

TEMPORARY RELIEF MEASURES FOR FINANCIALLY DISTRESSED BUSINESSES

A summary of the federal government measures

23 March 2020

The Federal Government has announced a number of temporary relief measures to assist financially distressed businesses and to assist them to resume normal operations when the coronavirus crisis has passed. Whilst the full details of these measures are yet to be provided by the Department of Treasury, we have set out a summary of the relief below.

Temporary relief from directors' personal liability for trading while insolvent

Firstly, directors will be relieved for a period of six months of their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of the company's business. This is a significant initiative designed to provide companies with confidence to continue to trade through the coronavirus health crisis.

It is unclear, however, what incurring debts in the ordinary course means when such unprecedented conditions prevail. Accordingly, for companies that meet the threshold requirements of the 'safe harbour' regime under the Act, we recommend that they consider working within this regime. As you may be aware, the Corporations Act provides a 'safe harbour' for directors from personal liability for debts incurred by an insolvent company if, after a director starts to suspect that the company may become or is insolvent, the director begins to develop a course of action that is reasonably likely to lead to a better outcome for the company than the immediate appointment of an administrator or liquidator.

Despite the relief, directors need to exercise due care in the current market, mindful that general directors' duties under the Corporations Act 2001 (Cth) (Act) and at common law still apply and egregious cases of dishonesty and fraud will still be subject to criminal penalties. Further, any debts incurred by the company will still of course be payable by the company.

It is also important to note for owners or directors of a business that is currently struggling due to the coronavirus, the Australian Taxation Office will tailor solutions for their circumstances, including temporary reduction of payments or deferrals, or withholding enforcement actions including Director Penalty Notices and wind-ups.

Temporary higher thresholds and more time to respond to demands from creditors

For a period of six months the Government is also temporarily increasing the current minimum threshold for creditors issuing a statutory demand on a company under the Act (a common way for a company to enter liquidation) from \$2,000 to \$20,000.

Not responding to a demand within the specified time creates a presumption that the company is insolvent. Accordingly, the statutory timeframe for a company to respond to a statutory demand will be extended temporarily from 21 days to six months and this measure will also apply for six months.

Providing the Treasurer an instrument-making power under the Corporations Act

The Treasurer is also being given an instrument-making power in the Corporations Act 2001 (Cth) to temporarily amend provisions of the Act to provide relief from specific obligations or to modify obligations to enable compliance with legal requirements during the crisis (such as the requirement to hold general meetings in person). The instrument-making power will apply for six months and any instrument made under this power will apply for up to six months from the date it is made.

Need help?

Contact [Dawn Carey](#) if your business needs assistance with corporate law.

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