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IMPORTANT CHANGES TO THE BANKRUPTCY ACT REGARDING PROTECTION OF SUPERANNUATION FUNDS

Recent changes to the Bankruptcy Act can result in the Trustee of a Bankrupt Estate being able to claw back monies paid to a Regulated Superannuation Fund. We provide below a quick summary of the protection provided to Regulated Superannuation Funds and the dangers that flow from the recent amendments.

Funds held in a Regulated Superannuation Fund are protected and not available to creditors when a person becomes bankrupt. (Section 116(2)(4)(iii)). Further, a lump sum payment to a bankrupt on or after the date of bankruptcy from a Regulated Superannuation Fund is also protected (Section 116(2)(d)(iv)).

However, the Bankruptcy Act has been amended to enable payments made to a Regulated Superannuation Fund for the purpose of defeating creditors to be clawed back when the person becomes bankrupt (Section 128B, 128C). A payment to a Regulated Superannuation Fund is recoverable if the bankrupt was insolvent or about to become insolvent at the time of the payment. Further, if the bankrupt did not maintain proper books and records or financial records have been lost, the legislation provides that the bankrupt is to be assumed to have been insolvent at the time of the payment.

The Legislation also provides that the Trustee of the Bankrupt Estate is to consider whether the bankrupt had an established pattern of making contributions to a Regulated Superannuation Fund and whether the transfer being investigated, when considered in the light of that pattern, is out of character.

It is recommended that persons who wish to utilize the protection provided to their Regulated Superannuation Fund ensure that;

- 1) They maintain and safety store proper financial records, and
- 2) They establish a regular pattern of making contributions to their Regulated Superannuation Fun.

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