

Sheridans' View



Scammers and con artists warnings

Following the recent publication of ACCC's Scam Watch data for 2015, which showed that reported losses doubled in 2015, ASIC has told consumers and investors to wise up.

ASIC's deputy chairman Peter Kell said the regulator is warning people to be more wary of fraudsters. Mr Kell said "Overseas-based scammers in particular commonly target consumers in wealthier countries such as Australia. People over 55, many of whom are looking for investment returns in a low interest rate environment, are often most at risk."

In 2015, the top five types of scams reported to ASIC were:

- overseas cold-calling about investment opportunities
- overseas calls offering easy credit or loans after payment of an upfront fee
- sports arbitrage or gambling schemes
- money transfer schemes (job opportunity or other fraud)
- fake debt and invoice scams

ASIC warns that the pitch to consumers is often very professional, slick and believable, with scammers having sophisticated sales practices, call scripts, false paperwork, fake websites and made-up references. "Do not send your money overseas for an investment offer that has come out of the blue. It's as simple as that," Mr Kell warned.

In a separate alert, the ATO has issued a warning to the public to be alert for con artists impersonating the ATO.

In a relatively new tactic, scammers are demanding payment of fallacious ATO tax debt by iTunes cards and pre-paid Visa gift cards purchased from supermarkets and department stores. The alert highlights to the public that the ATO will never request the payment of a tax debt via gift or pre-paid cards. The ATO reports that in April 2016 alone 26 people made payments totalling \$174,830 by iTunes gift cards to fraudsters.

Illegal phoenix activity: ASIC & ATO continue to target

ASIC continues its focus on advisors offering to assist financially distressed companies, especially where that advice facilitates illegal phoenix activity.

ASIC has recently commenced writing to directors of companies subject to a winding up application to warn them about untrustworthy advisors. Certain advisors use public information, like ASIC's Published Notices Website, to identify directors of companies subject to a winding up application and 'cold-call' them offering advice. ASIC's letter to directors notes some of the warning signs of untrustworthy advisors and suggests to push back against those who seek to exploit vulnerable directors.

This comes on the back of ASIC's successful prosecution of Timothy Donald Somerville, a NSW solicitor who advised eight separate clients to implement illegal phoenix arrangements. The ATO also continues its operations against illegal phoenix activity, working with ASIC's internal Phoenix Working Group. As part of its strategy to increase the information it has on the marketplace to target this type of activity, the ATO will be undertaking further "access visits" in the future.

The ATO's assistant commissioner Scott Parkinson said "We will continue to go in hard and use the force of the law where we see people deliberately and systematically liquidate companies to rip off their employees, their suppliers and the community's revenue."



FOREWORD

"The Law of Marginal Gains is the long-term play in life with extraordinary payoffs to those who invest in small changes constantly. Learn how the tiny and seemingly insignificant things you do today can and will compound over time into either great blessings or terrible curses."

Sri Kunundrum
(10 minute Yoga)

"Great things are not done by impulse, but by a series of small things brought together."

George Eliot

"Success is the sum of small efforts, repeated day in and day out."

Robert Collier

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Retention of Title ('ROT') clause defence to unfair preference claim

In a recent case the Judge clearly reasoned that an ROT clause will provide a valid defence to a liquidator's unfair preference claim in relation to a payment that reduces the debt to which the ROT clause relates.

In *Hussain v CSR Building Products Limited, in the matter of FPJ Group Pty Ltd (In Liquidation) (2016) FCA 392* a liquidator's unfair preference claim was defeated because, among other reasons, the alleged preferential payments were not in respect of an unsecured debt but rather reduced a debt that was secured by an ROT interest.

Section 588FA of the Corporations Act 2001 ("the Act") defines an unfair preference as a transaction (payment) "in respect of an unsecured debt". The Judge confirmed that the defined term 'security interest' (introduced into the Act by the PPS reforms) assisted the court's construction of the term 'unsecured debt' in Section 588FA to conclude that an ROT clause "secures a debt to which it relates".

This is a further benefit from ROT clauses. However, it is important to remember the various attributes necessary for an effective ROT clause, and the potentially fatal result upon failing to register on the PPSR.

Frequently Asked Questions

Can I make a proposal to my creditors even though I am bankrupt?

Yes, via a Section 73 composition or arrangement, which is an offer made by a bankrupt through their trustee to finalise their debts.

The trustee prepares a report about the proposal and advises creditors whether the proposal will benefit them. A meeting of creditors is then held at which creditors can vote on whether or not to accept the offer. Acceptance requires a "yes" vote from the majority of creditors who represent at least 75% of the dollar value of the voting creditors' debts. If the offer is accepted, the bankruptcy is annulled immediately.

Recent Assignments

- **Personal insolvency administrations, including those involved with:**
 - Property development
 - Waterproofing and concrete repair
- **Informal insolvency advice to various businesses, including those involved in floor coverings, beauty therapy, fast food and construction trades.**
- **Litigation support, including:**
 - The preparation of an expert report regarding the identification and tracing of tainted funds.
 - Valuation of an accounting practice.
 - Accounting assistance and advice regarding various Family Court matters.
 - Assistance with the quantification of the parties' asset pool in Family Court matters.

"Success is nothing more than a few simple disciplines, practised every day; while failure is simply a few errors in judgment, repeated every day."
Jim Rohn

DID YOU KNOW?



Ways not to recommend a former colleague (unless you dislike them):

- You'll be lucky if you can get this person to work for you.
- I am pleased to report he is a former colleague of mine.
- I assure you, no person would be better for the job.
- I would urge you to waste no time in making this person an offer of employment.
- I cannot say enough good things about this candidate or recommend him too highly.

From: The Lexicon of Intentionally Ambiguous Recommendations (L.I.A.R.) by Robert Thornton



EDITORIAL

The Law of Marginal Gains

Should we all be looking for marginal gains?

The concept of marginal gains has been widely adopted in sports to improve performance. The principle is that small incremental improvements in any process amount to a significant improvement when they are all added together.

The concept came to prominence in 2012 in the world of cycling. In 2010 when Dave Brailsford was the new General Manager and Performance Director for Team Sky (a British professional cycling team), Team Sky were the also-rans in world cycling, described by one pundit as "a laughing stock".



Brailsford believed in the concept he referred to as the "aggregation of marginal gains" and explained it as "the 1% margin for improvement in everything you do". Rather than concentrating on the achievement of one large change, he looked at the individual components.

Team Sky optimised the obvious factors: the nutrition of riders, their weekly training programme, the aerodynamics of the bike and rider, the ergonomics of the bike seat and the weight of the tyres. But they went further: discovering the pillow that offered the best sleep for each individual rider, testing for the most effective type of massage gel, teaching riders the best way to wash their hands to avoid infection. They searched for 1% improvements everywhere.

The result? In 2012, Team Sky rider, Sir Bradley Wiggins, became the first British cyclist to win the Tour de France. In the following month, at the 2012 London Olympic Games, Brailsford coached the British cycling team, which won over two-thirds of the gold medals available. Notwithstanding the recent Fancy Bears' disclosures, with rider Chris Froome the team has continued its real success in subsequent Tours de France.



The Law of Marginal Gains is a way of achieving success not only in sport but in almost every other endeavour. Instead of looking for the large and dramatic improvement, consider the compounding effect of small 1% improvements in habits and decisions. Do not underestimate the value of making better decisions every day, creating new or improved habits that are meaningful in the long run.
Where are the 1% improvements in your life?

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