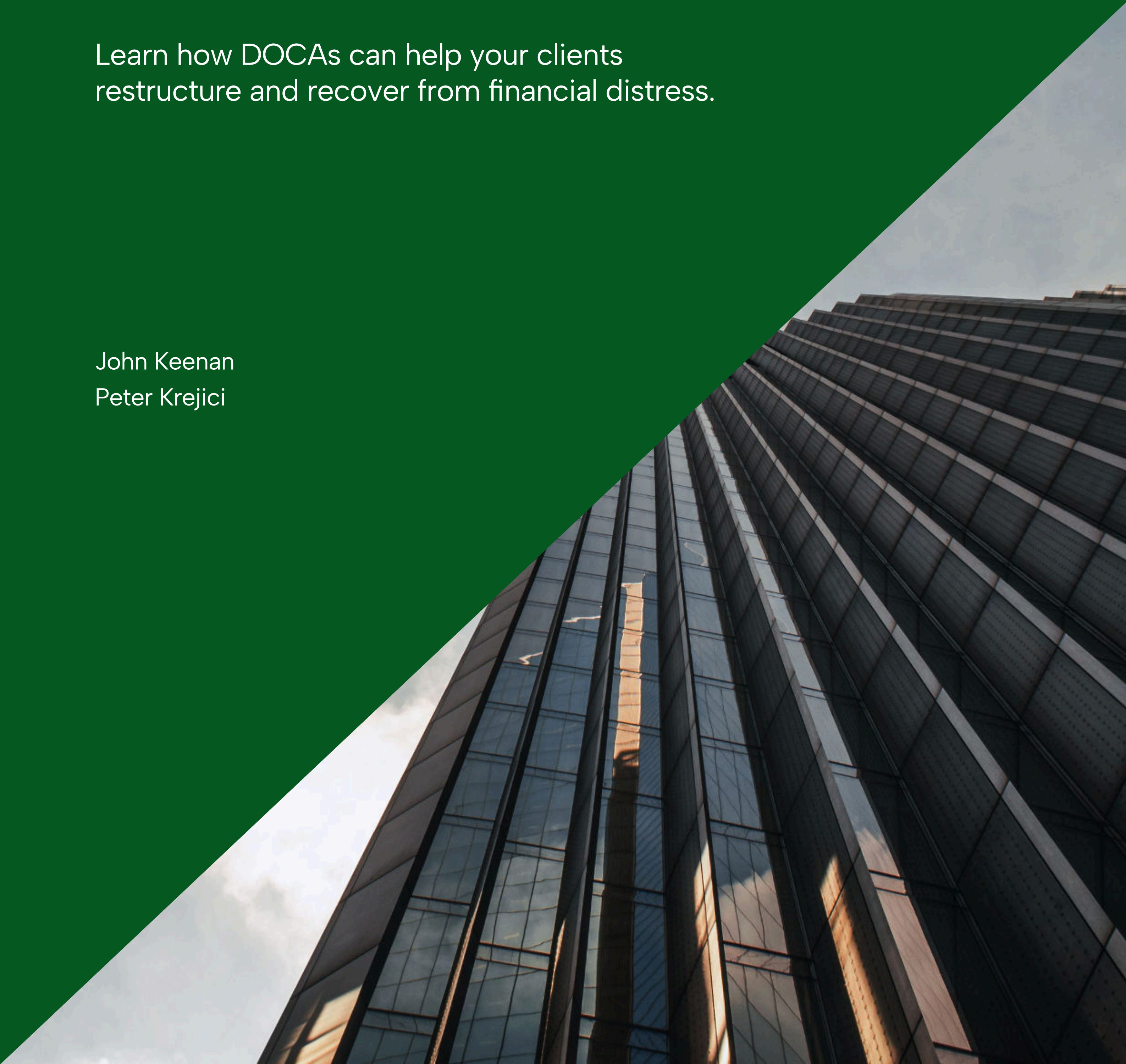
NAVIGATING DEEDS OF COMPANY ARRANGEMENT

Learn how DOCAs can help your clients restructure and recover from financial distress.



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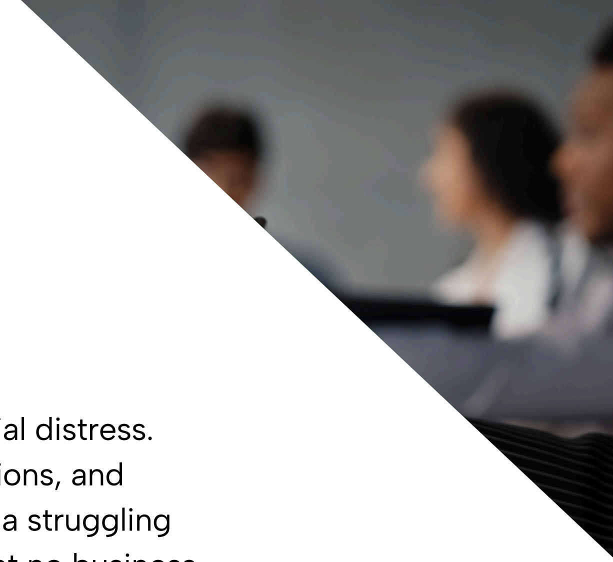

NAVIGATING DEEDS OF COMPANY ARRANGEMENT: A SUMMARY

Every year, thousands of Australian businesses face financial distress. Market downturns, economic shocks, supply chain disruptions, and unexpected crises can transform a thriving enterprise into a struggling entity overnight. The COVID-19 pandemic reminded us that no business, regardless of strength or industry, is immune to sudden financial upheaval.

In the past, businesses in financial distress faced limited options—liquidation or receivership. However, the Deed of Company Arrangement (DOCA) presents an alternative. For over 20 years, a DOCA has allowed companies to restructure and continue operations. Unlike other options, DOCA’s aim to maximise the chances of the company's survival and/or improve the return to stakeholders.

Understanding the DOCA process can transform a crisis into an opportunity for renewal. At BRI Ferrier, we’ve seen firsthand how a DOCA can salvage a flailing business. As a leading insolvency firm, we combine a proven track record, strong stakeholder relationships, and extensive industry expertise to offer unparalleled resources when you need them the most.

A DOCA is one of the most powerful of these resources. When implemented correctly, this avenue can save your business and your livelihood. So given the importance of DOCA, let us look at what it is, when to consider it, and how to increase the chances of a successful outcome.

WHAT IS DOCA?

Deed of Company Arrangement (DOCA) is an Australian legal instrument that can transform corporate collapse into corporate resurrection. Unlike liquidation, a DOCA doesn't aim to dismantle a company, but seeks to preserve it.

Put simply, a DOCA is a binding agreement between a distressed company and its creditors, approved through the voluntary administration process. This agreement maps a route out of troubled waters, and onto safer shores.

A DOCA can:

- Freeze Legal Attacks: Creditors can't pursue legal action, seize assets, or force liquidation while the DOCA is in play.
- Keep the Lights On: Unlike liquidation, the business continues trading. Operations don't halt, but they do recalibrate.
- Negotiate Smarter: Instead of paying creditors in full (which is often impossible anyway), you negotiate better terms, partial repayments, staged schedules, and/or equity conversions.
- Preserve Relationships: The business avoids the stigma of liquidation. Suppliers stay. Customers don't run. Employees hold on to their jobs.
- Stabilise the Brand: Managed correctly, the public hears the message of recovery.

Many jurisdictions don't offer the same flexibility as Australia's DOCA regime. In other countries, failure almost always leads to terminal outcomes, liquidation, bankruptcy, and a complete loss of control.

Here, the Corporations Act recognises that not every insolvent company is beyond saving, and our laws give space for triage and turnaround.

WHEN TO CONSIDER A DOCA:

For many directors, the first signs of distress are brushed off as temporary. A quiet hope takes root: next month will be better. As specialists in insolvency, BRI Ferrier has seen this pattern too many times to count, and to be blunt, hope is not a strategy.

The cost of inaction isn't just financial:

- Families are impacted
- Personal assets and homes, can be lost, personal guarantees called upon
- Reputations are ruined
- Directors face legal exposure for insolvent trading and other claims

The time to consider a DOCA is not when the doors are about to close, it's when the first signs of distress appear. If you're worried about mounting debts, tightening cash flow, or creditors growing restless, don't wait. Every day you delay, the list of options shrinks.

To maximise the benefits of a DOCA, you should still have a viable core business that is worth saving, and a clear plan based on realistic numbers.

THE DOCA PROCESS: FROM PROPOSAL TO EXECUTION

Stage 1: The Crisis Point & Voluntary Administration

This stage is generally commenced by directors, the people who know the business best. When they realise insolvency is unavoidable, they trigger Voluntary Administration.

That decision is a line in the sand, a moment of accountability that seeks to test if the business is worth saving.

Appointment of the Administrator

Upon the passing of a director's resolution, control transfers to a registered insolvency practitioner, like someone in our team at BRI Ferrier, who brings not just independence but commercial instinct.

The role is to:

- Assume full control of the business
- Determine if the company can survive
- Explore sale of business and recapitalisation options
- Investigate the causes of distress and potential recoveries
- Negotiate potential DOCAs

With the assistance of the existing management, the administrator becomes CEO, CFO, and CRO in one, and they have 20–25 business days to explore the available options and report on the company's fate.

The Investigation Phase

This is the heart of the administration. The administrator dives deep into:

- Cash flow analysis
- Asset and liability mapping
- Contract reviews
- Related party transactions
- Employee entitlements, creditor claims and tax liabilities
- Solvency assessments

The central question remains—can the business be saved, and under what terms?

Stage 2: The Creditors’ Meeting, Democracy in Action

Roughly five weeks in, the first real turning point arrives: the second creditors’ meeting.

The administrator lays down their findings. The options are presented:

1. Return the company to the directors
2. Liquidate immediately
3. Enter into a Deed of Company Arrangement

And then, creditors vote.

DOCA does not require unanimous approval. Approval is granted by a majority of creditors who vote by number and value.

This dual test creates balance. It prevents a single large creditor from dominating, while still protecting smaller voices. The independent administrator also has a casting vote, to resolve deadlocks within the creditor pool and deliver an outcome.

A DOCA proposal built with creditor input, and delivered by a respected administrator, has a far greater chance of passing.

Stage 3: Implementation

Once the DOCA is approved, the company has 15 business days to formally execute it. If that doesn't happen, it defaults to liquidation.

Once executed, a transformation begins.

The Deed Administrator is appointed and is empowered to:

- Enforce the terms of the agreement
- Manage the business (if mandated, and trading continues)
- Collect in assets and other contributions
- Monitor compliance and report regularly
- Ultimately distribute funds to creditors

This is where most of the hard work truly begins.

KEY COMPONENTS OF A DOCA

No two DOCAs are identical, but the best share some core traits:

- Realism, grounded in tested cash flows, not wishful thinking
- Flexibility, staged payments, contingencies, and fallbacks
- Transparency, so creditors know what they're voting for
- Accountability, with clear deliverables, regular reporting, exit conditions.

At BRI Ferrier, we work with the stakeholders to build a plan that suits the business needs. That often entails custom scenarios, combining debt compromises, asset sales, equity swaps, new management and/or employee guarantees into one integrated plan. The result is the company is returned to a solvent state ready to move forward.

AFTER THE DOCA IS IN PLACE:

Every DOCA carries two signatures: Hope and Risk.

When it works, the DOCA gives a company the runway to recover. But when it's flawed, rushed, manipulated, or built on bad faith, it becomes a loaded weapon pointed at the very people it was meant to help.

The Court does not hesitate to terminate a DOCA if it:

- Unfairly discriminates between creditors
- Serves improper or dishonest purposes
- Obstructs legal investigations or due process
- Is fanciful in its promises, presented without appropriate professional scrutiny.

RED FLAGS TO LOOK OUT FOR:

Structural Risks:

- Extremely low returns to creditors
- Unsecured creditors treated unequally without clear rationale
- No secured or guaranteed source of funding
- Speculative assumptions driving repayment plans.

Procedural Flaws:

- Key creditors excluded from voting
- Creditors misled or given insufficient disclosure
- Underlying company affairs not properly investigated

Improper Intent:

- Using DOCA to sidestep legal proceedings
- Protecting related-party claims or shadow directors
- Blocking regulator or tax office investigations
- Attempting to neutralise pending litigation

To safeguard the DOCA, the proposal should aim to:

- Justify returns: Provide realistic, well-modelled recovery expectations
- Treat creditors equitably: Don't play favourites without commercial reason
- Ensure transparency: Meaningful disclosures of assumptions, risks, and benefits
- Keep the purpose clear: It must prioritise creditor recovery, not director salvation
- Prepare for scrutiny: Formulate your DOCA as if the Court will review it (because it might)

CASE STUDY: BONDI PIZZA GROUP

In 2024, BRI Ferrier was appointed voluntary administrator of the Bondi Pizza Group, a multi-location hospitality restaurant business within a group of entities, around 300 employees, and a debt burden exceeding in the millions.

Challenges:

- Internal complexity between the group and leasing obligations
- Significant government tax debt
- Competing claims between group members

Strategy:

- A common DOCA pool, carefully structured to:
- Preserve jobs & the viable business
- Consolidate liability positions against a common DOCA pool
- Equitably distribute recoveries
- Ensure transparency

Key Battles:

- Negotiating a deal with the various stakeholders to preserve the business
- Getting the creditors of each of the entities on-board to a viable proposal that saw the business survive.

Outcomes:

- Creditors accepted the grouped DOCAs where the structure, disclosure, and commercial logic were sound.

Conclusion:

Restructuring a business via a DOCA requires careful planning, legal rigour, and commercial negotiation. In the wrong hands, they can be used to seek to sidestep proper creditor protections. But in the right hands they are a powerful restructuring tool.

For directors, advisors, and creditors facing the harsh realities of insolvency, understanding how and when to use a DOCA can mean the difference between an orderly restructure and a value-destroying liquidation.

When used with transparency, and strategic insight, a DOCA can deliver real, measurable outcomes and restore viability to businesses others might have written off.

FINAL WORD

Signing a DOCA is not the finish line. It's the opening bell.

If a DOCA is used simply as a loophole, it may not be effective. However, when approached as an opportunity with supporting data, consistent discipline, and commitment, it can offer significant benefits.

Once executed, a DOCA transforms the legal and commercial landscape. The power dynamics shift. The legal exposures are abated. The business is no longer in freefall – it is operating in a controlled manner, with informed strategic direction.

The business operations and future planning can resume with confidence after the ink dries.

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