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Introduction

Many companies today are navigating through difficult waters with continued uncertainty in both the global and local economy which has now lasted for a number of years.

Financial and operational restructuring is vital for many businesses in distress in order to weather the ongoing recovery whilst remaining viable and competitive in their respective industries.

Our team has compiled this concise booklet with a view of assisting in detecting the early warning signs of a distressed business and the options available that may assist in turning the business around.
Signs that a company may be insolvent or in financial distress

It is important for a distressed company to be aware of the early warning signs of insolvency, so that if some of these signs are identified, remedial action can be taken to avoid terminal insolvency such as the winding up or closure of a business.

It is important to identify symptoms of problems in a business and undertake corrective strategies.

It is a truism that the earlier solvency difficulties are acted upon, the more likely a successful turnaround can be implemented. The longer such problems are allowed to fester, the more likely the condition will become terminal.

Our top ten of warning signs of insolvency are as follows.

**Warning Sign 1**

**Non-payment of Tax Liabilities**

A distressed company will often forgo the payment of its tax liabilities to ensure that it has sufficient cash flow to meet its wages and critical supplier payments.

This may be considered by many to be an effective use of cash resources in the short term, however in the long term after those tax liabilities have continued to accrue penalties and interest, the imposed tax liability can become unmanageable.

Entities in this situation should seek financial advice, as a restructure may be able to be effected and a repayment plan entered into with the ATO to avoid the issuing of any penalty notices.
Signs that a company may be insolvent or in financial distress

**Warning Sign 2**

**Continuing Losses**

Companies with continuing financial losses for the past 2 years should review their asset and liability position. Idle or non-performing assets may need to be sold, in order to purchase new assets that will generate profitable income for the company.

Financial advice in the form of an investigative accountants review could also be sought, in order to determine if there are any non-value adding processes in place that could be stopped and/or that a reduction in overhead costs and employee costs could be achieved.

**Warning Sign 3**

**No access to credit**

In the event a company has attempted to secure new lines of credit or to extend existing lines of credit, it may be necessary to engage an investigative accountant to consider alternative arrangements to be made, in terms of repayment of debts due, to achieve some breathing space and to free up some cash in order to continue trading.
Signs that a company may be insolvent or in financial distress

Warning Sign 4

**Outside trading terms with creditors and supply on Cash on Delivery ("COD")**

When trading terms with creditors are well outside normal trading terms, i.e. 30 - 60 days and creditors are demanding that supply be made with COD, it is time to seek some financial advice in order to get trading back on track.

Warning Sign 5

**Receiving demands and/or other legal notices**

When creditors are pressing for payment in the form of final notices and issuing legal demands, it will not be long before they receive a judgement order for their debt and proceed with winding up proceedings.
Signs that a company may be insolvent or in financial distress

Warning Sign 6

Sales are decreasing

If trading has been decreasing over a period of time, it may mean that the business may need to free up some cash to promote its product and/or service, or needs to diversify.

Financial advice should be sought to determine the company’s place within the market and identify its strengths, weaknesses, opportunities and threats and to develop a plan for the future. That plan for the future may be in the form of an orderly sale of the business to a new entity.

Warning Sign 7

Unfunded superannuation

Businesses that have been utilising the funds earmarked for employee superannuation contributions, in order to continue trading, is not a good sign.

Superannuation payments are to be remitted quarterly and are required to be paid within the month after the end of each quarter. In the event the funds are not paid to the respective super funds within the specified timeframe these amounts fall due as a debt due to the Australian Taxation Office, under the Superannuation Guarantee Act. In addition to the debt due, penalties and interest are applied.

These amounts may also be included in the penalty notice issued by the ATO and as such, Directors may find themselves personally liable for these debts as well.
Signs that a company may be insolvent or in financial distress

Warning Sign 8

Excessive reliance on related parties

Without any formal loan agreement and/or repayment plan, companies may have been borrowing funds from related entities and/or family members.

In the event the company is ultimately wound up or made bankrupt, these debts will rank equally with all other unsecured creditors and if insufficient assets are realised, may not receive any dividend.

Warning Sign 9

Low stock turnover

When a company’s stock is not moving and the majority of stock on hand is extremely old and in some cases, obsolete, cash flow problems will arise. This will affect the value of the assets that have been recorded in the balance sheet and after adjustment of the stock value a negative balance sheet position may result.

Financial advice should be sought and perhaps an independent valuation undertaken, to assess the true value of the stock on hand.
Signs that a company may be insolvent or in financial distress

Warning Sign 10

High Accounts Receivable

The debtors may not be paying and a company may not have an accurate figure on the total amounts owed or the collectability of those receivables. This in turn leads to inefficient cash management.

Businesses may need to introduce a more effective debt collection process going forward, or like many SME’s in today’s market, utilize invoice discounting or other forms of cash flow financing to ensure continuity of cash flow and to streamline the debt collection function.

Conclusion

There is no hard and fast rule in determining the insolvent state of your company, but if any of these signs are appearing, act quickly and ensure the best outcome for a distressed business.
Common recovery proceedings by creditors that a business maybe subject to

Creditors have various means of debt collection mechanisms which a distressed business may be subject to. The following are the most common forms of debt collection procedures creditors utilize against a company to recover their debts.

**Statement of Claim**

A statement of claim is normally the very first step in the legal debt collection process through the court system. The main aspects of the statement of claim are addressing the elements of the law which the claim is based on and that it is supported by evidence, which is usually in affidavit form to substantiate the claim.

Once a Statement of Claim is received the recipient should act quickly to defend the claim made by the other party (the Plaintiff). The recipient (Defendant) has twenty eight (28) days to lodge a defence from when received. If a defence is not lodged, the plaintiff who brought the Statement of Claim can seek a default judgement against the defendant.

Common recovery proceedings by creditors that a business maybe subject to

Judgement Debt

A judgement debt means that the Court has ordered that the Defendant owes the money to the Plaintiff (as a result of previous proceedings such as the Statement of Claim). Once the Plaintiff obtains a judgement debt, they may enforce it a number of ways. The most common ways of enforcing judgement debts are as follows:

Judgements for possession of land in the Supreme or District Courts may be enforced by a writ of possession

Judgements for delivery of goods may be enforced by a writ of delivery

Judgements for the payment of money may be enforced by:

- A writ for the levy property
- A garnishee order, through the Supreme or District Courts, via a charging order.
Common recovery proceedings by creditors that a business maybe subject to

**Statutory Demand**

A Statutory Demand is a claim made under 459E of the Corporations Act. Failure to comply with a Statutory Demand or apply to the Court to set it aside will result in the company being “deemed” to be insolvent. The Corporations Act defines a company is insolvent if it is unable to pay its debts as and when they fall due.

The service and non-compliance with the Statutory Demand allows a creditor that issued the Statutory Demand to apply to the Court for the appointment of an official liquidator to the company. The failure to comply with a Statutory Demand is the most common basis in which applications are made to the Court for the winding up of companies in Australia.

If you have received a Statutory Demand, you are required to pay a specified sum of money within 21 days from the date of the delivery of the Statutory Demand.

If you dispute the debt or there are irregularities with the document received, you should immediately seek independent legal advice and apply to the Court to set the demand aside on the basis that the debt, being the subject of the Statutory Demand, is genuinely disputed or there is an irregularity. This application needs to happen within the 21 day period.

Directors need to act quickly if a Statutory Demand is served upon their company otherwise their company may be deemed insolvent and could face a Notice of Winding Up Application once the 21 day period expires.
Common recovery proceedings by creditors that a business maybe subject to

**Notice of Winding Up Application**

A Notice of Winding Up Application is issued to the registered office of a company when a creditor has filed in Court an application to wind up a company. This normally takes place after a creditor obtains a judgement debt or following failure for a debtor company to comply with a Statutory Demand within 21 days. Upon these events occurring, a creditor may issue proceedings in the Federal Court or the Supreme Court to wind up the company. The process for issuing these proceedings is brought under Section 459P of the Corporations Act.

There are other circumstances (less common) that may allow a party to initiate winding up proceedings.

If the Winding Up Application hearing takes place and the Court is satisfied that a company should be wound up, the Court makes an order for the company to be wound up and the Court appoints an Official Liquidator. Normally, the appointed Liquidator has provided a consent to be appointed prior to the hearing upon the request of the creditor (or their lawyers) making the Winding Up Application.

It is important that Directors are aware that once a Winding Up application commences, it is normally based upon an act of insolvency having taken place. If the Winding Up action is not dismissed and heard before a Court, the question of insolvency is usually taken into consideration.
ATO Garnishee

Pursuant to Section 260-5 of the Taxation Administration Act 1953, the Australian Taxation Office has the power to issue a Garnishee Notice in order to collect taxes due by a company (the taxpayer). The two most common Garnishees are as follows:

1) Garnishee to Debtors – the ATO can collect a company’s debtors by providing a letter requiring that the monies owed by the debtor to the company are not to be paid to the company that is owed the monies, but instead, directly to the ATO.

2) Garnishee to Bank Account – the ATO can collect funds that a company holds in a bank account by providing a notice to the Financial Institution requiring that monies held in a designated bank account of the company be paid directly to the ATO.

A Garnishee Notice can have detrimental effects to a company’s cash flow if issued as it takes away cash the company expects to receive. If a Garnishee Notice has been issued to either your debtors or the bank where accounts are being held, you may find having insufficient cash to pay employees or other critical creditors causes disruption to your business.
Personal liability risks for Directors for company debts

Long gone are the days of the corporate veil separating the personality of a corporation from the personalities of its Directors, by protecting the Directors from being personally liable for the company's debts and other obligations.

Through legislative changes and stringent requirements from creditors, Directors of companies today may easily become personally liable for company debts which then lead to potential bankruptcy for Directors.

The main catalysts causing personal liability for Directors from company debts are as follows:
- Personal guarantees provided to suppliers and leasing companies/landlords
- Personal guarantees provided to banks/financiers
- Insolvent trading
- Director Penalty Notices for unpaid PAYG and superannuation.
Personal liability risks for Directors for company debts

**Personal Guarantees**

The purpose of personal guarantees from creditors is to tie the Director’s personal finances to their business. Therefore assets such as the family home of Directors may be at risk. Creditors, landlords and banks seek these guarantees so that even if the business fails, they can make up the difference by going after Directors personally.

Unfortunately, due to differences in bargaining power, many companies in many cases cannot escape signing a personal guarantee. This is particularly the case if a company is signing a lease, obtaining a loan from a financial institution or obtaining credit from a key supplier.

As such, it is prudent for Directors to obtain advice when signing personal guarantees in regards to the nature and risk, and also consider personal legal asset protection strategies. In addition, over time, Directors may want to consider moving away from personal guarantees as collateral to assets of the business if sufficient assets are accumulated over time.

**Insolvent Trading**

Directors may be found liable for insolvent trading if they allow a company to incur debts at a time when the company was insolvent. Allowing for an insolvent company to incur debts whilst it is insolvent is a breach of directors’ duties.

A company is insolvent when it cannot pay its debts as and when they become due and payable. The test in simple terms is an inability to pay debts when the debts are 'due and payable'. The Corporations Act 2001 defines solvency and insolvency in the following terms:
Personal liability risks for Directors for company debts

Section 95A - Solvency and insolvency
(1) A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.
(2) A person who is not solvent is insolvent.

Insolvent trading claims normally arise after a company has gone into Liquidation, and are commenced by Liquidators. However an insolvent trading claim can also be initiated by a creditor if not undertaken by a Liquidator (with the consent of the Liquidator). In addition, despite being rare, insolvent trading claims in some instances can also be initiated by the Australian Securities & Investment Commission for criminal breaches (whereas actions initiated by Liquidators are civil actions – meaning “punishment” to Directors is only made by way of monetary claims).

An insolvent trading claim made by a Liquidator is calculated by way of compensation of the debts incurred and remaining unpaid after a date of insolvency. For example in very general terms, if a company is identified as “insolvent” on 1 January 2014, and the company continues to trade for 3 months until Liquidation and incurs $500,000 of unpaid debts, the Liquidator may have a claim against the Director personally for the sum of $500,000 as a damages claim.

Insolvent trading is a very technical and difficult area of the Corporations Act 2001. There have been numerous cases that have dealt with insolvent trading. As such the above is only a very general introduction.

We have listed the top 10 warning signs of insolvency previously in this booklet. If you are concerned that you may be insolvent, or may become insolvent, it is strongly advisable that you take action and seek help immediately to avoid significant exposure in the future.
Personal liability risks for Directors for company debts

Director Penalty Notices

On 29 June 2012, the Tax Laws Amendment (2012 Measures No. 2) Act 2012 received Royal Assent. The Bill extends with retrospective effect in an attempt to crackdown on phoenix operators.

Previously, a director of a company had a fallback position before the Commissioner of Taxation could enforce personal liability in circumstances that the company had an unpaid Pay As You Go (“PAYG”) liability. The Commissioner of Taxation had to send a Director Penalty Notice under Section 222AOE of the Income Tax Assessment Act 1936 prior to making Directors personally liable. The Notice provided that the penalty would be remitted if:
- The company’s liability has been discharged; or
- The company is under Administration; or
- The company is being wound up within 21 days from the date of issue of the Notice.

Directors have been known to liquidate a company to avoid paying amounts owed to the Commissioner of Taxation. In the past the ATO has often been a source of cash flow funding to companies struggling to pay their debts with the ATO, often being the largest and only creditor of a company in a Liquidation scenario. These amendments look to make paying amounts owed to the Commissioner of Taxation a primary consideration.

The law has now significantly changed

The major change in the legislation is that the tax office has now been given the power to collect unpaid superannuation from Directors personally, and Directors are now provided a tight timeframe to avoid personal liability for outstanding superannuation and PAYG tax.

The following is a summary of the changes and how the law will practically apply.
Personal liability risks for Directors for company debts

1) The Tax Administration Act 1953 has now been amended to extend the Director Penalty regime to include outstanding liability under the superannuation guarantee charge (SGC)

The legislation now extends a Director’s liability to unpaid superannuation guarantee charge whereby a Director is liable to a penalty if the company has not lodged its superannuation guarantee statement and paid the superannuation guarantee charge by the end of the lodgement date. The Commissioner will enforce liability by way of a Director Penalty Notice, providing a period of 21 days before commencing proceedings. The liability will be remitted if the Directors take one of the three actions described previously (subject to those actions occurring within the new timeframe as highlighted previously).

2) Directors in certain circumstances will no longer be able to avoid personal liability

However, the legislation provides that where 3 months has lapsed after the due date and the liability remains unpaid and unreported, the penalty will not be remitted as a result of placing the company into administration or liquidation. If the liability has been reported, Directors will still be issued with a Director Penalty Notice allowing them 21 days to take certain actions and avoid personal liability.

The following is an example of the new timeline for company Directors to avoid personal liability for a typical company in the first quarter of the year, being 1 January to 30 March. For illustration purposes, let’s say the company reports their PAYG tax on a quarterly basis and the PAYG becomes due and payable on or around the 28th day after the end of the period (28 April). Also, superannuation under the superannuation guarantee charge becomes due and payable on the 28th day after the end of the relevant quarter (28 April). Therefore, the critical day for both PAYG and SGC in this scenario is 28th April and Directors have three months from this date to take certain actions to avoid personal liability.
Personal liability risks for Directors for company debts

Payment and lodgment due date

28 April

{Three month ‘grace’ period}

End of 3 month grace period

27 July

Directors avoid personal liability if they do one of the following during this three month grace period
1. Pay the PAYG tax and superannuation incurred
2. Appoint a Voluntary Administrator if PAYG and super cannot be paid
3. Appoint a Liquidator if PAYG and super cannot be paid

Directors are personally liable for PAYG tax and super if it cannot be paid after this period. Directors cannot escape personal liability, if the liability has not been reported after this date and they appoint an Administrator or Liquidator after this date. If the liability has been reported, Directors still need to be issued a Director Penalty Notice giving Directors 21 days to take action to avoid personal liability.

Personal liability risks for Directors for company debts

3) The changes will apply retrospectively

It is important to note that the changes will apply retrospectively for outstanding PAYG obligations at the commencement of the new legislation and a Director may no longer be able to have their Director Penalty remitted by appointing an Administrator or by winding up the company, and will be personally liable regardless, if they are outside the 3 month timeframe. The law will not be applied retrospectively for superannuation with exception of superannuation incurred between 1 April 2012 and 30 June 2012.

4) Other notable amendments include

The Commissioner may also serve a copy of a Director Penalty Notice on the Director at his or her tax agent’s address.

A new Director is not liable for a Director Penalty for company debts until 30 days after they become a Director.

The introduction of a PAYG withholding non-compliance tax for Directors and their associates in circumstances that the Director and/or their associates claim a PAYG credit in their personal income tax returns for amounts withheld by the failed company. The tax is not recoverable unless the Commissioner issues a Notice to the individual Director or associate.
Personal liability risks for Directors for company debts

Directors will need to be aware of these changes, and start taking precautions to avoid personal liability. At the very least, Directors will need to ensure that they:

Maintain lodgements and ensure they comply within the 3 month lodgement period

Ensure PAYG and superannuation requirements are paid at least 3 months after the due date, and if these liabilities cannot be paid, consider making an appointment of an external administrator

Report on their current residential address with the Australian Securities and Investments Commission (ASIC) to make sure they get a DPN if one happens to be issued

Ensure their tax agents are diligent in forwarding all material promptly including a Director Penalty Notice

Review personal asset planning strategies.
Options available to companies when in financial distress

So now you have identified that you may be suffering financial distress and need help. Where to now? We have provided an easy to follow guide on the various options, advantages and restrictions with each option. We have also listed each option from best case scenario to worst case scenario, being terminal insolvency (being liquidation and the business ceasing to exist).

Business Performance Improvement

What is Business Performance Improvement?

The name speaks for itself. In general, a company may be able to pinpoint critical areas in the business where there may be improvements which will turnaround their business to a profitable state. These could be by obtaining independent assistance on areas such as the following:
- Reducing losses / increasing profits
- Achieving overall improvement and how to measure it
- Proper management skills
- Costing management
- Identifying profit centres and maximizing these centres
- Managing cash flow
- Preparing sound and realistic business plans.
Options available to companies when in financial distress

When is Business Performance Improvement a viable option?

A business should always look at improving its performance. You need to consider the extent of the debts and whether a formal appointment of an external administrator is needed rather than continuing to trade whilst implementing business performance strategies, because if the strategies ultimately fail, you may have breached Directors duties under the Corporations Act such as insolvent trading.

Ultimately, a company should only consider undertaking Business Performance Improvement strategies very early and with a view of paying creditors in full upon the successful implementation of the strategy, otherwise other options would be preferable to avoid the Directors breaching their duties in the future.

What are the advantages of Business Performance Improvement versus other options?
- Directors retain control of the business
- The company’s reputation and goodwill is preserved
- Directors can avoid insolvent trading and other voidable transaction recoveries
- It is not a creditor driven process
- And the business performance improves, improving the position for the shareholders.

Options available to companies when in financial distress

**Workouts**

What is a workout?

An informal workout is a combination of strategies and agreements that allows a solution for creditors in a distressed situation without the need of a formal appointment. If action is taken early, an informal workout may be able to be effected, without the stigma of a formal appointment, which could reduce the value of the assets of a company or the loss of confidence of investors and/or customers.

Furthermore, generally a formal appointment will involve additional costs, adverse publicity and result in an independent practitioner controlling the company’s business, property and affairs.
Options available to companies when in financial distress

When is an Informal Workout a viable option?

Any workout agreement requires the agreement of all creditors, i.e. without such agreement the non-consenting creditors are free to pursue their normal legal remedies and this can jeopardise the objectives of the workout. This is contrasted with a Voluntary Administration, wherein the decision of the creditors present, and voting at the Section 439A meeting, binds the entire body of creditors. Hence, formal administration provides for more certainty than an informal workout.

The following are examples when a company could consider an informal workout with the approval of all creditors:

- If a company is able to source opportunities to borrow further funds which can be used to pay its due debts

- If a company can obtain further funds by way of equity capital injection opportunities

- If a company can convert short term debt to long term debt by debt negotiation

- If a company can sell non-core business/asset units or closure of non-performing business/asset units

- If a company can streamline complex group structures and generate better liquidity.
Options available to companies when in financial distress

As mentioned previously, a workout requires the agreement of all creditors. If a workout ultimately fails, Directors may be found during the process to have breached their Directors’ duties and held liable for insolvent trading.

What are the advantages of an Informal Workout versus other options?

- Reduction in costs
- Directors retain control of the business
- The company’s reputation is preserved
- The workout is not advertised unlike a formal appointment
- Directors can avoid insolvent trading and other voidable transaction recoveries
- It is not a creditor driven process
- Workouts enable maintenance of goodwill with suppliers, creditors and customers rather than attracting the stigma of a formal appointment.

By fixing critical aspects of a company's balance sheet deficiency through an effective workout, it may be possible to convert an insolvent company to a solvent company.
**Voluntary Administration**

**What is Voluntary Administration?**

A Voluntary Administration is an avenue for an entity experiencing financial difficulty to appoint an independent External Administrator to take control of the affairs of the company to determine the future direction of the company. This enables an insolvent company to be saved.

The appointment can be made by Directors and there is no need for the Court's involvement.

The Voluntary Administration provisions allows for a short moratorium, which allows a company and its directors the opportunity to formulate a proposal to creditors, which will deal with the debts incurred prior to the Voluntary Administration and continue to trade in the future. A Deed of Company Arrangement may follow a Voluntary Administration which allows flexible conditions and all unsecured creditors are bound by the Deed.

The objectives of the Voluntary Administration are stated in Section 435A of the Corporations Act, as follows:

“The object of this Part is to provide for the business, property and affairs of an insolvent company to be administered in a way that:
Options available to companies when in financial distress

Maximises the chances of the company, or as much as possible of its business, continuing in existence; or

If it is not possible for the company or its business to continue in existence – results in a better return for the company’s creditors and members than would result from an immediate winding up of the company.”

When enforcement action from one or more creditors is inevitable a Voluntary Administration provides the best chance for a company’s business to continue in existence and allow for a formal restructure with the creditors.

A Voluntary Administration can maximize the chances of a company continuing to exist coupled with the return to creditors. Directors by appointing an Administrator can avoid personal liability. The appointment imposes a moratorium on debt enforcement. In addition, company guarantees cannot be enforced against Directors or relatives when an Administrator is appointed. Also, if a Deed of Company Arrangement is accepted it will release Directors for insolvent trading claims by creditors. You do however need to bear in mind that if a Deed of Company Arrangement is not accepted by creditors, it is likely that the company will be placed in Liquidation, as the Voluntary Administration process is creditor driven. Furthermore, secured creditors and lessors are not bound by any Deed of Company Arrangement unless they agree to be bound.
Options available to companies when in financial distress

What are the advantages of a Voluntary Administration?

The advantages of a Voluntary Administration are as follows:

- An independent insolvency practitioner is appointed who controls the company’s assets and reports to creditors on the financial performance of the company and its prospects for the future.

- The Administrator has the advantage of a seven day rent free period in respect of property owned by others.

- Directors have the opportunity to put forward a proposal to ensure the business and the company continues in existence.

- The appointment of an Administrator avoids personal liability in respect of unpaid tax liabilities and is one of the remedies when a Director is issued with a Director Penalty Notice (subject to previous lodgements having been made within the prescribed time).

- The process can be relatively short, a standard administration lasts approximately 5 weeks.

- Any dividends payable could occur faster than if the company was placed into Liquidation.

- Creditors and other stakeholders benefit from the company continuing in existence.

- In the event a proposal is accepted by creditors, voidable transaction, insolvent trading and preferences are not pursued by the Administrator.

- Creditors are unable to pursue personal guarantees during the administration process.

- Leases can be maintained with the consent of the lessors.

- Employees could maintain employment if the business continues to trade.
Options available to companies when in financial distress

**Liquidation**

**What is Liquidation?**

Liquidation of a company occurs when a company cannot pay all of its debts. When a company is in Liquidation, a Director is relieved of dealing with company debts. The Liquidator takes control of the company.

The objective of Liquidators is to:
- Wind up the affairs of a company; and
- Provide for a fair and equitable distribution of the company’s property amongst its creditors.

The company must cease to carry on its business except so far as is in the opinion of the Liquidator required for the beneficial disposal or winding up of the business. The Liquidation of a company can be initiated when the Directors believe that the company is insolvent, or likely to become insolvent in the near future, and the company and/or business should not remain in existence.

The shareholders resolve by a special resolution at a meeting to appoint a Liquidator and place the company into Liquidation in order to wind down the affairs of the Company.

At the appointment of a Liquidator, they take full control of the Company’s business and the powers of the Directors and other officeholders are suspended. In general terms, the role of the Liquidator is to:

1) Wind up the affairs of a Company
2) Report to the creditors of the Company
3) Conduct investigations into the affairs of the Company
4) Distribute the Company’s assets (if any) amongst its creditors
5) Deregister the company.
Options available to companies when in financial distress

When is Liquidation a viable option?

Liquidation is the most viable option when a company cannot pay all of its debts when they fall due and the company’s affairs need to be fully wound up. In most circumstances Directors would place their company in Liquidation versus a Voluntary Administration for the following reasons:

- A Voluntary Administration can be expensive compared to placing a company in Liquidation

- The company’s business may have been sold or ceased prior to appointing a Liquidator

- No Deed of Company Arrangement will be proposed to the creditors

- There are no leases to protect whereas a Voluntary Administration protects termination of leases during the Voluntary Administration

- The Directors and shareholders want to fully wind down the affairs of the company and if possible distribute a dividend to the shareholders

- The appointment of a Liquidator avoids personal liability in respect of unpaid tax liabilities

It is important to note that the Directors and shareholders cannot commence Liquidation if a Winding Up Application has already been commenced by a creditor.
About Australian Debt Solvers

Our passion is to help people that face financial challenges.

We are Australia’s leading advisors for business debt solutions. Our obligation free consultation is a must if your business is facing financial problems or potential insolvency.

Whether it’s a cheap liquidation, voluntary administration, company re-structure or garnishee order – our consultants are ready to help you. Don’t delay – Contact us NOW.

SO IF YOU ARE:

Getting conflicting advice?
Want to liquidate for the cheapest price?
Concerned you are trading insolvent?
Really worried and want to do the right thing?
On payment plans with your creditors?
Can’t pay company bills on time?
Received a Directors Penalty Notice?
Received a Notice of Winding Up?
NEED EXPERT INSOLVENCY ADVICE?
Don’t delay. Talk to us now - we can help.
National offices

SYDNEY - HEAD OFFICE
Suite 1, Level 1, 71 Longueville Road, Lane Cove NSW

SYDNEY - CBD OFFICE
Level 12, Plaza Building, Australia Square, 95 Pitt Street, Sydney CBD

PERTH OFFICE
Suite 7, 99 -101 Francis Street, Perth CBD

BRISBANE OFFICE
Level 21, Central Plaza, 345 Queen Street, Brisbane CBD

MELBOURNE OFFICE
Level 28, 303 Collins Street, Melbourne CBD

Contact us: 1300 789 499 - www.australiandebtsolvers.com.au