

BusinessPlus+ Newsletter



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Issue – May 2016

Another Election Campaign!

The 8-week election campaign, prior to the election on 2nd July 2016, will present many opportunities for business people to consider policies, announced by all of the major parties.

It's pleasing to see that the economy is growing at least in volume terms; however the Reserve Bank's decision to reduce the interest cash rate to 1.75% highlights some considerable concerns by the Reserve Bank Board Members. Residential property prices have continued to surge in the major capital cities, however a number of banks have recently made decisions to curtail lending to overseas residents for home financing. It will be interesting to see what effect this decision has on residential property prices.

The Australian currency has recently performed higher than initial expectations.

One of the last acts of the Senate was to pass legislation for the innovation companies, that was announced by the Prime Minister in December 2015.

Australian Economic Predictions

| | Actual 2013 | Actual 2014 | Actual 2015 | Expected 2016 | Expected 2017 | Forecast 2018 |
|-------------------|----------------|----------------|----------------|------------------|------------------|------------------|
| Real GDP Growth % | 2.6 | 2.5 | 2.2 | 2.5 | 2.5 | 3.0 |
| CPI | 2.4 | 3.0 | 1.5 | 1.25 | 2.0 | 2.25 |
| Unemployment | 5.6 | 5.9 | 6.1 | 5.75 | 5.5 | 5.5 |
| Wage price index | 2.9 | 2.5 | 2.3 | 2.25 | 2.5 | 2.75 |

Crowd Sourced Funding Companies

Crowd sourced funding investment will be available from the 1st July 2016 following the Senate's approval of the Crowd Sourced Funding Bill on Wednesday 4th May 2016.

This legislation presents opportunities to small/medium enterprises wanting to raise capital. The key attribute of Crowd Sourced Funding Companies are that they will be public companies with a maximum asset value of \$5M and sales of under \$5M per annum. The maximum amount of capital that can be raised in a twelve month period is \$5M. The maximum amount that a "Retail Investor" (i.e. not a "Sophisticated Investor") can invest is \$10,000 per company per annum.

A "Sophisticated Investor" is defined as a person with net assets of at least \$2.5M or income over \$250,000. There is no limit to the amount of investment by a "Sophisticated Investor".

A Crowd Sourced Funding Offer document must be prepared for each capital raising activity. Companies that wish to raise capital utilising the Crowd Sourced Funding legislation will need to prepare a range of documents including:

- Business Plan;
- Budget and Cashflow Forecast;
- Marketing Plan;
- Intellectual Property Summary;
- Statement of Share Price Calculation; and
- Appoint three directors and a company secretary.

Crowd Sourced Funding Companies (cont'd)

Each company needs to appoint an intermediary which will be a business which holds an Australian Financial Services Licence to act as an intermediary. If you are interested in considering utilising Crowd Sourced Funding as a means of raising capital for your business operations, please contact us for a discussion.

Early Stage Innovation Legislation

The Early Stage Innovation legislation was passed by the Australian Senate on Wednesday 4th May 2016 and allows new capital raising opportunities for many businesses.

This legislation will be welcomed by Entrepreneurs wanting to raise capital for their inventions and investors seeking special taxation treatment. Generally, an eligible company would have been formed in the last three years but it could have been formed in the last six years, subject to specific tests on the company's expenditure.

Eligible companies will have:

- expenditure of less than \$1M per annum; and
- assessable income of less than \$200,000 per annum.

However, any grant funds that have been received from the Accelerating Commercialisation Grant are not included in the assessable income calculation for the company.

Eligible companies must pass a 100 point innovation test relating to one or more of:

- research and development expenditure;
- participant in Accelerating Commercialisation program;
- participant in an approved Accelerator Program;
- has the company raised in-excess of \$50,000 in equity capital from arms' length investors;
- has the company registered any patents or plant patents in the previous five years;
- has the company registered any innovation patents or registered designs in the last five years; or
- the company is generally focused on developing for commercialisation one or more new or significantly improved products, processes, services, marketing or organisational methods.

"Retail Investors" (i.e. not a Sophisticated Investor) can invest up to \$50,000 per annum per company and there is no restriction on the amount that a "sophisticated investors" can invest ("Sophisticated Investor" can have annual earnings in-excess of \$250,000 or net assets worth more than \$2.5M).

Investors in an Early Stage Innovation Company will be entitled to a 20% investment rebate up to a maximum of \$200,000 rebate per company per annum. They will also be entitled to Capital Gains Tax exemption if they hold the shares in the Early Stage Innovation Company for more than one year and less than ten years.

To be eligible as an Early Stage Innovation Company the companies will also require:

- Business Plans;
- Budgets and Cashflow Forecasts;
- Marketing Plan;
- Intellectual Property Summary;
- Commercialisation Strategy;
- Calculations of share price.

If you are interested in having a discussion with us relative to determining your eligibility as an Early Stage Innovation Company or the concept of forming a company which would be deemed to be an Early Stage Innovation Company for the purpose of capital raising for your business projects, please do not hesitate to contact us.

Innovation Companies Capital Raising For Businesses

The government's new legislation will provide opportunities for businesses to raise capital.

One of the opportunities for innovation companies is the special benefit for investors, for investment in Early Stage Innovation Companies (ESIC) to obtain a taxation rebate on their investment, as well as CGT holiday.

Various other groups are very interested in this process as they are able to organise investment for eligible companies. These are Business Angel Groups and Founders Forum.

Companies aspiring to be accredited as being ESIC also have to satisfy a 100-point test to be classified as an ESIC. Legislation provides for specific activities that could contribute to the 100-point test or, as a special provision, if the company is generally focused on developing one or more new or significantly improved products, processes, services, marketing or organisational methods for commercialisation, an independent expert can issue a certificate to that effect.

Innovation Companies Capital Raising For Business (cont'd)

An organisation that's gearing up to be able to issue appropriate verification is Bistorque Pty Ltd. Bistorque's Managing Director has joined representatives from Business Angel Groups and Founders Forum in a webinar presentation.

A special webinar on the new innovation company was presented for the benefit of small/medium enterprises, entrepreneurs, inventors, etc. If you wish to view this webinar, please [click here](#).

Corporate Governance Is Important – Part 3

Director's Personal Responsibility

- The Corporation's Code basically applies with equal weight to a director of a major public company as it does to a director of a smaller company. The Parliament has passed legislation for two new types of companies – "crowd funded equity company" and "innovation companies" – which will bring a significant number of new directors into Boards of Directors.
- Directors need to be aware that they need to keep themselves informed as to what's happening in the company. It's very important to read reports prior to the meetings, make notes and turn up at the meeting with pre-prepared questions.
- The key recommendation is that the director should be asking questions if they don't understand something. This could include matters such as allocation of liabilities between "current" and "long term liabilities" (refer to What's It Mean for definitions). A couple of years ago, there was a major court case (Centro Group) in which allocation of liabilities (were they long term liabilities or current liabilities?) resulted in significant penalties being awarded by the court against the directors.
- If a director is unsure of the situation, whether it's in a set of financial accounts or in an operating procedure within the company, the director should seek a better explanation from the accountant, auditor, lawyer or other technical experts prior to voting on a motion.
- The director should ensure that, if they're involved directly or indirectly, or any of their immediate family is involved directly or indirectly, on any matter being considered by the Board of Directors, they should declare their interest.
- It's important for directors to respect confidentiality of the director's discussions and in the final analysis if a director is dissatisfied with how the company is operating, or the flow of information to the director, or explanations that have been given, a director should really consider resigning from the Board of Directors because the overall responsibilities of being a director are very onerous.

Regular Monitoring of Financial Performance

Budgets and cashflow forecasts that have been rigorously prepared can be a very valuable tool for a director, when the actual financial accounts are available, because management should be comparing actual financial performance with the financial performance that was projected in the budgets and cashflow forecasts.

Directors should be enquiring as to the reasons for variances as this may indicate that a far too optimistic view was taken in the preparation of the budgets and cashflow forecasts of which directors should be well aware to be mindful of next time the budgets and cashflow forecasts are prepared for the company.

What's It Mean

Current Liabilities – those amounts owed by the business which will normally be repaid within the operating cycle of the business (usually 12 months). Examples are sundry creditors, accruals, loan repayments due in the next 12 months and income tax due.

Long Term Liabilities – Amounts owed by the business which in the normal course of events are not due for repayment within the next twelve months (eg loan repayments owing beyond the next 12 months).

Legal Advice Is Important

- Legal compliance is very important for a successful business. Failure to determine appropriate legal strategies can cause you stress. In the first instance, the selection of the right type of business entity is important. There are some entities that are necessary if you are to obtain support from the government. For example, if you're going to undertake research and development that will cost in excess of \$20,000 per annum and you wish to claim an income tax rebate, you need to be operating your business as a company. There are a number of government grants that are only available for companies.
- The protection of Intellectual Property (IP) is an area that most operators will require assistance from a commercial solicitor, to ensure that the confidentiality agreements and assignment of IP agreements have been prepared on an appropriate basis for your business.
- Other areas that you might need assistance from a commercial solicitor include:
 - lease agreements for premises
 - appointment of staff – are you complying with the Fair Work Australia rules
 - engagement of contractor agreements

Legal Advice Is Important (cont'd)

- There are many laws being introduced throughout Australia every month by Federal, State and Territory governments. Some of these are amendments to laws and new laws which could be affecting your business. By having a regular communication with a commercial solicitor, you will give yourself a chance of remaining abreast of the developments in the law that could affect your business.

The following webinars have been presented relative to this topic. Click on your preferred webinar to view the presentation:

- Legal Issues Affecting SMEs – presented by Matthew Karakoulakis of AMK Law – [click here](#)
- Legal Essentials for Australian Small Businesses – presented by Dean Woodbridge of Clinch Long Letherbarrow Lawyers – [click here](#)

Protecting Your Business From A “Time Bomb” – Part 2

The types of assets that can be affected by the PPSA are very wide. In the first instance, it's important to realise that, even though this legislation uses the term “personal property”, it's in fact “business property” that's affected.

Some of the business assets that can be lost to the owner, if they're not registered on the PPSR, include:

- supply of goods on consignment
- sale of goods with serial numbers including motor vehicles
- supply of goods utilising hire purchase agreements
- supply of goods utilising lease agreements
- goods stored in someone else's possession
- goods attached to other goods
- mixed goods
- amounts owing by debtors
- livestock on agistment
- share farmers for security over a crop
- equipment stored on someone else's property such as scaffolding, plant and equipment
- tradesman's tools and equipment
- workplace buildings
- boats and other types of watercraft
- crops
- stock
- inventory
- supply of feed for livestock
- aircraft
- artist's works, sculptures, paintings, etc
- licence agreements
- loans from one business to another

Prior to the PPSA being introduced, many businesses utilised a protection mechanism referred to as the Romalpa Clause. The traditional Romalpa Clause is no longer effective under this new legislation. If you haven't already spoken to a commercial solicitor, we suggest that you do so to draft two very important agreements for you to utilise with your customers: Terms of Trade Agreement and Retention of Title Agreements.

A system then needs to be introduced into your business to ensure that your customers are signing the Terms of Trade and Retention of Title Agreements prior to the first sale and that the administration team are able to process the required registration information within the very tight deadlines specified within the legislation.

For more details on the PPSR, [click here](#) to view a webinar that was presented, featuring “PPSR – How do You Protect your Business”.

An Important Message

While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only.

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