Bankruptcy reform: a vaccine for the economy?

Date : January 19, 2021

By Andrew Hack, Solicitor, and Stephen Mullette, Principal, of Matthews Folbigg Lawyers, in our Insolvency, Restructuring and Debt Recovery Group.

Countries around the world have commenced their vaccine programs, with Australia's vaccine is expected to commence imminently once the TGA completes its approval process. As to the *economic* impacts of COVID-19, the Australian Government has been testing its own form of vaccine through legislative changes to corporate insolvency and bankruptcy laws.

In March 2020, the Australian Government enacted a number of changes to corporate insolvency and bankruptcy laws, seeking to address the economic impact of the coronavirus. The significant changes to bankruptcy laws included:

1. An increase in the cap on issuing bankruptcy notices from $5,000 to $20,000; and
2. An increase in the period for compliance with a bankruptcy notice from 21 days to 6 months.

Both of these changes were made by providing definitions determined through Regulations, which means that they are able to be adjusted from time to time by the Executive. Previously

those amounts were hard-coded in the *Bankruptcy Act* and could only be changed through Parliament.

As of 1 January 2021, the period for compliance with a bankruptcy notice has reverted back to the pre-COVID period of 21 days, but the debt threshold has been changed to $10,000.

On 13 January 2021 the Attorney-General's Department issued a Discussion Paper titled "The bankruptcy system and the impacts of coronavirus" and is seeking submissions from the public on bankruptcy laws and the effects on COVID-19. The topics for discussion include:

1. Whether the default period of bankruptcy, currently set at 3 years, should be set at 1 year (a topic which had been tabled by the Government even prior to the coronavirus);
2. Whether the Part IX debt agreement regime should be altered to address the ongoing economic effects of the coronavirus (for example, by changing the threshold limit for eligibility);
3. Whether the Part X personal insolvency agreement regime should be altered or expanded; and
4. Whether the offence provisions should be expanded to either:
    1. Address concerns of abuse brought about by a change to the default period of bankruptcy; or
    2. To deal with the behaviour of untrustworthy pre-insolvency advisors and 'illegal phoenix activity'.

The last 12 months has been an interesting time for corporate insolvency reform, beginning with the enactment in February 2020 of legislation clamping down on illegal phoenix activity, followed immediately with a policy backflip in March 2020 through extensions to creditor's statutory demands (similar to bankruptcy notices) and a moratorium on insolvent trading, and lastly with the creation of the debt restructuring regime.

It appears the Australian Government is now turning its mind again to bankruptcy reform – trying to perfect its economic vaccination program – with this Discussion Paper, the process of which is occurring simultaneously with the Government's proposed draft new Bankruptcy Regulations.

Read the Attorney-General's discussion paper here.

If you would like more information or advice in relation to debt recovery, insolvency and restructuring, contact Andrew Hack at andrewh@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au

Stephen Mullette on (02) 9806 7459 or stephenm@matthewsfolbigg.com.au.