

Submission to the Commonwealth Treasury
Exposure Draft
Corporations Amendment (Phoenixing and Other Measures) Bill 2012

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Introduction

The Corporations Amendment (Phoenixing and Other Measures) Bill 2012 Exposure Draft proposes to introduce provisions in the *Corporations Act 2001* (Cth) that allow the regulator and others to deal more effectively with the monitoring of companies that could be deregistered. This submission briefly considers the changes that are currently being proposed.

If any of the responses require further explanation please contact Dr Marina Nehme at m.nehme@uws.edu.au.

The Provisions

Section Number	Section heading	Submission
Schedule 1	Amendments	
Section 489F	ASIC may order the winding up of a company	Regulating and monitoring companies that are not carrying on any business has been a challenge in the past. As such it is important to ensure that the regulator has the necessary tools to deal with the issue. Under the current laws, ASIC has the power to apply

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		<p>for the liquidation of a company under s 461 if the company has suspended its business for a whole year. Further, ASIC has the power to initiate the deregistration of a company in certain instances under s 601AB.</p> <p>The proposed provision (s 489F) aims to provide ASIC with the power to liquidate companies in a number of instances. These instances compliment the ones present under s 601AB.</p> <p>Consequently, s 489F will help the regulator in combating phoenix companies. ASIC will be able to administratively appoint a liquidator to investigate the affairs of companies that may be deregistered under s 601AB or companies that are abandoned. This power will indirectly allow ASIC to take further action against directors of phoenix companies when appropriate.</p>
Section 489G	Deemed resolution that company be wound up voluntarily	There is a typing error in s 489G(B)(ii). The subsection should be: 'without a declaration having been made.'
Paragraph 589(3)		<p>Section 589(3) need to specify where the publication of the notice will take place. Will the notice be published though ASIC website; or will it be just a notice in ASIC's register?</p> <p>As such, I propose to omit 'the <i>Gazette</i>' and replace it with 'notice published in the prescribed manner'.</p>

Conclusion

This submission supports the proposed changes to the *Corporations Act 2001* (Cth). These changes are essential as they allow ASIC to deal more effectively with companies that should be liquidated.

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