



December 2017

Recent developments in Insolvency

New Creditor Rights – Insolvency Practice Rules 2016 (clause 70-40 & 70-45)

The new changes to Insolvency Practice Schedule of the Corporations Act 2001 (Schedule) which commenced on 1st September 2017, provide creditors with increased powers to obtain information from external administrators. Creditors are now: -

- Entitled to request information, documents and reports from an external administrator, either individually or by way of resolution;
- Request must be relevant, provision of information must not be in breach of duties, and it must be reasonable;
- Administrator must provide information or report within 5 business days, or later if agreed by creditor;

External Administrator has ability to not provide information if deemed to be an unreasonable request (i.e. substantiate prejudice, privilege, confidentiality, vexatious etc). However, EA must notify request not reasonable and reasons.

ATO – Managing Risk

The ATO has confirmed it actively monitors all its insolvency matters by using a wide range of data to assist in identifying issues and risks to take action were appropriate. One major area where risk assessment is undertaken is the instance where a Voluntary Administrator (VA) is appointed during Winding Up proceedings initiated by the ATO. Accordingly, the ATO has identified the following various issues of concern in VA appointments whilst winding up notices are issued: -

- VA appointment of company no longer trading serves no purpose than to nullify further investigations;
- VA appointed after company operations transferred to another entity;
- VA independence issues;
- Significant number of related party creditors;
- Unrealistic Deed of Company Arrangement (DOCA) proposal.

Recently, where a Winding Up applicant is before the Court the ATO has made several successful applications to the Courts for the replacement of VA, or to end the Voluntary Administration and appoint a Liquidator. If your clients are in the situation where they are considering appointing a VA, the prospects of a successful outcome will be subject to a timely appointment prior to any Winding Up proceedings having been commenced.

As always should you wish to discuss any of the above do not hesitate to contact any member of the Chamberlains SBR staff, and hope you have a enjoyable and safe festive season.



Chamberlains SBR's office will be closed 12.00pm Thursday 21st December 2017 and will reopen 8.30am Monday 8th January 2018.

Should you wish to receive this report electronically please forward an email to admin@chamberlainssbr.com.au "subscribe to monthly report" in the subject line.

CHAMBERLAIN'S S.B.R. OFFICES –

WAGGA WAGGA

Tel 02 6938 3800

Fax 02 6921 5492

Email admin@chamberlainssbr.com.au

DUBBO

Tel 02 6884 1077

Fax 02 6884 1072

Email graeme@chamberlainssbr.com.au

WANGARATTA

Tel 1300 887 687

Fax 1300 798 825

Email admin@chamberlainssbr.com.au