What you need to know about Safe Harbour

Are you finding yourself starting to worry about the bills your business has due at the end of the month? Or have you recently lost income or clients, leaving you with uncertainty about whether or not you can stay in business?

If this sounds familiar, then it's important to take your head out of the sand and seek advice.

Safe Harbour could be an option for your business.

So What is Safe Harbour?

The law allows for a Safe Harbour process by which a director can turn around their business's finances to avoid insolvency and liquidation.

By going into Safe Harbour, directors can also avoid being personally liable for company debts.

Imagine a business which supplies cakes. If a large bakery franchise chain this business supplies goes out of business, it could lead to a lot of financial uncertainty, especially if the business had just invested in some new equipment. Even though the business is still solvent, the directors would need to address things promptly to avoid insolvency in the future.

By contacting Insolve, the directors can speak with one of the high qualified insolvency experts on the panel, who can help them put Safe Harbour protections in place to get through the uncertain period and get back on track.

Safe Harbour isn't available to everybody and comes with requirements. Directors need to show that they've kept up with payroll, tax and super, and also made genuine attempts to keep the business going.

If you're experiencing any uneasiness with the finances of your business, contact Insolve today to tame the beast, and discover if Safe Harbour is an option for you.

Ginette Muller

Ginette Muller is in Financial Crisis Advisor, Debt Mediator, Registered Liquidator and Chartered Accountant.

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Looking for Insolvency Advice?

The biggest mistake I've seen people make when they are looking for insolvency advice is to go to Untrustworthy Advisors.

Untrustworthy Advisors ("UAs") will give you advice that could land honest business people in hot water – the court cases are starting to roll out and it is very unfair to those small business owners who thought they were doing the right thing by seeking out advice, only to find they went to someone who was prepared to give them bad and in some cases illegal or misleading guidance and advice. But, unfortunately as we all know – ignorance is no excuse – and the penalties are serious if you get it wrong!

The AFSA website also describes a recent Queensland court case where a bankrupt person was convicted after following advice from an UA to structure an illusionary second mortgage and subsequently making a false declaration to her bankruptcy trustee.

How do you avoid this and other common mistakes?

Always seek reliable advice from professionals who are registered with ASIC such as an Insolvency Practitioner, who will also hold a practising certificate from one of the 3 recognised Accounting professional bodies. All Insolve panellists are registered with ASIC so if you are reading this blog, you are already on the right track!

In the eyes of the law, business people who receive advice from UAs and participate in sharp practices as outlined in some of the links above are on notice that they could be fined and/or charged with criminal offences.

As if to reinforce the point and show how serious a problem this is, the Parliament is set to introduce even tougher laws in relation to phoenix activity, which will make it illegal for anyone to facilitate this type of behaviour. Large penalties and possible jail sentences for breaches are likely to be enacted in the legislation.

At this time it is worth remembering that unless your business is actually insolvent, then you have other options outside of External Administration – these could include some of the following:

- Safe harbour protection
- Business restructuring
- Selling parts of your business
- Adjusting credit terms
- Capital refinancing
- Selling your business
- Debt negotiation
- Protecting your assets through PPSR

ASIC also produces information for directors including what to do if a company is in financial difficulty. It is also worth have a quick look at this information release: ASIC.gov.au: regulatory resources – Insolvency: A guide for directors (INFO 42) (INFO 42: © Australian Securities & Investments Commission. Reproduced with permission)

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Beginner's Guide to PPSR

Personal Property Securities Register or PPSR has been around for five years and yet a lot of people do not really know that much about it, or if they do, they may be exposed if the registration they have made is able to be overturned.

PPSR is a single online Australian register where you can record your 'security' on goods and assets, typically when they have been sold on credit or leased. Clare Birnie is a corporate advisor, accountant and registered liquidator. She has extensive experience working with clients and the PPSR. We asked her to answer some of the questions that are most commonly asked about PPSR and share some wisdom around this little-understood topic.

What is PPSR?

Clare says there used to be about 40 registers similar to the PPSR across the country that recorded security over people's personal assets. The PPSR was created to combine those registers into one place to make them easier to track. Clare says the register was made mainly to simplify the motor vehicle industry. While cars and boats are a specific interest of the PPSR it also includes a whole list of other goods and assets including agriculture, aircrafts, intellectual property, financial property and other goods.

How does PPSR it work?

Clare says that the onus of the PPSR is mostly on the person 'providing the goods' – as this is the person that the protection is for. She says "If you provide a third party with a right in personal property and they, for whatever reason, don't pay you in full or try to transfer the property, the PPSR lets you say to the world 'This is mine and you can't do anything with it.'" Personal property can be thought of as anything capable of being owed or which can be transferred outside of land or real property and anything affixed to that land.

Clare uses a simple example when explaining how the PSSR can work, asking you to think of a bakery. She says "If you're the supplier of eggs to the bakery on account or credit, title does not pass for the goods until the account is paid in full (retention of title). Clare notes that a retention of title clause in your contract or invoice no longer protects the seller on its own. The PPSR enables you as the egg seller to register a Purchase Money Security Interest also known as a "PMSI", which may allow for a "Super Priority" over the proceeds of the sale of the eggs, including when they are traceable to a product, such as a cake.

If a liquidator is appointed to the bakery that bought your eggs – they will immediately try to take control of all of the remaining assets in the business. If you have a "Super Priority" as long as your PPSR interest has been logged correctly, and is found to be valid, for every cake that is sold, the bakery's liquidator then has to report to you, as the egg supplier to determine how many eggs went into the cake and pay the egg supplier for the eggs used in priority to other creditors. Clare concludes that "Basically it is recognising that the liquidator wouldn't have a cake to sell without the eggs".

Should I register for PPSR?

Clare believes that it is something you should strongly consider as it is an important protection for your assets, especially if you no longer have them in your control. She says you should consider taking qualified advice “It is similar to taking out any other insurance policy, do the assessment to see whether it is relevant to your business and then as a business owner you make a decision based on the risks”. She also clarifies that what you register on PPSR is not necessarily your ‘bread and butter’ it could be a car or some cattle you keep on a farmer’s land to make extra money on the side.

You should be asking yourself ‘what is the value of the asset?’ Making a registration helps protect your interest in your goods or assets when they are not in your possession. If you don’t make a registration of your interest in those goods or assets and your customer goes broke before they have fully paid you, your assets may be sold to pay other creditors first, including those such as banks who have registered security over all the property of the customer.

How do I register on PPSR?

Clare has plenty of experience working with the PPSR. When acting as a Liquidator her job is to put those registered assets through a series of tests to make sure they are registered correctly. If they aren’t she can claim them back for the business and add them to the pool to be shared with all creditors and to cover the costs of the liquidation process. If the assets are not registered properly, to continue her example of the bakery, “we’ll sell the cake with the eggs without giving out any proceeds” directly to the suppliers.

Thanks to her experience Clare knows how to set up a PPSR registration that will stick. “With our business, we’ve realised that if we’re the ones that often have to pick them apart, we also have an opportunity to help people put it on more effectively in the first place.” So if you are considering registering an asset with PPSR it might be worth speaking to someone like Clare. After all, the PPSR is still relatively new and a large majority of people still don’t understand how it works, even the professionals. “We are finding that smaller solicitors don’t understand the legislation,” Clare says.

If you want to know more about PPSR or you need help setting up a registration, you can speak to Clare Birnie or one of the Insolve panel members.

Clare Birnie

Clare Birnie specialises in Asset Security Registration and PPSR. Clare is a registered Liquidator and Certified Practising Accountant.

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Received Bad Financial Advice?

You've worked your whole life and finally made it to retirement age. You are starting to get excited about the next big adventure, maybe it's an overseas holiday or road trip around the country. You've been saving and saving and it's almost time to reward yourself for a lifetime of hard work. Then you look at your super fund, and something is not right...

As devastating as this scenario seems, unfortunately, it is not an uncommon occurrence. Shane Roberts has been Practising Law for 25 years. He specializes in financial services, and regularly consults with clients who have made it almost to retirement only to lose everything. This is commonly the result of bad financial advice. In this article Shane shares some advice on what you should do if you feel you are in too deep with an advisor who has invested your money in a way that doesn't seem to add up or you just don't fully understand.

What are the warning signs?

Shane Roberts says the typical profile of a person he helps is someone who is about to retire or has just retired. He says "[they are] Often a couple who have worked hard all their lives to put aside a bit of a nest egg."

According to Shane what happens typically is these people "run into strife when unfortunately they deal with somebody who gives them financial advice, a financial planner for example, and following that advice they end up in a situation where they are essentially left destitute, just at retirement age."

Shane says that the financial planners and advisors that are causing these problems are a minority in the market. He says the majority of financial planners and financial advisors "provide a great service and really look after their clients". He goes on to explain that one of the main red flags to be on the lookout for is when the advisor has not been acting in the best interest of the client. His advice is to ask yourself the following questions: How much in fees have they taken over the last couple of years? Have they tried to restructure you as their client from a more stable structure such as a big fund into a self-managed super fund? They might also be collecting a nice little fee from the audit of that super fund. What else are they doing to maximize the fee they can take away from the client? These are all signs that the financial planner or advisor might be acting in their own interest and this is when you should be speaking to someone like Shane about your options.

What should I do next?

Unfortunately, even when a person is certain that they have received bad financial advice, they often do not immediately seek advice. This is most likely due to something Shane refers to as 'the embarrassment factor'. He says "Nobody likes to feel that they have been hoodwinked particularly around retirement age." Shane says that when people come to him to seek advice on what to do about their financial issues it is often as a last resort. He stresses that it is important that anyone seeking advice should not delay. "It is important that someone who comes and sees me does so straight away because there are some strict time limits." Shane goes on to explain that if someone has received bad financial advice and lost their money, insurance may be able to help that person recover their money, however, if that financial advisor goes into liquidation that may have an impact on what coverage is behind them. "We will need to do some quick investigating on what has happened, how much you have lost, and finally what resources may be available to recover some of that loss."

Is my privacy being protected?

After working hard your whole life to make sure you are comfortable, only to make a mistake at the end that leaves you in financial trouble, is something some people are ashamed of. Shane reiterates that while he can understand the 'embarrassment factor', no one needs to be embarrassed because that's all in the past. That being said he understands why people may be concerned about such a personal matter going public. "What we will try to do usually is get to a stage where we can resolve the matter with 'the other side' 'the other parties' (financial advisor or planner) without going to court. Shane says that often "when you approach the other side you can sit down with them on a confidential basis without prejudice, maybe with a mediator and see if you can get a resolution and get the money back." Shane says that the end goal is to "restore their retirement and get on with their life."

If this situation is feeling a little too familiar it may be time you got in contact with a qualified advisor such as Shane Roberts. Shane regularly refers clients to Insolve as we will often have the resources needed to help his client restore their retirement and get on with their life. Don't let a bad experience with a financial planner or advisor ruin everything you have worked so hard to achieve.

Shane Roberts

Shane has been practising law for 25 years. He has extensive experience in financial services litigation for plaintiffs who suffered substantial loss due to bad advice.

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