



Insolvency Alert June 2010

Sons of Gwalia ruling reversal. What does it mean for you?

Recently, the Minister for Financial Services, Superannuation and Corporate Law, Chris Bowen, introduced a Bill into Parliament reversing a High Court ruling outlining the rules surrounding money distribution from failed companies.

This long awaited legislation reversed the decision of the High Court in *Sons of Gwalia* and was introduced to Parliament on 2 June 2010 in the form of the *Corporations Amendment (Sons of Gwalia) Bill 2010*.

The High Court decision overturned was a long standing convention that shareholders are second in line behind unsecured creditors in an insolvency, in respect of debts arising from their shareholding. The Bill contains three key actions.

Firstly, if the Bill is passed by the Federal Parliament, it will have the effect of postponing claims by shareholders for debts owed by the company in their capacity as a member of that company. It outlines that all claims arising out of buying, holding, selling or otherwise dealing in shares are to be ranked equally and "after all other creditors claims". In effect, this creates a subordinate class of creditor.

Secondly, the Bill confirms that a person is not prevented from obtaining damages or other compensation from a company only because they hold or have held or have subscribed to shares in a company or have a right to be included on the register of members of the company.

Put simply, a person's ability to bring a damages claim against the company is not restricted by how they acquired the shares or whether they actually continue to hold shares in the company.

The above provisions will come into operation the day after the Bill receives royal assent and only applies to claims arising after that date.

Finally, the Bill proposes that persons who make these types of claims are only entitled to receive a notice, report or statement to creditors if they ask the administrator or liquidator in writing for a copy. Further, they can also only vote at creditors meetings if they obtain Supreme Courts or Federal Courts approval.

The provisions in relation to shareholder's rights to receive reports and vote, will only apply in relation to those administrations which commence subsequent to the day after the Bill receives royal assent.

What does this mean for insolvency practitioners?

Broadly, and as mentioned in the explanatory memorandum accompanying the Bill, the government has said that the amendment "will reduce the costs of insolvency practitioners to carry out external administrations". It is also likely to reduce any uncertainty associated with the external administration where there are insufficient funds to pay out all ordinary unsecured credits claims.

Further, if passed, it is to be expected that the Bill will increase the chances of a successful restructuring being able to be implemented.

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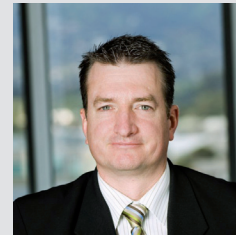
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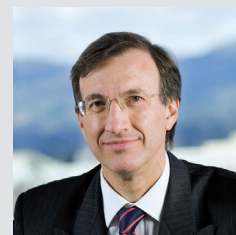
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