

Legal Issues for Service Providers

Reckless Trading

Reckless trading is the term afforded to directors' responsibility in trading while insolvent. This is a nightmare area for directors as their decisions are always viewed with the benefit of hindsight and it is often the case that hindsight will reveal insolvency and business risks which might not have been apparent at the time.

The Companies Act specifically legislates against reckless trading imposing personal liability for directors. The claim currently in the Courts against Jenny Shipley highlights the risks for directors. Ms Shipley was a director of failed Mainzeal. She is personally being sued for over \$47m for losses suffered by creditors allegedly as a result of decisions by directors of Mainzeal to continue to trade whilst the company was insolvent.

Putting Mainzeal aside, many directors will feel their responsibility for the company demands that they carry on and explore all avenues to trade out of insolvency. That is precarious to say the least. Another who is being sued along these lines is the Queenstown Mayor Jim Boulton who had been a director of Stonewood Homes, indeed I could give you a long list. Beware.

Cartel Liability

Steer clear of price fixing arrangements! Corporates that engage in price fixing or arrangements between competitors to restrict their output or allocate customers or geographic regions between them put themselves in peril. Criminal liability – a fine or imprisonment – is the potential outcome.

The recent Australian laid charges against ANZ, Citigroup and Deutsche Bank highlight the concern here. Not only have the companies themselves been charged in Australia (by the ACCC) for criminal offences, but so have a number of the senior executives. The charges relate to trading in ANZ shares held by Deutsche Bank and by Citigroup following an ANZ institutional share placement in 2015. Though the outcome is not yet known, the peril facing those charged is obvious. This follows hot on the heels of a \$15m penalty imposed in Australia against Air NZ for cartel conduct involving agreements with other airlines to fix the price of fuel and a recent \$12m penalty awarded against Flight Centre.

Don't hesitate to contact me for further information.