

## VOLUNTARY ADMINISTRATION – WHAT COMPANIES SHOULD KNOW

The Australian based Voluntary Administration insolvency regime came into force in New Zealand in November 2007, as part of a range of amendments to the Companies Act. When appropriate, this new regime may be utilised to restructure businesses experiencing financial difficulty and avoid company liquidation. VA is now the most common method of commencing formal insolvency in Australia.

Managers need to know what options they have:

- if their debtors appoint a voluntary administrator; or
- for restructuring their own businesses if experiencing financial difficulty.

The objective of VA is to allow for the affairs of troubled businesses to be administered in a way that maximises the chances of a company, or as much as possible of its business, to continue. Alternatively, if the business is unable to continue, then the objective is to achieve a better outcome than would result from an immediate liquidation.

VA is easily initiated. By directors' resolution, any company may appoint a voluntary administrator. A Court order or special resolution of shareholders is not required.

From commencement, a moratorium comes into effect to give the company breathing space. This prevents creditors from taking action against the company, or its property, without the administrator's consent (the exception is for a secured creditor who holds a debenture over substantially the whole of the property of the company). It prevents lessors from repossessing goods. It also prevents lenders from enforcing guarantees given by directors or their relatives. The moratorium is a major legislative development, particularly for leasing companies.

There is a seven day "no liability period" for an administrator, after that the administrator becomes personally liable for rent or lease payments if the company itself cannot pay.

After an initial meeting of creditors to confirm the appointment (or otherwise), an administrator will investigate any possibilities for rehabilitation.

At the second meeting, usually held 28 days later, the future of the company will be decided. Creditors can either vote that the company execute a Deed of Company Arrangement (**DOCA**), or resolve to liquidate the company, or return the control of the company to the directors.

A DOCA may be an external proposal to purchase the business and carry on under the existing corporate structure. Alternatively, it may be a proposal from management or shareholders to continue the company's business and offer the creditors a compromise arrangement.

Whatever the proposal, a DOCA must generally offer a better return to creditors than what they would be likely to receive in a liquidation before creditors will approve it. Managers should understand what is being proposed under a DOCA, against the likely outcome of a liquidation, before voting.

## **VOLUNTARY ADMINISTRATION – WHAT COMPANIES SHOULD KNOW** (Con't)

The IRD will retain its priority in a liquidation over other unsecured creditors. This is probably the main difference between the NZ and Australian VA regimes. As such the IRD may look closely at its treatment under a DOCA as compared with the priority position it would enjoy in a liquidation. The IRD have indicated that they will assess each administration on its own merits.

There are now more options available for rehabilitating businesses. The key feature of VA is, the moratorium to give companies breathing space and time to assess options. The procedure is designed to be more efficient than the other options currently available.

There have been a number of VA's in NZ now, the most high profile being Icon Digital Entertainment, which owned Sounds CD stores. No DOCA was proposed in that case and Icon went into liquidation after the second meeting.

New Zealand's business rehabilitation laws will now be largely aligned with those in Australia and the United Kingdom, which should enhance overseas investors' confidence.

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