



Take on Board

Transcript – Kate Conneely

Helga Svendsen 0:00

Today on the Take On Board Podcast, I'm speaking to Kate Conneely about voluntary administration, what it is, what it can be used for and why directors should consider it as part of their governance framework. First, let me tell you about Kate. And Kate is a partner at KordaMentha and a registered liquidator. She brings over 13 years experience specialising in formal insolvency restructuring and litigation strategy. In her role as a registered liquidator, she in effect assumes the position of the board on each company to which she is appointed. Kate has a proven track record dealing with small enterprises through to large corporate groups across a broad range of industries and restructuring scenarios, including playing a lead role in the area of administration. Most recently, Kate was appointed as administrator of Equestrian Australia Limited. Fun Fact or maybe not so fun fact, Kate is one of 7.6% of women who are registered liquidators across Australia. Was KordaMentha punching above their weight on this, they have double the national average? This still only represents 16% of the registered liquidators there. Kate is passionate about nurturing and supporting women to become registered liquidators, so we can change this statistic. Welcome to the Take On Board Podcast Kate.

Kate Conneely 1:17

Thank you so much for having me Helga. And thank you for that very lovely introduction.

Helga Svendsen 1:22

A pleasure. And we will come back to that fun fact. Because I'd love to not only talk voluntary administration, but talk a bit about gender equity and how that impacts both your sector but also what the advice might be for us on boards. But we'll come to that. Firstly, as always, I'd just love to dig a little bit deeper about you. So can you tell me a story about young Kate that tells us a bit about how you got to where you are today.

Kate Conneely 1:49

Okay, sure. So, young Kate really didn't know what Kate wanted to do. So Kate went to university and studied accounting and law, and was still undecided in her last year. But there had been the collapse of Ansett in my last year of university. And for the first time in 15 years, my university offered insolvency law as a subjects. So I thought I would say what it was all about. And we did an assignment on insolvency and the press and this firm called KordaMentha kept popping up in news

articles nearly on a daily basis. And I thought, Oh, this actually sounded quite interesting. And given I didn't know, if I wanted to be a lawyer or an accountant, it seemed to be the perfect mix of the two. And so I took a gamble and applied for a graduate role with KordaMentha, many, many years ago. And I guess they can say that the rest is history because I was successful. And I have now been a KordaMentha, some 14 years starting as a graduate, and last year being promoted to partner. So it was that fateful University subjects selection that brought me to where I am today. It's interesting to hear two parts of that what a that fateful University subject, it's not often that it does actually end up. I shouldn't say it's not often, but it's not always the case that those University subjects end up having that relevance in the real world. So that is fantastic to hear. And interesting to hear about it being in the news and the Ansett side of things, listeners might know, you might know that I was at the Australian Services Union at the time, and I was the organiser for the airline industry. So KordaMentha's role in the answerde administration is also very firmly etched in my mind from that time as well. And presumably, if you joined the firm a few years later, you may well have still been involved, because it went on for many years, that administration.

It did. And I think hearing you say that it proves it's a very small world. Insolvency touches the lives of many unfortunately. And yes, it was still running when I joined the firm. And I distinctly recall organizing courier packages to send airline parts to very, very random parts of the world, where airlines were still using the airplanes that Ansett had back in the day.

Helga Svendsen 4:08

Linda White was on the podcast a few months ago talking about some of those impacts as well. And yes, I think she has a memory of, you know, doing random deals with people to buy airplane parts and who they're sold to this and interesting, fun stories in there. I'll put a link to that in the show notes so people can go back and listen to that one, if it's of interest to them, as well about where aeroplane parts or aeroplanes end up and who the buyers are in Russia and the Mafia.

Kate Conneely 4:39

Hopping on a plane, chances are you probably are jumping on an Ansett plane from back in the day. So it is interesting and the legacy I guess still lives on.

Helga Svendsen 4:48

Yeah, it did. I think being you know, one of the largest administrations in Australian history. I think it did bring to light for a lot of people voluntary administration and what it means it became a much more public I think after that, certainly for me, but I think for many people, because it was such a public collapse of an organisation. So, which probably brings us to our topic for today, which is around, obviously, it's around voluntary administration. So even though that was the answer, one was one of the more public ones. And even though people may today know a bit more about it,

what is voluntary administration? Can you give us the, you know, the one on one, what is it? And what's it used for?

Kate Conneely 5:29

It's actually a very dry topic. I'm not going to lie. And I think I probably start with the legal answer, because that's probably my background. And technically, it's a Corporation's Acts framework. So in theory, it is a restructuring tool that's available to companies, that has the overarching purpose of maximizing the chances of a company continuing, or as much of the company continuing in its existence, into the future. And so when we say maximizing the chances, it's all about avoiding liquidation. Because liquidation is everyone perceives to be and it is, it's the death of the company. So it's about what are the options available to keep this company alive? So in practice, it really means that a board will sit down and assess the financial position of the company and say, is the company solvent? Is it insolvent? Or is it likely to become insolvent? And normally, when a board is sitting down and assessing the position of the company, it's normally after they've taken advice from an insolvency practitioner, and actually assessed where the company sits? And what are the options available to it, the board then must pass a formal resolution to actually appoint the voluntary administrator. And that person is considered and must be independent and must be a registered liquidator. So it is a pretty small pool of people, but they are all across the country. You mentioned in the introduction, that when I take my role, I step into the shoes of the board. And that's exactly what happens when a company goes into voluntary administration, the voluntary administrators are appointed, they take control. But I think the important thing there is that if you've got a good board and a good management team, it's about working collaboratively together. Because I can go into a company and know nothing about the company, and nothing about the industry. But voluntary administrators understand leading and managing issues in crisis. And that's the skill set that we bring to the table. I think the biggest benefit is that oftentimes when boards are going into voluntary administration, they're fighting fires all day long. Oftentimes, there's issues in the business, some they can control, but often they can't. And so the administration draws a line in the sand and says, Hi, Mr. creditor, Hi, Mrs. Landlord. I'm very sorry. But right now the company is taking a pause. And we're going to assess the position of the company and work out what is the best path forward for this company. So for the next little while, you'll need to sit tight while we work out and devise a plan to stabilize the company and to take it forward. And finally, its creditors who get to decide the outcome of the administration. So control does rest, ultimately, with the creditors and the stakeholders of the company that has an administration. So it's really important that it is a collaborative process, and everyone gets taken on the journey, so that the right decision is made at the end. And there are three outcomes that creditors can vote for. One is that control gets handed back to the board. That's a really rare outcome, because that would mean that the company was actually solvent. And it might have been a temporary hiccup that had caused the appointment of the administrators in the first place. The second is that the company execute what we call a deed of company arrangement, which again, is a pretty technical term, but realistically, it's an agreement between the creditors of the company, the company itself, and the parties that become the data administrators to agree how the company will be administered going forward. And then the third option, and unfortunately, this is, in some circumstances, the only option available is liquidation. And that really will occur where there's no ability to remedy the underlying causes of distress in that

company, or perhaps where directors have committed offenses, and there needs to be an investigation and recovery. So that I guess, is voluntary administration in a nutshell. But I should add that it is a really quick process. It's supposed to be quick and efficient in the sense that in theory, it can be done in around 28 business days. So no, no long drawn out process. But for example, I think everyone is very much aware of the voluntary administration of Virgin that took place last year. There is an ability to extend the timeframe for which the voluntary administration will run. And that's a really important feature, because obviously, it's not a one size fits all approach. And so with a company that size of such significance to the economy, national interests, it was really important that the administrators had that flexibility to be able to extend the time. So there are lots of ways to make it very fit for purpose for each company.

Helga Svendsen 10:28

Okay, or there's so many things I want to delve into there. So just on that final part, so the period of administration. So if it's the second option, and that is that a deed is entered into a date of arrangement. Once that deed is entered into, strictly speaking, the administration period is over, and then its implementation of that deed.

Kate Conneely 10:49

That's exactly right. So at the time that the date of company arrangement is signed, it could be that the administrators or the deed administrators as they then become largely step back. And control of the company can then be handed to the Board of Directors so that the board will continue to trade the business into the future. And the deed administrators might have an oversight role in terms of making distributions to creditors, or making sure that certain milestones that are built into the deed, say, for example, the sale of an asset are adhered to. But in some instances, it may be that the deed administrators actually retained control of the company. So most recently, with Equestion in Australia, which I was appointed to with a colleague, Craig Sheppard from our Melbourne office, we put the company at the second meeting, it was agreed that the company would go into a deed of company arrangement. But one of the milestones in the deed was that we would find an entire new board for the company. And so what Craig and I remained in control for an extended period of time. And then we went through a national recruitment process to find us, a new board, nine individuals who would be representative of the organization and its interests. And once we were able to put those new directors in place, then we were able to step away.

Helga Svendsen 12:12

Oh, I'm not sure where to go next. Let's let's try it. So I'm interested in in the role of the board in all of this. So there's that initial decision, obviously, of the board to put the company into voluntary administration. So from that point, because we've we've talked previously about some of the red flags and to look out for and so on. But once the board has made that decision about moving into voluntary administration, can you just talk me through in practical terms, what that means for you as

the registered liquidator in your relationship with the board? Because you've stepped into the shoes of the board? What does that mean for the board? Are they no longer the board for that period? But then they might come back and have a role if a deed is entered into how does that work in practice? What's the role of the board? If anything?

Kate Conneely 12:58

Yeah, sure. So I guess the answer is, it really depends. And I know that that's not an answer. But if we think about it, from the moment that the voluntary administrator is appointed, the board, they maintain their role, they don't resign, they stay in the office, but effectively all of their powers are suspended. So the Corporations Act says the administrator is now here. So the administrator is responsible for making decisions, and the administrator becomes an officer of the company. But we also have in the Corporations Act requirements for the board to assist the administrator. So there are obligations to provide information to the administrator to understand the assets, the liabilities and the financial position. And what the directors involvement has been in the company, because we are obligated as administrators to actually report to creditors, on what the directors say, is the position of the company. And so as you can imagine, in many instances where companies have great information, a really competent board and a really competent management team, that information comes out and reconciles with where the administrators conclude the position to be. But sometimes that's not the case. And so we have to report that to creditors to say, the directors say that the company is worth \$20. But in actual fact, on our investigations, we think it's worth \$200. And so that information needs to be provided to creditors, so it's clear it's transparent, so that they can understand how well the company was managed. Because ultimately when it comes to the deciding the future of the company, if those directors are going to stay involved in the future governance of the company, then creditors want to know that they were doing a good job essentially.

Helga Svendsen 14:44

So boards are put aside boards a step to the side, their role is kind of suspended. And it sounds like they may well often have views at odds with the administrator. Let's say to creditors meeting do boards get to have their say as well, or is it just the administrator?

Kate Conneely 15:03

The pleasing thing is the board's get to have their say to. So oftentimes parties will want to come to the meeting and explain what actually went wrong to their mind, because we actually have the first meeting of creditors within eight business days of taking an appointment. So you can learn a lot of things in eight days, but you can't learn everything. And we weren't there and involved when the issues were actually first presenting themselves. And we don't necessarily know how the board decided to make the strategic decisions that it did. So some directors will absolutely come along to meetings, and explain to creditors, what went wrong. And that is a great thing to be able to, to speak to your stakeholders and explain the situation. Because oftentimes, when companies go into

insolvency, it's financial, but it's also emotional. And so being able to express your opinion and your views on how things transpired, I think is a really powerful thing for directors to be able to do.

Helga Svendsen 16:04

And then I think you mentioned before they've got some, you know, that's their responsibility is to work with the administrators, they've got a requirement to assist in that way. So presumably, it's to both give the information to the administrators as best they can, but also to present their own case, if it is slightly different.

Kate Conneely 16:23

Exactly right. And the involvement and the cooperation or assistance that required really varies also, depending on the size of the organization. So if this is a small business with one director, it's normally quite hands on and quite involved. But if we're talking about an ASX listed company, it might very well be that the board relies very heavily on management to engage with us as voluntary administrators. But as a general rule, yes, we like to have the board's involved in the process, you know, they've invested a lot of time, a lot of effort, a lot of reputational value is tied up in these companies.

Helga Svendsen 17:01

And of course, the board, presumably, they actually get to choose who the administrator is. And if the first meeting is within eight days, you know, I would imagine that at least at that point, relationships are probably pretty good and strong, they might not always end up good and strong, I'm guessing further down the track. But at least at that stage, both the board and the administrators presumably have a pretty strong linear relationship, because they've been chosen by the board.

Kate Conneely 17:29

That's right. Yes. And that's how you know everyone endeavors to keep it that way. But as you do, say, time events things transpire. And sometimes it doesn't always pan out that way.

Helga Svendsen 17:39

Are you able to give us a live example? Like you mentioned a question in Australia before and in fact, in as much detail as you can tell us, I'm particularly interested there, because part of the role was to find a new board. Now I'm really interested in how the board who appointed you, and in their requirement to assist, then somehow it ends up that it's finding a new board. I'm not sure how much you're able to share with us there. But if you're able to talk us through that example.

Kate Conneely 18:07

Sure. I mean, maybe I'll give you two. So one is a relatively straightforward one and the other and a question Australia is I'm going to put in the slightly unique bucket. So the first one was a mining and mining services company, where we took the business through a sale process, after putting in in administration, there was a board there, very competent and very capable. But we actually sold the business to a third party. And so as a consequence of the sale, that third party wanted to install its own directors. And so there was a very consensual agreed resignation of all of the directors so that the purchaser could appoint its own board. That is what I would say, standard process for a sale through voluntary administration.

Helga Svendsen 18:51

Is it also well, how common is it? I guess that board members like maybe one or two board members from that organization then ended up on the new board? Is that does that happen very often?

Kate Conneely 19:02

I won't say that it happens very often. But it can happen. And sometimes that's really important from a continuity and a knowledge and an understanding perspective. And that may be particularly also with respect to management. So that there is that transition of knowledge and the old business isn't lost, if you like when a sale takes place that can absolutely occur. But I wouldn't say that board seats necessarily were the most common.

Helga Svendsen 19:28

And indeed, you know, I realized in asking that question, it kind of can sound like it's like, oh, but do we get to save our board role? It's around the saving of the organization, first and foremost. And if, presumably, if that can best be served by having the experience and knowledge of some of the directors or some of management, great, but if it's not best served in that way, then so be it.

Kate Conneely 19:53

Yeah, and I think just to add to what you've just said, oftentimes, we would like to bring a purchaser in. So then there can be some integration prior to completion of a sale occurring so that there is a seamless handover. Because oftentimes when we as administrators have imposed ourselves upon a company as well, I mean, there's a lot of things that we do in the background that we need to make sure the processes and controls and the information is handed over seamlessly as well, because we need to be able to walk away knowing that the purchaser and the company has everything it needs to be able to move forward in a successful way.

Helga Svendsen 20:31

Now, you're going to tell us about the slightly more complex circumstances with Equestrian Australia.

Kate Conneely 20:38

I was. S Equestrian Australia is a really interesting example. Because, number one, it's a national sporting organisation. So it's an organization funded by Sport Australia, or through the AIAS, to effectively promote equestrian in Australia, which is, it's the first time I've ever been involved in a sporting organisation. But I think the interesting factor there was as well, that it's a member based organisation. So it's a not for profit, with something like 18,000 members around Australia. So that's a lot of people who have a vested interest in the success or otherwise of this company. The greatest difficulties that Equestrian Australia faced were with regard to its corporate governance. So its funding from the national body had been withdrawn, off the back of concerns about the instability within the board, they've been very large turnover in board numbers, but also the chairs of the board. So that created a real uncertainty, and I guess, an unacceptable risk for the funder. And so that funding was ultimately withdrawn. And so when you're dealing with a membership based organisation that also has state based organisations that are separate, but related in the sense that they're all regarding the sport of Equestrian. And they're not related in the sense of a shareholder or otherwise, you really need to manage the interests of your people around the country. And so in consultation with the existing board, who were incredibly supportive of us, as administrators, and who made that incredibly tough decision to put the organisation into administration in the first place, they agreed with us that if we were to find an appropriately qualified, but more importantly, representative board, to take the organisation forward for the good of the sport, then they would resign their positions. And so that is exactly what did in fact, take place. And it was really great to be able to work with that existing board, have their support, knowing that the company was indeed of company arrangement, and that they would retire when some constitutional amendments were made, but also when there was a board there who were competent and capable and ready to serve the sport.

Helga Svendsen 22:51

Hmm. Interesting. And the board prior to that, then maybe I'm saying two and two and n equals five here, but was it more a representative board? Then it was, say, a skills based board? Is that the way it was structured? Was it like a representatives of the states or representatives of different parts of Equestrian?

Kate Conneely 23:11

You're not going to duck the question, but I think the answer is I never spent a huge amount of time focused on what the prior board was involved in, I guess, because our our philosophy, and our approach is very much looking forward. But I would say that it probably wasn't representative of all of the stakes. And when you've got members all across the country, and you've got big stakes, and you've got small stakes, it does need to be balanced. And so that was really our focus moving forward.

Helga Svendsen 23:39

And it sounds like a, despite the organisation ending up in some difficulties that the board had a leadership role at the time, it sounds like they had an incredibly mature approach to their own role in the future of that organisation. And by the sounds of things, put their own egos aside, essentially to step aside and allow the organisation to move into the future in a more sustainable and kind of positive way.

Kate Conneely 24:04

Yeah, and I think that's the beauty of the administration process, that without this company, having gone into administration, I think it would have been the end of this national sporting organisation, which would have mean, we might not be sending athletes to Tokyo, you need an organisation like this to actually send people to the Olympics, and that would be quite devastating for participants in this sport. So the administration process gave the board the opportunity to actually turn this company around.

Helga Svendsen 24:32

Oh, there's so much more I can ask about voluntary administration. But I'm also interested to delve into gender equity in your profession as well, before we wrap up so we mentioned in introduction that you're passionate about gender equity, equity, and that you're working in an environment that perhaps sadly, has even less gender equity than most boardrooms. And let's face it, gender equity in most of the boardrooms, Isn't fabulous either. So two parts to that. I'm just wondering, what's your advice to women who are operating in those environments? And what steps do you think we can take to improve gender equity, either with registered liquidators or in boardrooms?

Kate Conneely 25:17

In terms of women in organisations or industries where they're, I guess, they don't make up at least half? I think my advice is, number one, women need to support women, because we need to stand united, we're not divided. And we need to pave that path for others coming behind us, it's so incredibly important to bring through our junior women in our organisations. And that is going to sitting down and starting with the recruitment process from day one, when we're looking for

graduates in our organisations. What are we doing that's immediately building in the unconscious biases into our processes. Because if we don't build that pipeline, we're never going to be able to feel at the top. And I'm sure I'm preaching to the converted, and lots of people who, who completely agree with that proposition, but we really have to live it and breathe it and walk it every day. I'm very lucky that I've been supported by some incredibly amazing women who have come through my organisation before me. And I'd like to think that I'm now doing that exact same thing, with the women coming behind me. And I think it's really about reflecting on the challenges you faced, and those times where you wish you had have spoken up or done something differently. And I'm making sure now I make those conscious decisions. So that when my colleagues are in the room, they're the one that gets to do the talking. And they're the one that gets to be heard, because I often think if I reflect, I would have liked to have had those opportunities myself coming through.

Helga Svendsen 26:54

Oh, Kate, I knew the time would go too quickly. What, what are the main points you want people to take away from the conversation that we've had today?

Kate Conneely 27:01

First and foremost, I think voluntary administration sounds far more scary than it is. And I really do think in today's environment, having Plan A, which is your status quo, we're doing great, and we're going to do well into the future is a really good strategy. But I think boards these days also need to be thinking about the plan B and the Plan C and the Plan D. And I think snap lock downs are the perfect example and the driving force as to why we need to have those plans on the table. And don't be afraid of putting voluntary administration, if there are stressors in your organisation as one of those plans. And the second would probably be that planning early and getting help early or asking for help early with your organization will always give you the runway to set your company up for success. And sometimes voluntary administration can be the most powerful tool to set your company up for future success.

Helga Svendsen 27:54

Is there a resource that you would like to share with the take onboard community?

Kate Conneely 27:59

Sure, I was thinking about this. So there are there are probably two if I can be so greedy as to suggest to so number one is KordaMentha actually now has its own podcast, which is which is called Behind Business. And what that really is, is a short and sharp podcast released probably once every month, where we take a deep dive into a business or an industry, we share with our listeners, our perspectives as restructuring as real estate, and forensic accounting specialists on what we're seeing

on the other side, we get the view of directors often, but sometimes it's the view of the advisor or the consultants, which sometimes can be a different side of the coin. And then the second is, and this is probably a very popular one with your listeners. But I'm a little bit of a Brene Brown tragic, maybe if you could call me that. And I think some of her podcasts, particularly on the Dare to Lead series are phenomenal. You can learn so much in a half hour podcast with Brene Brown and whoever her incredible guest speakers are. So they would be my top two.

Helga Svendsen 29:05

Thank you so much for joining us today. If you'd said just a moment ago that Brene Brown's half hour podcasts are a great way to learn. And I'm guessing that people are going to have learned an awful lot out of this half hour conversation as well. So thank you so much for sharing your time and wisdom with us today and being so open and sharing some of those lessons from some of the administration's that you've worked on. So thank you for being here today.

Kate Conneely 29:31

Thank you so much for having me. Helga. It was a wonderful experience.