



November 2007

Voluntary Administration Alert

Voluntary Administration

Today (1 November 2007), the Companies Amendment Act 2006 (**Act**) comes into force introducing the voluntary administration regime to New Zealand. Modelled on the Australian system, voluntary administration is a new business rehabilitation scheme providing insolvent or near-insolvent companies with an alternative to liquidation.

Voluntary administration commences on the appointment of an administrator. At this time the administrator takes control of the company's business, and assumes the obligation to hold creditors' meetings to agree a company rescue plan. Voluntary administration also makes dealings with company property void unless expressly permitted by the administrator or a court order. This includes generally preventing creditors from enforcing charges against company property.

The Act does, however, afford certain exceptions to the moratorium on dealings with company property in respect of creditors who enforce their security prior to the commencement of voluntary administration, and creditors who hold security over all or substantially all of the debtor's assets (**Substantial Secured Creditors**) who enforce their security during the first ten working days of administration.

Substantial Secured Creditors

Substantial Secured Creditors need to be aware that to take advantage of their step in rights they must enforce their security against all the secured property within ten working days of the commencement of voluntary administration.

An administrator must notify all the company's secured creditors no later than one working day after its appointment that it has been put into administration. Accordingly, Substantial Secured Creditors should ensure they have internal procedures in place to ensure they can commence enforcement of their security after receipt of the administrators notice within the ten working day timeframe.

Other security holders

The voluntary administration regime puts other security holders (such as asset financiers) at a disadvantage compared to Substantial Secured Creditors because they are unable to enforce their security during the administration. Accordingly, asset financiers may consider taking more extensive security than may be current market practice.

Other security holders who do not take more extensive security may need to consider ensuring they have the ability to take enforcement action earlier than was the case prior to the introduction of the voluntary administration regime to protect their security.

Talk To Us

We are happy to discuss any queries you may have regarding the voluntary administration regime. As part of a trans-Tasman legal group Minter Ellison Rudd Watts can draw on the skill and knowledge of our Minter Ellison Australian colleagues who have significant experience dealing with administration in the Australian context.

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