

Breathing space given to debtors under urgent legislation

Daniel Turk and Rebecca Renshaw | March 2020 | Commercial

Coronavirus Economic Response Package Omnibus Bill 2020

In response to the Coronavirus (COVID-19) Pandemic, the Federal Government announced a new stimulus package over the weekend to assist businesses and individuals who will likely face financial distress during this unprecedented crisis. The legislation was passed in Parliament on Monday 23 March 2020 and will shortly commence.

Key Changes – Corporate Debtors

Creditor's Statutory Demands

- The statutory minimum debt is to increase from \$2,000 to \$20,000.
- The statutory period to comply with a demand is to increase from 21 days to six months.

Relief for Directors – temporary safe harbor (s588GAAA)

Directors are temporarily relieved of their duty to prevent insolvent trading in respect of debts incurred in the "ordinary course of the company's business". Some examples outlined by the Government include taking out a loan to move business operations online or continuing to pay employees during the pandemic.

Note: criminal penalties still apply when debts are incurred in circumstances of dishonesty or fraud.

The Treasurer's new power

- The Treasurer has the power (by legislative instrument) to temporarily exempt certain classes of persons from the operation of the *Corporations Act* or amend specific provisions to modify its operation.

- The Treasurer's power will arise in certain circumstances, e.g. when it is unreasonable to expect provisions to be complied with due to the impact of Coronavirus; or when necessary to facilitate continuation of business/mitigate the economic impact of COVID-19.

Key Changes – Individual Debtors

Bankruptcy Notices

- The statutory minimum debt is to increase from \$5,000 to \$20,000.
- The statutory period to comply with the notice is to increase from 21 days to six months.

Intention to present a debtor's petition

- A debtor who has presented a declaration of intention to file a debtor's petition will be protected from a creditor's enforcement action for a period of six months (previously 21 days).

When do these changes apply and for how long?

The changes will come into effect the day after the legislation receives royal assent. This process usually takes 7-10 working days but will likely be fast-tracked.

Some key time-frames to note:

- Changes will apply to all statutory demands that are served on or after the commencement date.
- Changes will apply to all bankruptcy notices issued on or after the commencement date.
- Creditor's statutory demands and bankruptcy notices issued and served before commencement are unaffected.

- Relief for directors will be available in relation to debts incurred during the six month period from the commencement date.

The amendments are temporary and are due to be repealed in six months from the date of commencement. However, given the unpredictable nature of today's economic climate, they could be extended!

What does this mean for creditors over the next six months?

The changes outlined above do not affect creditors to chase unpaid debt or issuing Court proceedings for unpaid debt. Secured creditors can still enforce security over real and personal property.

Judgment enforcement through garnishee orders and writs of execution is still available to judgment creditors. Creditor's Court examination of judgment debtors is still available.

Creditors should be on alert from companies ordering more than usual (outside of the ordinary course of business).

Please contact us for any advice in managing your debtors and potential variations to your usual payment terms in the new COVID-19 environment.

For more information, please contact



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