How Voluntary Administration provided a second chance for one Aussie business

It's been nearly 30 years since the Voluntary Administration (VA) regime in the Corporations Act was introduced. In that time, countless businesses around the country have used this corporate lifeline. Here, we look at how one Australian business used the VA regime to reinvent itself, save the business and jobs, and provide a good return for creditors.

Earlier this year, a NSW business aligned with the building and construction sector found itself in financial distress. It was hit by a combination of factors – both within and out of the director's control.

As Bradd Morelli, Jirsch Sutherland's National Managing Partner and Joint Administrator of the company, explains: "The company had entered into two contracts that would have been loss-making because of the global increase in the cost of materials as a result of the pandemic, which couldn't be passed onto the customer, and also subsequent variation works on the two major projects. In addition, the company had an increasing tax debt.

Bradd Morelli, National Managing Partner, Jirsch Sutherland

"It was also impacted by poor budgeting and planning and poor strategic management of the business. However, the primary catalyst for going into administration were the significant losses – hundreds of thousands of dollars – that were forecast to be made on the construction projects, should the works have been completed. Which is why the director made the decision to go into administration."

Jirsch Sutherland worked closely with the director and determined there might be the prospect of putting together a Deed of Company Arrangement (DOCA), and the company continued to trade during the administration period while the prospect of a DOCA was explored. This had a dual benefit: it enabled the goodwill in the business to be maintained, and the employees of the company to remain in employment.

The DOCA was successful, which will result in full payment of superannuation entitlements to

employees, 100 cents in the dollar for secured creditors, and 28 cents for unsecured creditors.

Morelli says that this matter “ticked all the boxes for why a VA is a good option”.

“It allowed the business to keep trading, to keep staff members employed, provide time for the director and creditors to consider the DOCA proposal and, ultimately, enable the company to be restructured and improvements to be made,” he says. “The company has successfully reinvented itself and it’s now trading under a related entity that proposed the DOCA.

“If a business is in financial distress and at risk of insolvent trading, the Voluntary Administration process can provide a corporate lifeline. It gives statutory protection from legal action and allows directors time to refocus, pay down outstanding debt and get their business back on track. There is still a lot of misconception about what a VA is, and it’s important for businesses, accountants, and other trusted advisers to understand what the benefits are.”