

Changes to Creditor, Bankruptcy and Insolvency rules for COVID-19 crisis

The economic impacts of Covid-19 and the health measures required to prevent its spread will see many businesses face financial distress. It is hoped that if businesses can survive the next 6 months, those businesses will remain viable and will be able to recover once the threat of Covid-19 has passed.

To assist businesses who might be experiencing financial distress due to the Covid-19 pandemic and to minimise the number of businesses who may face bankruptcy or insolvency as a result of this financial distress, the Federal Government has announced a temporary range of measures that will reduce the threat of businesses being subject to winding up or bankruptcy over the course of the next 6 months. The measures being implemented by the Government and outlined below will all be in place for a period of 6 months.

Creditors' Statutory Demand

A company is presumed to be insolvent if, having received a statutory demand from a creditor, it fails to pay the creditor or have the demand set aside by a Court. The minimum amount that may be claimed under a statutory demand is normally \$2,000 however this threshold is being increased to \$20,000 for the next 6 months, making it less likely that companies will be wound up for relatively minor debts.

Not responding to the statutory demand within the specified time (either 21 days or where the debtor makes an application to the Court to set aside the demand, such other time period specified by an order of the Court) creates a presumption that the company is insolvent in any application by the creditor to wind up the company for insolvency. The statutory timeframe for a company to respond to a statutory demand will be extended temporarily from 21 days to six months.

Notwithstanding this extension of the time period to respond to a statutory demand, it is always recommended that debtors seek assistance sooner rather than later, especially if you intend to apply to have the demand set aside.

Individual bankruptcy

Where the debtor is an individual, the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor was \$5,000 however this is being temporarily increased to \$20,000.

Similar to the increased timeframes for companies to respond to statutory demands, the time that an individual debtor will have to respond to a bankruptcy notice will be temporarily increased from 21 days to six months. The extension will give a debtor more time to consider repayment arrangements before they could be forced into bankruptcy.

Temporary Relief - Directors' Personal Liability - Trading Insolvent

Directors are personally liable if a company trades while insolvent. This can lead to boards of directors feeling significant pressure to make quick decisions and enter into an insolvency process sooner than they may otherwise have made that decision, if there is any risk that the company will experience periods where it will be trading while insolvent.

To give directors comfort and confidence to continue to trade through the Covid-19 crisis, company directors will be temporarily relieved of their duty to prevent insolvent trading concerning any debts incurred in the ordinary course of the company's business, meaning that they will not be held to be personally liable if the company is later found to have traded while it was insolvent. However, this relief only applies strictly in relation to debts incurred in the ordinary course of the company's business. Egregious cases of dishonesty and fraud will still be subject to criminal penalties.

This relief will not absolve the company from its responsibility to pay its debts. Any debts incurred by the company will still be payable by the company. It is intended that once the crisis has passed and businesses begin to recover from the temporary financial distress that they have suffered, businesses will in fact pay all debts incurred during this extraordinary period.

Temporary powers to implement awarded to the Treasurer

The Treasurer will be given a temporary instrument-making power in the Corporations Act 2001 to amend provisions of the Act temporarily. The Treasurer will be empowered to provide relief from specific obligations or to modify obligations to enable compliance with legal requirements during this health crisis, to ensure that the Treasurer can respond quickly to any issues that may arise in the following 6 months. Any instrument made under this power will apply for up to six months from the date it is made.

Keep informed and contact us for help

The legal, financial and government support landscape is changing on a daily basis. Please ensure you keep up to date with these changes and if you have any concerns about how they apply to your business contact us or your accountant as soon as possible.

For more information on the Australian Government's economic response to the Coronavirus, we recommend that you visit the following websites:

- <https://treasury.gov.au/coronavirus/businesses>
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- <https://www.business.gov.au/Risk-management/Emergency-management/Coronavirus-information-and-support-for-business>

Phone 07 4688 2188 www.cglaw.com.au

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