



ASIC

Australian Securities & Investments Commission

# Bankruptcy and personal insolvency agreements

## What happens to me as a director, alternate director or secretary if I am bankrupt or subject to a personal insolvency agreement under Part X of the Bankruptcy Act 1966?

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 1966* (Bankruptcy Act) or a similar law of an external Territory or a foreign country and the terms of the agreement have not been fully complied with,

you are automatically disqualified from managing corporations and cease to be a director, alternate director or secretary of a company unless you have been given leave by the Court to manage corporations.

This includes those persons who previously:

- have executed a deed of arrangement under Part X of the Bankruptcy Act (Part X) where the terms have not been fully complied with; or
- have creditors who have accepted a composition under Part X where final payment has not been made under the composition.

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. The penalty on being found convicted of this offence is a fine up to \$5,500.00 or 1 year imprisonment or both.

If you have any queries whether you are bankrupt or have entered into a personal insolvency agreement you should contact ITSA.

## What does being bankrupt mean?

A person is a 'bankrupt' if they have been declared bankrupt under the provisions of the Bankruptcy Act and have not been discharged from the bankruptcy. The bankruptcy is registered with Insolvency Trustee Services Australia (ITSA).

## 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 and for the purposes of the Corporations Act, is where a person enters into an agreement with their creditors without being made bankrupt. The person entering into the agreement must sign a deed.

## What you need to do with us.

If you are 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 be automatically ceased as an officeholder of a company, the company is still required to notify us of your cessation as a director, alternate director or secretary and the appointment of a replacement (if applicable) by lodging a Form 484 *Change to company details* within 28 days of the cessation. If there is more than one officer in your company, any remaining officer should sign the Form 484. 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 the number of directors being below the statutory minimum required under the Corporations Act.

If the company is no longer carrying on business, another officeholder or member of the company may wish to apply for voluntary deregistration by completing and returning to ASIC, a Form 6010 *Voluntary deregistration of a company* in accordance with s601AA(1) and 601AA(2) of the Corporations Act.

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; and
- The company is not carrying on business; and
- The company's assets are worth less than \$1000; and
- The company has paid all fees and penalties payable under this law; and
- The company has no outstanding liabilities; and
- The company is not a party to any legal proceedings.

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

If you were an undischarged bankrupt, you can be a director, alternate director or secretary again after the bankruptcy is discharged.

If you were subject to a personal insolvency agreement under Part X, you can be a director, alternate director or secretary again after you have fully complied with the terms of this agreement.

However, your appointment will not automatically recommence on one of the above events occurring. The company will need to reappoint you in accordance with the company's constitution and the appointment must be notified to ASIC by lodging a Form 484 *Change to company details* within 28 days of the appointment.

## **Liaison with ITSA**

As part of a Data Matching Protocol with ITSA we may receive information from ITSA that you may be a person within one of the above categories and therefore disqualified from being a director, alternate director or secretary. We will undertake steps to record your cessation as a director, alternate director, or secretary on ASIC's publicly available database in accordance with the Data Matching Protocol. Generally, if you disagree with the information received from ITSA, you would need to resolve the matter with ITSA.