

7 March 2013

Manager
Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600



Dear Sir,

The Printing Industries Association of Australia (*Printing Industries*) is the peak advocate and support organisation for companies operating in the paper, print, packaging and visual communication industry in Australia.

The industry represented by the Association is undergoing a massive transition as it repositions itself to compete with other communications mediums. The printing segment also faces increased competition from foreign print providers who are taking advantage of the high Australian dollar to encourage local print buyers to source print offshore. These industry pressures have created a situation of low industry margins and a general inability to pass on cost increases arising from government policy measures such as the carbon tax.

As the industry progresses through the current transition phase, issues such as 'phoenix activities' (ASIC has referred to such activities the '*systematic misbehaviour of company officers who deliberately avoid their responsibilities to creditors*') especially those that are deemed to be of fraudulent nature are the cause of great concern and considerable financial loss to businesses engaged in the Australian printing industry..

While we appreciate that the current review is essentially procedural in nature and is aimed at insolvency practitioners, the Association is hopeful that the second tranche of the Bill embraces some of the practical issues and concerns associated with phoenix company arrangements and activities. The core of this issue goes to the impact on the whole value chain in the Industry when company officers of a failed business or company officers of a succeeding business, engage in activity where the creditors (and of course the employees) of the failed business are left with, at worst, a write-off of their monies or at best a substantial write-down of their monies.

Members of *Printing Industries* who fall victim to fraudulent phoenix activity regularly fail to recoup funds owing to them as in most cases the debt falls into the unsecured creditor category. In recent industry examples suppliers of paper and other printing industry consumables as well as printing companies have been offered as little as 5 cents in the dollar by appointed administrators for the outstanding debts of liquidated companies. For an industry in which the businesses are predominantly small to medium, the impact on these debt write-off's strikes at the heart at the viability of the business. It is further exacerbated when the company reemerges as a competitor with a stronger balance sheet due to this write off.

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Printing Industries appreciates that often there is a fine demarcation between what constitutes phoenix activity in a general sense and what constitutes fraudulent phoenix activity. This is due to the fact that failing businesses tend to continue to operate as normal with their clients; suppliers; and other stakeholders – incurring debts and undertaking new commercial arrangements.

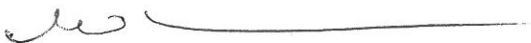
Complicating matters further is the fact that there is no definition of a phoenix activity under *The Corporations Act* and a person cannot be charged with creating or using a phoenix company. In some circumstances the use of a phoenix company is still considered as the most appropriate way of dealing with business failure.

***Printing Industries* proposes that a new test be developed to distinguish fraudulent business activity from normal phoenix activity.** Businesses who come under financial stress and re-emerge as a new entity soon after thereby evading outstanding taxation and other liabilities such as employee entitlements and money owing to suppliers, should be declared as engaging in fraudulent phoenix activity if it can be demonstrated that the director(s) of a business operating under financial stress failed to take appropriate corrective action to limit the potential adverse impacts on employees, suppliers and other business stakeholders.

If the directors of a particular company continue to operate and incur debts while being aware that the company is technically insolvent, then actions associated with the subsequent transfer of the assets of the old firm to the new firm should be declared as constituting fraudulent phoenix activity.

The Association looks forward to the release of the second tranche of the Bill outlining further consequential amendments to the corporate and personal insolvency legislation. We submit that should the concerns we raise above are not encapsulated in the second tranche of the Bill, then the Bill should be withdrawn until such time as the matters we have raised have been addressed.

Yours sincerely



Bill Healey
CEO