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### *“Safe Harbour”*

### *“It is not a Get Out of Jail Free Card”*

#### **PLEASE EXPLAIN**

Directors of Company's "Experiencing" Financial difficulties should not be lulled into a false sense of security that the proposed "Safe Harbour" provisions will protect them from any Insolvent Trading claim they may be exposed should the Company subsequently be Wound Up.

#### **SUMMARY OF DRAFT LEGISLATION**

The proposed new Section 588GA is structured to introduce a carve out such that Directors will not be liable for certain debts incurred whilst insolvent "if" after suspecting insolvency the Director takes a "Course of action reasonably likely to lead to a better outcome" for both the Company and the Creditors as a whole as against being Wound Up or entering into Voluntary Administration etc.

#### **WHAT IS "REASONABLY LIKELY TO LEAD TO BETTER OUTCOME"**

In determining whether a Directors course of action is "Reasonably likely to lead to a better outcome" the draft Legislation lists the following factors (guide only)

- Has the Director obtained appropriate advice
- Has the Director informed him or herself of the Company's financial position
- Has the Director been developing or implementing a plan for restructuring the Company to improve its financial position.

#### **WHAT DIRECTORS SHOULD BE AWARE OF!!**

- The provisions only cover those debts that are incurred in connection with the course of action.
- The provisions do not afford protection if the Company is not meeting its Employee Entitlements (including Superannuation contributions) and its tax reporting obligations are not consistent with a Company that is solvent.

#### **CSBR COMMENT**

Even though still draft Legislation I consider it difficult to expect it will be of great benefit to SME's unless they remain extremely diligent monitoring their Financial Affairs and have a sound history of obtaining regular and timely accounting advice.

#### **WATCH THIS SPACE!!**

*Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate  
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