

RUSSELL CORPORATE ADVISORY NEWSLETTER

Throughout this crisis our office remains open, albeit virtually. Our socially distant and experienced staff are available.

There is no doubt that the majority of clubs are now faced with cash crises of varying degrees. Hopefully your Club's creditors are exercising forbearance whilst you work through your numerous human resources and operational issues arising from the forced closures. With that aspect bedded down, your attention will turn to the financial impact on your Club. In this regard, we recommend that your Club prepares a cash flow forecast projected for at least the next 12 months and updated and rolled forward as required. It is difficult to determine at this time the period for which the forced closure directive will be in place, but 3 to 6 months is possible.

Many directors and senior management may have grave concerns over the solvency of their club and its ability to continue. These concerns may have even been building prior to the forced club closures and are now at a critical point. Although your Club may not be trading, it is more than likely still incurring debt. Section 588G of the Corporations Act places a clear obligation on directors to prevent its club from incurring debt whilst it is insolvent or otherwise risk personal liability and in some instances criminal penalties.

Special measures were recently announced and include temporary relief for directors from any personal liability for trading whilst insolvent. We interpret that this relief would also extend to a company that was not trading, but which is still incurring debt. These measures were announced on 22 March 2020, passed Parliament on 23 March 2020 and received Royal Assent on 24 March 2020.

In addition to the temporary relief from personal liability, the following additional temporary measures were announced:

- Increase in the threshold (from \$2,000 to \$20,000) at which creditors can issue a statutory demand for payment on a company and an extension of time for companies to respond to such a demand (21 days extended to 6 months);
- General flexibility to provide targeted relief for companies from provisions of the Corporations Act "to deal with unforeseen events that arise as a result of the Coronavirus health crisis";
- For personal insolvency matters, an increase in the threshold for a creditor to initiate bankruptcy proceedings and extensions of time to respond and be protected.

This temporary relief will apply for 6 months.

Further, the Australian Securities and Investments Commission (ASIC) has announced relief for public companies with a financial year end of 31 December 2019 and an obligation to hold an Annual General Meeting (AGM) by 31 May 2020. In this instance, ASIC has extended the AGM requirement to 31 July 2020. ASIC is also supportive of convening a virtual AGM but this may not be practical in a registered club context as voting by proxy is not available and all members may not have access to the internet. Please see ASIC guidance on this as follows: - <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-068mr-guidelines-for-meeting-upcoming-agm-and-financial-reporting-requirements/>

The Australian Taxation Office will also be directed to provide tailored solutions for directors and business owners "including temporary reduction of payments or deferral or withholding enforcement actions including Director Penalty Notices and wind-ups".

The intention of our government is to support all businesses that have been impacted by the recently imposed restrictions. Thankfully our government acknowledges the important contribution registered clubs make to our community and our economy. Safety net provisions are in the process of being implemented which are designed

to assist businesses through the current crises so that they will be ready, when the time comes, to resume business.

However, note that the above measures do not absolve directors and officers of their obligation to act in good faith, in the best interest of the company and with due care and diligence. Reckless or deceitful behaviour is never acceptable. The above measures also do not absolve any liability. Any debts incurred by your Club will still be payable by your Club.

Our relationships and means of communication are now being redefined. As leaders of your Club, communication is now more important than ever. Maintain communication with all of your stakeholders. In doing so, we urge you to be mindful of your mental health and of those around you and to seek help or encourage others to, if required.

If you have concerns around the solvency of your Club or if you require assistance with cashflow forecasting do not hesitate to contact us on 02 9957 6700 for a no obligation confidential chat about your Club's circumstances. If you would like us to contact you please email Greg Russell, greg.russell@russellcorporate.com.au

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