

Voluntary administrations

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- ▲ This edition of Inside Edge provides a guide on when voluntary administration may be used by a company suffering financial distress.

Introduction

An earlier edition of Inside Edge highlighted problems with [informal deeds of arrangement](#).

As an update, we are aware that the company referred to in that edition was being pursued through the courts by creditors who are not satisfied with the arrangement. Accordingly, we understand the company was forced to suspend repayments pursuant to the arrangement to direct cash flow to the creditors pressing for payment. Ultimately, that company entered voluntary administration and then liquidation.

This highlights the danger of the original process and reinforces the need for an arrangement that's legally binding on all creditors and conducted by a registered insolvency and restructuring specialist.

Voluntary administration is one such arrangement.

The voluntary administration process

The primary purpose of voluntary administration is to maximise the chance of a company continuing in operation.

The voluntary administration process provides for:

- ▲ the appointment of an independent, experienced insolvency practitioner (registered with ASIC) to take control of the company's operations
- ▲ a moratorium on action by creditors (except secured creditors)
- ▲ an opportunity for the company's director(s) to propose an arrangement with creditors

- ▲ an independent assessment of the proposal by the appointed insolvency practitioner
- ▲ a formal recommendation by the insolvency practitioner as to whether the creditors are best served by accepting the proposal
- ▲ all unsecured creditors to be bound by the decision of the majority of creditors as to the company's future.

Voluntary administration is often used to provide protection for an otherwise viable company that has encountered financial difficulty due to circumstances possibly beyond its control, such as:

- ▲ significant bad debts
- ▲ loss of a major contract
- ▲ legislative change
- ▲ a one-off catastrophic event
- ▲ withdrawal of a financier's support.

Voluntary administration may also be used to restructure a company that has ventured away from its core business or needs to move into a new product, service or market category.

The formal appointment of a voluntary administrator can give a business time to recover without pressure from creditors.

Types of proposals for deeds of company arrangement

Under voluntary administration, the exact terms of the proposal to creditors for a deed of company

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arrangement will, of course, depend on the unique circumstances of each company.

There are three main types of proposals that we often see are:

- ▲ contributions from future profits
- ▲ claims of related parties being deferred to allow a greater return to external creditors
- ▲ equity injection.

The proposal may comprise a combination of the above solutions and is always customised to the situation. Our experience enables us to determine whether or not the proposal may be acceptable to creditors. The terms of the proposal are, of course, up to the director(s) of the company to determine.

Warning signs

There are several warning signs that indicate a company may require a voluntary administration, including:

- ▲ ATO debt accruing
- ▲ statutory authorities (e.g. payroll tax) not being paid
- ▲ rental arrears
- ▲ continuing trading losses
- ▲ payment arrangements with key suppliers
- ▲ demand letters from creditors
- ▲ creditors withholding supply.

Keys to success

The keys to a successful voluntary administration, resulting in a deed of company arrangement include:

- ▲ early identification that the company is suffering cash flow difficulties, may be insolvent and seeking advice on the available options
- ▲ determining whether the underlying business is viable. There is little benefit to any stakeholders

if a company goes through the voluntary administration process only to fail a few months later

- ▲ formulating the correct restructuring strategy to rectify the cause of the cash flow difficulties.



Why your clients should seek advice early

In our experience, directors of companies in these circumstances often adopt a 'head in the sand' mentality rather than seeking early advice on the options available. This denial of the problem in the hope that 'things will get better' is often to their detriment, for two main reasons:

- ▲ It will be more difficult for insolvency practitioners to assist, as creditors are less likely to be receptive to a proposal for a deed of company arrangement if the directors have made promises which have not been kept, and therefore lack credibility
- ▲ The directors are likely to expose any remaining personal assets to a claim by a liquidator for insolvent trading.

In the event that the business cannot be saved, voluntary administration may still be appropriate if the proposal for a deed of company arrangement provides a better return to creditors of the company than would result from liquidation. It also provides the added benefit of potentially avoiding legal claims by a liquidator (such as insolvent trading claims).

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Help

The financial problems of a business may often be resolved without the need of a formal insolvency appointment such as a voluntary administration.

In general terms, a registered insolvency practitioner can advise whether or not your client needs a voluntary administration. If you or your client feel uncomfortable with the advice already received, a second opinion may identify other options or alleviate concerns.

The principals and directors of BRI Ferrier are available to assist you or your clients in assessing their position on a free, confidential and no-obligation basis.

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About BRI Ferrier

BRI Ferrier is a unique affiliation of expert business recovery, insolvency, forensic accounting and advisory firms. We provide practical, innovative services that help financially distressed businesses to recover or at least minimise the negative impacts of insolvency.

With over 160 staff and eleven practices in Australia, New Zealand, Hong Kong and the United Kingdom, we work with clients of all types – from individuals, sole traders and small businesses to public corporations and government entities.

We also work with financiers, solicitors, accountants and creditors to address the needs of all stakeholders when businesses face financial challenges.

How BRI Ferrier can help

BRI Ferrier can assess your current situation and advise on a path forward to minimise further risk.

Early intervention is often the key for a successful restructure of your business. If you or your client is experiencing financial challenges then don't delay, contact us today.

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The initial consultation to your client is free, strictly confidential and without obligation.

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