

# Business Advisory & Insolvency Services Guide



Many businesses are struggling to make ends meet; with the mining industry now in the production phase, consumer confidence in decline and general uncertainty surrounding the economy there may not appear to be a light at the end of the tunnel...

Our results driven Business Advisory & Insolvency team is experienced in helping directors and companies through difficult legal and financial times. We have successfully assisted a range of clients with:

- General insolvency advice
- Asset protection strategies
- Restructuring
- Payment arrangements
- Exploring alternatives to Liquidation and Bankruptcy
- Controlled descent into Liquidation or Bankruptcy
- Negotiating with creditors and other stakeholders
- Defending & settling claims by Liquidators
- Partnership/shareholder disputes
- Postponing/defending winding up court hearings
- Business sales
- Securitisation
- Introductions to second tier financiers

Murfett Legal is a full service, business orientated law firm & as such the Business Advisory & Insolvency team works closely with lawyers from other Murfett Legal teams including Tax, Property & Leasing, Litigation and Commercial.

Here are some examples of matters in which we have assisted clients, often working with our client's other business advisors (including accountants):

- Holistic approach** We take a holistic approach to all of our matters. For example, for one of our mining services clients we:
- Assessed their business & personal needs and goals;
  - Developed a strategy to achieve continuity of trade;
  - Appealed & settled a Construction Contracts Act dispute;
  - Negotiated with creditors to refrain from taking action to allow time to implement our strategy;
  - Negotiated with financial institutions & introduced our clients to financiers that were willing to lend when banks weren't;
  - Liaised with insolvency practitioners;
  - Continually reviewed & adjusted our strategy;
  - Reviewed existing contractual arrangements;
  - Assisted a director with the sale of the business, at market value, from one entity to another (including the taking-on of all accrued employee entitlements) allowing the director to continue to operate the business in the new entity, and avoiding: cessation of trade, unemployment, damages claims by contractors for unfinished works, & maximising the return to creditors;
  - Engaged in various negotiations with the Liquidator;
  - Negotiated payment arrangements on behalf of the director in respect of alleged guarantee creditors in order for the director to avoid bankruptcy; and
  - Defended claims by Liquidator including a demand for payment of a significant alleged director loan account in order for the director to avoid bankruptcy.



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<b>Asset protection</b>	We have advised a number of clients on the best trading structures to allow continuity of business & protect the family home against future insolvency events.
<b>Assisting clients to sell their business at market value to third parties or related parties to avoid cessation of business</b>	<p>Many of our clients have a potentially viable business but have encountered unfortunate circumstances. For example, a major debtor has failed to pay an account, a director or key employee has fallen seriously ill, the business has grown at an unsustainable pace, the business hasn't been proactive or reacted quickly enough to changes in the market.</p> <p>In many cases these clients are able to carry on business on a smaller scale or under a different structure with our assistance. We assist our clients to sell their business, at market value, to a third party or a related party to avoid cessation of business, with the benefit of:</p> <ul style="list-style-type: none"><li>• Continuation of employment for employees &amp; transfer of employee entitlements;</li><li>• Avoidance of major customer/client contract termination;</li><li>• Appearance of "business as usual";</li><li>• Better return for creditors than would be achieved in liquidation.</li></ul>
<b>Deconstruction and legitimisation of DIY transactions</b>	<p>We have successfully assisted numerous clients that have attempted a DIY restructure. For example, one client had transferred assets between three companies, in preparation of sale of one of the companies (that did not eventuate), and the accounts of the companies were a spider's web of intercompany credits and debits. We successfully:</p> <ul style="list-style-type: none"><li>• Determined the intention of the parties at the time of the transfer of all of the assets;</li><li>• Assisted our clients in obtaining retrospective valuations;</li><li>• Formalised the sale of assets between the companies;</li><li>• Formalised the vendor finance arrangements between the companies;</li><li>• Formally assigned debts from one company to another;</li><li>• Determined the true position of the intercompany loan accounts &amp; established that the vendor finance arrangements had been satisfied with assistance from the accountant;</li><li>• Assisted the directors to place one of the companies that had ceased trading into liquidation.</li></ul>
<b>Controlled descent</b>	There are some situations where Liquidation or Bankruptcy is inevitable. In those circumstances, we assist our clients by explaining processes & obligations, completing complicated paperwork and liaising with the Liquidator or Bankruptcy Trustee to ensure a smooth process.
<b>ATO negotiations</b>	<p>We regularly deal with the ATO to obtain:</p> <ul style="list-style-type: none"><li>• Agreement to forbear from taking further action (in one case for up to 6 months) to allow time for fund raising;</li><li>• Instalment arrangements (even in circumstances where there have been previous defaults);</li><li>• Remission of GIC and penalties;</li><li>• Release from liability on hardship grounds.</li></ul>
<b>Liquidator claims</b>	We have successfully defended and/or settled a large number of claims by Liquidators against directors including insolvent trading claims, preference claims and demands for repayment of drawing/loan accounts.
<b>Payment arrangements</b>	We have successfully negotiated numerous instalment arrangements, with the ATO and other creditors, including for one client that was able to avoid bankruptcy despite failing to lodge tax returns for 10 years, having at least one expired DPN and the ATO commencing Court action.
<b>Securitisation</b>	<p>Directors often borrow money against the family home for use in the business. We can help with:</p> <ul style="list-style-type: none"><li>• Formalising existing director loans (and in some circumstances obtain security);</li><li>• Preparing loan agreements with security provisions prior to lending funds to the business;</li><li>• Registration of security interests including by way of caveat or PPSR registration.</li></ul>

If you would like more information on any of our services, please contact us on +61 8 9388 3100 or visit our [website](#).

