

From: Samuel Piscopo [mailto:xxx]
Sent: Friday, 17 August 2018 2:42 PM
To: Phoenixing
Subject: Response+to:+Reforms+to+combat+illegal+phoenix+activity+--+Draft+Legislation

Dear Treasury,

In my experience, many directors will take their chances in stripping a company of its assets in phoenix activity. They figure, quite rightly, that criminal proceedings are rare, expensive and have a low success rate. The same happens in the personal insolvency sphere.

If the proposed measures are to be effective, there must be more immediacy of consequences for the culpable directors.

For example, if ASIC is to make an order that a transaction is voidable, then I suggest that the same order make the culpable directors liable for the value of the assets the subject of the order with failure to pay constituting an act of bankruptcy. That will have at least three effects.

Firstly, it will have a deterrent effect on directors because there is greater immediacy in regard to possible consequences for themselves.

Secondly, because the transferee, the object of the ASIC order, is likely to be subject to the effective control of the culpable directors, there will be a greater likelihood of compliance.

Thirdly, in those instances where the transferee itself disposes of the assets, there will still be a possible avenue for recovery from the culpable directors under penalty of possible bankruptcy. This will, incidentally, further add to the deterrent effect.

Similarly, criminal convictions should come with compensation orders as a matter of course. Too often I have seen individuals quite happily take a conviction on the chin as it is generally visited with only a modest fine that in no way approaches the value of the assets disposed of and denied to creditors. These people figure that it makes good commercial sense to take the risk.

Regards

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