

A blueprint for better restructuring

Wednesday, 24 October 2007

The introduction of the Voluntary Administration (VA) process in June 1993 was the most significant reform of Australian corporate law in many years, allowing Australia to boast one of the world's most effective corporate rescue regimes. Now, 14 years later, we are witnessing the introduction of wide-reaching reforms to that regime via the *Corporations Amendment (Insolvency) Act 2007* which will keep Australia's VA regime as a model for others to follow.

We are grateful to Ferrier Hodgson for providing the following succinct summary of those changes.

The reforms take effect on December 31, 2007 and aim to:

- Improve outcomes for creditors
- Fine tune the VA process
- Deter company officer misconduct
- Improve the regulation of insolvency practitioners

At their core, the reforms seek to reduce costs and improve the flexibility for restructuring within the VA process by allowing Administrators to:

1. Transfer shares or alter a member's status

- **Old:** Members with no commercial interest had the ability to prevent a transfer of shares that could be fundamental to a corporate restructure. Also, Deed Administrators had no power to compulsorily sell a member's shares
- **New:** A transfer of shares or alteration of a member's status can take place with the Administrator's consent or by order of the court. Even without the member's consent, if the court approves, a Deed Administrator can compulsorily sell a member's shares.

2. Raise funds

- **Old:** A debt-for-equity swap proposal from an Administrator requires compliance with the fundraising provisions of the Corporations Act. This adds complexity and cost.

- **New:** The fund-raising provisions of the Act will not apply to debt-for-equity swaps under a DOCA when creditors do not have to provide further consideration.

3. Borrow funds with the backing of a statutory indemnity and lien

- **Old:** An Administrator's borrowings do not fall within the definition of outgoings for which an Administrator has a statutory indemnity and lien.
- **New:** The existing statutory indemnity and lien extends to borrowings of an Administrator and any liabilities incurred in good faith and without negligence.

4. Change a company name without a special resolution from members

- **Old:** The difficulty of convening meetings and gaining consensus amongst members made it hard for an Administrator to change a company name, particularly a public company name, as part of a rescue plan. Also, disclosing a company's former name could result in reputation damage.
- **New:** Administrator can apply to ASIC to change a company's name without member approval. A Deed Administrator can gain court exemption from disclosing a company's former name.

5. Gain exemption from the disclosure "Subject to Deed of Company Arrangement", on public documents

- **Old:** Disclosure of "Subject to Deed of Company Arrangement" on all public documents could have an adverse affect on business.
- **New:** The court has a specific power to grant an exemption from making the public disclosure.

6. Deal with property that is subject to a lien or pledge

- **Old:** Uncertainty as to an Administrator's ability to deal with property subject to a lien or pledge.
- **New:** An Administrator can sell property under certain circumstances. Security holders will have protections.

7. Have more time to restructure a company

The reforms provide the following timetable:

First Meeting	Old	New
Notice of meeting	2 business days	5 business days
Timing of meeting	Within 5 business days after appointment	Within 8 business days after appointment
Second Meeting		
Notice of meeting	21 or 28 days	20 or 25 business days
Timing of meeting	Within 5 business days after the end of the convening period	Within 5 business days before or after the end of the convening period
Adjournment period	60 days	45 business days

The reforms also allow:

- Communication with creditors electronically.
- Streamlining of statutory advertising requirements.
- The conversion of 'days' to 'business days' thereby ensuring consistency and clarity in terminology.
- Creditors to terminate a DOCA only where there has been a fundamental breach which is not rectified.

* * * * *

Need more information or assistance?

Contact our Legal Compliance experts on:

E-mail: legal_compliance@croesusmgt.com

Website: www.croesusmgt.com

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific independent professional advice.