

# News with Clout

Restructuring Insolvency and Turnarounds

## IS THE ATO ON THE WAR PATH OR ARE THINGS NOT THAT GOOD??

The funny thing is we had drafted a newsletter starting with the question that is it time to relax are we back to good times. This was designed obviously leading in to what we are feeling that things are still not good everywhere.

Then the jungle drums started up. Insolvency industry watchers and commentators have noticed the ATO lodgements of winding up petitions to the courts have spiked this month. Funny we noticed a spike in enquiries and appointments from March onward. However this did not seem to be reflected by city practitioners. What is causing the spike in petitions is the subject of speculation. Reasons have been expostulated from slowing business cashflow to a government with its eye on its own cashflow.

Interestingly it is the SME's that are copping it. They are however over 60% of collectable debt. Also the approaches to larger entities are believed to be more direct rather than via such a public forum as legal action.

From our experience more often than not if a winding up order is eventually made there are rarely funds available to pay any amount towards what is due let alone the costs of administering the winding up. Clearly if there is a commercial motive, it is more a way of bringing pressure to bare in an effort to create focus in owners and directors to find the cash or negotiate a repayment plan. But as you can appreciate basket cases generally go to the wall.

It appears the incidence of other tactics available to the ATO is on the rise as well, being Garnishee Notices and Director Penalty Notices.

A Garnishee Notice is issued on an organisation who owes money to the Debtor Corporation, the

target of the ATO. This is more often than not a Bank. The order is to pay over any money that is owed the Debtor to the ATO rather than the Debtor. As you can imagine this would be the death knell for many an entity.

We all know these days with the Directors Penalty Notice regime that if lodgements (not payments) or superannuation returns drop beyond 3 months overdue and a DPN is issued all directors at that time are personally liable for the amounts outstanding. Lodgements need to stay up to date.

We have been consulted recently on a situation where a Garnishee Notice was issued against a Director personally in respect of an old DPN notice for a company he cannot remember anything about.

It appears the ATO's debt limit threshold for legal action has come way down too.

Do your deals with the ATO by all means but we would have thought there are a couple of questions that needed to be asked first. **(1)** What has caused the arrears and is it as a consequence of a slow payer of your clients or is it a lack of profitability? **(2)** If it is a lack of profitability can this be reversed, and fund the repayment plan as well as the usual continuous ongoing commitments to the government? If not any deal is only postponing the inevitable demise and prolonging the pain.

**Don't forget there are also the provisions of Section 588FGA to consider where any recovered preference from the ATO by a liquidator is indemnified by Directors personally.**

As ever we welcome your enquiries and appreciate your support!



# NEWS WITH CLOUT

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