

Liquidators do not perform serenades



Pritesh Patel

Liquidators or Insolvency Practitioners are no different to funeral directors and as such perform the last rites of a company to properly 'put it to sleep.'

You will seldom witness a funeral director giving his or her business card and the same can be said about us, as liquidators in New Zealand.

There are approximately 50 active in New Zealand and it is a high octane, stressful occupation in which a no-nonsense approach needs to be taken for effective discharge of duties. Sometimes it is an ungrateful task and at times someone will try and take a swing (yes literally!) at you.

Hostile environment

Liquidators deal in a hostile environment juggling many variables simultaneously.

They include creditors, landlords, finance and banking institutions, laid off employees and to some extent shareholders.

No two liquidations are the same.

Some of the matters we have witnessed in the course of discharging our duties are (a) Threats by creditors (b) Aggressive stance by landlords (c) Houdini's Act: disappearing assets immediately upon appointment of a Liquidator (d) Stock misappropriation by shareholders whilst the Liquidator is operating the business in liquidation with a view to maximising the dividend for creditors and (e) Misguided attempt by a debtor to issue proceedings against a

Liquidator when they are lawfully discharging their duties.

On average, there are approximately 3500 liquidations in New Zealand per annum which encompasses about 75% as insolvent liquidations and the balance made up of Solvent Liquidations shared amongst about 50 active insolvency practitioners like us.

Solvent Liquidations are for companies that have fulfilled their purpose or for other reasons and hence the shareholder (s) do not require them to continue.

The Law

All liquidations are governed by the Companies Act 1993 and the principal duty of a Liquidator is to immediately take control of the assets of the company.

Distribution of liquidated assets is done in accordance to the Act as 1. Secured Asset Distribution 2. Liquidator's fees and disbursements 3. Employee wages including Holiday Pay 4. IRD (GST and PAYE) 5. Unsecured Creditors and 6. Shareholders

At the heart of these is the 'Pari-Passu Rule,' which prescribes that all creditors must be treated equally (on a pro-rata basis).

Topical Issues

There are a number of issues that would be of interest to Liquidators, shareholders, the business community and even the government. Some of them are as follows:

Phoenix Company

As Liquidators, we see instances where a shareholder sets up a new company preceding the liquidation of the old one.

The new company 'inherits' the business. We are required to scrutinise all breaches of the law including this and there can be penalties if the matter is pursued through the Court.

Voidable Transactions

Simply put, the Liquidator is required to ascertain if there have been any transactions at the expense of the current (at the date of liquidation) creditors.

Such transactions are voidable and can be reversed (clawed back) by the liquidator.

Shareholders Current Account

If the shareholder's current account is overdrawn, the Liquidator would normally seek repayment of the amount.

We have seen many such cases before the Courts recently.

Reckless Trading

Liquidators also have an obligation to report to the authorities if there has been reckless trading by the Director(s) of a company to the detriment of its creditors.

Currently we are seeing an upsurge in liquidations involving retail business.

High overheads, declining foot traffic due to an increase in online buying and other reasons are contributing to this upsurge.

In all situations, we believe that early intervention is necessary to preserve the position of creditors and shareholders alike.

Pritesh Patel is an Insolvency Practitioner and Principal of Patel & Co. Phone (09) 2776852 or 021-2775080; Email: pritesh.patel@xtra.co.nz; Website: www.patelandco.co.nz

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