

News with Clout

Providing Corporate & Personal Solvency Solutions

BANKRUPTCY TO BECOME TWELVE MONTHS ONLY

There is a bill in Federal Parliament which has had its second reading in the Senate just under a month ago and it was not amended so it is expected it will soon become law in this regard.

From what we can gather it is another part of a string of initiatives aimed at converting this country into an entrepreneurial society or at least more entrepreneurial.

Even though the period whilst a Bankrupt is soon only to run twelve months rather than the three years currently (unless an objection to discharge has been lodged) we are of the view that realistically little has changed.

Assets will still vest in the Trustee on Bankruptcy and property in existence at the time of bankruptcy will still vest in the Trustee for six years subsequent to the discharge from Bankruptcy.

There is still an obligation to lodge with the Trustee details and proof of a Bankrupt's income for three years in order to comply with the income contribution regime of the Act.

The vesting of After Acquired Property will only apply for twelve months and as stated they will only have to disclose they are bankrupt if seeking credit for the twelve months they are in Bankruptcy which all sounds good in theory. In reality the Bankrupt's name will be permanently entered on the National Personal Insolvency

Index (the NPII). Admittedly the entry would show the individual as a discharged bankrupt but a Bankrupt none the less.

There also appears to be no change in the credit reference regime which means that a Bankrupt's credit rating will show that they have been a Bankrupt for seven years.

In any event to obtain credit from a Bank you usually need to answer a question, have you ever been made Bankrupt in the recent past and there is usually a document signed authorizing the institution to search your name on the records. If the former Bankrupt has not answered the question in the affirmative the search of the relevant records will show there has been a lie and credit will likely be denied.

It is noted that there will be a six month window before introduction which is understood to be designed by the legislators to give Trustees the opportunity to lodge objections to discharge which if successful has the effect of extending the Bankruptcy for either five or eight years. The grounds for objecting to the discharge of a bankruptcy are many and varied. Put simply if a Bankrupt does not cooperate with their Bankruptcy Trustee they run the gauntlet of an extended Bankruptcy.

Our preliminary view is the changes to the legislation are good in theory but practically they are notional at best.

As ever we welcome your enquiries.



NEWS WITH CLOUT

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THE SAFEST HARBOUR



HOW TO PROTECT YOURSELF IF YOUR BUSINESS IS IN FINANCIAL DISTRESS

FIND YOUR SAFE HARBOUR

The Federal Government recently passed new laws that allow directors of financially distressed businesses a new 'safe harbour' to turn around their business free of the worry of being personally pursued for insolvent trading actions. But there are important steps you must take to protect yourself as well as giving your business the best chance to return to profitability.

1. GET YOUR ACCOUNTS AND RECORDS IN ORDER

You can't get the protection of a safe harbour unless you've got your books, records and some key liabilities in order. This is vital because unless you know where your money is coming from or going to, you can't really have a plan to solve the problems your business is facing. It's also vital to understand where your debts may be and how much you really owe, including tax debts, and this is important in understanding if your business is actually viable or insolvent. You must also ensure that you have fully paid employee entitlement obligations, including super, and be up to date on your tax reporting.

2. YOU MUST GET EXPERT HELP

The law may deny you the safe harbour if you don't get advice from an appropriately qualified adviser. The most qualified advisers are always going to be ARITA Professional Members. Why? Only ARITA Professional Members are fully qualified in the intricacies of Australia's harsh and complex insolvency laws. Because they are also experts in turning around and restructuring businesses of all sizes, they can help you understand your financial position, your options and help you set a path forward. The sooner you seek expert advice, the more options you are likely to have.

ARITA Professional Members are governed by a very strict Code of Professional Practice. Registered Liquidators are closely regulated by ASIC. So not only are they highly qualified, you know they can be trusted.

You will need to pay for this professional advice. At a time where money may be hard to come by, this may be challenging. However, your investment in good turnaround advice – or professional advice about your options if you are actually insolvent – can save you money in the long run. It's vitally important that you don't go to dodgy advisers that promise things that seem too good to be true. Unfortunately, there's a lot of that type of advice out there and it's unregulated. That's why you should check that your adviser is an ARITA Professional Member.

3. YOU MUST PROPERLY INFORM YOURSELF OF YOUR COMPANY'S FINANCIAL POSITION

So you've got your financial records up to date, you've taken advice from your qualified adviser – hopefully an ARITA Professional Member – and now you must make a decision about where to go from here. The law now says you've got to decide if what you're about to do is 'reasonably likely to lead to a better outcome for the company' than if it had entered into voluntary administration or liquidation. And that's where the advice from an ARITA Professional Member is vital.

4. DEVELOP AND IMPLEMENT A RESTRUCTURING PLAN FOR THE COMPANY

Your adviser has told you there are good options to get the company back to profitability. Great news. But the law – and common sense – says you must have a properly documented restructuring plan for your company. It's important that it is documented; not just for you to be able to check off that you are following the plan, but also if the turnaround doesn't work, this gives a future liquidator comfort that the steps you took (even if they failed) had merit and the right intent. It will help make sure you are protected.

A restructuring plan doesn't need to be long or complex. As long as it has clear, sensible and customised steps to getting your business back to financial health and, importantly, as long as you follow the plan.

WHAT HAPPENS IF THE RESTRUCTURING PLAN FAILS?

If the restructuring plan is not successful and you decide to place your business into voluntary administration or liquidation, it is important to note that the safe harbour advisor that you have been working with cannot take the job. This is for important reasons concerning the investigative work a liquidator must undertake. It is best that the registered liquidator you appoint at this point is also an ARITA Professional Member.

There are good options to helping you through financial distress. But expert advice is key. And for your own safety, make sure you don't go to some of the unreliable advisers who may offer their service through Google advertising – often their only qualification is that they've been broke before.

ARITA PROFESSIONAL MEMBERS - THE SAFEST HARBOUR.

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