Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Madam/Sir,

The below is submitted as a private submission to the "Exposure Draft: Insolvency Law Reform Bill 2013: Explanatory Document".

The writer is a Fellow member of two Australian professional Accounting bodies; a full member of the Insolvency Practitioners Association of Australia; a Chartered Secretary; and a Graduate member of the Australian Institute of Company Directors. He has had extensive experience in the Federal aviation regulator and wide ranging experience in listed and unlisted companies prior to working in the insolvency profession.

I have indexed my comments to various parts of the Explanatory Document.

Sch 2, Pt 2, Div 8.B
Composition of the Committee to consider an application to be a Liquidator

In terms of the composition of the Committee, it is my view that the person appointed by the Regulator to act on the Regulator's behalf must be of a sufficiently senior position to reflect the importance of the appointment and to act as the Chair of the Committee. In effect the Regulator's appointee should be at the minimum, of senior executive status.

Similarly, the ministerial appointee must be a person with extensive experience in business to the extent that such an appointee would be respected by the Insolvency profession and the applicant. To be eligible for such a role, there should be no emphasis on qualifications, but on direct experience in senior executive roles in the corporate world and/or as a major shareholder.

The quality of the Regulator and Ministerial appointees will determine the level of respect the Committee receives.

In terms of giving the Committee power to require an applicant to sit an exam; I can see no value whatsoever in requiring an applicant to go through such a needless demand.

Applicants for registration as a Liquidator have already qualified with a degree; most would have successfully undertaken the ICAA program or the CPA program; the vast majority would have undertaken the two University designed and delivered subjects specialising in insolvency to gain membership of the IPAA; most would not be younger than 40 years of age; and some again would be partners of their firm. Yet, a Committee would have the power to

require them to sit an exam! What is the point? All the Committee will get from imposing this exam is whether or not the applicant knows the theory. I suggest that given the background and qualifications of the applicants, knowledge of theory should be assumed. It is the application of the theory that the Committee needs to focus on and that is why the composition of the Committee is of such critical importance.

If an applicant has not done the two post graduate subjects specialising in insolvency; and has not had sufficient life and/or professional experience, then sitting an exam would not be appropriate. Such applicants should be refused registration and informed to not return before a date in the future decided by the Committee so that the applicant can gain the further experience to satisfy the Committee.

Giving the Committee the power to require an applicant to sit an exam is a pointless exercise. The decision of the Committee must be to either issue or refuse not to direct further study. All decisions must be made on what the applicant presents to the Committee, that is the documentation and the person.

I totally disagree with the Committee having the power to require an applicant to sit an exam.

Sch 2, Pt 3, Div 16.D
Regulator power to suspend or cancel a registration.

I suggest that it would be advisable for the Regulator to also have the power to suspend a registration where the Regulator considers that the Liquidator may have a case to answer for bringing the insolvency profession into disrepute. Such suspension should not be exercised without the approval of the Committee.

An example where such a case would be appropriate is where there are sufficient complaints of merit and/or where the Liquidator is involved in court proceedings which may not directly involve his/her registration as a Liquidator but are of sufficient gravity that were such issues in the public arena, a reasonable person would determine that public opinion would be adverse.

Sch 2, Pt 3, Div 16.E

I have grave doubts as to the value of the Committee exercising its power to place conditions on a registration. If there are doubts that would create the need for conditions on a registration, then to my mind, the registration has been compromised and the registration therefore should either be suspended or cancelled. The affected person can then be required to face the Committee at a pre-determined date in the future.

The Committee is there to make a decision on a registration. Placing conditions on a registration is not a decision. It is instead akin to having a bet each way. The Committee is not there to make a judgment to assist individuals get to where they wish to be. It is there to make a decision on what is presented before them in terms of documentation and the person. Its purpose is to decide. Placing conditions on a registration is not a decision.

Sch 2, Pt 3, Div 16.G

It would be advisable to spell out the parameters of a suspension. Rather than create needless additional confusion and damage to a corporate community already facing financial pressure as a result of clients that are either in administration or insolvent, suspension should be restricted to a ban on accepting any new appointments, rather than having to go through the needless expense of new appointments for the suspended registrant's existing appointments.

The above comments are offered on a private basis and do not represent the views of my employer or any professional member body of which I am a member.

Yours faithfully

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8th March 2013