

# Sheridans' View



## Director Identification Numbers

On 12 September 2017 the Hon Kelly O'Dwyer MP (Minister for Revenue and Financial Services) announced that *"The Turnbull Government is taking action to crack down on illegal phoenixing activity that costs the economy up to \$3.2 billion per year to ensure those involved face tougher penalties."*

The proposed package of reforms includes the introduction of a Director Identification Number (DIN). The DIN will identify directors with a unique number and will be used by various government agencies to allow regulators to map the relationships between individuals and entities, and individuals and other people.

In addition to targeting illegal phoenixing activities, the government is aiming to curb the activities of pre-insolvency advisors (by making them potentially liable for their advice).

The Government is consulting on the best model of DINs to introduce, and also on a range of other possible measures to tackle illegal phoenixing, including:

- Extending the director penalty provisions by making directors personally liable for GST liabilities.
- The establishment of a dedicated phoenix hotline.
- An extension of existing penalties to capture advisors who assist phoenix operators.
- Stronger powers for the ATO to recover a security deposit from suspected phoenix operators.
- Restricting directors from backdating their resignation or leaving a company with no directors.
- A next-cab-off-the-rank system for appointing liquidators (to prevent the appointment of "friendly" liquidators).

### Bankruptcy: Reliance on a judgment debt?

**In most cases, a judgment debt is strong evidence of a debt owed and can be relied upon to issue a bankruptcy notice and then file a creditor's petition in bankruptcy proceedings.**

But the recent High Court of Australia's decision on 17 August 2017 in the matter of *Ramsay Health Care Australia Pty Ltd v Compton [2017] HCA 28* held that the Court still needs to be satisfied that a debt is truly owed by the debtor before making them bankrupt.

The High Court was asked to consider when the Bankruptcy Courts are required to exercise their discretion pursuant to Section 52 of the Bankruptcy Act 1966 (Cth) to investigate whether the judgment debt relied upon by a petitioning creditor remains due and owing, and what the circumstances are that enliven this discretion.

### Voluntary Administrations: "Holding" DOCAs are permissible

**The WA Court of Appeal in August 2017 delivered a landmark decision approving the use of a "holding" deed of company arrangement (DOCA) in the matter of *Mighty River International Ltd v Hughes [2017] WASCA 152*.**

Holding DOCAs are in fairly widespread use by insolvency practitioners. Indeed, ASIC's Regulatory Guide 82 comments on the appropriate use of holding DOCAs by administrators.

This recent decision confirms that administrators can use holding DOCAs to gain more time to complete investigations and pursue possible options to secure the future of the company. However, the question of whether a particular DOCA is valid will turn on the circumstances in each case.

## FOREWORD

*"When you pay attention to boredom it gets unbelievably interesting."*

Jon Kabat-Zinn

*"Your true traveller finds boredom rather agreeable than painful. It is the symbol of his liberty – his excessive freedom. He accepts his boredom, when it comes, not merely philosophically, but almost with pleasure."*

Aldous Huxley

*"Boredom is the dream bird that hatches the egg of experience. A rustling in the leaves drives him away."*

Walter Benjamin

*"Idleness allows you to turn a situation from boredom to pleasure."*

Tom Hodgkinson

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# Sheridans' View

## New guide for people in business

In April 2017 a new guide was produced for individuals running businesses that may be financially vulnerable, and where that may have an impact on them personally.

The guide entitled "*Personal Bankruptcy and Liquidation of a Company*" was jointly prepared by ASIC, AFSA and ARITA.

The brief guide encourages directors and individuals running businesses to seek appropriate professional advice (and to act on that advice), and highlights the need to be wary of untrustworthy advisors (listing some of the warning signs of untrustworthy advisors).

See [www.afsa.gov.au/About Us/Newsroom/MediaRelease-4April2017](http://www.afsa.gov.au/About Us/Newsroom/MediaRelease-4April2017)

## FAQ

**Will you make sure the directors go to jail?**

No. Even if the directors are apparently guilty of a criminal offence, liquidators do not have the power to pursue criminal matters (and you usually go to jail only for criminal matters). Liquidators are duty bound to report criminal matters to the Australian Federal Police, ASIC and AFSA, but only these organisations, in conjunction with the Department of Public Prosecutions, can pursue and prosecute someone for a criminal offence.

## Recent Assignments

- **Liquidation of:**
  - A scaffolding company
  - A commercial construction company
- **Continuing liquidations and bankruptcies involving:**
  - Pursuit of a preference recovery claim
  - Negotiations regarding the settlement of directors' loan accounts
  - Sale of business assets
  - Court application regarding dealing with a trust account
  - Court application for control and sale of a property
  - Pursuit of a voidable transaction (transfer for no consideration)
- **Personal insolvency administrations, including individuals involved in the construction industry**
- **Informal insolvency advice to various businesses, including those involved in property investment, construction, air conditioning and children's therapy**
- **Litigation support, including:**
  - Review of two alternative expert business valuations for a court matter
  - An accounting analysis of two related deceased estates
  - Investigations and sundry advice regarding various Family Court matters
  - Assistance with the quantification of the parties' asset pool in Family Court matters

**"A common mistake that people make when trying to design something completely foolproof is to underestimate the ingenuity of complete fools."**

Douglas Adams

## DID YOU KNOW?



Chindōgu is the Japanese art of inventing ingenious everyday gadgets that seem like an ideal solution to a particular problem, but are in fact virtually useless.

Chindōgu is the art of the useless idea or invention (they are really not useful but they aren't completely useless).

Some examples are (and you really have to see them to appreciate them): the Butter Stick, the Noodle Cooler, the Lipstick Guide and the Hay Fever Headset (see [www.tofugu.com/japan/chindogu-japanese-inventions](http://www.tofugu.com/japan/chindogu-japanese-inventions)).



## EDITORIAL

# Why Boredom isn't Boring

**Seems like we'll do anything to avoid being bored. And with our ever-growing to-do lists and so much technology at our finger tips to amuse ourselves with, boredom rarely seems like an option any more.**

Some would even take pain over boredom. One team of psychologists discovered that two-thirds of men and a quarter of women would rather self-administer electric shocks than sit alone with their thoughts for 15 minutes<sup>1</sup>.

Boredom has recently become of increasing interest to academics. In May 2017, London's Boring Conference celebrated seven years of delighting in tedium. There is no universally accepted definition of boredom but one widely accepted psychological definition is "*the aversive experience of wanting, but being unable, to engage in satisfying activity.*"<sup>2</sup>

The scientific study of boredom dates back to at least 1885, when Francis Galton published a short note in *Nature* on '*The Measure of Fidget*'. In 1986, Sundberg and Farmer published their Boredom Proneness Scale, which was followed by the development of the Multidimensional State Boredom Scale in 2008.

Boredom has been linked to a number of negative behavioural issues including bad driving, binge-eating, binge-drinking, substance misuse, problem gambling and risky sex.

**However, boredom isn't all bad.** Research also suggests that we could be missing out on a lot by never allowing ourselves to be bored.

*"A generation that cannot endure boredom will be a generation of little men, of men unduly divorced from the slow process of nature, of men in whom every vital impulse slowly withers as though they were cut flowers in a vase."* Bertrand Russell (*The Conquest of Happiness*)

So what are some of the surprising benefits of boredom?

In my own experience, the overwhelming benefit of boredom is creativity. Being bored can promote day dreaming, allowing us to make new, innovative connections and conceptualise creative ideas. Newton was purportedly *just sitting under an apple tree* when he discovered gravity.

And some other possible benefits of boredom are that it can:

- Inspire deliberate action
- Let you know when something's amiss
- Make you more goal-oriented
- Allow you to see things you never noticed before
- Make you more productive
- Make you a better person
- Be an essential key to happiness

So do not fear occasional boredom, or the "*tedium of reality*". In fact, don't let it be elusive to you. **View a good bout of boredom as an opportunity.**

## CONTACTS



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