

Newsletter – February 2018

This newsletter considers:

- **Reduction of the term of bankruptcy to one year**
- **Registering a security interest for professional services**
- **Guarantees - paying out the creditor and taking their security**
- **Garnishee Notices – obtaining judgment against the Garnishee**
- **Notary Public services now on offer from SRM Lawyers**

One year bankruptcy

The statutory requirement that an individual be placed into bankruptcy for a minimum period of three years is about to be reduced to just one year in 2018, subject to the bill receiving royal assent.

The effect will be that all new bankruptcies, together with existing bankruptcies under the old regime, will be discharged one year after the bankrupt files a Statement of Affairs with the bankruptcy trustee.

The restriction on holding office as a company director, seeking permission to travel overseas and possessing professional memberships and licences, will also only remain for that same one year period.

The one year discharge will not apply where the bankruptcy trustee has lodged an objection to discharge, pursuant to section 149B of the *Bankruptcy Act 1966* (Cth).

A bankrupt's post-bankruptcy income contribution (in circumstances where the relevant criteria are met), however, will extend to at least two years following discharge from bankruptcy.

The policy aims to promote innovation and remove the stigma of business failure. However, the effect of the reduced time period will be greater risk taking and increased consumer debt.



As a result, suppliers of goods or services should ensure that security is obtained from customers as part of their terms and conditions of trade, including taking guarantees from third parties.

SRM Lawyers is able to assist you in reviewing existing terms and conditions or other trade documents related to your business.

Registering security interests for professional services

The Personal Property Securities Register is a noticeboard, to all parties engaged in business transactions with each other, that a secured party claims a security interest over the assets / personal property of an entity or individual. It is an online registration system.

For the supply of goods, all suppliers should have as part of their terms of trade, the ability to register a security interest for the goods supplied.

Suppliers of goods have most likely been aware of their rights regarding the PPSR for some years, but providers of professional services may not have realised that they too should have, as part of their terms and conditions, the ability to register a security interest for the professional services supplied, as security for payment of their invoiced fee.

Like with the supply of goods, a security interest is capable of registration to secure a debt or obligation that a company or individual owes you for payment of your invoice for the provision of professional services.

Guarantees – paying out the creditor and taking their security

Providing a personal guarantee, in favour of the supplier for services provided to the principal (usually a company controlled by the guarantor), is a standard term of trade.

What is not a standard term of trade is where the guarantor satisfies the debt owed by the principal to the supplier and requests, as is the guarantor's right, to be transferred any security the supplier has obtained over the principal's assets.

The transfer of security is assigned by statutory right [pursuant to section 3 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW)].

Any terms of trade incorporating personal guarantees should include the right to have assigned to the guarantor, any security a supplier / creditor has, in the event of the debt being satisfied by the guarantor.

If such a provision is not contained in the terms of trade, guarantors should be aware of their right to have the security assigned to them.

Garnishee Notices – obtaining judgment against the Garnishee

The issue of a Garnishee Notice enables a Creditor, who is owed money by a Debtor, to obtain that money either from the Debtor's employer, bank account or another person that owes the Debtor money (**Third Party**).

A Creditor must firstly obtain a court judgment against the Debtor, prior to the issue of a Garnishee Notice upon the Third Party. This is with the exception of the Commissioner of Taxation, who can issue a Garnishee Notice to a Third Party pursuant to section 260-5 of the *Taxation Administration Act 1953* (Cth) without first obtaining a court judgment.



If the Third Party does not respond / comply with the Garnishee Notice within 14 days after service, the Creditor can proceed by way of a court application to obtain judgment against the Third Party directly, such as the Debtor's employer.

The Creditor must satisfy the Court that the Third Party does in fact owe money to the Debtor, and that the Creditor's judgment against the Debtor remains due and payable.

This is a further method of recovery not often used, but a quicker and more cost-effective means of recovery than, say, bankruptcy / liquidation court applications against the Debtor directly.

Notary Public services

Renee Stevens was recently appointed by the Supreme Court of New South Wales as a Notary Public. She can assist with documentation required for overseas use that cannot be dealt with by a lawyer or justice of the peace.

A Notary Public is a practising lawyer with at least 5 years standing, appointed by statute to hold a unique public office.

The most common tasks of a notary include:

- authenticating official, government and personal documents and information for use overseas;
- witnessing signatures of individuals to documents and authenticating identity;
- witnessing Powers of Attorney for use overseas;
- certifying true copies of documents for use overseas;
- witnessing documents and authenticating status and transactions for corporations; and
- dealing with documentation for land, property and deceased estates overseas.

Should you require any notarial services, please contact SRM Lawyers.

Please contact our office if you have any enquiry in respect of the above matters.

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