

## Insolvency Laws:

# How Countries Have Revamped Their Insolvency and Restructuring Laws

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The Australian government has taken swift action to enact new legislation that significantly changes the insolvency laws relevant to all business as a result of the ongoing developments related to COVID-19.

The Coronavirus Economic Response Package Omnibus Act 2020 (Response Act) became effective on 25 March 2020, and is an effort to provide temporary relief to companies experiencing financial distress as a result of the ongoing and rapidly changing economic slowdown caused by COVID-19.

## The COVID-19 Response Act

The amendments of the Response Act are temporary and will apply for six months, until 23 September 2020. However, subject to economic and health developments, the provisions may be expanded in both their application and scope.

### Key Aspects of the Response Act

#### The employment laws of which countries will apply in these scenarios?

The minimum dollar threshold to issue a creditors' statutory demand<sup>1</sup> has been permanently increased from AUS\$2,000 to AUS\$4,000.

The minimum dollar threshold for a creditor to initiate bankruptcy proceedings against a debtor has been permanently increased from AU\$5,000 to AUS\$10,000

#### Course of Business?

It is noteworthy that the relief under the temporary measures was only afforded to new debts incurred in the "ordinary course of business". Accordingly, in terms of potential future insolvencies or litigation on the incurring of debts, much will depend on the scope and application of that term to different types of businesses. The explanatory memorandum to the Response Act provided that:

"A director is taken to incur a debt in the ordinary course of business if it is necessary to facilitate the continuation of the business during the six-month period that begins on commencement of the subparagraph. This could include, for example, a director taking out a loan to move some business operations online. It could also include debts incurred through continuing to pay employees during the coronavirus pandemic."

Given the wide-ranging impacts of the virus and consequent economic slowdown, businesses in different sectors may be affected in varying ways and magnitudes. Directors should seek appropriate advice before taking on any significantly new or different types of debt or in relation to decisions to appoint external administrators who will be required to examine past transactions.

1. Creditors with undisputed debts of a minimum dollar threshold (originally of AU\$2,000; now, temporarily, AU\$20,000) may issue a formal demand for payment of their debt. If the company fails to pay the debt by the deadline (originally of 21 days; now, temporarily, of six months), the company will be deemed insolvent.

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