ASIC FOI 024-2024

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2018

No. , 2018

(Treasury)

A Bill for an Act to amend the law relating to corporations and taxation, and for related purposes

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A Bill for an Act to amend the law relating to corporations and taxation, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2018*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 3, Division 1	The day after this Act receives the Royal Assent. However, the provisions do not commence at all if the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018* commences on or before that day.	
4. Schedule 1, Part 3, Division 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018*. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2	The day after this Act receives the Royal Assent.	
6. Schedules 3 and 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Phoenixing offences and other rules about property transfers to defeat creditors

Part 1—Main amendments of the Corporations Act 2001

Corporations Act 2001

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2 Section 9 (definition of *linked*)

Repeal the definition, substitute:

linked:

(a) the incurring of a debt and a contravention of section 596AB are ***linked*** if they are linked under subsection 596AB(4); and

(b) the disposition of a company's property and a contravention of section 596AB are ***linked*** if they are linked under subsection 596AB(5).

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64 At the end of section 596AB

Add:

(5) If the company contravenes this section by making a disposition of its property that is voidable under subsection 588FE(6B), the disposition and the contravention are ***linked*** for the purposes of this Act.

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Part 3—Amendments with contingent commencement

Division 1—Amendments that do not commence if the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018 has commenced

Corporations Act 2001

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76 Paragraph 596AI(1)(d)

Repeal the paragraph, substitute:

(d) the company's liquidator has intervened in an application for a civil penalty order against a person relating to:

(i) a contravention of subsection 588G(2) relating to the incurring of the debt that is linked to the contravention of section 596AB; or

(ii) a contravention of subsection 588GAA(2) or 588GAB(2) relating to the disposition that is linked to the contravention of section 596AB; or

(e) the contravention of section 596AB is linked to a disposition of the company's property and the company's liquidator has requested ASIC to make an order under subsection 588FGAA(3) relating to the disposition; or

(f) the contravention of section 596AB is linked to a disposition of the company's property and ASIC has made an order under subsection 588FGAA(3) relating to the disposition.

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Division 2—Amendments commencing after the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2018 commences

Corporations Act 2001

78 Subsection 596AB(5)

Repeal the subsection.

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