

News with Clout

Providing Corporate & Personal Solvency Solutions

BEWARE OF UNQUALIFIED INSOLVENCY ADVISORS

There is currently a growing industry of 'Pre-Insolvency Advisors'. The vast majority of them are unqualified individuals who have no affiliation with any professional body and hence no Professional Indemnity Insurance or Code of Conduct to adhere to. Another worrying problem is some of these so called pre-insolvency advisors have either been through a bankruptcy or liquidation and are now "experts". This is tantamount to having a heart condition and getting advice from someone who has had heart issues themselves rather than seeking out the cardiologist. This may seem an extreme analogy but you get the point.

The pre-insolvency advice industry, whilst it is an unregulated sector, is now being heavily scrutinised by ASIC and the ATO to stamp out inappropriate relationships between pre-insolvency advisors, accountants and pet liquidators as well as targeting the illegal actions of Directors of companies in financial strife.

You may have heard in the news that there have been a number of high profile raids over the last 12 months on pre-insolvency advisers and accountants which has resulted in ASIC's successful enforcement action in prosecuting advisors for aiding, abetting, counselling or procuring a director of a company experiencing financial distress to breach their director's duties. It is no secret the ATO's and ASIC's investigations are continuing with more raids and charges expected in the not too distant future.

Clearly not all pre-insolvency advice is improper but some result in company director misconduct, and facilitate illegal phoenix activity. Phoenix activity is where an indebted company, transfers its assets to a new company under a different name for little or no consideration. The company is usually then liquidated, leaving creditors, employee

entitlements or tax or all of the above.

Pre-insolvency firms use public databases to identify struggling companies, and individuals cold-call them to offer "pre-insolvency" advice. The advice offered usually includes unrealistic promises that directors in financial difficulty understandably are inclined to cling to. Part of this can relate to how to "phoenix" the business, which can result in directors spending time in prison.

ASIC is now writing to directors of companies subject to winding up applications to provide timely information to help directors understand their responsibilities as officers, help them identify some warning signs of untrustworthy advisors and outline potential consequences of acting on their advice when it is inappropriate.

What should you do if your client finds themselves in this position or you hear from someone offering their services to your client? Do your background checks first. Before you engage an insolvency/turnaround expert, make sure they're a member of a recognised reputable professional body such as Australian Restructuring Insolvency & Turnaround Association ('ARITA'). ARITA is the professional body for Australian insolvency practitioners, as well as those working in the business of reconstruction and corporate and personal insolvency fields.

It is also a good idea to check with ASIC or AFSA to determine if the advisor is a registered liquidator, for a company or Bankruptcy Trustee or Debt Agreement Administrator for personal situations and his/her registration history.

As ever we welcome all your enquiries and are happy to address any questions you or your clients may have.



NEWS WITH CLOUT

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