# Doing Business in Australia - Restructuring & Insolvency

Levi

Insights into key aspects of Australia's restructuring and insolvency landscape

**Consultation at no cost**
Company directors and advisers are welcome to call David Levi on **+61 418 602 466** for an initial consultation that will not incur a fee. Training for advisers in relation to these and other topics can also be arranged via videoconference.
Levi Consulting services all Australian States and Territories.

## Restructuring & Insolvency in Australia

The information in this booklet provides a comprehensive guide of restructuring and insolvency in Australia. The information will assist advisors and business owners seeking an understanding of Australian law and practice in reconstruction and insolvency. David Levi is Founder and Managing Director, Levi Consulting based in Sydney Australia. David has over 30-years' experience in restructuring and insolvency in Australia.

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# 1. Restructuring & Insolvency Australia

**General**

Australia's restructuring and insolvency framework supports distressed businesses by offering clear pathways for turnaround or orderly wind-up. The system aims to preserve enterprise value, protect creditors, and provide certainty and transparency for stakeholders.

Corporate insolvency and reorganisation in Australia are primarily governed by the *Corporations Act 2001* (Cth) ("Corporations Act") which sets out procedures for liquidation, voluntary administration, receivership, small business restructuring and schemes of arrangement. The *Bankruptcy Act 1966* (Cth) applies to personal insolvency. For cross-border matters, the *Cross-Border Insolvency Act 2008* (Cth) incorporates the UNCITRAL Model Law on Cross-Border Insolvency and enables recognition of foreign proceedings.

**Legislation**

The primary legislation governing corporate insolvency is the Corporations Act, supported by the Insolvency Practice Schedule (Corporations) (Cth) ("IPS") and the Insolvency Practice Rules (Corporations) (Cth) ("IPR"). The regulator, Australian Securities and Investments Commission ("ASIC") oversees practitioner conduct, while courts can have input in some but not all complex administrations and disputes.

**Excluded Entities and Excluded Assets**

Certain entities — such as statutory bodies and government authorities — may fall outside the Corporations Act framework. Excluded assets often include PPSA secured assets, trust property, and statutory priority payments reserved for employees or the Australian Taxation Office ("ATO").

**Government-owned Enterprises**

Government-owned enterprises may operate under specialised legislation that outlines unique restructuring or dissolution processes. These frameworks often involve ministerial oversight to protect essential public services and are generally excluded from the insolvency procedures under Corporations Act.

**Protection for Large Financial Institutions**

Banks and key financial institutions benefit from crisis management and supervision powers of Australian Prudential Regulation Authority ("APRA"). These include statutory management, early intervention, and resolution strategies designed to maintain financial system stability. APRA is the regulatory body responsible for overseeing banks, credit unions, building societies, insurance companies, and superannuation (pension) funds in Australia. Its primary role is to ensure the financial safety, stability, and soundness of these institutions to protect depositors, policyholders, and fund members. APRA is like Australia's financial safety watchdog for institutions handling other people's money.

## 2. Types of Liquidation and Reorganisation Processes

**Voluntary Liquidations**

Voluntary liquidation occurs when shareholders resolve to wind up a solvent or insolvent company. In a members' voluntary liquidation, the company is solvent and aims to distribute surplus assets efficiently. In a creditors' voluntary liquidation, directors determine the business is insolvent and appoint a liquidator to realise assets and distribute funds to creditors. During liquidation, the liquidator takes control of the company and has extensive statutory powers.

**Voluntary Reorganisations**

Voluntary reorganisations — such as Voluntary Administration, Deed of Company Arrangement, Small Business Restructuring, Scheme of Arrangement or informal workouts — allow viable businesses to renegotiate creditor claims while continuing to trade. These processes preserve enterprise value and avoid the disruption of formal insolvency.

Voluntary administration ("VA") is the principal mechanism for corporate reorganisations at Part 5.3A of the Corporations Act. The debtor company can commence voluntary administration by passing board resolutions resolving that the company is insolvent or likely to become insolvent at some future time and that an administrator should be appointed. Upon the commencement of voluntary administration, the administrator takes control of the company's business and affairs, and an extensive statutory moratorium applies to court proceedings and enforcement actions against the company or its property with limited exceptions. VA is not an end. It may transition to a Deed of Company Arrangement ("DOCA"), winding-up (liquidation) or end of the process with control returned to the directors. VA followed by DOCA is very efficient method of restructure.

Separately, the Small Business Restructuring ("SBR") process under Part 5.3B of the Corporations Act 2001 may be used by eligible companies with total liabilities under AUS $1 million. It follows a debtor-in-possession model that allows directors to maintain control of the company.

Alternatively, a company may propose a scheme of arrangement under Part 5.1 of the Corporations Act 2001 which does not require insolvency as a precondition. Schemes of arrangement provide a mechanism to bind all creditors, or all creditors in a particular class, to a 'compromise or arrangement'. Creditors for this purpose are those who would have a provable debt or claim if the company went into liquidation. A scheme does not have to include all creditors and may leave out a class of creditors who would receive no value in a liquidation. A scheme requires approval from 75 per cent in value and 50 per cent in number of each class of affected creditors and court approval. The company retains control during the process. Upon successful implementation of the scheme, the company usually returns to its normal state as a going concern with the relevant compromises or arrangements taking effect.

**Successful Reorganisations**
A reorganisation is considered successful when creditors approve a restructuring plan in a VA or SBR or Scheme of Company Arrangement, the business stabilises, and the company continues as a going concern. Success typically arises where directors act early, financial forecasts are credible, and stakeholder communication is well managed.

**Involuntary Liquidations**
Involuntary liquidation begins with a court order — usually following a creditor's application. It involves the appointment of a liquidator by the Court who takes control, investigates affairs, realises assets, and distributes proceeds according to statutory priorities. There are no material differences between court-ordered and creditors voluntary liquidation once commenced.

**Involuntary Reorganisations**
In Australia, involuntary reorganisations may occur through receivership, creditor or liquidator-initiated voluntary administration or a creditor-initiated scheme of arrangement. A company can be in both receivership and voluntary administration – they can co-exist.

A secured creditor may appoint a receiver under a security agreement once default occurs, and the security becomes enforceable. The receiver acts as agent of the company and must take reasonable care to sell assets for market value or the best price reasonably obtainable. The receiver manages or sells secured assets and distributes proceeds to the secured creditor, with surplus, if any, returned to the company.

A secured creditor with security over all or substantially all the company's property may also appoint a voluntary administrator. Upon appointment of a voluntary administrator, a moratorium restricts creditor enforcement actions. Creditors vote at the second creditors' meeting to proceed with a DOCA, end the administration or wind up (liquidate) the company.

Schemes of arrangement may also be initiated by creditors under section 411(1) of the Corporations Act 2001, but this is rare. If approved by 75 per cent in value and a majority in number of each affected class and sanctioned by the court, the scheme binds all creditors in those classes.

**Expedited Reorganisations for small businesses**
The SBR process provides an accelerated restructuring pathway for small businesses, featuring low cost, minimal disruption, and director control. It is designed for companies with liabilities under AUS $1 million and offers a rapid 20-business-day proposal period.

There is no express legislative framework in Australia for prepackaged reorganisations akin to the United Kingdom's 'pre-pack pool' or the United States' Chapter 11 pre-pack. However, pre-packs (either exchange without settlement before appointment; or exchange and settlement pre-appointment) do occur at fair value and best supported by advice from insolvency specialist lawyers. Under certain circumstances, an administrator or receiver can give effect to those sale transactions by settling a transaction that has been negotiated to near completion before their appointment.

Voluntary administration enables distressed companies to pursue an expedited reorganisation without court approval. An administrator has broad powers to manage the company's affairs and to dispose of tangible and intangible assets, provided that the transaction aligns with the objectives of Part 5.3A of the Corporations Act namely to maximise the chances of the company continuing in existence or if that is not possible, to result in a better return for creditors than liquidation. Administrators may execute transactions negotiated pre-appointment, but only after appointment and with regard to their fiduciary duties and investigation obligations. The entire reorganisation process in a VA can be as little as 20-30 business days.

Receivers also hold power to dispose of company property, which can be used to implement a prepackaged reorganisation. Receivers must take reasonable care to sell at market value or best price reasonably obtainable.

**Unsuccessful Reorganisations**

A reorganisation fails when creditors reject the proposal or the business can no longer trade. In these cases, the company typically transitions to liquidation, where assets are realised and investigations proceed. Part 5.7B Corporations Act is activated in a liquidation. Part 5.7B deals with insolvent trading and director personal liability, uncommercial transactions, preferences and disposition of property. VA to DOCA will avoid activation of Part 5.7B.

**Corporate Procedures**

Corporate procedures in insolvency include creditor meetings, reporting obligations, investigations, recoveries, adjudication of claims, and distribution of dividends. Practitioners must comply with statutory duties and maintain transparency throughout.

## 3. Insolvency Tests and Filing Requirements

**Conditions for Insolvency**

A company is insolvent when it cannot pay its debts as and when they fall due. The assessment considers cash flow, access to finance, overdue debts, repayment arrangements, and the company's overall financial position. Courts apply the cash-flow test, supported by balance-sheet indicators where relevant.

Section 95A of the Corporations Act provides that a company is solvent if it can pay all its debts as and when they become due and payable. Further, section 95A provides that a company that is not solvent is insolvent.

The definition focuses on a 'cash flow test' of insolvency, and not simply a 'balance sheet test'. However, a company's balance sheet remains relevant, because the cash flow position must be assessed by reference to the company's financial position. Insolvency is a question of fact to be ascertained from a consideration of the company's financial position taken as a whole and taking into consideration commercial realities.

Consistent with the definitions contained in section 95A, the courts have held that solvency is a question of fact, assessed based on the company's liquidity, ability to borrow and realisability of assets (*ASIC v Plymin* [2003] VSC 123). While balance sheets may assist in evaluating solvency, courts have cautioned that they are not determinative.

**Mandatory Filing**

Australia does not impose strict mandatory filing for insolvent companies. However, directors must avoid insolvent trading and are expected to act promptly when facing financial distress. Failure to enter an appropriate process — such as voluntary administration, liquidation, or SBR — can expose directors to personal liability.

Directors have a duty to prevent the company from incurring debts when the company is insolvent or becomes insolvent by incurring this debt, and there are reasonable grounds to suspect so, and the director is aware, or a reasonable person in such a position would be aware of such grounds. Breach of this duty may expose directors to personal liability for insolvent trading.

To mitigate this risk, directors may appoint a voluntary administrator if they consider that the company is insolvent or likely to become insolvent. Commencing voluntary administration provides temporary protection from creditor claims to enable a voluntary administrator and creditors to consider the future of the company.

Alternatively, directors may defer appointment of a voluntary administrator and access safe harbour protection by developing a course of action reasonably likely to lead to a better outcome than liquidation. Safe harbour is a defence to insolvent trading if a company does ultimately enter liquidation.

# 4. Directors and Officers

**Directors' Liability**

- **Failure to Commence Proceedings and Trading While Insolvent**
  - Directors may be personally liable if they allow the company to continue trading while insolvent.
  - The Corporations Act imposes obligations to prevent insolvent trading and requires directors to act promptly once insolvency becomes apparent.
- **Other Sources of Liability**
  - Directors can also be liable for breaches of duties including misrepresentation, failure to keep proper financial records, failure to pay employee entitlements, environmental compliance breaches, and contraventions of statutory obligations.
- **Defences**
  - Defences include relying on competent advice, demonstrating that all reasonable steps were taken to avoid insolvency, and use of safe harbour provisions, which protect directors undertaking a restructuring plan in good faith.
  - A director may avoid liability for insolvent trading under section 588G of the Corporations Act if one of the statutory defences in section 588H applies:
    - (i) Reasonable expectation of solvency. The director had reasonable grounds to expect, and did expect, that the company was solvent at the time the debt was incurred and would remain solvent.
    - (ii) Illness or good reason. The director did not take part in management due to illness or other proper cause. However, if another person acted as a de-facto director, then that person instead may be liable.
    - (iii) Reasonable reliance. The director reasonably relied on a competent person to provide information about the company's solvency.
    - (iv) All reasonable steps taken. The director took all reasonable steps to prevent the debt being incurred, including efforts to appoint a voluntary administrator or small business restructuring practitioner.
  - In addition a director may avoid liability for insolvent trading under section 588G of the Corporations Act using safe harbour protection available under section 588GA of the Corporations Act (subject to meeting pre-conditions where, after suspecting insolvency, the company formally enters into safe harbour and a director begins developing a course of action reasonably likely to lead to a better outcome for the company than immediate liquidation, and the debts are incurred directly or indirectly in connection with that course of action. Pre-conditions include payment of employee entitlements, lodgement of tax returns and maintaining proper records.
  - Directors bear the evidential burden for establishing any of the above defences. These defences do not function as a shield against liability for other breaches such as failure to act with care and diligence or improper use of position.

**Shift in Directors' Duties**

Upon insolvency or when insolvency is suspected, directors' duties shift from shareholders to creditors. Directors must prioritise creditors' interests and take actions to maximise recoveries for all stakeholders. When a company is insolvent or nearing insolvency, directors must consider the interests of creditors as part of their overarching duty to act in good faith in the best interest of the company.

**Directors' Powers After Proceedings Commence**

Once proceedings such as administration or liquidation commence, directors' powers are generally suspended. Control is transferred to the administrator or liquidator who manages the company, investigate affairs, and make distributions if funds are available.

# 5. Matters Arising in a Liquidation or Reorganisation

**Stays of Proceedings and Moratoria**

Upon entering administration or liquidation, courts may impose stays or moratoria to prevent enforcement action against the company. This preserves assets and gives the administrator control to assess and restructure or distribute the estate.

All unsecured claims are stayed in liquidation and voluntary administration (subject to conditions) and subject to court approval being obtained to continue the claim. Such leave is not lightly granted.

While secured claims may generally be enforced in a liquidation, they are subject to limitations in a voluntary administration where secured creditors are generally prohibited from enforcing their securities unless (i) they hold security over all, or substantially all, of the company's assets and enforce their security (usually by appointing a receiver) within 13 business days of the commencement of the administration; (ii) enforcement of their security had already begun before the administration; (iii) the approval of the court or the administrator is obtained; or (iv) the security interest is over perishable property.

Courts can also limit the powers of secured creditors, provided that their interests are adequately protected, except for secured creditors with security over the whole or substantially the whole of the company's property.

Further, while voluntary administration is on foot

- (i) An application for an order to wind up the company may be adjourned if the court is satisfied that it is in the interests of the creditors to continue administration;
- (ii) Owners and lessors generally cannot repossess property used by the company unless they have the consent of the voluntary administrator or leave of the court, or if they have taken steps to recover the property prior to the voluntary administration, or if the property is perishable. The court can also limit the powers of owners and lessors provided that their interests are adequately protected, though the voluntary administrator may be personally liable for rent unless they give notice within five business days or the time frame extended by the court that the company does not intend to use the property;
- (iii) Inventory subject to retention of title interests also generally cannot be repossessed, and may be sold by the debtor in the ordinary course of business, or with the consent of the owners, or with the leave of the court, though the creditor is entitled to be preferentially paid out of the sale proceeds;
- (iv) Claims cannot be brought against directors or their relatives pursuant to personal guarantees, though this does not prevent the continuation of claims commenced before the administration or after the administration period ends;
- (v) Ipso facto provisions in contracts are not enforceable unless the court lifts the stay if it is satisfied that this is appropriate in the interests of justice

In practice, unsecured creditors usually accept the stay that follows from an insolvency appointment, as they may simply lodge their claim with the appointed external administrator without the need for further legal process.

During a receivership, there is no general moratorium, except on the enforcement of ipso facto provisions.

**Doing Business**

During administration, the company may continue trading under the direction of the administrator if it enhances the estate's value. Trade decisions are closely monitored to minimise risk and maximise returns for creditors.

**Post-filing Credit**

Credit extended after proceedings commence is protected if approved in advance in writing by the administrator or liquidator.

**Sale of Assets**

Administrators and liquidators may sell assets to realise value. Sales can be by public auction, tender, or private negotiation, always with a duty to maximise returns for creditors. An administrator or liquidator cannot dispose of encumbered property except with the relevant party’s consent, leave of the court, or if the disposal is in the ordinary course of business and the administrator or liquidator is prepared to pay for the goods and services, or a negotiated amount.

**Negotiating Sale of Assets**

Sale negotiations must be conducted transparently with disclosure to creditors and adherence to statutory duties. Strategic marketing and valuation are key to achieving best outcomes.

**Rejection and Disclaimer of Contracts**

Administrators and liquidators can disclaim onerous contracts, leases, or agreements to reduce liabilities and avoid losses, subject to court approval where necessary.

**Intellectual Property Assets**

IP assets, including patents, trademarks, and copyrights, are treated as estate property. Administrators can sell, licence, or assign these assets to realise value for creditors.

**Personal Data**

Data protection laws continue to apply. Administrators must manage personal data carefully when selling business units or databases to comply with privacy legislation.

**Arbitration Processes**

Ongoing arbitration may be stayed, or the estate may participate if it benefits creditors. Practitioners review potential claims and determine whether to continue, settle, or withdraw proceedings.

## 6. Creditor Remedies

**Creditors' Enforcement**

Creditors may enforce claims through statutory mechanisms or court proceedings. Secured creditors have priority enforcement rights, while unsecured creditors rely on distributions from the estate. Enforcement is subject to stays imposed during administration or liquidation.

**Unsecured Creditors**

Unsecured creditors are typically ranked after secured and employee-related priority claims. They must prove their claims to participate in distributions. The outcome depends on the available realisations and statutory priorities.

# 7. Creditor Involvement and Proving Claims

**Creditor Participation**

Creditors participate through meetings, votes on restructuring plans, and consultations with administrators. Active engagement ensures their interests are represented and can influence the outcome of reorganisations.

In voluntary administration

- (i) the administrator must lodge a notice of their appointment before the end of the next business day after appointment and publish notice of their appointment within three business days;
- (ii) the administrator must convene the first creditors' meeting where creditors vote on whether to appoint a committee of inspection within eight business days after the administration begins and is required to give written notice to as many creditors as reasonably practical at least five business days before the meeting. The administrator is also required to publish notice with the prescribed details and initial information in accordance with rule 70-30 and rule 70-35 of the Insolvency Practice Rules (Corporations) 2016;
- (iii) the administrator must convene a second creditors' meeting where creditors vote to determine the future of the company within a period as specified under section 439A of the Corporations Act or as extended by court order. Notice of the meeting must be accompanied by a detailed report setting out the administrator's opinions and reasons on a range of matters necessary to inform the creditors and enable them to make an informed decision along with the details of a deed of company arrangement (DOCA) if one is proposed;
- (iv) as well as these two statutory mandated meetings, the administrator can convene a meeting at any time. Creditors do not have the power to require the administrator to convene a meeting but have the power to request information from the administrator. Reports about remuneration must also be given before remuneration determinations are made. Creditors of a company in voluntary administration or liquidation have a right to request information.

In liquidation, a liquidator must

- (i) within 20 business days after the liquidator is appointed in a court-ordered winding-up or 10 business days in voluntary winding-up after the meeting at which the resolution for voluntary winding-up is passed: written notice of their appointment, an initial remuneration statement and information about creditors' rights, including the right to request information, appoint a reviewing liquidator, give directions and replace the liquidator;
- (ii) within three months after the date of appointment a report on the estimated assets and liabilities, inquiries undertaken or planned, the company's business affairs, the likelihood of dividends to creditors and any potential recovery actions; and reports about remuneration before remuneration determinations are made and such further reports as the liquidator considers appropriate, or that are reasonably requested by creditors.

In receivership. a receiver must lodge reports with ASIC and notify ASIC when the receivership ends.

**Creditor Representation**
Creditors may be represented by solicitors or appointed committee of inspection to coordinate actions, negotiate with an administrator, liquidator and review claims, ensuring collective interests are effectively managed.

**Enforcement of Estate's Rights**
Administrators and liquidators can enforce the company's rights, recover assets, challenge voidable transactions, and pursue legal action against directors or third parties to maximise returns. Creditors or a litigation funder may fund a liquidator or administrator and receive priority payment under Corporations Act section 564.

**Claims**
Creditors must lodge claims (including claims for contingent or unliquidated amounts) detailing amounts owed, supporting documentation, and priority classification. Claims are verified by the practitioner before distribution.

**Set Off and Netting**
In a liquidation, mutual debts between the company and creditors may be set off reducing the amount payable if there was no notice or knowledge of insolvency at the relevant time. (Corporations Act section 553C(1). Somewhat similar applies in voluntary administration.

**Modifying Creditors' Rights**
Reorganisation plans can modify creditor rights, subject to approval. This may include deferral, partial repayment, or conversion of claims to equity. For a DOCA the court has power to vary or invalidate terms of a DOCA (Corporations Act section 445G, 447A)

**Priority Claims**
Certain claims, such as employee entitlements, and secured creditors' claims rank higher in distribution and are paid before general unsecured claims.

**Employment-related Liabilities**
Administrators are required to pay employee entitlements such as wages, leave, and redundancy where funds permit. These liabilities are given statutory priority in voluntary administration and privately initiated receivership, contracts of employment continue unless terminated (Corporations Act section 437A, 420)

**Environmental Problems and Liabilities**

Environmental liabilities, including contamination or non-compliance penalties, can survive insolvency. Companies and liquidators must account for these obligations when restructuring or liquidating assets.

**Liabilities That Survive Insolvency or Reorganisation Proceedings**

Certain liabilities, such as fraud, fines, or criminal penalties, remain enforceable against directors or the company despite restructuring or liquidation.

**Distributions**

The liquidator or administrator makes distributions according to statutory priorities and verified claims. Regular reporting to creditors ensures transparency.

## 8. Security

**Secured Lending and Credit (Immovables)**
Security over real property (mortgages) is recognised and enforced under Australian law. In insolvency, secured creditors usually have priority over general unsecured creditors, often taking control of or selling the property to satisfy their claims.

**Secured Lending and Credit (Movables)**
Security over movable assets, including equipment or inventory, is typically registered under the Personal Property Securities Register (PPSR). Registration preserves priority rights and enables enforcement in insolvency.

# 9. Clawback and Related-Party Transactions

**Transactions That May Be Annulled**

Insolvency law allows voiding certain transactions prior to liquidation, including unfair preferences, uncommercial transactions, and transfers to related parties that disadvantage creditors.

Certain transactions are automatically void. One example is circulating security interests created within six months ending on the relation-back day without securing new money. Another example is security interests granted to officers or associated persons who seek to enforce them without the leave of the court within six months of the security being granted.

The following transactions are voidable and may be set aside by court orders upon application of the liquidator under section 588FF of the Corporations Act.

- Unfair preferences: where an unsecured creditor receives more than they would in a winding-up.
- Uncommercial transactions: where a reasonable person in the company's position would not have entered such a transaction considering the benefits and detriments to the company and other parties.
- Unfair loans: where the interest or charges of the loan to the company are extortionate.
- Unreasonable director-related transactions: where a director or their close associate or someone on their behalf benefits and a reasonable person in the company's circumstances would not have entered such transaction.
- Creditor-defeating dispositions: where the consideration was below market value or the best price reasonably obtainable with the effect of preventing or delaying property from becoming available to creditors.
- Unfair preferences and uncommercial transactions: these must be insolvent transactions to be voidable, which requires proof of insolvency.

Section 588FE of the Corporations Act specifies the period within which the above transactions must have occurred to be voidable by reference to a period prior to the relation-back day. A liquidator may apply to the court under section 588FF for orders in relation to transactions that are voidable under section 588FE. There are defences available under section 588FG, the application of which depends on the type of transaction. If the court is satisfied that a transaction is voidable, it may order repayment of money, return of property, compensation for benefits received or declare contractual terms void, varied or unenforceable.

**Equitable Subordination**

Courts may subordinate the claims of certain creditors if they have engaged in inequitable conduct, ensuring fairness among remaining creditors.

**Lender Liability**

Lenders may be liable if they engaged in misconduct, acted in bad faith, or improperly influenced company decisions prior to insolvency or exercised significant control over the company's affairs and are found to be a de-facto director or shadow director.

# 10. Groups of Companies

**Combining Parent and Subsidiary Proceedings**
Where a corporate group faces distress, separate entities' proceedings may be coordinated to maximise recoveries and streamline administration. Courts may consolidate matters or allow cross-company set-offs where appropriate.

A parent or affiliated company is not ordinarily responsible for the liabilities of its subsidiaries as they are separate legal entities, subject to general principles such as the law of torts. A parent or affiliated corporation may be a shadow director of its subsidiaries or affiliates if it has such extensive control over them that its instructions are consistently followed, with no room for free will or discretion to depart. If such a high evidential burden is satisfied, the parent or affiliated company may also be held responsible for breach of relevant directors' duties.

Under section 588V of the Corporations Act a holding company may be liable for insolvent trading if a subsidiary incurs a debt while insolvent or becomes insolvent because of incurring such debt, and the holding company knew or should have known of the insolvency risk.

Under section 588W of the Corporations Act a liquidator may recover compensation from the holding company for loss suffered by unsecured creditors because of breach of section 588V. Upon application of the liquidator, the court may order that related companies in liquidation be treated as a pooled group for the purposes of asset distribution, if statutory requirements under section 579E of the Corporations Act 2001 are met, including joint liabilities or shared operations or ownership, if it is just and equitable, and that such order would not cause material disadvantage. If a pooling order is made, each company becomes jointly and severally liable for the debts of the others, and intercompany debts and claims are extinguished. Liquidators also have the power to voluntarily make pooling determinations. Creditors are then treated as if claiming against a single economic group. Although the Corporations Act does not provide for pooling in voluntary administration, a pooled deed of company arrangement (DOCA) is permissible if it complies with statutory requirements and is approved by creditors.

## 11. International Cases

**Recognition of Foreign Judgments**
Australian courts may recognise foreign insolvency judgments under principles of comity and applicable treaties, allowing enforcement of claims across borders.

**UNCITRAL Model Laws**
Australia's adoption of the UNCITRAL Model Law on Cross-Border Insolvency facilitates cooperation between domestic and foreign courts and administrators in multinational restructurings. Cross-border insolvencies are supported by UNCITRAL Model Law and recognition of foreign judgments.

**Foreign Creditors**
Foreign creditors may submit claims and participate in proceedings in Australia, subject to registration and recognition rules.

**Cross-Border Cooperation**
Protocols exist for joint hearings, information sharing, and coordinated administration to protect creditor rights in multi-jurisdictional insolvencies.

**Winding-Up of Foreign Companies**
Foreign companies with Australian operations may be wound up in Australia to realise assets within the jurisdiction, often in coordination with home-country proceedings.

# 12. Support from Levi Consulting

As always, we remain available for discussion virtually or face-to-face. Reach out to David Levi at +61 418 602 466 for a confidential conversation about your unique circumstances.

| | Option | When is it suitable? |
|---|---|---|
| 1 | Informal Workout | Whenever informal solutions with creditors are feasible. |
| 2 | Members' Voluntary Liquidation, alternatively, corporate simplification | Solvent deregistration of a company that had trading activity. |
| 3 | Voluntary Deregistration | Solvent deregistration of a company with no or limited trading activity (e.g. a holding company or dormant company). |
| 4 | Voluntary Administration | Key mechanism for businesses in financial distress to explore restructuring or sale options while under the protection of a moratorium. |
| 5 | Safe Harbour | A support tool for enabling directors of a distressed company to continue to trade while working on an informal workout or planning for a formal solvency. |
| 6 | Deed of Company Arrangement (DOCA) following Voluntary Administration | A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts. |
| 7 | Creditors' Scheme of Arrangement | Another flexible formal insolvency restructuring tool - more cumbersome to implement than a DOCA, but with the advantage of being able to bind secured creditors. Ideally suited to financial restructuring of large/complex debt stacks. |
| 8 | Small Business Restructuring Plan | For small and micro businesses (less than $1,000,000 in total debts) - a quick and straightforward alternative to a DOCA. |
| 9 | Creditors' Voluntary Liquidation | Best suited to a terminal liquidation of a failed/insolvent company - where an attempt at restructuring through administration and DOCA would be unlikely to work. |
| 10 | Court Liquidation | Effective in instances of shareholder/management failure (e.g. in a failed or dysfunctional joint venture). Also commonly used by creditors to attempt to force an involuntary liquidation on a debtor company that has failed to pay its debts. |
| 11 | Receivership | A receiver is appointed by the court or alternatively by a secured creditor to take control of all or part of the assets and business of a company or partnership. Court-appointed receivers are common for partnership disputes. |
| 12 | Section 66G | When co-owners are in a dispute over jointly owned property the court can appoint trustees using s 66G of the *Conveyancing Act 1919* (NSW) to sell the property and distribute the proceeds. |

**Consultation at no cost**
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Levi Consulting services all Australian States and Territories.