

Temporary relief for financially distressed businesses in light of COVID-19 — changes to insolvency laws

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Abstract:

The Australian Federal Government announced on 22 March 2020 that it intended to make amendments to the *Corporations Act 2001* (Cth), which will have temporary effect, in response to financial impact of the Coronavirus on companies. The *Coronavirus Economic Response Package Omnibus Bill 2020* (Cth) was fast tracked into Parliament and passed on 23 March 2020. Royal Assent was given on 24 March 2020. The changes to the *Corporations Act 2001* (Cth) commence on 25 March 2020 (being the day after Royal Assent was given).

In addition, the ATO is to implement tailored solutions to businesses.

Statutory demands

The minimum threshold at which creditors can issue a statutory demand to a company will increase from \$2000 to \$20,000. This will apply for 6 months from 25 March 2020.

The statutory time frame for a company to respond to a statutory demand will be extended from 21 days to 6 months. This will apply for 6 months from 25 March 2020.

The amendments to the *Corporations Act 2001* (Cth) apply to statutory demands served on or after 25 March 2020.

Insolvent trading

Company directors will be relieved from any personal liability for trading while insolvent in respect of debts incurred in the ordinary course of the company's business. This will apply for 6 months from 25 March 2020.

However, 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.

Temporary powers given to Treasurer to grant relief

ASIC already has the power to offer relief from some provisions of the *Corporations Act 2001* (Cth) or to take no action for not complying with some provisions. But this can require companies to make individual requests to ASIC, which takes time.

To deliver regulatory certainty, the Treasurer will also be given a temporary 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. The instrument making power will apply for 6 months from 25 March 2020.

The legislation will not operate retrospectively.

ATO

For owners or directors of a business that are currently struggling due to the Coronavirus, the ATO will tailor solutions for their circumstances, including temporary reduction of payments or deferrals, or withholding enforcement actions including Director Penalty Notices and wind-ups.

What this means

The temporary changes will offer some relief to companies in financial distress.

In many instances, during the 6-month period, it will not be possible to issue statutory demands due to the increase in the threshold. Where statutory demands can still be issued, breathing space is granted in the process by which companies are presumed to be insolvent due to non-compliance with a statutory demand. Creditors will still have the right to enforce debts against companies in the usual ways, such as through the courts or enforcing security where it is held.

The temporary relief from personal liability of directors for trading while insolvent will assist some directors in exploring options other than entering voluntary administration or liquidation. It is hoped that viable businesses facing a short lack of liquidity can be saved and normal business can resume once the crisis has passed.

More information regarding the temporary relief for financially distressed businesses can be found [here](#).