

INSOLVENCY SOUND BITES

JobKeeper

Key Date: 28 March 2021

The JobKeeper subsidy will end on 28 March 2021 and you can claim payments for your eligible employees until this date.

It will be necessary to consider the necessary adjustments in your business to reflect the withdrawal of this subsidy.

Commercial Leasing Code of Conduct

Key Date: 28 March 2021

On 7 April 2020, the *National Cabinet Mandatory Code of Conduct – Commercial Leasing Principles during COVID-19* (“the Code”) was announced by the Commonwealth Government containing a set of fourteen (14) good faith leasing principles which were intended to regulate negotiations between landlords and tenants during the pandemic period.

Among other tenant protection measures, these principles require landlords to provide eligible tenants with proportionate rental waivers and deferral and prohibited them from terminating leases for unpaid rent.

The Code has since been extended by NSW regulations from 24 October 2020 to 31 December 2020, and subsequently to 28 March 2021.

The eligibility criteria from 1 January 2021 were restricted to apply only to:

- Retail tenancies / leases i.e. commercial leases were no longer protected.
- With an annual turnover of less than \$5 million; and
- Who suffered a decline in turnover of 30% or more during the December 2020 quarter (as compared to the December 2019 quarter).
- **This relief is due expire on 28 March 2021.**

Accordingly those tenants which are not subject to a reasonable period of post Covid recovery subject to Code of Conduct agreement, will revert to the terms and conditions of the pre Covid lease in place.

Small Business Restructuring – transitional measures

Key Date: 31 March 2021 (31 July 2021)

The *Corporations Amendment (Corporations Insolvency Reforms) Act 2020* was passed in December 2020 which:

- Extends the temporary relief measures for three (3) months in circumstances where a declaration of eligibility is made between 1 January 2021 and 31 March 2021; and
- Provides one (1) month additional relief extension for companies where certain criteria are met and the Company has resolved to appoint a restructuring practitioner.

Whilst the availability of this measure ceases as at 31 March 2021, its effect extends until 31 July 2021.

The temporary relief measures previously implemented during March 2020:

- Increase statutory demand minimum threshold from \$2,000 to \$20,000;
- Increase time span for response to creditor statutory demands from twenty-one (21) days to six (6) months; and
- Provide directors with temporary safe harbour from personal liability for insolvent trading since 25 March 2020.

Recently Announced – Covid Recovery Support measures

SME financing:

SME Guarantee Scheme:

- Guarantees 50% of participating lender loans <= \$1 million to SMEs with annual turnover <= \$50 million.

Phase 1 commenced on 23 March 2020 and closed for new loans on 30 September 2020.

Phase 2 commenced on October 2020 and will be available for loans made by participating lenders until 30 June 2021.

Key features:

- Loans are for terms of up to 5 years and a repayment holiday is not required but can be offered at discretion of lender;
- Loans can be either unsecured or secured;
- Interest rates on loans are determined by lenders but capped at around 10%.



SME Recovery Loan Scheme:

- Only applies to JobKeeper recipients between 4 January 2021 and 28 March 2021;
- Guarantees 80% of participating lender loans <=\$5 million to SMEs with annual turnover <= \$250 million; and
- Accepts applications from existing SME Guarantee Scheme borrowers.

Key features:

- The government guarantee will be 80% of the loan amount;
- Lenders are allowed to offer borrowers a repayment holiday of up to 24 months;
- Borrowers can access up to \$5 million in total;
- Loans are for terms of up to 10 years;
- Loans can be either unsecured or secured.
- Interest rate on loans will be determined by lenders but will be capped at around 7.5%

The terms are more favourable than the SME Guarantee Scheme and are obviously targeted at those SMEs most severely effected by the impacts on trade of the Covid period.

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