# SZABO DEVRIES™

BARRISTERS & SOLICITORS
**Registered Trade Mark Agents**

# "Creditor-Proofing"

The time to protect your assets and your investment in your business from creditors is before any financial problems arise. If you attempt to protect your business assets after you borrow money or after a financial or creditor issue arises, you may allow your business' creditors a better chance of accessing your assets and challenging any planning you have done.

***Liability***

As a shareholder of the business, your exposure is generally limited to the amount of your investment, both by way of shareholdings and through shareholder loans to the corporation. However, various situations may arise to impose liability upon you. If you have given personal guarantees to guarantee the debts and obligations of the corporation, creditors may sue you and attach (by way of garnishment or seizure) your personal assets to the amount of the personal guarantee. As a director or officer of the corporation, you may also have additional personal liability for such things as:

- unpaid employee salaries
- uncollected or unremitted GST
- unremitted payroll deductions
- breach of contract

***How to Protect Your Personal Assets***

Prior to signing a personal guarantee, engaging in a new business opportunity or agreeing to be a director or officer of a corporation, you may wish to consider the following:

- you may want to transfer your personal assets to your spouse or some other party (at fair market value)
- you may want to consider investing your money in assets which are exempt from creditors' claims
- certain forms of RRSP investment may also be beyond the reach of creditors
- you may want to set up an Asset Protection Trust in a foreign jurisdiction

***Protecting the Company's Profits***

There are similar steps you can take to protect the profits of the business:

- Establish a holding company to hold the shares in the corporation. The business' profits could then be paid on a tax-free basis to the holding company through dividends on the shares. Those profits could then be reinvested or loaned back to the corporation as a shareholder's loan, which would ensure that the business' cash flow remains unaffected. The business can grant security back to the holding company for repayment of the loan, making the holding company a secured creditor. In addition, the holding company can purchase equipment or land otherwise needed by the business and then lease it back to the business, at a profit. These assets could be out of reach from business creditors.

- Establish a family trust. Any shares in the holding company could be transferred to the family trust, and any funds paid by the holding company to the trust by way of a dividend would belong to the trust for the benefit of the trust beneficiaries. These funds would not be available to creditors even if one or more of the beneficiaries signed personal guarantees, or have other personal obligations.

All creditor proofing strategies require careful consideration of taxation issues so as to avoid income attribution problems or the unexpected triggering of capital or income gains. The above opportunities and strategies represent only a sample of what ought to be considered. Each circumstance will offer its own opportunities and restrictions on planning.

Szabo & Company would be happy to provide you with more information, or to advise you with respect to protecting your company and personal assets.

**For more information, please contact:**

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