

ASIC'S INSOLVENCY NOTICES WEBSITE
RESPONSE TO CONSULTATION PAPER
March 2014

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We thank ASIC for this opportunity to comment on its new Insolvency Notices Website. We are a group of academics currently undertaking an Australian Research Council-funded project examining the regulation of fraudulent phoenix activity. Our aim is to devise ways in which this damaging behaviour can be most efficiently and effectively prevented and deterred.

We have no specific comments to make about the questions addressed in the consultation paper, although we would like to commend ASIC for its work on the website. We believe the information produced greatly enhances protection for creditors.

We are particularly pleased to see the ASIC data on deregistrations. It is our belief that too much of the emphasis in the fraudulent phoenix activity debate has been on liquidations and voluntary administrations, and that proper investigations should be made into deregistrations. Because fraudulent phoenix activity generally involves the transfer of some or all of Oldco's assets to Newco at less than their proper value, these Oldco companies usually lack the funds to employ an insolvency practitioner. Where no creditor is willing to contribute further funds to pay for the appointment of a liquidator, Oldco is likely to remain dormant and be deregistered eventually by ASIC for failure to return documents and pay fees.

For this reason, we believe the ASIC deregistration data should be further analysed, both by ASIC itself as well as by researchers such as ourselves. To be useful, the data could be disaggregated and displayed according to the following factors:

- the age of the company when it is deregistered
- the type of company – proprietary limited or public
- the size of company as it was initially registered, displayed in bands – for example, one shareholder, one to five shareholders etc. This is the data disclosed on the application in accordance with s 117(2)(k).
- whether the directors hold or held directorships in other companies, and whether those other companies are ongoing, dormant or deregistered.
- any other available data.

The individual companies involved would not be identified.

We are available for further consultation, either in person or via email, if this would assist ASIC with its valuable work in this area.