In boom and bust, we must retain trust

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This year, Australia's insolvency industry has undergone two tranches of law reform. Passed in September, the amended legislation, Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017, is widely considered to be long-overdue and brings Australia in step with other developed economies.

According to seasoned company director and AICD acting chairman, Gene Tilbrook, the reforms will also help "remove the stigma around business failure" and prevent many companies from being prematurely placed into external administration, and potentially liquidation.

To date, the bulk of the commentary has understandably focused on the changes to the safe harbor provisions which afford company directors a window within which to restructure troubled businesses that have reasonable prospects of recovery.

A less discussed aspect of the new regime is how it elevates the needs and rights of creditors (opening the door to creditor activism) and introduces new requirements for stakeholder communication.

It is important that these aspects of the reforms are also understood by management and boards.

In communication we trust

CEO attendees at this year's World Economic Forum named the gaining and retention of trust as one of their most pressing concerns. In doing so, they also acknowledged the definition of trust has expanded - and in today's terms, trust must be aligned with organisational values, culture and behaviour. The post meeting papers reference:

> *"The days where the CEO of a company was rarely accessible to the end customer or was able to get sanitised feedback are gone... Today, executive teams need to fully grasp the ethical and moral implications of their decisions, and communicate their actions with integrity. Trust has become an equalising force, moving power from top-down to peer-to-peer."*

These remarks are equally relevant to the insolvency sector, and to the relationship insolvency practitioners have with creditors.

When a company enters voluntary administration or liquidation, it is almost a given trust will be compromised.

In that state, what can directors, managers and the appointed insolvency practitioners do to earn back trust? Should they even try?

Indeed, they should, because just as lack of trust can harm a company's growth, a trust gap can also quash a company's recovery, erode its value, and even delay its winding up.

Trust enables disclosure

It's well known that in 2016 FTI Consulting was appointed voluntary administrator, then liquidator, of Queensland Nickel. Queensland Nickel's stated values included credibility, respect, accountability and results. On its website, the company also espoused its support of the community, promoting its massive contribution to the North Queensland economy through the purchase of goods and services from local suppliers.

By the time the company ceased operations, the employment of 787 personnel had been terminated and over $300 million was left owing to creditors, rendering it one of the largest corporate collapses in Australian history.

Little wonder then that when FTI Consulting began its forensic investigation, the climate was one of hostility and distrust.

In those early days, because details were scant and information was not forthcoming, building relationships, then trust, with stakeholders was critical to the success of the investigation.

The FTI Consulting team connected with more than 1,500 stakeholders – employees, middle management, executive leaders, suppliers, creditors, government. And as one of the liquidators, I personally travelled to North Queensland every week for three months. We conducted rolling meetings, large-scale forums, one-on-one meetings and made ourselves readily available for private meetings with creditors and employees. We issued fact sheets, Q&A documents, newsletters and we closely monitored social media channels and online forums so that we could anticipate issues and be proactive and alert to the issues that mattered most to our stakeholders.

It took a long time to build trust and gain the confidence of employees and creditors, but those efforts ultimately revealed the depth of the crisis, brought to light suspect activity, and directed the still ongoing liquidation of Queensland Nickel.

Trust builds confidence

In the past, creditors have regarded insolvency practitioners with disdain and distrust.

In return, some insolvency practitioners have regarded creditors as a burden – and one to be ignored. They considered creditors an obstacle, rather than the ultimate benefactor or end client.

The amended legislation puts creditors firmly in charge, empowering them to remove an appointed insolvency firm, to challenge their fees, and dispute their actions. Creditors want, deserve, and are now entitled to information, respect and customer service.

The 2017 reforms will humanise insolvency and prompt practitioners to consider who they're working for, not just what they're doing.

At an organisational level, the changes will compel insolvency firms to seek out, prioritise and develop soft skills – empathy, listening, sincerity, patience, communication, and the like – skills which aren't necessarily associated with the world of insolvency but must now be at the heart of its practitioners.

The challenge for the industry will be in balancing the need to communicate and provide customer service to creditors with the management and control of costs. In an administration, cost conscious insolvency practitioners have rightly been reluctant to spend time or money on anything that doesn't achieve a financial outcome. After all, every dollar spent is one dollar less that can be returned to the ultimate benefactor, the creditors.

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