



12 October 2020

Manager
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: MCDInsolvency@Treasury.gov.au

Dear Sir/Madam

Submission on Insolvency Reforms to support Small Business

DW Advisory is a Sydney-based advisory and insolvency practice which specialises in corporate and personal insolvency and restructuring engagements. In the corporate space, DW Advisory commonly provides services to small and medium-sized enterprises. Our principals have combined experience of over 100 years.

We provide below our comments in relation to the *Corporations Amendment (Corporate Insolvency Reforms) Bill 2020* Exposure Draft noting that much of the detail of the proposed reform will be included in the regulations which are yet to be released.

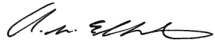
Section	Comment
453G	Due to the short timeframe for the restructuring plan to be prepared and provided to creditors for consideration, we consider that the timeframe for third parties to allow access to books and records they hold should be more clearly defined than “reasonable time”. We would suggest five (5) business days.
453LA	The legislation does not specify who has standing to make an application to the Court for compensation or a time limit for when the application may be made. It is unclear whether the recipient of a void transaction must return the company to the position as if the transaction had not occurred, which may affect the funds available for the restructuring proposal.
453P	Companies entering the restructuring process and the small business restructuring practitioners have generally limited resources available to them and it would be counterproductive to have them defend winding up proceedings. In our view, winding up proceedings should be automatically adjourned whilst the restructuring process is being undertaken or in the alternative, the company should not be allowed to enter into the restructuring process whilst a winding up application is on foot.
453W	It appears to us that after the company proposes a restructuring plan to its creditors, due to the deemed insolvency of the company (s455A(2)) being potentially an event of default, any money received by a company through its pre-existing bank accounts may be offset against a mortgage account or other loan that may not otherwise be in default. This may not accord with the objectives of the restructuring process.
454P	It appears to us that there is no restriction on the sale of goods subject to a Purchase Monies Security Interest (PMSI) and no requirement to account to the holder of the security interest in relation to goods sold during the period of the restructuring process.
500AA(1)(f)	Whilst we see the benefit of having a company complete and lodge its outstanding Single Touch Payroll (STP) and business activity statements up to the last lodgement date prior to appointment before being eligible for the simplified liquidation process, we see little utility in requiring a company that

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Section	Comment
	has ongoing tax losses being forced to incur the cost and delay of bringing its income tax returns up date.

Yours faithfully



Anthony Elkerton
Managing Principal