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

INSOLVENCY, RESTRUCTURING AND DISSOLUTION (ELECTRONIC MEETING AND RESOLUTION BY CORRESPONDENCE) REGULATIONS 2020

ARRANGEMENT OF REGULATIONS

Regulation

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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:

Citation and commencement

1. These Regulations are the Insolvency, Restructuring and Dissolution (Electronic Meeting and Resolution by Correspondence) Regulations 2020 and come into operation on 30 July 2020.

Definitions

2. In these Regulations, unless the context otherwise requires —
“convener” has the meaning given by section 445(2) of the Act;
“relevant officeholder” has the meaning given by section 441(3) of the Act.

Meetings under section 445 of Act where no place specified

3.—(1) This regulation applies where a convener proposing to call a meeting mentioned in section 445(1) of the Act —

- (a) forms the opinion mentioned in section 445(6)(b) of the Act that it is unnecessary or inexpedient to specify a place for a meeting which —
 - (i) is to be conducted and held in the manner mentioned in section 445(2) of the Act; and
 - (ii) will be attended by persons who will not be present together at the same place; and
- (b) proposes to call the meeting without specifying a place for the meeting (called in this regulation and regulations 4 and 5 the proposed virtual meeting).

(2) The convener must summon, call or convene the proposed virtual meeting by delivering, at least 7 days earlier than the notice period applicable to that meeting —

- (a) the notice required to summon, call or convene the meeting to every person who is entitled to receive notice of the meeting; and
- (b) a notice containing the following information:
 - (i) any necessary information as to how to attend the meeting remotely including any telephone number, access code or password required;
 - (ii) a statement that creditors or contributories who meet the threshold in section 445(8)(c)(i) of the Act or members who meet the threshold in section 445(8)(c)(ii) of the Act, may no later than 5 days after the date of the notice, require the convener to specify a place for the meeting.

Procedure for requests for place for meeting to be specified

4.—(1) Where a proposed virtual meeting has been summoned, called or convened, a creditor, contributory or member (as the case may be) may request the convener in writing no later than 5 days after

the date of the notice mentioned in regulation 3(2)(b), to specify a place for the meeting.

(2) It is the convener's responsibility to check whether any request for a place for the meeting to be specified is submitted before the deadline and if so whether in aggregate it meets or surpasses one of the thresholds under section 445(8)(c) of the Act requiring the convener to specify a place for the meeting.

(3) Where the prescribed threshold of creditors or contributories or members under section 445(8)(c)(i) or (ii) of the Act is met, the convener must —

- (a) not later than 3 days after the expiry of the time specified in regulation 3(2)(b), deliver a notice to all persons who were given notice of the meeting —
 - (i) to inform the persons that the meeting will be held at a specified place; and
 - (ii) stating whether the convener will be permitting any creditor, contributory or member (as the case may be) to attend the meeting remotely; and
- (b) give at least 7 days' notice of the specified place for the meeting to all those previously given notice of the meeting.

(4) Where the convener has specified a place for the meeting under this regulation, the chairperson of the meeting must attend the meeting physically at that place.

Technological failure affecting remote attendance at meeting

5.—(1) In the case of a proposed virtual meeting, or a meeting held at a specified place but with one or more creditors, contributories or members attending remotely, the chairperson of the meeting must, immediately after becoming aware of the failure of the electronic means that is or is to be used to enable the remote attendance of one or more creditors, contributories or members, ascertain —

- (a) whether as a result of the failure of the electronic means, any creditor, contributory or member is unable to attend in accordance with section 445(3) of the Act the meeting held in accordance with section 445(2) of the Act; and

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- (b) whether the inability of one or more creditors, contributories or members to remotely attend the meeting may, taken as a whole, have a material impact on the result of voting on a resolution at the meeting.
- (2) The chairperson of the meeting mentioned in paragraph (1) must ensure that the meeting is held in a manner that meets the legitimate interests of the members or contributories of the company, creditors and others attending the meeting, including the legitimate interests of any creditor, contributory or member who is unable to attend that meeting in accordance with section 445(3) of the Act.
- (3) The chairperson must adjourn the meeting mentioned in paragraph (1) if, having ascertained under paragraph (1)(b) that the inability of one or more creditors, contributories or members to remotely attend the meeting may have a material impact on the result of voting on a resolution at the meeting, the chairperson considers that the legitimate interests of the creditors, contributories or members (as the case may be) cannot be met due to the failure of the electronic means.
- (4) Any creditor, contributory or member who is aggrieved by his or her inability to remotely attend the meeting mentioned in paragraph (1) as a result of the failure of the electronic means, may apply to the Court for a declaration that the voting on any resolution conducted at the meeting is void, and for an order that another meeting be held to consider the resolution concerned.
- (5) The Court hearing an application mentioned in paragraph (4) may —
- (a) by order declare that the voting on any resolution conducted at the meeting is void, and order that another meeting be held to consider the resolution concerned; or
- (b) make any other order the Court thinks just.

Notices to creditors or contributories, etc., for resolutions by correspondence under section 446 of Act

6.—(1) This regulation applies where a relevant officeholder seeks to obtain the passing of a resolution by creditors of a company or an

individual, or by contributories of a company, under section 446 of the Act without holding a meeting.

(2) The relevant officeholder must give the same length of notice of the resolution as each creditor or contributory would be entitled to receive if notified of a meeting at which the resolution could be passed.

(3) The notice of the proposed resolution mentioned in section 446(1) of the Act must contain the following:

- (a) identification details for the proceedings;
- (b) details of the resolution which is sought;
- (c) a statement that the creditor or contributory (as the case may be) may vote in writing, or if the relevant officeholder so decides, in a permitted alternative form in accordance with the arrangements which the relevant officeholder is using;
- (d) a statement of the decision date;
- (e) the closing date and time for the counting of the vote, which must be in accordance with section 446(2)(a) and (4) of the Act;
- (f) a statement that creditors or contributories who meet the threshold in paragraph (4) or section 446(7) or (8) of the Act may within 7 days after the notice is given, require the relevant officeholder to summon a meeting to consider the resolution.

(4) Creditors whose debts amount to at least 10% of the total debts of an individual may, within 7 days after the giving of notice provided for in section 446(1) of the Act, require the relevant officeholder to summon a meeting of creditors to consider the resolution.

(5) The details in the notice must be set out in such a way that the recipient may indicate agreement to or dissent from the proposed resolution, and where there is more than one resolution may indicate agreement to or dissent from each resolution separately.

(6) Where the relevant officeholder arranges for voting in a permitted alternative form, in accordance with section 446(10) of the Act —

- (a) the notice mentioned in section 446(1) of the Act must give the creditor or contributory all necessary information as to how to access the voting system including any password required;
- (b) the voting system must be a system capable of enabling a creditor to vote at any time between the date of the notice and the closing date and time;
- (c) during the course of a vote, the voting system must not provide any creditor with information concerning the vote cast by any other creditor or contributory; and
- (d) the relevant officeholder must make appropriate arrangements to ensure that, in the event of failure of the voting system, the vote of the creditor or contributory is received and taken into account.

(7) Where the relevant officeholder is required by creditors or contributories under paragraph (4) or section 446(7) or (8) of the Act to summon a meeting of creditors or contributories, the relevant officeholder must summon the meeting in accordance with the applicable provisions of the Act or regulations.

Made on 16 June 2020.

LOH KHUM YEAN
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Singapore.*

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