

17 December 2014

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

Dear Sir or Madam,

### **Exposure Draft Insolvency Law Reform Bill 2014 ('Exposure Draft')**

This is a submission regarding the Exposure Draft. I am an employee of the Australian Securities & Investments Commission (ASIC). This submission represents my own personal professional opinions. I make no recommendations on ASIC's behalf.

#### **Recommendation**

I recommend that all time limits proposed to be measured in 'business days' be converted and adjusted to 'calendar days'.

Example:

Exposure Draft	Recommendation
5 business days	8 days

#### **Definition: 'Business day'**

*'Business day'* means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned per Section 9 of the Corporations Act 2001 (Cth).

#### **Benefits and reasons**

If adopted, my recommendation would enhance the benefits promised from the law reform: removal of unnecessary costs and increased efficiency in insolvency administrations; and, enhanced communication between stakeholders. This would be achieved by:

- eliminating ambiguity about if and how non-business days apply to a situation – there would be no need to determine which place, of possibly many places involved in a situation, is 'the place concerned' and what non-business days apply at that location;
- creating uniform national time limits for parties to deal with each other – time limits would be synchronised from different stakeholders perspectives because geographical location and any variation of business days between geographical locations would no longer be a factor. Stakeholders would no longer be potentially disadvantaged from being in a different location to 'the place concerned', for example: if there is a public holiday at the stakeholder's location but not at the location of 'the place concerned'; and

- making it easier and less costly for stakeholders to develop and maintain computer software applications that use the proposed law, which in turn would make software application more available and useful to them. Using 'calendar days' as the unit of measurement simplifies business rules for computer software applications and programming them. To calculate a time limit the computer application simply adds or subtracts days from a reference date without any further inputs. Inputs such as 'the place concerned', the geographical location of 'the place concerned', and non-business days applicable to the geographical location are not required. From a maintenance perspective, computer software applications that use 'calendar days' do not have to be periodically updated by a user, or rely on other computer systems, to account for changing public holiday dates.

### **Non-business days still taken into account**

Non-business days can still be accounted for so that stakeholders are not disadvantaged. This could be done by using the formula below, or a similar formula:

- Step 1. Identify the reference date prescribed by the law to start counting from.
- Step 2. Identify the number of days prescribed by the law to do what is required. This number could include an additional 1 day to account for public and bank holidays generally. Add the number of days to the reference date at Step 1.
- Step 3. If the result of Step 2 falls within a major holiday period from late December to the end of April, when many public holidays occur close together, add additional days (perhaps 2 days).
- Step 4. Add additional days to account for the number of intervening Saturdays and Sundays. The number of additional days can be worked out by mathematical formula (or a ready reckoner) from the day of the week of the reference date and the total number of days calculated at the end of Step 3.

### **Sometimes non-business days should be ignored**

In some instances I believe non-business should be ignored when prescribing a time limit. For example, s 35-1 will require a liquidator to lodge a notice with ASIC within 5 business days of becoming aware of a 'significant event'. 'Significant events' include the liquidator becoming a bankrupt or convicted of an offence involving fraud or dishonesty. My opinion is that the significance of these events transcends any possible disadvantage, if there is any, that a liquidator might suffer because of an intervening non-business day, particularly bank holidays and regionally specific holidays such as Melbourne Cup Day. All the liquidator would be required to do is lodge a notice with ASIC. A liquidator should be well aware of the requirement as part of the licensing process. Lodgements can be made by a liquidator online with ASIC at any time of the day and any day of the week. ASIC has staff based around the country that can respond on state or regionally specific public and bank holidays.

Please do not hesitate to contact me if you have any questions about my submission.

Yours sincerely,

Will Schouten