

*Welcome to*  
**Aubrey Paton & Associates**



Certified Practising Accountants  
Business & Taxation Consultants

**ECONOMIC DOWNTURN - POSSIBLE ISSUES FOR BUSINESS**

**QUESTION 1 - Reducing Labour Costs**

Q: I need to reduce my labour costs. What do I watchout for?

**Comment:**

There are several areas where we have helped clients to reduce their labour costs. The first, and the most obvious, is to reduce staff numbers. The trick here is to do it with employee consent so that the costs to the business are both known and controlled. Another possibility is convincing your workforce to work with you to reduce labour costs. In a recent assignment we negotiated reduced hours for a client who has a workforce of more than 80. Employees actually agreed to take unpaid leave while working shorter hours which was a significant advantage to the business. This was achieved after direct discussions with the Union and even a visit to the Australian Industrial Relations Commission (AIRC).

**QUESTION 2 - Collecting Debts**

Q: More customers are stringing out payment or not paying at all. What's the best way to chase a debtor?

**Comment:**

If your debtor is a company, the debt is over \$2,000 and there is no genuine dispute about the debt, serving the debtor with a "statutory demand" could be the best way to get payment within 21 days. Statutory demands can usually be issued for a fixed fee.

**QUESTION 3 - Letter from Bank**

Q: We've received a letter from the Bank seeking the appointment of a consultant to conduct a "Strategic review" of our business. How should I respond?

**Comment:**

Are views of your business by an outside party appointed by the Bank, may be costly and very distracting. Provided you act promptly, it may be possible to negotiate with the Bank to buy you time, save you money and, if need be, Refinance. If you are currently re-negotiating your finance we can advise you on the kinds of special conditions that banks often impose and suggest ways to make them less onerous to you.

#### QUESTION 4 - Cash flow

Q: We've seen a decline in profitability. I'm seriously concerned about our ability to service the bank and other creditors. What should I do?

#### Comment:

The important issue to get clear urgently is whether your company can meet ALL of its debts as they fall due. We urge you to consult with us as soon as possible so that you get an understanding of this issue. Declining profit is not necessarily insolvency, but it could be an early warning. Failure to deal with this issue commonly leads to the problem dealt with in question 5.

#### QUESTION 5 - Liability of Directors

Q: If things get serious, what should I be doing to protect myself from being sued personally?

#### Comment:

As a director you can be sued personally if your company pays out creditors or enters into "insolvent transactions" when your company is not able to pay all of its debts as they fall due. Please feel free to ring us to get a more detailed outline of the types of transactions that your company should avoid and other actions you might need to consider taking if you are facing difficulties. Be aware that breaching directors duties can lead, not only to claims by liquidators, but also to action by ASIC seeking penalties and compensation, and in some cases, prosecution for criminal breach. In serious cases, ASIC reviews and investigations and formal examination of directors will often precede other legal actions. If you face an ASIC investigation, contact us immediately for advice. We have experience in representing directors in response to ASIC investigations.

#### QUESTION 6 - Business Sale

Q: I'm wanting to sell my business and in this climate I think I'll find it difficult to find a buyer. What can I do?

#### Comment:

We have experience of previous situations over the last 40 years when credit has been tight and the economy has contracted. If you are contemplating a sale of your business there may be other opportunities and mechanisms to achieve your objectives. However, we need to know what those objectives are as each case is very different to any other.

QUESTION 7 - Acquisition of Assets

Q: Growth is still our strategy, so we are looking to purchase assets. In this economic climate what do I need to look out for?

Comment:

This objective is really the flip side of a sale of business. Again we need to discuss with you your objectives and look at some of the detail surrounding your business and the target acquisition. We caution you against entering into legally binding obligations or making irrevocable financial commitments to the seller prior to getting a thorough understanding of: the business and its assets; their ownership; and any third party claims over those assets. If you are contemplating buying the shares in the company owning the business instead of the business assets, we recommend increased vigilance during the due diligence process and coordination of financial and legal due diligence.

TWO FINAL POINTS

1.PAYMENTS FROM YOUR CUSTOMERS-BEWARE THE "CLAWBACK"

Be aware that if a customer of your's goes under then payments previously received by you from the customer may be "clawed back" from you by the liquidator. So, if you are concerned about the financial position of any customer, speak with us now about how you could protect the payments you receive from that customer.

2.RETENTION OF TITLE CLAUSE

If you supply product/goods you probably have a "retention of title clause" in your terms of trade. This clause aims to protect you against a customer that goes under by giving you the right to take back possession of product/goods supplied if the customer fails to pay you. Now would be a good time to check that you have such a clause in your terms of trade. And, if you do have one, to have it checked to be sure it is drawn as tightly in your favour as the law currently allows.

**Courtesy of Macpherson + Kelly Lawyers**