

THE
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Australian Insolvency Reforms - A Bill Becomes Law

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Last year, we reported that Australia had proposed significant insolvency reforms that, in our view, are long overdue ("[A Major Leap Forward for Australian Insolvency Laws](#)"). Earlier this year, we reported [here](#) that the Australian government had released a revised draft of its insolvency legislation providing a safe harbor from director insolvent trading liability and limitations on the enforceability of *ipso facto* clauses upon the occurrence of certain insolvency-related events. But it was still "just a bill." At long last, we are pleased to announce that the [Treasury Laws Amendment \(2017 Enterprise Incentives No. 2\) Bill 2017](#) passed through the Senate (with minor last-minute amendments) and received Royal Assent on September 18, 2017, so that the safe harbor provisions are finally effective and the new *ipso facto* provisions will become effective July 1, 2018.

The Reforms, Briefly

The new safe harbor provision shields directors from personal liability for debts incurred while the company is insolvent, if the company incurs such debts in connection with a course of action that is reasonably likely to lead to a better outcome for the company. As of July 1, 2018, the new legislation will impose a stay on the enforcement of "ipso facto" clauses against a company under administration or a company that has announced, or actually applied to enter into, a scheme of arrangement to avoid being wound up in insolvency.

Positive Changes for US Investors

Adding a safe harbor provision and restricting *ipso facto* clause enforcement will benefit US investors by reducing barriers to successful restructurings and thereby preserving the going concern value of distressed Australian borrowers. Now, directors have greater leeway to consider and implement a range of restructuring options, even if the company is already insolvent. And the coming *ipso facto* protections will provide additional stability to maintain its business relationships during such implementation. We applaud our Aussie friends for creating an environment that favors value-preserving solutions and making Australian companies more attractive borrowers.

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