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December 2019

Liability for Employee Entitlements

Corporations Act Amendment (Strengthening Protections for Employee Entitlements) Act 2019

In April 2019 the government passed amendments to the Corporations Act 2001, to strengthen the legislation in order to enhance the likelihood of employees recovering compensation following phoenix activity and provide a strong deterrent to phoenix activity in the first place. The government stated, “these vital new laws crack down on companies which try to evade their obligations to their workers, including through illegal phoenix activities, and shift the burden to the taxpayer.”

Quite often we are asked what exactly is illegal phoenix activity? The most basic way to describe illegal phoenix activity is the deliberate liquidation of a company with the main intent to avoid creditors and continue operations through a new entity.

The new law amends the Corporations Act 2001 to:

- deter and penalise directors and others (i.e. lawyers and accountants) who engage in, or facilitate, transactions directed at preventing, avoiding or reducing employer liability for employee entitlements in insolvency;
- recover employee entitlements from related entities if that entity benefitted from work performed, even if it did not employ the employees directly; and
- strengthen sanctions for directors and company officers with a track record of corporate contraventions and insolvencies where FEG is repeatedly and inappropriately relied on.

Furthermore, the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill (2019) Cth (“Phoenixing Bill”), was reintroduced to parliament in July this year. The Bill proposes a new clawback provision that enables a Liquidator to recover uncommercial creditor defeating disposition and a new liability provision for directors and others who permit a company to enter such dispositions.

Given these new and proposed legislative changes, please ensure all clients with corporate structures set up to isolate employee entitlements are aware of these law changes as they may have severe implications to the corporate group or directors personally should the employment company be placed into external administration.

As always, should you wish to discuss any of the above do not hesitate to contact any member of the Chamberlains SBR staff, and hope you have a enjoyable and safe festive season.



Chamberlains SBR's office will be closed 12.00pm Friday 20th December 2019 and will reopen 8.30am Monday 6th January 2020.

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