crouch amirbeaggi
BUSINESS ADVISORS & INSOLVENCY SERVICES

RECEIVERSHIP

COST EFFECTIVE RECEIVERSHIP

The Federal Government's Senate Inquiry into insolvency confirmed our longstanding claim that our hourly rate is about 30 per cent lower than those charged by the large insolvency firms offering the same services.

Our services are popular with both the banks and their clients because they tend to be significantly cheaper and more flexible than normal receiverships. Bankruptcy Solutions offers receivership services to our Big 4 banking clients together with leading second-tier and private lenders.

We also have extensive experience in undertaking Investigating Accountants (IA) reports and facilitating the repayment of a secured creditor's debt via alternative quasi-receivership processes.

WHAT IS A RECEIVERSHIP?

The concept of a receivership is an old and simple one: if a borrower defaults on their loan, the lender can appoint a receiver to sell the assets offered as security for the loan.

Unlike other external insolvency appointments, the receiver's primary duty is to act in the best interests of the secured creditor and not creditors as a whole.

In practice, the law is complex and litigation is common. The complexity stems from the manner in which the laws of receivership have developed from the old English laws of contract and equitable remedies.

Receiverships can be either private appointments or court appointments.

PRIVATE APPOINTMENT OF A RECEIVER

There are about 1500 corporate receivership appointments each year.

The vast majority are initiated by a lender using the powers contained in their security interest (formerly known as a mortgage/debenture/charge or fixed and floating charge) to appoint their preferred receiver to their corporate borrower.

The Corporations Act provides that a receiver of company property must be a registered liquidator (s 418).

Currently there are about 700 accredited liquidators in Australia.

Lenders, being conscious of costs and adverse publicity, often choose to realise their security through alternative types of appointments that might be considered quasi-receiverships. The available alternative appointments include:

- A partial appointment of a receiver over some company assets only
- An agent for a mortgagee
- Appointment of an Investigating Accountant to undertake a review of the client's financial affairs and capacity to repay their loan (called an IA report).

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COURT APPOINTED RECEIVERS

Both Federal and Supreme Courts have inherent jurisdiction to appoint a receiver. Various laws use the following terms:

> *The Court may, on such terms and conditions as the Court thinks fit, appoint a receiver when it appears to be just or equitable*

The courts have a history of making receivership appointments where:

- The security interest (charge) might not yet be enforceable or is otherwise defective or
- The affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a shareholder.

OUR INVESTIGATING ACCOUNTANT (IA) REPORTS

Our Investigating Accountants (IA) reports have been widely used by three of the Big 4 banks and often flow into informal workouts and quasi-receiverships of the bank's SME clients.

We estimate the returns we have achieved for the banks and their clients are about 30 to 50 per cent more than the returns that would have been available had a receiver been appointed.

During our IAs one of our partners will inspect the customer's trading premises and discuss the following:

- The customer's restructure & repayment plan
- The historical trading performance and profitability
- The prospects for injection of capital, joint venture partner, refinance or sale.
- Our partners will then offer their independent assessments of the customer's options and plans

Where appropriate, we encourage the bank's customer to engage our office to "test the market" and determine the value of their business via a tender process.

The customer is reminded that:

- They control this process and are not compelled to sell if they don't like the offers received
- A "going concern" sale will generally realise a 20 to 30 per cent premium compared to a forced sale and
- Our IA process avoids significant receivers' fees, which generally cost a further 10 to 20 per cent of gross realisations.

At this point, customers start to really appreciate the savings that can be achieved by avoiding a receivership appointment and often become highly motivated to refinance or sell

This will typically mark a tipping point in the relationship between the bank and the customer. Bad relationships cease and cooperative new relationships aimed at repaying the bank debt start.

During our supervised sale we provide assistance and documents such as:

- Confidentiality agreements
- Information memoranda and
- Pro-forma advertisements

With the customer's assistance, our office will compile and undertake a significant direct marketing process to ensure the integrity of the sale process.

The bank will effectively sit back and reserve its rights throughout this process.

THE COST OF OUR IA PROCESS

Our initial IA reports generally cost about $10,000 to $20,000. Each report is not a voluminous rehash of known facts, but will typically be a three-page bullet point assessment delivered in less than seven days from the date of our on-site attendance.

Our fee to facilitate a supervised sale will generally start from $30,000 providing the matter can be concluded within four weeks.

RECEIVERSHIP LAW REFORM

In 1983, the predecessor to The Corporations Act sought to rectify an absence of uniform powers and duties of receivers. The Act introduced minimum qualifications for receivers, detailed their accountability and powers, and clarified the priorities regarding debts repaid by receivers.

In 2009, The *Personal Property Securities Act 2009 (Cth) (PPS Act)* introduced major reforms of the laws affecting secured creditors.

In 2015, the Productivity Commission undertook the most extensive review of Australian insolvency law in the past 20 years. Three of the 13 Productivity Commission recommendations for law reform were adopted from proposals by Nicholas Crouch and Shabnam Amirbeaggi.

At page 415 of their final report, the Productivity Commission made its sole recommendation for reform of the receivership laws as follows:

> *The Commission broadly agrees with the submission of Crouch Amirbeaggi (sub. DR68) that improved communication is warranted. Specifically, receivers should be required (under statute) to provide basic information to creditors in a manner similar to the obligations of a liquidator to a committee of inspection. The information should include:*
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> *- a description of the proposed process*
> *- the results of the sale process*
> *- details of proposed and actual costs and disbursements*

The Productivity Commission made reference to our reform proposals and best practice on nine occasions in its report. At page 392 the Productivity Commission acknowledged that our specialisation is cost-effective restructuring of small to medium businesses when it stated:

> *Crouch Amirbeaggi suggested an Australian hybrid model that could avoid ... costs, assuage creditors' concerns and present small to medium enterprises with a genuine option for restructure.*

We are delighted that the Federal Government recognised our expertise and praised our contribution towards industry reform of insolvency management.

DO YOU NEED HELP?

We invite you to give us a call, all initial discussions are free of cost or obligation. Talk to our in-house liquidators, bankruptcy trustees, lawyers or accountants about your circumstances and options.

We have offices in Sydney, Melbourne and Byron Bay together with affiliated offices in each capital city. Our nationwide network lets us service our clients' needs throughout Australia.