



Law Council
OF AUSTRALIA

Business Law Section

31 March 2020

Edward Lee
A/g Principal Legal Officer
Private International and Commercial Law Section
Attorney-General's Department

By email: Edward.lee@ag.gov.au

Dear Mr Lee

Proposed emergency amendments to Insolvency Practice Rules (Bankruptcy) ('IPRB') and Insolvency Practice Schedule (Bankruptcy) ('IPSB') in relation to Covid-19 impact on insolvency practice.

The Insolvency & Restructuring Committee (the **Committee**) of the Business Law Section (**BLS**) of the Law Council of Australia recommends to the Attorney that certain amendments be made to the IPRB and IPSB to allow better management of certain aspects of personal insolvency administrations during this time when the conduct of business is significantly affected by restriction imposed as a result of the Covid-19 pandemic.

The recommended changes are set out in the *attached* schedule.

The recommended changes could either be adopted for a fixed period (say, six months, as is being done in the corporate sphere) or until such later time as the Attorney considers the emergency measures should be repealed.

Please contact the Chair of the Insolvency & Restructuring Committee (Scott Butler, sbutler@mccullough.com.au or 07 3233 8653) if you require further information or clarification.

Yours faithfully,

Greg Rodgers
Chair, Business Law Section

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Bankruptcy Act 1966 (Cth); Insolvency Practice Schedule (Bankruptcy); Insolvency Practice Rules (Bankruptcy)

Section or Rule	Content of Section or Rule	Proposed change
Meetings of creditors		
Insolvency Practice Schedule		
IPSB 75-30: Time and place of meetings	<p>(1): The trustee must convene a meeting of creditors at the time and place that the trustee thinks are most convenient for the majority of persons entitled to receive notice of the meeting.</p> <p>(2): Subsection (1) does not prevent a meeting from taking place at separate venues provided that technology is available at the venues to give all persons attending the meeting a reasonable opportunity to participate.</p>	<p>Issue</p> <p>Meetings should be able to be conducted entirely online. It is not possible to comply with this rule for such virtual meetings.</p> <p>Recommendation</p> <p>There should be an amendment so that meetings can be convened and held entirely online via video conference or audio conference without there needing to be any actual 'place' that the meeting is held.</p>
Insolvency Practice Rules		
IPRB 75-5 to 75-20	<p>Under IPSB 75-15, the trustee of a regulated debtor's estate must convene a meeting of creditors if:</p> <p>(a) where there is a committee of inspection—the committee of inspection directs the trustee to do so;</p> <p>(b) the creditors direct the trustee to do so by resolution;</p> <p>(c) at least 25% in value of the creditors direct the trustee to do so in writing;</p> <p>(d) both of the following are satisfied:</p> <p>(i) less than 25%, but more than 10%, in value of the creditors direct the trustee to do so in writing;</p>	<p>No change required as flexibility exists in IPRB 75-5 as to holding the meeting when it is 'reasonably practicable' in the circumstances.</p>

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	<p>(ii) security for the cost of holding the meeting is given to the trustee before the meeting is convened. However, the trustee of a regulated debtor's estate need not comply with the direction if the direction is not reasonable.</p> <p>IPRB 75-5: a meeting directed to be convened under IPRB 75-15 must be held as soon as reasonably practicable.</p> <p>IPRB 75-10: the trustee must give notice of a meeting of a regulated debtor's creditors which must:</p> <ul style="list-style-type: none"> (a) specify the date, time and place of the meeting; (b) specify the purpose for which the meeting is called; (c) state the effect of section 75-85 (entitled to vote as creditor at meetings of creditors); and (d) be in the approved form. <p>IPRB 75-20: the trustee must give notice of the meeting of creditors not less than 10 business days before the day of the meeting.</p>	
<p>IPRB 75-27: Additional rules for meetings under section 188 of the Act</p>	<p>IPRB 75-27(1): A meeting called under section 188 must be held not more than 30 business days after the relevant consent or approval was given.</p> <p>IPRB 75-27(2A): The regulated debtor must, unless prevented by illness or other sufficient cause, attend the meeting. However, a failure of the debtor to attend the meeting does not affect the validity of any resolution passed at the meeting.</p>	<p>Issue Compliance with working from home recommendations may make it difficult for controlling trustees to gather the information required to properly consider a debtor's proposal for a personal insolvency agreement and prepare a report to creditors and convene and hold a meeting within 30 business days.</p> <p>Recommendation IPRB 75-27(1) be amended so that a meeting called under section 188 must be held not more than 60</p>

		business days after the relevant consent or approval was given.
Procedure at meetings		
Insolvency Practice Schedule		
IPSB 75-25: Trustee's representative at meetings	<p>The trustee may, in writing, appoint a person to represent the trustee at a meeting.</p> <p>If the trustee is not personally present at a meeting, then a reference in a provision of this Act to a trustee, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the trustee at the meeting.</p> <p>IPRB 75-50: the trustee of a regulated debtor's estate must preside at meetings of creditors (except where a person has been appointed to represent the trustee).</p>	<p>No change required.</p> <p>Whilst the language refers to being present or presiding 'at' a meeting of creditors and this could be considered to refer to being physically present at a location where a meeting is being held, the language is wide enough to refer to a meeting held wholly online.</p>
Insolvency Practice Rules		
IPRB 75-140: Adjournment of meetings of creditors	<p>A meeting may be adjourned from time to time and from place to place by:</p> <p>(a) resolution; or</p> <p>(a) the person presiding at the meeting.</p> <p>IPRB 75-140(2): the meeting must not be adjourned to a day that is more than 15 business days after the day on which the original meeting was held.</p> <p>IPRB 75-140(3): Unless otherwise provided by the resolution by which it is adjourned, the adjourned meeting must be held at the same place as the original meeting.</p>	<p>Issue</p> <p>Meetings should be able to be conducted entirely online. It is not possible to comply with IPRB 75-140(3) for such virtual meetings.</p> <p>Recommendation</p> <p>There should be an amendment to IPRB 75-140(3) so that if the meeting was convened and held entirely online via video conference or audio conference, the adjourned meeting does not need to be held 'at the same place' as the original meeting..</p>

	<p>IPRB 75-140(4): The trustee must immediately give notice of the adjournment to the persons whom notice of the meeting must be given under section 75-10.</p> <p>IPRB 75-140(5): If a meeting is adjourned to a day more than 6 business days after the passing of the resolution by which it is adjourned, the trustee must cause notice of the day, time and place of the resumption of the meeting to be electronically lodged with ASIC in accordance with subregulation 5.6.75(4) of the regulations at least 5 business days before that day.</p> <p>IPRB 75-140(7): A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.</p>	
Committees of inspection		
Insolvency Practice Schedule		
<p>IPSB 75-45: Reporting to committee of inspection</p>	<p>If a committee of inspection makes a request for information or a report or document under IPSB 80-40, the trustee must give the information, report or document within 5 business days after receiving the request, or such later period as agreed with the committee.</p> <p>If the trustee is reasonably satisfied that, due to the nature of the request, an extension of time is required to comply with it, the trustee may, by written notice, extend the period for compliance</p>	<p>No change required. There is sufficient flexibility given the ability to extend time for compliance.</p>
Insolvency Practice Rules		
<p>IPRB 80-5: Eligibility and Procedures</p>	<p>IPSB 80-30(1) provides that, subject to the IPRB, a committee of inspection is to determine its own procedures.</p>	<p>Issue Meetings of a committee of inspection should be able to be conducted entirely online. It is not possible to comply with this rule for entirely virtual meetings.</p>

	<p>IPRB 80-5(3): A committee of inspection must meet at such times and places as its members from time to time appoint.</p> <p>IPRB 80-5(5): A committee of inspection may act by a majority of its members present at a meeting, but must not act unless a majority of its members are present.</p>	<p>Recommendation</p> <p>There should be an amendments to IPRB 80-5(3) and IPRB 80-5(5) so that meetings can be convened and held entirely online via video conference or audio conference without there needing to be any actual 'place' that the meeting is held.</p>
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