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SHERIDANS
CHARTERED ACCOUNTANTS

Sheridans' VIEW

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Much needed support for sub-contractors

Construction industry: Retention monies

At a time when the construction industry is under unprecedented financial strain, and experiencing the lion's share of business failures, the important second phase of the Retention Trust Scheme has come into effect.

Contractors and sub-contractors in the construction industry can be hit particularly hard with problems and delays in getting invoices paid. Sub-contractors may have had to spend considerable sums of money on materials and labour to complete a project, and delays in payments from clients can put their whole business at risk.

The relatively new *Building and Construction Industry (Security of Payment) Act 2021 (WA)* introduced, amongst other useful provisions, the Retention Trust Scheme to better protect retention money in the event of financial difficulty or dispute on a construction project. It provides more protection from the risks of not being paid.

The scheme applies whenever retention money is withheld under a construction contract with a value above a certain financial threshold:

Phase 1 : 1 Feb 2023 to 31 Jan 2024 - **$1 million** or more (incl. GST)

Phase 2 : 1 Feb 2024 onwards - **$20,000** or more (incl. GST)

The scheme only applies to new construction contracts entered into **after** these dates; the phase thresholds are not retrospective. There are some minor exceptions to the application of the scheme, including small scale residential contracts.

Under the scheme, the retention money withheld under a contract is taken to be held on trust for the benefit of the party who provided the money.

The "trustee" of the retention money is required to place the retention money in a separate retention money trust account, with a bank or other financial institution. That account must comply with certain minimum requirements, be established within 10 business days after the construction contract is entered into and the beneficiary (the sub-contractor) notified of the particulars.

The trustee must keep proper accounting records of the retention money held under the scheme, which the beneficiary is entitled to inspect and take copies of.

Most importantly, the trustee may only withdraw the retention money from the trust account to the extent they have a contractual entitlement to do so. The trustee should not at any time keep the retention money in their normal banking account – or use the money to pay other debts, or otherwise fund their business.

KEY POINT:
Contractors can benefit from having their retentions held on trust but must also ensure compliance by holding sub-contractors' retentions on trust.

FOREWORD

" Speculation is also the natural realm of tolerance, for judgement demands evidence, and it follows that the absence of evidence which forms the core of speculation requires the absence of judgement."
Daniel Abraham

" If the world were good for nothing else, it is a fine subject for speculation."
William Hazlitt

" Good and bad ideas both come from the same fountain of speculation and experiment."
Shaun Tan

" Time destroys the speculation of men, but it confirms nature."
Marcus Tullius Cicero

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Corporate insolvency misconceptions

- **Liquidation means director(s) will go bankrupt** – may sometimes be inevitable but not automatic.
- **Can't be a director of other companies if one goes into liquidation** – no automatic prohibition from other existing directorships or starting a new company.
- **The ATO receives priority** – no, not since 1993, except for unpaid SGC.
- **You can go to jail for debt** – you don't go to jail just because you owe a debt.
- **There are friendly liquidators** – no. If you are promised one, seek advice elsewhere. Liquidators must be independent.

Our Solutions

FINANCIAL DIFFICULTIES & INSOLVENCY

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

Recent work:

- Voluntary administration or liquidation of:
  - An Italian restaurant.
  - An auto parts supplier & smash repair business.
  - A foreign exchange investment company.
  - A plumbing and contracting services provider.
  - A marine repairs, parts & accessories business.
- New personal insolvency administrations including a physiotherapist, café owner, car repair & service technician, and indoor soccer organisers.

LITIGATION SUPPORT

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

Recent work:

- Review and analysis of documentation regarding ownership and control of a company.
- Valuation of a cleaning business.
- Review of expert investigation report on the direction of a company's finances.
- "Red flag" investigation and review of transactions and issues identified.
- Valuation of two separate legal practices.
- Investigation, identification and quantification of a Husband's income for a Family Court matter.

DID YOU KNOW?

Over 20 years ago, in August 2003, when the editor was heavily pregnant, Sheridans' View burst into print.

What got a mention in the first few editions?

- ASIC successfully prosecuted 'colourful identity' John Elliott for insolvent trading (5 May 2003).
- Three years after the introduction of GST (1 July 2000), the ATO's 2003/04 compliance program was starting to show a toughening attitude towards GST compliance.
- For the first time a person charged with insolvent trading was sentenced to serve time in jail (Timothy Williams, sentenced to 15 months' jail in June 2004).

EDITORIAL

Tulip Mania

In insolvency work, we often see speculation, all kinds of speculation. Some measured, calculated, rational and controlled, some bold, imaginative and creative, and other rash, reckless and without substance.

One of the earliest recorded and often quoted speculative bubble is that of Tulip Mania during the Dutch Golden Age (early to mid 1600s), when speculation drove the value of tulip bulbs to extremes.

Tulips were introduced to Holland in 1593, arriving via the spice trading routes, that lent a sense of exoticism to the imported flower. The pioneer botanist Carolus Clusius planted and cultivated tulips, leading to a profusion of varieties.

At the same time as the tulip's introduction and development, the Dutch Republic was becoming one of the world's leading economic and financial powers, with the highest per capita income in the world from about 1600 to 1720.

The tulip was different from other flowers known in Europe at the time because of its intense saturated petal colour. Tulips became a coveted luxury item and *"it was deemed a proof of bad taste in any man of fortune to be without a collection of tulips."* Particularly prized were the striped, multi-coloured tulips, with intricate lines and flame-like streaks on the vivid petals, known as "broken bulb" tulips . Unknown then, the treasured striated effect was actually the result of the tulip–specific mosaic virus.

The major acceleration in tulip prices started in 1634, with increasing demand and higher and higher prices. Many professional traders were using margined derivatives contracts to buy more than they could afford. Others simply purchased bulbs on credit to be repaid with sale profits.

Tulip mania reached its peak in the Dutch winter of 1636/37, with the best of tulips costing upwards of $1 million in today's money, and many bulbs trading in the $50,000 to $150,000 range. Some tulips were selling for the equivalent value of a mansion on the Amsterdam Grand Canal.

In the first week of February 1637, the tulip market collapsed. Contract disputes arose, reputations were lost and relationships broken. Disputes devolved into distressed accusations and recriminations.

Although earlier accounts (in particular, Charles Mackay 1841) may have exaggerated the extent and impact of the phenomenon on Dutch society, tulip mania is still often touted as a model for the general cycle of a financial bubble:

- Investors lose track of rational expectations.
- Psychological biases lead to a massive upswing in asset price.
- A positive-feedback cycle continues to inflate prices.
- Investors realise they are holding an irrationally priced asset.
- Prices collapse due to a massive sell-off.

In 2013, Nout Wellink, former president of the Dutch Central Bank, described Bitcoin as *"worse than the tulip mania"*, adding, *"At least then you got a tulip, now you get nothing."*

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