



Company Insolvency Reforms to Start 1 January 2008

This latest bout of reforms are really just fine tuning the Corporations Act as it relates to insolvency.

The amendments cover a broad range of issues which are very relevant to insolvency practitioners and those who avail themselves of their services.

Changes include:

- Ensuring the employee priorities, as specified in Section 556 of the Act, apply to Deeds of Company Arrangement and cannot be varied unless employees agree to it.
- In certain circumstances facilitating the pooling of assets in a group.
- Allowing electronic communication of certain notices.
- Cleaning up the treatment of superannuation in order to do away with the conundrum where monies may have been paid to the relevant employees' superfund, but after the statutory deadline, by the company and the Australian Taxation Office lodges a claim under the Superannuation Guarantee Charge regime which recent case law decided was a valid claim.
- Allowing for the change in appointee at the proposal meeting of creditors under the voluntary administration where previously that could only occur at the first meeting.
- In voluntary administration the time periods have been improved within which to call meetings of creditors in that now the first meeting must be within 8 business days not 5 and creditors need 5 days notice not 2.
- The initial voluntary administration period up to the proposal meeting will now be 5 weeks with a couple of exceptions around Christmas and Easter, where as it was previously one day less than 4 weeks.
- The original time restraints have often been impractical to do all that is required by a Voluntary Administrator such as take possession of the assets and the business, assess the position, implement controls for trading on the business, make an assessment of any proposal for a Deed of Company Arrangement, investigate the alternatives and report to creditors on our recommendations as to the fate of the Company.
- It is now possible to adjourn the proposal meeting in an administration, when the fate of a company is determined, from the original 60 days now up to 9 weeks.
- Administrators need to provide creditors with a much more comprehensive explanation of remuneration incurred and the basis thereof, than has been previously required to theoretically enable a more informed decision by creditors.
- Substantial charge holders will have 13 business days on which to make a decision as to whether to appoint a receiver or not over the top of an administrator instead of 10 business days.
- It will now be compulsory to lodge an account of receipts and payments for Administrations and Deeds of Company Arrangement where previously it could be excluded in the Deed.
- Liquidators and Administrators are now required to disclose to creditors any relationships to entities or officers. Any indemnities and the nature of those indemnities are also required to be disclosed.
- It had been hoped that the process of implementing a Creditor's Voluntary Liquidation was going to be streamlined but this did not occur.

As ever we welcome all your enquiries



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