Meltzer Mason Heath

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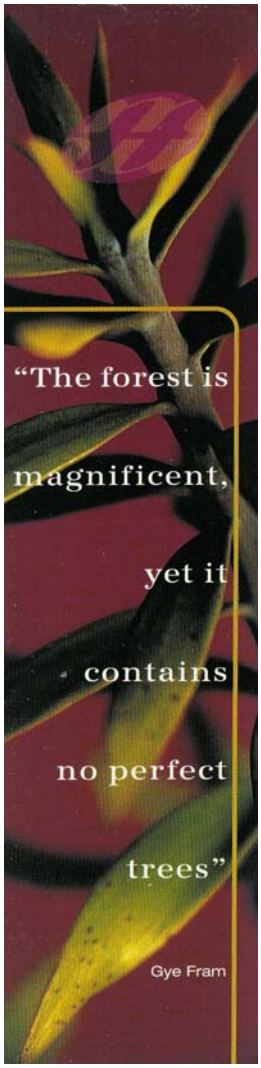
UPDATE + NEWS + REVIEW

November 2007



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It seems a little unreal that 2007 is drawing to an end and this is our last newsletter for the year. Throughout the year we have highlighted the changes to legislation, common law and given general updates. This issue deals with a significant breakthrough with IRD, and outlines some of the amendments to the Companies Act.

We wish you a happy and safe Christmas and holiday and look forward to all the challenges of 2008!

Unpaid Tax—Does your client have a problem debt with the IRD? How we can help

Lloyd Hayward

We have had success recently in negotiating payment arrangements with the IRD on behalf of companies who have significant IRD debt. The special characteristics of these companies were that there was significant debt due to the IRD, no immediate ability to repay, failed payment arrangements in the past and IRD on the brink of issuing winding up proceedings. There was however a core business that had real prospects of recovery.

Our task was to develop a proposal for the company to put to the IRD and to act as a "compromise manager" in relation to the agreement between the IRD and the company once the agreement was struck. This role included ongoing monitoring of the company's performance and reporting to the IRD. Our involvement as insolvency professionals gives the IRD confidence that the analysis underlying the proposal is robust and gives integrity to ongoing reporting (if part of the agreement).

The agreements reached have been a mixture of payment arrangements to meet core tax debt obligations, including instalment arrangements, or a lump sum and following instalments or a flat lump sum settlement. The IRD agreed to concessions on penalties.

The key ingredients to obtaining such agreements with the IRD are:

- Lodging returns and payment of ongoing taxes on due date without exception
- Ability to convince the IRD that the business is viable and has the ability to generate sufficient cash to meet the instalment payments proposed
- Detailed financial forecasts will be required to demonstrate this
- Past performance on payment arrangements will be a factor in assessing a proposal
- A lump sum payment towards the debt gives the proposal a real advantage

The IRD will judge each proposal on its merits. Its obligation is to recover as much tax as possible and with the new Insolvency laws being enacted there appears to have been a change in how the IRD assesses proposals and its ability to collect as much tax as possible.

Where a company's circumstance is such that liquidation would provide little or no return for the IRD, a proposal may be the only way for the IRD to meet its obligation to collect as much tax as possible. That is why a lump sum is so attractive. Also collection of a significant portion of past unpaid tax plus collection of ongoing tax is a much better result than none at all.

The value we add is in the insolvency aspect we bring to the proposal together with the contacts we already have with the IRD officers that will likely be assessing any proposal put to the IRD. The IRD knows that the proposals we bring to them work.

If you or any of your clients have any questions regarding how we undertake these projects, please call us.

Companies Amendment Act 2006

Arron Heath

The Companies Amendment Act 2006 came into effect on 1 November 2007.

Voluntary Administration

Among the changes to the Companies Act 1993 is the introduction of a voluntary administration regime similar to that operating in Australia. Voluntary Administration provides an alternative to liquidation for companies in financial distress and is intended to be a short term measure that applies a moratorium during the period of the administration in relation to charges over the company's property, property used or occupied by the company, proceedings against the company, and enforcement processes in relation to the company's property.

The first voluntary administration appointment has already been made with the company that operates Sounds and some Blockbuster stores going into administration this month.

New Section 241AA

The Amendment Act inserted a new Section 241AA relating to the appointment of liquidators. The new section restricts shareholders' ability to appoint a liquidator after a creditor has filed an application with the Court for the appointment of a liquidator.

If an application for the appointment of a liquidator has been filed with the Court then the shareholders may only appoint a liquidator within 10 working days after service on the company of the application.

Even if a liquidator is appointed by the shareholders within the 10 working day period the petitioning creditor is able to apply to the Court for a review of the liquidator's appointment.

Shareholders will no longer be able to delay appointing a liquidator until immediately before the liquidation application is due to be heard by the Court. It will therefore be important for shareholders and directors of companies who have been served with a liquidation application to seek professional advice without delay regarding options that may be available to them and it may even be appropriate for initial discussions to be held upon receipt of a statutory demand.

Transitional Provision

Jeff Meltzer and Mike Lamacraft were this month involved in a Court hearing relating to the application of the new Section 241AA. The petitioning creditor had served the liquidation application on the company on 5 July 2007, prior to the introduction of the amendments on 1 November 2007. The application was listed for hearing on 15 November 2007. Jeff and Mike were appointed liquidators of the company by the shareholders on 13 November 2007.

The petitioning creditor argued that the shareholders' appointment was invalid due to the provisions of Section 241AA. The Court disagreed and held that Section 241AA could not be retrospective as that would deprive the shareholders of their existing right to appoint a liquidator. Section 241AA indicates that Parliament intended the right of appointment (by the shareholders) should continue but that it should be restricted by the imposition of a time limit.

The Court's ruling confirmed that the provisions of Section 241AA will not apply in cases where the liquidation application has been filed and served prior to 1 November 2007 even if the hearing date is after 1 November 2007.

Between the professional staff at Meltzer Mason Heath there is over 100 years insolvency experience. This means that any problems or uncertainties facing your clients are likely to have been seen by us before. Please call us, and as always we will offer you and/or your clients a free one hour consultation.

Jeff Meltzer, Karen Mason, Arron Heath, Mike Lamacraft, Lloyd Hayward, Rachel Mason & Trish McLennan.