



# Business Administration 101:

What you need to know & how to best avoid it

Presented by

**Aston  
Chace  
Group**

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# Aston Chace Group



BUSINESS  
ADMINISTRATION  
101:

WHAT YOU NEED TO  
KNOW &  
HOW TO BEST  
AVOID IT

# CONTENTS

## How to best avoid external administration

- Operational restructure
- Working capital review
- Stakeholder engagement
- Government assistance
- Director duties

## The external administration process

- Insolvency 101 – what is insolvency and understanding the regime
- Types and purpose of administrations
- Restructuring options
- Liquidation – what this means
- How to prepare for administration event

# WHAT CAN YOU DO

## Cash is crucial in this current environment

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### Operational Restructure

The current circumstances may prevent usually practical solutions. However, focus is required on understanding:

- Employees:
  - reduce hours, access to leave at half pay or full pay
  - reduce casual staff
  - stand down staff (seek legal advice)
  - Redundancies (if cash is not an issue)
  - Negotiate reduce pay
  - Suspend benefits over and above entitlements
- Reduce retail footprint
- Sale of non core assets
- Understand loan covenants and flexibility

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### Working Capital

Travel restrictions have essentially stopped revenue. You need to assess whether you can:

- Debtors
- Commissions
- Collect overdue debts and enter into payment plans if necessary; communicate with customers around supply issues
- Suppliers
- Renegotiate supply agreements
- Enter into payment plans to defer payments
- Access to funding (investors, additional credit)
- Regularly update cash flow model

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### Stakeholder Engagement

As early as possible engage with key stakeholders so you can take them through your issues and plan.

- Lenders
- Landlords
- Key suppliers
- Employees

#### When dealing with stakeholders:

- Have a plan
- Have key financial information ready and available
- State clearly what you are asking and what solution you may have to deal with the situation

# GOVERNMENT ASSISTANCE

**Federal and State Governments have announced a number of measures to support businesses through COVID-19 includ. cash benefits and relaxation of insolvent trading laws**

## ASSISTANCE

### Insolvent Trading Laws

- Temporary relief from insolvent trading liability
  - Increase thresholds for commencing winding up - \$20k
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### Federal / State Government Assistance

- \$1500 per employee per fortnight
  - Asset write-off for small businesses up to \$150,000 until 30 June 2020
  - Accelerated depreciation for assets with values above the \$150,000 instant asset write-off threshold
  - Cash flow boost delivered to small businesses via activity statements, including an automatic payment/credit applied to any PAYG withheld for the March 2020, June 2020 and September 2020 quarters up to a capped amount of \$100,000
  - Respective State Governments are providing relief through waiving payroll tax liability and increasing the payroll tax thresholds
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### ATO

- ATO providing relief through deferred activity statement payments, variation of PAYG instalments, introducing no or low-interest payment plans, and allowing changes from quarterly to monthly reporting cycles for access to GST refunds.

# DIRECTOR DUTIES

In addition with general and specific laws applying to your company's operations, your primary duty is to the shareholders. If your company is insolvent, or there is a real risk of insolvency, your duties expand to include creditors

## DIRECTOR DUTIES

### Duty not to trade whilst insolvent

- **Federal Governments temporary relief from insolvent trading does not mean you can sit back and do nothing**
- While you may not be prosecuted for insolvent trading, the company maybe still insolvent and you still have other duties as a director and need to implement a restructuring strategy for the Company

### Duty to keep books and records

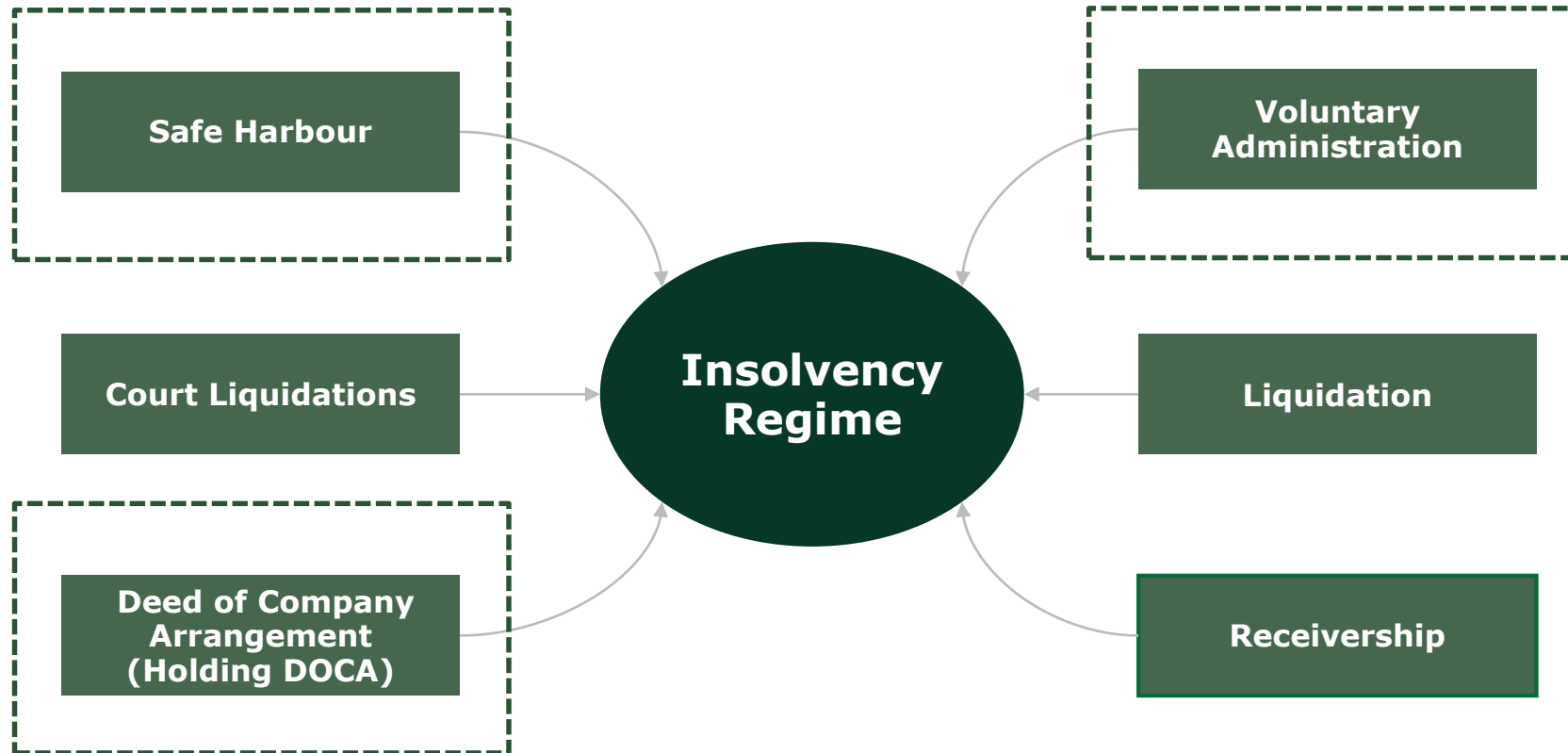
- Your company must keep adequate financial records to correctly record and explain transactions and the company's financial position and performance. A failure of a director to take all reasonable steps to ensure a company fulfils this requirement contravenes the Corporations Act
- For the purposes of an insolvent trading action against a director, a company will generally be presumed to have been insolvent throughout a period where it can be shown to have failed to keep adequate financial records

### General Duties

- Section 180 Care and Due Diligence
- Section 181 Good Faith
- Section 182 Not to improperly use position
- Section 183 Not to improperly use information

# WHAT IS INSOLVENCY?

An insolvent company is one that is unable to pay its debts when they fall due for payment





# RESTRUCTURING OPTIONS – SAFE HARBOUR & ADMINISTRATION

Safe Harbour or appointing a voluntary administrator can allow you to restructure, refinance or obtain equity funding to recapitalise the company

## SAFE HARBOUR



Statutory up to date

- Safe Harbour is only available for directors who are up to date with statutory lodgments and reporting and keeping proper books and records.



Develop course of action

- Provide directors with an exception from insolvent trading liability where they are developing a course(s) of action which is 'reasonably likely' to lead to a 'better outcome' for the company than administration or liquidation.



Insolvent trading protection

- Directors are now shielded from personal liability (civil provisions) arising from insolvent trading occurring in the next six months as a result of Coronavirus Economic Response Package Omnibus Bill 2020
- Doesn't absolve directors of their obligations

## CONTINGENCY PLANNING



Voluntary Administration  
Recapitalization of business

- Restructure via compromise with creditors in a Deed of Company Arrangement (DOCA)



Voluntary Administration  
Managed wind down

- Wind down the business entirely
- Closure of all retail footprint and liquidation of assets

There are several benefits of a holding DOCA, including exploring potential restructuring opportunities, the business continues trading as far as possible with creditors agreeing to defer enforcement of their debts

# VOLUNTARY ADMINISTRATION

If a company is insolvent or likely to become insolvent, the directors of a company may appoint voluntary administrators to take control of the whole company with a view to resolving the company's future quickly

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## PURPOSE OF VOLUNTARY ADMINISTRATION

The VA process provides a moratorium on creditors enforcing terms (i.e. payment of unsecured debts / landlord exercising rights to remove tenant due to breach of lease) whilst the Administrator(s) complete an assessment of the company and provide a recommendation to creditors

## REASONS FOR VOLUNTARY ADMINISTRATION

1. maximises the chances of the company, or as much as possible of its business, continuing in existence (as it is insolvent or likely to become insolvent at a future point) [s435A (a)]; or
2. 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 [s435A (b)].

## BENEFITS & RISKS FOR A VOLUNTARY ADMINISTRATION

### – Benefits

- Moratorium on creditor claims – can't enforce claims
- Assist business to undertake a recapitalisation
- Able to reduce / reduce footprint (eg. exit / negotiate loss-making stores)
- Exit out of onerous contracts
- Maximises overheads chances of the company survival

### – Risks

- Potential brand and reputation damage
- Loss of key stakeholder support
- Creditors vote on outcome for company
- VA does not cure breach of contracts (ie. leases)

# DEED OF COMPANY ARRANGEMENT

If a company is insolvent or likely to become insolvent, the directors of a company may appoint voluntary administrators to take control of the whole company with a view to resolving the company's future quickly

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## PURPOSE OF DEED OF COMPANY ARRANGEMENT (DOCA)

The aim of a DOCA is to:

- Facilitate the business, or part of the business continuing and / or
- To provide a better outcome for the creditors that would be available in an immediate winding-up of the company

## PURPOSE OF A "HOLDING" DOCA

Places the company in a holding pattern, and buys the administrators more time to investigate the affairs of the company and develop further plans to restructure the company

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2. 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 [s435A (b)]

A holding DOCA should:

- contain a stay of creditors' claims for a set time period
- provide for regular reporting to creditors
- Identify any assets available to pay creditors
- Identify milestones for DOCA to remain in place

## BENEFITS & RISKS FOR A DOCA

### Benefits

- Can request an extension to the convening period to extend the time required to develop a proposal
- The business can compromise creditor claims
- Potential to renegotiate leases etc
- Holding DOCA can give you time to explore potential restructuring opportunities

### Risks

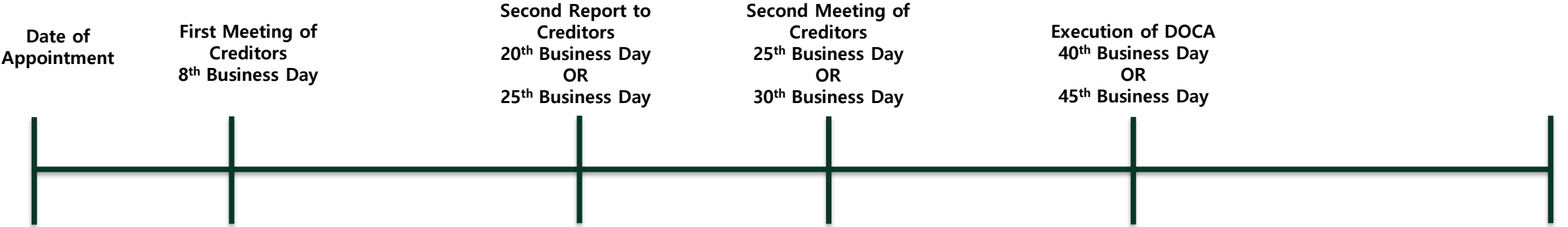
- Creditors, including employees may not approve DOCA proposal and company is wound up
- Conditions or events prevent a suitable proposal being offered and company is wound up

# VOLUNTARY ADMINISTRATION - DEED OF COMPANY ARRANGEMENT TIMELINE

Buying time in this current environment is crucial

There are generally three options available at the second meeting of creditors:

- 1. Return the company to the control of the directors, ending the voluntary administration
- 2. Agree a deed of company arrangement (DOCA)
- 3. Appoint a liquidator to wind up the company



Develop potential outcome scenarios matrix

Consider the merits of any proposal(s) for a DOCA

Process to take 3 > 6 months

The aim would be to enter into a holding DOCA, to explore potential restructuring opportunities

# PREPARING FOR ADMINISTRATION

## Practical recommendations when in distress and how to prepare for an administration event

### BEST PRACTICE

#### Regular executive meetings

- Convene regular board meetings to monitor the development and implementation of a workout plan to save the company, and to assess the company's solvency on an ongoing basis, having regard to future debt obligations
- Consider in detail the proposed next phases of the restructuring plan to form a view as to whether it continues to be reasonably likely to result in a better outcome than an immediate liquidation or administration
- Determine a materiality threshold for new debts, having regard to the size and nature of the company's business, above which you should require that it be taken into account whether the relevant debt is being incurred directly or indirectly in connection with the workout plan

#### Document your strategy and steps undertaken

- Ensure the following is thoroughly documented:
  - the information that the Board is regularly obtaining to stay informed of the company's financial position;
  - The strategic decisions taken by the board
  - the steps taken to date to prevent any misconduct by officers or employees that could adversely affect the company's ability to pay all its debts
  - the maintenance of appropriate financial records
  - The periodic assessment of whether the workout plan of the company remains reasonably likely and whether the board remains of the view that, if implemented, it will improve the company's financial position

#### Voluntary administration

- Bring financial accounts up to date
- Prepare 13 week cashflow
- Compile all creditor claims, listing out key suppliers, insurance policies (incl. D&O)
- Understand employee entitlements
- Usernames and passwords to accounting software, bank statements
- Understanding key stakeholders, i.e.- landlords



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