

Ceasing a Director

On 9 February 2021, ASIC announced that from 18 February 2021 there are new requirements when ceasing a company director in accordance with the Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020 which was passed by Parliament in February 2020.

Companies can no longer cease the last remaining director on ASIC records, unless a replacement director is also appointed. There are three (3) exceptions to this, including if:

- » The last director is deceased;
- » The company is being wound up or under external administration; and
- » The officeholder never consented to the appointment.

In addition, if a director's cessation date is notified to ASIC more than 28 days after the effective date, then the effective date will be overridden and replaced with the lodgement date. Late lodgement fees still apply in this scenario, and an application fee will be charged should directors apply to ASIC or the Court to change a resignation date.

The amendments aim to prevent illegal phoenix activity by holding directors accountable, preventing them from improperly backdating their resignation or leaving their company with no directors.

Increasing the Statutory Demand Threshold

On 25 March 2020, in response to the economic impact of COVID-19, the Government temporarily raised the threshold at which a statutory demand could be issued from \$2,000 to \$20,000.

The Government also temporarily increased the timeframe that creditors had to respond to a statutory demand from twenty-one (21) days to six (6) months.

Noting the expiry of this relief on 31 December 2020, the Government is now consulting on whether to permanently raise the minimum threshold upon which creditors can issue a statutory demand on a company.

The following considerations have been raised in relation to the statutory demand threshold:

- » Confusion that might result from indexing the threshold to keep in line with inflation;
- » Commercial costs of issuing and defending a demand at or near the current permanent minimal threshold amount of \$2,000;
- » Alignment with personal bankruptcy threshold; and
- » Impacts on creditors and debtor companies. For example, increasing the threshold may lead creditors to manage their risk of non-payment through less generous credit terms, such as higher interest rates or shorter payment period.

The closing date for submissions is 5 March 2021.

The proposal has implications for the debt collection industry.

Personal Bankruptcy Threshold

On 24 March 2020, the Commonwealth Government temporarily lifted the threshold to issue a bankruptcy notice from \$5,000 to \$20,000 in response to the COVID-19 pandemic.

On 18 December 2020, an announcement was made by Christian Porter, the Attorney-General and Minister for Industrial Relations, that there would be a permanent lift of the threshold to \$10,000, effective on 1 January 2021 upon expiration of the \$20,000 temporary threshold.

According to the Attorney-General, the new threshold took into account the changing value of money as well as changes to debt levels since that time, and was informed by consultation with stakeholders.