



Criminal and civil penalties for creditor-defeating dispositions: Illegal Phoenixing Amendments 2020 #5

Date : May 25, 2020



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As discussed in previous blogs in this series, both [directors](#) and [external advisers](#) have a duty to prevent creditor-defeating dispositions. Not only are they potentially liable for compensation, additionally they are liable for fines as well as it being a criminal offence. An offence could result in a maximum prison sentence of up to 10 years. The intention element is satisfied if a person has knowledge, intention or recklessness of the disposition being a creditor-defeating disposition.

The potential fines for a breach of the section can be severe. For individuals, the pecuniary penalty applicable is the greater of either 5,000 penalty units (\$1.05m) or three times any benefit derived or detriment avoided because of the contravention.

For corporate bodies, the pecuniary penalty applicable is the greater of either:



1. 50,000 penalty units (\$10.5m);
2. Three times any benefit derived or detriment avoided because of the contravention; or
3. 10% of the annual turnover of the body corporate, up to a maximum of 2.5m penalty units (\$525m).

As we have suggested before, external advisers such as accountants, legal practitioners and insolvency practitioners need to bear in mind that they are also potentially liable for these criminal and civil penalties if they fall foul of the creditor-defeating disposition provisions.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Andrew Hack at andrewh@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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