

## **TurksLegal Webinar Q&A:**

### **The New Insolvency Law Reforms to Support Small Business**

**1. Does the \$1M test include bank debt?**

Yes, provided it is not a contingent debt.

**2. Can you pursue a guarantor for a company debt when the company proposes a DRP or enters into a DRP?**

There is currently no limitation on creditors pursuing a guarantor who is **not** a director, spouse or relative of the director of the company, after the appointment of a Small Business Restructuring Practitioner. If your guarantor is a director, spouse or relative of the director of the company, you cannot enforce the guarantee until the Plan is entered into or the restructuring of the company ends before the Plan is proposed. The restructuring of the company will end if the company does not make a Plan or the directors of the company, the Small Business Restructuring Practitioner or the Court ends the restructuring process or an administrator, liquidator or provisional liquidator is appointed to the company.

**3. With respect to PPS rights, are you saying the SBRP won't recognise registered ROT rights?**

No. The Small Business Restructuring Practitioner will recognise perfected PPSA security interests. There are some limitations on the ability of the security holder to enforce those rights during the restructuring period and once the company enters into a Plan.

**4. Do employee entitlements include leave such as AL and LSL?**

Yes. All payable employee entitlements, other than contingent entitlements, must be paid. The definition of '*employee entitlements*' contained in s596AA (2) & (3) of the *Corporations Act 2001* (Cth) applies.

**5. With regards to the ATO, am I correct in saying that BAS (etc) only has to be lodged and that Payments don't have to be made?**

Yes. Only payable employee entitlements (other than contingent entitlements) must be paid by the company. The company is only obliged to ensure that all returns, notices, statements, applications or other documents as required by taxation laws within the meaning of the *Income Tax Assessment Act 1997* (Cth) are lodged.

**6. Presumably when the director gives the SBRP the Plan they must also give them the email addresses?**

This is not yet a prescribed requirement but a very sensible suggestion. There may be provision for this information in the prescribed form for the company's Restructuring Proposal Statement that accompanies the Plan.

**7. Can you mail out a proposal via AusPost and have votes returned via mail or must it all be by electronic means?**

Yes, you can. Electronic service is an alternative service method.

**8. How do you see the accuracy of creditors' debts working if the creditor only gets to address the debt when accepting or rejecting the plan?**

I see this as being very problematic. I think a more sensible approach would be to give creditors notice of the directors' assessment of the quantum of each creditor's debt or claim within five business days of the appointment of the SBRP so that creditors and the Small Business Restructuring Practitioners have sufficient time to resolve disputes even before the Plan is proposed.

**9. Fiona, you mentioned all debts are treated equally... does this include secured/PMSI creditors also in respect of pre-plan debts?**

Yes, it does to the extent that the secured creditor's pre-plan debt is captured by the Plan and the secured creditor is bound by the Plan. Whether, and the extent to which, the secured creditor is bound by the Plan is determined by the value of their security and the value of their admissible claim.

**10. Are creditors' rights for information and records the same as a standard insolvency process like a CVL?**

Presently, the relevant provisions under the *Corporations Act 2001* (Cth) have not been excluded from the Debt Restructuring or Simplified Liquidation Process.

**11. Are preferences to an unrelated party with 4 to 6 months of the relation-back day recoverable? (for a simplified liquidation)**

Yes. The existing unfair preference provisions apply to the Simplified Liquidation Process. However, there is a 'carve out' of payments received by creditors that are not related entities of the company within three months ending on the relation-back day, provided the creditor did not receive from the company more than \$30,000 as a result of the transaction or series of transactions.

**12. How will creditors know the bank debts along with the debtor ledgers?**

As a creditor you will receive a copy of the company's Restructuring Proposal Statement which will include a list of creditors and what they are owed, including details of amounts owing by the company to banks. There is presently no obligation to provide creditors with copies of debtor's ledgers.

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