



BANKRUPTCY LAW CHANGES TO AFFECT ASSET PROTECTION

As some of you may already have heard, the Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006 came into effect on 31 May 2006. These changes are not retrospective.

This Bill was originally put on the agenda to stop creditors avoiding their responsibilities to creditors, in particular, barristers using bankruptcy to avoid paying taxes.

These amendments come on the back end of changes already made to the *Family Law Act, 1975* and *Bankruptcy Act, 1966*, which were recently introduced to prevent individuals misusing the Family Court processes to have their assets transferred to their partners, to the detriment of creditors. Trustees are now able to not only be a party to the proceedings but also have the matters reheard where creditors interests have not been properly considered.

There are also legislation changes imminent with regard to superannuation contributions, which have, together with the other new changes, been put forward to ultimately strengthen the 'claw back' provisions of the *Bankruptcy Act, 1966*.

What does all this ultimately mean for people looking to set themselves up in a way so as not to expose their assets?

From our reading of the amendments, it appears that some of the new changes are not so profound but others along with a recent High Court decision are potentially catastrophic for most professionals

The changes we cover in this edition appear to be aimed at preventing people who are approaching bankruptcy from offloading assets to related parties or building up wealth in the name of another person. These changes include:-

- An increase in the time limit for undervalued transactions to related parties from 2 years to 4 years.

- Allowing a trustee to recover consideration paid to third parties in some circumstances.
- Allowing a trustee to rely upon the presumption of insolvency when the bankrupt fails to keep proper 'books, accounts and records'.
- The ability to void transfers where it was reasonable to infer that the Bankrupt was trying to avoid creditors.

The introduction of the new legislation will provide a Trustee with the ability to not only be able to recover property from companies and trusts but also other people where it can be proven that the property was acquired as a result of the bankrupt's financial contributions and the Bankrupt has received a direct or indirect Benefit.

Using just one example, this will have a major effect on people who have placed the family home in the name of the wife, who stays at home and contributes in other non-financial ways, while the husband's pay is used to cover the costs of the mortgage.

The way the new legislation is worded, the property will be available to the Trustee in the event of bankruptcy, as the Court will only be able to look at the matter with regard to financial contributions.

The current legislation changes and the proposed future changes, will ultimately close the door on individuals who try to protect themselves after the horse has bolted which the new legislation was designed for. However, it will also have a major impact on some protection structures and I suggest that before advising clients as to suitable structures you should have a very good understanding of the *Bankruptcy Act, 1966*.

As ever we welcome any insolvency enquiries that you may have.



NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

July 2006

Apart from Formal Insolvency Services at Clouts we also Offer:-

Orchestrating Informal Arrangements with Creditors

Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

Business Valuations

Internal Control Reviews

Small Business Courses

Official Website

www.CloutAssociates.com.au

Contact Details

Tel: 02 6652 3288

Fax: 02 6651 9393

Email: admin@cloutassociates.com.au

Clout & Associates Representatives

Morgan Chubb

Email: mjchubb@cloutassociates.com.au

David Morgan

Email: dmorgan@cloutassociates.com.au