HA2032
Corporate Accounting

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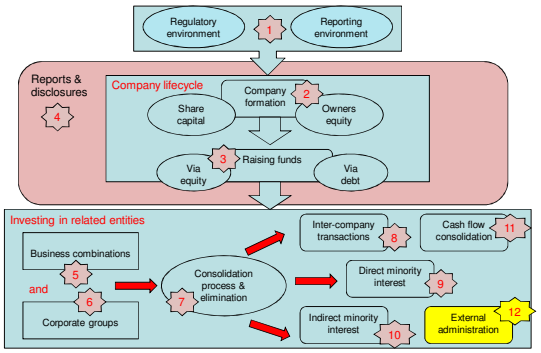
Topic 12
Introduction to External Administration

Studying Corporate Accounting



Features of external administration

- External administration – When a company is in financial or other distress
- Voluntary administration – an attempt to avert failure
- Receivership – a device to allow privileged creditors to *escape* the worst consequences of actual or anticipated failure
- Liquidation – orderly termination of companies that failed.

Features of external administration

- No applicable accounting standards or ASX rules
- External administration is regulated through Chapter 5 of the *Corporations Act*
- A significant role is given to courts of law.

Receiver

- Governed by the Act, Part 5.2 of Chapter 5
  - Appointment
  - Powers
  - Functions
  - Priorities, accounting and reports
    - Receiver's fees & costs → secured creditors → remainder returned to company.
  - Consequences
    - Does not alter company's status as a corporate person.

Voluntary administration

- Aim: to preserve property of a company threatened by insolvency so as to enable the business to survive
- To give creditors a better return than obtainable from liquidation.

Voluntary administration (contd)

- Governed by the Act, Part 5.3 of Chapter 5
  - Appointment
  - Duration
  - Creditors' meetings
  - Functions and powers
  - Deed of arrangement
  - Conflicts of interest.

Deed of arrangement

- Content (the Act, s 444A(4)):
  - name of deed administrator
  - company property to be made available to pay creditor claims
  - nature and duration of any moratorium that the deed provides for
  - extent to which company debts are to be cancelled
  - conditions for the deed to become operative, remain in force and terminate
  - order in which creditors who are bound by deed will be paid as monies become available.

Liquidations

- A liquidator is appointed to take control of company with the objective of terminating it.
- They collect and sell the assets, identify and rank creditors and pay them in prescribed order and approved ranking.
- In reality, insufficient assets force creditors into competition, while members and former officers will seek to minimise obligations.

Liquidation law

- Part 5.4–5.9 of Chapter 5 of *Corporations Act.*
- Bankruptcy Law.
- Jurisdiction lies with the Federal Court or Supreme Court in State.
- Court adjudicates on all matters in liquidation, including the granting of a winding-up order.
- Court's powers are unlimited and discretionary.
- Liquidator is an officer of the Court.

Consequences of winding up

- Control of the company.
- Supervision and consultation.
- Legal principle and agreement.
- Stay of proceedings.
- Other.

Winding up methods

1 Members' voluntary liquidation
  - Best for members' interests, they have powers of supervision and veto
  - Only permitted when funds are sufficient to pay all creditors fully
  - Establish *declaration of solvency* assuring that, within 12 months, company assets will realise an amount at least equal to all liabilities and costs of liquidation.

Winding up methods (contd)

2 Creditors' voluntary liquidation
- Company to be wound up by its creditors
- Creditors have supervision and veto powers
- Directors prepare *summary of affairs.*

Winding up methods (contd)

3 Compulsory winding up
- Court grants a winding-up petition
- Normal ground: insolvency
- Other grounds:
  - Unfair conduct
  - Just and equitable causes.

The liquidators functions

1 Responsibility concerning assets
- Evidence of existence
- Control
- Realisation
- Onerous property.

The liquidators functions

2 Responsibility to identify creditors
- Proof of claims
  - Discovery
  - Evidence
  - Powers as to proof.
- Meaning of creditors
  - To whom company is indebted under legal or acknowledged obligation.

The liquidators functions

3 Responsibility to rank and pay creditors
- Secured creditors
- Preferred creditors
  - Administration
  - Employees.
- Crown debts
  - Federal taxes.
- Unsecured creditors
- Deferred debts
- Payments to creditors.

The liquidators functions

4 Responsibilities to members
- Calls on contributories
  - Recover unpaid calls on share capital
  - Failure to pay arrears will result in forfeiture
  - Contributory – a person liable as a member, or past member, to contribute to property of the company if it is wound up.
- Distributions to members
  - Deferred debts of members include unpaid dividend declared.
- .

The liquidators functions

- Distributions to members (cont.)
  - After paying members' deferred debts, the liquidator pays out all remaining cash to present members, this represents their return of capital.
- Deregistration
  - Apply to ASIC.

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