

27 January 2015

Senior Adviser
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: fsi@treasury.gov.au

RE: Submission relating to recommendations of the Financial System Inquiry

Dear Senior Advisor

The Australian Government's Financial System Inquiry acknowledges that the civil and administrative penalties available to ASIC are comparatively low in relation to like peers internationally. This view is shared by the Chairman of ASIC, Mr. Greg Medcraft, who recently labelled Australia a 'paradise for white-collar criminals'. Mr. Medcraft pointed to the need for harsher penalties for white-collar crime, emphasising that jail terms would serve as an effective deterrent to white-collar criminals.

We, the co-signatories of this submission, strongly support the Australian Government establishing an agency such as the proposed Corporations and Financial Services Commission, with sufficient scope, breadth and resources to effectively administer the penalty regime in the Corporations Act.

Our families, and over 15 other families, have recently been affected by complex white-collar crime. Our observation is that the current regulatory and legal processes and penalties are inadequate, and have allowed, and indeed encouraged, dishonest individuals to commit white-collar crimes which have resulted in significant profits to the perpetrators, hardship to the victims of the crimes, and cost to the Australian taxpayer.

The regulatory and legal shortfalls observed by us relate to four areas:

- Application of test of fitness to be a director
An individual who has a long history of personal bankruptcies was allowed to be a director of a company.
- Directors' responsibility to pay employee entitlements
In instances where staff have not been paid by a company, the pursuit of entitlements by staff through civil proceedings requires financial resources, patience and resolve. In the meantime, directors are able to dispose of personal assets. The Australian Government's Fair Entitlements Guarantee provides a safety net for employees in such circumstances. In the instance we refer to, the total Fair Entitlements Guarantee payment to former staff was approximately \$250,000.

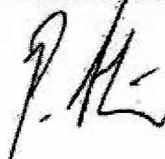
However, it should be noted that the Fair Entitlements Guarantee Scheme falls short in complicated international structures. This is evidenced in our situation by the fact former staff employed in Australia by a Hong Kong company are unable to receive any safety net payment, notwithstanding the fact the companies were part of the same group and had common directors with the Australian company.

- Perceived lightness of penalties and unlikelihood of imprisonment
While the maximum criminal penalties for failing to adequately respond to a Request as to Affairs (RATA) from a liquidator might be sufficient to discourage such an action by a director if the penalties were to be applied in full, it appears that ASIC may pursue prosecution in only some instances, and in very few instances are directors jailed for that (in)action. Similarly, penalties associated with trading while insolvent are infrequently pursued.
- Ability of State/Federal police/ASIC to prosecute complex white-collar crime
In the instance we refer to, one director (the individual with a history of personal bankruptcies) is being investigated for potential criminal activity associated with raising funds in Australia, which were deposited with a related Hong Kong company. At least \$1.5 million of investors' funds was deposited, all of which has been 'lost'. While the links between the activities of the Hong Kong and Australian companies are clear, it appears that the director(s) may not be prosecuted.

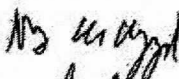
Thank you for your consideration of this submission.

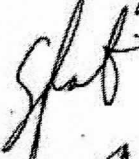
We look forward, with great interest, to the Australian Government's response to the Financial System Inquiry.


Yours sincerely

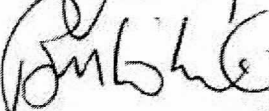
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