
DEBT COLLECTION IN A SAFE HARBOUR

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Credit Managers should be aware of the reforms made to the *Corporations Act* 2001 (“the **Act**”) that attempt to create a shield for directors of companies that believe their company is in financial stress and how it affects their debt collection strategies.

Changes in September 2017 to the Act created section 588GA and deal with specific actions taken by directors in relation to debts incurred after 19 September 2017. These reforms are commonly referred to as the “Safe Harbour Reforms”.

It idea behind the reforms is to assist directors by not penalising them should they recognise their company is in financial distress and seek professional advice from an “appropriately qualified entity” to get out of that situation.

If when a debt has been incurred the director has a suspicion that their company is, or may become, insolvent, and they are attempting to trade out of that position with advice from the appropriately qualified entity, then the director may be protected from the insolvent trading provisions under the Act.

Creditors need to be aware that there is no obligation for the company to advise its suppliers that it is undertaking the safe harbour process. The debt collection process could be severely interrupted if the attempted safe harbour reform fails and the company goes into liquidation. The immunity for the director from insolvent trading claims by the liquidator reduces the ability for the liquidator, and so all creditors, to recover the debt.

Further, should a creditor somehow become aware of the company attempting the safe harbour reforms, then it will be hard for the creditor to repel a preference claim on any payments received from the company by a liquidator who may be subsequently appointed.

It is therefore essential that creditors ensure that their documentation properly secures any debt due and owing to allow for maximum recovery and that each and every customer has completed the documents.

The above summary is designed to give creditors a general idea of how recent legislative changes may impact upon their debt collection procedures. Any specific advice on the safe harbour reforms can be discussed by contacting the team at Matthews Folbigg.

Section 588GA of the Act can be reviewed [here](#).

If you would like more information or advice in relation to insolvency, restructuring or debt



collection practice and procedure, contact Darrin Mitchell on 02 9806 7428 or darrinm@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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