



Temporary Higher Thresholds And More Time To Respond To Demands From Creditors

A creditor issuing a statutory demand on a company is a common way for a company to enter liquidation. The Government is temporarily increasing the current minimum threshold for creditors issuing a statutory demand on a company under the Corporations Act 2001 from \$2,000 to \$20,000. This will apply for six months.

Not responding to a demand within the specified time creates a presumption that the company is insolvent. The statutory timeframe for a company to respond to a statutory demand will be extended temporarily from 21 days to six months. This will apply for six months.

To assist individuals, the Government will make a number of changes to the personal insolvency system regulated by the Bankruptcy Act 1966. The threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings against a debtor will temporarily increase from its current level of \$5,000 to \$20,000. This will apply for six months.

Failure to respond to a bankruptcy notice is the most common act of bankruptcy. The time a debtor has 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. This will apply for six months.

When a debtor declares an intention to enter voluntary bankruptcy by making a declaration of intention to present a debtor's petition there is a period of protection when unsecured creditors cannot take further action to recover debts. This period will be temporarily extended from 21 days to six months. This will give debtors more time to consider the options that are best for them. This will apply for six months.

Creditors, many of whom are themselves small businesses, will still have the right to enforce debt against companies or individuals through the courts.

Temporary Relief From Directors' Personal Liability For Trading While Insolvent

Directors are personally liable if a company trades while insolvent. This can lead to boards of directors feeling under pressure to make quick decisions to enter into an insolvency process if there is any risk that the company will experience periods where it will be trading while insolvent.

To make sure that companies have confidence to continue to trade through the Coronavirus health crisis with the aim of returning to viability when the crisis has passed, directors will be temporarily relieved of their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of the company's business. This will relieve the

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director of personal liability that would otherwise be associated with the insolvent trading. It will apply for six months.

Temporary relief from personal liability for insolvent trading will apply with respect 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. Any debts incurred by the company will still be payable by the company.

Example 1

Steph, Mon and David own a small company that operates a chain of yoga studios in Sydney. Social distancing measures require the participants in the yoga class to be significantly reduced. As a result, their company incurs more debt, to the point where it cannot meet its debts as and when they become due and payable.

Under the provisions of the Corporations Act, the three owners would be personally liable if the business took on further debt without entering an insolvency procedure like voluntary administration or liquidation.

However, during the six month period in which the temporary relief is offered, their business can continue to open their yoga studios so that they can maintain their customers and quickly resume normal operations when the crisis has passed, and continue to incur debt. When economic conditions improve, the company can pay back the debt incurred.

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