

NEWSLETTER

Legal Up-Date

May 2008

INSOLVENCY LAW REFORMS

The *Corporations Amendment (Insolvency) Act 2007 (Cth)* – the “Act” – came into effect on 31 December 2007. The Act is intended to modernise, streamline and strengthen Australia’s insolvency laws. The provisions generally only apply to insolvency administrations commencing after 31 December 2007.

Some of the major changes are:

Improving Outcomes for Creditors

1. Employees

- Preserving insolvency priority for employees’ entitlements where a Deed of Company Arrangement (“DOCA”) is entered into.
- Priority for unpaid superannuation contributions. These give rise to a liability for the Superannuation Guarantee Charge which will now have priority.
- Priority for any person who makes advances for the purposes of funding the payment of employee entitlements. These are now given the same priority as the employee(s) would have had if the payment not been made.

2. Insolvency Practitioners’ Remuneration and Independence

- Administrators and liquidators are required to complete a statement of independence regarding relevant relationships with the company, its associates and certain other people in the preceding 24 months.
- Remuneration can be determined either by agreement with the Committee of Creditors or by resolution of the Creditors or by the Court.

3. Streamlining External Administration

- Insolvency Practitioners will be able to apply for a change of company name if they are satisfied that this is in the best interests of the creditors;
- Protection against ‘phoenix’ companies: If a company’s name has been changed during or 6 months prior to external administration, both the former and current names must be used in all public documents.
- Major costs savings through electronic distribution of notices and other information.

4. Pooling of assets and claims for corporate groups

The Act sets out a new mechanism for ‘pooling’ to facilitate the administration of corporate groups in liquidation.

Deterring Misconduct by Company Officers

- It is no longer possible to avoid filing evidence and giving discovery on the basis that you might be exposed to a penalty (One Tel’s Jodie Rich was able to do this in proceedings involving ASIC).
- Any claim for privilege by a person during an ASIC investigation will not prevent material discovered or otherwise provided from being used by ASIC in proceedings for disqualification, banning, suspension or cancellation orders.

Improving Regulation of Insolvency Practitioners

- The prohibition on inducements offered by Insolvency Practitioners for referral of work has been extended.
- ASIC is given an express power to investigate a liquidator’s conduct if it has reason to suspect they have not faithfully performed their duties.

Fine Tuning Voluntary Administration

- Administrators are required to lodge accounts of receipts and payments of the administration on a 6 monthly basis.
- Time periods for holding meetings have been extended.

If you believe any of your trading partners, customers or clients are insolvent or may be in danger of becoming insolvent, please contact us to discuss how to possibly better protect your position. Also if you have any queries regarding corporate or personal insolvency generally, please contact Alison Drayton at adrayton@schweizer.com.au.

YOUR FEEDBACK

If you have any comments about this newsletter, please drop us a line by :

email: mail@schweizer.com.au/fax: +61 2 9223 4729
mail: PO Box H283, Australia Square NSW 1215