

“When experience counts and you need an innovative approach, contact us”

In this issue...

How To Survive A Recession

Going Guarantor?

Solving Insolvency Issues

And Finally

Welcome to our Spring edition of Legal Insight for 2009.

How To Survive A Recession

Bank manager slow to return your phone calls? Customers late in paying their bills?

Weaker sales and gloomy forecasts, coupled with the ageing of debtors' ledgers and tighter credit from lenders, has already sent many businesses reeling. White collar fraud is also expected to rise as the downturn continues.



More than ever, you are going to need clear and practical advice on how to survive a recession. Understanding the legal issues facing your business is critical, especially when your own home or personal assets could be at risk.

Recovery and insolvency experts point to good planning as the way to “recession proof” a business. This should include strategies to protect both your personal and business assets.

Preparing solid financial documents such as cashflow statements and budgets will also go a long way towards ensuring you survive any downturn. And keeping a close eye on business assets such as stock and inventory can be the difference between a company that survives an economic downturn and one that fails.

Redundancies also need to be handled carefully to avoid claims of unfair dismissal and the resulting damage to your reputation. Fraud may also be on the increase as pressure to meet earnings targets intensifies. False invoicing, plant and inventory theft, stealing of cash, diverting of sales to an

Ancient Wisdom

“Tomorrow belongs to people who prepare for it today”

– Ancient African Proverb

employee's own business, identity and credit card theft, kickbacks and manipulation of data can occur when there are poor internal controls.

If you are a non-executive director of a company – big or small – remember you can be personally liable for the misconduct of your fellow directors.

Seek legal advice if you are concerned about fraud risk in the changed financial environment as the number of prosecutions and class actions are expected to rise when the accounts of insolvent companies are opened to forensic scrutiny.

Going Guarantor?

In the current economic climate, many home buyers may not have the financial reserves to secure a loan. The family is often the first port of call to provide much needed support, particularly parents for their children. With family backing, a prospective home buyer can access the current low interest rates and government grants.

While mum and dad are often willing to contribute some funds to secure the future for their children, there are risks particularly if they give consent to guarantee a bank loan. A guarantee is usually a written promise by a party (guarantor) that they will meet the payment obligations of the person obtaining the credit (debtor/borrower). Families may enter into such contracts with a degree of confidence that there will not be any default by their children or the borrower; however, changes in property values, the prospect of increases in interest rates, sudden illness or retrenchment can impact on the borrower such that they find they cannot or are unwilling to meet the terms and conditions of the contract. As a consequence, guarantors (whether parents or friends) may find that

If you would like to receive an electronic version of Legal Insight, please:

- call Tristan Tottenham of our office on 9870 9870
- write to us at PO Box 450, Ringwood 3134
- send an email to office@hutchinsonlegal.com.au

they become liable to make good the default for the loan which could involve all amounts owed by the borrower to the lender and substantial arrears of interest. The prospect is that parents may be at risk of losing their own homes in trying to bail out their financially stretched children.

Over recent years there have been significant cases and media coverage about guarantors who have escaped their obligations under guarantees. This has been generally on the basis that the guarantors were able to demonstrate to a court that they did not understand what they were doing when they gave the guarantee. Lenders have learnt many lessons and now there is a requirement that the guarantor receive independent legal advice or independent financial advice or both as a normal part of the transaction.

The guarantor may not be the first port of call by the lender if there are defaults on the borrowings; usually, the lender will take possession of a house and sell it to recoup their losses. If there is a shortfall, the lender may demand that the guarantor service the debt still outstanding. But as stated recently by Katherine Lane, NSW Consumer Credit Legal Centre in an article by Barbara Drury in 'The Age' (Wednesday 15 July 2009) lenders may 'sell whichever property will sell the quickest'. The parent's home may be in sight.

Given the risks, before you consider signing a guarantee, you should make sure of the following:

1. Receive a copy of the loan agreement that the debtor/borrower is to sign;
2. Receive a copy from the lender of an explanation of the rights and obligations of a guarantor;
3. Get sound legal or financial advice; for example: Is the guarantee limited or unlimited in duration? Is the liability of a guarantor limited to a certain amount? Is the guarantee limited to a specific transaction?

You can limit the extent of your guarantee to a specified amount of money, and even limit the duration of time. Any limitations, however, would be dependant on the approval of the lender.

If you would like advice or information regarding guarantees please call the office. It is important that early advice is sought given the significant risks involved.

Solving Insolvency Issues

Many people have found themselves caught on the wrong side of a company's slide into receivership. Others have been directors of an insolvent company and have found themselves at risk of legal action from creditors or shareholders.

Late payment of invoices, dishonoured payments or the issuing of post-dated cheques should trigger alarm bells that a company you are dealing with is in financial trouble.



What can you do about it?

You should first try and raise your concerns with the company. If this fails, other options include reviewing your trading arrangements, and/or seeking legal advice.

If you are the director of a company, signs to be aware of include ongoing losses, tight cashflow, unpaid creditors and problems getting finance.

If you receive a s222AOE penalty notice from the Commissioner of Taxation for your company's unpaid tax, you should immediately seek professional advice. Failure to take action within 14 days could see the Commissioner of Taxation take recovery action against you personally for the unpaid tax amount.

Signs that may indicate your employer is in financial trouble include late payment of your wages or unpaid wages and unpaid superannuation. Seek legal advice if raising your concerns with your employer fails to resolve the issue. Employees can get further information from the Workplace Infoline 1300 363 264 or via the Australian Workplace website, and can lodge a complaint with the ATO regarding unpaid superannuation.

The government (Commonwealth) has recently released proposed reforms to Australian personal bankruptcy laws for public consultation. Proposed amendments,

among others, are to increase the minimum debt for which a creditor can petition for bankruptcy from \$2,000 to \$10,000 and increasing the income, asset and debt thresholds to allow more people in financial distress to enter into voluntary debt agreements.

For more information see www.asic.gov.au/insolvency, www.workplace.gov.au or www.ato.gov.au/individuals. For the draft Bill and accompanying Explanatory Memorandum see our website or visit www.ag.gov.au

And Finally

When overseas, it is apparent that translating signs for English speaking visitors can be rather difficult. Consider the following:

In a city restaurant:

OPEN SEVEN DAYS A WEEK AND WEEKENDS.

In a cemetery:

PERSONS ARE PROHIBITED FROM PICKING FLOWERS FROM ANY BUT THEIR OWN GRAVES.

On a poster at Kencom:

ARE YOU AN ADULT THAT CANNOT READ? IF SO, WE CAN HELP.

Airline ticket office, Copenhagen:

WE TAKE YOUR BAGS AND SEND THEM IN ALL DIRECTIONS.



HUTCHINSON LEGAL
per Grant Hutchinson

Tel: **(61 3) 9870 9870**

Fax: (61 3) 9870 5704

Email: office@hutchinsonlegal.com.au

PO Box 450, Ringwood 3134.

Visit us at www.hutchinsonlegal.com.au (Last updated August 2009)

Clients should not act only on the basis of material contained in this newsletter because the contents are of a general nature only and may be liable to misinterpretation in particular circumstances. Changes to legislation can occur quickly. Do not act on any of the contents of this newsletter without first obtaining specific advice from a lawyer.