

of Administrator or Liquidator of a Pty Ltd Company

If you are a director of a Pty Limited Company which is in financial trouble, and you are looking for somebody to talk to about your options, and where you go from here, then no matter where you are in Australia I'd be pleased to talk to you, free of charge and obligation free.

You can email me with some of the details of your problem at alan@nichollSCO.com.au and leave me your telephone number too please, or call me on 1300 794 492.

In situations like this many company directors are naturally worried about their personal exposure, and possible bankruptcy, and the risk of losing their house.

These days, with the sub prime mortgage crisis and house prices falling in some areas, then if a director feels that he or she is facing personal bankruptcy, in some cases it is now possible to save the house. We can talk about that.

You can also read about personal bankruptcy and saving the house on my colleague Fred Appleton's website www.fredappleton.com.au Fred was a Chartered Accountant who I have dealt with for a number of years, and he has been through personal bankruptcy.

But back to your company's problem.

First of all, to get the terminology right, there is no such thing as a company bankruptcy or a business bankruptcy. Its people who go bankrupt, Pty Limited companies go into liquidation or a company administration.

There are 3 ways that company directors can put their company into liquidation. However, before doing that though, if they act quickly enough, by law the directors first have the opportunity to call a halt to things, and appoint an Administrator. This could greatly relieve the pressure and stress that they are under.

I am a registered company liquidator Australia wide, so Nicholls & Co can attend to company administration and company liquidation matters. I am also a registered trustee in bankruptcy, Australia wide.

Directors will typically Appoint an Administrator when:

- They are overwhelmed with the company's financial problems and seek to appoint an Administrator to enable them to be relieved of the pressure they are under.
- The directors have received, or are deemed to have received, a Director Penalty Notice from the taxation department. To protect their own personal positions, it is vital to have the company placed into Voluntary Administration without delay, there and then if possible.

If this can happen quickly enough then the directors should be able to avoid personal liability for the monies that the company owes the tax department for unpaid PAYG Withholding Amounts, particularly if the directors have received, or are deemed to have received, a Directors Penalty Notice from the department.

PAYG stands for Pay As You Go for income tax deducted each pay day from the employees' salaries or wages. When this does not get paid to the taxation department when it falls due, it leads to possible personal liability of the company

directors. (Incidentally, directors are not personally liable for any unpaid GST. This simply becomes a creditor of the company if it is placed into liquidation.)

Placing a Pty Limited company into liquidation or into Voluntary Administration quickly enough can cancel the directors' personal liability here for unpaid PAYG instalment deductions.

This subject is more widely covered in separate sections on this website, so if this is you, please take time to read them.

The Administrator will determine the chances of the business continuing to trade and be sold, or for a company Deed to be proposed to enable the company to trade out of its financial problems.

The immediate involvement of an Administrator will result in a better return for creditors, by enabling the company's assets to be secured.

For an Administrator to be appointed to a company, the company must be insolvent. Company insolvency means that it is unable to pay its debts as and when they fall due.

An Administrator cannot be appointed to a company without having first consented to act.

The proposed Administrator will normally require directors to provide him with a formal document called Report as to Affairs of the Company, so as to provide an official snapshot of the company's financial affairs and give a basis for the conduct of the Administration.

My office can direct you to a service to get this formal document prepared over the internet, no matter where you are in Australia. It's a separate stand alone, very good service, and it's a great help to me as the liquidator or administrator of the company.

Within 3 to 5 business days of his appointment, the Administrator will convene a meeting of creditors . Its purpose is to allow creditors to question the directors, who must attend this meeting, and the Administrator. At this meeting creditors can appoint a committee of creditors, or a new Administrator.

If for some reason I cannot accept an appointment as an Administrator if asked, then through my network of contacts I would try and help you to find one who will be appropriate for your circumstances.

The Administrator will investigate the company's financial affairs, as disclosed in the abovementioned Report as to Affairs, and is then required to convene a meeting of creditors within 20 to 25 business days from the appointment.

At the meeting the creditors can resolve to:

Accept a Company Deed, or

Do nothing, and return the company to the control of the directors, or

Place the company into liquidation.

If it would help for me to go over this with you on the phone, then just gi ve me a call and I'd be quite happy to do so

I'll now deal with the two other ways that an insolvent company can be placed into liquidation.

The first is a Creditors Voluntary Winding Up.

For a meeting of creditors to be convened utilizing a Creditors Voluntary Winding Up it is necessary for the following formal documents to be prepared:

- Summary of Affairs
- Report as to Affairs.

To place a company into liquidation by a Creditors Voluntary Winding Up the first step is that at a meeting of directors, they must resolve that the company is insolvent and needs to be placed into liquidation.

Then, a meeting of members must be convened and a meeting of creditors must be held within 24 hours of the meeting of members.

The meeting of creditors must be advertised in a newspaper and all creditors must also be notified of the meeting.

Creditors are required to receive at least 7 days notice and must be provided with a Notice of Creditors Meeting, a Summary of Affairs (a formal statutory document), and a Schedule of Creditors.

Not less than 7 days before the creditors meeting, the company must file with ASIC the following documents:

Notice of Creditors Meeting.

Summary of Affairs.

Schedule of Creditors, detailing names, addresses and amounts owing.

Within 7 days after the meeting of creditors, directors are required to lodge with ASIC a Report as to Affairs for the company. This is an ASIC document.

The final way that an insolvent company can be placed into liquidation is by an Order of the Supreme Court.

A company is typically placed into liquidation by the Supreme Court when a creditor initiates the proceedings trying to collect monies owing.

A company can also be placed into liquidation by the Supreme Court where there is a dispute between directors and shareholders.

