



## HOW TIMES CHANGE

By Schon G Condon RFD

This time last year I was making the closing address at the Annual Turnaround Management Conference in which I drew attention to the claim that there would be a significant financial meltdown during the periods 2008 and 2015 made by Robert Kiyosaki in his book "Rich Dad's Prophecy". There were many in the room who denounced such a prediction as being a myth. I indicated at the time however, that the issue was not whether there was going to be a meltdown but how well protected people would be in the event that it did actually occur. My genuine concern was the increasing belief by a number of parties that it could not happen.

It was a concern that brought to mind statements made in 1911/12 that the ship that could never sink had finally been built. The beliefs of a number of people at the time and the short but spectacular life of the RMS Titanic, now a matter recorded in history and the reinforcement of a basic understanding that essentially almost anything that floats can sink.

There are always many people who jump up after the event and spruik I told you so, alas this does not help. Risk assessment and contingency planning are the foundations of preparation against difficult times or events regardless of what they are, financial or otherwise. The difficulty with this is that there is associated costs, which will reduce the level of profit made, alas in boom times where the simple driver seems to be 'increase profits at any cost' this makes surviving the difficult period even more difficult.

Turnaround has now genuinely become a global issue. No doubt there are many who will be gloating at the impending prospect that there is money to

be made in the demise of others. The real issue is that if steps are not taken to minimise damage, the collateral impact will be significant.

This year in addressing the 2008 Business Leader's Summit, I revisited the fundamentals of turnaround from a global perspective. They can effectively be summarised as follows:-

- Growth
- Logistics
- Operations
- Behaviour
- Action
- Leadership

It will be the application of these processes that will see the regaining of value within the community. Let us hope that at the end of the day there is a genuine attempt to preserve, retain and build stakeholder value at all levels. Failing this, the impending slide may well have a very long distance to go and there will be many unnecessarily hurt along the way.

***Enjoy the read.***

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## **Recent Changes to Corporations Act Part 2** By Robert Kite

In a previous article (On the Beam September 2008), I made reference to the recent changes to the Corporations Act ("the Act"), and provided some detailed notes on the impact of same with respect to Voluntary Administrations. This article will highlight the changes to the Corporations Act with respect to Creditors Voluntary Liquidations.

It shouldn't come as a shock to most people reading this article that the "straws" which sometimes "break the camel's back" with respect to determining the appointment of an Insolvency Practitioner is quite often a Director Penalty Notice from the Australian Taxation Office. Such notices usually give the Director:

- 14 days within which to appoint a Liquidator
- Appoint an Administrator
- Pay out the debt in full, or
- Come to some arrangement with the ATO.

In the absence of taking any of the four options, the ATO will then have the necessary powers to prosecute the Director to recover monies outstanding for PAYG monies withheld that were not remitted to the ATO.

Under the old provisions of the Corporations Act, fourteen days wasn't necessarily sufficient time to arrange for the appointment of a Liquidator of a Creditor's Voluntary Liquidation as the client had to speak to their professional adviser and then subsequently to an Insolvency Practitioner.

The time this process generally takes, left insufficient time remaining (within the fourteen days provided within the notice by the Australian Taxation Office) to affect the appointment of a Liquidator. This is due to the fact that under the old provisions, certain notices needed to be provided, and certain meetings needed to be held within proximity of each other. This presented an almost immediate appointment of a Liquidator to the Company.

In many of these circumstances, the Directors appoint an Administrator (as an immediate appointment can be effected), to attempt to minimise their personal liability. This however incurs additional resources and costs that could have been avoided if a more immediate appointment of a Liquidator had been effected.

A substantial change to the Corporations Act relates to the manner in which the appointment of a Liquidator can now be effected. In order to appoint a Liquidator in a Creditors Voluntary Liquidation, a meeting of Directors is first convened, at which it is resolved that the company is insolvent and that a meeting of shareholders should be called to consider the placement of the company into Liquidation.

It is only following the resolution of shareholders, that the company is placed into Liquidation (note that this remains the same under both the old and new provisions of the Act). Under the old provisions of the Act, there was a requirement that a Meeting of Creditors be held within 24 hours of the Meeting of Members. This in itself does not present a problem, except for the fact that Creditors are entitled to a minimum of seven days notice of the Meeting of Creditors. Therefore, the actual timing of the appointment of the Liquidator is held up, by the proximity of the Meeting of Creditors.

The recent amendments to the Corporations Act have changed this process. A similar process is still utilised; after a Meeting of Directors, a Meeting of Shareholders is still required. However, the Meeting of Creditors is now required to be held within a period of 11 days following the appointment of the Liquidator. As there is no longer the obligation to hold the Meeting of Creditors within 1 day of the appointment of the Liquidator, the Meeting of Shareholders can actually be brought forward and the Meeting of Creditors held at a later time.

It is acknowledged that there are certain notice requirements required for considering a special resolution to place the company into Creditors Voluntary Liquidation. In closely held companies, the new provisions of the Corporations Act allows for a far quicker appointment of a Liquidator and in many instances, may remove the need or desire to use a Voluntary Administration to effect the Liquidation of the company.

This not only has a cost saving due to the reduced professional costs of the Insolvency Practitioner, it can also result in bringing the matter to a conclusion at an earlier possible date.

### Annual Meeting of Members and Creditors

A recent decision by the Supreme Court of NSW has allowed an Unsecured Creditor to appoint an alternate special purpose Liquidator to conduct separate investigations into the insolvent company's affairs along side the director-appointed Liquidator.

In the past, the Court would only appoint a special purpose Liquidator when there was conflict. However, in this ruling there had been no conflict, however the Unsecured Creditor who was funding the investigations was not prepared to fund the director-appointed Liquidator.

In today's economic climate with corporate insolvencies on the rise, this decision reduces the reliance on director-appointed Liquidators and has the potential to encourage Unsecured Creditors to take a more active role in the winding up of a company.

### Global Stress By Sveta Shao

On Tuesday, 16 September 2008 insurance giant – America International Group (“AIG”) neared collapse, which prompted further panic and stress on global financial markets.

The share price of AIG – a company with one trillion dollars in assets and tentacles in many markets, was reduced by more than 60 percent on 15 September 2008.

Different from other insurers, AIG has been a big player in a complex parallel market named – “Credit Default Swaps (CDS)” relative to financial instruments in which Wall Street Companies take out as a form of market insurance against the risk of bond default.

This kind of product often has close links to the US real estate market, which is in decline, and as a consequence is the major cause of current banking crisis leading to massive write-down of assets' value around the world.

AIG alone has written off 25 billion US dollars amid spiking defaults on US mortgage payments in the United States.

If AIG is placed into liquidation, it will impact upon its subsidiaries operations around the world, and could deepen the global financial crisis. The US Federal Reserve announced an unprecedented rescue loan of up to 85 billion US dollars to save this insurance giant.

In order to improve the financial markets movement and regain investors' confidence, Reserve Banks around the world, including Reserve Bank of Japan and most European countries have already injected approximately 300 billion US dollars into the finance markets around the world between 15 September 2008 and 17 September 2008.

No doubt the global finance market is facing severe financial crisis. The recent collapse of Bear Stearns, Lehman Brothers has further stressed the world finance market.

Maybe it is the time for all business owners to stop and think “Is my business healthy? Am I on the right track? Or, should I seek professional advice?”

Failing to plan can lead the plan to fail. Make sure you take a proactive approach to looking after your business. The combination of a good plan, early action and appropriate advice can provide the best solution for business recovery



## Condon Crew Run The City to Surf!

By Esma Refik

On 10 August 2008 the City to Surf 14km fun run sponsored by the Sun Herald newspaper attracted over 70,000 participants. At the back of the pack stood eight Insolvency Practitioners in their navy blue t-shirts and white shorts representing Condon Associates.

Left to right: Lisa Micallef, Esma Refik, Lovelle Reyes, Ana Turkalj, Ian Niccol, Rob Garofano, Schon Condon, Debbie Condon

The City to Surf has been making history since 1971, it is Sydney's most iconic running event, covering a fantastic course that runs from Hyde Park in the Sydney CBD, past the beautiful harbour bays of Double Bay and Rose Bay, up a good climb that has been dubbed 'Heart Break Hill' and then along to finish at famous Bondi Beach.

Our highest achiever of the day was Ana Turkalj, she successfully completed the course in 1 hour, 39 minutes and 47 seconds.

The day was an enjoyable team bonding experience and we look forward to seeing you there next year with your running shoes on!

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Left to right: Lisa Micallef, Esma Refik, Lovelle Reyes, Ana Turkalj, Ian Niccol, Rob Garofano, Schon Condon, Debbie Condon



Schon Condon and Joseph Russo  
"Really looking forward to the changes ahead".

## Welcome to Joseph Russo

Welcome to Joseph Russo who joined the team at Condon Associates this month. Joseph, a CPA is a graduate from the University of Western Sydney with a Bachelor of Commerce (Accounting).

Joseph brings wide experience in audit & investigation with clients ranging from trust accounts, Credit Unions, Clubs and SME's that will enhance the Firms skill base both within the Forensic and Turnaround areas of practice.

Recently married, Joseph is interested in the finance industry, shares, NRL (Parramatta Eels), fishing, and spending time with his family.

In this issue we also farewell Senior Associate David Watson after his short employment with the Firm.

