

## How UK insolvency experts are leading the fight against phoenixing

While the Australian Government's high-profile offensive against illegal phoenixing is already proving highly effective, the approach of their UK counterpart remains far less aggressive.

With ATO officers even going as far as mounting raids on properties of alleged perpetrators in Australia, the British government is content to see the country's insolvency practitioners lead the charge – albeit from behind the safety of their desks.

“The government is very comfortable with the powers that we have and what we use to enforce those powers,” says UK insolvency expert David Rubin from David Rubin and Partners. “It's not something that can go unpunished that easily.”



David Rubin

Identifying the construction industry as the most likely hotbed of illegal phoenixing activity, London-based David says the process of identifying and dealing with the corporate crime is well established.

“When an insolvent company eventually goes into liquidation, the liquidator will investigate, and if he finds out that the directors have moved the business sideways, then he'll simply bring proceedings against the directors,” he explains. “Our powers to do that are quite profound. We've got really heavyweight powers to bring actions against directors.”

David says that the ramifications of those powers see most phoenixing cases in the UK settled before legal action is even instigated.

“Nine-times-out-of-10 where that’s happened, and it’s happened a lot, we get the directors in, sit them around the table, tell them what we’ve found, look them in the eyes and say, ‘right, what are you going to do about this? Are you going to pay for the business you’ve nicked, or are you not?’ And nine-times-out-of-10 they will settle. Often a letter before action is enough to bring them around the table. They’ll take it to a lawyer, who’ll say, ‘you’re stuffed – go and see the insolvency practitioner and do a deal’. And that’s what they do. There’s no defence to this.”

When it comes to being alerted to instances of phoenixing, David says that tip-offs frequently prove invaluable.

“In 90 per cent of cases it’s the creditors who tell us what’s happened,” he says. “We investigate and find out what they’ve told us is true. Then we come down on the directors like a tonne of bricks.”

### **Two key ingredients**

Once dodgy director dealings have been detected, David adds that the UK system of pre-pack administrations is critical to saving businesses whose assets have been illegally shifted.

“If you do them properly they are an excellent way of moving a business to a new entity,” he says. “It’s not a transparent process, but it relies on the qualifications and the credentials and the integrity of the insolvency practitioner.”

For any country looking to change its phoenixing laws, David believes that two key components need to be established.

“If there’s going to be any changes in law you need to put into place some form of, A, a better regulation of your insolvency practitioners – make sure their licence is on the line, and B, have a system of pre-pack administration, because you don’t want the doors of places like nursing homes to close,” he says. “Any transfer has to be seamless.”