

Chartered Accountants Ireland or CCAB-I material

Technical Alerts

Companies (Miscellaneous Provisions) (Covid-19) Act 2020

TA 01/2021 - Guidance for Insolvency Practitioners – Meeting of creditors during Covid-19 pandemic restriction on movement and public gatherings

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland, The Association of Chartered Certified Accountants, The Institute of Certified Public Accountants and Chartered Institute of Management Accountants.

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Introduction

Technical Alert TA 01-2020, “**Guidance for Insolvency Practitioners – Meeting of creditors during Covid-19 pandemic restriction on movement and public gatherings**”, was released in April 2020. The alert was released during the global pandemic when practitioners had no legislative guidance on how members and creditors of companies could conduct the business of the company at a time when physical meetings of members and/or creditors were severely curtailed or prohibited due to public health guidance from the Irish government.

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (referred to herein as the “COVID Act 2020”) was enacted on 1 August 2020 and its provisions were commenced on 21 August 2020. It now makes legislative provision for how these matters should be dealt with and some of the provisions regarding creditor meetings are outlined in the paragraphs below.

Therefore, Technical Alert TA 01-2020 is now withdrawn and the guidance below is issued in its place.

Interim Period

The COVID Act 2020 provides for an “interim period”, which is a temporary period during which the amendments contained in the COVID Act 2020 will be operational. The period began on the 21 August 2020 and ended on 31 December 2020. The interim period was further extended to 9 June 2021 in respect of the matters dealt with below by the Companies Act 2014 (Section 12 A (1)) (Covid-19) Order 2020 (SI 672 /2020). This Technical Alert is operational for so long as any relevant provisions of the COVID Act 2020, together with any further legislative extensions from time to time, remain in force.

Provision for electronic meetings

Section 19 of the COVID Act 2020 inserts a new provision section 690A in the Companies Act 2014 (“2014 Act”), titled “Creditors’ meetings conducted by electronic means during interim period”. During the interim period under 690A (2), the person summoning, convening or calling the meeting need not hold a creditors’ meeting at a physical venue but may conduct that meeting wholly or partly by the use of electronic communications technology.

Notice

Sections 15 and 16 the COVID Act 2020 have amended section 584 (the duty of a liquidator to call a creditor meeting) and section 587 (meeting of creditors) of the 2014 Act to insert additional provisions as to what the notice of the meeting must include if the meeting is to be held electronically during the interim period.

The notice must specify:

- (a) the electronic platform to be used for the meeting,
- (b) details for access to the electronic platform,
- (c) the time and manner by which a person attending must confirm his or her intention to attend,
- (d) any requirements or restrictions which the person summoning, convening, or calling the meeting has put in place in order to identify persons who intend to attend the meeting,
- (e) the procedure for persons attending to communicate questions and comments during the meeting,

and

- (f) the procedure to be adopted for voting on resolutions proposed to be passed at the meeting.

Under section 584, this information does not have to be advertised in Iris Oifigiúil/newspapers.

Conduct of meetings

Section 19 of the COVID Act 2020 sets out additional provisions to those contained in the 2014 Act in respect of creditors’ meetings conducted by electronic means during the interim period. These provisions include, for example:

- Attendees must have a reasonable opportunity to participate in the meeting,
- No requirement for physical presence of attendees or proxies,
- The technology must enable attendees to hear what is being said and to speak and submit questions and comments,

- Temporary failure or disruption of the electronic communications technology does not invalidate the meeting or proceedings,
- There is no liability on the person summoning, convening or calling the meeting for failure or disruption unless it was a wilful act.

These provisions are included in the new section 690 A inserted by the COVID Act 2020.

Voting

Section 690 A (10) provides that where a creditors' meeting is held by electronic communications, the person summoning, convening, or calling the meeting may conduct a vote to decide on a resolution by show of hands where satisfied that s/he can identify the attendees entitled to vote and verify the content of their voting instruction.

Proxy

Section 24 of the COVID Act 2020 inserts a provision into section 701 of the 2014 Act which deals with proxies, as follows:

Section 701 (1A): During the interim period, a creditor, a contributory or a member may vote either by means of electronic communications technology or by proxy.

Passing of resolutions

Section 22 of the COVID Act 2020 inserts new provisions into section 695 of the 2014 Act, which deals with passing of resolutions.

Section 695 (1) deems a resolution as passed when a majority in number and value of creditors personally or by proxy vote in favour. Newly inserted (1A) provides that notwithstanding (1), that a resolution at a meeting of creditors held wholly or partly by electronic communications during the interim period is deemed passed when a majority in number and value of those attending the meeting by electronic communications vote in favour of the resolution.

Section 695 (2) deems a resolution as passed when a majority in number and value of contributories personally or by proxy vote in favour. Subsection (2A) provides that notwithstanding (2), where a meeting of contributories is held wholly or partly by electronic communications that a resolution shall be deemed to be passed when a majority in number and value of those attending the meeting by electronic communications vote in favour of the resolution.