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Matthew Bowd
Manager, Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: MCDInsolvency@Treasury.gov.au

4 March 2021

Dear Mr Bowd

INCREASING THE STATUTORY DEMAND THRESHOLD CONSULTATION

The Australian Finance Industry Association (AFIA) appreciates the opportunity to respond to the Consultation.

As context to this submission, AFIA is a leading advocate for the Australian financial services industry. We support[1] our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, and fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

OUR SUBMISSION

Our overarching principles in responding to this Consultation are that policies underpinning Commonwealth insolvency law should:

- preserves the rights of creditors to facilitate the efficient recovery of debt
- balance the interests of debtors and creditors through a process which is transparent, fair and efficient.

We are concerned that an increase in the statutory demand threshold, at this time, does not strike this balance because:

[1] Australian Finance Industry Association (afia.asn.au)

- it limits the rights of small business creditors who rely on repayment of these debts to make claims against their small business customers/debtors
- if the new 'norm' is that debts below a higher threshold are not able to be pursued for legal reasons, it could increase the risk of extending credit for those amounts and therefore make access to credit more difficult and expensive for small businesses.

We therefore support the recommendation by the Australian Restructuring Insolvency and Turnaround Association (ARITA) to keep the statutory demand threshold at $2,000.

QUESTION 1: SHOULD THE THRESHOLD AT WHICH A STATUTORY DEMAND CAN BE ISSUED ON A COMPANY BE INCREASED?

At this stage, no. We note that the current statutory demand threshold was temporarily increased to $20,000 as part of the Federal Government's package of legislative reforms passed on 25 March 2020. The temporary increase was extended to 31 December 2020. However, since then a dedicated small business restructuring process (along with a simplified liquidation process) has been put in place to support distressed businesses that continue to be impacted by the pandemic-related economic downturn.[2]

While $2,000 is the legal minimum statutory threshold, our members have noted that in practice it may not be commercially practical for a creditor to issue a statutory demand for that amount. This is due to the cost and time involved in drafting and issuing the demand, and the possible costs associated with contesting the statutory demand in court, if it is disputed by the debtor.

In saying this, our members have expressed the following concerns with an increase in the threshold:

1. The inability of a company to pay a $2,000 demand is a good indicator that a company is in financial distress. Issuing a statutory demand can be a useful tool to incentivise businesses to remediate late payments or 'bring the debtor back to the table' to discuss alternatives.
2. Increasing the threshold may incentivise small businesses to accumulate and not repay small amount debts across a number of suppliers.
3. An increase in the threshold may negatively impact the ability to get repaid and therefore impact the cashflow of (potentially multiple) small business creditors and create a ripple effect through a potential industry sector.

The overarching concern is that by increasing the statutory demand threshold you tacitly indicate that recovery of debts below this new amount become too difficult, which then has an adverse effect on the risk appetite of lenders which may restrict the flow of credit into the economy. As such, we do not believe that the threshold at which a statutory demand can be issued on a company should be permanently increased.

[2] The Corporations Amendment (Corporate Insolvency Reforms) Act 2020 (Cth) passed on 10 December 2020

QUESTION 2: IF THE THRESHOLD IS INCREASED, TO WHAT AMOUNT SHOULD IT BE INCREASED AND WHY?

We commend the Federal Government for making the temporary changes described above to provide immediate relief to small businesses facing challenges due to the economic impacts of the pandemic. However, as noted above, we do not support an increase in the threshold.

QUESTION 3: IF THE THRESHOLD IS INCREASED, WHEN SHOULD THIS CHANGE COME INTO EFFECT?

Please see above.

QUESTION 4: WHAT WILL BE THE IMPACTS OF INCREASING THE THRESHOLD?

We note our concerns in our response to Question 1. On a deeper policy level, we have a concern that the higher the threshold, the more risk averse lenders may become. This in turn may restrict the flow of credit to small businesses and into the economy, which is contrary to the government's efforts to incentivise lenders to continue to support smaller businesses.

An increase in the statutory demand thresholds may increase the risk profile of business customers and may have a negative impact or create additional barriers to smaller commercial borrowers obtaining finance on more favourable terms.

CLOSING COMMENTS

A continued focus on improving efficiency, competition and innovation within the finance sector will support Australia's economic recovery. If implemented, we believe our recommendations will:

- promote access and choice to consumer and business finance
- drive competition and innovation in Australia's financial services industry
- support economic and social participation across our community.

Should you wish to discuss our submission or require additional information, please contact me or Naveen Ahluwalia at naveen@afia.asn.au or 02 9231 5877.

Yours sincerely

Karl Turner
Executive Director, Policy & Risk Management

ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- Major, regional and mutual/community owned banks.
- Providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers.
- Providers of land finance, including residential and commercial mortgages and bridging finance.
- Equipment financers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing.
- Motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance.
- Fleet leasing and car rental providers.
- Providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see here.