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ARTICLES

The Solvency of Special Purpose Vehicles – *Liam Kelly KC and Dan Butler KC*

This article considers special purpose vehicles and their treatment in insolvency. In doing so, it examines the basis of court determinations of insolvency and the difficulties between a seemingly simple test as against commercial reality. It argues that notwithstanding the temptation to provide cookie-cutter application of a complex human concept, it is fundamental that the basal principles do not get out of hand on the other, for example by overly complex analysis or judicial categorisation. These considerations underly the concerns in two important respects, namely the means and nature of related party financial support given to these entities and refinancing issues around the future ability to pay. 134

A New Role for Debt Agreements? Implications of the Proposed Minimal Asset Procedure – *Lucinda O’Brien*

When the debt agreement framework was introduced in 1996, it was intended to offer an alternative to bankruptcy for debtors with low debts and few assets. This framework now faces the prospect of fundamental change. In 2024, the Commonwealth Government proposed to introduce a new Minimal Asset Procedure (MAP), a shorter, less onerous form of bankruptcy for low-income, low-asset debtors. If implemented, the MAP will divert some debtors away from the debt agreement system, potentially reducing the risk of harm from unaffordable agreements. Even so, debt agreements might continue to play an important role as an alternative to bankruptcy for higher income earners with valuable assets to protect, particularly a family home. This article outlines ways in which the debt agreement system could be improved, drawing on submissions to the Government’s 2024 consultation on the MAP. 159

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