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INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018 (ACT 40 OF 2018)

INSOLVENCY, RESTRUCTURING AND DISSOLUTION (VOLUNTARY ARRANGEMENTS) REGULATIONS 2020

ARRANGEMENT OF REGULATIONS

In exercise of the powers conferred by section 449 of the Insolvency, Restructuring and Dissolution Act 2018, the Minister for Law makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations are the Insolvency, Restructuring and Dissolution (Voluntary Arrangements) Regulations 2020 and come into operation on 30 July 2020.

Definitions

2. In these Regulations —

"Court" includes the Registrar when exercising the powers of the General Division of the High Court under Part 14 of the

Act or the Insolvency, Restructuring and Dissolution (Personal Insolvency) Rules 2020 (G.N. No. S 585/2020);

[S 1049/2020 wef 02/01/2021]

"creditors' meeting" means a meeting of creditors summoned under section 281 of the Act;

"nominee" has the meaning given by section 273(1) of the Act;

"nominee's report" means a report required to be submitted under section 280(1) of the Act by a nominee;

"proposal" means a proposal by a debtor for a voluntary arrangement for the purposes of Part 14 of the Act.

Notices to be in writing

3. All notices required to be given under Part 14 of the Act or these Regulations must be in writing, unless these Regulations otherwise provide or the Court otherwise orders.

PART 2

DEBTOR'S PROPOSAL

Preparation of proposal

4. A proposal must be prepared —

(*a*) where the debtor in question is an individual — by the debtor; or

(*b*) where the debtor in question is a firm — jointly by all or a majority of the partners of the firm.

Contents of proposal

5.—(1) The proposal must —

(*a*) identify the debtor and, in the case where the debtor is a firm, all the partners of the firm;

(*b*) explain why the debtor thinks a voluntary arrangement is desirable; and

(*c*) explain why the creditors are expected to agree with the proposed arrangement.

(2) The proposal must state —

(*a*) the following information so far as within the debtor's immediate knowledge:

(i) the debtor's assets, and an estimate of the value of each asset;

(ii) the extent (if any) to which each asset is charged in favour of creditors;

(iii) the extent (if any) to which each asset is to be excluded from the voluntary arrangement;

(*b*) the particulars of any property (other than an asset of the debtor) that is proposed to be included in the voluntary arrangement, and —

(i) the source of the property; and

(ii) the terms on which the property is made available for inclusion;

(*c*) so far as within the debtor's immediate knowledge, the nature and amount of the debtor's liabilities, the manner in which the liabilities are to be met, modified, postponed or otherwise dealt with by means of the voluntary arrangement, and in particular —

(i) how the preferential creditors and creditors who are or who claim to be secured are proposed to be dealt with; and

(ii) how those creditors who are associates of the debtor are proposed to be treated;

(*d*) whether there are, to the debtor's knowledge, any circumstances giving rise to the possibility, in the event that the debtor should be adjudged bankrupt, of any claim under section 361, 362, 366 or 438 of the Act (or any previous written law corresponding to those sections);

(*e*) where any circumstances mentioned in sub-paragraph (*d*) are present, whether, and if so how, provision is proposed under the voluntary arrangement to be made for wholly or partly indemnifying the insolvent estate in respect of the claim;

(*f*) whether any, and if so what, guarantee has been given of any of the debtor's debts by any other person, specifying which (if any) of the guarantors is an associate of the debtor;

(*g*) the proposed duration of the voluntary arrangement;

(*h*) the proposed dates of distributions to creditors, with estimates of the amounts to be distributed;

(*i*) in relation to the nominee of the voluntary arrangement —

(i) the functions to be undertaken by the nominee when supervising the implementation of the voluntary arrangement;

(ii) the amount of remuneration proposed to be paid to the nominee;

(iii) the estimated amount of expenses of the nominee proposed to be paid to the nominee; and

(iv) the manner in which the nominee's remuneration and expenses are proposed to be paid;

(*j*) whether any guarantee is to be offered by any person other than the debtor for the purposes of the voluntary arrangement, and whether any, and if so what, security is given or sought for the guarantee;

(*k*) the manner in which funds held for the purposes of the voluntary arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;

(*l*) in the event that any funds are to be paid to any creditor but not so paid at the termination of the voluntary arrangement, the manner in which those funds are to be dealt with;

(*m*) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the voluntary arrangement; and

(*n*) details of any further credit facilities to be arranged for the debtor under the voluntary arrangement, and how the debts so arising are to be paid.

(3) Where the debtor is a firm, any reference in paragraph (2) to the assets, associates, business, debts, liabilities or property of the debtor is a reference to the assets, associates, business, debts, liabilities or property (as the case may be) of the firm and each partner of the firm.

Notice of proposal

6.—(1) A debtor making a proposal must give the intended nominee written notice of the proposal.

(2) The notice must be accompanied by a copy of the proposal and delivered to —

(*a*) the person intended by the debtor to be appointed as nominee under the proposal (called in this regulation the intended nominee); or

(*b*) a person authorised to take delivery of documents on behalf of the intended nominee.

(3) If the intended nominee agrees to act, he or she must —

(*a*) endorse on a copy of the notice that —

(i) the notice was received by him or her on a specified date; and

(ii) he or she agrees to act; and

(*b*) return that copy of the notice immediately to the debtor at the address specified by the debtor in the notice for that purpose.

Amendment of proposal

7. A proposal may, with the written approval of the nominee in question, be amended at any time before the submission of the nominee's report to the Court under section 280(1) of the Act.

PART 3

INFORMATION, ETC., FOR PREPARATION OF NOMINEE'S REPORT

Statement of debtor's affairs

8.—(1) The statement of the debtor's affairs required to be submitted by a debtor to a nominee under section 280(2)(*b*) of the Act must —

(*a*) be in the current version of Form VA-1 set out on the Internet website of the Ministry of Law at https://www.mlaw.gov.sg; and

(*b*) be submitted to the nominee within —

(i) 7 days after the date of the delivery of the debtor's proposal to the nominee; or

(ii) any longer time allowed by the nominee.

(2) Where the debtor is a firm —

(*a*) the partners in the firm must jointly submit to the nominee a statement of their partnership affairs; and

(*b*) each partner in the firm must submit to the nominee a statement of the partner's separate affairs as part of the firm's statement of affairs.

(3) For the purposes of section 280(2)(*b*) of the Act, the prescribed particulars of the assets, creditors, debts and other liabilities of a debtor or a partner of a debtor that is a firm, are as follows:

(*a*) a list of the debtor's or partner's assets, divided into categories that are appropriate for each identification, and the estimated value of each asset;

(*b*) in the case of any property on which a claim against the debtor or partner is wholly or partly secured, the particulars of the claim, its amount, and how and when the security was created;

(*c*) the names and addresses of the debtor's or partner's preferential creditors, with the amounts of their respective claims;

(*d*) the names and addresses of the debtor's or partner's unsecured creditors, with the amounts of their respective claims;

(*e*) the particulars of any debts owed by the debtor or partner to persons who are associates of the debtor or partner, as the case may be;

(*f*) the particulars of any debts owed by associates of the debtor or partner;

(*g*) any other particulars as the nominee may in writing require to be provided for the purposes of making the nominee's report.

(4) The statement of affairs must be prepared up to —

(*a*) a date not more than 14 days before the date of the delivery of the notice to the nominee under regulation 6; or

(*b*) any earlier date (not being more than 2 months before the date of the delivery of the notice to the nominee under regulation 6) that the nominee may allow.

(5) The statement of affairs must be verified by statutory declaration —

(*a*) where the debtor is an individual — by the debtor; or

(*b*) where the debtor is a firm — by each partner who joined in the preparation of the proposal in question.

Additional disclosure for assistance of nominee

9.—(1) If it appears to a nominee that the nominee cannot properly prepare his or her report to the Court on the basis of information in the debtor's proposal and statement of affairs, the nominee may require the debtor to provide the nominee with more information which the nominee thinks necessary for the purposes of the report, including —

(*a*) further and better particulars as to the circumstances in which, and the reasons why, the debtor is insolvent or threatened with insolvency;

(*b*) particulars as to the circumstances in which, and the reasons why, the debtor has at any time —

(i) been adjudged bankrupt in Singapore or elsewhere; or

(ii) been subject to a debt repayment scheme under Part 15 of the Act or a voluntary arrangement under Part 14 of the Act or a similar scheme or arrangement outside Singapore;

(*c*) particulars of each bankruptcy, scheme and arrangement mentioned in sub-paragraph (*b*), including particulars of each previous proposal made by the debtor under Part 14 of the Act or a similar arrangement outside Singapore;

(*d*) any further information with respect to the debtor's affairs; and

(*e*) information whether the debtor has at any time been involved in the affairs of any company (whether incorporated in Singapore or elsewhere) which has become insolvent.

(2) In this regulation, a reference to a Part of the Act includes a reference to any previous written law corresponding to that Part.

Access to accounts and reports

10. A debtor who has made a proposal must give the nominee access to any accounts and records of the debtor which are necessary for enabling the nominee to prepare the nominee's report.

PART 4

CREDITORS' MEETING TO CONSIDER DEBTOR'S PROPOSAL

Summoning of creditors' meeting

11.—(1) A nominee who is required under section 281(1) of the Act to summon a creditors' meeting must send notices summoning the meeting at least 14 days before the day on which the meeting is to be held.

(2) The day on which the creditors' meeting is to be held must be a day at least 14 days but not more than 28 days after the day on which the nominee's report is submitted to the Court.

(3) The nominee must state in each notice summoning the creditors' meeting —

(*a*) the day on which the creditors' meeting is to be held;

(*b*) the time and venue of the creditors' meeting;

(*c*) the date of submission of the nominee's report to the Court; and

(*d*) any direction or order made by the Court under section 280(3), (4) or (5) of the Act in relation to the matter.

(4) In addition to the information mentioned in paragraph (3), the nominee must in each notice summoning the creditors' meeting draw the creditors' attention to section 282(1) of the Act and regulation 14.

(5) A nominee must enclose with each notice summoning a creditors' meeting —

(*a*) a form of proxy;

(*b*) a copy of the proposal to be considered by the creditors' meeting and the nominee's comments (if any) on the proposal; and

(*c*) either —

(i) a copy of the statement of the debtor's affairs submitted to the nominee under section 280(2)(*b*) of the Act; or

(ii) a summary of the statement mentioned in sub-paragraph (i) which includes a list of creditors and the amounts owed to each creditor.

Chairperson of creditors' meeting

12.—(1) The nominee appointed under a proposal is, by default, the chairperson of the creditors' meeting to consider the proposal.

(2) The chairperson of a creditors' meeting must not, by virtue of any proxy held by the chairperson, vote to increase or decrease the amount of the remuneration or expenses of the nominee in question or the expenses relating to the supervision of the voluntary arrangement in question, unless the proxy specifically directs the chairperson to so vote.

Entitlement to vote in creditors' meeting

13.—(1) Subject to paragraph (2), every creditor who has been given notice of a creditors' meeting is entitled to vote at the creditors' meeting or any adjournment of the creditors' meeting.

(2) A creditor may not vote in respect of —

(*a*) any debt for an unliquidated amount; or

(*b*) any debt the value of which is not ascertained,

unless the chairperson of the creditors' meeting agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(3) The value of a vote cast by a creditor at a creditors' meeting is calculated according to the amount of debt owed to the creditor as at the date of the creditors' meeting.

(4) The chairperson of a creditors' meeting may, in relation to a creditor's claim for the purpose of the creditor's entitlement to vote at the creditors' meeting, admit or reject a creditor's claim (or any part of the claim).

(5) Any decision of the chairperson of a creditors' meeting on entitlement to vote is subject to appeal to the Court by any creditor or the debtor in question.

(6) If the chairperson of a creditors' meeting is in doubt whether a creditor's claim (or any part of the claim) should be admitted or rejected, the chairperson must mark a creditor's claim (or any part of the claim) as objected to and allow the creditor to vote, subject to the vote (or any part of the vote) being subsequently declared invalid if the objection to the claim is sustained.

Proceedings of creditors' meeting

14.—(1) A resolution proposed at a creditors' meeting (other than one to approve a proposed voluntary arrangement or any modification to a proposed voluntary arrangement) may be approved by ordinary resolution.

(2) In the following cases, the chairperson of a creditors' meeting must leave out of account a creditor's vote (or any part of the vote) in a creditors' meeting in respect of any claim (or any part of the claim):

(*a*) where written notice of the claim was not given to the chairperson of the creditors' meeting before or at the creditors' meeting;

(*b*) where the claim (or any part of the claim) is secured;

(*c*) where the claim (or any part of the claim) is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing to —

(i) treat the liability of every person (being a person against whom a bankruptcy order has not been made or which has not gone into liquidation) who is liable on the bill or note antecedently to the debtor as security in the creditor's hands; and

(ii) estimate the value of the security and deduct it from the creditor's vote for the purpose of entitlement to vote at the creditors' meeting (but not of any distribution under the arrangement).

(3) Any decision of the chairperson of a creditors' meeting under paragraph (2) is subject to appeal to the Court by any creditor or the debtor in question.

(4) If the chairperson of a creditors' meeting is in doubt whether a creditor's claim (or any part of the claim) should be left out of account, the chairperson must mark a creditor's claim (or any part of the claim) as objected to and allow the vote to be taken into account, subject to the vote (or any part of the vote) being subsequently taken out of account if the objection to the claim is sustained.

(5) If the chairperson of a creditors' meeting uses a proxy contrary to regulation 12(2), the chairperson's vote with that proxy is to be left out of account.

Adjournments

15.—(1) Subject to paragraph (3), the chairperson of a creditors' meeting may adjourn the meeting from time to time if —

(*a*) the requisite majority for the approval of the proposal (with or without modification) has not been obtained; or

(*b*) the chairperson for any other reason thinks fit to do so.

(2) Subject to paragraph (3), the chairperson of a creditors' meeting must adjourn the meeting from time to time if it is so resolved by the meeting.

(3) The date of any adjourned meeting must be no later than 14 days after the date of the first meeting.

(4) The chairperson of a creditors' meeting that is adjourned must give notice of the adjournment to the Court.

(5) If a proposal is not approved (with or without modification) by a creditors' meeting upon the expiry of 14 days after the date of the first meeting, the proposal is treated as if the creditors' meeting has declined to approve it.

PART 5

ACTIONS FOLLOWING CREDITORS' MEETING

Nominee's report to Court

16.—(1) The report that a nominee is required to submit to the Court under section 283(1) of the Act after the conclusion of a creditors' meeting must state the following:

(*a*) whether the proposal considered by the creditors' meeting was approved or rejected and, if approved, with what modifications (if any);

(*b*) the resolutions that were taken at the creditors' meeting and the decision on each one of those resolutions;

(*c*) a list of the creditors (with their respective values) who were present or represented at the creditors' meeting, and how they voted on each resolution;

(*d*) any other information that the nominee thinks appropriate to be made known to the Court.

(2) The nominee must —

(*a*) file in Court a copy of the report mentioned in paragraph (1) within 4 days after the date of the conclusion of the creditors' meeting in question; and

(*b*) immediately after the filing of the report mentioned in sub-paragraph (*a*), serve a notice of the results of the creditors' meeting on each creditor who was given a notice summoning the creditors' meeting.

Debtor to put nominee in possession of assets

17. A debtor must, after the approval of a voluntary arrangement proposed by the debtor, do all that is required for putting the nominee in question in possession of the assets included in the voluntary arrangement.

Nominee's accounts and progress reports

18.—(1) A nominee supervising a voluntary arrangement in relation to a debtor must comply with paragraphs (2) and (3) if the voluntary arrangement authorises or requires the nominee —

(*a*) to carry on any business or trade of the debtor on the debtor's behalf or in the debtor's name;

(*b*) to realise any asset of the debtor; or

(*c*) otherwise to administer or dispose of any funds of the debtor.

(2) The nominee must keep accounts and records of the nominee's acts and dealings in and in connection with the voluntary arrangement mentioned in paragraph (1), including records of all receipts and payments of moneys.

(3) The nominee must —

(*a*) once every 12 months or less beginning with the date of the nominee's appointment, prepare a summary of receipts and payments mentioned in paragraph (2) made during a relevant period; and

(*b*) no later than 2 months after the end of the relevant period, send a copy of the summary mentioned in sub-paragraph (*a*), accompanied by the nominee's comments on the progress and efficacy of the voluntary arrangement, to —

(i) the Court;

(ii) the debtor in question; and

(iii) every creditor bound by the voluntary arrangement.

(4) If the voluntary arrangement being supervised by a nominee is otherwise than that described in paragraph (1), the nominee must, once every 12 months or less beginning with the date of the nominee's appointment, send a report on the progress and efficacy of the voluntary arrangement to —

(*a*) the Court;

(*b*) the debtor in question; and

(*c*) every creditor bound by the voluntary arrangement.

(5) The Court may, on application by the nominee, vary the frequency of sending the summary or report mentioned in paragraph (3) or (4), or the dates by which such summary or report is required to be sent.

(6) In this regulation, "relevant period" means the period of 12 months or less beginning with —

(*a*) the date of the implementation of the voluntary arrangement mentioned in paragraph (1); or

(*b*) the day following the last day of the last period for which the summary mentioned in paragraph (3) was prepared.

Nominee to send notice of completion

19.—(1) A nominee supervising a voluntary arrangement must, within 28 days after the completion of the voluntary arrangement —

(*a*) file with the Court a notice that the voluntary arrangement has been fully implemented; and

(*b*) send the notice mentioned in sub-paragraph (*a*) to the debtor in question and every creditor bound by the voluntary arrangement.

(2) The nominee must enclose in every notice filed or sent by the nominee under paragraph (1) a report which —

(*a*) summarises all receipts and payments made by the nominee in pursuance of the voluntary arrangement in question; and

(*b*) explains any difference in the actual implementation of the voluntary arrangement as compared with the proposal as approved by the creditors' meeting.

(3) The Court may, on application of the nominee, extend the period of 28 days mentioned in paragraph (1).

PART 6

MISCELLANEOUS

Fees, costs, charges and expenses of voluntary arrangement

20. The fees, costs, charges and expenses that a nominee may incur in connection with a voluntary arrangement are —

(*a*) any disbursements made by the nominee prior to the approval of the nominee's appointment;

(*b*) any remuneration for the services of the nominee as agreed between the nominee and the debtor in question; and

(*c*) any fees, costs, charges or expenses which —

(i) are sanctioned by the terms of the voluntary arrangement; or

(ii) would be payable, or correspond to those which would be payable, in the event of the debtor's bankruptcy.

Made on 16 June 2020.

LOH KHUM YEAN
Permanent Secretary,
Ministry of Law,
Singapore.

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