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“The Directors Wife is Given a Boat!!”

Legislation

Section 588FDA of the Corporations Act 2001 deems an “Unreasonable Director Related Transaction” is in summary;

- A payment, conveyance or disposition of company property and;
- It is made to the Director, an associate of the Director or a person on behalf of either and;
- It may be expected that a “reasonable person” in the Company’s circumstances having regard to the benefit (if any) and more in particular the detriment to the Company would not have entered into that transaction and;
- It is made within 4 years of the relation back date.

What about the boat?

- In 2007 a sole Director bought a \$385,000 boat for his wife using company funds at a time when there was no issue over the Company’s solvency.
- In 2011 the Company was Wound Up and the Liquidator challenged the transaction under Section 588FDA.
- The Court held that even though the question of solvency was not an argument there was simply no benefit to the Company for making the payment as it was purely a “gift” and the transaction was overturned.
- In addition to overturning the “gift” the Director was also deemed in breach of the Director Duty Obligations under Sections 181 & 182 to act in good faith.

In summary in a Winding Up 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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