Insolvency Law Reform – Phoenix Companies

Article re Phoenix companies (first written by Geoffrey McDonald in 2005)

In business, it is wrong to go broke. But, it is not illegal to go broke.

The illegality, associated with insolvency, comes from the specific conduct of the people at the time.

It is a crime to (dishonestly) trade whilst insolvent (section 588G(3)). It is a crime for a director to breach his or her duty to the company (ss180-183 of the Corporations Act). In *ASIC v Somerville & Ors* [2009] NSWSC 934 the Court found eight directors to have acted in breach of sections 181(1), 182(1) and 183(1) of the Corporations Act. **Their solicitor also contravened section 79 of the Corporations Act, as he aided and abetted the directors in their breaches.** In each of the cases, assets were transferred from the financially distressed companies to new companies, in consideration of the issue of V class shares which supposedly carried an entitlement to a dividend from the new company. Windeyer J found that there was 'no proper basis for the transactions other than to keep the benefit of the assets in [the new] company without the burden of liabilities'.

This type of conduct has been highly criticized and is described as "phoenix activity". This involves a director arranging for a new company to rise from the ashes of an old liquidated company, looking deceptively similar by using effectively the same name, brand or goodwill.

ASIC uses the term "phoenix company" within its guide to the use of the Assetless Administration Fund;

RG109.6 Note: Phoenix activity does not have a statutory or legal definition. However, fraudulent or unlawful phoenix activity can be regarded as typically involving:

the transfer of assets (such as the business) of a company (the previous company) to a subsequent company in circumstances where the previous company:

- ***was unable to pay its debts; and***
- ***may have been conducted in a manner so as to deprive unsecured creditors equal access to its assets; and***
- ***there is a connection between the management or shareholding of the previous company and the subsequent company.***

It is not always appreciated that, if a company is insolvent, the directors owe a duty to creditors;

In the context of insolvency, the requirement that directors consider the interests of creditors appears to only arise in relation to situations where there is a likelihood that certain or all creditors will not receive what they are owed from the company; that is, where there is an excess of liabilities over assets or a lack of liquidity. Once a company becomes insolvent, then the directors' duty to consider the interests of creditors gives rise to a duty not to prefer some

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creditors over other creditors and contributories who have claims on the fund in liquidation. ***Thus if directors of an insolvent company decide to prefer creditors with guaranteed debts, they may be held to be in breach of their duties as owed to the company****."*

***International Swimwear Logistics Ltd v Australian Swimwear Company Pty Ltd* [2011] NSWSC 488 (25 May 2011).**

Regardless, it is not a crime to set up a phoenix company.

Further, there is no such thing as a phoenix company under the Corporations Act.

Importantly, the ATO recognised that some phoenix activity was quite acceptable;

Case study: legitimate use of the corporate form

Michael is a director of XYZ Pty Ltd and becomes aware that the company is no longer in a position to pay its debts. After promptly taking legal advice on his options Michael decides to place the company into liquidation. Michael arranges to purchase some of the assets from the liquidator at market price. The liquidator pays the creditors the funds received from the sale of these and other assets but there are insufficient funds for the debts to be paid in full. Michael subsequently sets up a similar business using another company of which he is also a director.

Our friends across the Tasman have defined a phoenix company and established penalties for engaging in such activity, under the **New Zealand Companies Act, 1993:**

"phoenix company" means, in relation to a failed company, a company that, at any time before, or within 5 years after, the commencement of the liquidation of the failed company, is known by a name that is also—

(a) a pre-liquidation name of the failed company; or

(b) a similar name

"pre-liquidation name" means any name (including any trading name) of a failed company in the 12 months before the commencement of that company's liquidation.

"similar name" means a name that is so similar to a pre-liquidation name of a failed company as to suggest an association with that company.

There have been some attempts to change the laws in Australia, but the main attempts fell away. The driving force behind the changes has been the ATO. The ATO proposals paper issued in November 2009, "Action against Fraudulent Phoenix Activities" provided an overview of the problems that fraudulent phoenix activities cause in the collection of tax revenue and other employee entitlements. The *Corporations Amendment (Phoenixing and Other Measures) Act 2012* made significant changes to the tax laws, particularly making directors even more liable for their company's tax and superannuation debts.

The other proposed law change, *The Corporations Amendment (Similar Names) Bill* 2012, was never passed. It was meant to address the problem of Phoenix companies;

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"On 25 July 2010, the Prime Minister announced the Protecting Workers' Entitlements package which included the Government's election commitment: to impose personal liability on directors engaged in phoenix activity via being directors of similar named companies to failed companies."

So, without making changes to the law, one of the ways that ASIC has dealt with the problem is to attack the advisors.

In August 2017, ASIC notified every liquidator in Australia that one of their kind had his license cancelled for failing to investigate "phoenix company" activity.

The days of a "friendly liquidator", who takes no action in respect of phoenix activity, are numbered. The fear of solicitors being caught in the fall-out is ever-increasing (Google "$165m tax fraud" and read "He was recorded on an intercepted call to the group's tax lawyer, Dev Menon").

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ASIC Corporate Insolvency Update - Issue 1

Issue 1, September 2016

Since early July, directors of companies that become subject to winding up applications receive an ASIC letter warning them about untrustworthy advisers.

We've received very positive feedback and market intelligence about untrustworthy advisers and so-called, "friendly liquidators".

The letter forms part of ASIC's work aimed at curbing illegal phoenix activity. Our recent activities include better information sharing between government agencies, disruption activities and enforcement action against advisers.

ASIC Corporate Insolvency Update - Issue 4

Issue 4, August 2017

Tackling illegal phoenix activity

We continue to build on our work with other agencies including in information sharing and operational cooperation to achieve material outcomes to curb illegal phoenix activity (IPA). We participate on the ATO led Phoenix Taskforce and its steering committee. A good deal of thought is given to how to best deal with IPA – whilst at the same time doing what we can to curb that activity - with success.

On 22 June 2017, ASIC accepted an enforceable undertaking from Raymond Sutcliffe that involved him seeking ASIC cancellation of his registration. ASIC's concerns included conduct that he failed to adequately investigate potential IPA. A review of enforcement outcomes between August 2013 and December 2016 show 18 outcomes that involved at least some indicia of IPA or where we suspected the liquidator's behaviour assisted or facilitated IPA.

At the same time, we continue our work with registered liquidators to help them in their actions against directors and advisers. There is some great work in the pipeline.

What is troubling is we continue to see traditional referrers of insolvency work, accountants and lawyers, seemingly part of the problem. We'd like to think the wider accounting profession and the legal profession could do more to help.

http://www.asic.gov.au/about-asic/corporate-publications/newsletters/asic-corporate-insolvency-update/asic-corporate-insolvency-update-issue-4/#phoenix

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Deputy Commissioner of Taxation v A & S Services Australia Pty Ltd [2017] FCA 437 (27 April 2017)

19. **The appointment of a provisional liquidator** ex parte is an extreme measure only to be countenanced where no other solution is available **but the systemic disregard of taxation obligations, the evidence of the involvement of Mr Whiteman in each of the companies, the evidence of Mr Whiteman's prior involvement in a phoenix operation and the evidence suggesting fraudulent phoenixing activity in establishing AHW Solicitors raised very serious questions** about the corporate governance and operations of the corporate defendants and justified the appointment of provisional liquidators on an urgent basis to protect the assets of the companies.

UTSG Pty Ltd v Gwynvill Properties Pty Ltd [2017] NSWSC 558 (9 May 2017)

Shortly put, the defendant wishes to support its claim for an order requiring the plaintiff to **provide security for its costs** on two related grounds, each of which will involve the defendant establishing that **the court should infer from the evidence that Ms Singh has engaged in serious Phoenix activity once, that she has a propensity to do so, and may avoid the plaintiff paying any costs that the court orders it to pay to the defendant by repeating the Phoenix activity in relation to the plaintiff.** The defendant seeks to put that argument as a stand-alone ground for the court to order security for costs, and also to rely upon it as a ground in conjunction with such evidence as the defendant is able to put before the court to establish the likely impecuniosity of the plaintiff.

(Note: security for costs application was not determined).

In the matter of Plutus Payroll Australia Pty Limited [2017] NSWSC 1041 (9 June 2017)

8. **I am satisfied on the evidence so far before the Court that prima facie there is a strong case for a winding up order in respect of each of the defendant companies.** I emphasise that that is a prima facie conclusion, at this stage, before the evidence has been adduced in proper form, and based on material which is in part conclusionary in nature and which might not survive at a final hearing if objected to in its current form. Nonetheless, on an interlocutory application of this kind, that evidence establishes a number of relevant matters:

(1) first, the companies severally and together appear to have unpaid taxation liabilities of a very large order;

(2) secondly, that appears to be the consequence of a scheme by which the companies were used to evade tax;

(3) thirdly, those named as directors in the records of the companies maintained by ASIC, appear to be directors in name only, not to be acting as such and, indeed, at least in some cases, deny knowledge of having been appointed as such;

(4) fourthly, except in the case of the first defendant, Plutus Payroll, other winding up proceedings were already on foot on grounds of insolvency. In connection with the institution of these proceedings, the plaintiff in those other winding up proceedings has agreed that the other proceedings may be dismissed, rather than having the present plaintiff substituted in multiple different proceedings; and

(5) finally, in the case of Plutus Payroll, after these proceedings were instituted and late on 6 June 2017 at about 6.05pm, the director of that company caused voluntary administrators to be appointed under the Corporations Act, s 436A, which of itself admits insolvency.

10. I turn then to whether there is **sufficient cause to take the drastic step of appointing a provisional liquidator before a final hearing**. It is this issue that has caused me most food for thought, because there is an absence of the kind of evidence one normally expects to see of a threat of dissipation of assets or other irremediable detriment if the matter is left to await the final hearing of the winding-up proceedings. Ultimately, however, the matters which in my view favour the position that a provisional liquidator should be appointed can be summarised as follows.

11. First, there is the apparent history – within the scheme in the context of which these companies were engaged – of phoenixing arrangements, by which the assets and undertaking of one company would after a time apparently be transferred to another or new company. That bespeaks a risk that if any of these companies do have recoverable assets or the benefit of contracts, there is potential for them to be dealt with in the same manner.

Legal professional privilege

The principles that govern the common law test for legal professional privilege were set out by Young J in *AWB Limited v Honourable Terence Rhoderic Hudson Cole (No 5)* (with Corrigendum dated 25 October 2006) [2006] FCA 1234 (18 September 2006)) at 44 and cited in *Domain Paper (Australia) Pty Ltd v Galloway* [2014] FCA 936 (28 August 2014) at 30;

(4) Where communications take place between a client and his or her independent legal advisers, or between a client's in-house lawyers and those legal advisers, **it may be appropriate to assume that legitimate legal advice was being sought, absent any contrary indications**: *Kennedy v Wallace* [2004] FCA 332; (2004) 208 ALR 424 at [65] per Gyles J; affirmed on appeal, *Kennedy v Wallace* at [23]-[27] per Black CJ and Emmett J. In *Kennedy v Wallace*, Black CJ and Emmett J inclined to the view that **in the ordinary case of a client consulting a lawyer about a legal problem in uncontroversial circumstances, proof of those facts alone will provide a sufficient basis for a conclusion that legitimate legal advice is being sought or given.**

In *Australian Securities and Investments Commission v Mercorella* (No 3) [2006] FCA 772 (21 June 2006) Mansfield J observed that:

30 In some cases, it is clear that documents over which privilege is claimed were brought into existence in circumstances where **public policy removes the shield of privilege.** In other cases, indeed most cases, public policy clearly provides the shield of privilege. Where the line

is to be drawn so that that shield is lifted must be decided in the particular circumstances of the case. It is a contentious issue here.

31 In *Southern Equities Corporation Ltd (in liq) v Arthur Andersen* [1997] SASC 6712; (1997) 70 SASR 166 at 174 Doyle CJ said:

"I conclude from this reference to authority that **the claim of privilege will fail only if there is material raising an arguable case that the relevant communications were made for the purpose of furthering or assisting a crime or fraud, and that fraud in this context embraces a range of legal wrongs that have deception, deliberate abuse of or misuse of legal powers, or deliberate breach of a legal duty at their heart.** It is not enough, I consider, that one could simply say that a transaction constituted sharp practice, or fell below the normal standard of commercial probity. It is not enough, I consider, that one would regard a transaction on which advice was sought as artificial, or as deliberately structured to take advantage of the law on a topic. In light of the authorities, one cannot be more precise than that.

It is not necessary to show that the solicitor in question is implicated. What is in issue is the purpose of the client."

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ID numbers for directors as Turnbull government cracks down on phoenix companies

http://www.smh.com.au/business/the-economy/id-numbers-for-directors-as-turnbull-government-cracks-down-on-phoenix-companies-20170911-gyf8b8.html

"Each Australian company director will be assigned a unique identification number under tough new laws designed to prevent them deliberately scuttling their companies to avoid paying creditors and then re-appearing phoenix-like, debt-free.

The crackdown, approved by cabinet on Monday, will be announced by Financial Services and Revenue Minister Kelly O'Dwyer on Tuesday 12 September, 2017."

"The Government's comprehensive package of reforms will include the introduction of a Director Identification Number (DIN) and a range of other measures to both deter and penalise phoenix activity.

The DIN will identify directors with a unique number, but it will be much more than just a number. The DIN will interface with other government agencies and databases to allow regulators to map the relationships between individuals and entities and individuals and other people.

In addition to the DIN, the Government will consult on implementing a range of other measures to deter and disrupt the core behaviours of phoenix operators, including non-directors such as facilitators and advisers."

http://kmo.ministers.treasury.gov.au/media-release/090-2017/

COMBATTING ILLEGAL PHOENIXING

September 2017
https://treasury.gov.au/consultation/c2017-t221952/

What is illegal phoenix activity?
Phoenix activity is not defined in legislation and can encompass both legitimate business rescue activities and the use of serial insolvency as a business model to avoid debts and even in some cases to facilitate money laundering.
For ease of reference, this paper will refer to legitimate phoenix activity as "honest business rescue". Honest business rescue is a legitimate use of the corporate form, whereas illegal phoenixing is a misuse of the corporate form, which seeks to exploit the privilege of limited liability.

1. Identifying illegal phoenix activity – a Phoenix Hotline
2. A phoenixing offence
Proposed reform – a specific phoenix offence
Proposed reform – designating breaches of existing provisions as phoenix offences
ASIC Notices
It is proposed that where ASIC (or a liquidator) suspects that illegal phoenix activity has occurred and that assets of Company A have been transferred to Company B for no or less than their market value:

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- ASIC may issue a notice upon Company B (either on ASIC's behalf or at the request of a liquidator who is able to satisfy ASIC as to the matters above) requiring that Company B deliver up property or monies' worth, along the lines of the regime in place under section 139ZQ of the Bankruptcy Act; and

- the recipient of the notice would have the right to apply to court to set aside the notice.

3. Addressing issues with directorships

Proposed reform: limiting backdating of director appointments and resignations

4. Restrictions on voting rights

5. Promoter penalties

6. Extending the Director Penalty Notice Regime to GST

7. Security deposits

8. Targeting higher risk entities

The Government is proposing a mechanism for identifying and targeting the most egregious phoenix operators who have adopted phoenixing as a business model. This mechanism leverages off common phoenix behaviour.
This mechanism involves a two-step process:

1. designation as a “Higher Risk Entity” (HRE); and

2. being declared to be a “High Risk Phoenix Operator” (HRPO) by the Commissioner of Taxation, which would enliven the early intervention and prevention laws set out in this Part.

9. Appointing liquidators on a cab rank basis

Option 1 – High Risk Phoenix Operators

Under this proposal, the cab rank rule would apply only to a company where an officer of the company is, or was during a prescribed period prior to the appointment of an external administrator, an HRPO (section 2).

Option 2 – a Government Liquidator

10. Removing the 21 day waiting period for a DPN

By removing the 21 day period for those directors identified as HRPOs, the ATO will be able to commence recovery of the penalty as soon as the DPN is issued.

11. Providing the ATO with the power to retain refunds

Proposed reform

Where a person has been designated as a HRPO, it is proposed that the law be expanded to allow the Commissioner to retain a refund that otherwise would have been refunded to the HRPO in circumstances where the HRPO has an overdue lodgement or notification capable of affecting a tax liability.

QUESTIONS

94. Should this proposed power be broadened further where notifications are not yet due but will become due in the next reporting cycle? For example where lodgement of an income tax return by the HRPO is not due for some months but is expected to result in a significant liability, should the ATO be able to retain a refund presently owed?

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Supporting innovation through insolvency law reform

“The Government has delivered on its commitment under the National Innovation and Science Agenda (NISA) to improve Australia’s corporate insolvency system, with the *Treasury Laws Amendments (2017 Enterprise Incentives No. 2) Bill 2017* receiving passage through the Parliament.

This Bill promotes a culture of entrepreneurship and innovation by providing a ‘safe harbour’ for company directors from personal liability for insolvent trading if they are pursuing a restructure outside formal insolvency. It also makes ‘ipso facto’ clauses unenforceable during and after certain formal insolvency procedures.

“This Bill will protect diligent and competent company directors from personal liability for insolvent trading if they are pursuing a restructure outside of a formal insolvency process. Directors will be able to remain in control of the company and take proactive steps to restructure a company when that is reasonably likely to deliver a better outcome for creditors, employees and shareholders.”

The Bill ensures safeguards to make it unattractive to dishonest directors who might want to fraudulently phoenix their company.

The safe harbour provisions will commence on Royal Assent (which was 18 September 2017). The stay on the operation of ipso facto clauses will commence from 1 July 2018 to provide time for businesses to adapt to the new settings.

The operation of the Safe Harbour will be subject to an independent review two years after commencement.

The Government will shortly consult with key stakeholders on the Regulations to support the operation of the stay on ipso facto clauses.

Safe Harbour

588GA Safe harbour—taking course of action reasonably likely to lead to a better outcome for the company

(1) Subsection 588G(2) *(viz. Insolvent Trading liability)* does not apply in relation to a person and a debt if:

(a) at a particular time after the person starts to suspect the company may become or be insolvent, the person starts developing one or more courses of action that are reasonably likely to lead to a better outcome for the company; and
(b) the debt is incurred directly or indirectly in connection with any such course of action..

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(2) For the purposes of (but without limiting) subsection (1), in working out whether a course of action is reasonably likely to lead to a better outcome for the company, regard may be had to whether the person:
(a) is properly informing himself or herself of the company's financial position; or
(b) is taking appropriate steps to prevent any misconduct by officers or employees of the company that could adversely affect the company's ability to pay all its debts; or
(c) is taking appropriate steps to ensure that the company is keeping appropriate financial records consistent with the size and nature of the company; or
(d) is obtaining advice from an appropriately qualified entity who was given sufficient information to give appropriate advice; or
(e) is developing or implementing a plan for restructuring the company to improve its financial position.

Notes;

- The protection provided by the safe harbour is limited to civil liability under the insolvent trading provisions. Directors must continue to comply with all their other legal obligations and duties.
- Continuous disclosure requirements, if applicable, continue to apply.
- The safe harbour protection is only available while directors:
  - develop or take a course of action that, at the time, was reasonably likely to lead to a better outcome for the company than immediate administration or liquidation (the course of action that is developed must be implemented within a reasonable period)
  - ensure that the company complies with its obligation to pay its employees (including their superannuation), and
  - ensure that the company meets its tax reporting obligations.
- Whether a course of action is reasonably likely to lead to a better outcome is assessed as at the time the decision is made, not with the benefit of hindsight.
- If the restructuring plan were to fail and the company entered liquidation, the safe harbour would only be open if the directors comply with certain formal obligations during the liquidation, such as completing a RATA and providing books and records. Failure to do so will mean the safe harbour will be deemed not to have existed.
- A director that fails to provide access to books and records to a liquidator or administrator will be prevented from being able to rely on those materials as evidence of having complied with the safe harbour requirements – but the liquidator or administrator must ensure they advise the directors of this consequence when making the request.
- The benefits of safe harbour can also extend to a holding company where the directors of the subsidiary had the benefit of safe harbour and the holding company was taking reasonable steps to ensure that that was the case.
- The evidentiary burden lies with the director that is claiming the benefit of the safe harbour. However, it will be up to the liquidator to show, on the balance of probabilities, that the course of action taken was one not reasonably likely to lead to a better outcome.

(Ipso facto);
Part 2—Stay on enforcing rights merely because of arrangements or restructures

Some of the key points are:

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- The new law will only apply to contracts, agreements or arrangements entered into after the commencement of the new law.
- The ipso facto right will remain unenforceable against a company after the end of the stay:
  - for events that occurred before the end of the stay period, or
  - due to the company having been subject to a scheme, voluntary administration or having had a managing controller appointed.
- The right to terminate or amend an agreement remains if the breach occurs for any other reason, such as non-payment or non-performance.
- The stay can be waived in writing by the appointed insolvency practitioner.
- A lender to the company cannot be forced to advance new money or credit under an existing agreement during the period of the stay.
- The court can order that the stay not apply in relation to a particular contract.
- The court can grant extensions of the period of the stay.
- The stay will not extend to contracts entered into after the company enters into the scheme, voluntary administration or has a managing controller appointed.
- The stay will apply to schemes for disclosing entities from the time that the company announces that it will be making an application under s 411. The company will then have three months, or longer if provided by the court, to actually make the application.
- If a replacement managing controller is appointed over the whole or substantially the whole of the company's property, there is continuity in the period of protection.
- A stay on a right during a voluntary administration will extend into a subsequent winding up, but a liquidation commenced without a preceding voluntary administration will not have the benefit of ipso facto protection.
- A secured creditor with security over the whole or the substantially the whole of the company's property maintains its right to appoint a controller under s 436C where a voluntary administrator has been appointed, via amendments to s 441A.

451E Stay on enforcing rights merely because the company is under administration etc.

Stay on enforcing rights

(1) A right cannot be enforced against a company for:

(a) the reason that the company has come or is under administration; or

(b) the company's financial position, if the company is under administration; or

(c) a reason, prescribed by the regulations for the purposes of this paragraph, that relates to:

(i) the company coming, or possibly coming, under administration; or

(ii) the company's financial position;

if the company later comes under administration; or

(d) a reason that, in substance, is contrary to this subsection;

if the right arises for that reason by express provision (however described) of a contract, agreement or arrangement.

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OTHER LAW REFORM

Putting consumers first – improving dispute resolution

The Turnbull Government will establish a new one-stop shop dispute resolution scheme, the Australian Financial Complaints Authority (AFCA), which will significantly improve how financial disputes are dealt with in Australia.

In response to feedback received during consultation, the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, said the Government will make a number of improvements to the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017* (the Bill), previously known as the Treasury Laws Amendment (External Dispute Resolution) Bill 2017.

AFCA will replace the three existing schemes – the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT).

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Reforms to stop corporate avoidance of employee entitlements at taxpayers' expense

The Minister for Employment, Senator the Hon Michaelia Cash, and the Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP, will introduce new laws to stop corporate misuse of the Australian Government's Fair Entitlements Guarantee (FEG) scheme.

It is clear that some company directors are misusing the FEG scheme to meet liabilities that can and should be paid directly by the employer rather than passed on to Australian taxpayers. The FEG scheme is an avenue of last resort that assists employees when their employer's business fails and the employer has not made adequate provision for employee entitlements.

The proposed changes will provide a significant disincentive for employers to exploit the taxpayer-funded scheme and avoid their responsibilities to their employees. The changes will:

- Penalise company directors and other persons who engage in transactions which are directed at preventing, avoiding or reducing, employer liability for employee entitlements;
- Ensure recovery of FEG from other entities in a corporate group where it would be just and equitable and where those other entities have utilised the human resources of the insolvent entity on other than arm's length terms; and
- Strengthen the ability under the law to sanction directors and company officers with a track record of insolvencies where FEG is repeatedly relied upon.

This legislation will also support the Australian Government's 'Comprehensive Package of Reforms to Address Illegal Phoenixing' announced on 12 September 2017.

3 October 2017

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1-year Bankruptcy Bill introduced into Federal Parliament

The *Bankruptcy Amendment (Enterprise Incentives) Bill 2017* was today introduced into the Senate, 19 October 2017.

The key aspects of the Bill are:

- Amending s 149 of the *Bankruptcy Act 1966* ('the Act') to provide that 'the bankrupt is discharged at the end of the period of 1 year from the date on which the bankrupt filed his or her statement of affairs'

- Reducing other time periods associated with bankruptcy to one year, including the obligation to disclose one's status as a bankrupt when applying for credit, the requirement to seek permission to travel overseas and the ability to enter into certain professions or positions (eg, company director)

- Income contribution obligations of discharged bankrupts will extend for at least two years following discharge (five to eight years if the bankruptcy is extended due to non-compliance)

- For ongoing bankruptcies, the advent of the 1-year discharge will mean that '[a]ll bankruptcies on foot at the commencement date, except those subject to a section 149B objection, will be discharged if one year has expired since the bankrupt filed a statement of affairs with the Official Receiver.' Other ongoing bankruptcies 'will discharge on the day after the first anniversary of the filing of the statement of affairs with the Official Receiver'

- The 1-year discharge will commence 6 months after the Bill receives Royal Assent. According to the Explanatory Memorandum, this is designed to 'give trustees time to prepare any objections to discharge, and will enable relevant agencies time to consider whether a one-year licensing or professional restriction is appropriate for their purposes'

- Ongoing bankruptcies which have been extended for 5 or 8 years due to an objection to discharge (under s 149B of the Act) will remain unchanged. The ability of a trustee or the Official Receiver to lodge an objection to discharge after the commencement of the 1-year default period for bankruptcy will remain unchanged.

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