

what's the solution?

what's the cause?

- ▶ Change in market conditions put business at risk
- ▶ New competing products which could put existing business activity at risk
- ▶ Management does not have the skill set to go forward – often business is already strained because of past activity
- ▶ Major failure in business control and management systems

what's it about?

turnaround management

- ▶ Strategic analysis – how and where to operate or compete or do business
- ▶ Identification and protection of core business competencies
- ▶ Understanding the finance options available to the company

what it does!

- ▶ Build on existing Strengths
- ▶ Overcome Weaknesses
- ▶ Develop Growth Opportunities
- ▶ Manage Threats

voluntary administrations

- ▶ Pressure from creditors in general; directors at a personal financial risk from insolvent trading
- ▶ Pressure from banker or secured creditor
- ▶ Disputes between directors or shareholders
- ▶ Any legal action or event which may jeopardise the company

- ▶ Can be used to save or restructure a financially troubled business
- ▶ Appointment usually by directors or secured creditor
- ▶ Administrators' powers are:
 - to control and trade-on business
 - to investigate the company's affairs
 - report to creditors on the company's affairs
- ▶ Moratorium imposed on debt and guarantee enforcement during the voluntary administration
- ▶ At end of administration, company usually enters into a Deed with its creditors or is placed into liquidation
- ▶ If Deed prescribes that company will trade-on, control of company usually reverts to directors

- ▶ Provides the company with breathing space to deal with creditors in an orderly manner and prepare proposal to give the best return to stakeholders
- ▶ Reduces the possibility of secured creditor proceeding against the assets of the company
- ▶ Allows independent person to review the company's affairs and deal with the pressures of creditors
- ▶ May allow company to stay out of liquidation
- ▶ If Deed approved, will eliminate possible insolvent trading claim

creditors' voluntary liquidation

- ▶ Directors, shareholders or investor disputes
- ▶ Recovery action by the ATO and Directors' Penalty Notices
- ▶ Directors at risk of insolvent trading action

- ▶ Winds up the affairs of the company without the need for Court intervention
- ▶ Often occurs at the end of a voluntary administration if no proposal is submitted by the directors, or creditors reject any proposal submitted by the directors
- ▶ The role of the liquidator is the same as the role of an Official Liquidator in a Court Liquidation

- ▶ The benefits are the same as for a Court liquidation, in that a liquidator takes possession of the assets, realises the assets, distributes the funds, and investigates the affairs of the company and the activities of the directors
- ▶ Liquidator can appoint a Voluntary Administrator

receiverships

- ▶ Company unable to pay its debts
- ▶ Pressure from unsecured creditors or secured creditors
- ▶ Management does not have the skill set to go forward – often business is already strained because of past activity
- ▶ Major failure in business control and management systems
- ▶ Dispute between the directors or shareholders
- ▶ Default on loan repayments to secured lenders
- ▶ Appointment of a Liquidator or Administrator
- ▶ On-going losses and inability to improve trading performance

- ▶ Can occur when:
 - a secured lender wishes to recover its loan
 - an interested party (such as a shareholder, director or investor) makes and application to the Court
- ▶ Receiver will realise the company's assets and disburse the funds according to law
- ▶ Can be used to safeguard assets in the interim whilst other Court action proceeds
- ▶ Court appointed Receivers can be used in dispute circumstances

- ▶ Independent person controls the assets of the business
- ▶ Independent person manages those assets to recover all or part of the debt for a secured creditor
- ▶ Potential to trade on the company and sell business as going concern
- ▶ Control taken out of the hands of the directors
- ▶ Limited investigations of the company's affairs can be conducted by Receivers

court liquidations

- ▶ Non-payment of debts
- ▶ Recovery action by the ATO and Directors' Penalty Notices
- ▶ On-going losses and inability to improve trading performance
- ▶ Directors, shareholders or investor disputes
- ▶ Any action by a creditor pursuant to a statutory demand
- ▶ Directors at risk of insolvent trading action
- ▶ Creditors concerned that assets are being removed from the company

- ▶ Requires an application to the Court by creditors, members, the company itself, or any other interested party
- ▶ Usually takes around 30-45 days for the company to be wound up from the date of the application
- ▶ Provisional Liquidator can, where appropriate, be appointed immediately
- ▶ A Provisional Liquidator is a caretaker of the assets until the company is fully wound up
- ▶ Liquidators take control of the assets to realise them and disburse the funds to creditors in accordance with established priorities
- ▶ Liquidator investigates the affairs of the company and reports any offences and any other relevant matters to the shareholders

- ▶ Can result in the payment of unpaid liabilities of the company
- ▶ Independent person takes control of the assets of the company and realises the assets
- ▶ The directors' activities and the company's affairs can be properly investigated
- ▶ Certain transactions can be recovered by a Liquidator for the benefit of all creditors
- ▶ In some cases, insolvent trading actions can be taken against the directors for recovery of funds for the benefit of creditors
- ▶ There is no preferential treatment of creditors
- ▶ Secured creditors are still able to exercise their rights

what's the cause?

what's it about?

what it does!

bankruptcy

For Individuals

- ▶ Individual is unable to pay all debts
- ▶ Personal guarantees provided for company debts are called up
- ▶ Individual receives letters of demand, writs and/or bankruptcy notices from creditors, debt collectors or solicitors

For Creditors

- ▶ Not receiving payment of debt
- ▶ Dishonoured cheques/payments
- ▶ Trading terms extended or not met by the individual (debtor)
- ▶ The debtor disposing or transferring property prior to bankruptcy

- ▶ An individual becomes bankrupt either:
 - voluntarily (Debtor's Petition); or
 - by an Order of the Court on the application by a creditor (Creditor's Petition)
- ▶ The bankrupt's assets vest in the Trustee in bankruptcy
- ▶ Trustee recovers and sells assets of the bankrupt for the benefit of creditors and investigates the bankrupt's affairs
- ▶ Some bankrupts must contribute funds out of their income
- ▶ Bankrupts imposed with certain restrictions, eg. Freedom to travel overseas limited; cannot freely incur debt
- ▶ The bankruptcy lasts a minimum of three years unless annulled

For Individual

- ▶ Uncertainty is crystallised
- ▶ Provides relief from debt problem and extinguishes existing debts
- ▶ No further harassment from creditors
- ▶ Can start life afresh after bankruptcy, free of debt

For Creditor

- ▶ Allows an orderly and equitable distribution amongst all creditors
- ▶ May recover debts outstanding
- ▶ Uncertainty is crystallised
- ▶ The bankrupt's affairs are investigated by an independent expert (Registered Trustee)

personal insolvency agreement (part X under bankruptcy act)

- ▶ Occurs in lieu of bankruptcy
- ▶ Individual is unable to pay all debts
- ▶ Personal guarantees provided for company debts are called up
- ▶ Individual receives letters of demand, writs and/or bankruptcy notices from creditors, debt collectors or solicitors
- ▶ The bankruptcy is annulled and the individual is released from debts

- ▶ An individual who is insolvent enters into a formal arrangement with creditors
- ▶ The arrangement is flexible and the terms may be negotiated between the individual and creditors
- ▶ The Part X Arrangement is administered by an independent expert, a Registered Bankruptcy Trustee
- ▶ The individual is released from most debts (except with a Deed of Arrangement unless specified in Deed)

For Individual

- ▶ It is binding upon all parties
- ▶ The restrictions of bankruptcy are avoided.
- ▶ Provide relief from debt problems and extinguish existing debts
- ▶ Arrangements are flexible
- ▶ Can start life afresh, free of debt

For Creditor

- ▶ Often provides a higher and quicker dividend than under bankruptcy
- ▶ The Arrangement is binding upon all parties
- ▶ Uncertainty is crystallised
- ▶ Arrangements are flexible
- ▶ The Arrangement is generally finalised sooner and is less costly than bankruptcy
- ▶ The individual's financial affairs are subject to an investigation

section 73 proposals (under bankruptcy act)

- ▶ Occurs after Bankruptcy has taken place
- ▶ A bankrupt enters a formal, binding arrangement with creditors
- ▶ The arrangement is flexible and the terms may be negotiated between the individual and creditors
- ▶ A Registered Trustee administers the arrangement and pays the dividend to creditors
- ▶ The bankruptcy is annulled and the individual is released from debts

- ▶ The bankrupt wishes to shorten and annul bankruptcy
- ▶ The bankrupt has access to funds, which are not recoverable in bankruptcy, and the funds can be used to pay to creditors
- ▶ Individual can also access funds from third parties to pay creditors

For Individual

- ▶ Bankruptcy is annulled
- ▶ Formal arrangement binding upon all parties
- ▶ Uncertainty is crystallised
- ▶ The bankrupt's affairs are investigated by an independent expert (Registered Trustee)
- ▶ The stigma and restrictions of continuing bankruptcy are avoided
- ▶ Provide relief from debt problems and extinguish existing debts
- ▶ Arrangements are flexible
- ▶ A bankrupt can act as a director or take part in the management of a company after the Proposal is accepted by creditors

For Creditor

- ▶ The arrangement is binding upon all parties
- ▶ Usually makes assets available to creditors which would not be received under bankruptcy
- ▶ Uncertainty is crystallised
- ▶ Often provides a higher and quicker dividend than under bankruptcy
- ▶ Arrangements are flexible
- ▶ The arrangement is generally finalised sooner and is less costly than bankruptcy
- ▶ Individual can be made bankrupt again if default occurs under Proposal

administration of estates of deceased persons (part XI under bankruptcy act)

- ▶ In the circumstances when an individual that is insolvent passes away, leaving unresolved debt
- ▶ The deceased estates become insolvent due to the debts incurred by the legal personal representative of the deceased estate
- ▶ A creditor of the deceased estate or the administrator, executor or legal personal representative of the deceased estate wants to bankrupt a deceased estate
- ▶ An order for the administration of a deceased insolvent estate can only be made by the Federal Circuit Court or the Federal Court

- ▶ When the deceased estate has insufficient assets to pay any debts owing
- ▶ Administering a deceased estate under the Part XI of the Bankruptcy Act enables a trustee to recover property due to preferential payments and/or for less than market value

- ▶ SV Partners can act as the independent party that administers the deceased estate under Part XI of the Bankruptcy Act
- ▶ Potential realisation of assets of the deceased estate and proceeds be divided equitably amongst creditors