

COS WITH STRESSED LOANS

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Fearing Bank Action, Promoters Move Assets to Family Trusts

Move makes it tough for banks to attach personal assets as it involves long legal route

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Mumbai: Many promoters of companies with stressed loans are insulating their assets by transferring them into private family trusts fearing banks could go after their personal assets for defaulting on loans.

In past one year or so, say industry insiders, many promoters are creating family trust structures, where all the wealth is held by the trust. Banks seeking to recover dues by targeting the promoters' personal wealth would find it difficult as it would involve a long and tortuous legal route with an uncertain outcome.

The trusts are structured in a way where the promoter would not be a trustee and hold only 5-10% stake in the family trust.

Even where personal property is put as a guarantee, banks may not be able to acquire these personal assets. A majority stake in the family trust, that owns all personal assets, would now be held by the wife, son, parents and other family members who do not have any stake in the company.

"While family trusts were traditionally created by families that have large real estate holdings, many promoters are now going back to the drawing board and creating these structures. While the motivation for creating the family trusts vary, like succession planning or planning for estate duty (if any), in some cases some promoters who have stressed loans are also evaluating such a structure," said Hemal Mehta, partner, Deloitte Haskins & Sells.

A Mumbai promoter of a ₹1,500-crore infrastructure company is creating a family trust. This comes about a year after the infrastructure company's loans started getting stressed. "The fear is that the banks could even attach personal properties," said a tax expert who helped the promoter in creating the trust. The promoter now owns only about 5% in the trust while his family has the remaining stake.

In another case, two Kolkata-based businessmen are creating a family trust. The promoters—two brothers—own a listed company that has already defaulted on a ₹200-crore loan. Both the brothers are now looking to create the trust and transfer all real estate, gold

'Protecting' Personal Wealth

What are family trusts



Family trusts are entities where all the wealth is held by the trust



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Lenders not taking chances



In some cases some of the lenders have started taking personal guarantees from the promoters not to transfer their property to anyone



However, in some cases even family structures may not be able to help the promoters, say industry trackers. In some cases some of the lenders have also started taking personal guarantees from the promoters not to transfer their property to anyone.

ET VIEW

Don't Game The System

Trusts are meant to preserve the wealth of the family and to avoid legal disputes. There is nothing wrong in setting up trusts. It is also bankruptcy remote structure in jargon, and ring-fenced from creditors. But promoters setting trusts to game the system is plain wrong. If found to be in violation of the law, lenders could extract their pound of flesh. Hopefully, the bankruptcy code will abolish delays in the resolution of bad loans, and enable banks to dispense with personal guarantees of loans as it inhibits entrepreneurship.

and other family wealth into it. "Both the brothers combined would not hold more than 10% in the trust," said a lawyer helping the family.

"Many lenders while obtaining guarantees are getting declaration from such promoter or a personal guarantor that they will not transfer their declared assets without the permission of lenders," said Vishwas Pathak director of Universal Trustees, a firm that specialises in managing family trusts and corporate trusts.

"Many lenders do not do due-diligence on the assets of a guarantor before they take a personal guarantee," said Anand Desai, managing partner of law firm DSK Legal.

Experts say that traditionally, family trusts were created by old Parsi families in Mumbai. This was mainly done to create a transparent structure around real estate holdings of the family and a smooth transfer of those from one generation to another.

"A family trust is popular because promoters want to make sure that their personal assets are protected from risk. Several promoters are also creating family trusts to have a smooth transition of their business to the next generation and not just to protect assets being taken over by lenders in case a personal guarantee is invoked," said Desai.

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tential in India, which also and professional services financial services sector. It

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