



# Improving bankruptcy and insolvency laws: submission to Treasury's proposal paper

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## 1. Introduction

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### 1.1 Who we are

SV Partners Pty Ltd (SV Partners) provides professional corporate and personal insolvency advice to accountants, financial institutions, corporations, financial and legal advisors, and individuals.

With a team of over 100 insolvency specialists across the eastern seaboard, our expert advisors focus on recovery, reconstruction advice and formal insolvency appointments. We also operate one of the largest private bankruptcy practices in Australia.

### 1.2 Our experience

Our executive team has extensive experience in the insolvency and turnaround industry and hold memberships with: Australian Restructuring, Insolvency and Turnaround Association (ARITA), Chartered Accountants Australia and New Zealand (CAANZ), Certified Practising Accountants Australia (CPA), Institute of Public Accountants (IPA), Australian Institute of Credit Management (AICM), Turnaround Management Association (TMA), Australian Institute of Company Directors (AICD) and the QLD Master Builders Association (QMBA). They also hold positions on the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO) Liquidator panels.

### 1.3 Disclaimer

This submission has been prepared based on the proposed reforms as they were presented for comment, as at the date of this submission.

### 1.4 Executive summary

The proposals submitted by Treasury are:

- reduction of the default bankruptcy period from three years to one;
- introduction of a 'safe-harbour' for directors and approved advisors from personal liability for insolvent trading, when undertaking genuine restructuring; and
- ensuring 'ipso facto' clauses are unenforceable against a company undertaking genuine restructuring.

These proposed reforms are intended to promote entrepreneurial activity, whilst retaining protection mechanisms for creditors. A summary of our comments on the proposals are:

**Reduction of bankruptcy term:** we are undecided if reducing the term of bankruptcy to one year will achieve an increase in entrepreneurial activity. However, should the period be reduced there are a number of concerns we have expressed within this submission that will need to be addressed.

**Safe Harbour provisions:** Model A is preferred for the following reasons:

- it deals with the concerns surrounding the conduct of "pre-insolvency advisors" who currently do not have obligations to be registered with a regulatory body, hold a minimum standard of education or be bound by any professional and ethical standards;

- it can be codified to ensure that directors have a clear obligation to act when a company is in financial distress, accessing professional assistance and working with the company's stakeholders in an informal capacity to return the company to a solvent position;
- the assessment by a restructuring advisor is likely to assist with the ability to access additional funding; and
- the alternative Model B is too relaxed and places the obligation on the Liquidator to prove that the director has breached one of the three limbs (proposed to replace existing insolvent trading provisions). Model B shifts the responsibility away from the director to act at the time the company is in financial distress to the Liquidator after the company has failed and will lead to more litigation. If a director has the ability to make responsible risk-taking decisions which lead to informal restructuring of a company, they generally do this without the need for professional assistance.

**IpsO factO clauses:** have often interfered with the process of formal restructuring and we welcome the reforms as they have been proposed.

## 2. Reducing the default bankruptcy period

During the three year term of bankruptcy, a bankrupt is restricted to a capped amount of credit, cannot travel overseas without permission, cannot hold a directorship of a company and may have some licencing or employment restrictions.

The purpose of these reforms is to reduce these restrictions in order to encourage future business activity<sup>1</sup>. Over the past decade other countries, such as the United Kingdom and Germany, have implemented more lenient bankruptcy laws which resulted in a marginal increase in self-employment<sup>2</sup>.

### 2.1 Misconduct: objection to discharge

The trustee's ability to object to the discharge, extending the bankruptcy term up to eight years, would be retained. We are concerned that one year will be insufficient time to gather an appropriate level of evidence to support lodging an objection, if deemed appropriate.

### 2.2 Ongoing obligations for a bankrupt

#### 1.2.1 Requirement to assist trustee

The *Bankruptcy Act 1966 (Cth)* (the BA) currently provides for trustees to perform specific functions relating to asset recovery post discharge, being:

Section of BA	Relevant powers post discharge	Penalty
152	Bankrupt to give assistance, even though discharged, as the trustee reasonably requires in the realisation and distribution of property vested in the trustee	Imprisonment for six months

<sup>1</sup> Inquiry Report Business Set-up, Transfer and Closure August 2015

<sup>2</sup> Inquiry Report Business Set-up, Transfer and Closure August 2015

Section of BA	Relevant powers post discharge	Penalty
153	Bankrupt not released from liability to pay: <ul style="list-style-type: none"> <li>• income contributions; or</li> <li>• a debt resulting from fraud; or</li> <li>• obligation to pay a maintenance order.</li> </ul>	Can be sequestrated if fail to pay
139 & Reg 6.18	Discharged bankrupt to give information if contribution unpaid and the liability is not affected by discharge	10 penalty units

A practical issue occurs when a bankrupt is discharged and fails to give assistance as required by section 152 of the BA within a reasonable period of time. The penalty for failure to comply costs funds that are rarely held or retained by the trustee. This issue will be more prevalent if the bankruptcy term is reduced to one year.

### 1.2.2 Income contributions

This proposal intends on making the Bankrupt liable to pay income contributions for a period of three years, even though the bankruptcy term would be reduced to one. This liability will also continue for the entire bankruptcy period should an objection to discharge be lodged.

Whilst it is beneficial for creditors to have access to income for three years rather than one, the mechanisms obligating the discharged bankrupt to comply post discharge will have to be effective and carry heavy penalties to enable trustees to perform the functions.

Practical concerns for trustees carrying out this obligation are:

- when a discharged bankrupt is liable for income contributions for the entire three year period, how is the former trustee required to handle these funds? I.e. the account cannot be titled 'John Smith (A bankrupt) Estate No. xxxx/16';
- what powers do we have, as a former trustee, to ensure the contributions are paid? Is a former trustee imbued with the powers pursuant to sections 139ZL and 139ZIA of the BA?; and
- is the trustee required to obtain approval for future remuneration pursuant to section 162 of the BA prior to the Bankrupt's discharge? If so, a process must be determined to allow for further approvals if the prospective remuneration was underestimated.

The former trustee of the discharged bankrupt must have relevant powers to make income assessments, collect liabilities determined under section 139 of the BA, hold creditor meetings (if required) pursuant to section 64, gain remuneration approvals, account for realisation charges and pay dividends.

Additionally, we expect that windfall gains; such as funds bequeathed from a deceased estate within the three year period, should be a divisible asset within the bankrupt estate.

## 2.3 Restrictions imposed on a bankrupt

### 2.3.1 Credit

Access to credit is limited during the bankruptcy term, pursuant to sections 269 and 304A, and amounts exceeding these restrictions must be disclosed. A record of bankruptcy remains on credit records for two years post discharge or five years from the date of Bankruptcy, whichever is later, which may affect the Bankrupt's access to credit. Rather than reducing the period of time the bankruptcy event remains on the credit record, a classification system to identify high risk clients for credit providers would be preferable.

### 2.3.2 Overseas travel

Restricting overseas travel for the period of bankruptcy seems reasonable. However, if the bankrupt is high risk and conducts business overseas, the former trustee should be provided with the ability to extend this restriction (without the requirement to lodge an objection) to ensure the Bankrupt is compliant with the income contribution requirements.

### 2.3.3 Licences

We acknowledge that the Government intends to consult with relevant industry and licencing associations with a view to aligning these restrictions to the one year bankruptcy term, should this be introduced. Given the strong stance of regulators in the building industry, we think this will be an enormous task.

## 3. Safe harbour provisions

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There are many obligations and duties of a director in operating a company responsibly, one of which is the requirement to ensure the company does not continue to trade whilst it is insolvent (unable to meet its debts as and when they fall due<sup>3</sup>). These provisions are designed to penalise a director that has taken unreasonable trading risks. However, it is argued they have the undesired effect of restricting responsible risk-taking activity<sup>4</sup>.

The discussion paper, *Insolvent Trading: A safe harbour for reorganisation attempts outside of external administration*, issued in January 2010, submitted three options which were considered to address the issue that insolvent trading provisions were stifling entrepreneurial activity. These options were:

- no change to the *Corporations Act 2001 (Cth)* (the CA) insolvent trading provisions;
- additional defence available to directors based on the 'business judgement rule' in section 180 of the CA; or
- ability of the director, in agreement with creditors, to invoke a moratorium for the purpose of reorganising the company outside of external administration.

The first recommendation was adopted and no change to the provisions were made.

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<sup>3</sup> Section 95A of the CA

<sup>4</sup> Insolvent trading: A safe harbor for reorganisation attempts outside of external administration: January 2010

In response to several related Government inquiries, the Australian Restructuring Insolvency and Turnaround Association (ARITA) released a discussion paper titled *A Platform for Recovery: Dealing with Corporate Financial Distress in Australia* in October 2014, which provided further discussion on the benefits of safe harbour provisions.

In essence, when directors seek genuine restructuring, it is argued they should have a defence based on the business judgement rule<sup>5</sup>. This, coupled with the guidance of an adequately experienced professional, termed a Chief Restructuring Officer (CRO), would allow directors to access adequate informal restructuring services when a company is in financial distress situations.

The proposal paper issued in April 2016, currently being assessed, provides two options for safe harbour provisions. These are:

- Model A: additional defence to insolvent trading, provided genuine informal restructuring was pursued; or
- Model B: safe harbour acts to modify section 588G rather than providing a defence to it. This allows the director to retain control without the requirement to seek assistance from a restructuring advisor.

The two options are discussed below:

### 3.1 Model A

Based on the Productivity Commission's report on Business Set-up, Transfers and Closure, issued in September 2015, the recommendation for a director to access the advice of a restructuring professional and attempt informal restructuring should be available, without fear of personal liability should the restructuring fail.

This model is predicated on the following two conditions:

- that the company's records are adequate, up-to date and explain the company's transactions and financial position; and
- a restructuring advisor provides an opinion that the company may be able to avoid insolvent liquidation and be returned to solvency within a reasonable period of time.

This defence will be used by directors when a company has failed to return to a solvency position within a reasonable period of time, even though a restructuring advisor has provided an opinion that it was possible. To ensure both the director and the restructuring advisor act in good faith, we propose the following obligations be mandated through regulation:

#### 3.1.1 The director's obligations

- the director must take all reasonable steps to implement the recommendations of the Advisor to achieve a solvency position within a reasonable period of time. Circumstances outside the control of the director or impossible to foresee would be sufficient to evidence the director took reasonable steps to try to return the company to a solvent position;

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<sup>5</sup> ARITA discussion paper: *A Platform for Recovery Dealing with Corporate Financial Distress in Australia*: October 2014

- the director must provide the restructuring advisor with all specific industry knowledge, expertise and opinion of future trends known to the director at the time the opinion is being formed;
- failure to act in good faith constitutes a breach of the director's fiduciary duties detailed in section 180 – 185 of the CA.

### 3.1.2 The Restructuring Advisor's obligations

- the obligation to report any misconduct of the director or/and the company;
- the obligation to provide an honest and reasonably held opinion, exercising powers and discharging duties in good faith in the best interests of the company; and
- the obligation to provide relevant information on the safe harbour period to the key stakeholders of the company; such as the employees, parent company (if any), secured creditors and core suppliers.

### 3.1.3 Timeframes

The period of time that the company is going through an informal restructuring (the safe harbour period) should be defined. For example:

- Stage 1: Restructuring advisors to produce an opinion by way of a report to the company within 28 business days of appointment.
- Stage 2: The directors meet with key stakeholders within 14 days of the Advisor's report to implement changes to attempt to return the company to a solvent position.
- Stage 3: If the safe harbour period is more than one year from the date of the Advisor's report, then a meeting of the company stakeholders should be held at the end of the year, at which the restructuring advisor should provide a supplementary report on any additional action that could be taken to expedite the path to solvency OR whether the company should be placed into insolvency.

## 3.2 Other features of safe harbour

We agree that whilst the company is operating during the safe harbour period, the following should be preserved:

- the future right to pursue voidable transactions and personal liability for employee liabilities, should the company fail to return to a solvent position within a reasonable period of time;
- the relation back date should coincide with the commencement of the safe harbour period. For some transactions, such as transfers to related parties which are designed to defeat creditors; and
- the company should retain the same obligations as a solvent company in terms of continuous disclosure, such as:
  - lodgement of business activity statements;
  - payment of employee superannuation, PAYG, employee claims; and
  - lodgement of income taxation return.



As previously stated in section 3.1.1, the director should be obligated to take all reasonable steps to implement the restructuring advisor's recommendations, to be eligible to access the safe harbour defence.

### 3.2.1 Another suggested feature – access to finance

A common requirement to cure a company's financial distress is the ability to obtain debt or equity funding whilst implementing restructuring recommendations<sup>6</sup>. The restructuring advisor could assist the Company to access an appropriate debt or equity funder.

### 3.3 Model B

Model B provides for the director of a company to continue to trade and incur debt whilst the company is in financial distress, and make decisions with a responsible level of risk, provided:

- the debt is incurred as part of reasonable steps to maintain or return the company to solvency within a reasonable period of time; and
- the person held the honest and reasonable belief that incurring the debt was in the best interests of the company and its creditors as a whole; and
- incurring the debt does not materially increase the risk of serious loss to creditors.

This model does not prescribe the use of a restructuring advisor, and directors can retain control without disclosing any financial distress.

Between 1961 (when the insolvent trading laws were introduced) and 2004 there has been, on average, less than three insolvent trading actions each year. Of these actions, 75% sought compensation and only 15% sought more serious sanctions<sup>7</sup>.

Reasons why an insolvent trading claim would not be pursued are:

- the Liquidator's obligation to prove the director's state of mind, intent and personal knowledge as required can be very difficult;
- the costs to pursue the claims are high and unless a liquidator can be assured that a director holds substantial personal wealth to satisfy a future judgment debt, it is uncommercial and not in the best interests of the creditors of the company; and
- the reasonableness test in subsections 588G(1)(c) and 588G(2)(b) allows for a director to mount a defence based on the particular circumstances of the company.

For these reasons we do not believe Model B will encourage directors to voluntarily seek help at an earlier stage, or promote responsible corporate risk-taking to ensure continued trading and future solvency of a company.

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<sup>6</sup> Insolvent trading: A safe harbour for reorganisation attempts outside of external administration January 2010

<sup>7</sup> Productivity Commission report Business Set-ups, transfers and Closures pg 378

#### 4. Ipsos facto clauses

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An insolvency event of a company is likely to trigger an ipso facto clause in most contracts, allowing the other contracted party to terminate the agreement.

The appointment of a voluntary administrator is usually considered an insolvency event, even though the purpose of the appointment is to formally restructure the company. Section 440B of the CA was designed to restrict the rights of property lessors and secured creditors, however, it does not extend to general contracts with suppliers, franchisees etc.

By rendering ipso facto clauses void against an Administrator, Receiver, Controller or Deed Administrator, legislation could work in the way it is intended, allowing the appointee to retain and realise the value held in the business. We note that section 304 of the BA already renders ipso facto clauses void for Bankruptcy.

##### 4.1 The Ipsos Facto model

###### 4.1.1 Anti-avoidance

To ensure that any provision in an agreement that has the *effect* of terminating a contract solely on the reason of a contracted party's insolvency being void is supported.

###### 4.1.2 Exclusions

Prescribed financial contracts to be excluded from the model, as to include them could negatively affect capital markets.

###### 4.1.3 Appeal

We agree that counterparties could apply to Court to vary contract terms in the event of hardship.

In summary, we agree with and endorse Treasury's efforts to encourage appropriate efforts from directors to engage in early attempts to avoid the insolvency of a company. Of the proposals put forward, we believe that the introduction of a 'safe harbour' for directors, using Model A, is likely to be the most productive solution, and we also agree that ipso facto clauses should be unenforceable against a company undertaking genuine restructuring. We do support the proposal to reduce the default bankruptcy period conditionally pending clarification on recovery mechanisms and the powers of former trustees to perform their duties.



Improving bankruptcy and insolvency laws: submission to Treasury's proposal paper

We thank you for allowing us to provide our views on the proposed reforms. Should you have any queries regarding this submission, please contact:

A handwritten signature in blue ink, appearing to read 'D Stimpson'.

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Nicky Lonergan  
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Yours faithfully

A handwritten signature in blue ink, appearing to read 'T. Grant Van Der Velde'.

**TERRY GRANT VAN DER VELDE**  
**MANAGING DIRECTOR**  
**SV PARTNERS PTY LTD**

**Annexure A: Our responses to your queries detailed in the proposals paper**

Proposal	Query No	Query	Response
Retain trustee's ability to object to discharge and extend the period up to eight years	1.1	Should the criteria for lodging an objection and the standard of evidence to support an objection be changed to facilitate a trustee's ability to object to discharge?	<p>Yes.</p> <p>The criteria set out in s149C of the <i>Bankruptcy Act 1966 (Cth)</i> (the BA), being: able to identify the objection, ensuring sufficient evidence to prove the objection, having a valid reason to object and ensuring the Bankrupt does not have a reasonable excuse are simple at first glance. However, the evidence required to meet the criteria is onerous in practice, especially if the reason to object is to induce the Bankrupt to perform a duty not otherwise discharged [s.149B]. Reasons for this are:</p> <ol style="list-style-type: none"> <li>1. the objection is not meant to be seen as a punishment even though its function is punitive;</li> <li>2. creditors are disadvantaged and the delay of the Bankrupt's non-compliance does cause additional costs to the estate; and</li> <li>3. the trustee must anticipate what effect the objection will have on the behaviour of the Bankrupt, and this is generally unknown or unpredictable.</li> </ol> <p>Evidence provided by the trustee should be reduced as the objection can always be withdrawn. One year is an inadequate period of time to produce the level of evidence currently required.</p>
Change the BA to ensure the obligations on a bankrupt to assist in the administration of their bankruptcy remains after discharge	1.2.1a	Which particular obligations on a bankrupt should continue after a bankrupt is discharged?	All of the obligations detailed in sections 152 & 153 of the BA. Ensuring the Bankrupt provides assistance within 28 days of a trustee's reasonable request should be considered.
	1.2.1b	What incentives and mechanisms should be in place to ensure compliance with obligations after discharge?	<p>If a bankrupt does not comply with a trustee's reasonable request within 28 days, the trustee should have the option of applying to AFSA for commencement of a subsequent bankruptcy term.</p> <p>We recommend retaining the penalty of six month's imprisonment, however we recommend that the process of application to the relevant Court is simplified/standardised so that a lawyer is not required to assist with this application.</p> <p>If the bankrupt does not meet income contribution obligations (provision of income information, payment of liability), the former trustee should retain the right to issue a garnishee notice on the discharged bankrupt's bank account.</p> <p>If the bankrupt conducts business overseas and is non-compliant (and trustee does not lodge an objection) the trustee should have the option to extend the restriction on overseas travel for the two year period post discharge.</p>
	1.2.2	Continue to pay income contributions for three years and if objection is lodged for the entire term of the bankruptcy	The mechanism put in place to ensure a bankrupt provides evidence on income annually for two years after discharge will have to be effective and carry heavy penalties. Concerns include: what powers a former trustee would hold to collect the liability, how a former trustee would be remunerated, and any other tasks such as adjudication on creditor claims and dividend distributions at a time when the trustee is no longer the trustee.

Proposal	Query No	Query	Response
Reduction of credit, overseas travel and licence restrictions (subject to misconduct)	1.31	Appropriateness of reducing retention period for personal insolvency information in credit reports	Providing credit to a discharged bankrupt should be at the discretion of the financial institution (debt finance) or investor (equity finance). Recording the bankruptcy event should remain, however there should be the addition of a classification system to identify high risk clients.
Defence to section 588G of the CA (Model A)	2.2	Will model A provide an appropriate safe harbour for directors?	Yes, with the following changes/additions. It is insufficient for the requirement of relevant company records and the restructuring advisor's opinion to be the only determinants of the company's future viability. Directors must take reasonable steps to comply with the Advisor's recommendations to enable the company to be restructured in an informal capacity. If a director can evidence that the events that proceeded the insolvency of the company were unlikely to be predicted and outside of the director's control then the defence would be satisfactory.
	2.2.1a	What qualifications and experience should directors take into account when appointing a restructuring officer, & should this be set out in ASIC RG?	The recommended qualifications should be an external administrator or accountant and a member of ARITA and either the Institute of Charters Accountants Australia (ICCA) or CPA Australia.  Yes, a regulatory guide specifying what qualifications are required should be produced by ASIC.
	2.2.1b	Which organisations, if any, should be approved to provide accreditation to restructuring advisors, if such approval is incorporated in the measure?	We recommended that the appropriate organisations should be the Australian Securities and Investments Commission (ASIC) and the Australian Restructuring Insolvency and Turnaround Association (ARITA).
	2.2.1c	Is the method of determining viability appropriate?	No. Currently the method is too broad.  The method suggested is that the company can avoid insolvent liquidation and be returned to solvency within a reasonable period of time. This method very broad for the following reasons:  1. proving the insolvency or solvency of a company is a specialist's process which incorporates a large body of case law. The key principles are: insolvency as a cash flow test, use of balance sheet to supplement information, use of indicators of insolvency, how secured creditors and set off affects the assumptions, and access to debt/equity funding. These should be the bases of what is considered when assessing the company's current position.  2. providing an opinion that a company can avoid an insolvency event takes into consideration many forward looking statements that are affected by unknown factors occurring in the future. The Advisor would seek reliance on the statements of the directors (with their specific industry knowledge) and/or historical relationships.

Proposal	Query No	Query	Response
Defence to section 588G of the CA (Model A)	2.2.1d	What factors should a restructuring advisor take into account when determining viability? Should these be set out in regulation or left to the discretion of the advisor?	<p>The factors we recommend are:</p> <ul style="list-style-type: none"> <li>there should be a base level requirement to perform specific tests based on the above points in 2.2.1c, but the overall opinion should be left to the discretion of the Advisor.</li> <li>the Advisor could assist the company in obtaining further funding if required to return the company to solvency within a reasonable period of time.</li> </ul>
	2.2.1e	Are the protections and obligations for the restructuring advisor appropriate, and what other protections and obligations should the law provide for?	<p>The proposed protections and obligations for the restructuring advisor are logical. Two of these protections that should remain are that the restructuring advisor:</p> <ul style="list-style-type: none"> <li>is not a shadow or de facto director; and</li> <li>is not able to be appointed to any subsequent insolvency without leave of the Court, which is in line with Corporations and Bankruptcy statute and section 6 of ARITA Professional Code of Conduct.</li> </ul> <p>Obligations of the director have not been addressed. The director should take all reasonable steps to implement the recommendations of the Advisor, provide all reasonable assistance as requested and act in good faith.</p> <p>All obligations of the restructuring advisor and the director should be set out in the regulations.</p>
Other features of safe harbour	2.2.2a	Do you agree that safe harbour would not prevent voidable director related transactions or personal liability for specific employee liabilities incurred during the safe harbour period (if company is subsequently liquidated)?	<p>Voidable antecedent transactions predicated on determining a date of insolvency prior to or as a result of entering into the transaction are likely to be affected by the opinion of the restructuring advisor stating the company's ability to be solvent within a reasonable period of time.</p> <p>The impact of this depends on <u>the timing of when the restructuring advisor's opinion was provided</u>, and if the informal workout occurred. The current provisions of section 588 of the Act should all remain in the event of an insolvent liquidation, provided that all elements of voiding the transaction can be met. Yes, safe harbour provisions should not prevent voidable recoveries or absolve the director from personal liability associated with employee liabilities, if the company is liquidated due to a failure of the informal workout.</p>
	2.2.2b	Company continuous disclosure requirements would remain during the safe harbour period, which may impact privacy. Do you agree?	<p>Yes, continuous disclosure should occur, together with a defined timeframe for the process of "informal restructuring" to ensure that a company does not stay in the "safe harbour period" indefinitely. It is also recommended that key stakeholders be involved in this process as they should have the right to withdraw their support.</p>
Where safe harbour is not available	2.2.3	In what other circumstances should the safe harbour defence not be available?	<p>If the director does not take all reasonable steps to implement the Advisor's recommendations, they should not be afforded the defence.</p>
Section 588G of the CA does not apply (Model B)	2.3	What are the merits and drawbacks of this model?	<p>The drawback of this model is that it shifts the responsibility of the director to ensure the company not trading insolvently or will return to solvency within a reasonable timeframe to the Liquidator, in their obligation to pursue the director with creditors' funds. We are of the view that this is unlikely to have a positive effect in director dealings.</p>

Proposal	Query No	Query	Response
Any term of a contract or agreement which terminates or amends any contract or agreement by reason only that an 'insolvency event' has occurred would be void. Any provision that has the effect of providing for, or permitting, anything that in substance is contrary to the above provision would be of no force or effect	3.2a	Are there other specific instances where the operation of ipso facto clauses should be void?	We agree that counterparties to a contract with an insolvent party should not be allowed to amend, accelerate or vary an agreement for the sole purpose of insolvency.
	3.2b	Should any legislation introduced which makes ipso facto clauses void have retrospective operation?	No
	3.2.b	Are there any other circumstances to which a moratorium on the operation of ipso facto clauses should also be extended?	Yes. Liquidators that are converting a business sale or who have a genuine reason should also have the capacity to void an ipso facto clause. It is agreed that any other type of ipso facto clause that varies the terms or terminates a contract that would be detrimental to a company undertaking restructuring should be void.
	3.2.1	Does the mechanism of any provision in an agreement that has the effect of providing for, or permitting, any that in substance is contrary would be of no force or effect constitute adequate anti-avoidance?	Yes
	3.2.2	What contracts or classes of contracts should be specifically excluded from the operation of the provision?	We agree with prescribed financial contracts.
	3.2.3	Do you consider appeal on the grounds of hardship to be a necessary and appropriate safeguard? If no, what mechanism would be?	Yes