NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

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Funding Available to Pursue Legal Recoveries

We are seeing more and more company's, that enter into liquidation or individuals who become bankrupt, with little or no assets available to cover the costs of litigation that may exist.

In the past, very few creditors were prepared to fund an Insolvency Practitioner ("IP") to investigate and litigate certain dealings as most of them saw it as throwing good money after bad.

As a result, there are now more opportunities for an IP to obtain funding. Three of these opportunities are:-

(a) Section 305 Funding;
(b) DEEWR Funding; and
(c) ASIC AA Fund.

Section 305 Funding

When the Commissioner of Taxation is a creditor of a bankrupt, section 305 of the *Bankruptcy Act, 1966*, enables a Trustee in Bankruptcy to make an application for funding or an indemnity from the ATO.

To satisfy the guidelines of section 305, Trustees are required to demonstrate they have sought funding for their proposed action from those creditors who appear to have a capacity to support the Trustee's intended actions, before ITSA can consider applications for assistance.

"*In my view the whole transaction which commenced on 8 August 1996 and concluded at least as far as the company was concerned on 19 September 1996 was one designed to defeat the rights of its judgement creditors,*

circumstances of this case – could be circumvented so that the company having used all its available resources to pay creditors (including the respondents) other than those judgement creditors the moneys that were owing to them, could go into liquidation leaving its judgement creditors with judgements and unsatisfied statutory demands which would be worthless. In my view the whole transaction may properly be characterised as "an uncommercial transaction" within s.588FB of the Corporations Law" …. It is clear in my view that the whole object of the transaction stretching from 8 August 1996 to 19 September 1996 was to give "an unfair preference" to the company's creditors (including the respondents) at the expense of its judgement creditors"

With this kind of thing the commerciality of taking the legal action and the value of the assets transferred will be a consideration. You should also be aware that this can also be construed as a breach of director's fiduciary duty of acting bonafide in the interests of the company, which in an insolvent situation includes the interest of all creditors. If this is the case, directors run the risk of exposing themselves to personal liability.

Clearly transferring is a two edged sword.

As ever we welcome all your enquiries.

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

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