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Getting your mining services business back on track

A turnaround and insolvency prevention guide for CEOs, directors and board members of Australian mining services and associated businesses.

RAPSEYGRIFFITHS
TURNAROUND + ADVISORY

Contents

This e-book is designed to help CEOs, directors and board members of Australian mining services and associated businesses.

WE ARE RAPSEY GRIFFITHS.

We're not your average insolvency firm. We're experts in business turnaround, crisis management, unmanageable debt and solving complex financial problems - and work collaboratively with you.

EXPERIENCE & AUTHORITY TO ACT

Founded in 2013 by Chad Rapsey and Mitch Griffiths, we're experts in developing strategies to help companies and individuals recover from financial distress. We provide our clients with honest and transparent assessments of their situation, clearly outlining their options and associated implications.

We've helped businesses across Australia and are committed to 'turning around' organisations and making them profitable again. If turnaround isn't possible, we act positively to implement strategies to minimise losses to all stakeholders.

Our team has extensive experience across all areas of business turnaround, including insolvency administration, liquidations, voluntary administrations, receiverships and bankruptcy. As registered liquidators and registered trustees in bankruptcy, we have the expertise and authority to act.

We do things differently

- ✓ Collaborative
- ✓ Solution-minded
- ✓ Cost-conscious
- ✓ Flexible
- ✓ Digitally connected

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1300 727 739

INTRODUCTION

Though resilience is high, the mining industry's cyclical nature can make it financially challenging. Whether you're operating on or off-site, downturn can be a reality, especially in this post-COVID-19 world. The good news is, if you do hit shaky ground, it's usually possible to turn things around – provided you act fast.

Some of the ongoing financial challenges for mining companies and associated businesses in Australia include commodity and price risk, slow payment terms, difficulty accessing much-needed capital, and high competition resulting in fewer jobs won or stricter budgets.

Current trends also having an impact include a scaling back of expenditure and expansion, less demand for contract mining services, long-term contract caution, increasing consolidations, and rising concern over environmental issues that may limit industry growth.

If you're a director of a mining company and find yourself in financial freefall but continue to trade, you open yourself to Australia's wide and far-reaching insolvent trading laws. It's a situation you don't want to find yourself in and one that can be avoided.

In this e-book, we drill into the challenges Australian mining companies face and offer our expert guidance on how you can turn things around if your business is in financial trouble. We also cover the worst-case scenario – insolvency – looking at both your legal obligations and formal appointments.

Industry outlook
Overall, mining industry revenue declined 4.8 per cent between 2016 and 2021. While the Australian mining sector was quick to respond to COVID-19, the outbreak weighed heavily on commodity prices, such as coal, oil and gas, disrupting the industry. However, as things stabilise, revenue is expected to rise by 3.7 per cent between now and 2026.*

*IBISWorld 2020 Report: Contract Mining Services in Australia

637

metals and mining companies listed on the Australian stock exchange.

81

insolvencies in the mining industry nationwide between 2019-2020.

CHAPTER 1
MANAGING THE RISKS

Running a mining company isn't easy. A big part of the problem is the volatile, competitive nature of this mature industry. Success depends on how well you manage your business and cash flow – and your ability to curb the risks.

TOP FINANCIAL CHALLENGES FOR MINING COMPANIES

- **Changes in commodity demand** – Rises and falls in market demand for mined materials, such as coal, iron ore, oil and gas, can significantly affect a company's ability to generate profit. If the commodity you support isn't in demand, revenues will most certainly decrease.
- **Changes in contractor demand** – When there's a decrease in capital expenditure, larger mining companies go in-house, reducing contract opportunities.
- **Commodity price risk** – Financial stability can be adversely affected by fluctuations in the price of commodities. When coal, iron ore and metal prices crash, mining companies that depend on them can fall.
- **Slow payment terms** – Mining companies typically have to wait 30-90 days for invoice payment. This can be disruptive when paying overheads, such as quarterly costs, and can significantly impact cash flow.
- **Access to capital (including liquidity)** – Substantial working capital is often required to replace equipment and maintain operations. However, it can be difficult to borrow money from traditional banks or financial institutions. This is because mining companies, particularly smaller firms, are seen as a credit risk. They're also increasingly seen as a social and environmental risk.
- **Exchange rate variations** – Mining companies that operate in overseas markets are faced with the possibility of losing money due to unfavourable moves in exchange rates, notably in US versus Australian dollars.
- **Small numbers of large customers** – Common in this industry, having few large clients has a disproportionate effect on cash flow. If the larger companies cut back or fall into trouble, this can have a knock-on effect.
- **Tough industry competition** – With lots of companies competing for a small number of contacts, costs get cut to win the job despite additional resource costs. This can lead to decreased profit margins.

THE RISK OF SUPPLIER INSOLVENCY
The financial failure of a key supplier can significantly disrupt your operations. Not only can it impact the timing and budget of product delivery, but it can cause loss of revenue, weakening of customer service and reputational damage. Maintaining the integrity of your supply chain is therefore critical. If you notice a supplier is at risk, react quickly.

MANAGING THE RISKS

In addition to paying attention to the macro threats and challenges, here are some smart actions you can take to help reduce the risk of your mining company hitting financial hard rock:

- **Go back to basics** – To insulate yourself from price and other macro risks, go back to basics. By focusing on operational efficiency, productivity and cost containment, you can increase productivity and better manage your costs.
- **Keep accurate, up-to-date records** – In addition to keeping records, closely monitor your performance at all times. This can help ensure you're always fully aware of your financial situation, helping you avoid any overspends or missteps.
- **Improve your processes** – This means streamlining, for example, automating things like your accounting, reporting, and forecasting with fit-for-purpose systems. You might even consider outsourcing. Plus, look at your operational efficiency.
- **Use data and analytics** – To drive efficiencies and make smarter real-time decisions, invest in data analytics solutions designed for mining. These can help you predict and adjust quickly to any changes in the external environment.
- **Learn from your audits** – Don't just see your audits as something to get through. Work with your auditor, listen to their recommendations and make sure no obvious deficiencies are overlooked. This can cause more severe problems down the track.
- **Build reserves and resources** – A cash reserve can help you maintain financial stability and enable your company to continue to meet its commitments even in tough times. It can also be used to invest in new equipment, staff or infrastructure.
- **Check your insurances** – Having the proper insurances in place is vital to protecting your business, people and assets. These include public liability, plant and equipment insurance, professional indemnity and adequate motor vehicle insurance.
- **Consider mergers and acquisitions** – By combining machinery and workforce through either a merger or acquisition, you can boost your capabilities, enable economies of scope and scale and boost your competitive advantage.

KEY CONTRIBUTORS TO SUCCESS IN MINING

Access to highly skilled workforce
This can help you win more contracts, retain existing ones and beat in-house.

Effective industrial relations policy
To ensure you limit labour disputes, contain costs and meet operational targets.

Flexible operations
Being able to expand or contract your operations to meet demand can improve cash flow.

Economies of scope
By offering a range of services, you create a buffer when demand falls short.

Economies of scale
Large scale operations can help you reduce marginal costs and boost profitability.

Tender competitiveness
If you can secure long-term contracts, you can ensure ongoing revenue streams.

AI and automated machinery and equipment
This type of technology can help you create efficiencies and improve safety.

CLIMATE CHANGE RISK

Climate change is no longer just another risk; it's become a core issue. To ensure the long term viability of your mining business, you need to consider how government and social pressure will shift demand and how you can respond and decarbonise your operations.

If your mining company is facing financial difficulties despite your best efforts to curb the risk, you need to act swiftly if you want to turn things around.

CHAPTER 2
TURNING YOUR COMNPANY AROUND

If your mining business is financially struggling, being proactive is crucial. The sooner you act, the better your chances of turnaround and survival. Engaging a turnaround expert will make the process easier and can result in better outcomes.

FIRST STEPS

- Thoroughly investigate your financial difficulties
- Keep accurate records and stay informed as to your company's financial situation
- Seek help from a qualified advisor (e.g., an accountant) to determine your position

ENGAGING A TURNAROUND EXPERT

If you have concerns for the solvency of your company (see Chapter 3), you should swiftly engage a turnaround expert. They can help you identify problems and come up with a solution you may not have thought of. The sooner you seek help, the better your chances of survival.

Finding an experienced turnaround expert that understands your company is vital to the success of any turnaround strategy.

We're always available for a free confidential consultation to talk through your turnaround options and how the process could work for your company – 1300 727 739 | enquiries@rgia.com.au

3 STEPS TO TURNAROUND

STEP 1: ANALYSING THE SITUATION

Is your mining company in imminent danger of failure, do you have substantial losses but survival is not yet threatened, or are you simply in a declining business position?

For your business to be deemed viable, you must have:

- one or more viable core businesses
- adequate available financial resources, and
- sufficient organisational resources.

If these requirements are met, a detailed assessment of your strengths and weaknesses should be undertaken and stakeholder communication increased. If the above requirements are not met, go to Chapter 5 to consider other options for your business.

STEP 2: DEVELOPING A STRATEGIC TURNAROUND PLAN

Your turnaround plan should have specific goals and detailed function areas. Management must also be accountable to deliver on these goals.

STEP 3: IMPLEMENTING THE PLAN

If the review identifies that your company has any major financial issues, your turnaround plan must be implemented.

The seven key ingredients of a successful turnaround strategy are crisis stabilisation, new leadership, stakeholder focus, strategic focus, organisational change, critical process improvements and financial restructuring.

Your turnaround plan might involve:

- Determining your current labour requirements and making redundancies
- Changing your management team and structure
- Eliminating any unprofitable services your business offers
- Identifying any surplus assets (non-core assets) and determining if they can be realised in a timely manner
- Identifying assets that can be maximised for further value
- Eliminating any unnecessary capital expenditure or considering and prioritising capital expenditure that maximises return on investment
- Focusing on your cash flow
- Communicating with your employees, creditors and suppliers and financiers

Every situation is different, so will require different strategies. You might look at improving efficiencies and rationalising resources, such as negotiating temporary relaxed payment terms with creditors. Or you may need to downsize and make redundancies.

Importantly, these courses of action should be properly recorded. This includes having a **written turnaround plan**, a business review document, and advice prepared by an expert.

The best time to consider safe harbour is as soon as you suspect your company is approaching insolvency. The sooner you access it, the better protected you are.

THE IPSO FACTO CLAUSE

The ipso facto insolvency reforms, effective from July 1, 2018, prevent a party from exercising a right under a contract, agreement or arrangement that arises due to a formal insolvency restructuring including voluntary administration (VA), receivership or a scheme of arrangement. This includes a right to terminate your contract.

ENTERING 'SAFE HARBOUR' – AVOIDING INSOLVENT TRADING LIABILITY

Under Section 588GA of the Corporations Act 2001 (the Act), if your company is taking actions to improve its financial situation (turnaround), you can access 'safe harbour'.

Safe harbour is a form of legal protection that provides a defence from insolvent trading liability for directors (see Chapter 4). Importantly, safe harbour is only available where a genuine turnaround attempt is being made, and you meet the eligibility criteria referred to as the 'better outcome test'.

To stay protected, you must be able to answer yes to the following questions:

- Are you informed about the financial position of the company?
- Are you taking appropriate steps to prevent misconduct?
- Are you taking appropriate steps to ensure your company is keeping proper financial records?
- Are you seeking advice from an appropriately qualified expert?
- Are you developing or implementing a plan for restructuring the company?

In addition to answering yes to all of these questions, you must also ensure your employee entitlements and superannuation are paid, and your ATO returns are lodged on time.

SMALL BUSINESS RESTRUCTURING PLAN (SBRP)

If you're a small business experiencing financial difficulties, as of January 1 2021, you may be able to access the small business restructuring plan. This new formal turnaround option – part of the government's COVID small business rescue reforms – offers an easier way to reduce debt and avert crisis, whilst remaining in control of your business.

SBRP PROCESS

The small business restructuring plan is a formal restructuring option; it's a simplified, lower-cost formal appointment. The purpose of this new process is to support more small businesses to survive, meaning better outcomes for businesses, creditors, employees and the economy.

ELIGIBILITY CRITERIA

To take advantage of this process, you must:

- ✓ be operated by a company;
- ✓ owe less than $1 million in liabilities (excluding liabilities to employees of the company);
- ✓ all outstanding employee entitlements, including superannuation, must have been paid (nb. this does not include entitlements not yet due for payment, such as annual or long service leave);
- ✓ all tax lodgements for the company must be up to date;
- ✓ not have previously done a small business restructuring or used simplified liquidation in the past 7 year.

Current and former directors (acting in the past 12 months) also cannot have been a director of a company that has done a small business restructuring or used simplified liquidation in the past 7 years.

HOW THE SBRP PROCESS WORKS

STEP 1: APPOINTING A QUALIFIED SMALL BUSINESS RESTRUCTURING PRACTITIONER

After announcing the decision to access restructuring, a qualified small business restructuring practitioner must be appointed. Their first job is to assess your situation and determine if your company is eligible to access the restructuring process.

STEP 2: DRAFTING A SMALL BUSINESS RESTRUCTURING PLAN

You and your practitioner have **20 days from the appointment to prepare a small business restructuring plan in the approved form**.
The plan must:

- Identify the property that is being dealt with and how it will be dealt with (this could be via third party contribution, proceeds from the sale of assets, future trading profits or refinance)
- Provide remuneration for the SBRP appointment
- State the date on which it was executed

Your practitioner must review and verify the information provided in the plan.

STEP 3: SERVING OF THE BUSINESS PLAN TO CREDITORS

Your practitioner must serve the plan and relevant papers to affected creditors. **Note** all employee entitlements must be paid and all tax reporting obligations up to date before this can happen.

STEP 4: ACCEPTANCE OR REJECTION OF THE PLAN

Once your creditors have received the plan, they have **15 days to vote on it** via a written statement.

If disputed: A creditor must provide specifics of the dispute. Your practitioner may reject the dispute or proposed variation to the proposal.

If the majority in value of creditors accept it: The plan will be approved, binding all unsecured creditors. It will then be administered as you continue to trade as normal.

If rejected: Control of the company returns to the directors. The directors may choose to appoint a liquidator or voluntary adminstrator(see Chapter 5).

Rapsey Griffiths are experienced small business turnaround and restructuring practitioners. We can guide you through developing and administering a small business restructuring plan.

Contact us –
1300 727 739 | enquiries@rgia.com.au

CHAPTER 3
TACKLING INSOLVENCY

While revenues have a tendency to ebb and flow in the mining industry, if the ebbs outweigh the flows, you may find yourself facing insolvency. But, what exactly is insolvency and what are the vital warning signs to look out for?

WHAT IS INSOLVENCY?

Insolvency is the state of being insolvent or unable to pay your debts as and when they are due and payable. If you're facing it, it's a daunting reality.

(1) A person (or company) is solvent if, and only if, the person (or company) is able to pay all the person's debts as and when they become due and payable."

(2) A person (or company) who is not solvent is insolvent **—Section 95A of the Corporations Act 2001 (Cth) (the Act).**

WARNING SIGNS OF INSOLVENCY

Determining insolvency isn't always easy. A forward-looking **cash flow test** can help you determine your company's ability to pay its debts when they become payable. However, you also need to look at your wider financial position.

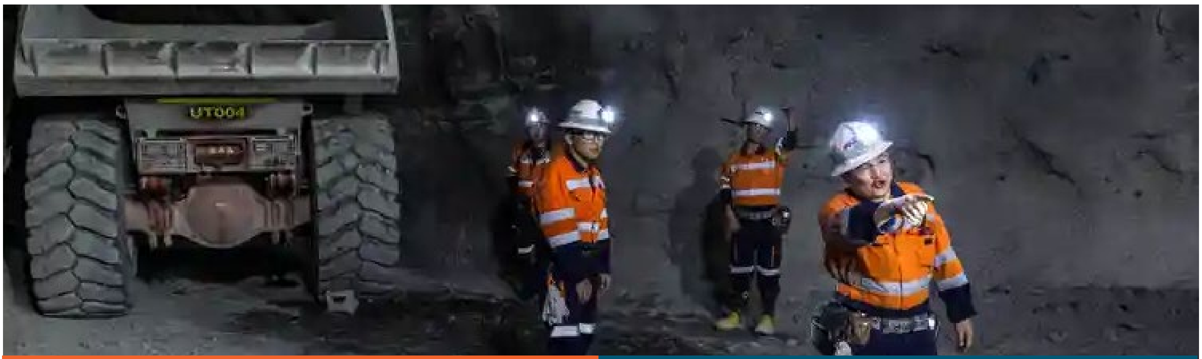
INSOLVENCY CHECKLIST

- Continued losses over recurring financial reporting periods
- Inability to borrow money or obtain loan approvals
- Overdue taxes
- Poor liquidity ratios
- Inability to produce timely and accurate information on your company's performance and financial position
- Dishonoured and post-dated cheques
- Special arrangements with certain creditors
- Sales of non-current assets (e.g., land, vehicles or equipment) to fund working capital deficiencies
- Inability to meet employee payment obligations (e.g., superannuation payments)
- Replacing standing creditor payment terms with discretionary decisions on when and which creditors will be paid
- Absence of any budget or basic financial plan/goals (e.g., seasonal periods may cause reductions in service hours/revenue and need to be planned for operationally to reduce expenses to prevent hours being spent on post-analysis of suspected revenue loss)

If your mining company is facing any of the above, you should take immediate action to turn things around (see Chapter 2).

It's important to note the difference between a temporary lack of liquidity (you may still be solvent) and an endemic shortage of working capital.

TO FIGURE OUT WHICH APPLIES TO YOUR COMPANY, YOU CAN USE A BALANCE SHEET TEST.



CASH FLOW TEST

A cash flow test looks at whether your company can pay its liabilities, as and when they fall due. Because lengthy payment terms are typical in the mining industry due to the nature of big projects, these should be taken into account.

BALANCE SHEET TEST

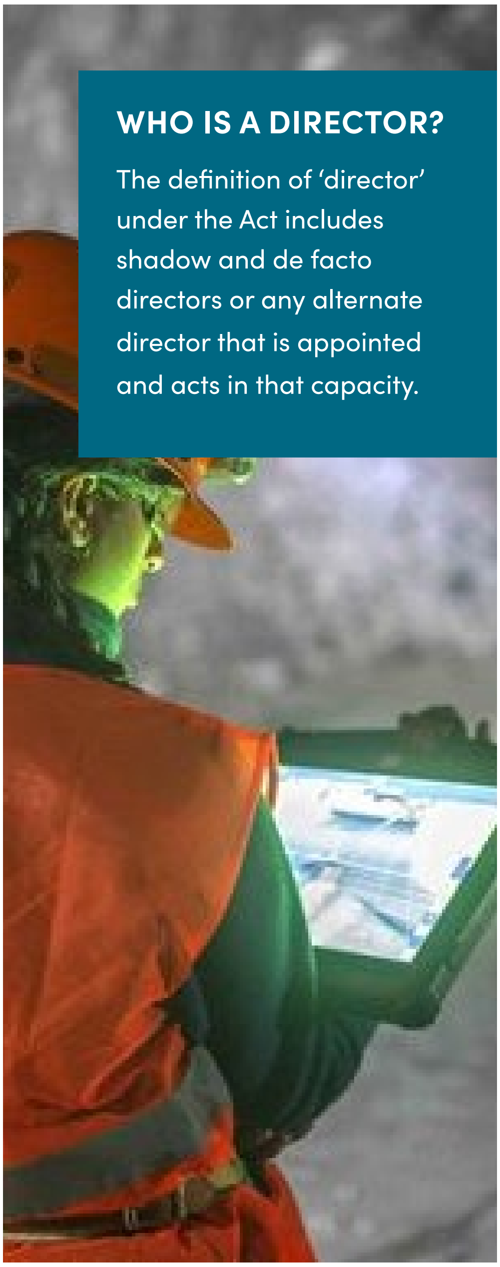
A balance sheet test involves looking at your balance sheet to work out whether your company would have more assets or liabilities if it were immediately wound up. In the mining industry, work-in-progress (WIP) is considered an asset.

If you don't have the expertise to do these tests internally, consider seeking help from an external, independent expert.

A successful turnaround with safe harbour protection (see Chapter 2) can steer you back to solvency and protect you from liability. But what are your legal obligations when it comes to insolvency?

CHAPTER 4
UNDERSTANDING DIRECTORS' DUTIES

Under insolvency law, directors of companies are bound by a series of statutory, common law and equitable obligations owed primarily to the company that employs them. These are called directors' duties. But what are yours?



WHO IS A DIRECTOR?

The definition of 'director' under the Act includes shadow and de facto directors or any alternate director that is appointed and acts in that capacity.

COMMON LAW DUTIES

Under common law, directors have a duty to:

- act in good faith and the best interests of the company;
- act with care and diligence;
- to avoid conflicts of interest; and
- to not improperly use company information.

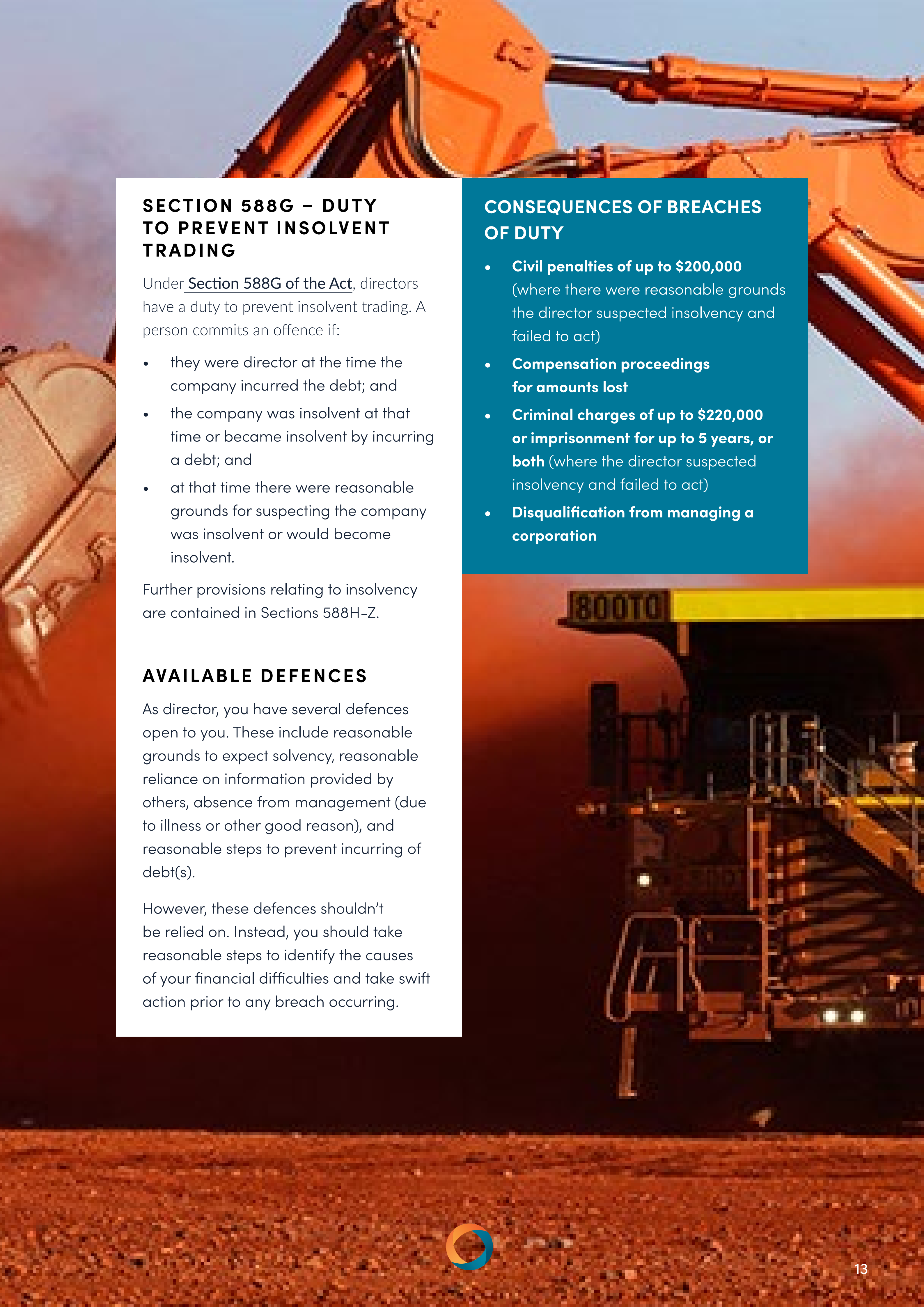
If you allow your company to get into financial hot water or realise it's insolvent or facing insolvency and fail to act, you're failing to meet these duties.

THE CORPORATIONS ACT 2001 (THE ACT)

The common law duties are reinforced in the Corporations Act 2001 (the Act), which includes a duty to act with care and diligence (section 180 (2)) and in good faith, and a requirement for directors to not improperly use their position or information.

KEEP YOUR RECORDS IN CHECK

One of your specific duties under the Act is a duty to ensure that your business keeps adequate books and records. These must correctly record and explain your company's financial position and performance and includes work-in-progress (WIP) reports.



SECTION 588G – DUTY TO PREVENT INSOLVENT TRADING

Under Section 588G of the Act, directors have a duty to prevent insolvent trading. A person commits an offence if:

- they were director at the time the company incurred the debt; and
- the company was insolvent at that time or became insolvent by incurring a debt; and
- at that time there were reasonable grounds for suspecting the company was insolvent or would become insolvent.

Further provisions relating to insolvency are contained in Sections 588H-Z.

AVAILABLE DEFENCES

As director, you have several defences open to you. These include reasonable grounds to expect solvency, reasonable reliance on information provided by others, absence from management (due to illness or other good reason), and reasonable steps to prevent incurring of debt(s).

However, these defences shouldn't be relied on. Instead, you should take reasonable steps to identify the causes of your financial difficulties and take swift action prior to any breach occurring.

CONSEQUENCES OF BREACHES OF DUTY

- **Civil penalties of up to $200,000** (where there were reasonable grounds the director suspected insolvency and failed to act)
- **Compensation proceedings for amounts lost**
- **Criminal charges of up to $220,000 or imprisonment for up to 5 years, or both** (where the director suspected insolvency and failed to act)
- **Disqualification from managing a corporation**

CHAPTER 5
WHEN TURNAROUND ISNT AN OPTION

If your company is already insolvent and a turnaround plan is not viable, your next move is a formal insolvency appointment. For this, you should engage reputable and qualified experts registered with ASIC and ARITA to assist you.

The two main formal insolvency appointments available to companies are voluntary administration and liquidation.

VOLUNTARY ADMINISTRATION

If your company is believed to be insolvent (or likely to become insolvent), you can appoint an independent administrator to take control. They will assess your businesses viability moving forward and undertake a range of other activities such as:

- Complying with statutory obligations (such as the ATO)
- Communicating with governments, authorities and employees
- Procuring funding
- Engaging external experts to review your internal controls and implementing measures to ensure its integrity
- There is a moratorium on creditors enforcing their claims during this period.

An administrator can also help you draw up a Deed of Company Arrangement (DOCA).

Working through insolvency is a daunt-ing task. We're always available for a free, confidential consultation to talk you through the process and how it could work for your organisation –
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WHAT IS A DOCA?

A Deed of Company Arrangement (DOCA) is a binding arrangement between a company and its creditors governing how its affairs will be dealt with. It maximises the chances of a company continuing while providing a better return for creditors than winding up. (ASIC)

Your DOCA proposal may involve:

- A third party injecting cash into your business to partially repay creditor claims
- Your business contributing to a fund (managed by a deed administrator from trading profits) to partially repay creditor claims

When drawn up, your DOCA will be proposed and considered at a meeting of your company's creditors. If your creditors accept it, you, as director, will generally resume control of your company.

The voluntary administration process typically takes 25 business days – enough time to get some clarity. However, the issues in a DOCA are generally not resolved in this timeframe.

Once the DOCA terms have been complied with, your company is released from administration and creditors can no longer recover any unpaid debts from prior to the administration.

CASE STUDY – VOLUNTARY ADMINISTRATION

"Using our expertise, we were able to simplify a complex problem and focused on the best outcome for the business. Working in collaboration with the business owners, their accountant and legal team, we achieved the best possible result for employees, creditors and shareholders."

—CHAD RAPSEY (CO-FOUNDER / DIRECTOR)

BACKGROUND

An electrical contractor providing contract labour hire to various mine sites had grown its turnover from $200,000 to $3.2M in a 3 year period. During this period the workforce had grown from 1 to 17 employees. The Company was begining to experience financial difficulty.

CORE PROBLEM

The Company's financial difficulty was primarily due to aggressive unstructured growth the Company had experienced without an appropriate business plan or management expertise. This growth resulted in a debt to the ATO of approximately $800,000.

THE SOLUTION

Given the debts of the Company were significant and the Company did not have access to finance, the Company was placed into Voluntary Administration.

Working as voluntary administrators, we undertook the following:

- An independent review into the business's projected trade profitability and cashflow to verify viability
- Exited unprofitable lines of business and contracts
- Restructure the workforce
- Formulation of a deed of company arrangement (DOCA) between the company and creditors to satisfy the business's existing debts

THE OUTCOME

The creditors accepted the proposal set out in the DOCA, which led to them receiving greater returns than liquidation. Additional benefits of the acceptance of the DOCA included:

- Employee entitlements were paid in full
- Unsecured creditors received a return of 20c/$
- The company's debts were reduced by approximately $500,000

As a result of completing this voluntary administration turnaround alongside the new directors, the Company is continuing to trade profitably.

We deal with many mining service leaders who are facing financial issues and insolvency. The solutions we deliver are highly-tailored to individual circumstances. If you feel your company could benefit from our assistance, we're always available for a free, confidential consultation to talk through your options –
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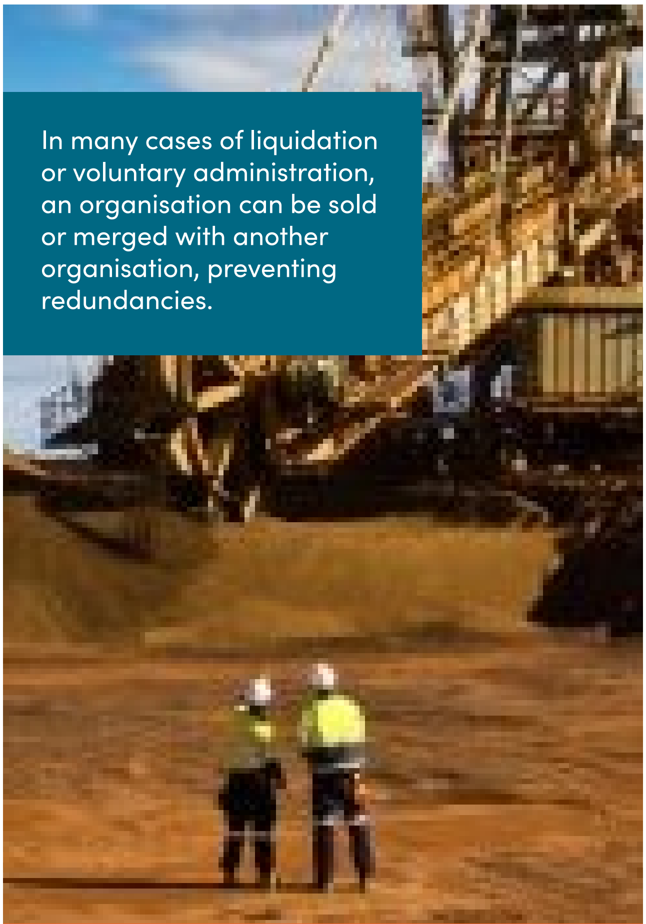

In many cases of liquidation or voluntary administration, an organisation can be sold or merged with another organisation, preventing redundancies.

PUBLIC REPUTATION

As formal insolvency appointments are typically made public, you may be concerned about the negative impact this will have on your business, e.g., contract terminations. However, by avoiding a formal insolvency appointment, you can make the situation worse, including breaching your obligations under the Act.

HOW DO I PAY LAID OFF EMPLOYEES?

If there's not enough money to pay employees their entitlements in a liquidation scenario, these are covered by the Fair Entitlements Guarantee. Entitlements include unpaid wages, annual leave, long service leave, and redundancy pay.

LIQUIDATION

Liquidation is usually considered as a last resort but offers a more conclusive outcome. It's a formal appointment that terminally winds up the affairs of your company if you can't pay your debts when they are due. This is generally a shutdown scenario.

THE WINDING UP PROCESS

During liquidation, control is handed to the liquidator. The process involves selling off your company's assets, winding up your company's financial affairs, breaking up the company structure, then figuring out what happened. In addition, bank accounts are frozen and employment terminated.

Once your organisation has been wound up, the Australian Securities and Investments Commission (ASIC) will deregister it.

RECEIVERSHIP

Receivership involves a secured creditor – via a receiver – taking control of and protecting, collecting and selling some or all of your assets to repay debt owed. A secured creditor is allowed to appoint a receiver because they hold a security interest.

Two types of security interest that enable receivership:

- Non-circulating security interest – an interest in land, plant and equipment.
- Circulating security interest – in assets used and disposed of in normal trading operations, such as debtors, cash and stock.

If appointed as a receiver and manager, they also have the power to manage your company's affairs. Receivers are often appointed at the same time as voluntary administrators or liquidators.

THE RECEIVERSHIP PROCESS

The receivership process can take weeks or months. During this time, a receiver will:

- Collect and sell enough of the charged assets to repay the debt owed
- Pay out the money collected to the secured creditor
- Distribute any leftover funds or assets to the company or external administrators
- Report any possible offences or irregularities to ASIC

CASE STUDY – VOLUNTARY LIQUIDATION

"Clarity makes resolution easier to achieve. By working together, we can put mechanisms and processes in place that help move things towards a suitable outcome."

— MITCH GRIFFITHS
(CO-FOUNDER / DIRECTOR)

BACKGROUND

A Company providing electrical and mechanical services to Hunter Valley based mines had been operating for 3 years employed 30 staff working at various mine sites. The Company had found itself in financial difficulty due to a reduction in contracted hourly rates and issues in managing the significant growth in workforce since establishing the business.

CORE PROBLEM

Following a business viability review, we determined the company was insolvent and unable to continue trading. As the owners and managers were experiencing high levels of stress and the business was lacking the capacity to undertake a turnaround strategy, we needed to provide a way for the company, its stakeholders and its creditors to move forward.

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THE SOLUTION

Given the company's inability to pay its significant debts as and when they fell due, we determined the best solution would involve:

- Entering creditors' voluntary liquidation (also known as business liquidation)
- Realising the assets of the company
- Communicating with employees and creditors regarding the liquidation process

THE OUTCOME

While liquidation is generally a last resort, the benefits of undertaking the creditors' voluntary liquidation reduced the risk of insolvent trading and reduced the stress on the directors of the Company. It also:

- Averted a standard director penalty notice (DPN) being issued by the ATO (subject to lodgements being made on time)
- Compliance with their directors' duties and avoidance of any ongoing liability for trading while insolvent
- Enabled employment entitlements to be paid in full via the Fair Entitlements Guarantee (FEG) scheme
- Saw employee superannuation paid from the assets realised by the liquidator
- Resulted in unsecured creditors receiving a distribution of 10c /$
- Unsecured creditors wrote off debts of approximately $650,000

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