Australia's property industry
Creating for Generations

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Clarifying the treatment of trusts under insolvency law

The Property Council welcomes the opportunity to respond to the Treasury consultation on clarifying the treatment of trusts under insolvency law.

The Property Council of Australia champions the industry that employs 1.4 million Australians and shapes the future of our communities and cities. Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

We have participated in the broader consultation process on insolvency law reform and now appreciate the chance to contribute to understanding whether the treatment of corporate trusts in Australia's insolvency law needs to be clarified. We appreciate that there can be costs and intricacies when dealing with an insolvent business where a corporate trust is involved.

Trusts are commonly used in the property sector, comprising the main vehicle for collective investment in funds management and are used by a range of institutional investors.

The intersection between trusts and insolvency law is complex and in reviewing the current regime we urge the below considerations be kept in mind:

- The difference in size and complexity of trusts
  - As indicated in the paper, trusts are commonly used in small, medium and family-owned businesses, and they are also used on a large institutional basis
  - The difference in sizes necessitates close attention be paid to any proposed changes to the law, to ensure there are no unintended negative consequences
- The sanctity and unique position of the lease is respected
  - A lease agreement gives rise to contractual rights and obligations for both landlords and tenants throughout the term of the lease, in particular, the exclusive use of premises is provided by the landlord in exchange for the tenant agreeing to pay rent and keeping the premises in good order

- The relationship between property owners/landlords (creditors) and tenants (debtors) is unique insofar as the owner/landlord is providing an essential service for the business that is applying to restructure.
- Unlike suppliers of goods to a business who can change their service conditions dependent upon the current 'at time' situation of the business (moving to cash on delivery, withholding goods until invoices are paid), the situation for the landlord is very different.
- Commercial property is a critical part of the Australian economy and financial system, and the proposed reforms should not inadvertently jeopardise the stability of our markets
- We therefore propose landlords be considered as a special category and afforded necessary protections

We recognise the challenges in getting the balance right. As such, the Property Council stands ready to offer experts to assist with the details if any changes are sought to the treatment of corporate trusts in Australia's insolvency regime.

Please do not hesitate to contact me on 0400 356 140 or at bngo@propertycouncil.com.au or Adele Lausberg on 0415 225 638 or at alausberg@propertycouncil.com.au.

Yours sincerely

Belinda Ngo

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