



NEWSLETTER – VOLUME 1

Welcome

Welcome to the first newsletter for KHR Insolvency.

In this edition we provide an update relating to the Federal Government's COVID-19 measures associated with creditors petitions under the Corporations Act and the Bankruptcy Act, along with the new Temporary Restructuring Relief measures.

Changes to Bankruptcy Notices

A creditor can apply to the court for a Sequestration Order to have an individual declared bankrupt. The most common approach utilised by creditors is to rely on the act of bankruptcy stemming from the non-payment of a debt detailed in a Bankruptcy Notice. A Bankruptcy Notice is obtained from the Australian Financial Security Authority.

Prior to any COVID-19 amendments, a debtor had 21 days to deal with a Bankruptcy Notice. The debtor could pay the debt, apply to the court to have the Bankruptcy Notice set aside, or to request an extension of time to pay the debt. If neither of these options were dealt with in the above time frame, the Bankrupt is deemed to have committed an act of bankruptcy. The creditor can then use this act of bankruptcy to file a Creditors Petition with the court seeking a Sequestration Order against the debtor.

The minimum level of the debt to seek a Bankruptcy Notice was, prior to any COVID-19 amendments, \$5,000. The debt is required to be based on a final judgement or final order.

In March 2020, the above provisions were amended in light of the COVID-19 measures introduced by the Federal Government. The minimum debt to apply for a Bankruptcy Notice was increased to \$20,000, in addition to

which debtors were provided with 6 months to satisfy the Bankruptcy Notice.

The measures introduced were temporary and were scheduled to lapse in September 2020, following which the provisions associated with Bankruptcy Notices were to revert to the previous requirements.

In September 2020 the temporary measures were extended to 31 December 2020. These measures have now lapsed, however there has now been an amendment to the Bankruptcy Act in relation to the minimum debt requirement for a Bankruptcy Notice.

From 1 January 2021, the minimum debt level to obtain a Bankruptcy Notice is \$10,000, and the debtor has 21 days in which to adequately deal with the Bankruptcy Notice.

Changes to Statutory Demands

Like the bankruptcy scenario referred to above, a precursor to many applications to the court to place a company into liquidation, relies upon a company failing to satisfy a debt or claim. For a company, the details of the debt or claim are set out in a Statutory Demand.

There are no applications required to obtain a Statutory Demand. A creditor is able to issue the claim in the required form and serve it upon the company's registered office. There is no requirement to have a final judgement prior to issuing a Statutory Demand.

Prior to the introduction of the COVID-19 measures, the minimum debt level to issue a Statutory Demand was \$2,000. The company who received the demand has 21 days to apply to the court to set aside the Statutory Demand, or to pay the debt. In the absence of the company resolving the above matters within 21 days, the creditor could then file a creditors



petition seeking orders to place the company into liquidation.

In March 2020, the provisions relating to Statutory Demands were also amended to a minimum debt level of \$20,000 and 6 months to resolve the Statutory Demand.

The amendments were temporary in nature as per the Bankruptcy Act changes referred to above. They were due to lapse in September 2020, however they were also extended to 31 December 2020.

From 1 January 2021 the temporary measures lapsed, and the Statutory Demand provisions reverted to their pre COVID-19 measures with a minimum debt of \$2,000 and 21 days to resolve the Statutory Demand. There is an exception to this position when a company elects to utilise the “Temporary Restructuring Relief” which is discussed further below.

Temporary Restructuring Relief

A company which has entered into the Temporary Restructuring Relief (“TRR”) is able to rely upon the following:

- The threshold debt to for a Statutory Demand is increased from \$2,000 to \$20,000;
- The time to respond to the Statutory Demand is increased from 21 days to 6 months; and
- Directors are provided with temporary safe harbour protection from insolvent trading for debts incurred before the appointment of an administrator or liquidator.

To access the TRR a company must, during the period of 1 January 2021 to 31 March 2021, make the required declaration about eligibility for the TRR, and publish a notice about the declaration on the ASIC Published Notices

Website. Directors are also required to give a copy of their declaration to ASIC within 5 business days of making the declaration.

The relief measures afforded by the TRR only apply from the date of the making of the declaration and the publishing of the notice on the Published Notices Website. The relief period lasts for 3 months after the declaration is made. The period of relief can be extended for a further month in certain circumstances.

In order to utilise the TRR measures, a company must be able to adhere to the following:

- The company is insolvent or likely to become insolvent;
- There is no external administrator appointed to the company;
- Total admissible debts or claims of the company do not exceed \$1 million. (Admissible debts or claims do not include employee obligations, inclusive of superannuation, or contingent liabilities);
- A current or former director (within the last 12 months) can not have been a director of a company that has been under restructuring or subject to the simplified liquidation process within the preceding 7 years; and
- The company has not been under restructuring or subject to the simplified liquidation process within the preceding 7 years.

The above information relating to the Temporary Restructuring Relief Measures is an abbreviated interpretation. The full information sheet can be obtained by visiting the KHR Insolvency website at www.khrinsolvency.com.au and selecting the “Newsletters” tab at the top of the page, followed by the option titled “Temporary Restructuring Relief Measures – ASIC Information”.

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