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PNG Law Society

Tax Reform Update + Insolvency

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Presenters

Andrew Harris
Partner, Tax and Legal
andrewharris@deloitte.com.pg

Gil Grinberg
Partner, Advisory + Registered Liquidator
ggrinberg@deloitte.com.pg

Andrew Harris

Partner, Tax and Legal

Income Tax Act 2025

- Whole new Act, effective 01/01/26
- Final Regulations pending
- Draft Transfer Pricing Regulations
- New Forms not yet released
- IRC grace period to 30 June

Creation of IRC Board

- New rules on functions and powers
- Establishment of Audit & Risk, Governance, & Budget Committees

Tax Administration Act

- Greater IRC powers
- New appeal timeframes and payments
- TAA 2025 Bill
  - Private and Public Rulings

Goods and Services Tax

- GST Monitoring System
- Digital Services Bill

Automatic Exchange of Financial Information Bill

- Requirements re “reportable persons” by financial institutions

Creation of Infrastructure Tax Credit Development Board

- Treasury, DNPM, NEC, IRC, MRA NPA

Key Takeaways – ITA 2025

#1 - Withholding Taxes

1. Foreign Contractor Withholding Tax removed
2. Foreign companies:
   a) With permanent establishment (PE) lodge corporate income tax returns. 30% plus 15% repatriated profits tax
   b) With no PE may still be subject to non-resident technical fee withholding tax at 15%
   c) To determine what is attributable to PE and what isn't
3. New definitions of interest, dividends, technical fees and royalties
4. Tax treaties still overlay outcomes
5. Domestic withholding taxes limited – note now need Nil Withholding Authority for Business Payments WHT

- **Review contract terms, outcomes and appropriateness**
- **Understand timing of changes and which ITA applies**
- **Understand transitional rules and contracts affected**
- **Agree on outcomes and requirements**

Key Takeaways – ITA 2025

#2 - Employment Taxes

1. Salary package policies must be approved by the IRC. Only following can be salary packaged:
   a) Primary and secondary school tuition fees
   b) Flights – FIFO issue
   c) Accommodation (HAV change too)
2. New benefit valuation rules
   a) Motor vehicles
   b) Medical
   c) Loans
   d) Other
3. Non-resident tax brackets
4. Super – rates and RSAs

- **Agree salary packaging policy and submit to IRC for approval**
- **Understand all benefits provided**
- **Determine if employee contracts need to be updated**
- **Determine impact on 2026 payroll**
- **Look out for IRC announcements**

Key Takeways – ITA 2025

#3 – IRC Procedures

1. New Income Tax Act, Regulations and Tax Administration Act means new IRC procedures, forms, powers, guidelines and interpretations
   a) Withholding Tax Certificates and WHT forms
   b) Nil Withholding Authority (CoC)
   c) CGT forms
2. IRC has limited technical resources and delays and teething issues will occur
3. ITAS and self assessment coming

- **Look out for IRC guidelines early in 2026. Guidance may be retrospective**
- **Expect delays in IRC responses**
- **Understand risks in positions taken**
- **Seek advice**

Key Takeways – ITA 2025

#4 - Assets

1. New depreciation regime
   a) 5 asset categories
   b) Category for Intangibles
   c) Diminishing value method only available to categories 1 to 3, and require one-off pooling election
2. New asset transfer rollover rules, including current year losses. No amalgamation provisions
3. Capital gains tax limited to resource rights
   a) Valuation required, otherwise cost basis
   b) Beneficial ownership changes
   c) CGT rules require further consideration

- **Determine impact of depreciation changes and timing of deductions to income**
- **Consider impact of new rules in intra-group transactions**
- **For those with CGT assets, valuations recommended**

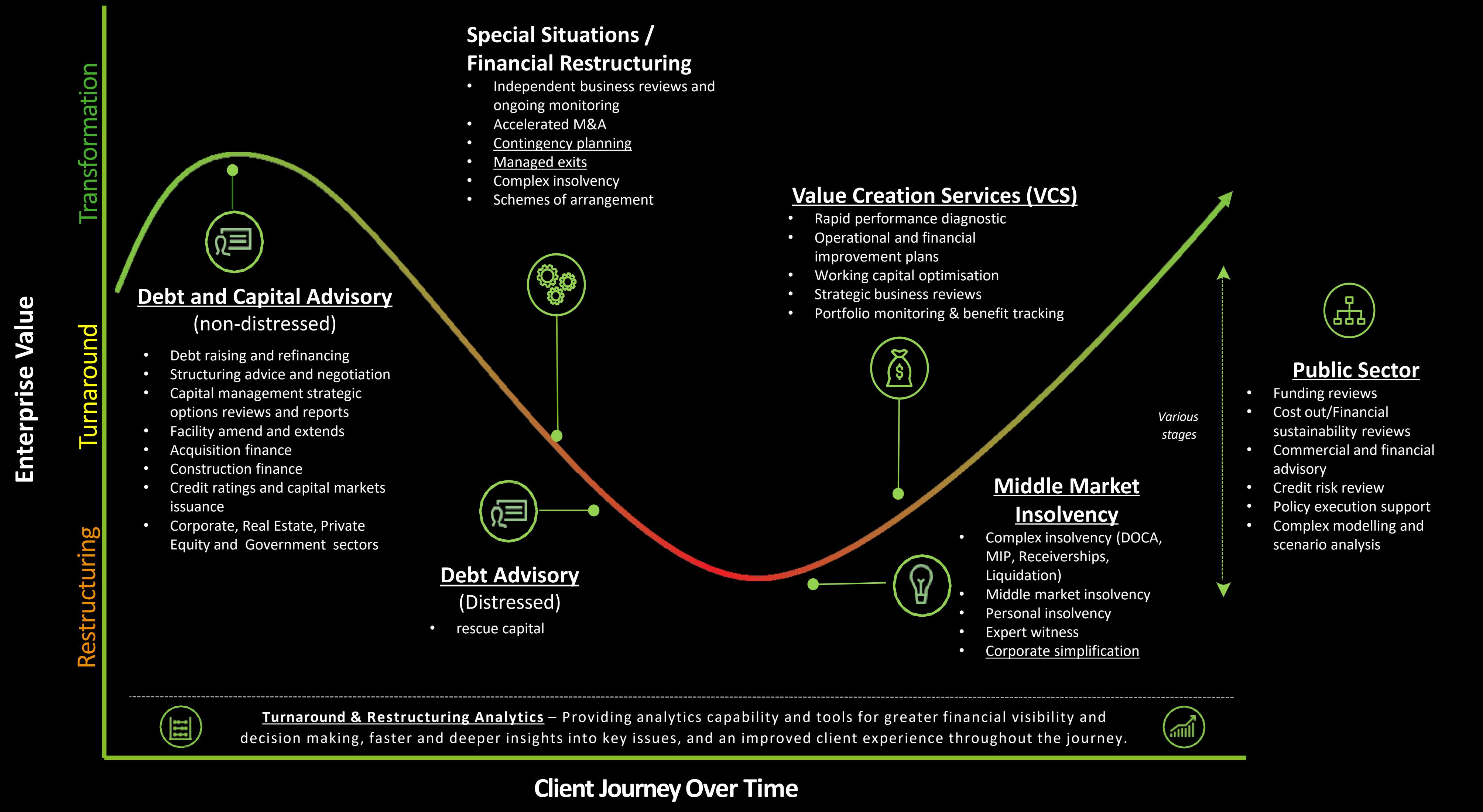
Gil Grinberg

Partner, Advisory

Registered Liquidator

The business lifecycle

Different tools are used for different stages of the lifecycle



Insolvency and Enforcement Mechanisms in Papua New Guinea

When a company experiences financial distress or defaults on its obligations, creditors typically seek to achieve one of three objectives:

1. **Mortgagee in Possession**

   Enforce security over mortgaged property

2. **Receivership**

   Enforce security over business assets

3. **Liquidation**

   Terminate the company and distribute assets

The chosen mechanism depends on the creditor's rights, the nature of the assets, and the desired commercial outcome.

Mortgagee in Possession

Mortgagee in Possession is a targeted recovery mechanism, often used where lenders want to avoid full insolvency proceedings.

What is it?

A mortgagee in possession is a secured creditor enforcement mechanism whereby, upon default by a borrower, the lender (mortgagee) **exercises its proprietary rights over secured property** by **taking possession of that asset** and either managing it or selling it to recover the outstanding debt.

In PNG, this mechanism is not governed by a single comprehensive statute but instead derives from a combination of **contract law** (loan and mortgage instruments), the **Land Registration Act** (in relation to registered land interests), and received English **common law principles**, which continue to shape mortgage rights and remedies.

The mortgagee is not required to achieve the best possible price, but **it must obtain a price that is commercially reasonable in the circumstances.**

The process of Mortgagee in Possession

1. **Mortgagee (lender) enforces security.**
2. **Lender takes possession of secured property.**
3. **Mortgagee decides whether to operate property or sell asset to recover debt.**

PNG Strategic Insights

Valuation risk is legally sensitive
Thin market – litigation risk where borrower alleges undervalue

Security enforceability varies by land class
Customary land cannot be mortgaged in the same way – structural limitation

Banking practice dominates doctrine
Courts tend to defer to commercial reasonableness where process is documented

Receivership

The receiver's primary responsibility is not to save the company but to maximize recoveries for the secured creditor that appointed them.

What is it?

Receivership is a **creditor-driven insolvency** enforcement mechanism through which a secured creditor appoints a receiver to **take control** of a company’s charged assets, or in some cases its entire undertaking, for the purpose of **preserving and realising value** to satisfy the secured debt.

In PNG, receivership rights arise contractually, but the mechanism is principally governed by the **Companies Act 1997**, which provides the statutory framework for the **appointment, powers, and duties of receivers, supplemented by the terms of the relevant security instrument** (typically a debenture or general security agreement) and applicable common law principles.

The process of Receivership

1. Default under security
2. Appointment under instrument
3. Receiver assumes control of secured assets or whole undertaking
4. Determine strategy
5. Asset disposal
6. Distribution (receiver costs, secured creditor, residual)

PNG Strategic Insights

Limited Insolvency practitioner capacity
May affect quality of operations and asset recovery

Information asymmetry
Poor financial reporting impairs turnaround decisions and asset tracing

Regulatory overlay
Especially in banking, aviation and utilities

Conflict between secured creditor control vs broader stakeholder impact

Liquidation

Liquidation is governed primarily by Part XVIII of the Companies Act 1997. A company enters liquidation when a liquidator is appointed.

What is it?

Liquidation is a formal, collective insolvency process designed to **wind up a company's affairs, realise its assets, and distribute the proceeds among all creditors** in accordance with a statutory priority regime, ultimately resulting in the dissolution of the company.

In PNG, liquidation is comprehensively governed by the **Companies Act 1997**, which establishes the legal framework for both court-ordered (compulsory) and voluntary winding up, as well as the appointment, powers, and duties of liquidators.

A key distinguishing feature of liquidation is the **liquidator's statutory obligation** to investigate the company's affairs, including potential misconduct, voidable transactions, or insolvent trading, reflecting the broader public and creditor protection purpose of the regime.

The process of Liquidation

1. Statutory Demand
2. Non-Payment
3. Winding-up Application
4. National Court Hearing
5. Appointment of Liquidator
6. Creditor Meeting and Asset Realisation & Distribution
7. Final Report
8. Deregistration

PNG Strategic Insights

- Court Delays materially **impact realisation**
- **Asset erosion over time** due to storage issues, security concerns, or market illiquidity
- **Weak creditor enforcement mechanisms** and **asset tracing systems**
- High Likelihood of **government intervention in large or sensitive entities**

War stories – SVS

Business rationalisation, receivership, refinance and recapitalisation

What happened?

The business had incredible growth and was very profitable. Future growth plans were funded by bank debt – but unfortunately it could not sustain the previous growth.

During a 12-month period, underwent a business improvement and rationalisation programme.

Progress stalled, resulting in appointment of receivers.

Pacific balanced fund refinanced the debt, recapitalised the business and control was returned to the original owners. Only possible due to the 12-month restructuring and turnaround programme.

Insights

- **Ex-parte** injunctions!
- **Working with stakeholders early** gives you more options later

War stories – Hodava Hotel

Long-tail litigation, business turnaround, sale to the Church of Jesus Christ of Latter-Day Saints

What happened?

Successful business. Too much debt to sustain downturn in profitability.

ANZ Bank appointed us as Receiver and Manager.

Long-tail litigation, involving partial injunctions delivered through ex-parte hearings.

Returned business to profitability under receivership.

Sale to the Church of Jesus Christ of Latter-Day Saints (Mormons) – who will be converting it into a skills training college after NCDC signs off on redevelopment.

Insights

Ex-parte injunctions again!

Returning the business to profitability critical

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Deloitte.

Contact us

Deloitte Touche Tohmatsu

Level 9 Deloitte Haus,

MacGregor Street,

Port Moresby

Papua New Guinea

Phone: +675 308 7000

www.deloitte.com/pg

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