  (b) the Court is satisfied that:
    (i) the rights are being exercised; or
    (ii) the rights are likely to be exercised; or
    (iii) there is a threat to exercise the rights;
    because of one or more reasons referred to in paragraphs 454N(1)(a) to (d); and
  (c) an application for the order is made by the restructuring practitioner for the company.

(3) An order under subsection (1) must specify the period for which it applies. In working out the period, the Court must have regard to:
  (a) subsections 454N(2), (3) and (4); and
  (b) the interests of justice.

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

Note: An order under subsection (1) also does not restrict certain secured creditors (see sections 454C to 454H).

Interim orders

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

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

454R Self-executing provisions

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

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

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

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

Note 1: This subsection achieves the object in subsection (1) by extending the application of all of the outcomes, exceptions and powers in sections 454N to 454Q.

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

(a) a reference that a right cannot be enforced (however described) as including a reference that a self-executing provision cannot start to apply; and

(b) the words “if the right arises for that reason by express provision (however described) of a contract, agreement or arrangement” as being omitted from subsection 454N(1); and

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(c) a reference that one or more rights are enforceable as including a reference that one or more self-executing provisions can start to apply; and

(d) paragraph 454Q(2)(b) as alternatively providing that the Court is satisfied that one or more reasons referred to in paragraphs 454N(1)(a) to (d) can cause the self-executing provisions to start to apply.

(3) In this section:

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

(a) for one or more reasons; and

(b) without any party to the contract, agreement or arrangement making a decision that the provision should start to apply.

454S When other laws prevail—certain other Commonwealth Acts

If there is any inconsistency between sections 454N to 454R and one of the following Acts, that Act prevails to the extent of the inconsistency:

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

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

Division 3—Restructuring plan

455A Proposing a restructuring plan

(1) A company may propose a restructuring plan to its creditors.

(2) The company is taken to be ***insolvent*** if the company does so.

(3) The regulations may prescribe the time at which the company is taken to have done so, for the purpose of determining when the company became insolvent under subsection (2).

455B Restructuring plan

Proposing a restructuring plan

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

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(a) proposing a restructuring plan;
(b) the matters that must or may be included in a restructuring plan;
(c) accepting and rejecting a proposal for a restructuring plan;
(d) the circumstances in which a proposal for a restructuring plan lapses;
(e) the consequences of a proposal for a restructuring plan lapsing.

Making, varying and terminating a restructuring plan

(2) The regulations may make provision for and in relation to the following:
(a) making a restructuring plan;
(b) the consequences of making a restructuring plan;
(c) the variation of a restructuring plan;
(d) the termination of a restructuring plan;
(e) the consequences of a restructuring plan being varied or terminating.

Debts and claims

(3) The regulations may make provision for and in relation to the following:
(a) debts and claims that must or may be dealt with in a restructuring plan;
(b) the calculation of the value of those debts and claims under a restructuring plan;
(c) the proof and ranking of those debts and claims under a restructuring plan;
(d) the property of a company that must or may be used in payment of those debts and claims under a restructuring plan;
(e) the payment of those debts and claims under a restructuring plan;
(f) the period within which those debts and claims must be paid under a restructuring plan;
(g) the treatment of those debts and claims under a restructuring plan if the property of the company is not sufficient to satisfy those debts and claims in full;

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

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

Contributories

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

(a) the identification of contributories of the company;

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

Circumstances in which restructuring plan void

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

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

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

Contravention of a restructuring plan

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

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

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

The restructuring practitioner

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

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

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

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

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

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

General

(8) Without limiting anything in this section, the regulations may make provision for and in relation to any information (including personal information within the meaning of the *Privacy Act 1988*), report or other document that must or may be created or given in relation to a proposal for a restructuring plan, or a restructuring plan.

Division 4—The restructuring practitioner

Subdivision A—Qualifications of restructuring practitioners

456A Appointee must consent

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

(a) the person has consented in writing to the appointment; and

(b) as at the time of the appointment, the person has not withdrawn the consent.

456B Restructuring practitioner must be registered liquidator

(1) A person must not consent to be appointed, and must not act as restructuring practitioner for a company or for a restructuring plan.

(2) Subsection (1) does not apply if the person is a registered liquidator.

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

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

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456C Disqualification of person connected with company

(1) Subject to this section, a person must not, except with the leave of the Court, seek or consent to be appointed as, or act as, restructuring practitioner for a company or for a restructuring plan if:

(a) the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding $5,000 to the company or to a body corporate related to the company; or

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

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

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

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

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

a creditor of the company or of a related body corporate in an amount exceeding $5,000; or

(c) the person is a director, secretary, senior manager or employee of the company; or

(d) the person is a director, secretary, senior manager or employee of a body corporate that is a secured party in relation to property of the company; or

(e) the person is an auditor of the company; or

(f) the person is a partner or employee of an auditor of the company; or

(g) the person is a partner, employer or employee of an officer of the company; or

(h) the person is a partner or employee of an employee of an officer of the company.

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

(3) For the purposes of paragraph (1)(a), disregard a debt owed by a natural person to a body corporate if:

(a) the body corporate is:

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(i) an Australian ADI; or
(ii) a body corporate registered under section 21 of the *Life Insurance Act 1995*; and

(b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and

(c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

(4) For the purposes of this section, a person is taken to be a director, secretary, senior manager, employee or auditor of a company if:

(a) the person is or has, within the last 2 years, been a director, secretary, senior manager, employee, auditor or promoter of the company or a related body corporate; and

(b) ASIC has not directed that the person not be taken to be a director, secretary, senior manager, employee or auditor for the purposes of this section.

ASIC may give a direction under paragraph (b) only if it thinks fit in the circumstances of the case.

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

Subdivision B—Removal and replacement of restructuring practitioner

456D Appointment of restructuring practitioner cannot be revoked

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

456E Vacancy in office of restructuring practitioner for company

(1) Where the restructuring practitioner for a company:

(a) dies; or

(b) becomes prohibited from acting as restructuring practitioner for the company; or

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(c) resigns by notice in writing given to the company;

the appointer may appoint someone else as restructuring practitioner for the company.

(2) In subsection (1):

appointer, in relation to the restructuring practitioner for a company, means:

(a) if the restructuring practitioner was appointed by the Court under Division 90 of Schedule 2 (review of the external administration of a company) or subsection (4) of this section—the Court; or

(b) the company.

(3) An appointment under subsection (1) by the company must be made by resolution of the board.

(4) Where a company is under restructuring, but for some reason no restructuring practitioner is acting, the Court may appoint a person as restructuring practitioner on the application of ASIC or of an officer, member or creditor of the company.

456F Declarations by replacement restructuring practitioner—relevant relationships

Scope

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

Declaration of relationships

(2) As soon as practicable after being appointed, the restructuring practitioner 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 restructuring practitioner must:

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(a) give a copy of the declaration under subsection (2) to as many of the company's creditors as reasonably practicable; and

(b) do so at the same time as notice of the appointment is given under section 457A.

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

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

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 restructuring practitioner 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 restructuring practitioner becomes aware of an error in the declaration;

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

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:

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(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.

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

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

(1) The regulations may make provision for and in relation to the following:
(a) the rights, obligations and liabilities of a company that is or has been under restructuring in relation to a person who is or has been the restructuring practitioner for the company;
(b) the rights, obligations and liabilities of a company that has at any time made a restructuring plan in relation to a person who is or has been the restructuring practitioner for the restructuring plan;
(c) the rights, obligations and liabilities of the officers and former officers of a company that is or has been under restructuring in relation to a person who is or has been the restructuring practitioner for the company;
(d) the rights, obligations and liabilities of the officers and former officers of a company that has at any time made a restructuring plan in relation to a person who is or has been a restructuring practitioner for the restructuring plan.

(2) The rights, obligations and liabilities provided for in the regulations are in addition to any other rights, obligations and liabilities provided for under this Act.

456H No liability for consent etc.

A person who is or has been the restructuring practitioner for a company under restructuring is not liable to an action or other proceeding for damages in respect of:
(a) a decision to terminate, or not to terminate, the restructuring of a company under section 453J; or

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(b) a decision to give, or refuse to give, an approval or consent under this Division.

456J Right of indemnity

A person who is or has been the restructuring practitioner for a company under restructuring is entitled to be indemnified out of the company's property (other than any PPSA retention of title property subject to a PPSA security interest that is perfected within the meaning of the *Personal Property Securities Act 2009*) for:

(a) any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the restructuring practitioner:
  (i) in the performance or purported performance of the restructuring practitioner's functions or duties; or
  (ii) in the exercise or purported exercise of the restructuring practitioner's powers; and

(b) the remuneration to which the restructuring practitioner is entitled under Insolvency Practice Rules made under Subdivision DA of Division 60 of Schedule 2.

456K Right of indemnity has priority over other debts

General rule

(1) Subject to section 556, a right of indemnity under section 456J has priority over:
  (a) all the company's unsecured debts; and
  (b) any debts of the company secured by a PPSA security interest in property of the company if, when the restructuring of the company begins, the security interest is vested in the company because of the operation of any of the following provisions:
    (i) section 267 or 267A of the *Personal Property Securities Act 2009* (property subject to unperfected security interests);
    (ii) section 588FL of this Act (collateral not registered within time); and

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(c) subject otherwise to this section—debts of the company secured by a circulating security interest in property of the company.

Debts secured by circulating security interests—receiver appointed before the beginning of restructuring etc.

(2) A right of indemnity under section 456J does not have priority over debts of the company under restructuring that are secured by a circulating security interest in property of the company, except so far as the secured party agrees, if:

(a) before the beginning of the restructuring, the secured party:

(i) appointed a receiver of property of the company under a power contained in an instrument relating to the security interest; or

(ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or

(iii) entered into possession, or assumed control, of property of the company for that purpose; or

(iv) appointed a person so to enter into possession or assume control (whether as agent for the secured party or for the company); and

(b) the receiver or person is still in office, or the secured party is still in possession or control of the property.

Debts secured by circulating security interests—receiver appointed during restructuring etc.

(3) Subsection (4) applies if:

(a) debts of a company under restructuring are secured by a circulating security interest in property of the company; and

(b) during the restructuring, the secured party, consistently with this Part:

(i) appoints a receiver of property of the company under a power contained in an instrument relating to the security interest; or

(ii) obtains an order for the appointment of a receiver of property of the company for the purpose of enforcing the security interest; or

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(iii) enters into possession, or assumes control, of property of the company for that purpose; or

(iv) appoints a person so to enter into possession or assume control (whether as agent for the secured party or for the company).

(4) A right of indemnity of the restructuring practitioner under section 456J has priority over those debts only in so far as it is a right of indemnity for debts incurred, or remuneration accruing, before written notice of the appointment, or of the entering into possession or assuming of control, as the case may be, was given to the restructuring practitioner.

Debts secured by circulating security interests—priority over right of indemnity in relation to repayment of money borrowed etc.

(5) A right of indemnity under section 456J does not have priority over debts of the company under restructuring that are secured by a circulating security interest in property of the company, except so far as the secured party consents in writing, to the extent that the right of indemnity relates to debts incurred for:

(a) the repayment of money borrowed; or

(b) interest in respect of money borrowed; or

(c) borrowing costs.

456L Lien to secure indemnity

(1) To secure a right of indemnity under section 456J, the restructuring practitioner has a lien on the company's property.

(2) A lien under subsection (1) has priority over another security interest only in so far as the right of indemnity under section 456J has priority over debts secured by the other security interest.

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Subdivision D—Appointment of 2 or more restructuring practitioners

456M Appointment of 2 or more restructuring practitioners of company

(1) Where a provision of this Act provides for a small business restructuring practitioner for a company to be appointed, 2 or more persons may be appointed as small business restructuring practitioners of the company.

(2) Where, because of subsection (1), there are 2 or more small business restructuring practitioners of a company:
   (a) a function, duty or power of a restructuring practitioner for 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 instrument appointing them otherwise provides; and
   (b) a reference in this Act to a restructuring practitioner, or to the restructuring practitioner, of a company is, in the case of the first-mentioned company, a reference to whichever one or more of those restructuring practitioners the case requires.

456N Appointment of 2 or more restructuring practitioners of restructuring plan

(1) Where a provision of this Act provides for a small business restructuring practitioner for a restructuring plan to be appointed, 2 or more persons may be appointed as small business restructuring practitioners of the plan.

(2) Where, because of subsection (1), there are 2 or more small business restructuring practitioners for a restructuring plan:
   (a) a function, duty or power of a restructuring practitioner for the plan may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the plan, or the instrument appointing them, otherwise provides; and
   (b) a reference in this Act to a restructuring practitioner, or to the restructuring practitioner, for a restructuring plan is, in the

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

Division 5—Information, reports, documents etc.

457A Regulations may deal with information etc.

The regulations may make provision for and in relation to:

(a) giving information, providing a report or producing a document to the restructuring practitioner for a company or for a restructuring plan; and

(b) giving information, providing a report or producing a document to ASIC in relation to a company under restructuring or a company that has made a restructuring plan; and

(c) giving information, providing a report or producing a document to any other person (including creditors) in relation to a company under restructuring or a company that has made a restructuring plan; and

(d) publishing information, a report or a document in relation to a company under restructuring or that has made a restructuring plan.

457B Notice in public documents of company

(1) A company under restructuring must set out, in every public document, and in every negotiable instrument, of the company, after the company's name where it first appears, the expression ("restructuring practitioner appointed").

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

457C Effect of contravention of this Division

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

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Division 6—Powers of Court

458A General power to make orders

(1) The Court may make such order as it thinks appropriate about how this Part is to operate in relation to a particular company.

(2) An order may be made subject to conditions.

(3) An order may be made on the application of:
  (a) the company; or
  (b) a creditor of the company; or
  (c) the restructuring practitioner for the company or for a restructuring plan for the company; or
  (d) ASIC; or
  (e) any other interested person.

458B Other powers of the Court

(1) The regulations may:
  (a) confer powers on the Court in relation to the restructure of companies or restructuring plans; and
  (b) prescribe whether those powers are to be exercised on the initiative of the Court or on the application of one or more persons; and
  (c) prescribe persons who may apply to the Court for the exercise of those powers.

(2) Without limiting subsection (1), the powers that may be conferred on the Court include the power:
  (a) to vary or terminate a restructuring plan; and
  (b) to declare a restructuring plan void.

(3) The powers conferred on the Court under regulations made for the purposes of this section are in addition to any other powers conferred on the Court.

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Division 7—Other matters

458C Time for doing act does not run while act prevented by this Part

Where:

(a) for any purpose (for example, the purposes of a law, agreement or instrument) an act must or may be done within a particular period or before a particular time; and

(b) this Part prevents the act from being done within that period or before that time;

the period is extended, or the time is deferred, because of this section, according to how long this Part prevented the act from being done.

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Part 2—Consequential amendments

Banking Act 1959

2 Subsection 5(1) (after paragraph (c) of the definition of *external administrator*)

Insert:

; (d) a restructuring practitioner for a company or for a restructuring plan.

Corporations Act 2001

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

Insert:

(da) that is under restructuring; or

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

4 Section 9 (definition of *decision period*)

Repeal the definition, substitute:

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

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

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

(ii) otherwise—the administration begins;

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

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

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

(ii) otherwise—the restructuring begins;

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

5 Section 9 (after paragraph (d) of the definition of *eligible applicant*)

Insert:

(da) a restructuring practitioner for the corporation; or

(db) a restructuring practitioner for a restructuring plan made by the corporation; or

6 Section 9

Insert:

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

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

After "administration", insert ", restructuring".

8 Section 9 (definition of *firm*)

Omit "administrator or liquidator" (wherever occurring), substitute "administrator, restructuring practitioner or liquidator".

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

Insert:

(ea) a restructuring practitioner for the corporation; or

(eb) a restructuring practitioner for a restructuring plan made by the corporation; or

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

Insert:

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

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11 Section 9 (after paragraph (c) of the definition of *remuneration*)

Insert:

(ca) a restructuring practitioner for the corporation;

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

12 Section 9

Insert:

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

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

restructuring practitioner:

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

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

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

(b) in relation to a restructuring plan:

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

(ii) if 2 or more persons are appointed under that Part as small business restructuring practitioners for the plan—has a meaning affected by paragraph 456N(2)(b).

13 After subparagraph 53(d)(iia)

Insert:

(iib) the body is under restructuring; or

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

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14 Paragraph 53(d)

After "of an administrator of such a deed of company arrangement,", insert "of a restructuring practitioner for the body, of a restructuring practitioner for such a restructuring plan,".

15 After subparagraph 60(1)(a)(vi)

Insert:

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

16 After subsection 60(1)

Insert:

Restructuring practitioner

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

(a) stating whether any of the following:

(i) the restructuring practitioner;

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

(iii) if the restructuring practitioner'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 security interest in the whole, or substantially the whole, of the company's property (including any PPSA retention of title property); and

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

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17 Subparagraph 60(2)(a)(viii)

Omit "; and", substitute "; or".

18 At the end of paragraph 60(2)(a)

Add:

(ix) a former restructuring practitioner for the company; or

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

19 Section 91 (at the end of the table)

Add:

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

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	(b) immediately before the order was made, a restructuring plan had been made by the company and had not yet terminated; and (c) the order was made in response to an application filed at or after the beginning of the restructuring that ended when the plan was made;	
19	in the case of a company: (a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and (b) immediately before the order was made, a restructuring plan had been made by the company and had not yet terminated; and (c) the order was made in response to an application filed before the beginning of the restructuring that ended when the plan was made;	the day on which that application was filed.
20	in the case of a company: (a) the company resolves by special resolution that it be wound up voluntarily; and (b) immediately before the resolution was passed, the company was under restructuring; and (c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the restructuring;	the section 513CA day in relation to the restructuring
21	in the case of a company: (a) the company resolves by special resolution that it be wound up voluntarily; and (b) immediately before the	the section 513CA day in relation to the restructuring.

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

20 At the end of subsection 95A(2)

Insert:

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

21 At the end of subsection 109X(1)

Add:

; or (e) if a restructuring practitioner for the company has been appointed—leaving it at, or posting it to, the address of the

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restructuring practitioner in the most recent notice of that address lodged with ASIC.

22 After paragraph 12.1 of the small business guide in Part 1.5

Insert:

12.1A Restructuring

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

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

[Part 5.3B]

23 After subsection 157A(4)

Insert:

Application by restructuring practitioner

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

Application by restructuring practitioner for a restructuring plan

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

24 After subparagraph 161A(1)(a)(iii)

Insert:

(iiia) the company is under restructuring;

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(iiib) the company has made a restructuring plan that has not yet terminated;

25 After subparagraph 161A(1)(b)(iv)

Insert:

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

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

26 Subsection 161A(3)

After "subparagraph (1)(b)(ii), (iii), (iv),", insert "(iva), (ivb),".

27 After paragraph 161A(6)(c)

Insert:

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

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

28 After subsection 198G(4)

Insert:

(4A) Subsections (1) and (2) do not apply in relation to:

(a) a company under restructuring; or

(b) a company that has made a restructuring plan that has not yet terminated.

29 After paragraph 206D(2)(c)

Insert:

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

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30 At the end of subsection 250PAA(1)

Add:

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

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

31 After subsection 250PAB(3)

Insert:

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

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

32 Paragraph 420(2)(r)

Omit "or a scheme of arrangement", substitute ", a scheme of arrangement or a restructuring plan".

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

After "administration,", insert "restructuring,".

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

After "administration,", insert "restructuring,".

35 After paragraph 425(5)(c)

Insert:

(ca) if the corporation is under restructuring—the corporation with the consent of the restructuring practitioner for the corporation; or

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

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

Add:

or (vi) one or more restructuring practitioners; or

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

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

Omit "administration, management", substitute "administration, restructuring, management".

38 Paragraph 448C(1)(b)

Repeal the paragraph, substitute:

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

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

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

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

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

(v) liquidator of the company or a related body corporate;

a creditor of the company or of a related body corporate in an amount exceeding $5,000; or

39 After paragraph 468(2)(ab)

Insert:

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

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

40 At the end of subsection 482(1A)

Add:

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

41 After subsection 482(2A)

Insert:

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(2B) If such an application is made in relation to a company subject to a restructuring plan, 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 restructuring practitioner, or a former restructuring practitioner, for 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 restructuring practitioner, or a former restructuring practitioner, for 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 that the company make a restructuring plan;

(d) any notice that has been given to the restructuring practitioner for the restructuring plan or the company's creditors in relation to a contravention of the restructuring plan;

(e) whether the restructuring plan is likely to result in the company becoming or remaining insolvent;

(f) any other relevant matters.

42 After paragraph 513A(d)

Insert:

(da) if, immediately before the order was made, the company was under restructuring—on the section 513CA day in relation to the restructuring; or

(db) if:

(i) when the order was made, a provisional liquidator of the company was acting; and

(ii) immediately before the provisional liquidator was appointed, the company was under restructuring;

on the section 513CA day in relation to the restructuring; or

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(dc) if, immediately before the order was made, a restructuring plan had been made by the company and had not yet terminated—on the section 513CA day in relation to the restructuring that ended when the plan was made; or

43 After paragraph 513B(da)

Insert:

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

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

44 Before paragraph 513C(a)

Insert:

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

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

45 After section 513C

Insert:

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

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

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

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

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

Repeal the paragraphs, substitute:

(a) both of the following are satisfied:

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

(ii) the company is under the deed immediately before the resolution or court order that the company be wound up; or

(b) both of the following are satisfied:

(i) the circumstances occur at a time when the company is under restructuring;

(ii) the company is under restructuring immediately before the resolution or court order that the company be wound up; or

(c) both of the following are satisfied:

(i) the circumstances occur at a time when the company is under a restructuring plan;

(ii) the company is under the plan immediately before the resolution or court order that the company be wound up.

48 Subsection 553(1A) (note 1)

Repeal the note, substitute:

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

49 Subsection 553(1A) (note 3)

Repeal the note, substitute:

Note 3: A debt or claim admissible to proof under paragraph (1A)(a) 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)).

Note 4: A debt or claim admissible to proof under paragraph (1A)(b) will only be covered by paragraph 556(1)(a) if the restructuring practitioner for the company is personally liable for the debt or claim (see subsection 556(1AAA)).

Note 5: A debt or claim admissible to proof under subsection (1A)(c) will only be covered by paragraph 556(1)(a) if the restructuring practitioner for the plan is personally liable for the debt or claim (see subsection 556(1AAB)).

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50 Subsection 553(1B)

Repeal the subsection, substitute:

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

(a) if it is a debt or claim that is admissible to proof under paragraph (1A)(a)—the date on which the deed terminates; and

(b) if it is a debt or claim that is admissible to proof under paragraph (1A)(b)—the date on which the restructuring ends; and

(c) if it is a debt or claim that is admissible to proof under paragraph (1A)(c)—the date on which the plan terminates.

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

After "administration", insert "or restructuring".

52 Paragraph 556(1)(c)

Repeal the paragraph, substitute:

(c) next:

(i) the debts for which paragraph 443D(a) or (aa) entitles an administrator of the company to be indemnified (even if the administration ended before the relevant date), except expenses covered by paragraph (a) of this subsection and deferred expenses; and

(ii) the debts for which paragraph 456J(a) or (b) entitles a restructuring practitioner for the company to be indemnified (even if the restructuring ended before the relevant date), except expenses covered by paragraph (a) of this subsection and deferred expenses;

53 Paragraph 556(1AA)(b)

Omit "subsection 553(1A)", substitute "paragraph 553(1A)(a)".

54 After subsection 556(1AA)

Insert:

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

(a) incurred by the restructuring practitioner for a company; and

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(b) relating to a debt or claim admissible to proof under paragraph 553(1A)(b);

unless the restructuring practitioner is personally liable for the expenses.

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

(a) incurred by the restructuring practitioner for a restructuring plan; and

(b) relating to a debt or claim admissible to proof under paragraph 553(1A)(c);

unless the restructuring practitioner is personally liable for the expenses.

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

Add:

; (e) in any case—a restructuring practitioner for the company, even if the restructuring ended before the winding up began;

(f) in any case—a restructuring practitioner for a restructuring plan made by the company, even if the plan terminated before the winding up began.

56 After subsection 588FE(2B)

Insert:

(2C) 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 restructuring 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

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(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, in the ordinary course of business or by or with the consent of the restructuring practitioner for the company.

(2D) 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 restructuring plan 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:
  (i) in the ordinary course of business, or by or with the consent of the restructuring practitioner for the company; or

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(ii) on behalf of the company by or under the authority of the restructuring practitioner for the plan.

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

Insert:

(iiia) by a restructuring practitioner for the company; or

(iiib) under a restructuring plan made by the company; or

58 Paragraph 588FGB(7)(a)

After "an administrator of the company", insert "or a restructuring practitioner for the company".

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

Omit "and".

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

Add:

(iv) a restructuring practitioner for the company is appointed under section 453B;

(v) a company makes a restructuring plan under Division 3 of Part 5.3B; and

61 At the end of paragraph 588FL(5)(b)

Add:

; (v) the appointment of a restructuring practitioner for the company under section 453B;

(vi) the making of a restructuring plan by the company under Division 3 of Part 5.3B.

62 Subsection 588FL(7) (paragraph (b) of the definition of *critical time*)

Repeal the paragraph, substitute:

(b) if the company is under administration or is subject to a deed of company arrangement—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company; or

(c) if the company is under restructuring or is subject to a restructuring plan—when, on a day, the event occurs by

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virtue of which the day is the section 513CA day for the company.

63 After paragraphs 588GAB(3)(b) and 588GAC(3)(b)

Insert:

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

64 Paragraph 588GAAA(1)(c)

Omit "administrator, or liquidator,", substitute "administrator, restructuring practitioner or liquidator".

65 After section 588GAAA

Insert:

588GAAB Safe harbour—companies under restructuring

Safe harbour

(1) Subsection 588G(2) does not apply in relation to a person and a debt incurred by a company if the debt is incurred:
  (a) during the restructuring of the company; and
  (b) in the ordinary course of the company's business, or with the consent of the restructuring practitioner or by order of the Court.

(2) A person who wishes to rely on subsection (1) in a proceeding for, or relating to, a contravention of subsection 588G(2) bears an evidential burden in relation to that matter.

When the safe harbour does not apply

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

Definitions

(4) In this section:

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

66 Subparagraph 588GB(1)(a)(iii)

Repeal the subparagraph, substitute:

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

67 Paragraph 588GB(2)(b)

Omit "or subsection 438B(2) or (3)," insert ", subsection 438B(2) or (3), paragraph 453F(1)(b) or subsection".

68 Subsection 588GB(5)

Omit "or subsection 438B(1) or (2)", substitute ", subsection 438B(1) or (2), paragraph 453F(1)(c), section 453G or subsection".

69 Paragraph 588H(6)(a)

After "an administrator of the company", insert "or a restructuring practitioner for the company".

70 After paragraph 589(1)(ca)

Insert:

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

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

71 Subsection 589(5) (after paragraph (ba) of the definition of *appropriate officer*)

Insert:

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

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

72 Subsection 589(5) (after paragraph (ba) of the definition of *relevant day*)

Insert:

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(bb) in relation to a company that is or has been under restructuring—the restructuring began;

(bc) in relation to a company that has made a restructuring plan—the plan was made;

73 After paragraph 595(1)(c)

Insert:

(ca) a restructuring practitioner for a company; or

(cb) a restructuring practitioner for a restructuring plan made, or to be made, by a company; or

74 After paragraph 596AB(2B)(b)

Insert:

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

75 At the end of paragraph 596AC(7)(a)

Add:

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

76 After subparagraph 596A(b)(ii)

Insert:

(iia) if the corporation is under restructuring—on the section 513CA day in relation to the restructuring; or

(iib) if the corporation has made a restructuring plan that has not yet terminated—on the section 513CA day in relation to the restructuring that ended when the plan was made; or

77 After subparagraph 597A(1)(b)(ii)

Insert:

(iia) if the corporation is under restructuring—on the section 513CA day in relation to the restructuring; or

(iib) if the corporation has made a restructuring plan that has not yet terminated—on the section 513CA day in relation to the restructuring that ended when the plan was made; or

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78 After paragraph 600AA(1)(b)

Insert:

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

79 Subsection 600F(2) (after paragraph (d) of the definition of *eligible company*)

Insert:

(da) that is under restructuring; or

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

80 Subsection 600F(2) (after paragraph (d) of the definition of *relevant authority*)

Insert:

(da) the restructuring practitioner for the company; or

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

81 Paragraph 600H(1)(a)

After "the administrator", insert ", the restructuring practitioner'.

82 Subsection 600H(2) (after paragraph (c) of the definition of *external administration*)

Insert:

(ca) restructuring;

(cb) restructuring under a restructuring plan;

83 Section 601FH

Repeal the section, substitute:

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

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

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(a) a provision of the scheme's constitution, or of another instrument, is void against the liquidator, the administrator of the company or the deed or the restructuring practitioner for the company or the plan, if it purports to deny the company a right to be indemnified out of the scheme property that the company would have had if it were not being wound up, were not under administration, had not executed a deed of company arrangement, were not under restructuring or had not made a restructuring plan; and

(b) a right of the company to be indemnified out of the scheme property may only be exercised by the liquidator, the administrator of the company or the deed or the restructuring practitioner for the company or the plan.

84 After subparagraph 911A(2)(f)(vi)

Insert:

(via) as a restructuring practitioner for a body corporate;

(vib) as a restructuring practitioner for a restructuring plan made by a body corporate;

85 Paragraph 1317S(3)(a)

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

86 Section 1-5 of Schedule 2 (paragraph beginning "Under this Act")

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

87 Section 1-5 of Schedule 2 (paragraph beginning "A company")

After "is the subject of a deed of company arrangement", insert ", is under restructuring, is the subject of a restructuring plan".

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

Insert:

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

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

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

Insert:

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

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

90 After paragraph 5-15(b) of Schedule 2

Insert:

(ba) the company is under restructuring; or

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

91 After paragraph 5-20(b) of Schedule 2

Insert:

(ba) the restructuring practitioner for the company; or

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

92 Section 60-1 of Schedule 2

After:

> The remuneration of provisional liquidators is, in most cases, determined by the Court.

Insert:

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> The remuneration of a restructuring practitioner for a company or for a restructuring plan is dealt with in the Insolvency Practice Rules.

93 After paragraph 60-2(b) of Schedule 2

Insert:

; or (c) a restructuring practitioner for a company; or

(d) a restructuring practitioner for a restructuring plan.

94 After Subdivision D of Division 60 of Schedule 2

Insert:

Subdivision DA—Remuneration of restructuring practitioners

60-18 Insolvency Practice Rules

(1) The Insolvency Practice Rules may provide for and in relation to the remuneration of:

(a) a restructuring practitioner for a company; and

(b) a restructuring practitioner for a restructuring plan.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for the remuneration of a restructuring practitioner for a restructuring plan that has been made in relation to a company to be dealt with wholly or partly under the restructuring plan.

95 After paragraph 70-5(6)(e) of Schedule 2

Insert:

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

96 After paragraph 70-6(5)(e) of Schedule 2

Insert:

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

97 After subsection 70-10(3) of Schedule 2

Insert:

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

98 Section 75-1 of Schedule 2

Omit "The external administrator of a company", substitute "In most cases, the external administrator of a company".

99 Section 75-1 of Schedule 2

After:

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

insert:

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

100 After section 75-20 of Schedule 2

Insert:

75-21 Restructuring and restructuring plans

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

(2) However, the restructuring practitioner for a company, or for a restructuring plan, may convene a meeting of the creditors if the restructuring practitioner is satisfied that:
  (a) there are exceptional circumstances; and
  (b) it is in the interests of the creditors to do so.

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101 Section 80-1 of Schedule 2

Omit "Creditors", substitute "In most cases, creditors".

102 Section 80-1 of Schedule 2

After:

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

insert:

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

103 Section 80-5 of Schedule 2 (heading)

Omit "**of sections 80-10 to 80-25**".

104 Before subsection 80-5(1) of Schedule 2

Insert:

Application of whole of Division

(1A) This Division does not apply to:

(a) a company under restructuring; or

(b) a company that has made a restructuring plan that has not yet terminated.

Application of sections 80-10 to 80-25

105 Section 90-1 of Schedule 2

After "to review the external administration of the company", insert "in most cases".

106 Section 90-1 of Schedule 2

After:

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

insert:

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

107 After subsection 90-23(5) of Schedule 2

Insert:

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

(a) a company under restructuring; or

(b) a company that has made a restructuring plan that has not yet terminated.

108 At the end of section 90-24 of Schedule 2

Add:

Restructuring and restructuring plans

(8) This section does not apply to:

(a) a company under restructuring; or

(b) a company that has made a restructuring plan that has not yet terminated.

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

Insert:

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

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Section 458H	20 penalty units

Insurance Act 1973

110 Subsection 3(1) (after paragraph (c) of the definition of *external administrator*)

Insert:

; (d) a restructuring practitioner for a company or for a restructuring plan.

Life Insurance Act 1995

111 Dictionary (after paragraph (c) of the definition of *external administrator*)

Insert:

; (d) a restructuring practitioner for a company or for a restructuring plan.

Payment Systems and Netting Act 1998

112 Section 5 (definition of *external administrator*)

Repeal the definition, substitute:

external administrator, for a person who goes into external administration, is:

(a) if, within the meaning of the *Corporations Act 2001*, the person is a company that is under restructuring or that has made a restructuring plan that has not yet terminated—the restructuring practitioner (within the meaning of that Act) for the company or for the plan; and

(b) otherwise—the person who takes control of the property, part of the property, the business, or part of the business, of the person under the administration.

113 Section 5 (paragraph (d) of the definition of *specified provisions*)

Repeal the paragraph, substitute:

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(d) sections 415D to 415FA, 434J to 434LA, 437D, 440B, 451E to 451GA, 453R, 454N to 454R, 468, 556 and 588FL and Division 2 of Part 5.7B of the *Corporations Act 2001*; and

114 Section 5 (paragraph (c) of the definition of *voidable*)

After "the external administrator", insert "or any other person,".

Personal Property Securities Act 2009

115 After subparagraph 267(1)(a)(iii)

Insert:

(iiia) a restructuring practitioner for a company or a body corporate is appointed (whether under section 453B of the *Corporations Act 2001*, under that section as it is applied by force of a law of a State or Territory, or otherwise);

(iiib) a company or a body corporate makes a restructuring plan (whether under Division 3 of Part 5.3B of the *Corporations Act 2001*, under that Division as it is applied by force of a law of a State or Territory, or otherwise);

116 Subparagraph 267(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) in the case of a company or a body corporate to which subparagraph (a)(ii) or (iii) applies—when, on a day, the event occurs by virtue of which the day is the section 513C day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);

(iia) in the case of a company or a body corporate to which subparagraph (a)(iiia) or (iiib) applies—when, on a day, the event occurs by virtue of which the day is the section 513CA day for the company or body, within the meaning of the *Corporations Act 2001* (including that Act as it is applied by force of a law of a State or Territory, or otherwise);

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117 At the end of paragraph 267(3)(b)

Add:

; (v) the appointment of a restructuring practitioner for the company under section 453B of the *Corporations Act 2001*;

(vi) the making of a restructuring plan by the company.

Taxation Administration Act 1953

118 After subparagraph 18-130(2)(b)(ii) in Schedule 1

Insert:

(iia) the directors caused a small business restructuring practitioner for the company to be appointed under section 453B of that Act;

119 After paragraph 18-135(4)(b) in Schedule 1

Insert:

(ba) a small business restructuring practitioner for the company is appointed under section 453B of that Act;

120 Section 269-1 in Schedule 1 (paragraph beginning "The directors of a company")

After "voluntary administration", insert "or restructuring".

121 Paragraph 269-5(b) in Schedule 1

After "voluntary administration", insert "or restructuring".

122 After paragraph 269-15(2)(b) in Schedule 1

Insert:

(ba) a small business restructuring practitioner for the company is appointed under section 453B of that Act; or

123 Subsection 269-30(2) in Schedule 1 (table heading)

After "**administrator**", insert "**or restructuring practitioner**".

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124 Subsection 269-30(2) in Schedule 1 (table, heading to column 2)

Repeal the heading, substitute:

Column 2

and, because of paragraph 269-15(2)(b), (ba) or (c) (an administrator or a restructuring practitioner is appointed, or the company begins to be wound up), the directors stop being under the relevant obligation after …

125 Subsection 269-30(2) in Schedule 1 (note 1)

After "An administrator", insert "or a small business restructuring practitioner".

126 After subparagraph 269-35(2)(a)(ii) in Schedule 1

Insert:

(iia) the directors caused a small business restructuring practitioner for the company to be appointed under section 453B of that Act;

127 Application of amendments relating to PAYG withholding non-compliance tax

The amendments of sections 18-130 and 18-135 in Schedule 1 to the *Taxation Administration Act 1953* made by this Schedule apply in relation to an amount of PAYG withholding non-compliance tax, whether or not the withholding payment to which the amount relates was made before, on or after the commencement of this Schedule.

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Schedule 2—Temporary relief for companies seeking a restructuring practitioner

Corporations Act 2001

1 Section 9

Insert:

eligible for temporary restructuring relief has the meaning given by section 458E.

restructuring relief period has the meaning given by section 458D.

2 At the end of Division 7 of Part 5.3B

Add:

458D Meaning of *restructuring relief period*

In this Act:

restructuring relief period means the period:

(a) beginning on 1 January 2021; and

(b) ending on 31 March 2021.

458E When is a company *eligible for temporary restructuring relief*?

When is a company eligible for temporary restructuring relief?

(1) A company is ***eligible for temporary restructuring relief*** if:

(a) before the end of the restructuring relief period, the directors of the company:

(i) make a declaration in writing that sets out the matters mentioned in paragraphs (b), (c) and (d) and, if there is a prescribed form for the declaration, is in the prescribed form; and

(ii) publish notice of the declaration in the prescribed manner; and

(b) there are reasonable grounds to believe that:

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(i) the company is insolvent, or is likely to become insolvent before the declaration under subparagraph (a)(i) expires; and

(ii) the eligibility criteria for restructuring would be met in relation to the company if a restructuring practitioner were appointed on the day on which notice of the declaration under subparagraph (a)(i) is published, or on any day afterwards on which the declaration has not expired; and

(c) the board has resolved to the effect that a restructuring practitioner for the company should be appointed; and

(d) there is no:

(i) restructuring practitioner for the company; or

(ii) restructuring practitioner for a restructuring plan made by the company that has not yet terminated; or

(iii) administrator of the company; or

(iv) administrator of a deed of company arrangement executed by the company that has not yet terminated; or

(v) liquidator or provisional liquidator of the company; and

(e) the declaration under subparagraph (a)(i) has not expired; and

(f) the company has not otherwise ceased to be eligible for temporary restructuring relief for any reason; and

(g) the company has not previously been eligible for temporary restructuring relief that has ceased:

(i) because a previous declaration under subparagraph (a)(i) has expired; or

(ii) for any other reason.

(2) A declaration under subparagraph (1)(a)(i) in relation to a company expires:

(a) 3 months after notice of the declaration is first published in the prescribed manner (the ***initial relief period***); or

(b) a further one month after the initial relief period if:

(i) paragraphs (1)(b), (c) and (d) continue to be satisfied in relation to the company; and

(ii) the directors of the company have taken all reasonable steps to appoint a restructuring practitioner but have been unable to do so; and

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(iii) the directors of the company make a further declaration under subsection (3), and publish notice of that declaration in the prescribed manner; and

(iv) notice of the further declaration is published no later than 2 weeks before the end of the initial relief period.

(3) A declaration by the directors of a company under this subsection must:

(a) state that paragraphs (1)(b), (c) and (d) continue to be satisfied in relation to the company; and

(b) set out:

(i) the steps that the company has taken to appoint a restructuring practitioner; and

(ii) the steps that the company intends to take to appoint a restructuring practitioner before the declaration under subparagraph (1)(a)(i) expires, if extended under paragraph (2)(b); and

(c) be in writing; and

(d) if there is a prescribed form for the declaration—be in the prescribed form.

Giving ASIC copies of declarations under this section

(4) If the directors of a company publish notice of a declaration as mentioned in subparagraph (1)(a)(ii) or (2)(b)(iii), they must give ASIC a copy of the declaration no later than 5 business days after doing so.

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

When does a company cease to be eligible for temporary restructuring relief?

(5) A company ceases to be ***eligible for temporary restructuring relief*** if:

(a) the declaration under subparagraph (1)(a)(i) under which the company was eligible for temporary restructuring relief expires; or

(b) the directors of the company fail to comply with subsection (4); or

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(c) a small business restructuring practitioner for the company is appointed under section 453B; or

(d) an administrator of the company is appointed under section 436A, 436B or 436C; or

(e) a liquidator, or provisional liquidator, is appointed to wind up the company; or

(f) the company publishes notice under subsection 458F(1) or (2) that the company is not, or is not to be treated as, eligible for temporary restructuring relief; or

(g) the Court orders under section 458G that the company is not eligible for temporary restructuring relief.

458F Directors declare company not eligible for temporary restructuring relief

(1) The directors of a company contravene this subsection if:

(a) there are not reasonable grounds to believe either or both of the following:

(i) that the company is insolvent, or is likely to become insolvent before the declaration under subparagraph 458E(1)(a)(i) expires;

(ii) that the eligibility criteria for restructuring would be met in relation to the company if a restructuring practitioner were appointed on the day on which notice of the declaration under subparagraph 458E(1)(a)(i) is published, or on any day afterwards on which the declaration has not expired; and

(b) one or more of the directors becomes aware of that fact; and

(c) the directors do not, within 5 business days after one or more of the directors becoming aware of that fact:

(i) make a declaration in writing that the company is not eligible for temporary restructuring relief; and

(ii) publish notice of the declaration in the prescribed manner; and

(iii) give ASIC a copy of the declaration.

Note: This subsection is a civil penalty provision (see section 1317E).

(2) The directors of a company may:

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(a) make a declaration in writing that the company is not to be treated as eligible for temporary restructuring relief for any other reason; and

(b) publish notice of the declaration in the prescribed manner.

(3) If the directors of a company make a declaration under paragraph (2)(a), the directors must give ASIC a copy of the declaration within 5 business days after doing so.

458G Court order that company not eligible for temporary restructuring relief

(1) The Court may order that a company is not ***eligible for temporary restructuring relief*** if there are not reasonable grounds to believe any of the following:

(a) the company is insolvent, or is likely to become insolvent before the declaration under paragraph 458E(1)(a) expires;

(b) the eligibility criteria for restructuring would be met in relation to the company if a restructuring practitioner were appointed on any day after notice of the declaration made under subparagraph 458E(1)(a)(i) is published on which the declaration has not expired;

(c) the company has taken all reasonable steps to appoint a restructuring practitioner;

(d) the company will take all reasonable steps to appoint a restructuring practitioner before the expiry of the declaration made by the company under subsection 458E(1).

(2) The Court may make an order under subsection (1):

(a) on the application of:

(i) a creditor of the company; or

(ii) ASIC; or

(b) on the Court's own initiative.

(3) If the Court makes an order in relation to a company under subsection (1), the directors of the company must within 5 business days after the order is made:

(a) publish notice of the order in the prescribed manner; and

(b) give ASIC a copy of the order.

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

(4) Nothing in this section limits the power of the Court to make an order that a company is not ***eligible for temporary restructuring relief*** for any other reason.

458H Obligation on registered liquidator to report

A registered liquidator contravenes this section if:

(a) the directors of a company have published under subparagraph 458E(1)(a)(ii) notice of a declaration under subparagraph 458E(1)(a)(i) that has not expired; and

(b) the registered liquidator suspects that there are not reasonable grounds to believe either or both of the following:

(i) the company is insolvent, or is likely to become insolvent before the declaration under subparagraph 458E(1)(a)(i) expires;

(ii) the eligibility criteria for restructuring would be met in relation to the company if a restructuring practitioner were appointed on the day on which notice of the declaration made under subparagraph 458E(1)(a)(i) is published, or on any day afterwards on which the declaration has not expired; and

(c) the company has not ceased to be eligible for temporary restructuring relief under subsection 458E(5); and

(d) the registered liquidator does not give ASIC notice in writing setting out the registered liquidator's reasons for forming the suspicion mentioned in paragraph (b) of this section, within 5 business days after first forming the suspicion.

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

3 After section 588GAAB

Insert:

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588GAAC Safe harbour—temporary relief for companies looking for a restructuring practitioner

Safe harbour

(1) Subsection 588G(2) does not apply in relation to a person and a debt incurred by a company if:
  (a) the company is eligible for temporary restructuring relief when the debt is incurred; and
  (b) the debt is incurred in the ordinary course of the company's business; and
  (c) the company has taken all reasonable steps to appoint a restructuring practitioner before the debt was incurred.

(2) A person who wishes to rely on subsection (1) in a proceeding for, or relating to, a contravention of subsection 588G(2) bears an evidential burden in relation to that matter.

When the safe harbour does not apply

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

Definitions

(4) In this section:

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

4 Subsection 1317E(3) (after table item dealing with subsections 344(1) and (1A))

Insert:

subsection 458F(1)	obligation to declare and publish notice if company not eligible for temporary restructuring relief	corporation/scheme

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Schedule 3—Simplified liquidation

Bankruptcy Act 1966

1 Subsection 20-20(5) of Schedule 2

Repeal the subsection, substitute:

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

2 Subsection 20-20(6) of Schedule 2

Repeal the subsection, substitute:

Registration may be subject to conditions

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

Corporations Act 2001

3 Section 9

Insert:

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

4 Section 9

Insert:

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

5 Section 489F

Insert:

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

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(a) a special resolution under section 491 that the company be wound up voluntarily is passed;

(b) if section 446A applies in relation to the company because of paragraph 446A(1)(a)—the resolution referred to in that paragraph is passed;

(c) if section 446A applies in relation to the company because of paragraph 446A(1)(b)—the company first contravenes subsection 444B(2);

(d) if section 446A applies in relation to the company because of paragraph 446A(1)(c)—the resolution referred to in subparagraph 446A(1)(c)(ii) is passed;

(e) if section 446AA applies in relation to the company because of paragraph 446AA(1)(a)—the Court makes an order under section 445D terminating a deed of company arrangement in relation to the company;

(f) if section 446AA applies in relation to the company because of paragraph 446AA(1)(b)—the circumstances specified in the deed of company arrangement in which the deed is to terminate and the company is to be wound up first exist;

(g) if regulations made for the purposes of section 446B have the effect that the company is taken to have passed a special resolution under section 491 that the company be wound up voluntarily—that special resolution is taken to have passed, under the regulations;

(h) any other event prescribed by the regulations.

6 Before section 497

Insert:

Subdivision A—Liquidation process

7 After section 497

Insert:

498 Declaration that company eligible for the simplified liquidation process

(1) The directors of a company must give the liquidator of the company a declaration in accordance with this section if the

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directors believe on reasonable grounds that, on the declaration being given, the eligibility criteria for the simplified liquidation process will be met in relation to the company.

(2) The declaration must:

(a) be given within 5 business days after the day of the meeting of the company at which the resolution for voluntary winding up is passed; and

(b) if there is a prescribed form for the declaration—be in the prescribed form; and

(c) if the regulations prescribe information to be included in the declaration—include that information.

(3) The regulations may prescribe information to be included in a declaration under this section.

8 At the end of Division 3 of Part 5.5

Add:

Subdivision B—Simplified liquidation process for creditors' voluntary winding up of an insolvent company

500A Liquidator may adopt the simplified liquidation process

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

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

(a) more than 20 business days have passed since the day on which the triggering event occurred (see section 489F); or

(b) the liquidator has not given each member and creditor of the company notice in accordance with subsection (3); or

(c) at least 25% in value of the creditors request the liquidator under section 500AB not to follow the simplified liquidation process in relation to the company.

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

(a) a statement that the liquidator believes on reasonable grounds that the eligibility criteria for the simplified liquidation process will be met in relation to the company when the process is adopted;

(b) an outline of the simplified liquidation process containing the prescribed information (if any);

(c) a statement that the liquidator will not adopt the simplified liquidation process if at least 25% in value of the creditors direct the liquidator in writing not to do so;

(d) prescribed information on how a creditor may give a direction in writing not to adopt the simplified liquidation process.

500AA Eligibility criteria for the simplified liquidation process

(1) The ***eligibility criteria*** for the simplified liquidation process are met in relation to a company if:

(a) a triggering event occurs in relation to the company; and

(b) subsection 497(4) (report on company's business affairs etc.) and section 498 (declaration of eligibility for simplified liquidation process) have been complied with, or are taken to have been complied with, in relation to the company; and

(c) the company will not be able to pay its debts in full within a period not exceeding 12 months after the day on which the triggering event occurs; and

(d) if the regulations prescribe a test for eligibility based on the liabilities of the company—that test is satisfied on the day on which the triggering event occurs; and

(e) no person who:

(i) is a director of the company; or

(ii) has been a director of the company within the 12 months immediately preceding the day on which the triggering event occurs;

has been a director of another company that has undergone restructuring or been the subject of a simplified liquidation process within a period prescribed by the regulations, unless

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exempt under regulations made for the purposes of subsection (2) of this section; and

(f) the company has not undergone restructuring or been the subject of a simplified liquidation process within a period prescribed by the regulations, unless exempt under regulations made for the purposes of subsection (2) of this section; and

(g) the company has given returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*).

(2) The regulations may prescribe:

(a) tests for eligibility based on the liabilities of companies for the purposes of paragraph (1)(d); and

(b) circumstances in which the directors of companies are exempt from the requirement in paragraph (1)(e); and

(c) circumstances in which companies are exempt from the requirement in paragraph (1)(f).

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

A creditor of a company may, within 20 business days after the day on which a triggering event in relation to the company occurs, give the liquidator of the company notice in writing requesting the liquidator not to follow the simplified liquidation process in relation to the company.

500AC Liquidator must cease to follow the simplified liquidation process

(1) The liquidator of a company must cease to follow the simplified liquidation process:

(a) if the eligibility criteria for the simplified liquidation process are no longer met in relation to a company; or

(b) in other circumstances prescribed by the regulations.

(2) The regulations may deal with the transition from a simplified liquidation process to another process under this Chapter.

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(3) Without limiting subsection (2), regulations made for the purposes of that subsection may deal with:
  (a) proofs of debts and claims in relation to a company that has ceased to be subject to the simplified liquidation process; and
  (b) ranking debts and claims in relation to a company that has ceased to be subject to the simplified liquidation process; and
  (c) the identification of contributories in relation to a company that has ceased to be the subject of the simplified liquidation process; and
  (d) the declaration and payment of a dividend in the winding up of a company that has ceased to be the subject of the simplified liquidation process; and
  (e) giving information, providing reports and producing documents to ASIC in relation to a company that has ceased to be the subject of the simplified liquidation process.

(4) Regulations made for the purposes of subsection (2) may provide that this Act has effect with any modifications prescribed by the regulations.

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

For the purposes of paragraph 500A(2)(c):
  (a) the value of the creditors at a particular time is to be worked out by reference to the value of the creditors' claims against the company that are known at that time; and
  (b) the regulations may prescribe creditors that are, or are not, to be taken into account.

500AE Simplified liquidation process

(1) The ***simplified liquidation process*** for a creditors' voluntary winding up is the process for a creditors' voluntary winding up set out in this Act, as affected by:
  (a) subsection (2); and
  (b) regulations made for the purposes of subsection (3).

(2) The following provisions do not apply in the simplified liquidation process:
  (a) section 533;

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

(3) The regulations may provide for and in relation to the following:
(a) circumstances in which a transaction is not an unfair preference despite section 588FA;
(b) circumstances in which a transaction is not voidable despite section 588FE;
(c) proofs of debts and claims in relation to a company that is subject to the simplified liquidation process, including:
(i) the preparation and content of formal and informal proofs of debts and claims in relation to the company; and
(ii) the submission of formal and informal proofs of debts and claims to the liquidator of the company; and
(iii) the production of documents and information relating to proofs of debts and claims to the liquidator of the company; and
(iv) withdrawal and variation of proofs of debts and claims in relation to the company; and
(v) the admission and rejection of formal and informal proofs of debts and claims in relation to the company;
(d) the identification of contributories in relation to a company that is the subject of the simplified liquidation process;
(e) the declaration and payment of a dividend in the winding up of a company that is the subject of the simplified liquidation process;
(f) giving information, providing reports and producing documents to ASIC in relation to a company that is the subject of the simplified liquidation process.

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9 In the appropriate position in Chapter 10

Insert:

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

1681 Application of amendments relating to the simplified liquidation process

The amendments made by Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* apply in relation to the winding up of a company because of a triggering event that occurs on or after 1 January 2021.

10 Subsection 20-20(5) of Schedule 2

Repeal the subsection, substitute:

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

11 Subsection 20-20(6) of Schedule 2

Repeal the subsection, substitute:

Registration may be subject to conditions

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

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Schedule 4—Virtual meetings and electronic communications

Part 1—Definitions relating to virtual meetings and electronic communications

Corporations Act 2001

1 Section 9

Insert:

document means any record of information, and includes:

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and

(d) a map, plan, drawing or photograph.

electronic communication means:

(a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or

(b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

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

(a) the most recent electronic address nominated by the addressee to the originator of the electronic communication as the electronic address for receiving electronic communications; or

(b) if:

(i) the addressee has nominated an electronic address as mentioned in paragraph (a) and the originator knows, or

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there are reasonable grounds to believe, that the address is not a current electronic address for the addressee; or

(ii) the addressee has not nominated an electronic address as mentioned in paragraph (a);

an electronic address that the originator believes on reasonable grounds to be a current electronic address for the addressee for receiving electronic communications.

receive, in relation to an electronic communication, has a meaning affected by section 105A.

sent, in relation to an electronic communication, has a meaning affected by section 105A.

virtual meeting technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

2 After section 105

Insert:

105A When is an electronic communication *sent* and *received*

(1) This section applies in relation to an electronic communication unless otherwise agreed between the originator and the addressee of the electronic communication.

(2) An electronic communication is ***sent***:

(a) when the electronic communication leaves an information system under the control of the originator or of the party who sent it on behalf of the originator; or

(b) if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator—when the electronic communication is received by the addressee.

Note: Paragraph (b) would apply to a case where the parties exchange electronic communications through the same information system.

(3) Subsection (2) applies even though the place where the information system supporting an electronic address is located may be different

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from the place where the electronic communication is taken to have been sent under section 105B.

(4) An electronic communication is ***received*** when the electronic communication becomes capable of being retrieved by the addressee at the addressee's nominated electronic address.

(5) It is to be assumed that an electronic communication is capable of being retrieved by the addressee when it reaches the addressee's nominated electronic address.

(6) Subsection (4) applies even though the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is taken to have been received under section 105B.

105B Place where an electronic communication is sent or received

(1) This section applies in relation to an electronic communication unless otherwise agreed between the originator and the addressee of the electronic communication.

(2) An electronic communication is taken to have been sent:
  (a) if the addressee is a company or registered scheme and the originator is a member of the company or registered scheme—from the address of the originator as contained on the register of members of the company or registered scheme at the time the communication is sent; and
  (b) if the originator has a registered office and paragraph (a) does not apply—from the registered office of the originator; and
  (c) otherwise:
    (i) from the most recent physical address nominated by the originator to the addressee; or
    (ii) if the originator has not nominated a physical address as mentioned in subparagraph (i)—from the originator's usual residential address in Australia.

(3) An electronic communication is taken to have been received:
  (a) if the originator is a company or registered scheme and the addressee is a member of the company or registered scheme—at the address of the addressee as contained on the

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register of members of the company or registered scheme at the time the communication is received; and

(b) if the addressee has a registered office and paragraph (a) does not apply—at the registered office of the addressee; and

(c) otherwise:

(i) at the most recent physical address nominated by the addressee to the originator; or

(ii) if the addressee has not nominated a physical address as mentioned in subparagraph (i)—at the addressee's usual residential address in Australia.

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Part 2—Provisions relating to insolvency

Corporations Act 2001

3 Subsection 422B(4) (note)

Repeal the note.

4 Subsection 436DA(3) (notes 1 and 2)

Repeal the notes, substitute:

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

5 Subsection 436E(3) (note)

Repeal the note.

6 Subsection 450A(3) (note)

Repeal the note.

7 Section 450B (note)

Repeal the note.

8 Section 450C (note)

Repeal the note.

9 Section 450D (note)

Repeal the note.

10 Subsection 497(1) (note)

Repeal the note.

11 Subsection 506A(2) (notes 1 and 2)

Repeal the notes, substitute:

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

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12 Subsection 568A(1) (note)

Repeal the note.

13 After paragraph 571(1)(c)

Insert:

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

14 Subsections 579J(1) and (2) (notes 1 and 2)

Repeal the notes, substitute:

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

15 Subsection 579K(1) (notes 1 and 2)

Repeal the notes, substitute:

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

16 Subsection 579K(2) (note)

Repeal the note.

17 Subsection 579K(3) (notes 1 and 2)

Repeal the notes, substitute:

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

18 Subsection 579K(4) (note)

Repeal the note.

19 Section 600G

Repeal the section, substitute:

600G Electronic communication of documents

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

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

(b) required to be signed by a person;

under:

(c) this Chapter; or

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

(e) a provision relating to the external administration of a company that:

(i) is a provision of Chapter 10; or

(ii) is a provision of an instrument made for the purposes of a provision of Chapter 10; or

(iii) is continued in effect by a provision of Chapter 10; or

(iv) is a provision of an instrument made for the purposes of a provision that is continued in effect by a provision of Chapter 10; or

(f) Schedule 2; or

(g) an instrument made for the purposes of a provision of Schedule 2.

Giving a document

(2) The document may be given to the recipient by means of an electronic communication.

(3) The document may be given by giving the recipient (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically.

(4) However, an electronic communication or electronic access may only be used if, at the time the electronic communication is used or information about the electronic access is given:

(a) it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference; and

(b) there is a nominated electronic address in relation to the recipient.

Signing the document

(5) If the document is required to be signed by a person, that requirement is taken to have been met in relation to the electronic communication of the document, or access to the document electronically, if:

(a) the person receives a copy or counterpart of the document:

(i) that is in a physical form; or

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(ii) by means of an electronic communication; and

(b) the copy or counterpart includes the entire contents of the document; and

(c) the person indicates, by means of an electronic communication, that the person has signed the document; and

(d) a method is used to identify the person and to indicate the person's intention in respect of the information communicated in the document; and

(e) the method used was either:

(i) as reliable as appropriate for the purpose for which the document was generated or communicated, in light of all the circumstances, including any relevant agreement; or

(ii) proven in fact to have fulfilled the functions described in paragraph (d), by itself or together with further evidence.

(6) For the purposes of paragraph (5)(b), a copy or counterpart of a document need not include:

(a) the signature of another person signing the document; or

(b) any material included in the document to identify another person signing the document or to indicate another person's intention in respect of the contents of the document.

Application of section to documents given to ASIC

(7) Subsections (2) to (4) do not apply to a document that is required or permitted to be given to ASIC.

(8) If:

(a) under this Act, the signature of a person is required on a document; and

(b) the person signs the document in accordance with subsection (5); and

(c) the person submits the document for lodgement;

ASIC must not refuse to receive or register the document on the basis that the document has not been signed.

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Definitions

(9) In this section:

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

20 In the appropriate position in Chapter 10

Insert:

Part 10.53—Application and transitional provisions relating to meetings and communications under the Corporations Amendment (Corporate Insolvency Reforms) Act 2020

1680 Definitions

In this Part:

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

1680A Application of COVID-19 instrument

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

(a) a meeting of a committee convened under Part 2 of Schedule 2; or

(b) a meeting concerning one or more companies under external administration;

that is held on or after the commencement day.

1680B Validation of things done under COVID-19 instruments

(1) This item applies if, before the commencement day:

(a) a thing is done in accordance with:

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(i) the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*; or

(ii) the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*; and

(b) the thing done would, apart from this item, be invalid or ineffective because it did not satisfy the requirements of this Act.

(2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the thing done satisfied the requirements of this Act.

21 Subsection 70-5(6) of Schedule 2 (note)

Repeal the note.

22 Subsection 70-6(4) of Schedule 2 (note)

Repeal the note.

23 Subsection 70-6(5) of Schedule 2 (note)

Repeal the note.

[*Minister's second reading speech made in—*
House of Representatives on 12 November 2020
Senate on 9 December 2020]

(150/20)

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