

FINANCIAL SOLUTIONS

At Hall Chadwick we recognise that many companies and individuals are facing challenges that were inconceivable a month ago.

Like many areas the reconstruction area can seem full of jargon, which can appear overwhelming particularly for those of you who have not had exposure to it before.

Added to that there has been a blizzard of advice from so called experts who often have their own agenda about what you should do.

The truth is that no one company/business/individual circumstances are the same and what may be the solution for one business may not be appropriate for another. Further there may well be more than one solution to your particular circumstances.

Accordingly we have developed a plain English guide to the various restructuring options available – both informal and formal. We will also be publishing one with respect to individuals. In the coming days we will provide further details about the pros and cons of each particular option.

At Hall Chadwick we consider that the challenges presented by the corona virus whilst unprecedented, must be viewed like any challenge in business – they must be confronted and where possible regarded as an opportunity. It is a reality that unfortunately this is not going to go away.

We believe that clear decisive advice will lead to decisive action which will enable your business to best position itself for recovery.

We trust you and your clients will find this a useful reference.

From the Hall Chadwick Partners.

INFORMAL WORKOUTS

BUSINESS IMPROVEMENT & MEASUREMENT

FEATURES

- Advise business how to reduce losses/increase profits.
- Teaches business how to achieve overall improvement and how to measure it
- Teaches proper management skills
- Costings
- Profit centres
- Business plans.

BENEFITS

- Business becomes more profitable and thus more sound.
- Information systems are more useful and increase prospects of better decision making.
- Provides independent "sounding board" for management.

TRIGGERS

- Management decides profitability is inadequate.
- Management decides help is needed to stem losses.
- Lender is concerned about debtor performance.
- Supplier requires comfort before giving further credit.



DIVESTMENT & RATIONALISATION

FEATURES

- Involves sale of non-core business units or closure of non-performing business units
- Streamlines complex group structures.
- Achieves cost savings by eliminating compliance returns and decreasing administration costs.

BENEFITS

- Aligns business structures and needs.
- Improves integrity and flow of information.
- Tax savings and planning opportunities.
- Freeing up management for core business units.
- Maximising return on assets.

TRIGGERS

- Management decision to restructure.
- Overtly complex group structure.
- Non-performing business units and non-core business units.

These strategies may be used in conjunction with the Safe Harbour provisions if the threshold of Insolvency approaches.

FORMAL APPOINTMENTS

VOLUNTARY ADMINISTRATIONS / DEED OF COMPANY ARRANGEMENTS

FEATURES

- Insolvent company can be saved.
- Administrator can be appointed by directors
- Administrator
 - Takes control of the company
 - Investigates company's financial circumstances, and
 - Makes recommendations for the company's future.
- No need for court's involvement.
- Appointment imposes a moratorium on debt enforcement.
- During administration, company guarantees cannot be enforced against directors or relatives.
- Deed conditions are flexible.
- All unsecured creditors are bound by the deed.

BENEFITS

- Maximises the chances of the company continuing to exist.
- Maximises the return to creditors.
- Prevents creditors acting to the detriment of the company (i.e. assets cannot be removed.)
- Allows time to prepare proposal.
- Directors can avoid personal liability for PAYG tax debts
- Reduces chance that secured creditor may act to the detriment of company. Directors can take early initiative to save the company.
- May release directors for insolvent trading claims by creditors if Deed accepted
- Simpler and less costly than formal scheme.
- Independent person controls the company.

TRIGGERS

- Directors realised that the company is insolvent or likely to become insolvent.
- Director realised that a company guarantee is likely to be enforced
- Bankers realise company cannot meet debt reduction requests.
- Dispute between directors or shareholders not able to be resolved
- Directors receive penalty notice from ATO which specifies that liquidation or administration is an option
- Other legal Action against the company.



CREDITORS VOLUNTARY LIQUIDATIONS

FEATURES

- To wind up the affairs of an insolvent company.
- To provide fair and equitable distribution of the company's property amongst its creditors.
- Liquidator takes control and proceeds similar to a Court Liquidation.

BENEFITS

- Directors are able to relieve themselves of the legal consequences of operating an insolvent company
- Creditors may recover some of their losses through a managed asset programme.
- Other benefits similar to a Court Liquidation without the cost of Court application or delay.
- Company has become insolvent or having trouble meeting commitments.

TRIGGERS

- When a voluntary administration had come to an end in circumstances where creditors desire that a winding up take place
- Directors receive penalty notice from ATO which specifies liquidation or administration as an option.
- Other legal action against the company.

MEMBERS' VOLUNTARY LIQUIDATION AND DEREGISTRATION

FEATURES

- Decision to windup is internal and not subject to outside influence.
- Liquidator need not be a registered liquidator.
- All liabilities of company are paid
- Distribution to shareholders of surplus assets.

BENEFITS

- Transfer of some assets e.g. shares, real estate free of stamp duty in some states.
- Distributions could be tax free to shareholders
- Cost savings – no further accounting, taxation or secretarial services are required
- Distribution in specie allow for assets to be distributed without involving cash, bank charges and possible short term bank loan interest costs.

TRIGGERS

- Company has stopped trading and is solvent but of no further use.
- Company affected by family law ruling to divide assets
- Company had pre-CGT capital profits to distribute.
- Disputes between directors/partners.

RECEIVERSHIPS/CONTROLLERSHIPS

FEATURES

- Appointment made by
 - Secured lender holding a debenture mortgage over the assets of the company
 - Court order on application by an interested party.
- Receiver/Controller realises assets on behalf of the secured lender or as per court order

BENEFITS

- Control of assets removed from directors
- Lender recovers part or all of funds.
- Possible trade on of the company with the end result of returning company to profitability
- Lender had comfort from the receiver taking control of the assets.
- Independence of receiver can alleviate directors' concerns
- If dispute between directors appointment of court resolves impasse.

TRIGGERS

- Company having liquidity problems
- Company financials showing continual losses
- Dispute among the directors of the company
- Failure to meet loan repayments or other forms of default or erosion of security.
- Lender requests investigation
- Appointment of liquidator or voluntary administration
- Directors/shareholders may have charge



COURT LIQUIDATIONS

FEATURES

- Appointment of liquidator is made by the federal or Supreme Courts usual on the application of a creditor.
- Liquidator takes control of the company and,
 - Investigates its affairs;
 - Realises assets for the benefit of creditors;
 - Reports to the ASIC on the failure of the company.

BENEFITS

- A creditor's debt may be recovered
- Director's actions can be investigated
- Can resolve shareholder's disputes.
- Company placed under control of independent court officer.
- Allows debtor insurance claim to be made by creditor.
- All creditors treated equally
- Sometimes can recover debt from directors personally
- Ability to pursue recovery of impugned transactions

TRIGGERS

- Inability to recover a debt.
- Dispute with other shareholders.
- Oppression by other director/ shareholders.
- Assets of company being dissipated.

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