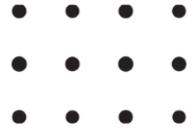


LIVE SESSION – DAY 2



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the best result



WEB EVENT

2 Action Filled Days



URGENT

**Business Turnaround,
Insolvency & Asset Protection**



14-15

**June 2022
12 to 1:30pm**



STARTING SOON.....



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WE ♥
ADVISORY GROUP

AM
Abbott & Mourly



Partner Solution Series

Eventum Optimum

With Michael Jeffriess from
Eventum Optimum, SAPEAPA,
We Love Advisory Group +
LightYear Docs

And Special Guests!!!

June 2022

Preparing & Protecting your clients from the Economic Tsunami they are facing!

Key Takeaways from next two days:

- Here from **industry experts** on:
 - Business Turnaround
 - Insolvency
 - Asset Protection
 - Credit Reporting + Cleaning
- **All attendees** will have a link made available after the webinar that will include:
 - Checklists to review your clients – warning signs and other
 - Questionnaires to review insolvency indicators
 - EO's Triage process for your clients
 - Processes to investigate a business' viability
 - ATO, Banking & Creditor Tactics
 - Asset Protection marketing collateral

Run Sheet

Time	Tuesday
12:00 pm	Intro + Set the Scene - MJ
12:15 pm	Eventum Optimum + Morgan Hillman – Rod Peters & Bill Mackay
1:15 pm	Wipe Credit Clean – Larni Spilsbury-Vatselia
1:30pm	Wrap-up

Time	Wednesday
12:00 pm	Aston Chase – Steve Naidenov
12:30 pm	SAPEPAA - Grant Abbott
1:00 pm	Full Panel – interviewed by Grant Abbott
1:30pm	Wrap-up



ASTON CHACE
GROUP

EO Series: Urgent Business Turnaround & Insolvency

Steve Naidenov

June 2022



About Aston Chace Group



Our business

We are a boutique advisory and restructuring firm assisting clients in driving business performance, managing risk and navigating financial distress.

Our culture

We exemplify a high-performance culture based on accountability for service excellence. We recognise that trust, discretion, integrity and a positive mindset are central to our relationships with clients and seek to embed those qualities in all aspects of our work.

Our team

Our principals drive all aspects of our client work from appointment to resolution, supported by a team of multi-disciplinary practitioners with experience from both larger and more specialised professional services firms.



The Aston Chace Group difference

A true specialist

We combine the rigour and discipline of a larger firm with the agility to rapidly deploy senior resources to move more strategically and efficiently to advance our clients' interests.

Client centered

We think innovatively about solving client problems and have a proven capability to achieve outcomes where others have failed.

Mid-market focus

We have proven experience in delivering outcomes for stakeholders in Australia's SME sector.



Today's Discussion Points

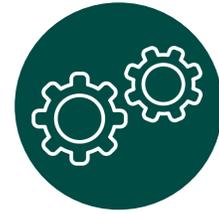


Outline of Today's Discussion Points



Impact of COVID-19

(Changing times for business, landlord collection activity and the tsunami of insolvencies)



ATO Collections and the DPN Regime



Combatting Illegal Phoenix Activity



Restructuring via Deeds of Company Arrangements



Insolvent Trading

(The liability and effects on Directors & Impact on accountants/advisors)



Importance of the right advisor from the start



Impact of COVID-19



Impact of COVID-19



Changing Times for Business

So how do businesses manage to avoid liquidation and yet survive through this unpredictable environment? The changes we are seeing are:

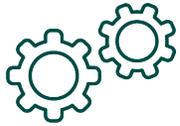
- business owners relying more than ever on their accountants, lawyers and/or advisors
- significant growth in innovation and the use of technology to run businesses
- product or service evolution occurring as a result of changing customer behaviour

The strong businesses are either surviving because they have either been fortunate enough to sell products or services which consumers are demanding through lockdowns or are successfully evolving their businesses to generate revenue and/or successfully manage costs.

Examples of business successfully adapting in the economy include online sales for retail, remote access for office workers and financial services through the use of tech savvy apps.



Impact of COVID-19



Landlords Commencing Action

While COVID support payments have increased and there is a temporary stay on evictions, many tenants who have lost work and income are still concerned about the possibility of being evicted or finding themselves with a hefty debt once foot traffic starts to increase.

Since January 2022 a number of restaurants have been forced out of business due to landlords commencing to enforce their collections of their deferred and overdue rent.

There are various circumstances, including where companies are eligible for landlord relief or failed to meet the requirements.

I have seen numerous lock outs and landlords claiming a lien over the assets owned by the companies.

What landlords are not understanding is that the restaurant trade is yet to pick up and service a full seating due to limited staff. However, certain landlords don't care and simply want the old tenant out (with a new tenant in and cashflow coming in).

If you want to avoid insolvency and be locked out please communicate with the landlords and be proactive to come to an arrangement. In these circumstances, seek help from professional advisors to understand and to strategise your options.



Impact of COVID-19



Tsunami of Insolvent Companies & Insolvencies to Spike

The avalanche of corporate and personal insolvencies that many commentators expected to eventuate as a result of the COVID-19 pandemic has not (yet) materialised.... but that may be about to change.

- The ATO in recent months announced that they have issued approximately 50,000 letters of intention to commence recovery action, in addition to DPN notices each day.
- The almost perfect storm of rising interest rates, increased cost of living, higher fuel costs, supply chain issues, staff shortages and ongoing impact from Covid around the health and well-being of the population.
- As an aside, insolvencies in the UK are at a 60-year high and given the above issues facing Australian businesses its only a matter of time before the wave commences in Australia.
- As a result, a starting focus should predominately focus on cashflow and working capital. There are other things to also consider, but advisors should now proactively analyse their client's financial position.
- As we may all be aware, formal insolvency appointments have been down substantially through to the end of the December 2021 quarter. However, several signs have emerged in the December 2021 quarter, particularly in the construction industry, that point to a significant shift in the prevalence of appointments that have now flowed through (due to fixed price contracts, supply chain issues, impact of lockdowns, interest rate rises, etc).
- The Construction industry is one of the largest contributors to Australian GDP. Unfortunately, it is also historically the sector with the largest number of formal insolvency appointments on average per year.

I suspect, that based on the increased level of enquiry and the spike of appointments that has occurred post 31 March 2022, these numbers will be reflected in the 30 June 2022 appointment statistics.



ATO Collections & the DPN Regime



ATO Collections & the DPN Regime

- Throughout COVID the ATO offered various packages to businesses and affording them some breathing space to deal with creditors and unpaid debts, including taxation obligations.
- A review of available data indicates that ATO initiated only six bankruptcies and three winding up applications (for companies) for the period 1 July 2020 to 31 March 2021.
- What did giving this breathing space mean? Tax Debts increased from \$26.5 billion for FY20 to approximately \$38 billion for FY21. The estimated aggregate total debt owed to the ATO as at 30 June 2021 was \$55 billion!
- With the end of COVID-19 restrictions and a return (to some sense of normalcy) paves the way for a more aggressive approach from the ATO to call on its debts. With this, there has been a gradual increase use by the Commissioner of Taxation as to garnishee notices and Director's Penalty Notices (**DPN**) as mechanisms to recover outstanding debt.
- The general view of the industry is that Directors have not had to deal with the ATO debt for a couple of years (and using the ATO as a financier). With the backlog of tax debt, the consensus is that there will be a ramp up in the issuing of DPNs in the coming months.



ATO Collections & the DPN Regime

- What are Director Penalty Notices?

A DPN is a formal notice issued by the Deputy Commissioner of Taxation to the directors of a company that has not met its obligations to pay Pay as You Go (**PAYG**) withholding obligations, Goods and Service Tax (**GST**), Luxury Car Tax (**LCT**), Wine Equalisation Tax (**WET**) and/or Superannuation Guarantee Charge (**SGC**) notifying the directors that the specific tax obligation has not been met by the company and that they may **become personally liable** for those debts.

A DPN provides 21 days' notice of the ATO's intention to commence proceedings to recover the debts if the DPN is not complied with. DPN's are generally referred to under two categories:

Non-lockdown DPNs	Lockdown DPNs
<p>This is issued in circumstances where the tax liabilities of a company are unpaid but have been reported to the ATO (where a company has lodged business activity statements (BAS) and instalment activity statements within three months of the due date and/or has lodged SGC statements within one month and 28 days after the end of the quarter that the contribution relates to).</p> <p>Under a non-lockdown DPN, directors can avoid personal liability if, within 21 days of the date of issue of the DPN, the company:</p> <ul style="list-style-type: none">(i) pays the debt;(ii) goes into administration;(iii) appoints a small business restructuring practitioner, or(iv) goes into liquidation. <p>Director are no longer able to avoid personal liability by entering into a payment arrangement with the Commissioner under s 255-15 in Schedule I to the <i>Taxation Administration Act 1953</i>.</p>	<p>A Lockdown DPN may be issued where a company has not lodged its BAS or SGC statements in time and has not paid these amounts which are due.</p> <p>The director becomes immediately personally liable for the penalty as soon as the Lockdown DPN is served on the director. The only way for a director to comply with a Lockdown DPN is to cause the company to pay the underlying debt or to pay the director penalty.</p>



ATO Collections & the DPN Regime

Other considerations that directors and their advisors need to be aware of:

- New directorships
- How to deal with and how to respond if you have received a DPN
- Consequences of ignoring a DPN
- Beyond DPNs, directors also need to be aware of the implications of Director Loans (including those under Division 7A loans) in the context of an insolvency appointment



Combating Illegal Phoenix Activity



Combating Illegal Phoenix Activity

On 18 February 2020, new laws were brought into effect to combat illegal phoenix activity and improve the accountability of directors.

Phoenix activity can be used legitimately to restructure or rescue a business within the confines of the law (i.e. being legal).

Illegal phoenix activity, however, can be commonly characterised as involving the transfer of assets from 'Company A' to 'Company B' (a new company) with the intention of deliberately avoiding paying liabilities such as taxation debts (Payroll Tax, GST & PAYG), employee entitlements and suppliers.

The aim of these laws were to protect the interest of creditors and employees while cracking down on unscrupulous advisors and directors introduced **creditor defeating dispositions** and **ASIC receiving new powers** (these new powers include making an order to unwind creditor defeating dispositions).

What does this mean? There are criminal offences that can be charged against parties and also civil obligations.



Combating Illegal Phoenix Activity

What are the implications?

- ASIC can make an order for recovery which avoids the requirement of a court action.

Practically speaking, the real issue for liquidators is never the lack of powers but rather lack of assets with which to fund litigation and the real prospect that the defendant does not have means to satisfy a judgement.

- Advisors (who provide pre-insolvency advice) will now need to be mindful more than ever because of the criminal and civil provisions that apply to advising of phoenix activity.
- A director cannot resign and leave the company without a director. There will always be someone to face the consequences.



Combatting Illegal Phoenix Activity

Recent Case Study

Re Intellicomms Pty Ltd (in liq) [2022] VSC 228

- The liquidator for Intellicomms Pty Ltd (**Intellicomms**) alleged the company's business and assets to Tecnologie Fluenti Pty Ltd (**TF**) for less than market value. It was revealed that TF was owned by the director's relative.
- A sale agreement between Intellicomms and TF was executed on 8 September 2021 just a few hours before the company was placed into liquidation for a consideration of \$57k subject to adjustments. It is understood that the company was served with a creditors statutory demand by a major creditor which was due to expire on 8 September 2021. These actions by the director appear to be unreasonable when intentionally preventing the company's assets from being made available to its creditors who were owed in excess of \$3.2m.
- It was also revealed that Intellicomms obtained several valuations of the company's assets from February 2021 to September 2021 that ranged from \$57k to \$11.3m. At the time of each valuation, the director provided comments to the valuers which reflected an increasingly pessimistic outlook for the company.
- The judge in these proceedings described the attempt to sell the business as "brazen and audacious."





Restructuring via Deeds of Company Arrangement



Restructuring via Deeds of Company Arrangement

A formal proposal usually put forward by the directors (or any other interested party) that normally provides a return to creditors in settlement of their debts and will allow the company to continue in its existence. The terms of the Deed of Company Arrangement (DOCA) are up to the party proposing, but may include scheduled contributions over a period of time for the purpose of compiling funds to be distributed to creditors (note: approval of the DOCA is required by creditors). The DOCA will usually provide a better return to creditors than a Liquidation scenario.

Key advantages of a DOCA:

- + High degree of flexibility that enables the DOCA to be tailored to an individual company's circumstances.
- + It allows the implementation of a revised business plan and strategy to return the business to profitable trading.
- + It may provide for the successful return of a company to solvency.
- + It provides a greater return to creditors than would otherwise be available if the company were placed into Liquidation.
- + Potentially provide for a dividend to be paid to creditors relatively quickly.

Financial instability for a company can be daunting, but there are several options available to you. Entering into a DOCA through the Voluntary Administration process can help you keep your company solvent and active, rather than subject to a process of Liquidation.



Insolvent Trading



Insolvent Trading

Insolvent trading occurs when a director of a company allows their company to incur debts even though they are aware that the business operations is unable to pay them as and when they fall due, making their company insolvent.

Section 95A of the Corporations Act 2001 defines solvency as:

- (1) A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.
- (2) A person who is not solvent is insolvent.

In this situation, a liquidator can pursue a claim for insolvent trading against a director. De-facto directors and shadow directors can also be held personally liable for insolvent trading.

A person will be a de facto director if they act in a role or roles within a company and perform functions that one would reasonably expect to be performed by a director of the company given its circumstances (e.g. making, or participating in making, decisions that affect the company).

A person will be a shadow director if they communicate instructions or wishes to the director or directors of a company in circumstances where the director or directors are accustomed to act in accordance with the person's instructions or wishes and intending that the director or directors will act in accordance with those instructions or wishes.



Insolvent Trading

Reasonable Presumption of Solvency

You had reasonable grounds to presume that your company was solvent and would remain solvent even if a debt or other debts were incurred at that time.

Reliance on Others

You had reasonable grounds to rely on a competent and reliable person to provide information on the company's solvency and that the information provided could reasonably presume that the company was solvent.

Reasonable Steps

You took all reasonable steps to prevent your company incurring the debt, including but not limited to appointing a Voluntary Administrator.

Illness

At the time due to illness or some other good reason that you did not take part in managing your company.

There are defences which are available to a director when a liquidator brings a claim against them for insolvent trading.

As an aside, if a liquidator commences proceedings for insolvent trading (which may involve public examinations), their advisors / accountants / lawyers may also be subject to the public examination process (to determine their involvement and knowledge) by giving evidence and producing documents.

These advisors / accountants / lawyers may also be liable for a claim that may be made out by the liquidator (including accessory liability for any potential breach of director's duties). This means that there may be exposure under a professional and indemnity insurance policy.



Importance of the right advisor from the start



Importance of the right advisor from the start



During any insolvency process some directors get nervous and put their head in the sand which will ultimately affect them in the long term for not providing information relevant to the liquidation. Having access to advisors such as Morgan Hillman (and their network) in addition to other professionals provides long term support to directors.

The earlier the clients engage their advisers and obtain the right professional advice, the greater the likelihood the business can survive.



Generally, the right advisors will ensure that:

- Implement a business plan in place and adapt to the changing economic conditions;
- Scrutinise existing legal and accounting agreements in place to properly protect and manage the parties;
- Weed out those unprofitable parts of the business and act on them now;
- Adequate infrastructure is in place i.e. IT systems – are extremely relevant – what is missing – where do I need an upgrade to meet current customer expectations.

There have been many experiences whereby, as a restructuring and insolvency practitioner, the proactive accountants and advisors have reached out to me to hold a discussion with their business clients. More often than not, if they act early, there is a solution that will avoid the need to restructure. What is usually required, is a commercial resolution of some form. However, there will be circumstances that a restructure, distressed sale, distressed private equity, safe harbour, or even an insolvency appointment are necessary.



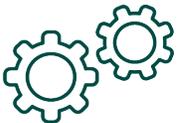
Importance of the right advisor from the start



Client directors need to be aware of the risks out there when they conduct business. This is now more important than ever where the ATO is aggressively pursuing directors for DPNs and scrutiny over phoenix activity that is occurring within the Australian economy, where special task forces are being set up to combat this.



Directors need to engage registered and regulated professionals with restructuring, turnaround and insolvency experience if there are concerns that their businesses are facing financial distress.



Whether it be accountants, lawyers or business consultants – the access to a network of professionals who can assist is invaluable.

Directors who ignore the early warning signs and leave things to the last minute, may get desperate and do things that will likely become voidable by a future appointed liquidator. Unfortunately, the liquidator will then scrutinise not just the transaction but also any advisors that may have assisted the director.

Client directors need to be aware that it is rather a question of what a reasonable person in their shoes would do and an expectation that they do the right thing.

When a liquidator is appointed over a company, they act on behalf of the body of creditors.



Our team



Steve Naidenov

Principal

snaidenov@astoncg.com.au

0413 566 440

Steve is a co-founder of Aston Chace Group and registered liquidator with more than 20 years' experience in corporate insolvency matters. Steve specialises in supporting SMEs, individuals and financial institutions.

As a registered liquidator, Steve has managed formal and informal appointments across industries, delivering strategic solutions that address all aspects of the insolvency process.

Allan Ly

Manager

aly@astoncg.com.au

0413 569 375

Allan has more than six years' experience in the insolvency and restructuring industry, having worked with business owners and lenders in the construction, hospitality, retail and start-up space.

Allan has been involved in a range of appointments and regularly works on voluntary administrations, deed of company arrangements, liquidations, receiverships, statutory trustees for sale and assisting in the preparation of investigating accountant reports and solvency reports.



Steve's Professional Memberships, Registrations & Accreditations

- Certified Practising Accountant – CPA
- Certified Practising Accountant – IPA
- Bachelor of Business (Accounting and Sub-Major in Law)
- Association of Independent Insolvency Practitioners
- Registered Liquidator

Allan's Professional Memberships, Registrations & Accreditations

- Bachelor of Commerce (Accounting and Business Law)
- Institute of Chartered Accountants Australia and New Zealand (CA ANZ)
- Graduate Member of ARITA



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Any Questions?

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Succession, Asset Protection and Estate Planning - the big growth area for accountants



With Grant Abbott, Abbott & Mourly Lawyers and
SAPEPAA Chairman

15 June 2022



Estate Planning is only going to get bigger and more contested

Baby Boomers to pass on \$224b a year by 2050



Aleks Vickovich
Wealth editor

Dec 7, 2021 - 12.15am

Baby Boomers will pass on an estimated \$224 billion each year in inheritances by 2050 as record housing and super wealth, and fewer heirs, create a \$3.5 trillion bonanza for younger generations, including the poorest Australians.

In the first-ever official study of wealth transfers in Australia, the Productivity Commission has projected a fourfold increase in the value of inheritances over the next 30 years.



Selling Agent and Auctioneer Stewart Kirby in action at 12 Lucretia Avenue Longueville.
Photo: Peter Rae

Australia's property market tipped to reach \$9 trillion later this year: CoreLogic

TAWAR RAZAGHI  JOURNALIST | AUG 11, 2021



Australia's residential property market is tipped to be worth \$9 trillion later this year, thanks to skyrocketing house prices and an ongoing construction boom, according to CoreLogic.



At the moment, residential real estate is worth a staggering \$8.8 trillion dollars. That's worth more than Australian superannuation (\$3.1 trillion), the Australian stock market (\$2.8 trillion) and commercial real estate (\$978 billion) combined, CoreLogic's August indices revealed.

The value of Australian homes only reached \$8 trillion in March this year and is on track to reach its next trillion-dollar milestone later in 2021.

"It won't be too long before it breaks the \$9 trillion mark," said Tim Lawless, CoreLogic research director. "We're going through a construction boom, and housing values are rising very swiftly."

As a result, there was more housing stock, and it was worth more, too, he said. More than half of household wealth is held in housing, with \$1.9 trillion in outstanding mortgage debt.

"Household spending is the biggest component of economic activity. This is why we have so much attention on the housing market," Mr Lawless said.

While the market was still red hot, it was "not as hot" as it has been due to affordability constraints and lockdowns starting to slow down the rate of growth, he said.

And look at
how many
Australian
homes are
exposed

Castles, like family wealth can last centuries and need protection



Let's start with Successor Director for companies

2021 Total number of companies registered in Australia

Month	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
January	49,264	940,886	13,062	505,435	136,727	28,886	912,753	248,613	2,835,626
February	49,494	944,986	13,136	507,761	137,427	29,032	915,731	249,349	2,846,916
March	49,858	951,570	13,211	511,362	138,451	29,251	921,070	250,753	2,865,526
April	50,059	954,781	13,250	512,782	138,869	29,370	923,006	251,384	2,873,501
May	50,370	960,894	13,312	515,988	139,758	29,611	927,895	252,712	2,890,540
June	50,905	969,056	13,403	521,399	141,199	29,997	934,957	254,953	2,915,869

ASIC guidance 73 on Directors

During that period when there is no director, the company may be completely unable to operate. With no-one properly authorized to make management decisions or act for the company, it may be unable to trade. Banks and other financial institutions in particular may be unwilling to accept instructions in relation to a company's trading account if they are not satisfied there is someone properly authorized to act for it. Equally, staff and suppliers may not be able to be paid, which can quickly have a deleterious effect on the reputation and value of the company to the beneficiaries of the estate.

Let's start with Successor Director for companies

- The large majority of companies are single or dual directors – known as Mum and Dad companies
- What happens if one or both directors die or become incapacitated
- An enduring power of attorney and a Will CANNOT appoint a director
- The company constitution is the key document
- Need a current binding resolution plus Deed of Indemnity for Successor Director

No Risk Spouse strategy is dead

- **Commissioner of Taxation v Bosanac [2021] FCAFC 158**
- Mr and Mrs Bosanac acquired a family home and as part of an asset protection strategy the property was placed in the wife's name
- The deposit came from a joint bank account
- There was no documentation on why it had been done
- ATO argued that there was a resulting trust where Mrs Bosanac was the trustee on behalf of Mr Bosanac for 50% of the property
- Mr Bosanac's counsel argued that there is a presumption of advancement – equity for gifting for spouses that is settled law
- The Full Federal Court held that there was a resulting trust with Mr Bosanac's 50% open to pay ATO debts

PROTECTING FAMILY WEALTH WITH THE PROTECTOR

Line of Succession is important

1. Leading Family Member (LFM)
2. Successor LFM
3. Second Successor LFM

TRUSTEE COMPANY FOR LONGEVITY

FAMILY PROTECTION TRUST TO HOLD THE CROWN JEWELS

1. Set up the Family Protection Trust (FPT)

LOAN

4. Lend \$1.15m back

5. Secure the assets with mortgage

GIFT

3. Gift \$ 1.15 Value to the FPT with Cheque



Value = \$1m



Value = \$150,000

2. Value assets less money owing



We are **S A P E P A A**

Succession, Asset Protection & Estate Planning Advisers Association

Leave a Legacy



The Panel Interviewed by Grant Abbott

The Big Questions

- It appears that Covid washed a tsunami of money into the system and now the water is subsiding. In hindsight was the stimulus the right thing to do? Is there a recession on its way?
- Inflation is expected to run at 7%+ and the only tool the RBA and the government has to tame inflation is to reduce demand – what does that mean for business?
- Baby boomers control a lot of property and shares – they are retired so falling share and property market – what does that mean for businesses?
- If property interest rates hit 10% in 2023 or 2024, what can you see happening in various sectors of the economy?
- A saying from Dr Fauci from NIH – a now famous figure: “if you don’t prepare for the worst and the worst happens”
 - What do you think is the absolute worst-case scenario?
 - How would you prepare for it personally and what would you advise your clients?
 - Do you see a black swan out there?



We are there when you need us

eventum



optimum

Wrap Up

CPD Certificates – we will award CPD once you complete a quick assessment

- Downloadable link with collateral pack will be sent out to all registered attendees
- Recording of all sessions will also be sent out to all registered attendees
- Call to action:
 - Read through the material
 - Review your client's positions – questionnaires in downloadable pack
 - Communicate with your clients → this will be included in the downloadable pack
 - If they need help, then you need to be help take action if there is a need → contact EO ASAP.
 - Be proactive with all other clients and get necessary protection in place

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[mjeffriess](#)



SCAN ME