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### *Bankruptcy and Estate Planning*

#### **Executors Liability for a Deceased's debts**

Section 252 of the Bankruptcy Act relevantly provides that a payment or transfer of property made by a legal personal representative:

- a. After service on him or her of a petition under this Part in respect of the estate of that person;
- b. In a case to which subsection 245(1) applies, after he or she has knowledge of the presentation of a petition against that person; or
- c. After a petition is presented under section 247 in respect of the estate of that person; does not:.....

.....if an order for the administration of the estate of that person is made under this Part on that petition, operate as a discharge to the legal personal representative as between himself or herself and the Trustee.

What this means in plain English is that a Trustee in Bankruptcy can take action against the legal personal representative of a deceased person for the recovery of, amongst other things:

- a. Preferential payments to estate creditors (S122), and
- b. Beneficial distributions under S120 (undervalued) and S121 (transactions to defeat creditors).

Hence the need for extreme caution once an executor apprehends that an Estate is either or both asset light and debt heavy.

Especially one light on cash or other liquid assets, bearing in mind that insolvency is defined as the inability to pay one's debts as and when they fall due.

Obviously cash is king in this context; if the only way to pay out estate creditors is to embark upon the process of selling non-liquid assets, either negotiate with the known creditors – including offering them the right to attend at settlement and be paid directly from the sale proceeds – or give serious consideration to applying to the Federal Circuit Court for the analogue to a debtor's petition.

Definitely don't pay anything out to anyone!

**As always if you or your clients need advice on any business turnaround or insolvency matters do not hesitate to contact us.**

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