

Recommendations

Recommendation 1

2.11 The committee reinforces its support for the principles of recommendation 13. The committee recommends that insolvency be removed as a prerequisite for the avoidance of uncommercial transactions which may be challenged by a liquidator. Such transactions are to have taken place during the one year period preceding formal insolvency.

Recommendation 2

2.18 The committee recommends that in the light of support for recommendation 54 from the major insolvency and accounting bodies, the Government reconsider its position in relation to recommendation 54. In particular, the committee recommends that Treasury examine ways to modify and simplify the CVL procedure to enable a company to be placed into liquidation immediately to maximise recoveries for the benefit of creditors.

Recommendation 3

2.23 The committee recommends that the Government and industry stakeholders review the right of administrators to use a casting vote in relation to his or her removal and develop an alternative voting mechanism that would satisfy the committee's intent on avoiding conflicts of interest.

Recommendation 4

2.32 The committee recommends that in the light of evidence from industry stakeholders, the Government reconsider its position in relation to recommendation 55. The committee recommends that the Government pay particular attention to the operation of 'ipso facto' clauses.

Recommendation 5

2.40 The committee recommends that the penalty provisions for breach of section 286 of the Corporations Act be significantly increased to act as an effective deterrent for directors to ensure that proper financial records are kept. The committee recommends that Treasury develop an appropriate scale of penalties which apply to companies of different sizes.

Recommendation 6

2.47 The committee recommends that Treasury give consideration to alternative administrative processes (discussed in paragraphs 2.41 and 2.42) that would permit an administrator or liquidator to recover from certain classes of directors who fail to ensure that company records are complete and up-to-date, the costs and expense of reconstructing company records.

Recommendation 7

2.54 The committee recommends that the draft bill be amended to reflect committee recommendation 31. The committee further recommends that ASIC benchmark the effectiveness of programs to combat fraudulent phoenix companies and other abuses of the corporate form, and make its findings publicly available.

Recommendation 8

2.61 The committee recommends that the Government compile data on the incidence of employees who are unable to receive their entitlements under GEERS due to a lack of company records. The committee further recommends that the Government examine any practical and cost-effective measures, including minimum standards of training, to assist relevant directors and company officers in maintaining appropriate and up-to-date company records and to ensure employee entitlements under GEERS are met.

Recommendation 9

2.63 The committee recommends that any proposed review of GEERS specifically include an analysis of the costs and benefits of alternative measures for safeguarding employee entitlements such as insurance schemes and trust funds.

Recommendation 10

2.70 The committee recommends that Treasury and ASIC jointly examine ways to devise a formal reporting mechanism that would require ASIC to automatically provide liquidators with background information about officers convicted of a serious criminal offence or an offence involving fraud or dishonesty in the operation of a company.