

A dark blue banner with a background image of palm trees and a large, semi-circular graphic of a compass rose. The text "July 2021 Communique" is in a white, italicized serif font, and "Insolvency Update" is in a larger, white, bold serif font below it.

July 2021 Communique
Insolvency Update

Welcome to our latest bulletin on what's happening at Helm Advisory and the latest news in the insolvency industry.

ATO ramps up action with Director Penalty Notices and Garnishee Notices heading their arsenal.

Bronwyn du Mont, Director of Debt and Lodgement Management advised AIPP members recently that the ATO was ramping up its action against non-compliant and non-engaging companies with high levels of debt.

Late in 2019, during the bushfires of New South Wales, the ATO stopped all outbound debt interactions with bushfire affected communities. During March 2020, following the onset of COVID 19, this was extended to the entire population. In July 2020 the ATO started some activity mainly in the area of help and assistance. From about September 2020, the ATO started to issue warnings of



potential future action where appropriate. At present the ATO is taking firmer action and expects to commence winding up action and bankruptcies in the four quarter of this year. Between 1 July 2020 and 31 March 2021, the ATO commenced only 6 bankruptcy and 3 winding up proceedings.



We were told that their current approach was to help businesses get back on their feet or to exit with dignity. The ATO takes a firm view on non-payment of PAYG, GST and SGC as essentially directors are collecting this money on trust. Expect them to come down hard on directors deliberately not complying with their taxpayer responsibilities with respect to these debts.

Gary Busby, Senior Insolvency Advisor, also in the ATO's Debt and Lodgement Management, advised AIIP members that the ATO was supportive of the new small business restructuring initiatives by the Federal Government. There is a focus of the ATO to allow small businesses to access these reforms. However, it is necessary that the company has paid all employee entitlement and superannuation to appoint a Small Business Restructuring Practitioner. In addition, for Small Business Restructuring and Simplified Liquidation, the taxpayer needs to have brought all of its tax returns and lodgements up to date. This is subject to a substantial compliance test which he explained means that all returns need to be lodged unless there are extenuating circumstances due to illness or some other good reason. He clarified that substantial compliance does not mean that the taxpayer has complied with most of its obligations.

Gary advised that generally, the ATO will provide a supporting vote for a Restructuring Plan or a Deed proposal where:

- There is no suspicion of phoenix behaviour;
- The Company's compliance history prior to COVID 19 is good;
- There are any tax offences, considering the extent and seriousness of them;
- Whether the company has planned to meet its tax obligations when they fall due; and
- The likelihood that the plan or deed proposal would be achieved.

Finally, if you have clients with large tax debt consisting of PAYG, GST and or SGC, now is the time to arrange for a discussion with a Helm Insolvency Practitioner to allow them to get back on their feet or exit with dignity.



Do you need a Solvency Report?

When are the occasions when your client requires a Solvency Report to be prepared? There are numerous

Helm can assist with the preparation of an expert report prepared in accordance with the Australian Ethics and Standards Board's statements and Schedule 7 of the Uniform Civil Procedure Rules 2005 Expert Witness Code of Conduct.

occasions and some of the common ones are:

- Winding up proceedings to prove that the company is solvent or insolvent;
- Voidable transactions to prove that the company was solvent or insolvent at the time the payment was made; and
- Insolvent trading claims to determine the date of insolvency in order to calculate the extent of the claim.

A solvency report looks at the Company's financial statements to determine the balance sheet test however the major test is the cash flow test to evaluate the company's ability to pay its debts when due and payable. Ratio analysis is usually conducted to assess the availability of assets to pay the company's liabilities and to look at such areas as stock turnover and debtor turnover.

The Water Wheel case (ASIC v Plymin, Elliott & Harrison) is favoured for citing in solvency reports particularly for the list of indicia of solvency which are addressed in most solvency reports.

If we can assist you with the preparation of a solvency report, please contact our office.

[Contact Us Now](#)

Case Study - Ross Mottershead

The Detail is worth its weight in Gold



My boys and I love to go fossicking, with time you learn different techniques, which rock to look under to find that piece of gold or sapphire. Some forensic accounting exercises are very similar, looking into the detail, pursuing techniques, turning over rocks to find value.

A common issue when valuing some small businesses is how to account for cash, a great technique (or rock to turnover) is called an asset betterment exercise (you never know what little gem you might find).

The technique involves ascertaining the net assets of the individuals (business owners) at the start of a period, adding after tax income, adding or subtracting loan account movements and subtracting living expenses, together with once off living expenses for the period. You then compare this result with the actual net assets of the individuals at the end of the period. While this will not provide a 100% accurate result, often you find little gems.

A little while ago, for family law purposes, I was asked to value a restaurant. The accounts showed little or no profit and so in accordance with the accounts the business had little or no value. The owners lived in a waterfront house, had three daughters in private schools, went on an overseas trip once a year, the ex-husband loved to buy new cars and the wife (for whom I was acting) enjoyed a very nice lifestyle. By adopting the asset betterment technique I was able to estimate the amount of cash that was being taken from the business and derive a realistic business value. The matter was set down for court, did not reach court, the wife used my calculation to reach a suitable settlement.

If you need any assistance with business valuations (for whatever purpose), quantification of fraud or contract disputes, please do not hesitate to contact Ross Mottershead of this office.

Contact Ross Mottershead



Are you seeking small business finance for restructuring?

Sources of business finance have never been so diverse in Australia. Be it debt or equity, the options have expanded significantly over the past decade.

On the debt side, you have the old-school, big 4 banks. Then, there is an ever-growing number of other banks. And these so-called second tier banks, often have less stringent lending criteria than the big 4. One of the largest new players in this space is Judo Bank, which is focused on lending to small and medium businesses. According to SmartCompany, Judo is now the third-largest bank lender to the SME sector by net lending growth.

The latest boom banking sector is known as the neobanks. These are online business banking platforms and include names such as Moula, Prospa, Lumi and Banjo. One of the key features most offer is a very fast turnaround time on your loan application. These players are often also looking to innovate in terms of product, especially in areas like invoice finance, debtor book and line of credit.

Other debt providers worth considering, include mutual organisations that offer business finance, including building societies and credit unions.

On the equity side, sources have also expanded in recent times. Australian private equity and venture capital funds raised over \$5 billion in 2020. This was a record year and this money is now looking for a home amongst Australian businesses.

Other equity sources include family offices and angel groups. Some angel groups are informal, whilst others such as Sydney

Angels, require a membership application. Then there are platforms, such as Wholesale Investor that assist in connecting investors with emerging companies seeking capital.

Perhaps the most innovative change to the equity raising landscape in Australia in recent times, was the introduction of crowd-sourced equity funding. Businesses can now utilise the services of platforms such as VentureCrowd and Birchal to source investors.

If you are seeking debt or equity, or both, do not hesitate to get in touch with Anthony Anderson on [0450 118 688](tel:0450118688).



Get in touch with us

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.



Stephen Hathway

[0413 443 224](tel:0413443224)



Phillip Hosking

[0434 407 748](tel:0434407748)



Ross Mottershead

[0413 759 242](tel:0413759242)



Bob Pfaff

[0405 506 040](tel:0405506040)



Shijun Chan

[0431 986 778](tel:0431986778)

Helm Advisory

Suite 2 Level 16, 60 Carrington Street Sydney

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