

News with Clout

Providing Corporate & Personal Solvency Solutions

TEMPORARY RELIEF IS WHAT IT SAYS “TEMPORARY”

We are all aware and no doubt have been inundated with information in relation to the Government's temporary amendments to anything they can get their hands on, including the Insolvency Laws, in an effort to assist businesses to survive through the downturn.

But what do these changes really mean? Some believe that the changes are a free pass to trade for 6 months with no consequences if you are insolvent, which is certainly not the case.

In summary the temporary insolvency law changes allow for:-

- a) Temporary increases to the threshold at which creditors are able to issue a statutory demand (from \$2,000 to \$20,000)
- b) Temporary increase to the threshold at which creditors can initiate bankruptcy proceeding (from \$5,000 to \$20,000)
- c) Increased time periods for responses to statutory demands and bankruptcy notices from 21 days to six months
- d) Temporary relief for directors from insolvent trading liability (although egregious cases of fraudulent or dishonest insolvent trading may still attract criminal actions)

Yes, these changes are a welcome addition to the Covid-19 interruptions. However, all they are really doing is providing businesses with some more time so they can assess their position and come up with sensible options without the added worry of defending against demands from creditors.

We hope your clients are using this time wisely as these changes are no panacea. In reality they need to know they can survive and pay back the debts that are being incurred as we speak when the time comes.

If a business was in financial difficulty prior to the Covid-19 pandemic and the business owners/directors haven't implemented processes along the lines of the Safe Harbour provisions, it is highly unlikely that the business will survive much beyond October and the directors are exposing themselves to both civil liability and criminal prosecution.

We hope your business clients are utilising the breathing space to undertake the following steps as a bare minimum:-

- Ensuring their books and records are up to date, which will enable an accurate and urgent financial assessment of the position and the ability of the business to survive.
- If the foregoing assessment is bleak then they need to develop and implement a plan, which will include:-
 - reviewing, questioning and updating forecasts, particularly cashflow, and stress tests;
 - outlining the worst-case scenario and how the achievable plan will affect it;
 - scenario analysis and contingency planning to set certain safeguards of strict key indicators to ensure the plan is being followed and the progress tracked.

This work is comprehensive and time consuming. If you find yourselves totally occupied with answering queries about the JobKeeper Applications and their applicability, we are available to assist in the review process outlined above. Sometimes the first step will unfortunately be enough to know they are staving off the inevitable and a second opinion may assist.

The Australian Restructuring, Insolvency & Turnaround Association (“ARITA”) have produced an easy to follow factsheet/guide on [“How to Protect Yourself if your Business is in Financial Distress”](#). The factsheet can be found at www.arita.com.au.

The Australian Government Treasury Department has produced a [factsheet](#) in relation to the Covid-19 temporary relief package which can be found at www.treasury.gov.au.

Now is not the time for your clients to panic and listen to people who will tell your clients what they want to hear rather than the cold hard facts. Please don't let them get suckered in by unregulated pre insolvency advisors because if there is eventually failure of the business it has the unfortunate potential side effect of causing significant unwanted attention on your clients by the authorities.

Business owners and directors must be proactive and take control and actually assess their future to give them the best possible chance for survival.

As ever we welcome all your enquiries and are happy to address any questions you or your clients may have.



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