



# SRM Lawyers

Level 11, 65 York Street  
Sydney NSW 2000

Level 1, 102-104 Longueville Road  
Lane Cove NSW 2066

T 02 9188 9631 F 02 8246 3430  
[www.srmlawyers.com.au](http://www.srmlawyers.com.au)

ABN 96 168 744 769

## INSOLVENT TRADING AND DIRECTOR'S LIABILITY FOR COMPANY DEBTS

A proposed amendment to the *Corporations Act 2001* (Cth) should now encourage all qualified advisers i.e. accountants and solicitors, to be proactive in reviewing their client's ability to deal with corporate and personal insolvency.

The amendments are:

1. what has become known as the safe harbour regime / defence for company directors, to avoid personal liability for insolvent trading that may arise once a company has been placed into liquidation (proposed section 588GA *Corporations Act*), which is awaiting official approval to commence; and
2. a stay on contracts being terminated as a result of an insolvency event (ipso facto clauses) during the administration of a company, which will take effect on 1 January 2018. The stay will not apply once a company is placed into liquidation.

Company directors will avoid personal liability for company debts if the director takes a course of action which will lead to a better outcome for the company and its creditors, as opposed to entering into administration / liquidation. The better outcome is based on an objective test, not the subjective opinion of the director.

That course of action will include maintaining appropriate financial records, obtaining advice from a qualified adviser i.e. an accountant and/or solicitor or developing a plan for financial re-structure, which may include formal insolvency.

Company liabilities to employees (superannuation) and taxation reporting obligations must still be kept up to date.

Accountants should now prepare / update their checklists to send to clients, setting out the course of action directors can take to be pro-active when dealing with potential insolvency, and resulting personal liability for company debts.

Please contact SRM Lawyers to answer any queries you have relating to corporate or personal insolvency.

**Michael Stevens**

[michaels@srmlawyers.com.au](mailto:michaels@srmlawyers.com.au)