

## Member Update

**Title:** Managing insolvency

**Update No.:** 26 of 12

**Date of Issue:** 29 July 2012

### Distribution

- GTA Members – primary contact list. Please circulate to all appropriate internal parties

### Issue

- GTA has received a number of requests regarding the situation where a member has commercial dealings with a company that becomes insolvent with the question being can there be financial set offs against the various commercial dealings.
- GTA Trade Rules is silent on this issue, however the following references maybe of use to determine your obligations and entitlements.

### Legal references

1. Corporations Act 2001 Para. 553c – Insolvent companies – mutual credit & set off.  
[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/C1A0363A6806B9F1CA2570460014CD4C/\\$file/Corps2001Vol2WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/C1A0363A6806B9F1CA2570460014CD4C/$file/Corps2001Vol2WD02.pdf).
2. Ford's Principles of Corporation Law 2005 [Para 27.450] Set-off of mutual claims.  
This is a legal text; however your legal adviser would be able to source the information.

### GTA Trade Rules

- The GTA Trade Rules detail how contracts that reference the GTA Trade Rules handle an insolvency event.
- **Do not assume** all grain contracts reference the GTA Trade Rules.

### Managing Insolvency - industry briefing paper

- Insolvencies occur frequently in the grain industry and businesses need to prepare for them. The best preparation is to attempt to avoid dealing with counterparties that are likely to enter insolvency but even with the best preparation it is likely that you will have to deal with an insolvent counterparty.
- GTA members who are not familiar on how to handle an insolvency event are encouraged to read the briefing paper on the GTA website. This paper is meant to be a brief guide to a before and after situation with insolvencies.
- Particular note should be taken on the need to cover physical exposures as a result of financial settlement of contracts.
- [Managing insolvency - GTA briefing paper](#)

### Advice

- GTA is not able to advice members on how they should handle their commercial dealings with an insolvent party.
- GTA urges members to seek professional advice on this issue.