



Govt launches next phase of phoenix crackdown

The government has today released a public consultation paper on reforms to address illegal phoenixing activity, following the announcement of draft reforms earlier this month.

11:39 AM, 28 Sep 2017 0 comments

Today the Minister for Revenue and Financial Services, Kelly O'Dwyer, released a paper entitled 'Combatting Illegal Phoenixing' for public consultation.

The paper seeks views on the draft reforms to the corporations and tax laws proposed by the government earlier this month.

The reforms are designed to deter and disrupt the core behaviours of phoenix operators, while minimising any unintended impacts on legitimate businesses and honest restructuring.

"The government is committed to helping the honest and diligent entrepreneurs who drive Australia's productivity, but we won't tolerate those who misuse the corporate framework for their own advantage," Ms O'Dwyer said.

The proposed changes will also assist regulators to better target action against those who repeatedly misuse corporate structures and enable them to take stronger action against those entities and individuals.

Professional accounting body Chartered Accountants Australia and New Zealand and mid-tier accounting firm BDO previously voiced their support for the reforms and indicated a desire to make a submission upon the release of the consultation paper.

Source:

https://www.accountantsdaily.com.au/tax-compliance/10864-next-phase-of-phoenix-crackdown-underway?utm_source=Accountants%20Daily&utm_campaign=29_09_17&utm_medium=email&utm_content=4



Insolvency safe harbour for 'diligent' directors

New laws will encourage "honest" directors to take reasonable risks so companies can trade their way out of financial difficulty, as part of a push to make Australia more entrepreneurial.

Legislation introduced to federal Parliament on Tuesday will afford directors legal protection from insolvency breaches while they are undertaking a restructure.

Under the "safe harbour" provision, directors will not be held liable for an insolvent company's debts if they can prove their behaviour was "reasonably likely" to lead to a better outcome than immediate administration or liquidation.

"Whether a course of action is reasonable will vary on a case-by-case basis depending on the individual company and its circumstances," an explanatory memorandum accompanying the legislation says.

"A liquidator ... seeking to make the director personally liable for any debts incurred while the company was insolvent will bear the onus of establishing that the course of action by the director was not reasonable in the circumstances."

A second element of the legislation will prevent contractors terminating supply and other contracts with the business during the restructuring period, under what are called "ipso facto" clauses.

The changes are part of the government's National Innovation and Science Agenda and the Australian Institute of Company Directors said they could be game-changing.

'Big cultural shift'

"This really would be a big cultural shift ... saving potentially billions of dollars' worth of lost wealth and tens of thousands of jobs," AICD general manager of advocacy Louise Petschler said.

"The current system creates all the incentives to pull the trigger on an administration or liquidation too early."

Australia's insolvency laws are harsh in a global context and they are viewed as a barrier to start-ups.

But even with the changes, hope will not be an acceptable strategy, the memorandum warns.

"Directors who merely take a passive approach to the business' position or allow a company to continue trading as usual during financial distress, or whose recovery plans are fanciful, will fall outside the bounds of the safe harbour."

Protection will only be afforded to directors who act "honestly and diligently".

No 'free ride'

Ms Petschler said the model the government had adopted was not a "free ride" for companies.

"You have to be able to guarantee your employee entitlements, you have to have met your tax reporting obligations and you have to be maintaining your books in good order, which is very important if you do end up going into any kind of administration or liquidation," she said.



Revenue and Financial Services Minister Kelly O'Dwyer said directors would get "breathing room" when genuinely trying to turn a company around.

That would in turn promote a culture of entrepreneurship and help reduce the stigma associated with business failure, she said.

Source:

<http://www.afr.com/news/politics/insolve-ncy-safe-harbour-for-diligent-directors-20170328-gv8c46>