

In our ever-changing world

Creditor defeating dispositions

The introduction of the new voidable transaction – the creditor defeating disposition – was part of the new legislation that came into effect on 18 February 2020 to combat illegal phoenixing (which also included the changes to director resignations).

A creditor defeating disposition is a disposition of company property for less than market value (or the best price reasonably obtainable) that has the effect of preventing, hindering or significantly delaying the property becoming available for creditors in a winding up.

The new provisions catch not only directors but “facilitators” (which include accountants, solicitors and pre-insolvency advisors).

Expansion of Director Penalty Notices

From 1 April 2020 the director penalty regime was amended to include GST. Previously DPNs were limited to unpaid PAYG and SGC. Directors can now find themselves personally liable for their company’s unpaid PAYG, SGC and GST.

New insolvency regimes

From 1 January 2021 two new insolvency regimes were introduced:

1. *A small business restructuring process* – the aim being to allow directors to retain control of their company while the company’s debts are restructured with their creditors’ agreement.
2. *A simplified liquidation process* – essentially for small business.

To be eligible for the small (or simplified) business restructuring process, the business must be:

- incorporated and have less than \$1 million in liabilities;
- insolvent or likely to become insolvent; and
- substantially compliant with the payment of employee entitlements, and up to date with all tax lodgements.

In addition, neither the company nor any of its directors must have been involved in a small business restructuring process, or simplified liquidation process, in the last seven years.

Director resignation changes

From 18 February 2021 a company director will not be able to backdate their resignation more than 28 days or resign and leave a company without a director.

The end of COVID laws

- *Statutory demands* – from 1 January 2021 they returned to a threshold of \$2,000 (or more) with 21 days for compliance (unless an application for temporary relief has been filed).
- *Electronic signatures for companies* – from 21 March 2021, electronic signatures for the purposes of Section 127 of the Corporations Act are no longer permitted.
- *Shareholders’ general meetings* – from 21 March 2021, virtual meetings are no longer permitted and must be at a physical location (although members may attend via technology).
- *WA commercial tenancies rent relief* – the emergency period expired 28 March 2021.



FOREWORD

“ This world, this earth, a planet of changes, first the seasons come and seasons go, now snow, then rain, now drought, and then a hurricane. Fog, mist, drizzly rain, clouds flat, clouds streaky, fluffy clouds, clouds that rain, green clouds hail, clouds of falling snow, but then warm sun appears.

This world of changes, nothing stays the same, it is like a constant moving picture show. An ever changing continuous performance. Entrance is free, there is no charge to view, but if you want to have a life, just make sure you are on time, or you might just miss the show.”

Our Ever Changing World (extract)
Bob Blackwell
Poet

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The ATO is back on the field

With the JobKeeper program officially over, the ATO has now confirmed that it will resume pursuing and enforcing debt recovery action.

At the height of COVID-19, the ATO paused its debt, audit and lodgement work, which contributed to a \$1.3 billion shortfall against its compliance revenue target and the growing reported \$53 billion book debt (ATO's 2020 annual report). The majority of the ATO's "collectible debt" is owed by small business (63%).

With the ATO's return to business-as-usual activity, taxpayers can expect ATO letters warning of potential sterner action if they fail to attend to their obligations and fail to communicate with the ATO. The ATO has urged accountants to ensure clients continue to lodge, even if they are unable to pay, and just as importantly, not to ignore ATO letters but to engage with the ATO and consider the available options that the ATO provides.

In summary, the brief respite from ATO obligations and debt is over.

Our Solutions

FINANCIAL DIFFICULTIES & INSOLVENCY

We provide help and support for companies and individuals under financial strain.

We are specialists in corporate and personal insolvency services, financial and strategic advice and support, and turnaround and restructuring advice. In addition to formal insolvency services, we can provide informal advice and support including:

- Assessment of current financial difficulties.
- Assessment of options and explanation of implications.
- Strategic management advice.
- Understanding directors' financial exposure.
- Assistance with Director Penalty Notices.
- Dealing with other insolvency practitioners.

LITIGATION SUPPORT

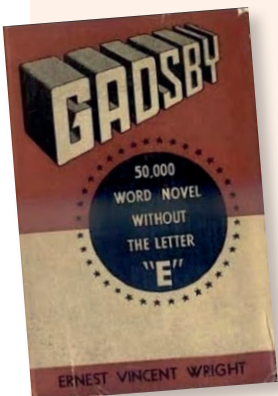
Litigation support and forensic services can take many forms and we tailor our approach to the individual requirements of each assignment.

Our work and experience covers identification of key business and financial issues, preliminary evaluations and assessments, investigations, assistance during discovery, expert reports, comments on opponents' expert reports, and testimony in court.

" Focusing on things that won't change does not guarantee success – but it provides as close a foundation for success as you will find."

Jeff Bezos, Founder of Amazon

DID YOU KNOW? A lipogram



Gadsby is a 1939 novel by Ernest Wright which does not include any words that contain the letter E, the most common letter in English. A work that deliberately avoids certain letters is known as a lipogram.

Wright did not write the story to attain literary merit but to balk at the notion that "it can't be done; for you cannot say anything at all without using E, and make smooth continuity, with perfectly grammatical construction."



EDITORIAL

In our ever-changing world... "Some things never change"

**" Yes, the wind blows a little bit colder
And we're all getting older
And the clouds are moving on with every autumn breeze
Peter Pumpkin just became fertilizer
And my leaf's a little sadder and wiser
That's why I rely on certain certainties
Yes, some things never change
Like the feel of your hand in mine
Some things stay the same" *Frozen 2***

The only constant in life is change. Change is not permanent, but change is constant. Our world is always in a state of flux. But in a world that never stops changing, there are some things that never change: the fundamentals. These fundamentals are the same for us as they were for our great-grandparents.

And I suggest that the fundamentals are the most important things to pay attention to (and to hold on to), although change is usually the attention-grabber with its frisson of surprise.

Why is it useful to reflect that our fundamentals don't change?

Because it can reduce our fear, and even make us more positive and optimistic, in challenging or confusing times. You may have no idea what's going to happen in the future but acknowledging those things that stay the same can give us confidence to engage and belong in our world.

So what are your fundamentals?

Love (in its many forms), trust, hope, a sense of purpose, loyalty, safety, a sense of belonging, music, pleasure, creativity and kindness.

And what about the realities that:

- You are not going to live forever.
- You can't please everyone.
- You can't control what someone else thinks.
- More people wake up each day wanting to solve problems than wake up looking to cause harm.
- This too shall pass.
- Yesterday is history.
- Tomorrow is a mystery.
- Today is a gift.

So acknowledge and deal with change from a foundation and belief in your fundamentals.

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