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Information Sharing - Serious Financial Crime - submission

ARITA make a brief submission in support of this proposal. Our professional members, liquidators and trustees in bankruptcy, have obligations to report breaches of the law to the relevant regulators. Our members are often appointed by the court, on the application of a regulator, to take control of an unlawful business and seize assets. They also provide reports on the financial position of unlawful businesses to assist with enforcement.

ARITA supports any proper measures to ensure that information its members gather and provide to the government agencies is usefully applied.

Yours sincerely



John Winter
Chief Executive Officer

About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents practitioners and other associated professionals who specialise in the fields of insolvency, restructuring and turnaround.

We have more than 2,000 members including accountants, lawyers, bankers, credit managers, academics and other professionals with an interest in insolvency and restructuring.

Some 76 percent of registered liquidators and 86 percent of registered trustees are ARITA members.

ARITA's mission is to support insolvency and recovery professionals in their quest to restore the economic value of underperforming businesses and to assist financially challenged individuals.

We deliver this through the provision of innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large.

The Association promotes best practice and provides a forum for debate on key issues facing the profession. We also engage in thought leadership and advocacy underpinned by our members' knowledge and experience.

Submission

We note that the exposure draft would allow taxation officers to continue to share taxpayer information with other Project Wickenby agencies, or a court or tribunal, until 30 June 2017; and would list the Fraud and Anti-Corruption (FAC) Centre as a prescribed taskforce so as to enable tax officers to share taxpayer information with the FAC Centre on an ongoing basis.

This would be done through the *Taxation Administration Amendment (Disclosure of Information) Regulation 2015* amending the *Taxation Administration Regulations 1976* to allow the release of such protected information.

ARITA agrees with the exposure draft.

ASIC's *Regulatory Guide for External Administrators* – RG 16 states that external administrators 'are the front-line investigators of insolvent corporations'. This refers to obligations of liquidators under the Corporations Act 2001 (for example s 533) to report breaches of the law to ASIC, including unlawful phoenix activity; and by arrangement, liquidators also report unlawful phoenix activity to the ATO. Liquidators are often appointed by the court on the application of ASIC or other law enforcement agencies to act as receiver or other controller of unlawful entities.

ASIC also funds liquidators through the Assetless Administration Fund to investigate and report - ASIC reports that a significant number of statutory reports allege illegal phoenix activity; ASIC also relies upon liquidator's statutory reports for the purpose of disqualifying directors; and ASIC's Liquidators Assistance Program assists liquidators to secure the books and information of companies in external administration needed to properly conduct the investigations.

ASIC, AFSA and ATO regularly meet with ARITA about these and related matters.

We are also aware of and in communication with work being done by an ARITA academic member, Associate Professor Helen Anderson, from the Centre for Corporate Law & Securities Regulation of the University of Melbourne, under an Australian Research Council Discovery Grant. Its first report - *Phoenix Activity: Regulating Fraudulent Use of the Corporate Form*, December 2014 - profiles phoenix conduct across the spectrum, beginning with legal business rescues and ending with complex illegal phoenix activity linked to other such behaviour including organised crime.

We also mention that AUSTRAC's Information Circular No. 76 - *External Administration and AML/CTF Act Obligations* – requires an external insolvency administrator to comply with the insolvent company's obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

We also note that our members are trustees in bankruptcy whose reports may similarly assist AFSA in its law enforcement role under the *Bankruptcy Act 1966*, and under the *Proceeds of Crime Act 2002*.

In summary, ARITA member liquidators, and trustees, are part of the investigative and legal structure that monitors and reports on breaches of the law, including financial crime, to the regulators. We support any means by which the relevant government agencies can use this information more freely and usefully.