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AUSTRALIA • NEW ZEALAND

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Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington
email: edsi@parliament.govt.nz

Submitted [via website](#)

Dear Sir or Madam

Insolvency Practitioners Bill

Chartered Accountants ANZ and New Zealand Institute of Chartered Accountants (NZICA) have long advocated for greater regulation of insolvency practitioners undertaking regulated insolvency engagements in New Zealand. We therefore welcome the opportunity to provide a submission to the Economic Development, Science and Innovation Committee on the Insolvency Practitioners Bill Supplementary Order Paper (SOP). We have focused our feedback on the key areas where we consider we can add the most value. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Key points

- We strongly support the introduction of a co-regulatory regime for insolvency practitioners to improve the integrity and skill of those undertaking insolvency engagements and improve the outcomes for creditors and other stakeholders.
- We support obligations for insolvency practitioners to provide detailed reports on insolvency engagements. However we consider the legislation is particularly prescriptive in respect of the content of these reports and consider this detail might be better included in accompanying regulations.
- We are concerned that Section 22 of the SOP provides that the accredited body “must” issue a licence to a person if the specified criteria in Section 22 (2) of the SOP are met. We recommend this section is amended such that accredited bodies ‘may’ issue a licence to a person meeting the criteria and that the Registrar of Companies be responsible for licensing overseas insolvency practitioners.

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Should you have any queries concerning the matters raised in our submission or wish to discuss them in further detail, please contact Karen McWilliams via karen.mcwilliams@charteredaccountantsanz.com and phone (+612) 8078 5451 or Gillian Hawkesby via Gillian.Hawkesby.NZICA@charteredaccountantsanz.com and phone (+64) 4 462 0266.

Yours sincerely



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Appendix A

General comments

Change to co-regulatory licensing framework

We strongly support the introduction of a co-regulatory regime for insolvency practitioners to improve the integrity and skill of those undertaking insolvency engagements and improve the outcomes for creditors and other stakeholders.

Existing voluntary accreditation

Together with RITANZ, we established an accreditation regime to improve and enhance the ethical standards and professional competency of insolvency practitioners in New Zealand. This included establishing a framework for enhanced regulation of New Zealand resident members of CA ANZ and RITANZ undertaking Regulated Insolvency Engagements in New Zealand. As at 30 June 2018, there were 99 New Zealand Accredited Insolvency Practitioners (AIP).

We support a robust process to license insolvency practitioners under the Insolvency Practitioners Supplementary Order Paper (SOP). Given the level of rigor applied in the current voluntary regime, we recommend consideration be given to expediting the registration of existing AIPs under the new licensing regime.

PONZI scheme

We note the recent consultation by MBIE for *A new regime for unravelling Ponzi schemes*. We consider it important for Committee to consider the interaction of this proposed Ponzi regime with this SOP.

Transition arrangements

We recommend appropriate consideration is given to transition arrangements for engagements currently handled by individuals who won't be licensed under the new regime. Of particular concern is how insolvent no-asset liquidations are concluded and by whom.

Specific comments on SOP

Impose a duty on insolvency practitioners to provide information and assistance to an insolvency practitioner that replaces them

We consider this proposal to be reasonable.

Impose obligations on insolvency practitioners to provide detailed reports on insolvency engagements

We support the proposal for insolvency practitioners to prepare and send a report to every creditor and shareholders every six months. However, we note that the detail of the contents for these reports are also included in the proposed legislation. We note this is particularly prescriptive for legislation and consider this detail might be better included in accompanying regulations. This would also streamline the process if amendments were required in the future.

If the detail is retained in legislation, it is important that the existing options under s255A (3) and s255C (3) Insolvency Practitioners Bill are included. This provides for insolvency practitioners to omit the estimated fair value or estimated proceeds of realisation, of an asset or class of assets from the report if the details would materiality prejudice the exercise of the liquidator's functions.

Licensing

We are concerned that Section 22 of the SOP provides that the accredited body “must” issue a licence to a person if the specified criteria in Section 22 (2) of the SOP are met. The interaction between Section 22 and Section 68 of the SOP, broadens the oversight role of accredited bodies beyond their own membership base with no discretion. This is not an acceptable position for an accredited body. This arises because accredited bodies would be required to issue licences to individuals who are members of a “recognised body” or practicing members of certain religious societies or orders whose beliefs preclude membership of the accredited body provided they meet the licensing criteria. The Registrar of Companies is not required to consult with accredited bodies prior to recognising a body for the purpose of Section 68 SOP.

We note that the obligation for an accredited body under this SOP differs from both the Auditor Regulation Act 2011 (ARA) whereby the accredited body “may” issue an auditor licence, and the Financial Reporting Act 2013 (FRA) whereby accredited bodies have discretion to determine whether to recognise certain members of religious societies or orders as qualified auditors or qualified statutory accountants. In addition, under the FRA, accredited bodies also have some discretion to determine whether an individual is eligible to act as a qualified auditor under the terms of its own Rules.

We consider that this proposal could result in accredited bodies being required to issue licences to members of recognised bodies that operate under very different frameworks from the accredited body. This would also create issues for accredited bodies from an oversight perspective, particularly if the individuals applying for a licence were resident outside the jurisdiction of accredited body.

We note that NZICA is responsible for regulating all New Zealand resident members of CA ANZ and is an established accredited body in New Zealand. NZICA has a clear remit under the NZICA Act 1996 to “control and regulate the practice of the profession of accountancy by its members in New Zealand”¹ and under the NZICA Rules, an individual is only eligible for membership if they “reside in New Zealand”².

We recommend that Section 22 (2) is amended such that accredited bodies ‘may’ issue a licence to a person meeting the criteria. Further, we recommend that the Registrar be responsible for licensing overseas insolvency practitioners. This is consistent with the recommendations set out in Report No. 1 of the Insolvency Working Group, on insolvency practitioner regulation and voluntary liquidations. Additionally, we note that under the Auditor Regulation Act 2011, the Financial Markets Authority is responsible for licensing overseas auditors wishing to undertake FMC entity audits in New Zealand. Under the Financial Reporting Act 2013, the Registrar of Companies is responsible for recognition of overseas auditors as qualified auditors, including Australian members of CA ANZ.

Duration of Licence

The maximum duration of a licence under section 25 of the SOP is 5 years. We note that this is consistent with an auditor licence and consider this period to be reasonable.

¹ Section 5A NZICA Act 1996

² Rule 3.2(b) NZICA Rules

Ongoing competence requirements

We support the requirement by accredited bodies for licensed insolvency practitioners to complete competence programmes as proposed under section 26 of the SOP. Under the existing voluntary regime, there is a specific requirement for 30 hours of verifiable insolvency continuing professional education over a three year period.

Section 34(1)(c) of the SOP provides that the Registrar may prescribe specific requirements. We note that the level of insolvency engagements is closely related to the local economic conditions. We note that it is important for this to be considered, if the Registrar intends to include a specified period of practical experience within the ongoing competence requirements. We would welcome the opportunity to discuss the development of the specific ongoing competency requirements with the Registrar in the future.

Minimum standards for licence

We support the inclusion of prescribed minimum standards for the issue of a licence under paragraph 35. Under the current voluntary accreditation regime, applicants need to:

- hold a CPP (if they are a member of CA ANZ)
- be a fit and proper person
- have appropriate practical insolvency experience at a senior level (currently CA ANZ members must have 1,000 hours over a three year period, RITANZ only members must have 2,000 hours over a three year period). Alternatively, applicants need to establish that they are “otherwise competent”
- have had acceptable practice review results
- hold professional indemnity insurance appropriate for the nature of their business
- spend 30 hours of their overall CPD obligations on insolvency related training every three years

As noted earlier, we consider it important for any experience requirement to give consideration to an appropriate level of hours. Access to this experience can vary according to the local economic conditions. This is particularly relevant for regional practitioners as well as senior partners with significant firm responsibilities as their time spent on insolvency engagements is lower due to their location or role. We note that ASIC regulatory guide (RG) 258 deems relevant employment to include ‘providing advice in relation to the external administration of companies, receivership or receivership and management.’

Register

We support the establishment of a central register of all accredited insolvency practitioners under Section 39 of the SOP so that consumers are able to easily ascertain which practitioners are able to undertake regulated insolvency engagements.

Reporting obligations of accredited bodies

We note that accredited bodies are required to provide an annual report on their regulatory activities and annual confirmation of licensed insolvency practitioner details to the Registrar. Given the number of insolvency practitioners and insolvency appointments per year in New Zealand and the relative compliance burden of collating the annual report information, we consider it may be more appropriate to require such a report every three to four years. The confirmation should be on an annual basis. We recommend that the reporting periods for the reports required from the accredited body and the reports issued by the Registrar be aligned.

Report serious problems

We note that Part 5, subpart 1 refers to serious problems. We consider that this term could be interpreted more broadly than just the circumstances described in 71(2). We recommend that consideration be given to a more appropriate term to refer to these circumstances such as suspected misconduct.

We also consider it important to recognise that this is not the primary duty of the insolvency practitioner and therefore the requirements under sections 71 and 72 should not overburden the insolvency estate with compliance. It may be more appropriate under section 71(3) to only require the insolvency practitioner to report the Registrar. It would then be the responsibility of the Registrar to inform any other appropriate bodies, such as the New Zealand Police or the Reserve Bank of New Zealand as required.

Solvent company liquidations

We support the inclusion of Part 6 to draw a distinction between solvent liquidations and insolvent liquidations. We note that section 80(1) of the SOP enables members of a recognised professional body to act as a solvent company liquidator. We consider that consideration should be given to broadening section 80(1) of the SOP to include provisions contained in section 68(1)(a)(ii)(b) and (c) of the SOP. This is to acknowledge that there may be individuals who fall within these provisions who are competent to undertake solvent liquidations but may not meet the criteria to undertake insolvent liquidations.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.