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Corporations Act “Claw Back Provisions”

Background

At Common Law transactions entered into by a Company prior to Liquidation are not in general voidable even if the Company is insolvent. Consequently it has been left to legislation to construct parameters as to the kinds of transactions that should a company enter into prior to liquidation that fall within what is collectively referred to as the “Claw back provisions”.

These provisions are aimed at protecting the interests of unsecured creditors which might otherwise be prejudiced by a Company disposing of assets or incurring liabilities or entering into unrealistic loans shortly before a Winding Up.

A timeline is provided below of the relevant periods prior to the “commencement of Winding Up” or “relation back day” as sometimes referred.

Types of Voidable transactions

Unfair Loans	Transactions for purpose of defeating Creditors	Uncommercial transactions or unfair preferences with related entity	Unreasonable Director-related transactions	Uncommercial transactions	Unfair Preferences	Circulating Security Interests
S588FD	S588FE(5)	S588FA & S588FB	S588FDA	S 588FB	S588FA	S588FJ
At any time on or before the Winding Up began	During the 4 years prior	During the 4 years prior	During the 4 years prior	During the 2 years prior	During the 6 months prior	During the 6 Months prior
Relevant Time Period						

In summary everything is subject to scrutiny.

Please contact us any time to discuss and note as always we at Chamberlains SBR are more than welcome to review any matter with you or your clients regardless of how trivial it may appear.

Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate Business Reconstruction & Insolvency

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