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## November 2016

### "Insolvency Law Reform Part 2"

#### **BACKGROUND**

In the September CSBR Report an overview was provided of those proposed Bankruptcy reforms ie that "subject to no malfeasance", the (3) three year exclusion period for a Bankrupt be reduced to (1) one year for being a Director, overseas travel and obtaining finance etc.

In respect to those proposed Corporate Law reforms there are two major items on the Agenda ie;

- Making "Ipso Facto" clauses unenforceable and;
- Introducing a "Safe Harbour" for Directors from Liability for Insolvent trading

#### **IPSO FACTO CLAUSES**

An "*Ipso Facto*" clause is a contractual clause which allows one party to terminate an agreement by reason "only of the fact" (i.e. *Ipso Facto*) of the insolvency of the other party. These clauses are found in many critical Supplier Contracts, Franchise and Licence Agreements and Leases for Land and Equipment

Under the existing Corporate Insolvency regime there is no prohibition or moratorium on the enforcement of "*Ipso Facto*" clauses and this has been a major impost to Directors decision making process to appoint a Voluntary Administrator (VA) for fear of the distressed company's main trading partner invoking the right to terminate contracts etc. despite there being no outstanding payments or contractual default.

In summary there may as a consequence be no business to restructure and therefore it is the Governments proposal within the reforms to void a termination by reason only that an insolvency event has occurred.

We consider this is an extremely positive move in value adding to the benefits of in particular the Voluntary Administration process if relevant.

#### **2016 IN HOUSE TRAINING**

***As always we at Chamberlains SBR are more than open to coming to your firm and running an in house session to your middle management and staff should you be interested in arranging a free session do not hesitate to contact us.***

Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate  
Business Reconstruction & Insolvency

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