



ASSET RISK EXPOSURE CHECKLIST

CONSIDERATION	Y	N	Provision/Exposure
PERSONAL INSOLVENCY			
Divisible assets of at risk person vest in Trustee, including but not limited to: > Shares/Units owned in Companies/Trusts > Debit Loan Accounts/Unpaid Present Entitlements			ss58 & 116 – Bankruptcy Act
Assets acquired after bankruptcy but before discharge vest in Trustee.			ss58 & 116 – Bankruptcy Act
Is at risk person a beneficiary of a Will where the interest may crystallize before/during bankruptcy?			s58 & 116 – Bankruptcy Act
Income of person assessable for contributions to Bankrupt Estate (beware deeming provisions).			Div4B – Bankruptcy Act
Has there been a transfer of assets by individual within 5 years of relevant date for undervalue?			s120 – Bankruptcy Act
Has there been a transfer of assets by individual to defeat creditors (no time limit)?			s121 – Bankruptcy Act
Have there been gifts or other settlements with entities/individuals?			ss120 & 121 – Bankruptcy Act
Services/Financial Contributions provided by at risk person to Individual/Entity which was used to acquire assets of an entity of another individual.			ss139A to 139H – Bankruptcy Act
Have there been transfers to Superannuation Funds before bankruptcy?			ss128B & 128C – Bankruptcy Act
Have there been withdrawals from superannuation funds before bankruptcy?			ss58 & 116 – Bankruptcy Act
Member of a SMSF must notify ATO within 28 days if insolvent under administration: > disqualified from acting as trustee personally > banned from acting as director of company			s120(1)(b) – Superannuation Industry (Supervision) Act s206B(3) – Corporations Act

PLAIN TALK.
STRAIGHT ANSWERS.
FAST RESULTS.



ASSET RISK EXPOSURE CHECKLIST

CONSIDERATION	Y	N	Provision/Exposure
CORPORATE INSOLVENCY			
Is more than one spouse a director of the corporate trading entity?			Personal Guarantees / Insolvent Trading / Breach of Director Duties etc.
Have personal guarantees been given to suppliers? Do they have a charging clause? Has a register been maintained?			
Are there outstanding Debit Loan Accounts owing to the company that must be repaid?			
Has there been repayment of a related party credit loan account that may give rise to a claim by a Liquidator?			Pt 5.7B – Corporations Act (Voidable Transactions)
Has there been a transaction with a related party which may be considered uncommercial or for less than market value that may give rise to a claim by a Liquidator?			Pt 5.7B – Corporations Act (Voidable Transactions)
Director Indemnity Provisions by ATO on recovery of preferential payment by Liquidator.			s588FGA – Corporations Act
Has the Company traded whilst insolvent?			s588G – Corporations Act
Review ASIC Regulatory Guide 217 - Duty to Prevent Insolvent Trading.			ASIC Regulatory Guide 217
Consideration of statutory defences?			s588H – Corporations Act
Does the at risk trading entity have a holding company (risk that holding company liable for insolvent trading)?			s588V – Corporations Act
Is there any conduct that may give rise to a potential claim for breach of fiduciary duties?			ss180 to 184 – Corporations Act
Is there a risk of a Director Banning Order from ASIC?			s206F – Corporations Act

PLAIN TALK.
STRAIGHT ANSWERS.
FAST RESULTS.



ASSET RISK EXPOSURE CHECKLIST

CONSIDERATION	Y	N	Provision/Exposure
DIRECTOR PENALTY REGIME			
Consideration of exposure for personal liability to the ATO for PAYG and Superannuation.			Division 269 of Schedule 1 – Taxation Administration Act 1953
Safeguards to ensure BAS/IAS are lodged by (or within 3 months of) due date.			
Safeguards to ensure SGC Statements are lodged by (or within 3 months of) due date.			
Consideration of exposure for personal liability of new directors appointed to existing companies.			
Residential address up to date with ASIC?			
OTHER CONSIDERATIONS			
Are related party credit loan accounts documented in writing (including a charging clause) and registered on the PPSR?			Personal Property Securities Act
Is there an unregistered PPS Lease between entities, which is at risk of vesting in an external administrator on an insolvency event?			ss267 & 55(3) – Personal Property Securities Act
Has a PPSR registration been taken by the financier (i.e. bank or other financier) to the Corporate entity?			
Consideration of taking a security interest and PPSR registration to secure exposure for contingent liabilities e.g. personal guarantees that may be paid in the future.			Personal Property Securities Act
Is Discretionary Trust 'alter-ego' of at risk person? Consider role of Trustee, Appointor and Directorships?			
Is the business being conducted in a separate entity to where the assets are being accumulated?			
Is insurance cover in place and adequate to mitigate risk (e.g. Professional Indemnity, Product Liability, Business Insurance, Trade Debtor Insurance, Director and Office Insurance etc.)?			

Liability limited by a scheme approved under Professional Standards Legislation.

© Worrells Solvency & Forensic Accountants 2017

PLAIN TALK.
STRAIGHT ANSWERS.
FAST RESULTS.