Bankruptcy and personal insolvency agreements

Information sheet – 14

> This is **Information Sheet 14 (INFO 14)**. It provides general information for directors, alternate directors and secretaries about bankruptcy and personal insolvency agreements.

What does being bankrupt mean?

You are 'bankrupt' if you have been declared bankrupt under the provisions of the *Bankruptcy Act 1966* (Bankruptcy Act) and have not been discharged from the bankruptcy. The bankruptcy is registered with the Australian Financial Security Authority (AFSA).

What is a personal insolvency agreement under Part X?

A 'personal insolvency agreement' (formerly known as a 'Part X arrangement') is an alternative to bankruptcy. A person enters into an agreement with their creditors without being made bankrupt.

What happens to me if I am bankrupt or subject to a personal insolvency agreement

Unless you have been given leave by the court to manage corporations, you are automatically disqualified from managing corporations and cease to be a director, alternate director or secretary of a company under the *Corporations Act 2001* (Corporations Act), if you:

- are an undischarged bankrupt, or
- have entered into a personal insolvency agreement under Part X of the Bankruptcy Act (Part X) or a similar law of an external territory or country and the terms of the agreement have not been fully complied with.

This includes if you have previously:

- executed a deed of arrangement under Part X where the terms have not been fully complied with, or
- not complied with all the terms of a composition under Part X including where final payment has not been made.

It is an offence for a person within one of the above categories to continue to manage a corporation without the leave of the court. If convicted, the penalty is a fine up to $8,500 or one-year imprisonment, or both.

If you have any questions about whether you are bankrupt or have entered into a personal insolvency agreement, you should contact AFSA.

What do you need to do?

If you fall within one of the above categories, you should promptly lodge with us a Form 296 *Notice of disqualification from managing a corporation*.

While you may automatically cease as an officeholder of a company, the company must still notify us of your cessation as a director, alternate director or secretary and the appointment of a replacement (if applicable), by making your changes online by lodging Form 484 *Change to company details* within 28 days of the cessation. If there is more than one officer in your company, any remaining officers should complete Form 484 online. If there are no other officers in the company, but there are members other than you, the members can appoint a replacement director.

If you are the only officeholder and member, your trustee in bankruptcy can appoint another person as a director of the company to take your place.

The company may wish to seek independent legal advice if your disqualification from managing a corporation affects the continued operation of the company, including if the number of directors are below the minimum required under the Corporations Act.

If the company is no longer carrying on a business, another officeholder or member of the company may wish to apply for voluntary deregistration by completing and returning, Form 6010 *Voluntary deregistration of a company* to us.

Consideration can be given to the deregistration of the company if the company meets all of the following criteria:

- all members of the company agree to the deregistration
- the company is not carrying on business
- the company's assets are worth less than $1,000

- the company has paid all fees and penalties payable under the Corporations Act
- the company has no outstanding liabilities
- the company is not a party to any legal proceedings.

When can I be a director, alternate director or secretary again?

You can be a director, alternate director or secretary again:

- if you were an undischarged bankrupt, after the bankruptcy is discharged
- if you were subject to a personal insolvency agreement under Part X, after all the terms of the agreement have been fully complied with.

The company will need to reappoint you in accordance with the company's constitution and notify us of the appointment by lodging Form 484 online within 28 days of the appointment.

Liaison with AFSA

As part of our data matching protocol, we may receive information from AFSA that you may be a person within one of the above categories and disqualified from being a director, alternate director or secretary. We will take steps to record your cessation as a director, alternate director, or secretary on ASIC Connect in accordance with the data matching protocol. If you disagree with the information received from AFSA, you will need to resolve the matter with AFSA.

- Find out more

More information

- Regulatory Guide 217 *Duty to prevent insolvent trading: Guide for directors*

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of

the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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