



16 February 2021

Our ref: 1000_statutory demand reform

Manager
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: MCDInsolvency@Treasury.gov.au

Submission regarding consultation on increasing the statutory demand threshold

Dear Sir/Madam

On behalf of SM Solvency Accountants, an insolvency practice providing corporate and personal insolvency administration services nationally, I submit the following feedback in regard to the consultation paper dated 15 February 2021 regarding a possible increase of the statutory demand threshold.

Support for an increase to \$4,000

We support an increase of the statutory demand threshold to reflect changes in the real value of the dollar since the statutory demand was originally legislated.

The consultation paper notes that the original (and current) statutory demand threshold of \$2,000 equates to \$3,878 adjusted for inflation. If that amount were rounded to \$4,000 it would be 40% of the recently adjusted bankruptcy creditor petition threshold. Prior to 1 January 2021, the statutory demand threshold (\$2,000) was 40% of the then bankruptcy creditor petition threshold (\$5,000), excluding the temporary threshold changes introduced for part of 2020 on account of the Government's response to the COVID-19 pandemic.

We agree that an increase is warranted due to inflation and given an increase to \$4,000 would keep the statutory demand threshold proportionately the same in comparison to the current bankruptcy creditor petition threshold, we support an increase of the statutory demand threshold to \$4,000.

We support comments made in the consultation paper regarding harmony between the personal and corporate insolvency regimes, to the extent possible.

The consultation paper notes that legal costs may sometimes make winding-up applications prohibitively expensive and may reduce the ability of creditors to collect monies due to them. It is our view that it is the Government's responsibility to small businesses to counter this by not increasing the statutory demand threshold to too high an amount.

General comments

Generally, we have concerns with prioritising the protection of small business debtors ahead of small business creditors, for the following key reasons:

- While some small business debtors face serious cash flow difficulties due to factors entirely beyond their control (and we appreciate that public lockdowns and downturn in trading activity due to the COVID-19 pandemic is an example of such a recent external factor), in our experience there are usually other factors. These other factors can include inadequate financial record keeping, excessive and unmanaged accumulated related party drawings loans (in lieu of expensing taxable wages), and tax reporting non-compliance.
- Businesses which do not pay their debts as and when they fall due inherently obtain a trading competitive advantage over businesses that either do or scale back their operations to ensure they can. This unfair competitive advantage not only adversely affects the overall quality of Australian business activity, but disincentives entrepreneurialism and risks harm to Australia's credit industry.
- It has been previously acknowledged by the Government that illegal phoenix activity causes significant loss to the Australian economy. It is typically the role of liquidators to investigate and identify alleged illegal phoenix activity. The Australian Securities and Investments Commission relies upon investigations undertaken by liquidators to identify a multitude of alleged misconduct. Policies aimed at deliberately and significantly reducing the appointments of liquidators are likely to foster the promotion and use of illegal phoenix activity.
- No references to data have been provided in the consultation paper about the percentage of "viable" businesses which have historically been wound-up through court proceedings. Accordingly, the statement that change is required to "...lessen the threat of actions that could push otherwise viable businesses into insolvency" appears unsubstantiated. The consultation paper also states that businesses with "long term viability" may be "unnecessarily" pushed into liquidation. The consultation paper provides no data to support that assertion nor does it contain a definition of "long term viability".



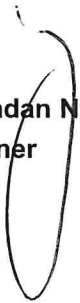
- The notion that protecting debtor businesses is more important than the rights of creditor businesses lacks even verisimilitude and merely transfers one party's cash flow difficulties onto multiple other parties causing an adverse multiplier effect that fosters illegal phoenix activity.

Thank-you for the opportunity to provide feedback on this issue.

Should you wish to discuss this submission, please contact myself on 07 3308 4910
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Yours faithfully

Brendan Nixon
Partner



Solvency Accountants