



ASIC

Australian Securities & Investments Commission

21 July 2016

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Be wary of untrustworthy advisers contacting you

- Some advisers target directors like you to offer ‘friendly’ but bad advice.
- Taking this advice might cause you to break the law or breach your duties as a director.
- Breaking the law can result in large fines or even imprisonment.

Dear «First_name_2»

Untrustworthy advisers do target directors like you

Certain advisers contact directors whose businesses may be in financial distress. While not all of these advisers do the wrong thing, some suggest that directors take actions which could be considered illegal (such as suggesting you transfer assets of your company into another company without paying for them - known as ‘phoenixing’).

Some of these actions can lead to serious consequences for directors, including large fines or even imprisonment. You can see a recent example of one of our enforcement actions in our media release 16-127MR at www.asic.gov.au.

The following lists some of the warning signs of untrustworthy advisers.

Some of the warning signs of untrustworthy advisers



They may contact you ‘out of the blue’ and make promises that can result in bad advice.



They may suggest you transfer assets owned by your company into another company without paying for them. This can damage the claims of the company’s creditors.



They may be reluctant to provide their advice in writing. You should always ask for any advice to be provided in writing so you have a record of it.



They might tell you they use a ‘friendly’ liquidator to wind up your company. However, by law a registered liquidator, if formally appointed to externally administer your company, cannot act for you personally or your adviser. They must only act on behalf of the company’s creditors.



They may tell you to destroy books and records or withhold or delay providing them to the company’s liquidator, if appointed.

What you should do if an adviser contacts you offering assistance

Be sure about what you are paying for and the advice given does not cause you to break the law or breach your director duties. Be particularly wary if contacted ‘*out of the blue*’.

You can visit our website (www.asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/) to learn more about your duties.

Why are they targeting you?

A party recently filed an application in Court to wind up «Organisation_Name». When filing an application with the Court, the party must lodge a form with ASIC and publish a notice on our Published Notices Website (PNW), which you can see at www.insolcencynotices.asic.gov.au. As part of the Court process, the Court might decide to wind up your company and appoint a liquidator.

Some untrustworthy advisers use public information arising from the wind up process, including our PNW, to take advantage of directors of businesses in financial difficulty.

Help us stop untrustworthy advisers

ASIC works with other government agencies to identify misconduct and illegal activity. Our work includes identifying untrustworthy advisers and the registered liquidators they refer companies to.

If such an adviser contacts you, you can report them to us by visiting our website at www.asic.gov.au/about-asic/contact-us/how-to-complain/.

Yours sincerely

Adrian Brown
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Insolvency Practitioners Team - ASIC