



FINANCIAL STORMS

Turnaround + Solvency Solutions

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The financial storms that buffet people and companies are everyday occurrences and an unfortunate by-product of a highly competitive economy where success is not guaranteed.

In recognition of this, the Australian Government has passed laws to provide individuals, Companies, Directors and Creditors effective ways in which to address this situation.

Choosing the correct alternative is crucial to achieving the best outcome for all stakeholders.

Access to expert advice from an experienced insolvency practitioner is vital to ensure the most appropriate solution is utilised.

A range of procedures exists

A range of insolvency procedures exists, such as Voluntary Administration, Creditors' Voluntary Liquidation and Receivership.

The most appropriate option to pursue is determined by the specific circumstances a Company and its Directors find themselves in.

Your involvement is vital

It must be understood from the outset that while an insolvency practitioner brings experience and insight to the table, access to complete and detailed information relating to the Company is pivotal to the provision of optimal advice.

Which alternative?

It is important to recognise there are relative levels of financial difficulty. The particular level of difficulty a Company is experiencing will determine the most appropriate option to be employed.

For this reason we have included a Financial Position worksheet and associated schedules. While completion of these involves an investment in time and effort, we know it is worthwhile. Doing so will allow you to develop a clear snapshot of your particular situation, and maximise the usefulness of the following sections that examine common triggers Directors and their Advisors face.

PRELUDE

This document has been developed to allow Company Directors and their Advisors to quickly understand the options available to them when they are confronted by a financial storm.

Whilst for a range of reasons each situation will be truly unique, after being involved in literally thousands of people's financial storms we know the most common triggers and the options available.

This document is by no means supposed to be a comprehensive "do it yourself" diagnostic kit. It aims to help people understand the most likely option they should pursue when confronted by one of these common triggers.

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ATO ISSUES DIRECTOR PENALTY NOTICE

The Australian Taxation Office issues a notice to Directors (pursuant to Section 222AOE of the Income Tax Assessment Act). The effect of the notice is to make Director(s) personally liable for the Company's outstanding tax debt if the debt is not paid within 14 day of the notice being given. Upon expiry of the notice deadline, the ATO acquires a range of powers to pursue payment from the Directors personally.

Options available to Directors under the notice

- a. Payment in full within the notice period;
- b. A repayment agreement entered into with the ATO;
- c. Company Liquidation
(Refer to Offermans Partners Creditor's Voluntary Liquidation Booklet); or
- d. Voluntary Administration
(Refer to Offermans Partners Voluntary Administration Booklet).

Assessment

Amount due End of notice period

(Assumption is made that the Company cannot pay the ATO debt from its current Company cash position)

Questions

1a	Is the Company in the process of being liquidated?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 1c
1b	Will the appointment of Liquidator be completed prior to end of notice period?	<input type="checkbox"/> YES Continue with Liquidation <input type="checkbox"/> NO Next question
1c	Do you want to become personally liable for ATO debt?	<input type="checkbox"/> YES Do nothing <input type="checkbox"/> NO Next question
1d	Is the Company capable of funding a repayment plan with the ATO from cash flow?	<input type="checkbox"/> YES Contact ATO a.s.a.p. to organise <input type="checkbox"/> NO Next question
1e	Does your Company have sufficient realisable assets to pay ATO debt?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 1i

1f	Can the assets be realised within the notice period?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 1h
1g	Can the company function without the assets?	<input type="checkbox"/> YES Proceed with asset sale <input type="checkbox"/> NO Go to 1i
1h	Can the Company organise short term finance to cover the ATO debt until assets are sold?	<input type="checkbox"/> YES Go to 1g <input type="checkbox"/> NO Next question Voluntary Administration is an option as it provides a moratorium (breathing space) for the sale of Company assets <i>(Please read Note A at bottom of page)</i>
1i	Assuming Directors do not want to become personally liable for outstanding tax debt. Is the debt greater than \$16,500	<input type="checkbox"/> YES Next question Voluntary Administration may be an option. Minimum cost is \$16,500 <i>(Please read Note B at bottom of page)</i> <input type="checkbox"/> NO Next question
1j	Does the Company have realisable unsecured assets to cover the minimum cost of a Voluntary Administration (i.e. \$16,500)?	<input type="checkbox"/> YES Contact Offermans Partners regarding a Voluntary Administration <i>(Please read Note B at bottom of page)</i> <input type="checkbox"/> NO To progress with a Voluntary Administration, a cash injection will be required. Minimum cost is \$16,500 <i>(Please read Note B at bottom of page)</i>

Important Information

Note A

Upon appointment of an Administrator, a moratorium is put in place giving the Company breathing space from paying Creditors. This breathing space may allow a Company to re-structure itself and/or its finances and enable a Deed of Company Arrangement with Creditors to be put in place. The outcome of this can include ongoing viability.

Note B

Creditors have the right to vote either in favour or against the continuation of a Voluntary Administration at the Second Creditors Meeting (i.e. within 35 days of appointing an Administrator).

Creditors will only vote in favour of the continuation of Administration or a move into a Deed of Company Arrangement if they believe it will result in a better financial outcome than if the Company was placed in Liquidation.

This may require Directors to inject personal cash into the Company to ensure Creditors receive a better payout under the Deed of Company Arrangement than if the Company was voted into Liquidation.

CREDITOR ISSUES A STATUTORY DEMAND

A Statutory Demand is issued by a Creditor and requires payment within 21 days. If the amount under the Statutory Demand is under dispute, the Company should make an Application to set aside the demand within the 21 days. If not under dispute and if not paid in time, the Creditor can apply to the Court to wind up the Company on the grounds of insolvency (i.e. not able to pay debts as and when they fall due).

When the Courts sets a date to hear the application, notice of the Winding Up Application is served on the Company. Unless the money is paid prior to the hearing, the application will most likely be successful and the Court will appoint a Liquidator and the Company will be wound up.

Please note; a Liquidator is required to investigate and report to ASIC on the following key items:

- **Insolvent Trading.** If proven, Directors can be personally pursued for financial compensation to Creditors for debts incurred during the time of the insolvent trading.
- **Preferential payments.** Payments made to Creditors at a time when the Company was insolvent will be reviewed. As a consequence, the Company may have provided a Creditor with a preference over other Creditors of the company. That payment may be “clawed back” from the Creditor by the Liquidator.
- **Uncommercial transactions.** Transactions that a reasonable person would not have entered into because the transaction was either detrimental to the Company or provided the other party with a benefit that would not normally be realised.
- **Related party transactions.** Transactions that are to the detriment of the Company and entered into by persons or entities related to the Officers or Shareholders of the Company.

Options available to Directors

- a. Payment in full within Statutory Demand period;
- b. Dispute Statutory Demand and apply for demand to be set aside;
- c. Allow Wind Up Application to proceed with Liquidation the result; or
- d. Appointment of a Voluntary Administrator.

Questions

2a	Do you want to allow Company to be placed in Liquidation (wound up)?	<input type="checkbox"/> YES Do nothing. <i>(Please read Note C)</i> <input type="checkbox"/> NO Next question
2b	If payment of current Creditors was put on hold for a period of time, can the Company generate positive cash flow from which to fund ongoing operations and payment to Creditors?	<input type="checkbox"/> YES Go to 2g <i>(Please read Note D)</i> <input type="checkbox"/> NO Next question
2c	Does the Company have sufficient realisable assets to pay the Statutory Demand amount?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 2f
2d	Can the assets be realised in notice period?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 2f
2e	Can the Company function without the assets?	<input type="checkbox"/> YES Proceed with asset sale <input type="checkbox"/> NO Next question
2f	Assuming Directors do not want Company to be Liquidated; Voluntary Administration may be an option. Is the statutory debt greater than \$16,500?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Fund debt from external source.
2g	Does the Company have funds to cover the minimum cost of a Voluntary Administration (i.e. \$16,500)	<input type="checkbox"/> YES Contact Offermans Partners regarding a Voluntary Administration <input type="checkbox"/> NO Next question
2h	Does the Company have realisable unsecured assets not crucial to the Company functioning that could be sold to fund cost of Administration (i.e. \$16,500)?	<input type="checkbox"/> YES Contact Offermans Partners regarding a Voluntary Administration <input type="checkbox"/> NO To progress with a Voluntary Administration, a cash injection will be required <i>(Please read Note E)</i>

Important Information

Note C

A Liquidator is required to investigate and report upon any evidence of insolvent trading, preferential payments and voidable transactions. In instances where these exist, Creditors may vote for and fund action to be taken against Directors for the recovery of funds from these actions.

Note D

Upon appointment of an Administrator, a moratorium is put in place giving the Company breathing space from paying Creditors. This breathing space may allow a Company to re-structure itself and/or its finances and enable a Deed of Company Arrangement with Creditors to be put in place. The outcome of this can include ongoing viability.

Note E

Creditors have the right to vote either in favour or against the continuation of a Voluntary Administration at the Second Creditors' Meeting (i.e. with 35 days of appointing an Administrator).

Creditors will only vote in favour of the continuation of Administration or a move into a Deed of Company Arrangement if they believe it will result in a better financial outcome than if the Company was placed in Liquidation.

This may require Directors to inject personal cash into the Company to ensure Creditors receive a better payout under the Deed of Company Arrangement than if the Company was voted into Liquidation.

CREDITORS PURSUING COLLECTION ACTION

Creditors have or are taking steps to collect monies outstanding through letters from Solicitors and Debt Collection Agencies, legal action and repossession (excluding a Statutory Demand).

Analysis of outstanding liabilities clearly shows Creditors have become increasingly overdue and Directors believe the Company is currently, or will become, unable to pay Creditors as and when they fall due. By definition, this means the Company is or will be insolvent and the Directors may be liable for the debts incurred as a result of insolvent trading.

The Directors have many options before them and to a greater extent the correct option will be determined by the Company's ability to create positive cash flow from day-to-day operations, and the likelihood it will be able to do so, on an ongoing basis moving forward.

Options available to Directors

- a. Asset sales;
- b. Voluntary Administration; or
- c. Creditor Voluntary Liquidation.

Amounts outstanding Personal Guarantees

(Assumption is made that the amounts outstanding are not disputed)

Questions

3a	Is the Company currently trading?	<input type="checkbox"/> YES Go to 3e <input type="checkbox"/> NO Next question
3b	Does the Company have any assets that can be sold?	<input type="checkbox"/> YES Sell assets and distribute funds to Creditors. If after doing this, significant amounts remain outstanding, go to next question. <input type="checkbox"/> NO Next question
3c	Do Directors have Personal Guarantees of more than \$16,500?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Creditor Voluntary Liquidation may be an option. <i>(Please read Note F)</i>

<p>3d Do Directors have personal funds or assets greater than \$16,500?</p>	<p><input type="checkbox"/> YES Voluntary Administration may be an option. Go to 3f.</p> <p><input type="checkbox"/> NO Creditor Voluntary Liquidation may be an option. <i>(Please read Note F)</i></p>
<p>3e If payment of current Creditors was put on hold for a period of time, can the Company generate positive cash flow from which to fund ongoing operations and payment to Creditors?</p>	<p><input type="checkbox"/> YES Next question Voluntary Administration is an option due to the moratorium on Creditors. <i>(Please read Note G)</i></p> <p><input type="checkbox"/> NO Go to 3b</p>
<p>3f Does the Company have funds to cover the minimum cost of a Voluntary Administration (i.e. \$16,500)?</p>	<p><input type="checkbox"/> YES Contacts Offermans Partners regarding a Voluntary Administration <i>(Please read Note H)</i></p> <p><input type="checkbox"/> NO Next question</p>
<p>3g Does the Company have realisable assets not crucial to the Company undertaking business that could be sold to fund cost of Administration (i.e. \$16,500)?</p>	<p><input type="checkbox"/> YES Contact Offermans Partners regarding a Voluntary Administration <i>(Please read Note H)</i></p> <p><input type="checkbox"/> NO To progress with a Voluntary Administration, a cash injection will be required. <i>(Please read Note H)</i></p>

Important Information

Note F

A Liquidator is required to investigate for and report upon any evidence of insolvent trading, preferential payments and voidable transactions. In instances where these exist and Directors have personal assets, Creditors may vote for and fund action to be taken against Directors for the recovery of funds.

In these instances and where a Director has personal assets it may be in their best financial interest to explore a Voluntary Administration and Deed of Company Arrangement.

Note G

Upon appointment of an Administrator, a moratorium is put in place giving a Company breathing space to pay Creditors. This breathing space may allow a Company to re-structure itself and/or its finances and enable a Deed of Company Arrangement with Creditors to be put in place. The outcome of this can include ongoing viability.

Note H

Creditors have the right to vote either in favour or against the continuation of a Voluntary Administration at the Second Creditors' Meeting (i.e. within 35 days of appointing an Administrator).

Creditors will only vote in favour of the continuation of Administration or a move into a Deed of Company Arrangement if they believe it will result in a better financial outcome than if the Company was placed in Liquidation which can cost less and be quicker.

For the Creditors to believe this is the case, Directors may need to inject personal cash into the Company to ensure Creditors receive a better payout under a Deed of Company Arrangement than if the Company was voted into Liquidation.

MAJOR CLIENT DEFAULTS

Unfortunately when a major client defaults, many Companies find themselves in significant financial distress.

Directors need to be cognisant of the danger of knowingly allowing the Company to trade whilst insolvent and the range of options before them.

To a greater extent the correct option will be determined by the Company’s ability to create positive cash flow from day-to-day operations and the likelihood it will be able to do so on an ongoing basis moving forward.

Options available to Directors

- a. Asset sales;
- b. Voluntary Administration; or
- c. Creditor Voluntary Liquidation.

Amounts outstanding Personal Guarantees

Questions

4a	Will the lack of this cash flow make the Company unable to pay its debts now or sometime in the future (i.e. insolvent)?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Examine options available, which may include repossession of goods or recovery of debt via debt collection agency or legal proceeding.
4b	Does the Company have any assets not crucial to Company operations that can be sold?	<input type="checkbox"/> YES Next question <input type="checkbox"/> NO Go to 4b
4c	Will the sale of none crucial assets inject enough cash flow to ensure debts can be paid as and when they fall due?	<input type="checkbox"/> YES Continue with sale and monitor cash flow. <input type="checkbox"/> NO Next question
4d	If payment of current Creditors was put on hold for a period of time, can the Company generate positive cash flows from which to fund ongoing operations and pay its Creditors?	<input type="checkbox"/> YES Next question Voluntary Administration is an option due to the moratorium on Creditors <i>(Please read Note I)</i> <input type="checkbox"/> NO Go to 4g

<p>4e Does the Company have funds to cover the minimum cost a Voluntary Administration (i.e. \$16,500)?</p>	<p><input type="checkbox"/> YES Contact Offermans Partners regarding a Voluntary Administration. <i>(Please read Note J)</i> <input type="checkbox"/> NO Next question</p>
<p>4f Does the Company have realisable assets not crucial to the Company undertaking business that could be sold to fund cost of Administration (i.e. \$16,500)?</p>	<p><input type="checkbox"/> YES Contacts Offermans Partners regarding a Voluntary Administration. <i>(Please read Note J)</i> <input type="checkbox"/> NO To progress with a Voluntary Administration, a cash injection will be required. <i>(Please read Note J)</i></p>
<p>4g Do the Directors have Personal Guarantees of more than \$16,500?</p>	<p><input type="checkbox"/> YES Next question <input type="checkbox"/> NO Creditor Voluntary Liquidation may be an option. <i>(Please read Note K)</i></p>
<p>4h Do Directors have personal funds or assets greater than \$16,500?</p>	<p><input type="checkbox"/> YES Voluntary Administration may be an option. Go to 4f. <input type="checkbox"/> NO Creditor Voluntary Liquidation may be an option. <i>(Please read Note K)</i></p>

Important Information

Note I

Upon appointment of an Administrator, a moratorium is put in place giving a Company breathing space to pay Creditors. This breathing space may allow a Company to re-structure itself and/or its finances and enable a Deed of Company Arrangement with Creditors to be put in place. The outcome of this can include ongoing viability.

Note J

Creditors have the right to vote either in favour or against the continuation of a Voluntary Administration at the Second Creditors' Meeting (i.e. within 35 days of appointing an Administrator).

Creditors will only vote in favour of the continuation of an Administration or a move into a Deed of Company Arrangement if they believe it will result in a better financial outcome than if the Company was placed in Liquidation which can cost less and be quicker.

For the Creditors to believe this is the case, Directors may need to inject personal cash into the Company to ensure Creditors receive a better payout under a Deed of Company Arrangement than if the Company was voted into Liquidation.

Note K

A Liquidator is required to investigate for and report upon any evidence of insolvent trading, preferential payments and voidable transactions. In instances where these exist and Directors have personal assets, Creditors may vote for and fund action to be taken against Directors for the recovery of funds.

In these instances and where a Director has personal assets it may be in their best financial interest to explore a Voluntary Administration and Deed of Company Arrangement.

SUMMARY OF FINANCIAL POSITION

The tables below form a summary of financial position, ascertained by completing the schedules on the following pages.

ASSETS	VALUATION \$
• Land	
• Debtors	
• Cash on hand	
• Cash at bank	
• Stock	
• Work in progress	
• Plant and equipment	
• Other assets	
TOTAL ASSETS	\$

LIABILITIES	\$
• Overdraft	
• Company Credit cards	
• ATO	
• Employees	
• Secured Creditors	
• Other Creditors	
• Workers Compensation	
TOTAL ASSETS	\$

SALES	\$
• Financial year ended 30/06/_____	
• Last three months _____ / _____ / _____	

DEBTORS

	DEBTORS LEDGER	COLLECTION	ESTIMATED REALISABLE VALUE
	\$	\$	\$
Current			
30 Days			
60 Days			
90 Days			
120+ Days			
	\$		\$
LESS FACTORED DEBTS	\$		\$
NET DEBTS	\$		\$
RELATED PARTY DEBTORS	\$		\$

CASH POSITION

Cash at bank

FINANCIAL INSTITUTION	BSB	ACCOUNT NUMBER	\$
TOTAL			\$

Cash on hand

LOCATION	\$	
TOTAL		\$

TOTAL CASH POSITION	\$
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PLANT AND EQUIPMENT

	COST VALUE	WRITTEN DOWN VALUE	VALUATION	ESTIMATED REALISABLE VALUE
	\$	\$	\$	\$
Freehold improvements				
Leasehold improvements				
Plant				
Motor vehicles				
Office equipment				
Other				
TOTAL PLANT & EQUIPMENT	\$	\$	\$	\$

OTHER ASSETS

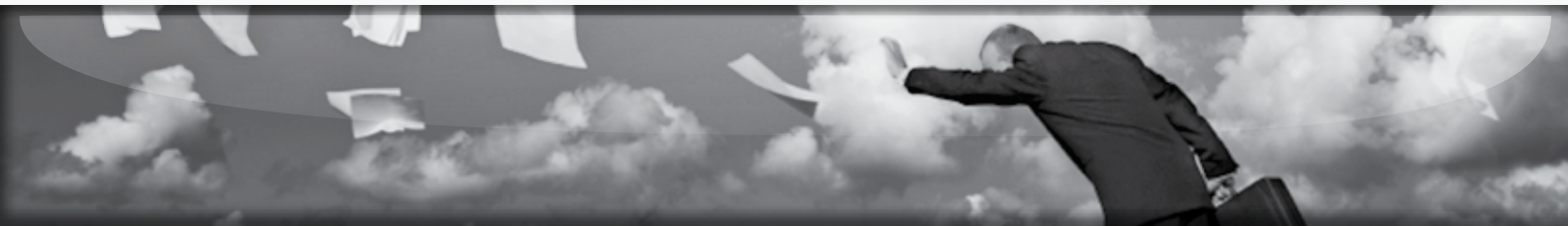
DESCRIPTION	VALUE PER ACCOUNTS	WRITTEN DOWN VALUE	VALUATION	ESTIMATED REALISABLE VALUE
	\$	\$	\$	\$
TOTAL OTHER ASSETS	\$	\$	\$	\$

ATO

\$	
Income tax outstanding	
GST outstanding	
PAYG deductions outstanding	
Child support deductions outstanding	
Payroll tax outstanding (State tax)	
Other taxes outstanding	
Plant and equipment	
Other assets	
TOTAL ASSETS	\$
WORKERS COMPENSATION OUTSTANDING	\$

EMPLOYEES

SUMMARY - OUTSTANDING		\$
Wages & salaries		
Annual leave		
Long service leave		
Redundancy		
Superannuation		
TOTAL EMPLOYEE ENTITLEMENTS	\$	



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