Danger - COVID-19 Safe Harbour Flaw Requires URGENT External Administrator Appointment

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DANGEROUS
Waterfall Ahead
DO NOT Proceed
Take All Craft Out Here

A fatal flaw exists in the government's COVD-19 safe harbour legislation. This means directors **must** appoint an external administrator to their company **on or before 24 September 2020**, if they wish to take advantage of the COVID-19 safe harbour protection from insolvent trading.

At the beginning of the global pandemic the Australian Federal Government introduced temporary legislation to protect directors from liability for insolvent trading during the global COVID-19 pandemic. This safe harbour protection from insolvent trading will excuse directors for liabilty in respect of debts incurred in the 'ordinary course of business' during the operation of the temporary legislation, presently due to expire at the end of 24 September 2020.

However, for reasons which are not clear, but possible linked to the urgency with which the legislation was passed, the drafters included an additional fundamental and crucial requirement to gain the benefit of this COVID-19 safe harbour protection from insolvnt trading. That requirement is that in order to gain this COVID-19 safe harbour protection, an external administrator (either a voluntary administrator or a liquidator), **must have been appointed before the legislation expires** at the end of 24 September 2020.

That means that if you or your clients are in any doubt about whether or not you might need to rely upon the COVID-19 safe harbour protection; or if there is any risk that you or your clients' company might be placed into external administration in the future, you **must** consider whether or not an appointment or a voluntary administrator or liquidator should be made on or before 24 September 2020.

Read a detailed article published in Lexis Nexis Insolvency Law Bulletin on the COVID-19 safe harbour problem by Matthews Folbigg Principal, Stephen Mullette here.

If you would like more information or advice in relation to COVID-19 safe harbour, insovent trading or insolvency, restructuring or debt recovery , contact a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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