

Administrator investigating circumstances behind 'unofficial' Foodora directors

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Sep 20, 2018 - 11.00pm

The Australian Tax Office could struggle to pursue individual Foodora directors for what is being flagged as more than \$10 million in tax and superannuation liabilities as the company's only official Australian director is a 23-year-old accountant.

Foodora administrator Worrells Solvency last week launched an investigation into the food delivery company's directors after it discovered that three of them were never registered with the regulator despite exercising control over the company.

Two of the "unofficial" directors were current and former executives from Foodora's German-based parent company Delivery Hero, Bastian Stohr and Philipp Lederer, and the third was managing director of prominent meal-kit delivery company HelloFresh, Manutea Dupont

[<https://www.afr.com/technology/web/ecommerce/becool-backtracks-says-hellofresh-marleyspoon-could-buy-it-20180531-h10tpo>].



Manu Dupont, co-founder of online supermarket, ShopWings, is one of the "unofficial" directors of Foodora.

In an affidavit filed with the NSW Supreme Court last week, administrator Simon Cathro said he had been "unaware" that the three people were directors at the time of a meeting on August 17 that put the company into administration.

Despite documents indicating the trio had started as directors "in or about 2015", "none of the people ... have ever been registered directors of the company," Mr Cathro said. "I will conduct an investigation into this issue."

A spokesperson for Worrells said it was continuing its investigations and "will report to creditors in due course which will include an explanation surrounding the three directors".

The ATO is currently assessing Foodora [<https://www.afr.com/news/policy/industrial-relations/tax-office-investigating-foodora-before-exit-over-millions-in-unpaid-taxes-20180828-h14lm7>] for unpaid Pay As You Go tax and superannuation after determining that its cyclists were employees, not independent contractors.

Union to raise 'serious concerns'

According to ASIC records, the only current registered directors for Foodora are Singapore-based Jakob Angele and Foodora's 23-year-old head of finance in Sydney, Lisa Bushnell.

Tax Institute senior counsel Bob Deutsch said the regulator struggled to prosecute companies which have majority overseas-based directors and just one local resident with little assets.

Lisa Bushnell, director and head of finance for Foodora.

"It's a frequent modus operandi of a company headed towards trouble," he said.

However, he said the ATO could seek to recover from unregistered directors if it could show they acted as directors.

Mr Dupont, who was born in France but is Sydney-based, did not respond to requests for comment. Aside from his senior role with HelloFresh, he co-founded grocery delivery service ShopWings and lift sharing company RideSurfing.

Transport Workers Union national secretary Tony Sheldon said the union was going to "raise serious concerns about Foodora breaking the law by not registering its directors when we meet the company's administrators on Monday".

"Foodora have been breaking the law since they arrived in Australia - stealing wages and superannuation from riders, sacking them unfairly and not paying all their tax liabilities," he said.

"Now they have been found to have appointed directors but not declared this to ASIC for years."

Tax strategist and partner with accounting firm Pilot Partners, Murray Howlett, said many directors were unaware they could be caught by relatively new personally liability laws for unpaid PAYG tax and superannuation.

"In many cases, company directors are innocently relying on the wrong advice around what constitutes an 'independent contractor' but this is no defence when it comes to the ATO," he said.

He said superannuation rules were drafted so it was "very easy for company directors to get caught out," although there is a defence if it was "reasonably arguable" that the superannuation guarantee did not apply.

Unpaid super and taxes 'in excess' of \$10m

According to the administrator's affidavit, the ATO's upcoming Foodora assessment "could increase the liabilities of the company by in excess of \$10m".

The tax office is understood to be examining Foodora for unpaid PAYG taxes and superannuation across 38,000 transactions for more than 3000 cyclists over the past three years.

The affidavit reveals the ATO first flagged concerns with Foodora over its engagement of delivery riders as far back as December 2016, including by issuing a notice of audit to former director and Delivery Hero chief operating officer Toon Gysells.

Mr Gysells, who is now based in Dubai, quit as director of Foodora on August 22, 2017.

By August 17 this year, after the company went into administration, the ATO notified Ms Bushnell it was finalising its audit and hit the company with a default notice of \$956,576 for 2015 to 2016.

However, the company's current directors told the administrator they had not been aware the audit was ongoing.

NSW Revenue has already assessed the company as owing \$558,074 in GST and payroll taxes for 2015 to 2017 and will be making further claims for 2017 to 2018.

Meanwhile, the administrator is getting legal advice over Delivery Hero's "letter of comfort" to Foodora that promised to guarantee all debts and liabilities.

Despite Delivery Hero withdrawing its financial support after the ATO claims, Mr Cathro said in the affidavit the letter was "potentially a source of funding for the company for the payment of debts and liabilities".

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