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28 July 2011

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

**By Email: [Insolvency@treasury.gov.au](mailto:Insolvency@treasury.gov.au)**

Dear Sir/Madam

**Options Paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia.**

PPB Advisory Statutory Recovery Group is the market leader in administering small (often assetless) official liquidations and bankruptcies for unsecured creditors.

In our opinion a combined strategy relating to small matters of:

- Streamlining official liquidations
- Funding official liquidations, and
- An alternative to official liquidations

will minimise liquidation costs, reduce cross subsidy and reduce the number of official liquidations to be funded.

Our law reform submission relating to small appointments is in 5 sections:

- A. Streamline official liquidations to make them as cost effective as possible.
- B. Provide funding for assetless official liquidations and allow official liquidators to refuse unfunded work.
- C. Company initiated Provisional Deregistration for assetless insolvent companies.
- D. PPB Advisory Statutory Recovery qualifications and experience.
- E. Statistics used in this submission.

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

Yours faithfully

**PPB Advisory**

A handwritten signature in blue ink, appearing to read 'Scott Pascoe', written in a cursive style.

**Scott Pascoe**  
Partner

## A. Streamline Official Liquidations

The case for streamlining official liquidations to eliminate unnecessary costs is compelling:

- 40% of all liquidations are assetless and more than 60% have assets at less than \$10,000.<sup>1</sup>
- More than 50% of official liquidations administered by PPB Advisory are assetless.
- 96% of official liquidation pay no dividend.

The cost of administering all assetless official liquidations is estimated at not less than \$8.25m per annum. This represents between 16.5% and 25% of the total fees billed in all official liquidations.

Official liquidation fees are set at high rates as they are often not paid in full (or all at all). Creditors of funded matters effectively subsidise the cost of unfunded matters (Options Paper paragraphs 180 and 181). High cost of liquidations is the source of complaints about insolvency practitioners. Often the regulatory response to complaints is to increase the regulation of Insolvency Practitioners. However, the cost of compliance with this additional regulation further increases costs and therefore complaints.

For example, with respect to independence, Insolvency Practitioners are required to prepare and forward a Declaration of Independence Relevant Relationships and Indemnities (DIRRI) at first contact in each official liquidation. Whilst this requirement is voluntary (except for IPA members) we estimate this requires one hour per liquidation and the estimated cost to the market is approximately \$1 million per annum with half of this unrecoverable.

A further example was the introduction of minimum remuneration in 2007. A liquidator is required to convene a meeting of creditors without quorum in order to be entitled to draw a \$5,000 fee. The cost of convening the meeting (including notice to all creditors and advertising) significantly diminishes the benefit of the default entitlement.

Likewise an hour taken from the time spent on each official liquidation will save the market \$1 million. The following table contains our ideas of ways to streamline small official liquidations:

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<sup>1</sup> Source of statistics and calculations throughout this paper are contained in Section E



Task	Current Position	Desired Position
	Lodgement with ASIC	Unchanged
<b>Notice of Appointment</b>	Advertisement in paper	<b>Internet advertisement</b>
	Issue demand to officer(s) to lodge	Unchanged
<b>Report as to Affairs</b>	If no reply from initial demand, issue a follow up reminder	<b>ASIC to follow up officer(s) with compliance notice.</b>
	Reporting offence to ASIC and seeking their assistance	<b>ASIC to prosecute following compliance notice</b>
	On receipt of RATA, lodge with ASIC and Court	On receipt of RATA, <b>lodge with ASIC</b>
<b>Section 476 report (Form 564)</b>	Prepare and lodge report with ASIC within two months of receipt	<b>Not required</b>
	Issue demand on officer(s)/external accountants to deliver books and records to Liquidator	Unchanged
<b>Books and records</b>	If no reply from initial demand, issue a follow up reminder	<b>ASIC to follow up officer(s) with compliance notice</b>
	Reporting offence to ASIC and seeking their assistance	<b>ASIC to prosecute following compliance notice</b>
<b>Investigations</b>	Investigations undertaken to identify assets, voidable transactions and offences	Investigations to be limited to identify assets or voidable transactions <b>where the Liquidator forms the opinion that there will be realisations or recoveries</b>
<b>EX01 report</b>	Report to be lodged with ASIC if investigations identify offences committed by an officer(s) or company is unable to pay a dividend of 50 cents or more to unsecured creditors	<b>The report should be prepared only where the Liquidator has formed a view that offences are likely to be prosecuted</b>
<b>EX02/EX03 reports</b>	Reports prepared in situations where ASIC have requested a supplementary report	<b>Report to be prepared only when fully funded by ASIC</b>
<b>Reports to Creditors</b>	Required to convene a meeting of creditors to approve remuneration, compromise of debt or enter into to settlement agreements	<b>Whilst to inform/update creditors, minimum remuneration to be drawn without resolution of creditors</b>
	Send out the Report to all known creditors	<b>Email and website</b>
<b>Creditor's meetings</b>	Report to Creditors is prepared and mailed to creditors containing the Notice of Meeting	<b>Notice of Meeting by email and website</b>
	Creditor attendance in person or by proxy	<b>Meetings to be held by circular resolutions</b>
<b>Remuneration not fixed</b>	\$5,000 if not fixed and meeting called and no quorum	<b>\$5,000 automatic minimum entitlement</b>
<b>Form 524</b>	To be lodged on every six months on all appointments	<b>To be lodged only where there have been transactions</b>

## B. Funding Assetless Administrations

Official Liquidators should be funded for the “fairly similar and standard processes” performed in small and assetless administrations. (Options Paper paragraph 169) These “standard” services are provided for the public good. We submit that the most effective way to do so is to pay a fixed fee for the standard processes of every official liquidation.

The existing AA Fund and the options to expand the AA Fund or s305 funding (Options Paper paragraphs 666 and 667) whilst useful do not cover the above “standard” costs, merely providing funds to do future work (such as recovering assets). Therefore, the amount of cross subsidy is not reduced by these options.

Possible options for the source of funds include a levy on company registrations or an annual fee for all companies. The cost of funding (e.g, \$2,000 per official liquidation) is estimated at approximately \$6.6m per annum.

To become registered as an official liquidator an applicant must undertake to ASIC that he or she will not refuse to consent to act solely because the company has no assets (ASIC Regulatory Guide 186 – External Administration: Liquidation Registration). We can find no legislative basis for requiring this undertaking. We understand it dates from a time where there was a small number of official liquidators and before the introduction of voluntary administration in 1993. At that time the position of official liquidator was more profitable, assetless matters were rarer and less costly to administer.

We submit it is appropriate to relieve official liquidators from this undertaking.

The absence of a fee negotiation (described in options Paper paragraph 201) is therefore compulsory in all official liquidations. Official liquidation is the only insolvency service where practitioners must accept opportunities even if unpaid. This means official liquidations and creditors are not free to set a market price for small and assetless administrations.

Certain practitioners are known to have withdrawn their services from official liquidations as unsustainable.



## C. Provisional Deregistration

### Concept

A new type of matter to allow defunct insolvent companies to be voluntarily struck off the company register. The process would involve directors declaring the company insolvent and applying for deregistration at no or minimal cost.

Deregistration would remain provisional for a set period (e.g. 6-12 months from notice) after which it would become permanent. The company would cease to be registered on application and therefore would not be obliged to prepare financial statements, lodge tax returns, take insurance (including workers compensation) etc.

Relevant stakeholders (shareholders, employees, ASIC and creditors) can be protected from abuse by allowing a right to administratively convert a Provisional Deregistration into an official liquidation at any time during the set period.

The stakeholder would select a liquidator, determine the scope of investigations to be conducted and fund the liquidator's costs.

The purpose of Provisional Deregistration is to acknowledge that for many small and assetless insolvent companies official liquidation is not the most appropriate form of dealing with the company. The company or its directors cannot afford the cost of a creditors voluntary winding up (Options Paper paragraph 645).

### Why official liquidation is not the best solution

Creditors often initiate official liquidation despite the fact that the prospect of a return is low (96% of official liquidations pay no dividend).

For example, the ATO may wish to bring the company's tax affairs to an end, workers compensation insurers to eliminate risk, creditors to collect debtor insurance etc. As noted in Options Paper paragraph 646 other stakeholders, including employees may be dependent on external administration for other reasons, such as to access GEERS.

The petitioning creditors' costs of winding up are wasted in assetless administrations.

Upon appointment the official liquidator is required to conduct an investigation and prepare a report for ASIC at significant cost. Liquidators reported more than 14,000 breaches of the law each year of this a few hundred directors were prosecuted. The cost of liquidators assisting ASIC with these prosecutions is significant compared with the value of the penalties obtained.

It is not practical or desirable to prosecute every breach of the law. Provisional Deregistration acknowledges that in many cases this is not required.

Provisional Deregistration would reduce the number of official liquidations and therefore reduce the funding requirement in section B above.

## D. PPB Advisory Statutory Recovery qualifications and Experience

PPB Advisory is a firm of professional advisors employing more than 300 people with offices in Sydney, Melbourne, Brisbane, Perth and Adelaide.

More than three quarters of the firm is engaged in providing insolvency services and related advice.

Our Statutory Recovery Group specialises in providing insolvency services to unsecured creditors principally via official liquidation and bankruptcy. Based in Sydney and Melbourne the Statutory Recovery Group employs more than 30 staff including 5 Official Liquidators and 5 Registered Trustees in Bankruptcy.

Statutory Recovery Group Appointments		
	Official Liquidations	Bankruptcies
2008/2009	344	206
2009/2010	376	323
2010/2011	351	164
<b>Total</b>	<b>1071</b>	<b>693</b>

The statutory recovery group was appointed to more than 10% of all official liquidations nationally since 1 July 2008 and is the market leader in this specialisation.

PPB Advisory paid 42 dividends to creditors in the period 1 July 2008 to 31 March 2011 in official liquidations.

We have researched the source dividends paid and published our results in a paper: The Future of Liquidations and Bankruptcy: <http://www.ppbadvisory.com/insights/d/2011-06-10/ppb-advisory-research-the-future-of-liquidation-and-bankruptcy-june-2011>

In the period 1 July 2008 to 30 June 2011 PPB Advisory Statutory Recovery Group has recovered more than \$1.4 million in petitioning creditors' costs in 396 official liquidations and bankruptcies.

PPB Advisory has developed in house software systems to track and measure the performance of its matters individually, as a whole and in groups.



## E. Statistics Used in This Submission

Official Liquidation appointments: ASIC Insolvency Statistics: Series 2 Insolvency Appointments	
2008/2009	3708
2009/2010	2935
2010/2011	3282*
Total	9925
Average PA	3300

\* Projected based on first three quarters published statistics

ASIC Report 225 Insolvency Statistics External Administrators 2010	
Assetless Administrations	39.3%
Estimated Assets < \$10,000	60.9%
Estimated Dividends nil	92.9%
Estimated Dividends less than 11c	97.3%
Number of possible misconduct identified 2009/10	14,652

ASIC Media Centre Releases 10-15AD, 09-228AD and AD09-191	
Number of directors prosecuted January 2009 to December 2009	420

PPB Advisory Official Liquidation Statistics	
Assetless Administrations	55%
Estimated Dividends nil	96%
Minimum cost to administer assetless company	\$5,000
Estimated size of total official liquidation market	\$33m-50m pa
Cost of assetless matters (1650 matters x \$5,000)	\$8.3m pa