

High Court provides guidance on voluntary administration and creditors' meetings under COVID-19 Alert Level 4

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A recent decision of the High Court of New Zealand provides helpful guidance for insolvency practitioners on how aspects of the voluntary administration regime should operate in the context of the COVID-19 pandemic.

On 30 March 2020, the board of directors of EncoreFX (NZ) Limited resolved to appoint administrators to the company. By then, New Zealand was already at Level 4 on the four-level alert system for COVID-19.

The administrators Ernst & Young applied to the Court on a without notice basis, seeking orders to modify the default statutory requirements under the Companies Act 1993 (Act) that relate to the first creditors' meeting, methods of voting, and communications with creditors. The administrators sought orders permitting them to conduct those aspects of the voluntary administration electronically. The administrators asserted that the COVID-19 lockdown made it impossible, impracticable, and undesirable to comply with the default statutory requirements, which by and large do not facilitate the conduct of a voluntary administration electronically.

Under s 239AN of the Act, the purpose of the first creditors' meeting is to decide whether to appoint a creditors' committee and whether to replace the administrators. The meeting must be held within 8 working days after the date on which the administration began. Accordingly, in the absence of the orders sought, it would have been impossible for the administrators to hold the first creditors' meeting.

The High Court released its decision yesterday granting the orders sought. The default statutory requirements were amended as follows:

- Documents and notices required to be sent under Part 15A of the Act were permitted to be sent by posting a copy on EncoreFX's website and emailing a copy to the email address of the creditors
- The first creditors' meeting was permitted to proceed by way of video or telephone conference
- Any documents required to be tabled at the first creditors' meeting were permitted to be tabled by posting them to EncoreFX's website or emailing it to be creditors
- The creditors were permitted to vote at the first creditors' meeting by electronic means (such as email).

Of note, the application was supported by an affidavit which was taken remotely and filed electronically. The Court granted leave for the affidavit to be received in this way.

The decision can be found [here](#) and [here](#).

Note: Buddle Findlay were instructed as counsel on the application.

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