DEED OF COMPANY ARRANGEMENT (DOCA)

A DOCA represents an outcome of the Voluntary Administration process, enabling the restructuring of a company to facilitate its ongoing trading ability and corporate existence. A DOCA also ensures that a company can manage its creditors' existing claims through a formal agreement.

It is an opportunity for the company to trade through an unexpected hurdle such as short-term cash flow problems, legal issues or other actions.

A DOCA is an extension to a Voluntary Administration and is one of three alternative options available to creditors in determining the future of a company. Creditors are asked to consider and decide on the future of the company at a meeting convened pursuant to Section 439A of the Corporations Act 2001, which is commonly referred to as the "second meeting" or "proposal meeting".

Whether a DOCA is an option available to creditors is contingent upon the director(s) putting forward a proposal setting out the terms and conditions of the proposed DOCA. The submission of the proposal should be tendered prior to the second meeting in order to enable the presiding Administrator to assess the merits of the proposal against liquidation of the company.

The Administrator will, in their report to creditors, provide a comprehensive analysis of the return to creditors arising from a DOCA versus a liquidation of the company enabling creditors to decide and vote upon what is in their best interests.

The advantages of a DOCA are as follows:

- It has the potential to bind all creditors of a company to the terms of the DOCA;
- It offers the company an avenue to be released from its debts at the date of appointment of an Administrator, provided that the terms of the DOCA are complied with;
- Control of the company will ordinarily revert back to the director in either a full or limited capacity;
- A moratorium on creditor claims for the duration of the DOCA is imposed, meaning a creditor cannot commence or continue legal proceedings against the company without leave of the Court;
- A DOCA is flexible and can be tailored to a company's specific circumstance;
- It can return the company to a position of solvency;
- It will enable the company's business to continue with ongoing benefit to suppliers and employees;
- Generally, it provides a greater return to creditors than if the company was placed into liquidation with an opportunity for a dividend to be paid relatively quickly;
- Should creditors vote to accept a DOCA, the DOCA will ordinarily be executed within 15 business days from the date of the resolution being passed by creditors unless extended by the Court;
- Should the DOCA requirements be complied with, the company will avoid liquidation and the director(s) will avoid the potential negative personal consequences of a Liquidation;
- Any parties considering a DOCA should be mindful that actions usually afforded to creditors in a Liquidation scenario such as pursuing insolvent trading, uncommercial transactions, unfair preferences and other voidable dispositions are not pursuable under a DOCA scenario.

Should you have any queries regarding the above information or any other matters, please do not hesitate to contact our team via www.hamiltonmurphy.com.au or send us an email at info@hamiltonmurphy.com.au.