

The Rise of the Zombie Companies

Insolvency | Snapshot

10 September 2020
Henry Kwok and Patrick Loi

RESTRUCTURING | INSOLVENCY | ADVISORY | DISPUTE RESOLUTION

Extending the lifeline for businesses and zombie companies due to the extension of temporary relief to "insolvency laws" until 31 December 2020.

On 7 September 2020, the Treasurer announced that the temporary relief to various "insolvency related laws", originally enacted to avoid unnecessary business closures and bankruptcies as a result of the COVID-19 pandemic, would be extended for a further 3 months to 31 December 2020. This announcement comes just weeks before those measures were due to expire on 26 September 2020.

Given the extension to the JobKeeper Subsidy and the temporary insolvency relief, we wonder whether the COVID-19 rent relief (due to expire in October 2020) will also be extended?



Be in the know for your clients

The temporary changes to insolvency law in response to the COVID-19 pandemic, now been extended from 26 September 2020 to 31 December 2020, are as follows:

- Relief of personal liability for insolvent trading – even if there is a breach of the duty of company directors to prevent the company from trading whilst insolvent (so long as debts are incurred in the ordinary course of business – which is a low bar & subjective).
- Extension of the time for compliance with a creditor's statutory demand - usually 21 days to 6 months – and increase of the minimum debt that may be the subject of such a statutory demand (from \$2,000 out to a substantial \$20,000). There are also similar reforms for bankruptcy proceedings against individuals for the minimum debt increase from \$5,000 to \$20,000.
- The Government's stimulus package and temporary insolvency relief was enacted in March 2020 to prevent an avalanche of business closures and bankruptcies as a result of the COVID-19 pandemic. However, the effectiveness of these measures were grossly underestimated and have correlated with a considerable reduction in formal insolvency appointments with a 65% dropped in August compared to the same time last year.

This indicates that there are businesses out there now, continuing to trade and incur debt, that would have closed their doors, if not for the Government's stimulus package and temporary insolvency relief. These businesses are aptly dubbed zombie companies).

If you have clients or you are operating or dealing with a zombie company, you should seek qualified professional advice prior to 31 December 2020 to understand your options and avoid the fallout in January 2021.

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The Rise of the Zombie Companies 殭屍公司的崛起

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由於延長了“破產法”的臨時寬鬆政策，一些企業和殭屍公司的壽命會延至 2020 年 12 月 31 日。

澳洲財政部長於 2020 年 9 月 7 日宣布，把為避免因 COVID-19 大流行而導致不必要的企業倒閉和個人破產而頒布各種“破產法”的臨時寬鬆政策時再延長 3 個月，直至 2020 年 12 月 31 日。這項宣布是在這些政策於 2020 年 9 月 26 日到期前幾週時發布。

在另一方面，考慮到政府已經延長了的 JobKeeper 補貼和破產法的臨時寬鬆政策，我們想知道政府是否考慮也延長 COVID-19 租金減免相關的政策（將於 2020 年 10 月到期）？



為您的客戶所知

為應對 COVID-19 大流行而針對破產法進行的臨時變更（現由 2020 年 9 月 26 日延長至 2020 年 12 月 31 日）如下：

- 減輕董事在對於無力償債情況下交易延伸的個人債務責任-即使董事違反了公司法規定需要阻止公司在無力償債期間進行交易的義務（當然要求在正常業務過程中產生的債務-但是這是一個低門檻且主觀的看法）。
- 延長了債權人發出的法定要求償債書中的規定的回應時間及提高了金額-由通常下的 21 天回應時間至 6 個月-並增加了此類法定要求償債書中指定的最低欠債金額（從正常的 2,000 澳元提高到至少 20,000 澳元）。也針對個人破產法進行了類似的臨時變更，將最低債務金額從 5,000 澳元增加到 20,000 澳元。
- 政府於 2020 年 3 月頒布的一系列刺激經濟方案和臨時破產法的變更，是為了防止因 COVID-19 大流行而導致大量的企業倒閉和應對激增的個人破產案件。但是政府嚴重低估了這些措施的有效性，引致常規破產案件比去年八月同期下降超過 65%。

這表明了如果沒有政府的刺激經濟方案和臨時破產法的變更，令到一些本應破產關閉的企業及公司仍然繼續經營交易及產生債務。這些企業及公司被本地經濟學家稱為“殭屍公司”。

如果您有客戶，或者您正在經營或與一家殭屍公司打交道，則應在 2020 年 12 月 31 日之前尋求合規的專業建議和評估，以了解您可行的選擇方案及避免 2021 年 1 月的倒閉潮

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10 September 2020
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RESTRUCTURING INSOLVENCY ADVISORY DISPUTE RESOLUTION

由于延长了"破产法"的临时宽松政策，一些企业和僵尸公司的寿命会延至 2020 年 12 月 31 日。

澳洲财政部长于 2020 年 9 月 7 日宣布，把为避免因 COVID-19 大流行而导致不必要的企业倒闭和个人破产而颁布的各种"破产法"的临时宽松政策时再延长 3 个月，直至 2020 年 12 月 31 日。这项宣布是在这些政策于 2020 年 9 月 26 日到期前几周时发布。

在另一方面，考虑到政府已经延长了的 JobKeeper 补贴和破产法的临时宽松政策，我们想知道政府是否考虑也延长 COVID-19 租金减免相关的政策（将于 2020 年 10 月到期）？



为您的客户所知

为应对 COVID-19 大流行而针对破产法进行的临时变更（现由 2020 年 9 月 26 日延长至 2020 年 12 月 31 日）如下：

- 减轻董事在对于无力偿债情况下交易延伸的个人债务责任-即使董事违反了公司法规定需要阻止公司在无力偿债期间进行交易的义务（当然要求在正常业务过程中产生的债务-但是这是一个低门槛且主观的看法）。
- 延长了债权人发出的法定要求偿债书中的规定的回应时间及提高了金额-由通常下的 21 天回应时间至 6 个月-并增加了此类法定要求偿债书中指定的最低欠债金额（从正常的 2,000 澳元提高到至少 20,000 澳元）。也针对个人破产法进行了类似的临时变更，将最低债务金额从 5,000 澳元增加到 20,000 澳元。
- 政府于 2020 年 3 月颁布的一系列刺激经济方案和临时破产法的变更，是为了防止因 COVID-19 大流行而导致大量的企业倒闭和应对激增的个人破产案件。但是政府严重低估了这些措施的有效性，引致常规破产案件比去年八月同期下降超过 65%。

这表明了如果没有政府的刺激经济方案和临时破产法的变更，令到一些本应破产关闭的企业及公司仍然继续经营交易及产生债务。这些企业及公司被本地经济学家称为"僵尸公司"。

如果您有客户，或者您正在经营或与一家僵尸公司打交道，则应在 2020 年 12 月 31 日之前寻求合规的专业建议和评估，以了解您可行的选择方案及避免 2021 年 1 月的倒闭潮。

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