

LEGAL CLAIMS THAT COULD LEAD TO RECOVERIES INTO THE LIQUIDATION

The tph Difference

Quite often a Liquidator must decide whether to commence a legal action to recover funds for creditors in the Liquidation. The variety of legal claims is wide, and directors can alert the prospective Liquidator to the issues even before the Liquidation commences. At **tph** each legal claim is independently considered before a decision to continue any legal action is made.

Considerations include:

- 1 What is the legal merit of the case (ie is there a legal claim and is the evidence sufficient to run the claim?)
- 2 Are there sufficient funds to obtain a legal advice?
- 3 Are there sufficient funds in the 'kitty' available for such an action and do creditors want the Liquidator to utilise those funds?
- 4 Does the target party have the means to pay any judgement amount?
- 5 Can litigation funding be sourced?
- 6 Can the claim be sold/assigned for a fee?
- 7 Will creditors indemnify the Liquidator if there are insufficient available funds to commence the action?
- 8 Will an indemnifying party indemnify the liquidator against an adverse costs order?

Once the matrix of issues has been answered, a decision is made.

At **tph** we do not attempt litigation lightly. It is expensive and always takes longer than anticipated and the prospects of success are never guaranteed. If however there is enough support (i.e. several criteria are met) then **tph** will undertake litigation where necessary or where all other logical approaches have or would fail to recover funds.

Common Alternative Approaches adopted by Insolvency Firms

Because the role of a Liquidator is to recover funds and distribute to competing interested parties, Liquidators commonly confront legal issues that may only be completely solved by litigating. The approaches by insolvency practitioners vary considerably, however many of the criteria used by **tph** would be upper most in the minds of practitioners.

That said, many practitioners see commencing litigation (even if there is no desire to run the entire case) as a way to secure/ compromise offers which are capable of acceptance. The 'risk' appetite for litigation varies from practitioner to practitioner and before engaging or appointing a practitioner a due diligence enquiry should be directed at the policy of the practitioner towards litigation.

That is, ask the practitioner the process he/she adopts before commencing litigation. If the answer is hard to follow or seems like it is a case by case proposition, then that would not provide satisfactory guidance as to how that liquidator will approach any legal matters that may arise.

With voluntary liquidations and voluntary administrations, the only real influence a director has is in the choice of insolvency practitioner. Therefore, the director should avail him/herself to the manner in which the prospective registered liquidator will approach the role.

Questions as to the approach to litigation should be raised prior to appointing a liquidator.



The tph Smart Solution

Appointing an insolvency firm to perform a voluntary administration or liquidation by a director is one of the last points of influence in the process. Therefore, this is a big decision and should not be taken lightly. **tph** is open and transparent, removing unforeseen surprises working to achieve the best outcomes for all parties. Insolvency firms offering their services should answer specific questions from directors about how they will run a Voluntary Administration or Liquidation concisely. Legal claims that could lead to litigation are among the many questions a director must ask to understand how an insolvency firm will respond. **tph** applies the eight steps to ensure the considerations are satisfied before moving forward with litigation.

