



However, they sought to implement option 3, namely, they sought orders permitting them to continue to act as directors of Kircam Pty Ltd.

Banks-Smith J observed:

... the court needs to know what the applicants propose to do... the attitude of the shareholders... the circumstances in which the debts giving rise to the bankruptcy were not paid, and the extent to which an applicant has cooperated with the trustee in bankruptcy ...

... the main consideration ... is therefore the interests of third parties; the shareholders, creditors and employees ... and the public at large ..

... other considerations may include:

- (a) the protection of the public and any shareholders;
- (b) the nature of the disqualification;
- (c) the applicant's character and conduct since the disqualification;
- (d) the structure of the company and the nature of the business;
- (e) the potential for repetition of contraventions;
- (f) the risk to survival of the company;
- (g) the effect on any third parties of the company being unable to have the benefit of the applicant's knowledge...

The following facts may be distilled from the affidavit evidence:

- Mr Macalister is 67 years old and Ms Macalister is 60 years old.
- The Macalisters are only the members of the SMSF.
- Prior to the sequestration orders, the Macalisters were only directors of Kircam Pty Ltd.
- They managed Kircam Pty Ltd from their appointment until their bankruptcy.
- The only shareholder of Kircam Pty Ltd is the Macalisters' daughter, Ms Wardle.
- Kircam Pty Ltd does not carry on any activity other than to act as trustee of the SMSF.
- The SMSF assets are not in any way referable to, or derived from, the proceeds of the sale of business.
- The Macalisters have not received any SMSF benefits since certain freezing orders.
- To the best of their knowledge, the Macalisters have complied with the orders.
- The Macalisters have no intention of managing any company apart from Kircam Pty Ltd.

In light of those facts, Banks-Smith J found it was appropriate to grant the leave sought.

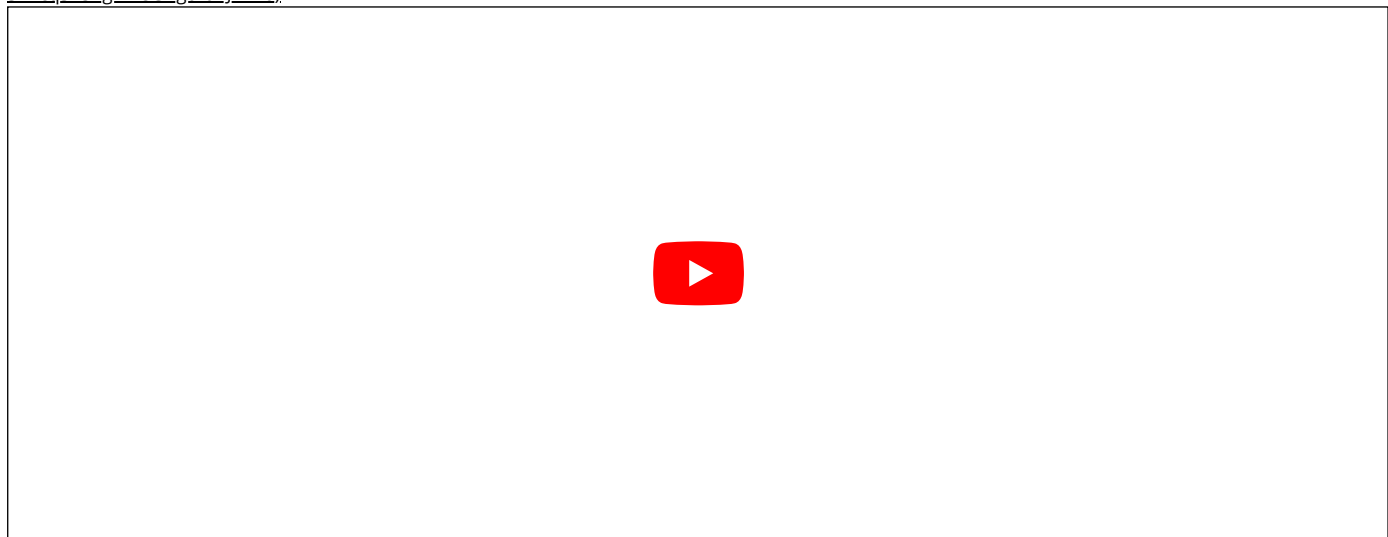
**Conclusions**

When an SMSF member becomes bankrupt, prompt action needs to be taken and the fund member is faced with various options. One option now includes considering whether their facts make it appropriate to seek leave of the court to still be allowed to run the fund him or herself.

*Bryce Figot, special counsel and Alex Aktepe, lawyer, DBA Lawyers*

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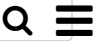
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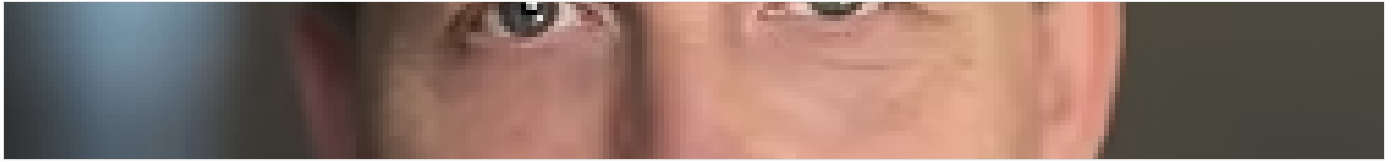
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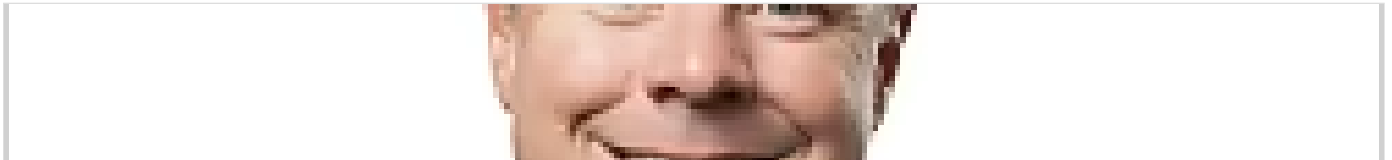
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