

4 March 2021

Manager
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The Treasury
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Dear Sir/Madam

Submission to Treasury – increasing the statutory demand threshold

Introduction

The Australian Credit Forum (**ACF**) welcomes the opportunity to make a submission to Treasury in respect of the potential reforms to the indefinite increase of the statutory demand threshold.

The ACF was established in the early 1970's by a group of senior credit professionals. The group recognised the need to develop an association where members could meet on a regular basis to exchange thoughts and ideas to strengthen their own knowledge but also the standards of the industry.

The association meets on a regular basis to discuss and review existing and proposed changes to the Federal and State Governments legislation that might have an impact on their company's credit policies and practices in their day-to-day role as credit professionals.

The members of ACF are drawn from all areas of the credit profession across a range of industry groups including but not limited to senior credit managers, members of the legal profession, insolvency practitioners, credit insurance underwriters and brokers, mercantile agents and credit reporting agencies. The depth and diversity in experience of the members ensures that a broad cross section of the credit industry considers the impact of all relevant legislation.

Overview

The ACF, in collaboration with its members, will give professional insight for the proposed reforms to the proposed statutory demand threshold increase.

This submission addresses the four (4) questions presented in the consultation paper, *Increasing the Statutory Demand Threshold – 15 February 2021*. Key issues pertaining to the effect's changes may have on creditors are detailed in the response to the Treasury questions below.

The ACF has concerns regarding the raising of the statutory demand threshold and more specifically, the impact this may have on creditors. Broadly speaking the ACF does not support the implementation of any changes to the statutory demand threshold and maintains that it should remain at the current rate.

Response to consultation paper

1. Should the threshold at which the statutory demand can be issued on a company be increased?

Currently section 9 of the *Corporations Act 2001 (Cth)* (the **Act**) defines the *statutory minimum* as \$2,000 in respect of section 459E(1)(a) of the Act. The current statutory demand threshold is debt or debts totalling a minimum of \$2,000.

The ACF strongly recommends that the statutory demand threshold be maintained at the current *statutory minimum* of \$2,000.

This statutory minimum allows for creditors with accrued debts of \$2,000 or more to commence proceedings to wind up a company under section 459P of the Act if the debts are not paid.

Commencing winding up proceedings on a company is an action that is not taken lightly and will have a serious effect on a company. Therefore, the threshold of responsibility for companies is higher and the need to pay their debts when they fall due, even small amounts, is greatly important.

It is ACF's view that the threshold set on statutory demands directly impacts the behaviour of debtors. If the threshold is too high, it is highly possible that debtors may be encouraged to actively avoid their creditors.

Further, if the threshold were to be increased, this would minimise creditor/debtor engagement to resolve any financial hardship as there would be no benefit for either party. This would create hurdles and limits in providing small value credit for businesses requiring such a limit.

To have an effective threshold, it is critical that the statutory demand regime contain lengthy and detailed processes to validate, oppose or respond to the statutory demand. The current processes do provide an opportunity for debtors to set aside statutory demands in view of genuine dispute, set-off or if the debt is compounded.

The Federal Government have taken significant steps to implement a restructuring process which would allow viable businesses in financial distress to avail themselves.

Increasing the threshold will likely deter credit providers from providing credit to operations that will fall below the threshold and this will have long terms effects on small to medium enterprises.

2. If the threshold is increased, to what amount should it be increased and why?

The statutory demand threshold should not be increased above the current statutory minimum of \$2,000. The ACF is of the belief, any increase to the statutory minimum will have detrimental impacts on credit providers, particularly small business credit providers, and will likely see an increase in the costs of bad debts being passed on.

Accordingly, any increase will see creditors disadvantaged, due to the foreshadowed trend of companies ignoring debts below the threshold.

Further, ACF does not consider it is in a position to provide a recommendation as to an amount the statutory minimum should be increased to, without the provision of further research, into particularly:

- (a) the number of statutory demands issued for debts between, say, \$2,000 and \$10,000;
- (b) the alleged abuse of the statutory demand process; and
- (c) any costs and benefits (if any) of increasing the statutory minimum.

3. If the threshold is increased, when should this change come into effect?

To provide creditors with an opportunity to reassess their current debtor's ledger, and further in view of the completion of the temporary relief for small business the ACF believes any legislative change should commence 1 July 2022

This timeframe will be crucial to give organisations time to reassess their financial positions to successfully recovery any debts that they may have owing.

4. What will be the impacts of increasing the threshold?

The impacts of increasing the threshold will see creditors disadvantaged to any business that wish to neglect their debts. Unscrupulous businesses will seek to negate any debts that remain below the increased minimum threshold.

Our ACF members have indicated that companies that already have genuine cash flow issues are willing to communicate with the creditors and creditor's representatives in order to establish payment plans or an extension of time. This allows for the promotion of company engagement between the creditor and the indebted company.

A permanent increase to the statutory demand threshold would diminish the engagement between a company and its creditors, especially creditors that fall below the threshold.

Further impacts would see companies that are insolvent and are unable to pay their debts continue trading. The increase in value that the statutory demand threshold receives will equally see a proportionate number of creditors unable to hold a company to account. This unaccountable behaviour could result in an increase in the operation of 'zombie businesses' as the creditor will be unable to utilise the statutory demand regime.

It is the ACF view that an increase to the threshold would see a negative impact on creditors interest and protect those companies that are wilfully not attending to their debts.

The ACF appreciate that the Covid-19 crisis has forced governments to take drastic and temporary action to balance the needs of business communities and the rights of trading partners, however ACF confirm that maintaining the threshold at \$2,000 is the right course to take.

The temporary moratorium on enforcement action that commenced in March 2020 and ended on 31 December 2020, along with enormous stimulus packages that were provided gave companies sufficient breathing space to companies to allow them to reorganise their financial affairs. Australia has been extremely successful in supporting businesses over the worst period of the pandemic and with the vaccine rollout underway and good businesses largely coming back into line, a return to normal enforcement processes is required. This will ensure a return to normalised business lifecycle process, a big part which relies on creditors being able to enforce their rights in relation to outstanding debts owed to them.

Observations

The ACF observes that the purpose of this act is to allow for greater company growth and expansion. However, if an increase of the statutory demand threshold were to go ahead other debt recovery remedies would need to come under reform to give greater flexibility to the creditor and more responsibility to a company to pay their debts.



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