



## MYTH BUSTERS

In this month's newsletter will be dedicated to busting a number of myths that are associated with insolvency.

**1. Administrators/Liquidators/Trustees in Bankruptcy are hard to deal with?**

FALSE. I guess it is like all industries, some bad apples spoil the broth. You will find most of us are very approachable and have a commercial mind set when making decisions, which is something you should keep in mind.

**2. If you go bankrupt you loose everything?**

FALSE. That may have occurred 15 years ago but not today. The Bankruptcy Act, 2001 has been amended to enable bankrupts to utilise the system to ensure that they still have quality of life.

A bankrupt is entitled to earn income of \$38,510.50 net of tax, if they have no dependents and up to \$52,374.28 net of tax, if they have over 4 dependents.

**3. Directors become personally liable for the company's tax debt when it is placed into liquidation?**

FALSE. This may have once been the case but no longer. Having said that the tax office have the ability to issue directors penalty notice (222AOE), which we have written about previously. These notices provide directors with 14 days within which to:-

1. Pay the debt in full;
2. Appoint a voluntary administrator;
3. Place the company into liquidation; or
4. Enter into a repayment plan.

The problems with the last 2 options is that the liquidation option is not really available as it takes at least 10 days to place a

company into liquidation which means that the directors must act immediately or they will run out of time. While entering into a repayment plan may sound like a good idea initially, however if the company is unable to fulfil the terms of the repayment plan and defaults after the 14 day period has lapsed, the directors will automatically become personally liable.

**4. If I move the assets of my insolvent company to another company and start up again and a liquidator is appointed to my original entity, no action will be taken by the liquidator as there are no assets left to fund the liquidation?**

FALSE. The Australian Securities and Investments Commission are now looking very closely at all suspect phoenix entities. In the last 12 months, the task force has prosecuted 40 directors.

In addition, ASIC have also set up the Assetless Administration Fund to cover the costs of liquidators in conducting an investigation, where certain companies do not have any assets or limited funds.

**5. A landlord can lock out a tenant that enters into voluntary administration?**

FALSE. The Corporations Act, 2001 prevents a landlord from locking the company and administrator out of the premises without the written consent of the Administrator.

**6. Voluntary Administration = Liquidation?**

This is commonly, thought true however this is also FALSE. A voluntary administration is there to enable a company to either trade out of its predicament or to provide directors with a vehicle to do a deal with its creditors, which has the ability to benefit all stakeholders.



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