

27 October 2017

James Mason
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: phoenixing@treasury.gov.au

Dear James

Combatting illegal phoenixing – consultation paper

The Property Council welcomes the opportunity to comment on Treasury's consultation paper, *Combatting Illegal Phoenixing* (the Paper).

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

The Property Council supports the Government's commitment to combatting illegal phoenixing and welcomes the recognition by Government that any proposed measures should be carefully targeted to minimise any impact on legitimate business activities and honest business restructuring.

Industry is broadly supportive of the proposed changes to Australia's corporate insolvency regime discussed in the Paper, and welcomes the additional clarity on appointments and resignations of company directors. We also welcome the proposed safe harbor provisions which should give more certainty to directors of entities that are undergoing honest business restructuring.

Industry would also support measures to improve financial literacy and awareness of the business regulatory environment to ensure greater compliance with the law. The benefit of any "phoenix hotline" will be limited if the general public does not have a strong understanding of the law, and could result in high volumes of unsubstantiated reports and nuisance complainants.

As the proposed reforms are developed further, it will also be important to clarify the extent to which any changes to insolvency rules will apply to special purpose vehicles in large corporate structures or joint venture arrangements. Many large corporate structures will have deeds of cross guarantees in place and other arrangements to support the solvency position of underlying wholly owned subsidiaries. As such, there is expected to be limited scope for these vehicles to deny access to assets by creditors.

Industry also recommends a holistic approach is undertaken to assess how these proposed changes interact with the broader business regulatory environment.

As noted in the Paper, the Government has recently implemented, or is in the process of introducing, numerous reforms which are designed to deter and disrupt phoenix operators (including for example, enhancing ASIC's power and enforcement tools, introduction of a director identification number and proposed changes to collection of GST on residential property transactions). Further changes are also being proposed as part of the Black Economy Taskforce.

These measures will impose additional reporting and regulatory burdens on all industry participants, including those who are currently complying with the law and not engaging in phoenixing behaviour. Industry recommends that consideration is given to ensure the various measures, when considered collectively, are complementary and necessary, and do not result in duplication or unnecessary compliance.

We would be happy to meet to discuss these issues with you further.

Please contact me [REDACTED] if you have any queries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Belinda Ngo', written in a cursive style.

Belinda Ngo
Executive Director, Capital Markets