OFFICIAL

CATSI Act Review

# Part 17—External administration and deregistration

**Item 236—Irregularity in financial affairs as a ground for special administration**

One of the current grounds for appointing a special administrator is where the corporation has traded at a loss for at least six of the last 12 months, however, this can be very difficult to determine and may also capture corporations that have seasonal trading cycles or rely on annual grant funding. Recommendation 66 of the CATSI Act Review final report stated:

*It is recommended the current ground for appointing a special administrator that the CATSI corporation has traded at a loss for at least six of the last 12 months be changed to identification of an irregularity in the management of a corporation’s financial affairs.*

Item 236 gives effect to this by repealing the existing ground and replacing it with a new ground, ‘there is a serious irregularity in the financial affairs of the corporation’. This differs slightly from the wording of the recommendation by introducing the criterion of ‘serious’ irregularity thus addressing some concerns that were raised during consultation that any minor irregularity could inappropriately trigger the appointment of a special administrator.

## Items 237 and 238—Removal of show cause notice

Currently even where a majority of directors request the appointment of a special administrator, the Registrar is still required to issue a show cause notice to the corporation. Recommendation 65 of the final report states:

*It is recommended the ‘show cause’ notice procedure not be required under the CATSI Act when a majority of directors have requested that a special administrator be appointed.*

Items 237 and 238 implement this recommendation by removing the requirement for the Registrar to issue a show cause notice when the majority of directors of a corporation have requested the Registrar in writing to appoint a special administrator.

## Items 235, 241 and 243 to 245—Requirement to apply for leave of court

Currently, the Registrar must apply for permission from the Court before making an application to wind up a corporation on the grounds of insolvency. Recommendation 71 states:

*It is recommended the CATSI Act be amended to remove the requirement for the Registrar to apply for leave of the court, before making an application for winding up a corporation on the grounds of insolvency.*

Items 235 (a note), 241, 243, 244, 245 work together to remove the requirement for the Registrar to have to apply for the leave of the court before making an application to wind up a corporation on the grounds of insolvency. This does not remove the requirement for the Registrar to have to prove the corporation is insolvent, which means that the corporation will still have an opportunity to demonstrate to the court that it is solvent.

## Items 239 and 240—Prevent the cancellation of contracts of corporations under special administration

Recommendation 69 of the CATSI Act review stated:

*The CATSI Act be amended to provide that contracts of corporations under special administration cannot be cancelled, unless they are detrimental to the corporation in the opinion of the special administrator.*

This was intended to ensure that corporations that have been placed under special administration can continue to deliver, and benefit from, commercial contractual arrangements in a similar way to corporations under the *Corporations Act* *2001*.

Items 239 and 240 implement this recommendation by providing that for a corporation under special administration, sections 451E to 451H of the *Corporations Act* *2001* apply. These sections relate to enforcing rights when a corporation is under administration (etc), and would prevent the enforcement of a right to terminate a contract with a corporation under administration.

## Item 242—Presumptions of insolvency

It can be difficult to determine whether a corporation is insolvent, however some presumptions can be made where corporations meet certain criteria.

Recommendation 70 of the CATSI Act Review final report states:

*It is recommended the CATSI Act be amended to provide that a CATSI corporation be presumed to be insolvent where an authorised officer appointed under the CATSI Act has reported to the Registrar, or a special administrator forms the opinion:*

* + *the corporation has failed to keep adequate financial records (with no time period specified); or*
  + *the corporation has failed to retain adequate financial records for a period of seven years.*

Item 242 introduces presumptions of insolvency as recommended above, which the Court can rely on for the purposes of finding a corporation insolvent noting that they are rebuttable, so a corporation has the opportunity to prove that it is solvent.

## Items 246 to 251—Voluntary deregistration

Voluntary deregistration is less costly and complex for a corporation than winding up by appointing an administrator or liquidator through the courts. Currently the CATSI Act sets out a number of criteria that must be met before applying for voluntary deregistration including that 100 per cent of members agree to the winding up. This can be difficult to achieve as corporations that are considering winding up are often no longer functioning, and members may have moved away and lost touch.

Recommendation 72 of the CATSI Act Review final report stated:

*It is recommended the CATSI Act be amended to provide that the Registrar may exempt corporations from satisfying specific criteria required to be met for voluntary deregistration.*

Items 246, 247 and 248 enable corporations to apply for voluntary deregistration even if the conditions for voluntary deregistration are not all met, provided they specify which conditions are not met and the reasons why they are not met. This would, for example, allow a corporation to apply for voluntary deregistration even when all members have not voted on such a resolution.

Item 249 sets out the deregistration procedure including allowing for publication of the notice of deregistration on the website of the Office of the Registrar of Indigenous Corporations, as well as through other channels (including the Australian Government Gazette, which is currently the only way the Registrar is able to give notice of the proposed deregistration under subsection 546-1(4)).

Items 250 and 251 acknowledges the range of other ways in which a notice of a proposed deregistration may be given, by removing specific references to the *Gazette* (refer also to fact sheet 12—Modernising Publication Requirements).