

19 December 2014

Corporations and Scheme Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Manager
Email: insolvency@treasury.gov.au

Dear Manager

Insolvency Law Reform Bill 2014 (Bill)
Private submission

This submission comments on Schedule 2 – amendments relating to the Insolvency Practice Schedule (Corporations).

Broadly, the amendments provide for increased oversight of external administrators by ASIC, a committee, the creditors and the Court, with disciplinary measures and offences where an external administrator does not comply with his or her obligations.

Optically, the amendments ought to serve to increase creditors' confidence in the external administration system. The amendments ought to also address the concern that while the industry is generally aware of those few external administrators who routinely fail to comply with their obligations, those with the power to discipline such persons have insufficient resources and information to take action against them.

In so far as the proposed amendments in fact deliver greater creditor confidence in the external administration system, and prove to deliver greater and better informed resources to ASIC with the assistance of a committee and designated industry bodies, the amendments will in turn serve to enable government to deliver additional flexibility to the existing external administration regime for businesses in financial difficulty (as recommended by the Financial System Inquiry Report, recommendation 36).

A concern that is raised in considering tools that deliver additional flexibility, is that such tools are at a significant risk of abuse by the 'friendly administrator', ie. one who acts in a manner which is or appears to be prejudicial to creditors.

If we address the question of adequate supervision and discipline, by introducing laws which provide for strengthened supervision of administrators and sanctions for those who do not comply, then the risk of such abuse is significantly reduced. In so doing, we provide greater scope for government to introduce tools aimed at increasing the prospects of a company being turned around or where that is not possible, increasing the likely return to creditors. Such tools could include:

- Pre-packs (where a sale of the company's business or certain of its assets and liabilities, is agreed prior to the appointment of the administrator and entered into by the administrator

immediately following his or her appointment), with disclosure obligations relating to marketing efforts, independent valuations and transparency of terms.

- In the case of a viable company which has reasonable prospects of being turned around, a broader moratorium, capturing a sufficiently broad class of creditors and circumstances, to provide a genuinely stable platform from which the company can deliver a turnaround plan for agreement with its creditors, within a finite period.
- A requirement on creditors that they coordinate their response to a company's turnaround plan, to avoid individualistic behaviours that are not in the best interests of the company and the creditors as a whole, and tend to disrupt, delay and increase the costs associated with turnaround attempts.

While creditors' control of a company may well be lessened by such tools, creditors' rights with respect to the person who administers the company are significantly enhanced by the measures proposed under the Bill.

In so far as the Bill lays the foundation for laws which deliver additional flexibility to the existing external administration regime for businesses in financial difficulty, they are a step in right direction.

I appreciate any law reform is a balancing act of the competing stakeholder interests, rights and obligations including the consequential cost implications. I do not comment specifically on each section of the Bill, which I understand ARITA will do on behalf of the members that it represents, including importantly the external administrators affected by the amendments.

I am happy to discuss any aspect of this submission with you.

Yours sincerely



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