

Our Ref: ADMIN:SDP

26 February 2013

Manager
Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: insolvency@treasury.gov.au

Dear Sir/Madam

Exposure Draft: Insolvency Law Reform Bill 2013

We are pleased to have the opportunity to submit our comments on the Exposure Draft.

Following the order of the Uniform rules Part 3 – General Rules our submissions are set out as follows:

1. Remuneration
2. Funds Handling
3. Information
4. Meetings of Creditors
5. Committees of Inspection
6. Review of Administration
7. Statements and Reports of Affairs
8. General Submissions
9. About PPB Advisory

We would be delighted to provide any further information or clarification at your convenience.

Yours faithfully
PPB Advisory



Scott Pascoe
Partner

1. Remuneration (Division 22)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
1.1	<u>Duty of to disclose engagement of related entities</u> Unintended Consequences of amendment	22-35 p 37 & 112	The Appointees practice entity is a “related entity”. No appointment can be commenced before sending information to creditors. Only sole traders can comply with this unintentionally wide provision	Provide an exception for practice entity.
1.2	<u>Review of Remuneration</u> Streamline appointments	22-20 p 34 & 107 22-20(1)(b) p 34 22-20(1)(d) p 108	There is no time limit on when a review can be made. It is unreasonable to allow remuneration to be reviewed indefinitely given practises’ working capital requirements. A bankrupt must have a financial interest (see section 8.12F application threshold). The provision specifically allows for an “officer of the company”. Part (c) allows for “a person with a financial interest” – this would capture a “relevant” officer	Insertion of a time period of 28 days after RCN to be consistent with the Bankruptcy Act. (there is no current provision in the Corporations Act) Delete 22-20(1)(a) Delete 22-20(1)(d)
1.3	<u>Remuneration of Appointee</u> Drafting changes	22-10(1) p 32 & 106	22-10(2) the first trustee accrues the default remuneration, therefore the amount accrued cannot be less than the accrued remuneration, therefore 22-10(3) has no effect.	Delete “to accrue” from 22-10(1) & (2) Delete 22-10(3)
1.4	<u>Appointee must not accept benefits, etc</u> Drafting changes	22-45 p 39 & 113	It is unclear whether creditor indemnities are caught under this provision.	Provide and exception for indemnities.
1.5	<u>Default remuneration amount and remuneration allocation</u> Drafting clarification	22-30 p 36 & 110 22-10(2)(3) p 32	The provision is silent on GST. If the first trustee is the OT – is the second trustee entitled to the default amount?	Specify whether the default amount is inclusive or exclusive of GST. Clarify default amount is to apply to first RT.

1.6	<u>Remuneration of Liquidators in ASIC winding up</u> Consistency with other types of Administrations	22-34 p 111	Creditors do not have the power to determine remuneration in ASIC liquidations.	Insert creditor approval as per other appointments.
1.7	<u>Other matters</u> Division of remuneration and expenses Account of receipts and payments	22-65 p 41 22-70 p 41	Why is this provision not included for companies? Why is this provision not included for companies? It is unreasonable that the first trustee must give each creditor a copy of the accounts.	Include for companies Delete 22-70 Delete 22-70(1)(c)
1.8	<u>Harmonisation</u> Drafting inconsistencies	22-15(4) p 33 22-15(4) p 107	The percentage basis is not specified in the companies but included in bankruptcies "A determination <i>under this section..</i> " is inconsistent. With bankruptcy 22-15(4) p33.	Insert the percentage basis into companies. Delete the words "under this section" from 22-15(4) p107.

2. Funds Handling (Division 24)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
2.1	<u>Bank accounts</u> Unintended consequences of Bill	24-10(1) & (2) p 115	Requires a bank account to be opened even if no funds are available incurring unnecessary expense. There is no equivalent in bankruptcy.	Remove 24-10 (1) & (2).
2.2	<u>Offences by External Administrator or Trustee</u> Over regulation	24-10(4) p 43 24-10(6) p 116 24-20(4) p 44 24-20(6) p 117 24-40(3) p 46 24-40(3) p 118	Offence of strict liability under the Criminal Code. Does not take account of inadvertent conduct or circumstances beyond appointees' control. For example, bank may not be open for a period of time, a sole appointee may be on leave or there may be a bank error. There is adequate protection imposed in 24-15 (p 43 & 116) and 24-50 (p 47 & 119) without need for criminal penalty.	Delete the offence of strict liability for inadvertent conduct or for circumstances beyond control.
2.3	<u>Reconcile bank accounts on a regular basis</u> Harmonisation	24-30 p 45	There is no requirement for an EA to reconcile company bank accounts.	Insert 24-30 for companies.
2.4	<u>Payments out of account</u> Drafting inconsistency Harmonisation	24-10(3) p 43 24-20(3) p 44	24-10(3)(a) is not consistent with 24-20(3) a regulated debtor cannot have its name on a cheque when it is part of a single bank account for multiple debtors. There is no provision to allow EA to operate a single account for multiple companies unless there is a pooling order.	Delete 24-20(3)(a). Allow EAs to operate a single administration account.

3. Information (Division 26)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
3.1	<u>Annual Administration Return</u> Manage practice workflow in July	26-10 p 48 & 120	The time frame to complete all returns is too short. All returns are required at the same time and correspond with the bankruptcy Annual Estate Return. No transitional provisions in place for existing appointments.	Due date to be extended to 3 months after the end of the Financial Year for all, or Due date for lodgement of personal and Corporate different to allow sufficient time to complete or; Use anniversary of appointment to spread the workload throughout the year. Retaining existing anniversaries would make transition easier
3.2	<u>Transfer of Books to New Appointee</u> Practical problems occurring on transfer	26-40 p 51 & 123	5 days is too short to enable the outgoing appointee to complete their duties, finalise accounts, pay costs, transfer funds and copy necessary books before transferring. Find a balance between frustrating new appointee and enabling former appointee to correctly close off the administration before transferring. Exposure draft silent on transfer of funds to new appointee. Provision for remuneration of outgoing appointee Books for completion of annual return, to be retained or copied. Who will pay for the costs?	Must transfer substantially all of the books within 5 days and be provided with 10 days to close off the administration and transfer remaining books. Remove offence provision. Provision to allow payment to outgoing administrator for costs incurred in carrying out duties.
3.3	<u>Administration Books</u> Streamline small and assetless administrations reduce unrecoverable costs.	26-15(2)(a) p 48 & 121	Impractical and costly to retain all books at the practitioner's offices and the life of the administration for years after finalisation.	Provision to store books offsite, and make available upon request. Allow for reasonable costs of retrieval from the Administration and at the expense of the requester if insufficient funds available in administration.

3.4	<u>Right to Request information</u> Preserve the value of the assets.	26-50,55,57,59, 60 p 54 to 56 & 127 to 129	No right to refuse to provide confidential information which may prejudice the outcome of the administration.	Insert provision that prejudicial information may be excluded. Suggest similar wording to s421A(4) & (5)
3.5	<u>Commonwealth may request information</u>	26-65(2) p 56 & 130	Silent on costs of providing information (Company, ASIC, Appointee?)	Regulations to provide for who is to bear the cost of giving the information as in 26-60 (2)(d)
3.6	<u>Return or Destruction of irrelevant books</u>	26-47 p54	Can only return or destroy books during the administration of the estate not "after"	Delete "during the administration of the estate"
3.7	<u>Court may order information etc. to be given</u>	26-80(1) p59 & 132	Application to Court may be available without first approaching Regulator or if Regulator request refused.	Require persons to first go to the Regulator before approaching Court.
3.8	<u>Retention and Destruction of books</u> Drafting changes	26-45(1)(b) 26-45(1) p125 26-45(1)(a) p53	Includes a reference to a "trustee" Not consistent with bankruptcy bill, equivalent section reads the last trustee 26-45 (1)(b) No real application of this section Make consistent with company rules	Delete "trustee" and replace with external administrator Change to "last external administrator" must retain all books of the Company Delete section 26-45(1)(b) Insert after retain "all books relevant to the affairs of the regulated debtor, (subject to section 26-47)". Delete 26-45(1)(a)&(b) and replace "that day" with "the day the estate was finalised."
3.9	<u>Trustee's books when trading</u> Drafting Changes	26-20 p49	Section seems unnecessary no equivalent section in company rules, 26-15 seems to cover this area adequately	Delete entire section and other references to it in 26-25(1) & 26-30(1)
3.10	<u>Right of IG to request information etc. from trustee</u> Duplication of powers	26-68 p57	Section seems unnecessary given IG's s12 and other powers already held.	Remove section unless s12 is to be repealed.
3.11	<u>IG may direct trustee to comply with request for information, report or document</u> Drafting consequence	26-75 p58	Would appear to give the IG ability to review own request under section 26-60 for reasonableness	Exception for review of 26-68 requests

4. Meetings of Creditors (Division 28)

	Title & Rational for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
4.1	<u>Resolutions without meeting</u> Streamline small appointments.	28-40(3)(d) p 62 & 136	<i>“yes vote by majority worked out in accordance with the regulations”</i> . No regulations are drafted. An ordinary resolution requires a majority in value and number (compare with bankruptcy requires value only). For appointments with a small number of creditors any vote against will make a resolution difficult to achieve (assuming casting vote is not possible on the papers).	Align with bankruptcy requiring majority in value only.
4.2	<u>Outcome of resolutions</u> Harmonisation, streamlining. Alignment with Proposals Paper.	28-41, 28-44 & 28-45 p 136 28-41, 28-42, 28-43, 28-44, 28-45 p 136 to 139	Power to creditors provided in companies not provided in bankruptcy. These powers are duplicated at s600A to s600E respectively. They are not relevant to bankruptcy. It is not clear why the existing provisions are inadequate.	Insert 28-41 in Bankruptcy Rules. Delete 28-41 to 28-45 and retain s600A to s600E of the Corporations Act.
4.3	<u>Resolutions without meeting</u> Streamlining small appointments	28-40(2)(b) p 62 & 135	The reason to approve remunerations is always “to get remuneration approved”, the requirement to include it is unnecessary.	Insert “except in relation to resolutions for remuneration” to 28-40(2)(b) (p 62 & 135).
4.4	<u>Convene meetings if required</u> Streamlining small appointments.	28-15(c) & (d) p 60 28-15(1)(e) & (f) p 133	Proof of debts and admissions are often not known by the time of the request to convene a meeting of creditors. It is impractical and often difficult to determine when 10% or 25% in value of the creditors so direct.	Insert rules that assist determine %. for example:: - 25% in value of the creditors who have lodged particulars of their debt so direct

4.5	<p><u>Appointee's representative</u></p> <p>Streamline small matters.</p> <p><u>Security for costs of holding meeting</u></p> <p>Drafting omission</p>	<p>28-25 P 61 & 134</p> <p>28-15(d)(ii) & 28-15(1)(f)(ii) p 60 & 133 respectively</p> <p>28-15(1)(g) p 133</p>	<p>Representative may not be able to vote proxies appointing the appointee as proxy.</p> <p>The Uniform Rules do not provide that the Appointee <i>may</i> draw upon the security for the cost of holding the meeting.</p>	<p>Insert equivalent to Reg 4.15 of the Bankruptcy Act to 28-25 the representative can <i>"exercise at the meeting any proxy exercisable by the trustee/ administrator at the meeting."</i></p> <p>Insert to 28-15 (d), 28-15(1)(f) and 28-15(1)(g) similar provision to s73A of the Bankruptcy Act (provides that the "Trustee may require surety for cost of meeting") to allow the External Administrator to draw from the security.</p>
4.6	<p><u>External Administrator must convene meeting</u></p> <p>Duplicate provisions</p> <p><u>Trustee's Representative</u></p> <p>Align with Proposals Paper and EM</p> <p><u>Regulations relating to meetings</u></p>	<p>28-15(1)(a) &(b) p 133</p> <p>28-25 p 134</p> <p>28-50 p 63</p>	<p>Duplicated in 30-10 and 30-11 respectively. 28-15(2) is a duplicate of 28-15(1)(a).</p> <p>Part 5.3A administrators must chair meetings and cannot delegate to a representative.</p> <p><i>"the Regulations may make provision for and in relation to meetings and resolutions of creditors"</i>.</p> <p>There is detailed code provided in the Bankruptcy Act s64A to 64ZF Accordingly, 28-50 is unnecessary as it is a duplicate the Bankruptcy Act.</p>	<p>Delete 28-15(1)(a);25-15(1)(b); and 28-15(2).</p> <p>Consequential amendment "External Administrator's representative" required to s439B(1) and s445F(4)</p> <p>Delete 28-50 or confirm the Bankruptcy Act meeting rules will be repealed.</p>

5. Committees of Inspection (Division 30)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
5.1	<u>Appointment</u> Make COI selection of singles companies and pooled companies consistent.	30-10 (1) p 141 30-11 (1)-(3) p 142	Meeting of contributories required for single companies when they have no financial interest incurring unnecessary expense. Pooled companies do not have any specifications for employee or 10% representatives	Delete reference to “contributories” Delete section 30-10(3) Insert specifications for 10% and employee representatives for pooled companies
5.2	<u>Powers</u> Streamline appointments.	30-15 (1) p 65, 143	No automatic power to approve remuneration. Must be delegated to them by creditors.	Add to 30-15(1) an automatic power to approve remuneration
5.3	<u>Expenses of Members</u> Harmonise & clarify.	30-30 (2) p 67, 145	Different priority for expenses incurred by COI member in bankruptcy and companies? In bankruptcy an expense of the Estate, compared with companies an expense of the COI member. Does COI member have right of indemnity against the appointee?	Only expenses incurred with the consent of the appointee should be an expense of the administration. Clarify no personal liability to Appointees.
5.4	<u>Voting</u> Harmonise & streamline appointments		No power for COI to vote by Notice of Resolution without a meeting. Leads to increase costs in calling meetings.	Add section to provide COI power to vote on resolutions without a meeting.

5.5	<u>Membership</u> Streamline & harmonise laws to reduce unnecessary.	30-10 (7)(a) p 64, 141 30-10 (5) p 64, 141 30-10 (4) & (5) g 64, 141	If employee and 10% creditors are additional members of COI rather than one of the number resolved by creditors under subsection (1) it may make COI large, cumbersome, and expensive to convene. What is to occur when entitlements paid by third parties like FEG (formerly GEERS) - employees have no further interest. Employee and 10% creditor eligibility rules are difficult to determine. Is the percentage calculated on all creditors present and voting at the full creditors meeting or on whole body of creditors in the estate/ administration?	Make employee creditors and 10% creditor's part of the resolved number for the COI. Allow for removal of employee representative without replacement Percentages based on creditors entitled to vote at the meeting
5.6	<u>Members Obligations</u>	30-35 (9) p 68 & 146	No power for Appointee to set aside transaction	Add Appointee to eligible applicants.

6. Review of Administration (Division 32)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
6.1	<p><u>Removal and Replacement of Insolvency Practitioners</u></p> <p>Alignment with proposals paper paragraph 180 “providing adequate protections for practitioners against abuse of such powers.”</p>	<p>32-35 p 72,73</p> <p>32-35 p 155,156</p>	<p>Appointee or other persons to apply to Court to be reappointed after being removed for an improper purpose (corrective not preventative). The disruption to an administration would be too great even if the Appointee is successful in being reappointed.</p> <p>Improper use of power is not defined and would be near impossible to prove.</p>	<p>Allow Appointee, creditor or other person with a financial interest to apply to Court before removal becomes effective.</p> <p>Presumptions about improper intention to be drafted e.g. because a claim is made/contemplated against removing creditor(s). Alternatively raise the threshold by excluding related parties from resolution.</p>
6.2	<p><u>Review of Remuneration</u></p> <p>Streamline small and assetless administrations.</p>	<p>32-24 p 71</p>	<p>The bankrupt and creditors are subject to a time limit to make an application for review. Trustees require certainty of remuneration to enable them to pay expenses and manage their practices. Indefinite review is unfair.</p>	<p>Reasonable time limits to be imposed on IG (see Bankruptcy Regulation 8.12E).</p>
6.3	<p><u>Review by Registered Liquidator</u></p> <p>Providing a purpose/standing of a report prepared by a reviewing liquidator</p>	<p>32-24 p 152, 153</p>	<p>Is a reviewing liquidators report binding on Liquidator or applicant. Does it have any standing? What recourse will follow?</p>	<p>Applicant may apply to Court using report as evidence.</p>
6.4	<p><u>Court may make orders</u></p> <p>Clarifying that the Court can make orders upon an inquiry.</p>	<p>32-20 p 70, 71</p> <p>32-20 & 32-20A p148, 149</p>	<p>It is not clear if 32-20 is a ‘new’ power or ancillary to 32-15.</p> <p>32-20A applies to companies but not bankruptcy.</p>	<p>Remove duplicate sections 32-20 (2), (3) & (6).</p> <p>Include a similar provision to 32-20A in the Bankruptcy Rules.</p>

6.5	<p><u>Court may inquire</u></p> <p>Clarification of when an inquiry is available, to whom and how the costs of an application are treated.</p>	32-15 p 69,147,148	<p>The costs to make an application by the COI are treated differently in bankruptcy and companies. It is not stated how the costs are treated for other applicants.</p> <p>It is not clear why the following parties exist or would have a right to apply for an inquiry: Bankruptcy-p 69 (2)(c) the regulated debtor or (2)(e) any other person with a financial interest in the external administration of the regulated debtor's estate Companies-p147 (2)(c) the Company (2)(e) any other person with a financial interest in the external administration of the company</p> <p>The proposed bill does not state the threshold for an inquiry to be granted or what considerations are available to the Court.</p> <p>It is unclear why there is a need for change as there did not appear to be a problem with the current provisions.</p>	<p>Treat costs the same for bankruptcy and companies with the costs being borne by the applicant or as ordered by the Court.</p> <p>Remove 32-15 (2)(c) (p 69) & 32-15 (2)(c) (p147). See general submissions.</p> <p>Applicants should be required to justify an inquiry is warranted and specify what is to be investigated.</p>
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7. Statements & Reports of Affairs (Schedule 2)

	Title & Rationale for Submission	Bill Provision Reference	Problem / Issue	Suggested Resolution
7.1	<u>Time to Comply</u> The disqualification process will promote streamlining assetless administrations by	s206BB(1) – (6) p 167 to 169	It will take at least 85 business days for a director to be disqualified from managing a corporation for failing to submit a RATA. In many instances a small or assetless administration will be finalised before this time. It is essential that timely information is received by the EA to adequately investigate the affairs of the company and secure/realise any assets for the benefit of creditors.	Reduce the time until disqualification. A warning notice to be sent by ASIC upon appointment of the EA giving the director 10 business days to provide a completed RATA. A compliance notice to be sent by ASIC after the expiry of the warning notice giving a further 15 business days to comply. Upon the completion of the compliance period, if no RATA is received, the director automatically disqualified from managing a corporation. Upon automatic disqualification, a director is given a further 20 business days to appeal the disqualification to the AAT / Court or comply.
7.2	<u>Format & Compliance</u> Harmonisation and improved compliance	Form 507	The RATA in its current state is cumbersome and confusing to complete. Most directors incorrectly or inadequately complete the form.	Change the format of the RATA to a SOA style questionnaire.
7.3	<u>Streamlining Administrations</u> Streamlining of external	s475(7)(a)	The Court does not use the RATA for any purpose in the liquidation. This procedure is a historical significance only. Unnecessary costs incurred in the liquidation. It is estimated it costs the industry approximately \$33,000 in disbursements in addition to time costs to file the RATA's at Court.	Delete s475(7)(a) delete: "be filed with the Court and a copy to"
7.4	<u>Notification & Compliance</u> Unintended consequences.	s206BB(2)(b) p 167	Does ASIC intend to issue warning notices to non-directors (e.g. Accountants) which may lead to disqualification if a s530(B)(4) notice is not complied with?	Clarify s206BB only applies to officers of the company.

7.5	<u>Period of Disqualification</u> . Improve compliance	s206BB(7)(b) & (c) p 169	Where a director fails to provide a RATA and the Company's records, the external administration may be very short. Non-compliance may assist in reducing the period of the disqualification and other consequences of appointment.	Insert "at the latter of" provision for subsection (b) and (c).
7.6	<u>Final accounts & duplication</u> Simplification	s509	Liquidators final accounts will duplicate the Final Annual Return	Delete proposed s509(1) Amend proposed s509(2) by deleting "account" and inserting "final annual return".
7.7	<u>Definitions</u> Drafting issue	s206BB(2) & (4) g 167 & 168)	ASIC may "give" a person a warning notice or compliance notice	"Give" should entail the notices have been sent to the address shown in the ASIC database for companies. The notice is presumed as given when mailed.
7.8	<u>Director Education</u> Consistency with Proposals Paper	Proposals Paper para 235.	In the instance of a first offence, the removal of a directors disqualification from public record if he or she completes a prescribed course in director duties. This has not been implemented.	Introduce this provision into the draft Bill.

8. General Submissions

Structure of the Bill

The use of uniform rules and its numbering has made the task of submissions time consuming and difficult. It has been necessary to compare the December 2011 Proposals Paper, Explanatory Document and Bill to existing law and the uniform rules to be compared to each other.

With duplicated numbering systems our referencing has where ever possible included the page numbers of the downloaded version of the Bill to avoid confusion.

The absence of regulations, transitional provisions, section guides and consequential amendments adds to this difficulty. Whether the Bill will be effective in streamlining administrations and reducing overall costs is highly dependent on the detail of the Regulations.

Not reasonable

This term has been used throughout Part 3 of the Bill. The term is to be defined in the regulations. The definition of the term may have a large impact on the cost of conducting small and assetless administrations and should be drafted with care so as not to unnecessarily burden unfunded appointments.

Person with a financial interest

This term should be used to exclude persons such as members of insolvent companies and bankrupts with no prospect of a surplus and such persons should only have the same rights (eg. to request information) as creditors where there is a prospect of a financial return. This will minimise the costs of compliance and avoid creditors having to indirectly fund irrelevant requests.

Not a legislative instrument

We are not familiar with this term or the effect it has on the Bill.

9. About PPB Advisory

PPB Advisory is a firm of professional advisors employing more than 300 people with offices in Sydney, Melbourne, Brisbane, Perth and Auckland. More than three quarters of the firm is engaged in providing insolvency services and related advice.

Our Company and Personal Insolvency Group (CPI) specialises in providing insolvency services to unsecured creditors principally via official liquidation and bankruptcy. Based in Sydney and Melbourne, CPI employs more than 35 staff including 5 Official Liquidators and 4 Registered Trustees. CPI is the market leader in small and assetless appointments. These submissions focus on streamlining such matters.

We have previously made submissions in relation to both the Options Paper and the Proposals Paper which preceded this Bill and included the case supporting streamlining.

Abbreviations used in this submission

AAT	Administrative Appeals Tribunal
Appointee	Trustee and external administrator
Bankruptcy Rules	Uniform insolvency practice rules Bankruptcy Act 1966
Bill	Insolvency Law Reform Bill 2013
COI	Committee of Inspection
Company rules	Uniform insolvency practice rules Corporations Act 2001
EA	External Administrator
IG	Inspector-General in bankruptcy
OR	Official Receiver
OT	Official Trustee
RATA	Report as to Affairs
RCN	Remuneration Claim Notice
RT	Registered Trustee in bankruptcy
SOA	Statement of Affairs
Uniform rules	Uniform insolvency practise rules