SMART INSOLVENCY SOLUTIONS

UNCOMMERCIAL TRANSACTIONS SUCH AS PREFERENCES OR DISPOSITIONS CONCERNING DIRECTORS

The tph Difference

Directors sometimes enter into transactions in a time period before a company is placed into Liquidation. These transactions need to be reviewed by a Liquidator under the law to see if they should be reversed, or a claim made to compensate the company as the transaction may provide an unfair outcome to the directors over creditors.

tph reviews all transactions and identifies any that may fit that category. But again, the **tph** approach is commercially and legally pragmatic so unless stakeholders (usually creditors) want the Liquidator to spend money on recovering these types of transactions, or the transaction would be something a litigation funder would support, **tph** will report them to creditors but only commence the action if sufficient funds/ coverage is available for cost orders in the event of losing, or if third party creditors are fully behind the action.

That sends a message to **tph** and how we deal with the claims. It's not absolutely conclusive that the action won't be taken, however it weighs heavily on our decision. We don't take legal actions simply for the sake of securing our remuneration (as an example).

Where a claim may exist against the directors, we are obliged at the very least to report it to ASIC and we will look to see if an action is feasible and that it is in the best interests of creditors. However, an action is not commenced unless it is commercially justifiable to do so.

Common Alternative Approaches adopted by Insolvency Firms

This area of insolvency and its treatment is widely interpreted by variety of practitioners. The pragmatic view of **tph** is sometimes adopted, however many practitioners will look at pursuing potential claims based more on a speculative basis than on a pragmatic basis.

There is certain criticism levelled at insolvency practitioners on the basis that it would appear claims that may be difficult to substantiate are made in any event in the hope that some funds may be recovered without litigation actually taking place and even if litigation is commenced then there might be some view that the litigation can be won by the Liquidator and recoveries would follow.

When this approach is adopted, in many instances it gives rise to a criticism which is levelled at insolvency practitioners whereby the recovery action does not benefit creditors but in many instances simply meets the costs of the liquidator. Clearly, sometimes it will look like that is the primary motivation, however unless you are in the shoes of the particular practitioner it is difficult to follow through on the accusation as there are other factors that need to be taken into account.

The tph Smart Solution

tph upholds high standards, our approach is to review all transactions, and evaluate their commercial criteria and work in accordance with the law. This ensures the correct procedures are followed whilst adopting a pragmatic view, unless the stakeholders (usually creditors) want the liquidator to recover these types of transactions by using the available options.

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