

Insolvency Alert

Corporations Amendment (Phoenixing and Other Measures) Bill 2012

February 2012

On 15 February 2012, the *Corporations Amendment (Phoenixing and Other Measures) Bill 2012* was introduced into federal parliament. The effect of the Bill, is to make a number of amendments to the Corporations Act which may affect insolvency practitioners, directors and financiers and areas of the banking and finance industry.

The Bill is designed to allow the government to fulfil an election commitment, such that where an employer corporation, and its directors have abandoned the business, its employees can access the GEERS scheme. The Bill allows ASIC, to place an abandoned company into liquidation which will enable employees to be paid part of their outstanding entitlements under the GEERS scheme and the liquidator to investigate and report on alleged misconduct and possible phoenixing behaviour.

The Bill also changes how notices in relation to insolvency administrations are to be given and prescribes additional notices to be given by insolvency practitioners of their appointments to the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs.

The amendments to the *Corporations Act* may be summarised as follows:

ASIC Winding Up

ASIC is to be given the power to order the winding up of a company where:

- response to a return of particulars given to a company is at least 6 months late and the company has not lodged any documents required under the Corporations Act in the last 18 months and ASIC has reason to believe the company is not carrying on business and believes the order is in the public interest.
- the company's review fee in respect of review date has not been paid in full at least 12 months after the due date.
- ASIC has reinstated a company that has previously been deregistered, in the last 6 months, and has reason to believe making the order is in the public interest.
- ASIC has reason to believe that the company is not carrying on business and has given at least 20 business days notice to the company and each of its directors.

Where ASIC makes a winding up order the company is deemed to have been placed into voluntary liquidation (usually a creditor's voluntary liquidation).

ASIC has been given the power to determine the liquidators fees where it makes such an appointment.

Publication and advertising of notices

The Bill allows notices in relation to liquidations, voluntary administrations and receiverships to be advertised in a manner prescribed. In some circumstances this will be the only way such notices can be advertised.

The explanatory memorandum indicates that a prescribed website (to be established by ASIC/federal government) will be established for the purposes of all advertising and that notices will be required to be set out in a prescribed form and contain prescribed information.

The memorandum further states that some notices will require an electronic link to an insolvency firm website where full copies of reports etc can be obtained and downloaded free of charge.

This will require insolvency practitioners to have websites with the capacity for creditors and other interested parties to obtain copies of all notices and reports to creditors etc. Practitioners may have to consider issues of privacy which may arise so as to restrict access of some reports to those parties who have a right to receive the same.

Paid parental leave

The Bill places an obligation upon receivers, administrators and liquidators to advise the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA) where a company to which they are appointed is a paid parental leave employer, to provide FHCSIA with notice of their appointment as soon as possible after they are appointed.

Conclusion

Insolvency practitioners, directors, financiers and credit managers need to be aware of the possible effects of the bill and consider the implications for their businesses, clients and practices.

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