

News with Clout

Providing Corporate & Personal Solvency Solutions

DO A PHEONIX AT YOUR PERIL

It would appear the Government has had enough. Particularly given the ATO is usually the creditor of choice that is left behind in a failed entity and has championed legislation aimed to make leaving them out on their own harder with the introduction of **Treasury Laws Amendment (Combating Illegal Pheonixing) Bill 2019** into Parliament.

As we all know a phoenix is the transfer of assets and business from one company to another where the new entity is usually controlled by the same people or related parties and creditors are left in the old company which then is allowed to go into liquidation with nothing left. More often than not the only creditor left is the ATO.

Readers will also recall the reporting in the media of the fraudulent activities of labour hire entities where a whole train of companies were used leaving vast amounts of unpaid PAYG withholding tax and outstanding superannuation. They are now determined to stamp this out and if this legislation is not enough our guess is they will keep broadening the net till they do.

Some of the key reforms include:

- Creation of new civil and criminal offences for those who engage in and facilitate illegal phoenix transactions including directors, pre-insolvency advisers and other facilitators;
- Extension of existing liquidator asset clawback avenues to include illegal phoenix transactions;
- Company directors will be prohibited from improperly back-dating resignations to avoid personal liability;
- Sole directors of companies will be prohibited from resigning preventing companies from being left without a director;

- Voting rights of related creditors of the failed company will be restricted at meetings regarding the appointment, removal or replacement of a liquidator;
- Extension of current director penalty provisions to include GST liabilities; and
- Extension of ATO's power to retain refunds where there are outstanding tax lodgements.

A Bill has also been introduced to Parliament to provide for the allocation of a "Director Identification Number" to company directors which it is believed will assist the Pheonix Taskforce to identify and deal with such activities.

At present the Pheonix Taskforce is comprised of 34 Federal, State and Territory government agencies, which, we are advised will continue to grow and ultimately widen the net to catch and help stamp these illegal activities.

A new phoenix hotline has been set up to make it easier to report individuals or businesses that may be engaging in illegal phoenix activity. The ATO have a division dedicated to this initiative and they are asking that people who suspect wrong doing to please contact the ATO as follows:

Telephone: **1800 807 875**

Email: pheonixhotlinereferrals@ato.gov.au

Website: www.ato.gov.au/reportpheonix

Perhaps if there are businesses that get into difficulty, but are worth saving, some consideration should be given to the formal insolvency provisions designed to enable the business to survive and treat all creditors fairly. This is one of the reasons the Safe Harbour provisions were recently introduced.



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