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Manager
Governance and Insolvency Unit
Corporate and Capital Markets Division
The Treasury
Largton Crescent
Parkes ACT 2600

By Email: insolvency@treasury.gov.au

Dear Sir/Madam

Proposals paper: A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia.

PPB Advisory commends the Government on its Proposals paper as it relates to the administration of small and assetless estates. This submission relating to small and assetless matters is in 2 attachments:

A. Enhancements to Proposals and drafting suggestions

We support all of the Governments proposals designed to harmonise corporate and individual insolvency practise particularly for small and assetless administrations. We make a number of submissions we believe would improve or clarify the Proposals.

B. Possible additional harmonisation

There are many other examples where the Corporations Act and Bankruptcy Act vary for processes which are similar. Many of these differences could be described as 'form over substance'. The opportunity exists to further harmonise the law in these areas. We submit that significant costs could be saved and creditors would be better informed by eliminating more of these differences. Some examples are contained in the attached table.

I would be delighted to provide more detailed information, clarification or answer any questions at your convenience.

Yours faithfully
PPB Advisory



Scott Pascoe
Partner

A. Enhancements to Proposals and drafting suggestions

Advertising and Notice

Chapter 12 paragraph 268 sets out types of advertisements it is proposed may be placed on a single website. A relevant advertisement which is not included on this list is a Notice of Appointment of an Official Liquidator.

Currently liquidators are required to advertise their appointment in a relevant national or local newspaper by the Courts' Corporations Rules at r5.11. We submit it is appropriate for this requirement to be included in the single website or alternatively and consistent with the Bankruptcy Act, to be dispensed with and replaced by the notice requirement set out in paragraph 102 of the Proposals paper.

RATA

We note the paragraphs 227 – 236 propose new powers to ASIC to pursue compliance with lodgement of RATAs and collection of books and records. We support these proposals.

We submit that compliance would also improve if the prescribed form of the RATA was simplified in the style similar to the bankruptcy Statement of Affairs. This Q&A style would eliminate the requirement for detailed instruction sheets to be forwarded to company directors (our instructions precedent is presently 9 pages long) and enable "less financially literate" directors to comply with their obligations. It is likely a new form could be prescribed without legislation.

Committees of Inspection

The Proposals paper contemplates a significant rewrite of provisions regarding COIs.

Where a company nominates a member of a COI doubt exists as to whether the member of the COI is the individual nominated to the COI (employee of the company) or the company itself. This doubt can be resolved in new legislation.

Section 548 of the Corporations Act provides that the liquidator must convene separate meetings of creditors and contributories to determine the composition of the COI. We submit that where the company is insolvent it is not relevant to include contributories on the COI and we support the Proposal in paragraph 93 that the Act be amended accordingly.

Costs Assessment in Corporate Insolvency

We support the power for creditors and regulators to seek an assessment of costs outlined in paragraphs 73 – 79. We submit however that it is appropriate to propose a reasonable time limit (for example 60 days) within which such application must be made. Insolvency Practices are complex businesses with significant costs of staff, rent and other overheads. Practitioners need certainty of remuneration (after a reasonable time) to effectively manage their firms.

Disbursements

Where a matter is assetless practitioners often pay necessary disbursements on behalf of administrations from the own or their firm's money. Where funds become available at a later time the appointee will reimburse his firm (a related entity) at cost. Whilst this practise does not offend the proposal in paragraphs 68-72 an opportunity exists in drafting the legislation, to specify that this conduct does not conflict with the law.

The disruption to the proper and efficient securing and realising of assets would be significant if appointees needed creditor approval in all instances before reimbursing their firm.

B. Possible additional harmonisation

Examples of unnecessary differences between company and individual insolvency law

Task	Corporations Act	Bankruptcy Act	Proposed Harmonisation
Creditors Meetings			
Notice of Meeting	10 business days Reg 5.6.12(3)	Reasonable Notice	Reasonable Notice
Advertisement	Daily newspaper in relevant locations Reg 5.6.14A (Proposed single website)	No advert	No Advert
Chairman/roles	Liquidator or delegate is chairman Reg 5.6.17 Minutes prepared and lodged by liquidator Reg 5.6.27	Trustee is chairman until creditors elect a president Sec 64P Minutes secretary elected by creditors Sec 64L	Appointee or delegate presides and prepares minutes
Quorum	If there are more than 2 creditors – at least 2 in person or by proxy; otherwise all creditors Reg 5.6.16	Trustee's representative and one other person Sec 64N	Appointee and one other person
Ordinary Voting	Majority in value and number with chairman casting vote Reg 5.6.21	Majority in value Sec 5(1)	Majority in value and number with appointee casting vote
Dividends			
Notice of Intention	Sent to all creditors not admitted with 21 days notice and advertise in gazette (Proposed single website) Reg 5.6.65	Sent to creditors who have not proved with reasonable notice; not advertised Sec 140(5)	Sent to creditors who have not proved with reasonable notice; not advertised
Declaration of Dividend	Paid within 2 months after publishing notice of intention Reg 5.6.65	Not less than 21 days after the notice of intention has expired Sec 140(7)	Not less than 21 days after the notice of intention has expired