

October 2022

Communique

Welcome to our October newsletter as we endure the traditionally volatile month for stock markets and a smaller than forecast increase in interest rates by the RBA. Following the onesided Grand Finals in both the AFL and NRL, we can look forward to the Spring Racing Carnivals.

A COMPREHENSIVE REVIEW OF INSOLVENCY AND BANKRUPTCY LAWS IN AUSTRALIA



On 28 September 2022, Senator Deb O'Neill, Chair of the Parliamentary Joint Committee on Corporations and Financial Services announced a comprehensive review of Australia's insolvency and bankruptcy laws. Company trusts need to be dealt with in the new laws to streamline insolvency involving corporate trustees.

Our insolvency laws are overly complex and difficult to navigate due to numerous additions and deletions over the years.

In summary, the terms of reference for the inquiry include the following:

1. Recent and emerging trends in the use of corporate insolvency and related practices in Australia, including in regard to:
 - a. temporary COVID-19 pandemic insolvency measures, and other policy measures introduced in response to the pandemic that may have had an effect on such trends and practices;

- b. recent changes in domestic and international economic conditions, increases in material and input costs for businesses and inflationary pressures more broadly, and supply shortages in certain industries; and
 - c. any other contributory factors or events that have impacted insolvency patterns;
2. The operation of the existing legislation, common law, and regulatory arrangements, including:
- a. the small business restructuring reforms (2021);
 - b. the simplified liquidation reforms (2021);
 - c. the unlawful phoenixing reforms (2019); and
 - d. the operation of the *Personal Property Securities Act 2009* in the context of corporate insolvency;
3. Other potential areas for reform, such as:
- a. unfair preference claims;
 - b. trusts with corporate trustees;
 - c. insolvent trading safe harbours; and
 - d. international approaches and developments;
4. Supporting business access to corporate turnaround capabilities to manage financial distress;
5. The role, remuneration, financial viability, and conduct of corporate insolvency practitioners (including receivers, liquidators, administrators, and small business restructuring practitioners);
6. The role of government agencies in the corporate insolvency system, including:
- a. the role and effectiveness of ASIC as the corporate insolvency regulator;
 - b. the ATO's role and enforcement approaches to corporate insolvency, and relevant changes to its approach over the course of the COVID-19 pandemic;
 - c. the role, funding and operation of relevant bodies, including the Assetless Administration Fund and the Small Business Ombudsman; and
7. Any related corporate insolvency matters.

It is hoped that the review will address the complex issues with the current law and improve the efficiency and effectiveness of the insolvency and bankruptcy regimes.

THE WORLD EDGES TOWARDS RECESSION



The rhetoric in the press is increasing with a number of experts including the International Monetary Fund and World Bank, predicting that the World will slip into recession during 2023.

The former US treasury secretary, Larry Summers, expects the Federal Reserve to increase interest rates further in order to battle wage inflation caused by the shortage of staff and low unemployment. A recession, which Larry considers inevitable, will cause the unemployment rate to increase and reduce the current pressures on wages.

Local economist, Shane Oliver predicts that Australia could slip into recession due to inflation and the energy crunch caused by the Ukraine war. Oliver believes that Europe and the UK may already be in recession. As the recession takes hold then commodity prices will soften and the Australian dollar will continue to slide. The good news is that this does assist companies in the export sector but makes that overseas trip more expensive.

China will not be our saviour this time due to the volatility and disruptions in the property sector and their zero COVID policy.

The Australian treasurer, Jim Chalmers, stated that Australia won't be immune from a world recession but expects that growth will be slashed and unemployment will increase. He further advised that his budget assumes growth in 2023.

The Financial Times tracking index has revealed that growth together with financial markets and confidence indicators have deteriorated markedly over recent months due to soaring prices and uncertainty fuelling pessimism in world economies. The UK economy is suffering from a plunge in the pound sterling, continued fallout from Brexit and undisciplined fiscal policy leading to a bailout by the Bank of England to shore up the currency.

The recent decision by OPEC to reduce production is likely to fuel the energy crisis and has been strongly criticised by the US treasury and the Biden administration. Developing countries have limited tools available as their debt rises exponentially.

The question remains as to whether Australia can avoid being tipped into recession.

We can help you now

If you have clients who are experiencing difficulty in paying their debts and/or need to restructure their business, please contact me.



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