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Our ref 43141362_1

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9 October 2015

Dear Mr Bell,

KPMG response to the proposed industry funding model for the Australian Securities and Investments Commission

We are pleased to have the opportunity to respond to the Consultation Paper – Proposed industry funding model for the Australian Securities and Investments Commission (ASIC).

KPMG appreciated the opportunity to participate at the roundtable at ASIC's offices on 23 September.

Our response is focussed on the proposed funding model as it applies to Auditors and Registered Liquidators.

We have three associated companies holding Australian financial services licenses with a small number of financial advisers. Given this is a relatively small part of our business we have opted not to comment on the detail of the proposal for AFS Licensees.

KPMG does not support the proposal in its current form.

General Comments

1 The consultation paper does not develop ideas about accountability to stakeholders. The paper does not explain how ASIC's performance will be measured and reported, which will become even more critical given the increased expectations for efficiency and transparency that inevitably will follow any industry funded model.

Whilst Chapter 5 of the consultation paper provides 'an overview of the process to determine ASIC's annual levies, funding accountability and other review processes', it does not address the two ramifications of the FSI finding that 'ASIC['s] costs are not transparent to regulated industry participants', namely:

- 'industry and consumers have little understanding of the actual costs of ASIC supervision; and

- ASIC has limited accountability to industry and consumers in the activities it undertakes and why it undertakes them.'

It is unclear how the proposals will deliver the three stated outcomes to:

- 'Ensure that the costs of the regulatory activities undertaken by ASIC are borne by those creating the need for regulation;
- Establish price signals to drive economic efficiencies in the way resources are allocated in ASIC; and
- Improve ASIC's transparency and accountability.'

The proposals do not provide clarity on how the funding model will work to enhance ASIC's transparency and accountability. Nor do the proposals as drafted allow for the results of the ongoing ASIC Capability Review to be incorporated. It is important to ensure future funding correlates with future regulatory activity, and is based on measurable improvements in terms of process efficiency, and transparency in terms of the effectiveness or impact of ASIC's regulatory activities.

Recommendation 1: KPMG recommends further work by Treasury following the results of the ASIC Capability Review, to identify and propose potential metrics on the measurement of ASIC's accountability, transparency and efficiency, together with formal reporting and assessment mechanisms. This should be followed by further consultation and should allow sufficient time for due consideration and response.

2 The proposed model does not introduce an alternative to government oversight of the costs of running ASIC. Without an enhanced mechanism for oversight, the system may become susceptible to increased demand for the intensity of ASIC's supervision and consequently costs may be susceptible to increase.

Recommendation 2: KPMG recommends further work by Treasury to identify and propose a transparent approach to the management and governance around the setting of ASIC's budget. This should be followed by further consultation and should allow sufficient time for due consideration and response.

3 The proposed methodology for determining the levy mechanisms is stated to reflect 'supervisory intensity'. It would be preferable to consider a methodology reflecting an objective assessment of sector risk. This could be on the basis of enforcement outcomes by sector and would facilitate accountability.

It is unclear that the proposal delivers equitable allocation of ASIC's resources to the regulated population. Equitable allocation would closely reflect an objective assessment of the level of supervision warranted for a sector or an entity.

We note that KPMG already commits ongoing and significant investment to controls and other risk and compliance measures as well as to responding to ASIC's ongoing surveillance and inspection activities.

Recommendation 3: KPMG recommends that further time is made available for Treasury to consider and consult on other approaches to the allocation of costs that more closely correlate to regulatory risk to assist ASIC in the allocation of its resources.

4 Given the above and the significance of the proposals, KPMG considers the time provided for due consideration and response to the proposals has been insufficient and that the timeframe for implementation is too short.

Recommendation 4: KPMG recommends greater time should be taken for consultation and implementation.

5 It is not apparent from documents in the public domain that levies are incurred in relation to one's business and therefore tax deductible expenses.

Recommendation 5: KPMG recommends Treasury provides certainty about the tax deductibility of the proposed levies.

Response to proposed industry funding model for Auditors

6 The levies for Audit Firms and Authorised Audit Companies that audit listed entities would be apportioned 'according to the share of annual audit fee revenue that they earned'. However the term 'audit fee revenue' is not defined in the proposal, and is contradicted by Example 9 which refers instead to 'fee revenue from auditing listed entities'.

Financial information is required to be disclosed in the annual transparency reports for audit firms, but does not include a split for listed entities. That information may not be readily available, and there will be a significant cost and limited value associated with producing such information.

Further, unless very clearly and objectively defined, 'audit fee revenue' will be subject to interpretation and differences in calculation between firms and will lack comparability and impair confidence in the data.

For these reasons, in our view the suggested fee allocation basis is not workable. KPMG suggests as an alternative, a more objective measure, using market capitalisation of listed entities audited by each firm.

Recommendation 6: KPMG recommends using market capitalisation of listed entities as the basis for allocating audit costs.

Response to proposed industry funding model for Registered Liquidators

7 Liquidators play a large part in assisting ASIC in its governance and regulation of the industry by conducting statutory investigations and reporting offences, as well as liquidating insolvent entities. Liquidators are also officers of the Court and as such face a higher regulatory burden when acting on behalf of the Court.

The proposed increase in levies and fees will be costs the liquidator must recover. Thus, the return to creditors will be adversely affected. Further, in many circumstances, the liquidator will not be able to recover all or any costs, leaving the liquidator in a position of loss.

On the basis of the above comments, increased levies and fees on liquidators seem counterproductive.

Recommendation 7: KPMG recommends the proposed industry funding model exclude liquidators.

8 Liquidators undertake investigations on ASIC's behalf that are unfunded. Unfunded appointments represent costs to the industry. Out of pocket costs associated with unfunded appointments include costs payable to ASIC such as searches.

Recommendation 8: Should a funding model be implemented that includes fees or levies on liquidators, KPMG recommends the costs associated with ASIC's involvement in unfunded appointments be taken into account.

9 KPMG considers the value of assets recovered as a means of apportioning levies would result in a poor correlation to the actual allocation of costs associated with regulation of registered liquidators and where such costs are likely to be incurred. Apportioning levies on the basis of assets realised appears to conflict with the liquidator's role in maximising realisation of assets for the benefit of creditors. We consider the 'number of appointments method' is likely to better reflect the actual allocation of risk and hence regulatory costs.

Recommendation 9: Should a funding model be implemented that includes levies on liquidators, KPMG recommends against the use of the value of assets recovered as a means of apportioning levies. KPMG considers the 'number of appointments method' is likely to better reflect the allocation of costs associated with regulation of registered liquidators and where such costs are likely to be incurred.

We would be pleased to discuss any of these points further; should you have any questions please contact me on (03) 9335 7108 or Tom Seville, KPMG's Head of Regulation & Compliance on (03) 9288 5050.

Yours sincerely

Chris Hall
National Managing Partner - Risk & Regulation