

Feedback to Options Paper
Regulation of Insolvency Practitioners Australia

Having recently been through the process of appointed liquidation of a company that I was a director of, I would like to suggest some reforms/regulations to improve the process:

1. The liquidators should be required at the first meeting to provide to creditors a standard written document in plain English that explains the process and creditors' rights. This would discourage the current practice of liquidators providing as little information as possible in order to encourage inquiries from creditors that can then be logged at astronomical hourly rates.
2. Time charging should be permitted for an initial period only to define the scope and extent of work required. Once the scope of work has been defined then liquidators may competitively tender to provide the services required. The shareholders would be able to engage the preferred liquidators on a majority vote system.
3. Liquidators should not be able to exceed their tendered quote unless any additional service is first submitted to shareholders and agreed to by majority vote.
4. Any third party consultants costs/disbursement should only be engaged on a competitive basis at market rates and only if there is a reasonable expectation that the additional cost is likely to have a nett increase in return to creditors. Any breach of this regulation should incur penalties.
5. Liquidators should not be permitted to use shareholder funds to defend or justify their claims.
6. The liquidation process and claims for remuneration should be overseen by an independent review body. Any breaches of the regulation should be met with heavy penalties and deregistration. This would discourage unprofessional operators.
7. Liquidators should be required to maintain appropriate levels of professional indemnity insurance.
8. Solicitors should not be permitted to recommend Court appointed liquidation to their clients without disclosing that their fees will automatically be paid as secured creditors.
9. The liquidation process should be open to competition with suitably qualified solicitors and accountants permitted to tender for liquidation services. The size of the liquidation company should be appropriate to the size of the company being liquidated.
10. It should be possible to remove a liquidator at any time by simple majority creditor vote.

Many of the above desired performance objectives are already contained in the current IPA Code of Conduct however with no independent body currently overseeing the process, no effective competitive system or any reasonable means to remove a non performing liquidator the current system is simply encouraging a transfer of funds from shareholders of companies in difficulties to liquidation companies.

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