



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	089
Topic	Pre-insolvency advisers
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Committee member	Senator O'NEILL

Question

CHAIR: Could you, Ms O'Rourke, on notice give me an update on the pre-insolvency advisers.

Ms O'Rourke: Enforcement activity?

CHAIR: Yes. What's happening with that?

Ms O'Rourke: I'm not sure if there are things on pre-insolvency actions.

CHAIR: Could you take that on notice and give it to me.

Ms O'Rourke: Yes, no problem. We'll do that

CHAIR: You know what the issue is in the report and what the concerns are. I've raised concerns about professionalism, accreditation, registration and licensing in a range of sectors. Clearly this is one that is right in your guns—that needs to be given ongoing consideration.

Ms Smith: I will say something briefly about that. That's an area where we are exploring what the chair and Ms O'Rourke referred to earlier, around taking a more data driven approach to identifying targets for enforcement action. We're having active conversations with AFSA as well as the ATO around opportunities to share data to identify candidates for action.

Answer

In relation to current enforcement activity against pre-insolvency advisors, in August 2023, an ASIC Delegate banned Mr Phillip Whiteman from managing corporations for the maximum period of 5 years. The ASIC Delegate found that Mr Whiteman acted as a 'shadow director' of five companies that were involved in business advisory services including pre-insolvency advice. Mr Whiteman has sought a review of ASIC's decision by the Administrative Appeals Tribunal. The review is yet to be heard.

ASIC is also presently exploring opportunities to share data with AFSA with an objective to improve both agencies' ability to take enforcement action in respect to misconduct by pre-insolvency advisors.

ASIC has agency interactions with the ATO directly and through taskforces, such as the Phoenix Taskforce and Serious Financial Crime Taskforce.

ASIC's work with ATO includes:

- Coordination of intelligence and operational activity in relation to misconduct by pre-insolvency advisors registered liquidators, and unregulated advisors.

As an example, ASIC co-operation with the SFCT in this space led to a recent enforcement outcome in the prosecution of Peter Andrew Amos, a former registered liquidator. On 19 December 2023, Mr Amos was charged with six counts of dishonestly using his position as an officer of a company to gain an advantage for his business and himself contrary to s184(2)(a) of the Corporations Act. The prosecution of Mr Amos was endorsed through an SFCT operation

that included in its scope investigations into illegal phoenix activity including pre-insolvency advisors and facilitators.

- ASIC and the ATO also have specific programs to exchange data and information, including behavioural work examining vulnerabilities in ASIC and ATO systems that can be exploited by pre-insolvency advisors, and to identify opportunities for the ATO or ASIC to engage with small businesses to encourage the use of trustworthy advisors.

An example of this is the Data Fusion Project. ATO can analyse the fused ATO and ASIC data, leading to early identification and detection of potential illegal phoenix behaviour and actors for subsequent compliance action. This program has been ongoing since late 2020.

- ASIC is also considering the use of ATO and ASIC data to identify and more efficiently use available resources, including the Assetless Administration Fund to quickly identify potential targets where pre-insolvency advisors are involved, for the purposes of collecting intelligence, disrupting conduct and penalising bad actors involved in offending connected with the exploitation of Australia's insolvency system.