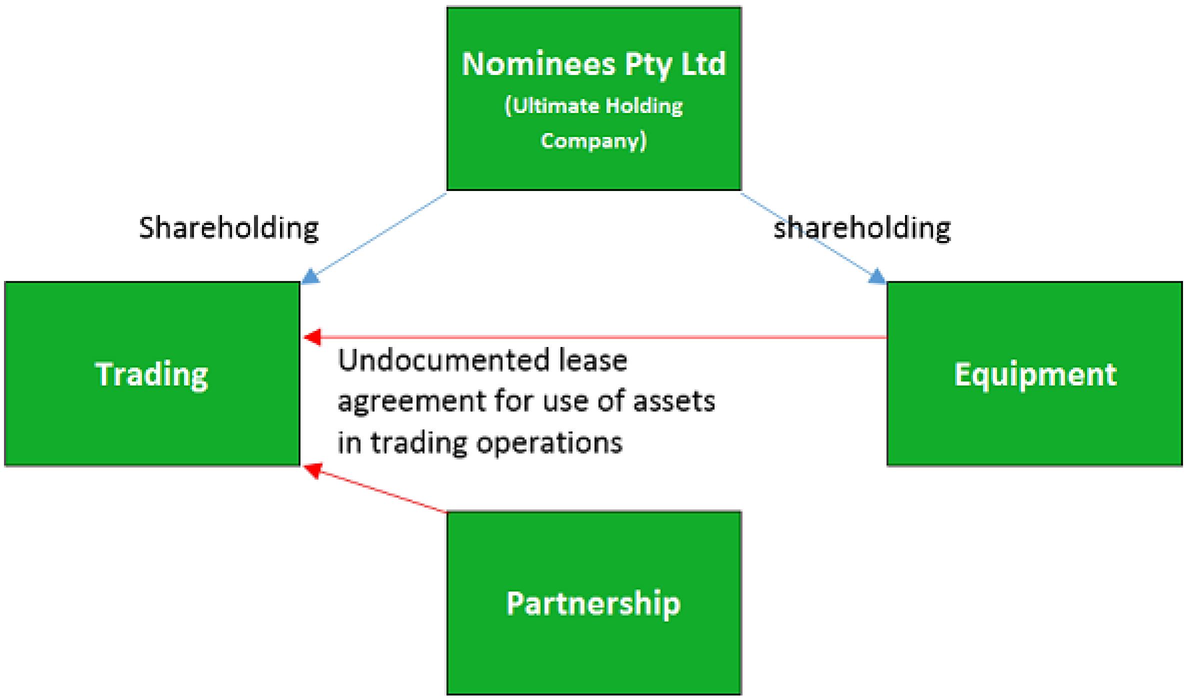
BRI Ferrier Newsletter – May 2017

Asset Protection structures that are not PPSR compliant – what can happen

Case study 1: Groups

In August 2016, we were appointed as Administrators of two companies in a group of entities operating in the transport industry. You can see below how the entities in the group had structured the ownership and use of plant and equipment.

The owners of the vehicles (Equipment and Partnership) allowed Trading to use the vehicles on the basis that Trading paid all operating costs and lease payments. This agreement was not in writing.



Neither Equipment, nor Partnership registered their interests in the vehicles used by Trading on the Personal Properties Securities Register ("PPSR").

Upon our appointment as Administrators of Trading, we received advice that Equipment and Partnership's failure to protect their interests by registering on the PPSR, meant the vehicles in the possession of Trading on the day of our appointment were "vested" in Trading.

Trading had "inherited" vehicles with a market value of more than $1m.

This is the first time since the legislation commenced in 2012 that we had come across an issue of this type with such significant consequences for the historically recognised "owners" of the assets.

Advisors looking to structure a group's affairs for asset protection purposes, should seek proper legal advice to document the arrangements between members of the group. This should form the basis for registering the interests of the asset-owning entities on the PPSR.