O'BRIEN PALMER
INSOLVENCY & BUSINESS ADVISORY

OBP BUSINESS UPDATES
DECEMBER 2023

VOLUNTARY LIQUIDATION

CLOSING DOWN IMPACTS & DECISIONS

CASE STUDY: ECORNER

by

JOHN DEBRINCAT
FORMER DIRECTOR
eCORNER

LIAM BAILEY
MANAGING PARTNER

INTRODUCTION

The global pandemic brought a slew of challenges for businesses across industries and regions. For Sydney-based eCorner, which provided hosted e-commerce website services to businesses, the tides turned exceptionally grim in 2021. This article delves into the challenges faced by the company, the decisions they had to make, and the ensuing liquidation process and ramifications.

REASONS FOR THE DOWNFALL

eCorner was besieged by a multitude of factors:

1. **Heightened Competition:** eCorner was battling fierce competitors from overseas, particularly Shopify. Such platforms, with their global footprint and significant resources, eroded eCorner's market share.
2. **Decreased Productivity:** The abrupt transition to work from home during the pandemic led to reduced productivity, complicating project execution.
3. **Marketing and Sales Hurdles:** Marketing expenses soared, yet sales cycles lengthened, resulting in a decreased ROI on promotional campaigns.
4. **Fixed Fees & Rising Expenses:** Existing customer contracts had fixed fees, making it tough to adjust pricing in line with rising operational costs. The escalating costs of PCIDSS compliance, among other requirements, further strained the budget.
5. **Refinancing and Sale:** Efforts to find alternative financial pathways, including potential refinancing or sale, led by a business consultant, were unsuccessful.
6. **The COVID Pandemic:** The nail in the coffin.

THE COMPANY HISTORY

Founded in 2004, eCorner Pty Ltd provided hosted ecommerce websites for businesses. Since the start of the business operating capital was primarily provided by the major shareholders.

In Australia ecommerce was relatively an unknown. Overseas solutions had been developed to enable businesses to create an online presence quickly. One such organisation was ePages and in 2004 a master distribution agreement was signed to offer the ePages product to businesses in Asia Pacific initially focusing on Australia and New Zealand.

With the digital marketplace and ecommerce just beginning to mature, ecommerce services were in demand, and eCorner enjoyed years of steady growth. Like most startups any revenue was put back into the business. Although sales and the customer base grew profits did not.

However, the increasing competition from overseas companies, especially giants like Shopify, started to encroach on eCorner's clientele. They watched as their customers were wooed away by cheaper or more functional platforms, causing sales to slump.

FINDING NEW INVESTORS

In 2011 eCorner was approached by Telstra with a view to acquire a significant stake in the business. This led to a long period of negotiation and during that process there were many changes to the business processes and procedures.

Ultimately the negotiation failed, and the investment didn't proceed.

So, it was decided that the business would seek funds via business loans from the National Australia Bank. This allowed the business to expand. These loans quickly grew in costs as business interest rates were rising.

SOFTWARE EVOLVES FAST

The Software as a Service model was adopted and implemented using ePages as that base technology. All services were based in Australia and that was presented as a market differentiation.

As new international competitors came into the market eCorner was under pressure to find new channels to market and new opportunities. That requires capital.

Cashflow was always a key issue but was supplemented by business bank loans supported by the major shareholders. But that was continuing to add pressure to the business.

LOCALISATION AND DEVELOPMENT

The main product was ePages hosted online stores. This was built on a highly modified version of the original software to incorporate the localisation needs like payment method, shipping, marketing and many others.

As the software matured and new functionality was needed the technical effort became more complex and more expensive.

AUTOMATION AND RECORD KEEPING

eCorner was a highly automated business. Systems were used for all business functions and all business data was stored online. This was both a benefit and a liability as explained later. Automation also adds costs and maintaining systems required specialist knowledge.

The suite of business systems used included:

- MYOB for accounting and invoicing
- Microsoft Access for data management
- Sales Force for sales, customers, and licence management
- Slack for internal communication
- Microsoft 365 for meetings, mail and general office automation
- Zoom for online sales events and meetings
- Social media and marketing tools
- Numerous software development tools and systems
- Antivirus, malware and cyber security systems
- Hosting was based in Australia via Macquarie Telecom cloud computing

THE TIPPING POINT

In 2017 it was apparent that change was needed to survive. We took advice from a business consultation and acquisitions firm with the objective of finding investors or buyers. Although there was a lot of interest nothing eventuated.

The decision was made in 2018 to reorganise the company to reduce monthly costs. Bank loan interest was a significant expense, so it was agreed that the bank loans were paid out by loans directly from the major shareholders and security was taken against those loans.

The loans between shareholders and the business were fully documented with interest rate set. The loans were protected, via a PPSR – Personal Property Security Register.

The company moved offices to reduce rental costs and negotiated new cloud infrastructure with the key Information Technology supplier. These new offices provided all key services as part of the rental.

Some staff were retrenched or not replaced while other staff agreed to salary cuts. The business was stabilised.

THE COVID PANDEMIC

Then COVID-19 hit. By January 2020 businesses were closing and lockdowns were being discussed and implemented.

This pandemic, with its myriad of challenges, became the proverbial straw that broke the camel's back. Monthly expenses began to rise, and productivity fell. Some customers that were based on face-to-face sales went out of business very early. Other customers could not pay the monthly fees and were given assistance. The sales, already slowing due to competition, grew even slower. The revenue that came in was mostly from existing clients and projects commenced before COVID, but with fixed fees that were difficult to increase, this wasn't enough.

GOVERNMENT ASSISTANCE

Both federal and state governments offered assistance via grants such as JobKeeper which supported existing full time and part-time staff. eCorner was able to keep existing staff with the support of grants throughout the first year or more of the pandemic.

But by early 2021 these grants were starting to run out and so pressure was put on the liquidity of the business.

THE DIFFICULT DECISIONS

The company senior management convened to discuss the company's future. The harsh reality was evident; the business was unsustainable in its current form.

We again reached out to the advisors and accountants, Presidio Partners and business advisor, Groves & Partners to determine the options. One recommendation was to get advice from an accredited liquidation firm to look at a voluntary liquidation and O'Brien Palmer was recommended.

It is important to note that you need to get personal legal advice. The legal firm needs to be able to provide advice on the business issue and responses for a director of a company in liquidation. Your family solicitor will most likely not have the expertise to assist you. JHK Legal was the chosen firm and provided advice and reviewed all the documentation that was provided and completed.

Importantly everything that is done, said, and agreed needs to be documented. This should start long before the business enters liquidation.

MEETING THE LIQUIDATORS

The first meeting with the company chosen to control the voluntary liquidation was difficult. Mainly because at this point what was to happen next was unknown.

This meeting was to discuss the structure of eCorner and financial position. Provide an update on acquisition options and more information about liquidation.

- Discussed the current financial position and explained that cashflow was the key issue and that we might run out of cash. We needed to expediate the options.
- Gave a general overview of the situation and agreed to provide more complete company and financial information.
- Also explained that staff and customer protection was important if that can happen.
- Explained that we cannot put more money into the business. The liquidator explained that if it only delayed the result, it would not be a good idea.
- They asked about company debts, and it was explained that all tax and employee payments up to date and no bank debts apart from the company visa card that is paid out monthly. The business owed some back payments to ePages, supplier of software, due to last years lockdown. But otherwise, payments for royalties to ePages was monthly.
- It was agreed that we had some time to look at the sale option but if the position did not improve then the next step was to start the liquidation process.
- Our business advisor provided information and outlined a plan to do a fast offer and look for interested parties who might acquire the whole company or just the business (customers). We agreed and it was agreed that we would send the engagement letter. The cost to do this was around $10,000.00 and so was an additional expense that was unplanned.
- It was agreed to provide a list of suggested companies that might acquire the business. These included known possibilities, competitors and staff offers.
- The liquidation process, if we were to proceed down that path, was explained and a timeline was charted. A deadline date was set where the liquidation would be triggered if an acquisition did not occur.

At this point it is also important to have a legal representative that can advise on the process from a personal position.

In late July 2021 the decision was made to enter voluntary liquidation. The decision to liquidate was gut-wrenching but seemed the only viable option.

1. LAYING OFF STAFF:

The most challenging decision was letting go of long-term employees. These were people who had been with the company through thick and thin. It was apparent that allowances had not been made to retain enough cash to cover annual and long service leave entitlements. Superannuation and PAYE tax was up to date and had been paid on a monthly basis.

It was apparent after discussions with the liquidator that Australia has the Fair Entitlements Guarantee (FEG), which employees may be able to claim where there are not available funds in the business. For example, unpaid wages, unpaid annual leave and long service leave, payment in lieu of notice and redundancy pay.

2. INFORMING SUPPLIERS:

Suppliers, some of whom had built years of relationship with eCorner, had to be informed about the company's decision. The company tried to honour as many outstanding debts as possible, but some negotiations were challenging. Supplier invoices had been paid monthly and most were up to date.

3. CLIENT TRANSITIONS:

eCorner's responsibility didn't end at its own doors. They had a commitment to their existing clients. Efforts were made to ensure smooth transitions to other service providers. This included helping with data migrations and other support services.

4. ASSET LIQUIDATION:

Office equipment, servers, and other assets had to be sold off, with priority given to clear as many company debts as possible.

SUPPLIERS & STAFF

eCorner's office providers, information technology providers, software vendors, and other suppliers were also tightening their belts. Negotiating payment terms or seeking extensions became a delicate and often fruitless negotiation.

Most heart-wrenching was the staff meeting. The company had prided itself on a family-like culture. Layoffs were inevitable. When the decision was announced, the room was heavy with emotion. Long-time employees, some of whom had been with eCorner since its inception, were facing the reality of seeking employment in an uncertain job market.

IMPACT ON CLIENTS

For eCorner's diverse clientele, the news was a blow. Many were local businesses that had grown alongside eCorner. The idea of migrating their websites, some of which were complex e-commerce platforms with years of data, was daunting.

Some of the customers understood the situation and were very supportive. While others saw the situation very negatively and looked to place blame and even recover indirect losses.

Information regarding the situation and liquidation could not be shared with the customers. The directors have an obligation to continue with business as usual. After the liquidator is appointed the company directors lose control and there are limits to the information that can be discloses without the liquidator's approval.

JOHN DEBRINCAT
FORMER DIRECTOR
eCORNER

VOLUNTARY LIQUIDATION

by **JOHN DEBRINCAT FORMER DIRECTOR eCORNER**

THE LIQUIDATION LABYRINTH

The decision to liquidate wasn't taken lightly. It involved assessing and valuating every asset, from tangible office furniture to intangible software licenses. Every client contract had to be reviewed, ensuring transitions were smooth and data integrity was maintained.

There is a lot of paperwork and the directors of the company have an obligation to complete that paperwork honestly and as completely as possible. This is the main reason that good business record keeping is essential.

The impact was multifaceted:

1. **Owners:**
   Beyond the financial loss, there was a deep sense of disappointment. The dream they had built and nurtured was now dissolved.
2. **Suppliers:**
   Some had to deal with unpaid invoices, and others lost a significant chunk of business.
3. **Staff:**
   Beyond the immediate loss of income, many grappled with a sense of identity loss. For many, eCorner wasn't just a job; it was a community.
4. **Customers:**
   While many were transitioned smoothly, others faced disruptions in their businesses due to the change in service providers.

Entering voluntary liquidation is a significant decision for any business owner. Voluntary liquidation refers to the process where the company's directors decide to wind up the affairs of the company.

NAVIGATING TOWARDS LIQUIDATION

Given these mounting challenges, the eCorner management had to confront the painful decision to cease operations. Several options were considered, with voluntary liquidation emerging as the clearest path.

1. **Professional Liquidation Firm:**
   Before making a final call, eCorner reached out to a professional liquidation firm for advice. Such firms have expertise in guiding businesses through the process, ensuring legal compliance and optimal asset liquidation.
2. **Staff Buyout:**
   There was a brief glimmer of hope when a staff buyout was floated as a potential solution. However, complications arose from certain suppliers' financial demands, making it unfeasible.
3. **Final Call for Liquidation:**
   With no alternatives left, eCorner had to make the difficult choice to undergo voluntary liquidation.

VOLUNTARY LIQUIDATION

"A company's Voluntary Liquidation is the method by which a solvent company is wound up and its assets are distributed to its members (also known as shareholders). The winding up itself is usually conducted by a registered liquidator."

Entering voluntary liquidation is a significant decision for any business owner. Voluntary liquidation refers to the process where the company's directors decide to wind up the affairs of the company due to its inability to meet its liabilities.

Given the serious ramifications for stakeholders, especially in a regulatory landscape as intricate as Australia's, seeking professional advice is essential for a multitude of reasons:

1. **Legal Implications:**
   The Corporations Act 2001 (Cth) is the primary piece of legislation governing the liquidation process in Australia. The Act sets out strict requirements and responsibilities for directors during liquidation. Failure to adhere to these requirements can result in personal liability for company directors or even criminal penalties.
2. **Complexity of the Process:**
   Voluntary liquidation involves various steps such as holding meetings, appointing a liquidator, ceasing company operations, selling company assets, distributing funds to creditors, and deregistering the company. A professional advisor can guide the business through these steps in the correct sequence and ensure compliance.
3. **Financial Assessment:**
   Before opting for liquidation, it's crucial to have a comprehensive understanding of the company's financial position. Expert financial advisors or accountants can provide an unbiased assessment, helping to determine if liquidation is indeed the best option or if alternatives, like restructuring, might be more suitable.
4. **Protection of Directors' Interests:**
   Company directors may face personal liability in certain circumstances, especially if insolvent trading can be proven. Professional advice can help mitigate the risks and ensure that directors' actions are in accordance with the law.
5. **Stakeholder Communication:**
   Liquidation affects various stakeholders, including employees, creditors, suppliers, and investors. It's essential to communicate effectively and transparently with these groups. An advisor can guide this communication to ensure it meets legal requirements and maintains the company's reputation.

CASE STUDY: eCORNER

6. **Maximising Returns for Creditors:**
   A professional liquidator's role is not only to wind up the company but also to maximize returns for creditors. They can help identify and sell assets at their best possible value, ensuring that debts are settled as extensively as possible.
7. **Tax Implications:**
   Liquidating a business may have various tax consequences, including capital gains tax, GST, and other potential liabilities. Engaging a tax expert ensures that all tax implications are understood, and any potential benefits are maximised.
8. **Emotional Distance:**
   Making the decision to liquidate can be emotionally draining for company directors. An external advisor provides an objective perspective, ensuring decisions are based on facts and logic rather than emotions.
9. **Exploring Alternatives:**
   Before deciding on liquidation, there might be other viable options, such as entering a Deed of Company Arrangement (DOCA) or restructuring. Advisors can present these alternatives, offering a potential lifeline for struggling businesses.
10. **Future Planning:**
    Post-liquidation, company directors might be pondering their next steps. Professional advisors can offer guidance on future endeavours, ensuring past mistakes aren't repeated.

LOSS OF CONTROL

Once the liquidation process commences the directors of the company no longer have control. During the liquidation process key data is needed to enable the liquidator to fully understand to extent of the financial position of the company.

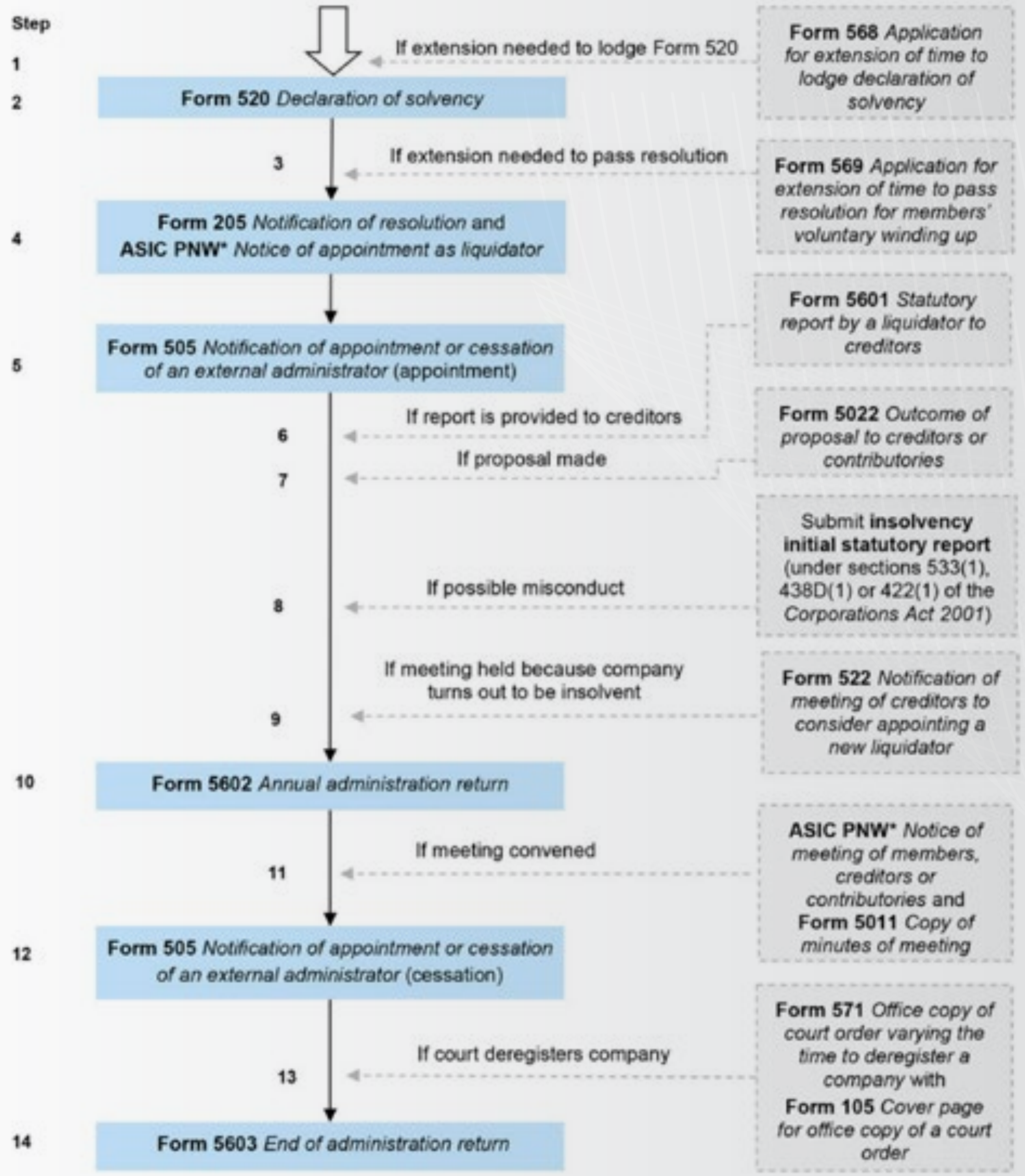
eCorner maintained all the company data assets online and as mentioned before used a number of key business system. A downside of this is that once control of systems is lost access to the data that was contained is also lost.

An important issue to note is that all the core data should be copied from any online system prior to passing over control or turning those systems off.

CASE STUDY: eCORNER

THE LIQUIDATION PROCESS IN AUSTRALIA

In Australia, small business liquidation involves several stages:



* ASIC PNW = ASIC published notices website.

In a more simplified format, there are five key steps that a business owner needs to take:

1. **Decision-making and Consultation:**
   The company's board decides to liquidate, typically after seeking advice from insolvency experts.
2. **Appointment of a Liquidator:**
   A liquidator is appointed to manage the winding up of the company, settle its debts, and distribute any remaining assets.
3. **Asset Distribution:**
   Assets are liquidated, and proceeds are used to pay off creditors.
4. **Final Reports:**
   The liquidator prepares final reports detailing the process and outcomes.
5. **Deregistration:**
   Once all assets are dealt with and debts settled, the company is officially deregistered.

THE IMPACT ON STAKEHOLDERS

1. **Owners and Shareholders:**
   They bear the emotional and financial brunt of seeing their investment and efforts dissolve. Many face significant personal financial losses and the challenging task of starting a new or pivoting their careers.
2. **Suppliers:**
   Suppliers face the risk of unpaid invoices, which can cascade into their own financial problems, especially if eCorner was a significant client.
3. **Staff:**
   Employees not only lose their jobs but also face uncertainties regarding pending payments, benefits, and severance. The emotional toll, combined with the general job market's state during the pandemic, compounds their challenges.
4. **Customers:**
   Existing clients must migrate their e-commerce platforms, often facing disruptions in their online sales. The trust they placed in eCorner is shaken, making them wary of future collaborations with smaller firms.

LESSONS LEARNED

Business planning and the need for constant review is a critical lesson that comes out of this situation. eCorner did have a business plan and did circulate and review that plan with stakeholders.

But the plan was built based on growth and new opportunities and did not look at the downside possibilities. Those being no growth and no opportunities. Few small to medium sized businesses consider the possibility of failure.

There are some important lessons that can be learned from the eCorner story.

1. If possible, **surround yourself with people that you can trust.** There will be a point where there are difficult decisions to make, and others cannot make the decisions for you. But have advisors that you know, and trust can make the process much easier to bear.
2. **Be realistic,** although planning is generally about success there needs to be an understanding of what will happen if that is not possible.
3. **Use an accredited external accountancy service** to manage your business accounting and reporting. Keeping accurate records and understanding your financial position is very important.
4. **Cash flow** is the life blood of a business. It is essential not just when starting but for every period of the business development. Unexpected events that might stop cash from coming into the business need to be considered.
5. **Keep financially up to date**, many businesses use superannuation and BAS as a short-term loan service. But by paying suppliers, employee entitlements and the ATO monthly the business has a cleaner and easier to manage financial position.
6. **Staff leave entitlements,** always understand the extent of employee unpaid entitlements. If employees are with the business for many years these entitlements will build up and become a significant liability. Employees should take regular leave and leave should not be allowed to accumulate unpaid.
7. **Seek financial and business help** early from a qualifies management consultant. Organisations like the Institute of Management Consultants have directories that can help find a qualified person to advise the business.
8. **Ensure that the company maintains good business data** on all aspects of the business including.
   - Financials
   - Staff
   - Prospects and customers
   - Suppliers and details
   - Software systems licences
   - All assets tangible and intangible
   - Shareholders
   - Policies and procedures
   - Business plans

Thank you

We are very grateful to John Debrincat for generously taking the time to pull this information together, as well as sitting down with us recently for an indepth interview to discuss the entire process. He has done a fantastic job at documenting each stage from a business point of view, but also speaking on a personal level around what it meant for their team, their investors and shareholders – many of whom were personal friends and family, their suppliers and also their very valued customers.

I cannot stress enough that businesses fail for many reasons, and it doesn't mean anything about you as an individual. I think we can learn a lot from John who has come through this journey, and has come to a much happier place within himself by recognising that their business cycle had drawn to a close, and moving on to do other viable work with a not for profit organisation, as well as consulting back to many of their former clients.

LIAM BAILEY, MANAGING PARTNER, O'BRIEN PALMER

SERVICES

CORPORATE INSOLVENCY

Voluntary Administration
Deeds of Company Arrangement
Receiverships
Court Liquidation
Members' Voluntary Liquidations
Creditors' Voluntary Liquidations
Provisional Liquidations

PERSONAL INSOLVENCY

Bankruptcy
Part X Personal Insolvency Agreements
Part XI Deceased Estate Administration
Deceased Estate Administration

COURT APPOINTMENTS

Statutory Trusteeships (s66G)
Expert Reports

BUSINESS ADVISORY

Business Viability Reviews
Prelending/Refinancing Reviews
Security Reviews
Management Reporting
Cash Flow Management
Turnaround Management

CONTACT THE OBP TEAM

SYDNEY
Level 9, 66 Clarence Street
Sydney NSW 2000

☎ (61) 2 9232 3322
✉ obp1@obp.com.au

BATHURST
103 Piper Street
Bathurst NSW 2795

PO Box 2153
Bathurst NSW 2795

☎ (61) 2 6338 2650
✉ obp1@obp.com.au

O'BRIEN PALMER
INSOLVENCY & BUSINESS ADVISORY