Asset Protection – A Brief Note of Concern

One of the things that is becoming increasingly apparent is the need for business people to have proper asset protection (as far as possible of course). Many businesses have such structures, however, due to rapid developments in the law, those structures may no longer be appropriate, leaving assets at risk.

A Common Asset Protection Structure

The introduction of the Personal Property Security Register (**PPSR**) has put in jeopardy many of the long held structures that many business people have employed over many years, namely, that the assets are held by Company A, which then leases or licences them to Company B, which conducts the business.

Company B pays a leasing or licence fee to Company A as a result.

In the past, if the business (Company B) was unsuccessful, and was wound up, the assets owned by Company A could not be taken in the liquidation.

The PPSR however, makes that situation very dangerous. Under the PPSR, if Company A leases assets to Company B, then, depending on the nature of the asset, if Company B is placed into liquidation, and Company A has not registered a security interest in those assets under the PPSR, those assets will be lost.

There was a transition period when the PPSR was introduced which gave temporary protection, but that period has now finished.

What should you do?

If you or your client have not recently reviewed your asset protection strategy, it is vitally important it is done urgently. It may be the only thing that can save the assets in the unhappy event of a business failure!

In particular, check:-

- is your structure properly documented?
- do the documents create a security interest in the assets?
- has that security interest been registered?

We are able to assist in the review of your structure, and, if necessary, the registration of a security interest.

An additional benefit in registering the security interest is that, a security interest registered by Company A can also include any money owed in respect of lease payments or licence fees. If Company B is then liquidated, and the liquidator recovers some funds, Company A may well receive a substantial portion of the proceeds recovered, as a secured, rather than unsecured creditor.

This note clearly does not address all the possible scenarios available for asset protection, but, as the structure set out above is extremely common, it is important to look at this particular aspect.

If you wish to discuss your concerns regarding asset protection, please contact David Brett on (03) 8621 2818.

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