

August 2017

“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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