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5 December 2024

Hard Truths and Difficult Decisions for CRICOS Providers: Should You Restructure or Wind Up?

The international education sector is under immense pressure. Private CRICOS providers are facing mounting scrutiny from the media and policymakers.

Unfortunately, much of this negativity stems from the misconduct of a small group of bad actors, including unethical practices by student recruitment and visa agents.

Even before the Department of Employment and Workplace Relations (**DEWR**) introduced international student caps for 2025 and beyond, many providers were struggling.

To remain competitive, providers slashed course fees and dramatically increased commissions for agents, with some paying out over 50% of fees.

This unsustainable strategy has created what can only be described as a race to the bottom.

Now, with the imposition of harsh and often financially crippling student caps, coupled with aggressive regulation from the Australian Skills Quality Authority (**ASQA**), many providers are at a crossroads.

The critical question they must ask themselves is: *Can we, or should we, continue operating?*

For providers in financial distress, there are various options, including informal restructuring, voluntary administration, and creditors' voluntary liquidation.

The suitability of these options will depend on each provider's financial situation. Simplified processes are also available for small companies with liabilities of less than $1 million.

Below, we explore three key options: informal restructuring, voluntary administration, and creditors' voluntary liquidation.

1. Informal Restructuring: A Practical Alternative

1.1 **Definition and Approach**:

Informal restructuring focuses on improving a business's financial health without initiating a formal insolvency process under the *Corporations Act 2001 (Cth)* (the **Act**).

Unlike formal measures such as voluntary administration or deeds of company arrangement (**DOCA**), this method allows directors to remain in control while implementing strategies to achieve long-term viability.

1.2 **Advantages**:

This approach is typically more affordable and easier to implement compared to formal restructuring.

1.3 **How to Begin**:

The first step is to consult an external appropriately qualified advisor to analyse the business's financial position and evaluate the available options. These early discussions often require confronting uncomfortable truths about the company's challenges.

1.4 **Safe Harbour Provisions**:

Directors should assess, seek advice and implement appropriate action to ensure the *safe harbour* protections outlined in section 588GA of the Act protect them from liability throughout the restructure process.

These provisions shield directors from liability for insolvent trading if they are pursuing actions likely to produce a better outcome for the company than immediate liquidation or administration.

1.5 **Eligibility for Safe Harbour**:

To qualify, directors must:

- Have reasonable grounds to suspect the company is at risk of insolvency or is insolvent.
- Properly inform themselves of the company's financial position.
- Take appropriate steps to prevent misconduct that could adversely affect the company's ability to pay all debts.
- Ensure the company is maintaining appropriate financial records.
- Seek advice from an appropriately qualified advisor and develop actionable plans to improve the company's financial standing.
- Ensure any new debts align with these plans.
- Maintain timely payments for employee entitlements and tax filings.

1.6 **Implementation and Monitoring**:

If the *safe harbour* pathway is chosen, directors must document their plans and monitor compliance with all relevant requirements.

1.7 **Additional Strategies**:

Informal restructuring often involves:

- **Asset Divestment**: Selling underutilised assets or non-core business units.
- **Cost Rationalisation**: Cutting expenses, renegotiating contracts, or terminating inefficient operations.
- **Refinancing**: Securing new funding or renegotiating existing debt arrangements.
- **Forbearance**: Negotiating with creditors to allow the company additional time to repay or settle debts.
- **Structural Adjustments**: Altering the company's legal or operational framework to align with recovery goals.

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1.8 **What Happens If It Doesn't Work?**

If informal restructuring does not achieve the desired outcomes, directors should promptly seek professional advice to explore alternative pathways.

1.9 **Alternative Options**:

For viable businesses burdened by excessive debt, potential next steps include:

- Selling assets or the entire business.
- Transitioning to a formal restructuring process such as voluntary administration.
- If recovery is unfeasible, a controlled closure and liquidation may be the most practical solution.

2. Voluntary Administration: A Structured Recovery Option

2.1 **Overview**:

Voluntary administration allows an insolvent company to restructure under the guidance of an independent administrator.

The administrator evaluates the business's viability and develops a plan to achieve better outcomes than liquidation.

2.2 **When to Consider It**:

This option is suitable if the company has:

- A realistic prospect of recovery.
- The potential to restructure debts or operations.
- Creditor protection requirements to continue operations.
- Viable options for a DOCA.

2.3 **Process**:

- **Appointment**: An administrator is appointed by directors, liquidators, or secured creditors.
- **Administrator's Role**: The administrator assesses the company's affairs and recommends a pathway: DOCA, winding up, or ending administration.
- **Creditor Meetings**:
    - **First Meeting**: Creditors are updated on the company's status and administration plans.
    - **Second Meeting**: Creditors vote on the company's future—DOCA, liquidation, or administration termination.

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3. Creditors' Voluntary Liquidation: An Orderly Closure

3.1 **When to Choose Liquidation**:

Liquidation may be the best option if:

- The company cannot meet its financial obligations.
- Recovery prospects are minimal.
- Avoiding further liabilities is crucial.

3.2 **Process**:

- **Engage a Liquidator**: A registered liquidator is appointed.
- **Resolutions**: Directors resolve to wind up the company, and members pass a special resolution.
- **Liquidator's Role**: The liquidator sells assets, investigates company affairs, distributes proceeds to creditors, and deregisters the company.

4. Key Considerations for Directors

4.1 Directors must:

- Keep accurate financial records.
- Act promptly when financial issues arise.
- Seek professional advice early.
- Explore alternatives such as informal restructuring.
- Comply with legal obligations, including avoiding insolvent trading.
- Evaluate the impact of their decisions on stakeholders.

The Bottom Line

Navigating financial challenges is never easy, especially for CRICOS providers facing heightened regulatory pressures.

Taking early action and seeking expert guidance can help ensure the best possible outcomes.

Our team at RTO Legal is here to help you make informed decisions. Contact us at (07) 3726 9559 to discuss your options and chart a path forward.

Disclaimer: This article provides general legal information and should not be considered legal advice. Seek professional guidance tailored to your circumstances before taking action. We will not be liable for any loss suffered by any person who relies on anything in this article.

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