

24 April 2017

Mr James Mason
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: insolvency@treasury.gov.au

Dear Mr Mason

Treasury Laws Amendment (2017 Enterprise Incentives No.2) Bill 2017

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide input into the draft Bill proposing a safe harbour for insolvent trading and a stay on enforcing rights merely due to arrangements or restructures. We support the objectives of both proposals. We believe the balance between supporting businesses to work through temporary difficulties and protection of rights of those transacting with them has broadly been achieved.

Safe Harbour

We note that the draft Bill proposes a defence for directors should there be a “trading while insolvent” claim in a subsequent proceeding.

We support the inclusion of reference to obtaining advice from an appropriately qualified entity as potential evidence of working for a better outcome. The skills and competencies that a qualified professional can bring to enable the value in a business to be realised are important. The term “appropriate” is subjective and without further guidance, directors that seek or are offered advice from those without the necessary competencies could be exposed.

- We recommend that further information on what would constitute “appropriate” advice be made available, through regulation or other regulatory body material. This would include reference to skills and competencies, membership of a professional body (which requires the member to follow ethical codes, and has active monitoring and disciplinary processes), and a need to have current PI insurance.

We support the references to maintaining and making available proper books and records, and meeting employee entitlements and taxation obligations. However some of our members are concerned that an argument could be run that making a journal entry or other book entry in the company’s records could be deemed to be “making a provision” but would not enable these entitlements to be realised.

- In draft clause 588GA(4)(a) we recommend changing “providing for the entitlements of its employees” to “setting aside funds for the entitlements of its employees”.

In the event that the company moves to a formal proceeding, directors are subject to certain obligations to provide information and assistance to the liquidators or administrators under the Corporations Act 2001. Our members report that in some instances these obligations are not met.

- We recommend that non-compliance with Corporations Act obligations in the event of a proceeding be added to the list of matters which would prevent directors from utilising a safe harbour defence.

Stay on enforcement

We support the proposals in relation to staying enforcement rights merely because of a proceeding.

In practice, our members report that immediately prior to a proceeding, directors can be distracted and payments may slip which would and could be paid in the ordinary course of business. A practitioner coming in can quickly rectify the position. Under the current drafting, a one-off non-payment immediately prior to the proceeding could take the contract out of the stay provisions.

- We recommend that a clause be added to enable the liquidator or administration a period of up to 7 days to rectify any non-payments prior to a contract being rescinded.

Chartered Accountants ANZ is made up of over 100,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over. Our members are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business. We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

Should you have any queries concerning the matters discussed in our submission, or wish to discuss them further, please contact me at: liz.stamford@charteredaccountantsanz.com or telephone (02) 8078 5426

Yours sincerely,



Liz Stamford
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