How a Part X can help you avoid bankruptcy

“I need to go bankrupt!” It’s a common refrain from individuals when they first approach us to discuss their financial affairs. But first, let’s take a step backwards: before jumping in the deep end of bankruptcy, there might well be other options – including a Personal Insolvency Agreement (Part X Agreement). It’s a flexible way to come to an arrangement to settle debts without becoming bankrupt.

According to AFSA, in the March 2023 quarter, there were 33 Personal Insolvency Agreements – but over the past 12 months I have noticed a real uptick in the implementation of PIA/Part X arrangements, perhaps because accountants and solicitors are becoming more aware of the benefits accruing to their debtor clients, and creditors are more prepared to evaluate the merits of supporting the proposals.

Let’s delve further into the impactful Part X agreement.

It’s designed for individuals who are financially insolvent, and they’re offered on the basis that creditors will receive a higher return than they would in a bankruptcy scenario. They involve the appointment of a Registered Trustee to review a debtor’s financial affairs and report to creditors, who then can then vote on the proposal at a meeting of creditors. Once creditors accept the Part X proposal, it becomes a PIA.

While PIAs won’t suit all circumstances, they can be used to protect certain assets that might otherwise be absorbed by bankruptcy where an alternative source of funds may be available, or otherwise exempt assets are released to achieve a dividend return to creditors of a comparable or greater sum than in bankruptcy.

What are the benefits of a Part X arrangement?

For debtors:

- immediate relief from your debts.
- avoid the restrictions of bankruptcy.
- they can be tailored to meet the circumstances.
- in most instances they’ll be over a shorter period than bankruptcy.

For creditors:

- independent review of a debtor’s financial affairs.
- independent recommendation as to the potential dividend rates under the PIA vs bankruptcy.
- there’s a comparable or greater return than in bankruptcy and it’s paid over a shorter period.

Examples where a PIA has been successfully used (and resulted in a better outcome than compared to a bankruptcy scenario):

Case A

- the debtor had significant unsecured liabilities (estimated $2.45m).
- liabilities had arisen through guarantees given as a director of a company now in liquidation and in support of related party trust activities, impacted by economic conditions and market forces.
- there were also proceedings whereby certain property was vested in the debtor's wife.
- in a bankruptcy scenario, there was uncertainty as to the equity position in two properties.
- an amount of $130,000 was offered to settle claims, which was accepted by creditors given it provided a more certain return in terms of quantum and timing.
- A dividend of 2.35 cents in the dollar was paid on admitted claims of $2.5m.

Case B

- this matter involved a husband and wife, who were director and former director of a company in liquidation.
- they were experiencing financial distress due to director guarantees and the termination of a business contract.
- the equity position in residential property was uncertain in a bankruptcy scenario, noting caveats lodged in respect of business liabilities in addition to mortgage loan.
- the Part X proposal involved:
- a contribution of $200,000, comprising $130,000 held by solicitors (asset realisation proceeds from a related party), and $70,000 made over 12 months.
- there was a condition precedent that the caveats on the property were released.
- a specific payment of $100,000 was made to the main caveator (debt $577k), with related party creditors not claiming.
- the balance of the funds was to be distributed to unsecured creditors (estimated debts $894,000).
- an estimated dividend to unsecured creditors of 7 cents in the dollar (compared to a bankruptcy estimate of nil).
- the residential property was preserved, maintaining the relationship with the mortgagee.

Case C

- this involved a company director whose company was placed into Voluntary Administration and subsequently liquidation.
- liabilities had arisen through director guarantees and claims by the Liquidator for breach of duties (alleged insolvent trading).
- total estimated claims were $21m, including the Liquidator's insolvent trading claim ($10m).
- real estate was encumbered by mortgage/caveats and ultimately found to be a trust asset and not available in bankruptcy.
- the PIA proposal involved:
- $115,000 provided by a related party;
- Related party creditors not to claim.
- although the estimated return was minimal (.003 cents in the dollar), it was considered on a commercial basis to be in the best interest of creditors.

Our national team of Bankruptcy Trustees are skilled and experienced in assessing individuals'

situations and then advising the best solution. So, before you automatically think you have to declare bankruptcy, talk to us first! You might be able to avoid it altogether.

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