

MinterEllison

12 October 2020

BY EMAIL: MCDInsolvency@Treasury.gov.au

Manager
Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600

Dear Sir/Madam

Submission in relation to insolvency reforms to support small business

We refer to the exposure draft of the Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 (Cth) (**Draft Bill**) and its explanatory memorandum. MinterEllison thanks the Treasury for the opportunity to make these submissions on the Draft Bill.

Please note that the views expressed in these submissions do not represent the views of MinterEllison's clients.

Given the short time that has been available since the release of the Draft Bill, we make the following submissions on limited aspects of the Draft Bill as set out below.

Restructuring of a company

MinterEllison is broadly supportive of the proposal for the simplified restructuring process outlined in the Draft Bill. As much of the detail will be contained in regulations, drafts of which are yet to be released, we would hope to have the opportunity to comment on the proposed reforms as a package after this occurs.

Simplified liquidation process

We question the need for and suggest the proposed s 500AA(1)(c) be deleted.

The proposed s 500AA(1)(c) echoes the declaration that is required for a members' (solvent) voluntary liquidation (**MVL**), but no such declaration is required under the existing creditors' (insolvent) liquidation (**CVL**) process. The concept that a company will not be able to pay its debts in full within 12 months of a triggering event occurring being a threshold for eligibility means that companies that cannot pay all their debts when they are due (the test for solvency/insolvency under s 95A of the *Corporations Act 2001* (Cth) (**Corporations Act**)), but *could* pay given a period of 12 months, would not qualify for the simplified liquidation process. While the absence of a 'declaration of solvency' is the key to a voluntary liquidation being a CVL, the directors may choose to not make such a declaration because they cannot pay their debts when due (not just within 12 months) so as to put the company into liquidation to avoid potential personal liability for insolvent trading.

Additionally, the proposal to abandon formal meetings of creditors does carry with it the loss of the opportunity for creditors to hear the views of other creditors and for questions to be asked and the answers shared with all (particularly if voidable transactions are to be subject to potential recoveries in the simplified liquidation process). We suggest there should be some capacity for a meeting of creditors to be called during the simplified liquidation process, rather than such meetings only being possible under the existing liquidation framework, which in the case of a proposed simplified liquidation would require 25% of the creditors by value to reject the simplified liquidation process in favour of the pursuing a



liquidation under the Corporations Act as it presently stands. The capacity to call one meeting of creditors on short notice would be an appropriate middle-ground measure that would achieve balance between the interests of streamlining the liquidation process for small businesses and enabling creditors to express their, and hear each other's, views. In the alternative, it would be appropriate to provide an electronic list of all creditors and their contact details to enable discussion between creditors throughout the simplified liquidation process, and particularly in instances where there is a proposal by at least 25% of creditors by value to reject the simplified liquidation process.

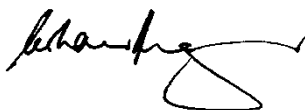
We look forward to the release of the draft regulations that will disclose the what pre-liquidation transactions will not be voidable in the new simplified liquidation process.

Further measures

MinterEllison is generally supportive of the proposals with respect to electronic communications and virtual meetings, and look forward to detail being announced with respect to the proposed temporary relief for companies seeking a small business restructuring practitioner.

We would be pleased to discuss any of the above matters and provide further input if requested.

Yours faithfully
MinterEllison

A handwritten signature in black ink, appearing to read 'Michael Hughes', with a large, stylized flourish at the end.

Michael Hughes
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