


What to Do

when faced with potential abuse of Part 5.3A

01


Be vigilant



People are creative! Be aware that the regime in Part 5.3A of the Corporations Act can be abused and be vigilant about it.

02


Step through the purposes of administration



Think economically! At all points in time, consider if the company be saved, is it likely or possible that creditors will get a better return? Ask: "why are we in the regime"?

03

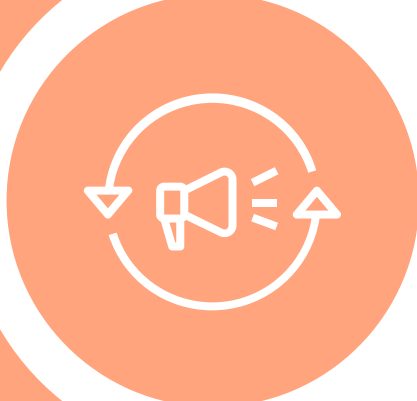
Are there alternatives to section 447A?



Think laterally! If there is a potential improper use of Part 5.3A, consider seeking a declaration of invalidity under 447C rather than pursuing an action under s 447A. If there is already a DOCA, consider applying to the Court for an order to terminate the Deed pursuant to 445D.

04

Think about relief



Think through solutions! If abuse under s 447A is established, remember that the Court will be looking at what's in the interest of creditors, what's in the interest of the business and the company.

The Court is not limited to simply an order that the administration end with control simply reverting to directors. Put yourself in the shoes of a judge and think about the objectives of the regime and try to see what relief would be best suited to your circumstances