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### *Relief for individuals and Businesses during the covid-19 era*

May 20, 2020

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Whilst the world watches on at the shocking impacts of the COVID-19 pandemic (**Covid-19**), people are quickly becoming aware of the harsh realities that many face, both now and in the years to come.

Individuals and businesses who are financially distressed due to the impacts of Covid-19 have recently been met with temporary relief thanks to amendments made to both the *Bankruptcy Act 1966* (**the Bankruptcy Act**) and the *Corporations Act 2001* (**the Corporations Act**).

On 24 March 2020, Royal Assent was given to the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (**the Act**), with the Act being passed by both Houses of Parliament on 23 March 2020. The Act outlines the relevant amendments made to both the Bankruptcy Act and the Corporations Act and provides changes to bankruptcy proceedings (individuals) and statutory demands (companies).

#### **Bankruptcy Notices and Proceedings**

A bankruptcy notice is a formal demand for payment based on a final judgment or order of the court. Before the Act came into force, individuals were required to respond to the bankruptcy notice within 21 days, failing which they were committing an act of bankruptcy. The creditor then has the right to make the individual bankrupt by way of a creditor's petition which is presented at court.

#### **Key Changes as set out in the Act**

The key amendments to the Bankruptcy Act are outlined below:

- a) The statutory minimum to issue a bankruptcy notice has increased from \$5,000.00 to \$20,000.00;<sup>1</sup>

<sup>1</sup> Bankruptcy Regulations 1996 (Cth) s 4.02AA(1).

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- b) The statutory period for the debtor to respond to the bankruptcy notice has increased from 21 days to 6 months;<sup>2</sup>
- c) The amendments are repealed at the end of the period of 6 months starting on 25 March 2020<sup>3</sup>; and
- d) If the debtor is served with the bankruptcy notice in Australia, the bankruptcy notice must specify that the period for compliance is 6 months from the date that the debtor is served.

### Impact of the Act on Individuals

Individuals who are issued with a bankruptcy notice now have a 6-month protection period whereby they are not obliged to comply with the bankruptcy notice. This allows an extended period of time for debtors to seek financial advice, negotiate a payment plan with the creditor and/or consider formal insolvency options.

For creditors, these changes make it difficult and significantly less useful to issue a bankruptcy notice due to the extended period that individuals are now afforded to comply with the notice. During this time, creditors are encouraged to re-consider alternative methods of enforcement if they do not wish to wait the 6-month period to recover monies owing.

### Creditor's Statutory Demand for Payment of Debt ("statutory demand")

A statutory demand is a written demand which is served by a creditor on the debtor company pursuant to section 459E of the Corporations Act.<sup>4</sup> Ordinarily, the debtor company would have 21 days to respond to the statutory demand, failing which it is presumed insolvent and the creditor has the right to make an application to wind up the debtor company.<sup>5</sup>

### Key Changes as set out in the Act

The most significant amendments to the Corporations Act and the Corporations Regulations 2001 (**the Corporations Regulations**) are as follows;

- a) The statutory minimum to issue a statutory demand has increased from \$2,000.00 to \$20,000.00;<sup>6</sup>
- b) The statutory period for the debtor company to respond to the statutory demand has increased from 21 days to 6 months;<sup>7</sup>
- c) The amendments are repealed at the end of the period of 6 months starting on 25 March 2020;<sup>8</sup> and
- d) The wording in Form 509H, being the statutory demand must be amended so that it complies with Schedule 12, part 2 of the Act.<sup>9</sup>

<sup>2</sup> Bankruptcy Regulations 1996 (Cth) s 4.02AA(2).

<sup>3</sup> Bankruptcy Regulations 1996 (Cth) ss 4.02AA(3), 4.10A.

<sup>4</sup> Corporations Act 2001 s 459E.

<sup>5</sup> Corporations Act 2001 s s459C(2)(a) and s459P.

<sup>6</sup> Corporations Regulations 2001 (Cth) s 5.4.01AA(1).

<sup>7</sup> Corporations Regulations 2001 (Cth) s 5.4.01AA(2).

<sup>8</sup> Corporations Regulations 2001 (Cth) s 5.4.01AA(3).

<sup>9</sup> Coronavirus Economic Response Package Omnibus Act 2020 (Cth) s 1669

It is important to note that the Act provides for legislative changes to come into play the day after the Act received the Royal Assent. This means that if a statutory demand was served on a company on or before 25 March 2020, the Act would not apply and the company would have 21 days to respond to the statutory demand. Furthermore, the amendments made to the Corporations Act only apply to statutory demands that are served on or after the commencement of the Act.<sup>10</sup>

## Impact of the Act on Businesses

Likely one of the biggest impacts of these changes will be a large reduction in the use of statutory demands by creditors who believe there is a debt due and payable by the debtor company.

We may see a shift towards more creditors using other court processes, i.e. issuing a statement of claim, which is normally viewed as a more timely and expensive process.

The difference for debtor companies is that they will have an extended period of time to comply with the statutory demand. Short term, these changes will provide breathing space for debtor companies and an opportunity to re-evaluate their financial situation and options moving forward. The long-term effects however remain unknown.



## How can we help?

Whether you are a creditor or a debtor, JHK Legal can assist you with any queries you may have in relation to the proposed changes of the Corporations Act and the Bankruptcy Act. Our solicitors are well versed in all legislative changes and are able to provide legal advice based on your specific circumstances.

JHK has extensive knowledge in the area of insolvency and can assist in all areas including statutory demands and bankruptcy proceedings, as well as general enquiries you might have.

If you are based in New South Wales, please don't hesitate to call our Sydney office on (02) 8239 9600 for further information.

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<sup>10</sup> Coronavirus Economic Response Package Omnibus Act 2020 (Cth) s 1669.  
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