

COVID-19 small business insolvency and restructuring reforms

On 31 December 2020, the temporary insolvency protections which had been in place since March 2020, expired.

On 1 January 2021, we saw the introduction of the small business insolvency reforms (including a simplified liquidation process) and a change to matters surrounding creditor's statutory demands and bankruptcy notices.

Creditor's statutory demand

As at 1 January 2021:

- the threshold to issue a statutory demand was returned to the sum of \$2,000; and
- the timeframe for debtors to respond to a statutory demand was returned to 21 days.

Bankruptcy notices

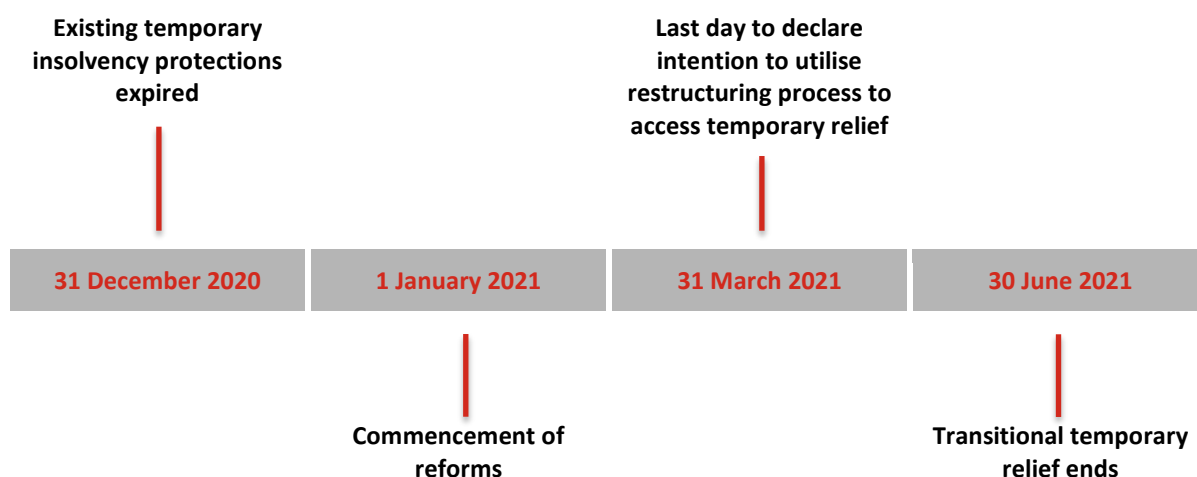
As at 1 January 2021, the following changes were made:

- the debt threshold is now \$10,000; and
- the timeframe for debtors to respond to a bankruptcy notice has been reduced from 6 months to 21 days.

Small business insolvency reforms

The small business insolvency reforms, which commenced on 1 January 2021, allow eligible small businesses to utilise either a "debtor in possession" restructuring process, or, where businesses enter a creditor's voluntary winding up, a simplified liquidation process.

Creditors should be aware that eligible small businesses may declare their intention to appoint a restructuring practitioner until 31 March 2021, where they will be afforded up to three months temporary relief from insolvent trading liability and enjoy continued access to the COVID-19 protections for statutory demands (\$20,000 statutory limit and 6 months to comply).



For the relief to apply, directors must lodge their intention with ASIC, and have the notice published on the ASIC published notices website.

If dealing with a business who provides notification of an intention to take up restructuring, creditors should carry out the following actions:

1. Undertake stocktake of goods supplied, and an account of outstanding invoices.
2. If monies outstanding, exercise rights under retention of title and recover stock.
3. Stop supply or cash on delivery only.
4. Set up a notification system.
5. Take legal action.
6. Review your contractual documents including but not limited to your credit agreement and personal guarantee.
7. Resolve any issues in your documentation.
8. Review your security interests both personal and real.
9. Register any unregistered security interests.
10. Speak to your insurer before providing any further supply.

The simplified liquidation process

Key modifications to the existing process are:

1. reduced circumstances where a liquidator can seek to clawback unfair preference payment from a non-related creditor;
2. requirement for the liquidator to report to ASIC on potential misconduct where there are reasonable grounds to believe misconduct has occurred;
3. removal of requirement to call creditor meetings and the ability to form committees of inspection;
4. simplification of dividend and proof of debt processes; and
5. maximisation of technology neutrality in voting and communications.

The impact of the simplified liquidation process is currently unknown. It is not apparent as to whether the simplification of this process will have a positive impact on creditors and the insolvency space generally.

We are here to help

If you need any assistance or advice in understanding the impact of the small business insolvency reforms, the actions you should be taking now as a creditor, or strategic advice to manage insolvency, please feel free to contact our office to discuss.