

March 2021 Communique Insolvency Update

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

UPDATE ON SMALL BUSINESS RESTRUCTURING

As expected, there have been very few appointments for Small Business Restructuring (SBR) under the new legislation which became effective from 1 January 2021.

ASIC has recently written to all insolvency practitioners advising them of their duty to report a company to them that the practitioner suspects does not satisfy the eligibility criteria for a SBR even though the practitioner was not appointed to the company. This would appear to be another nail in the coffin for the SBR regime as there is no equivalent requirement for a Voluntary Administration or Creditors Voluntary Liquidation.

An insurance broker who acts for insolvency practitioners has also voiced concerns over the insurance protection for the practitioner where the director is in control of the business. The possibility for concealment of vital information or fraud by the directors is a real threat under the watch of the SBR practitioner who is required to certify the restructuring plan.

Finally, the restructuring plan is only accepted if the majority in value vote for the plan. We do not know how the Australian Taxation Office (ATO) will vote in the SBR and they may well be the major creditor.

WHAT WILL HAPPEN AFTER THE END OF JOBKEEPER 2.0?

There is some evidence that after JobKeeper ends, at the end of March, companies will lay off staff when they can no longer afford to pay their salaries. It is likely that this will occur in those industry sectors that have been hard hit by the COVID-19 pandemic, in particular, tourism and hospitality, not-for-profit, event management, entertainment, and international education.

Of course, the biggest creditor in the Australian economy, the ATO, will commence enforcement action. Therefore, be ready for the garnishee notices, director penalty notices and winding up notices to begin in April 2021 or soon thereafter. With billions of dollars owing to them, recovery action will be continuing over many months.

UPDATE ON SME COMMERCIAL LEASING

As you may be aware, the National Code of Conduct for commercial and retail tenants was extended in each of the eastern states of Australia. In NSW there is limited relief to retail tenants with a turnover of less than \$5 million in the 2018-2019 financial year where their turnover for the December quarter fell by at least 30%. Therefore, rent relief for commercial and retail tenants with turnover over \$5 million can no longer avail themselves of the rent relief.

Eligible tenants still have to make a further request to their landlord for rental relief to be extended to 28 March 2021.

RESIGNATION OF DIRECTORS

A company director can no longer backdate their resignation more than 28 days prior to advising ASIC on Form 484, otherwise the date of resignation will be taken to be the date of lodgement of the form with ASIC. To fix an earlier date the director must apply to ASIC or make an application to the court. Further, a director cannot resign from a company where the result would be that the company was left without a director.

INDUSTRY FOCUSED FORUM NIGHT

As mentioned earlier in this bulletin, two of the industries devastated by the lockdowns and border closures due to COVID-19 have been the travel and events.

Helm is pleased to present an Industry Focused Forum night to be held at The Kitty Hawk, from 5.30pm to 8pm on Thursday 6 May 2021 to discuss the effects on these important industry sectors.

There will be good opportunity to network during the night.

There will be limited seating available for this event so please contact us quickly to avoid disappointment.

Should you be interested in attending the forum, please contact Kandyce on 02 9194 4000 or kandyce.strickland@helmadvisory.com.au.

WE CAN HELP YOU NOW

In the event that your clients decide that they may wish to further explore the small business restructuring regime and whether it is suitable for their situation, please don't hesitate to contact our experienced staff on 02 9194 4000 or by mobile:

Philip Hosking 0434 407 748 **Shijun Chan** 0431 986 778 **Ross Mottershead** 0413 759 242
Yuhan Tan 0430 382 682 **Bob Pfaff** 0405 506 040 **Stephen Hathway** 0413 443 224

HELM'S JAZZ SUPPER CLUB

Another industry sector devastated by lockdowns has been live entertainment. Helm decided to provide its support by presenting a Jazz Supper Club last month.

A fantastic night was held, featuring the Jazz Icons of the 20th Century. Musical director, Andrew Oh together with some of Australis's finest jazz musicians and singers performed to a mesmerised audience in a supper club atmosphere.

