

Meltzer Mason Heath

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UPDATE + NEWS + REVIEW

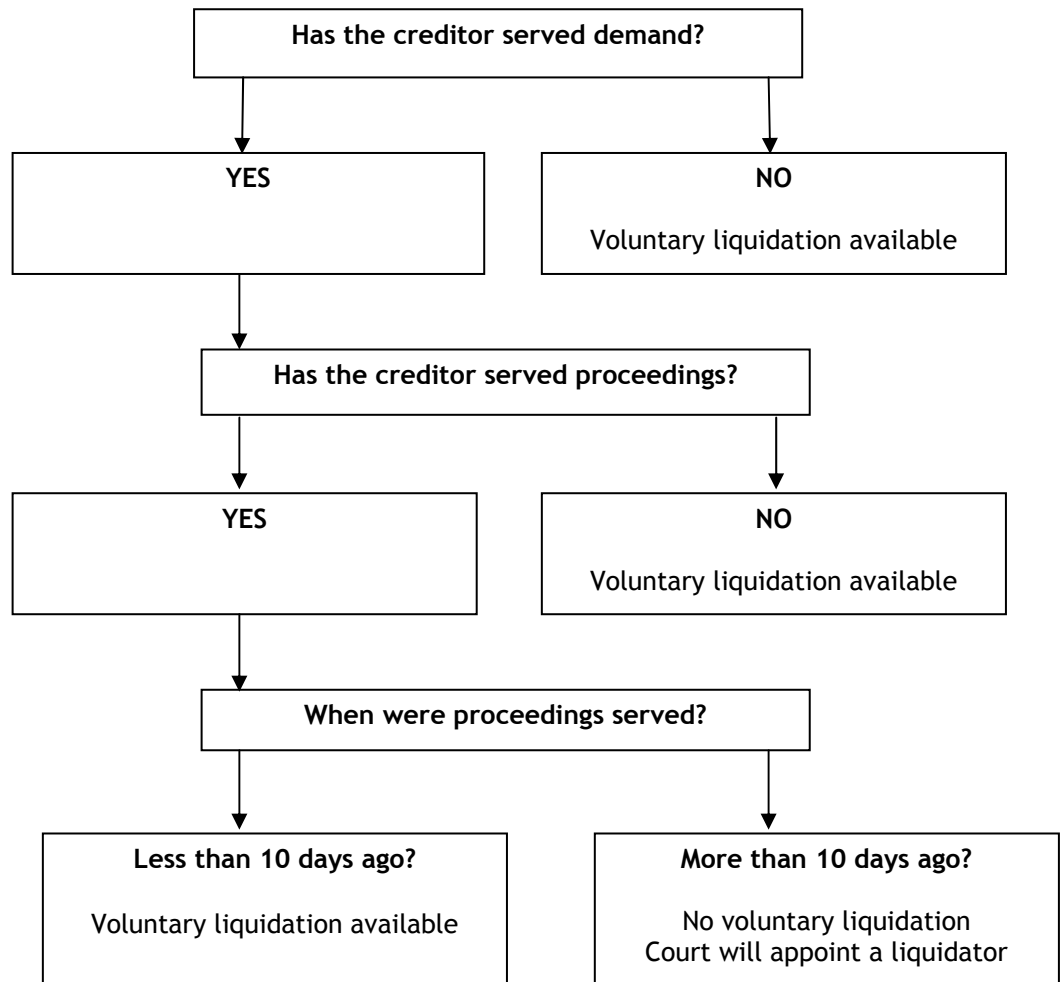
November 2008

This is a special edition of our newsletter given the economic climate and difficulties we are now seeing with businesses. We hope the contents will assist your clients and protect them from other failing companies.

New rules regarding service of Statutory Demand

Rachel Mason

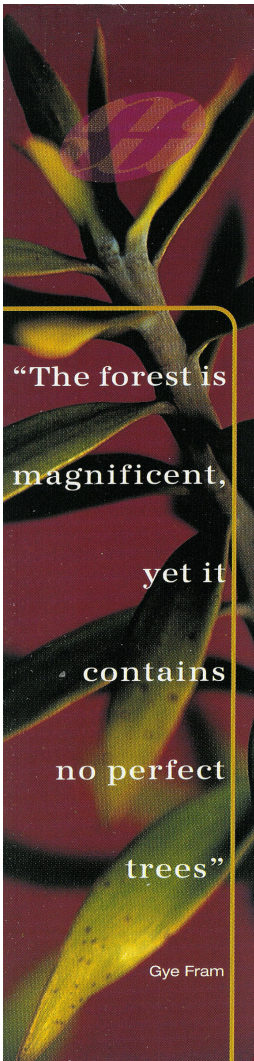
**A creditor is threatening to liquidate my company.
Can I voluntarily liquidate before it goes to Court?**



Court Windings Up

Karen Mason

There has been a marked increase in the number of IRD applications for liquidations over the past three months. One reason for this could be the time constraints as per our flow chart whereby the shareholders can now easily lose the ability to voluntarily place the company in liquidation. To retain the power to appoint their own liquidator it is vital that shareholders seek professional advice upon service of the statutory demand at the earliest, and on receipt of legal proceedings at the very latest.



“The forest is magnificent, yet it contains no perfect trees”

Gye Fram

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Ensuring supplier's priority - PPSR: Use it or lose it!

Rachel Mason

Nearly 10 years ago, the Personal Property Securities Act ("PPSA") was enacted yet some trade creditors still don't know about it or view it as "too hard". Given the trading climate that we are embarking on presently, it would be a wise move for trade creditors to get registered.

The PPSA provides an excellent mechanism to retain and protect title to goods supplied on credit. In a liquidation setting, the ability for a supplier to retain specific title to their goods, over and above the interests of a generally secured creditor (such as a bank), is within easy reach for all suppliers of goods.

In order for a supplier to obtain a super-priority over all other creditors, it is important that the two step process is followed:

1. Include a retention of title clause or general security interest in the terms of trade; and
2. Perfect that interest by registering a financing statement on the on-line Personal Property Securities Register ("PPSR"). (Note that the purchaser of the goods must agree to the registration).

We suggest that suppliers of goods establish a PPSR framework to ensure that, in the event of a customer's liquidation, they have the best possible chance of either reclaiming their goods or the proceeds of those goods. For example:

1. For one-off supplies, establish a monetary threshold, say \$1,000. For all orders over that amount, register a financing statement.
2. For continuing supplies, register a financing statement against all customers.
3. Ensure that terms of trade contain a security interest along with reservation of title ("ROT") clauses. ROT clauses are good to have, but they are insufficient on their own where there are other charges over the business' assets.
4. Perfect that security interest by registering it on the PPSR, as soon as possible (but no later than 10 working days) after starting to trade with the customer.

Ensure that the financing statement contains an accurate description of the goods supplied. Use serial numbers where applicable. The description does not need to list all the goods supplied. An example of a good, yet general, description:

"All goods supplied from time to time by The Supplier Limited and its subsidiaries, and any services related thereto, together with all proceeds arising from those goods and services, including goods, money, accounts receivable, chattel paper, intangibles, negotiable instruments, documents of title, and investment securities."

The PPSR is extremely simple to use, it's cheap, and it takes little time to register a financing statement. The website (www.ppsr.govt.nz) contains FAQs and tutorials, and the Companies Office can also provide on-site training.

Blue Chip Update

Karen Mason

We want to thank all the Practitioners who have offered their services to Blue Chip investors. Blue Chip liquidations are now in the investigative stage and the investigation is primarily being led by Arron Heath. All other staff are now back on track with the ability to take on new assignments and to help Directors seeking advice in these turbulent times.

Changes and Pressures

Karen Mason

We are conscious of the pressures being put on businesses with the changes in the tax and GST payment due dates. Given the holiday period on our doorstep we are seeing many directors struggling to meet these deadlines. Interestingly, over the last two months there has been an increase in both Company and Individual Compromises with creditors. Although the Voluntary Administration regime, introduced on 1 November 2007, has seen some use, to date only a few of the Administrations have proceeded to implement a Deed of Company Arrangement with liquidation being recommended for the remainder. The major advantage of Voluntary Administration - the moratorium - is being achieved in Auckland anyway due to delays in the Court system.

Between the professional staff at Meltzer Mason Heath there is over 100 years insolvency experience. This means that any problems or uncertainties facing your clients are likely to have been seen by us before. Please call us and as always we will offer you and/or your clients a free one hour consultation.

Jeff Meltzer, Karen Mason, Arron Heath, Mike Lamacraft, Lloyd Hayward, Rachel Mason & Trish McLennan.

This newsletter provides general information only and is not intended to constitute legal advice. Specialist legal and/or professional advice should always be sought in relation to any particular circumstances.