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Ferrier Hodgson
Commercial-in-Confidence
Response to the Australian Government's Options Paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia June 2011

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1 Purpose of response

Ferrier Hodgson is a leading firm of professionals specialising in Corporate Advisory, Forensics, Corporate Recovery and Management Consulting.

This paper is Ferrier Hodgson's response/commentary to the Australian Government's June 2011 options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia. Generally, Ferrier Hodgson is supportive of industry reform and recognises the benefit of increasing the alignment between corporate and personal insolvency regimes and improving regulator responses to practitioners not meeting the necessary professional standards or practitioner misconduct.

This paper uses the paragraph numbering from the Australian Government's June 2011 options paper.

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2 Standards for entry into the insolvency profession

Option one: maintain the current standards for entry

Option two: expand the scope for insolvency entrants

Option three: alignment of standards for entry

Paragraph	Question	Response
80	Are there any concerns with changing the academic requirements to remove the greater emphasis placed upon accounting skills over legal skills, while retaining a minimum level of study in each?	Ferrier Hodgson considers that the current emphasis on accounting skills in the entry criteria for the profession is appropriate and should be maintained. Lawyers canvassed by this firm accept the focus on accounting skills. Legal advice may be acquired on an as needed basis but accounting and commercial insolvency skills are utilised on a day to day basis.
81	Should the gaining of a Masters in Business Administration meet the qualification requirements for registration, if it did not otherwise meet legal and accounting study requirements?	Ferrier Hodgson considers that awarding of an MBA, without study of the currently required accounting and legal disciplines should not be the sole qualification for an individual to enter the profession. MBA‘s are awarded in a wide variety of disciplines that may not necessarily give the recipient the necessary accounting, legal or base insolvency knowledge required of a practitioner. A narrower definition of a MBA qualification may be appropriate. As a general comment relative to paragraphs 80/81 is that it is difficult to see that the current academic requirements are inadequate or moreso a barrier to entry. The present system allows those with an MBA and/or a legal degree to enter the profession and to hold a liquidator

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2 Standards for entry into the insolvency profession

Paragraph	Question	Response
		designation. As such there appears minimal, if any, reason to ―open” the process, it is open and the criteria is known, plausible and relevant to the actions/activities undertaken in the role. Tinkering with the entry standards down plays the importance and value of specialists in the insolvency and reconstruction field.
82	Should a minimum level of actual experience in insolvency administration remain a mandatory requirement for registration as a practitioner?	Ferrier Hodgson considers that maintaining the current minimum level of professional experience is essential to maintaining the quality of registered practitioners. Insolvency work and particularly corporate insolvency and reconstruction work is specialised and often highly complex. Maintenance of the actual experience criteria is extremely important to ensure the continued development of specialised professionals.
83	Should the experience requirements for registered liquidators be reduced to two years of full-time experience in five years?	No. Hands on experience and training is essential to practitioner development. The preferred outcome should be for the personal insolvency registration requirement to be increased from two years to five years experience.
84	Should new market entrants be required to complete some form of insolvency specific education before practicing as registered liquidators or registered trustees?	Yes. As well as encouraging its staff to complete the Institute of Chartered Accountants in Australia‘s (―ICAA”) CA program, Ferrier Hodgson also encourages staff to complete the Insolvency Practitioner Association of Australia‘s (―IPAA‘s”) Insolvency Education Program (―IEP”) as they progress through their careers. The existing IPAA programme is an important educational/development tool. The integration and further

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2 Standards for entry into the insolvency profession

Paragraph	Question	Response
		development of the discipline into the CA program for those wanting to move into this area of the profession may be of merit.
85	Should ASIC be empowered to impose requirements on a registered liquidator as a condition of the registration? What types of conditions should a regulator be empowered to impose upon a new registered liquidator‘s registration?	Yes. The main restriction may be to take joint appointments with an experienced practitioner. In practice this occurs at Ferrier Hodgson and other leading firms. It is acknowledged that such a criteria maybe more difficult in a sole practice and/or smaller firm. In these cases there may be some restriction on the relative size/complexity of a matter principally to ensure existing infrastructure associated with a practitioner can reasonably cope with a particular matter. Some may argue that this will favour larger firms in relation to larger matters however this is presently reflective of general market practices.
86	Should a registered trustee face more streamlined entry requirements than those that exist for a standard applicant for registration as a registered liquidator, and vice versa?	Generally, the management of personal insolvencies is less complex than the management of corporate insolvencies. In practice Ferrier Hodgson has found that personnel who have joined as lateral hires with solely personal insolvency experience take considerable time to transition to working competently on corporate insolvency matters.
87	Is further formal training necessary to ensure that practitioners that wish to transition between the two professions are able to fulfil their statutory obligations?	Formal training is probably not necessary to assist practitioners‘ transition between personal and corporate insolvency dependent upon the size/structure of the firm relevant to the practitioner, that is, a larger firm is likely to have more regulated structured training regime. Key to a

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2 Standards for entry into the insolvency profession

Paragraph	Question	Response
		practitioner being registered as either a liquidator or trustee is demonstration of required academic qualifications, necessary practical skills and experience, the capacity of a particular firm to support/provide appropriate training, operational infrastructure to support complex administrations

Ferrier Hodgson position:

Option one: Supported. The current standards for registration as a liquidator should be maintained, albeit the requirement to have completed the equivalent of the IEP should be mandated;

Option two: Not supported. The entry scope should not be eased.

Option three: Supported. Alignment standards for entry should be considered. However, the focus should be on improving the requirements to be registered as a trustee by ITSA.

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3 Registration process for insolvency practitioners

Option one: enhance ASIC's and ITSA's current registration processes

Option two: adoption of committee structure in corporate insolvency

Paragraph	Question	Response
144	Should an applicant seeking registration as a registered liquidator or registered trustee be required to be interviewed as part of the registration process?	An interview process for prospective registrants may be an important enhancement to the registration processes. However, clear guidelines on scope of the interviews would need to be established to avoid potential subjectivity emerging. The qualifications of the interviewer/panel would also be a significant issue.
145	Should an applicant seeking registration as a registered liquidator or registered trustee be required to sit an exam as part of the registration process?	In respect of registered liquidators currently, they must have undergraduate accounting and legal qualifications. Passing a course in insolvency education is also viewed favourably by the Australian Securities and Investments Commission (―ASIC"). Mandating the requirement to complete the IEP or equivalent is a natural progression to enhance the registration process for both registered liquidators and registered trustees. Whilst we support the requirement for a course of study in insolvency prior to registration, a further separate exam as part of the registration process seems excessive. Care should be taken to avoid oral examinations which may become subjective.
146	Should a general *„fit and proper"* person requirement be imposed for the registration of both personal and corporate insolvency practitioners?	Being a *„fit and proper"* person should be imposed in both personal and corporate insolvency regimes as a prerequisite for registration. It should also be considered

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3 Registration process for insolvency practitioners

Paragraph	Question	Response
		as grounds for loss of a practitioner‘s registration if it can be readily demonstrated on review, that a practitioner is no longer a „*fit and proper*" person.
147	If the process for the registration of liquidators is aligned with the process for the registration of registered trustees, what differences should be maintained between the two registration processes?	If an exam separate to a course of study in insolvency is mandated, the examination itself should be different for registered liquidators and registered trustees to recognise the technical differences between the regimes.
148	Is it appropriate that the current fee for registration of liquidators be increased to reflect the amendments to registration processes?	The cost of preparing an application for registration under the existing guidelines for liquidators is not insignificant, although ASIC‘s fees are modest. Any increase in fees which might be associated with maintaining a professional interview panel should be only partially passed through to applicants. If fee increases are too substantial it may discourage qualified applicants from seeking registration, which may ultimately reduce the quality of practitioners and industry competition.
149	Should the official liquidator role be maintained?	The differentiation between registered and official liquidators should be maintained. Many Court appointments are „*assetless*" and consequently the liquidator may receive no fees. Many registered liquidators may not accept these „*assetless*" engagements. Further, whilst many Court appointed assignments are „*plain vanilla*" and are not considered complex, other appointments to wind-up unregistered schemes, act as a

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3 Registration process for insolvency practitioners

Paragraph	Question	Response
		Court appointed receiver or a provisional liquidator can be exceptionally complex. Maintaining the official liquidator designation provides some safe guard that appropriately experienced practitioners will be engaged in these instances. The Courts may not have the same indulgence as a private appointor in understanding the reputation, experience, skills and industry knowledge of practitioners.
150	What other aspects of the current Bankruptcy Act committee system might be amended?	The committee system operates well in that it is expedient, there is appropriate input from insolvency professionals and there are appropriate channels of appeal. This system greatly benefits from the annual surveillance reporting undertaken by ITSA. No amendments are suggested.
151	If registration of a registered liquidator is for a defined period, what conditions should be required to be met for renewal of the registration to occur?	If registration were to be for a defined period, renewal ought be based upon demonstrating compliance with Continuing Education (–CE") requirement of the relevant accounting body, continuing to be a „*fit and proper*" person and adherence to insurance/fidelity requirements. As with any decision by a regulator not to renew a registration, there may need to be an appeal process. There is a risk that any „*non-renewal*" practitioners may seek to escalate the review to Court proceedings. If a renewal period is defined it should be for a minimum of

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3 Registration process for insolvency practitioners

Paragraph	Question	Response
		say, three to five years. Any shorter period will create an unnecessary cost burden which may ultimately reflect in higher practitioner charges. Thought should also be given to streamlining case transmission procedures from practitioners whose registration is not being renewed.
152	Should the renewal process include a fee? Should the fee be commensurate merely with the administrative cost for completing the renewal or should the revenue raised by the fee be used to fund additional oversight of the insolvency market? Should the renewal fee be determined with reference to the numbers and nature of the administrations to which the practitioner is appointed?	The relevant fee should be structured to allow the recovery of the regulators' costs; not to fund increased supervision or add to any fidelity fund that may be established. If renewal fees are increased substantially this will ultimately be reflected in practitioner charges. It would also disproportionately impact on smaller firms (if struck at a flat rate), which are likely to be less able to absorb the additional cost, thereby potentially reducing competition in the sector.

Ferrier Hodgson position:

Option one: Supported. Ferrier Hodgson supports enhancements to the registration process for registration of liquidators and trustees, trustee registration requires marked improvement e.g. increased minimum insolvency experience and a *„fit and proper"* person requirement. Existing high standards for liquidator registration should be maintained and may be improved by processes such as interviews, completion of a course of study in insolvency and an ongoing *„fit and proper"* person requirement. The official liquidator designation should be maintained due to the complexity of assignments such as the winding up of unregistered schemes, court receiverships and provisional liquidations.

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3 Registration process for insolvency practitioners

Option two: Supported. The adoption of a committee structure to interview and recommend whether or not an applicant should be registered as a liquidator may be a vital enhancement to the current process, so long as clear guidelines are in place that restrict subjectivity.

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4 Remuneration framework for insolvency practitioners

Option one: status quo with potential conflicts of interest addressed

Option two: address the issue of disbursements

Option three: aligned enhancements

Paragraph	Question	Response
233	Should the Corporations Act be amended to include a provision that aligns with the Bankruptcy Act prohibition upon practitioners making any arrangement whereby a benefit is received, either directly or indirectly, in addition to the remuneration to which he or she is entitled? Should such a prohibition be clarified to provide that this extends to charging disbursements with a profit component that may benefit, directly or indirectly, the practitioner?	Ferrier Hodgson considers that an amendment of this nature is appropriate. Ferrier Hodgson does not charge a profit component in respect of use of facilities for meetings or in recovery of out-of-pocket expenses, such as printing, travel, postage, telephone usage, photocopying or advertising.
234	Are the current requirements for the provision of information to creditors to assist them in assessing costs appropriate? Should this information be provided in a standard form? Should these requirements be aligned between corporate and personal insolvency?	The current requirement for provision of remuneration information in corporate insolvency are adequate and most reputable practitioners already adhere to the guidelines suggested from time to time by the IPAA as to best practice for remuneration reporting. This provides a basis for consistency in reporting between the practitioners. The options paper correctly identifies that services to an „*insolvent*" are highly heterogeneous and that many creditors of „*insolvents*" are not well placed to assess either quantitative or qualitative factors in respect of remuneration. Prompt regulator responses to genuine

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4 Remuneration framework for insolvency practitioners

Paragraph	Question	Response
		complaints regarding fees and a consistent monitoring regime are likely to be the best remedial actions. There should be some alignment between corporate and personal insolvency remuneration reporting.
235	What could be done to address concerns about cross subsidisation?	The key response to addressing cross-subsidisation is ensuring that the market for purchase of insolvency services remains competitive. Whilst there is a long standing political/media allegation that hourly fee rates are too high, there are many practitioners and firms competing in both the personal and corporate insolvency and restructuring sectors for a relatively small number of annual appointments. They range from the ‗Big Four' international accounting firms, to specialist insolvency and restructuring service providers to sole practitioners. In practice the fee rates at the highest level for leading insolvency and restructuring practitioners are substantially lower than the rates for similarly specialised, experienced and well regarded corporate finance, specialists, taxation advisers and lawyers.
236	What could be done to address concerns about inappropriate use of disbursements?	A regulatory guideline could be issued setting out the appropriate basis for charging disbursements. However it would be difficult to mandate a cost regime as every particular assignment has its own identity and as such variances in disbursements will occur.

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4 Remuneration framework for insolvency practitioners

Paragraph	Question	Response
237	Should all fee approvals be required to be subject to a cap set by creditors in an external administration or bankruptcy? Is it unreasonable to expect that an insolvency practitioner go back to the creditors in order to seek an increase on the initial remuneration cap?	The current arrangements for fee approvals allow for the setting of caps for future fees; this is not an unreasonable or onerous requirement, so long as practitioners retain a right to seek creditor approval where caps are exceeded and the practitioner provides appropriate supporting information to creditors. The key with this element of an administration is fulsome/adequate disclosure of salient issues to the creditors.
238	Should a group of creditors (or a single creditor) that successfully challenge an insolvency practitioners' remuneration, receive an increased priority in relation to the savings that may result?	No, there seems a risk that this could create a conflict between the interests of creditors generally. Certain creditors may not be in a position to fund, even jointly such an action. Instead, genuinely aggrieved creditors ought to have the support of the regulators to challenge remuneration that is either inappropriate in quantum or where insufficient information has been provided by the practitioner to enable creditors to make an informed judgement on the fee approval being sought. Any such challenge assumes creditors who may question the fees submissions have been unsuccessful in bringing about change via relevant voting procedures and/or where the practitioner has approached the Court to have it fix remuneration.
239	Should a registered liquidator, under any circumstances, be able to exercise a casting vote on a motion regarding his or her remuneration or removal?	A liquidator should not be able to exercise a casting vote in relation to his/her remuneration or removal from office in any circumstance.

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4 Remuneration framework for insolvency practitioners

Paragraph	Question	Response
		The liquidator has the ability to seek fee approvals from the Courts where fees are not approved by creditors. This option should be retained.

Ferrier Hodgson position:

Option one: Supported. Practitioners complying with IPAA guidelines would not exercise their casting vote in favour of their remuneration. Amending the Corporations Act to reflect IPAA's guidelines will bind those practitioners operating outside what should be considered industry best practice.

Option two: Supported. Practitioner recovery of out-of-pocket expenses or disbursement should not contain a profit or benefit for the practitioner.

Option three: Three issues are proposed under this option:

1. Power for a binding creditor resolution capping practitioner fees – Not supported – IPAA members adopting best practice guidelines attempt to estimate future costs and set fee caps, creditor approval is required to exceed these caps. As each matter is often widely dissimilar and complexity varies, estimating fees is often difficult.
2. Incentivise challenges to liquidator remuneration – Not supported – Certain creditors may not be able to participate in legal proceedings challenging remuneration; this may create a conflict between the various creditors of an insolvent.
3. Alignment of duties – supported – liquidators, administrators and receivers should not be able to benefit from the conduct of a matter, other than to receive the remuneration to which they are entitled. Care should be taken with any amendments to ensure that reasonable commercially based contingent remuneration arrangements are not inadvertently restricted.

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5 Communication and monitoring

Option one: maintain the status quo

Option two: align creditors powers to effectively monitor administrations

Option three: controlling the direction of a winding up

Paragraph	Question	Response
302	What amendments should be made to provide creditors with more information or power to monitor the progress of a winding up, administration or bankruptcy?	It is difficult to respond to this discussion question without more detailed knowledge of the complaints made to regulators, their type and frequency. Also are the complaints valid in respect of conduct or do they arise from the complainants' lack of knowledge regarding the various processes? Further, do the nature of complaints vary between personal and corporate regimes?
303	Should creditors have largely the same rights to information and tools to monitor a liquidation, administration, bankruptcy or controlling trusteeship?	Consistency in the provision of information in the different regimes is desirable; however, there must be safeguards in respect of release of „*price sensitive*" information where businesses and assets are being dealt with. A mechanism must also be in place to prevent undue costs being incurred by providing responses to multiple individual requests.
304	Are there any impediments to insolvency practitioners communicating with creditors electronically?	Impediments to electronic communication with creditors are: 1. Whether a creditor has internet access. 2. The currency of email addresses within an

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5 Communication and monitoring

Paragraph	Question	Response
		insolvent's records. 3. Whether the email address will reach the correct individual or team within a creditor organisation. Ultimately pursuing an electronic communication process should assist the timing and cost associated with the provision of information presently creditors are required to *"opt-in"* to receive communications by email. It may be possible to reverse this arrangement and establish an *"opt-out"* regime and require creditors to validate their email addresses.
305	If the statutory frameworks are aligned, are there any modifications necessary to account for the practical differences between the bankruptcy and corporate insolvency frameworks?	Corporate insolvencies are generally more complex than personal insolvencies; the law governing each regime in Australia has a common basis and common underlying goals. Corporate insolvency law has evolved more rapidly since the Cork Report (UK) and the Harmer Report (Australia). Care needs to be taken to ensure that bankruptcy law does not adopt corporate processes that will add to the costs of administering a case with no practical improvement in the outcome for creditors.
306	Would support from at least 25 per cent of creditors be an appropriate threshold in corporate insolvency for requiring a creditors meeting to be held? Given the larger numbers and quantum of claims, would a lower threshold (for example, 10 per cent) be more appropriate? What rules should apply in relation to who bears the costs of holding a	A 10% support threshold is reasonable in corporate insolvencies for creditors to require a meeting. The requisitioning creditors must bear the cost in the first instance in minimal or assetless cases. In cases where costs may be prohibitive, consideration may need to be given to have a right to have creditors or the Court approve

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5 Communication and monitoring

Paragraph	Question	Response
	meeting of creditors?	the meeting costs as a cost of the liquidation (if funds are available).
307	If liquidators are required to provide all information reasonably requested by a creditor regarding a liquidation or administration and creditors have improved powers to require the calling of meetings, is there any need for default annual meetings, written updates or creditors' meetings at the completion of a winding-up? Could these requirements be amended to a requirement for the practitioner to raise the option of having such updates and meetings with creditors (for consideration and voting) as a default reporting arrangement?	There is no need for creditors' meetings to be called more than annually where creditors may requisition meetings. The key in assessing creditors requests for information is the determination of ―reasonable" if this is open to interpretation there may be cost and timing implications for the progression of an administration/liquidation. Creditors could be given an option of voting on whether to have a more frequent reporting schedule. However, to ensure associated costs did not become excessive, an agreed short form report would need to be developed in conjunction with the regulator.
308	Should the role of the COI be given greater prominence in the corporate and personal insolvency systems? If so, how might this occur?	The role of committees in Administrations and Liquidations is presently adequate. Any steps toward giving COI's power to make resolutions binding on liquidators will greatly undermine the commercial independence of the practitioner and is likely to lead to an increase in applications to Court for directions on commercial issues. Committees cannot always be relied on to be and be seen to be impartial by their very nature, they are a representative body of creditors who in certain circumstances may have for whatever reason self interest at the forefront of their considerations. Historically, the Courts have indicated that they are not prepared to rule on commercial decisions that should be made by the liquidator.
309	Should the rules governing COIs be aligned between	Alignment of the rules between corporate and personal

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5 Communication and monitoring

Paragraph	Question	Response
	corporate and personal insolvency? Are there any specific aspects of COI law that should be otherwise reformed?	insolvency is probably desirable.
310	Should creditors be able to make a binding resolution on a liquidator? If yes, should there be any role for the Court to overrule that resolution (for example, where the Court believes that the resolution is not in the best interests of the creditors as a whole)? Should there be any limit on the type of areas that creditors are able to pass a binding resolution?	Creditors should not be able to make a binding resolution on a liquidator; it will erode the commercial independence of the liquidator and add to the costs of liquidation as many resolutions may be legally challenged. If yes, the Court will need to be able to overturn resolutions that it considers are not in the best interest of creditors. Creditors must not be able to pass a resolution where they have a conflict or vested interest e.g. related parties in respect of an „*insolvent*" in respect of insolvent trading, or voidable transactions.

Ferrier Hodgson position:

Option one: Not supported. Communication with stakeholders should be improved and use of electronic communication tools should be encouraged.

Option two: Supported. Increasing the flexibility of practitioners to communicate with creditors using electronic formats would enhance the current regime. Alignment of communication requirements and the operation of COI between corporate and insolvency regimes is supported, as much as practicable. Restrictions on the provision of commercially and legally sensitive information needs to be maintained.

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5 Communication and monitoring

Option three: Not supported. Amendments allowing creditors to make binding resolution on liquidators is likely to undermine practitioners' commercial independence and lead to undesirable outcomes particularly in respect of additional and costly Court proceedings being commenced, even in circumstances where vested interest safeguards are introduced.

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6 Funds handling and record keeping

Option one: maintain the status quo with minor enhancements to funds handling

Option two: alignment with enhancements

Option three: increase penalties

Paragraph	Question	Response
383	Should the rules governing record keeping, accounting, audits and funds handling in corporate and personal insolvency be aligned? If so, how should this occur?	It is desirable that the regimes are more aligned, noting that in corporate insolvency the requirement for separate accounts must be maintained. Timeframes for actions and reporting should be consistent and report formats and penalties for non-compliance ought be similar.
384	If aligned rules on accounts reporting are introduced, what should be the content, form and frequency of the accounts required?	The frequency of reporting from the current corporate regime should be adopted. However, the format of six monthly returns (required in corporate insolvencies) should be amended. The current requirement to provide a listing of each individual receipt and payment only provides useful information in smaller insolvency matters. On larger or more complex corporate insolvencies, practitioners are usually required to rely on the corporation's financial systems to record transactions and monitor business performance and these systems are often not easily able to produce a „*pure*" list of receipts and payments in the manner required for ASIC lodgements without either creating a new reporting module (at significant cost) or alternatively running a manual listing of transactions in a spreadsheet or alternative accounting system, thereby

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6 Funds handling and record keeping

Paragraph	Question	Response
		duplicating accounting costs. The six monthly ASIC lodgements may be more useful in providing information if the receipts and payments were presented by accounting category, similar to regular financial statements. Six monthly accounts are presented in the United Kingdom on this more useful summary basis.
385	Are there other record keeping, accounting, audits and funds handling rules that should be mandated for personal and corporate insolvency, in addition to those that currently exist?	Apart from the suggestions above no further changes to funds handling and record keeping rules are required.
386	If amendments are made to the personal and corporate law to align the powers of the regulators (in certain circumstances) to freeze the accounts of insolvency practitioners, in what circumstances should the regulators be able to issue an account freezing notice to a bank?	A freeze on accounts should only be capable of being placed by a regulator where there exists robust evidence of fraud and/or misfeasance.
387	Should the issuing of an account freezing notice require an application to the Courts? For how long should a freezing notice have effect?	An application to the Court must be made where a regulator is seeking to freeze accounts as it is a significant event affecting numerous parties. A freezing notice should be in place for as long as the Court determines is appropriate based on the evidence before it. Any freezing notice should also be considered in conjunction with an aligned undertaking as to damages.
388	At what level should the penalties that apply to breaches of the funds handling, record keeping, retention of books, and audit provisions in the Corporations Act and the	The penalties should be set to consider the magnitude of a breach and give appropriate scope to the regulators to impose either:

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6 Funds handling and record keeping

Paragraph	Question	Response
	Bankruptcy Act be set to provide a greater deterrent to potential offenders?	1. Small or significant financial penalties; or 2. To deregister or suspend a practitioner.
389	Will increasing the penalties make practitioners more likely to pay greater attention to these requirements?	Increased penalties will increase practitioner vigilance in this area, although regulators will need to continue their monitoring programs.
390	Are there additional civil obligations and criminal offences that should be provided for in respect of these areas?	Significant civil and criminal penalties already exist in these areas.
391	If civil or criminal penalties are applied for the lodgement of inaccurate annual reports, under what circumstances should those penalties apply?	Significant civil and criminal penalties already exist in these areas.
392	Should late lodgement, non-lodgement or false lodgement of accounts be a statutory basis for removal? If so, by what process might removal take place?	If the late, non or false lodgements are an endemic issue with a firm or practitioner, this may be possible grounds for removal from office. The removal should occur on the basis of a regulator's application to Court for replacement.

Ferrier Hodgson position:

Option one: Not supported. Steps should be taken to improve the consistency of funds handling procedures between personal and corporate insolvency.

Option two: Supported. The funds handling regimes and record keeping in corporate and personal insolvency should be more closely aligned. Enhancement should also be made to the form of reports (six monthly receipts and payments account) to improve communication with stakeholders.

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6 Funds handling and record keeping

Option three: Supported. Increased penalties for non-compliance are appropriate, particularly in respect of enhancing the regulators' ability to quickly suspend or de-register a practitioner by application to the Court where robust evidence of fraud or misfeasance is available. Although penalties may be increased, the regulators must continue proactive monitoring of practitioners in concert with relevant professional associations i.e. ICAA and IPAA.

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7 Insurance requirements for insolvency practitioners

Option one: increasing severity of penalties for breach

Option two: required notification of lapsed insurance policies

Option three: establishment of a fidelity fund

Option four: mandated periodic checking of insurance cover

Paragraph	Question	Response
424	Is there a benefit for insolvency practitioners, creditors or other stakeholders in aligning the insurance requirements for liquidators and registered trustees?	As far as practical, the insurance guidelines for corporate and personal insolvency practitioners should be aligned. This will enhance stakeholder capacity to understand the types of cover in place and resulting protection of their interests.
425	If the criminal penalty for not complying with insurance requirements is increased, at what level should the penalty be set to provide a sufficient deterrence against breach?	A more constructive approach may be to impose a registration suspension regime, whereby practitioners have a short, say 30 day period, to remedy a breach of insurance requirements. During the remedy period practitioners would be unable to accept new appointments.
426	Should a fidelity fund be established? If so, how should such a fund be operated and funded?	The options paper correctly points to there being a relatively low number of industry participants, (in comparison to other professions, such as accounting generally), which is likely to lead to an excessive financial imposition if a fidelity fund is established. The establishment of a fidelity fund would be inefficient and

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7 Insurance requirements for insolvency practitioners

Paragraph	Question	Response
		costly, in comparison to insurance products which are available. A fidelity fund should not be established.
427	What other reforms might be put in place regarding insurance requirements?	Clarification of RG194 may be helpful. Run off cover could be a mandated requirement of any policy.

Ferrier Hodgson position:

Option one: Not supported. Alternative incentives to encourage compliance with insurance can be developed.

Option two: Supported. Noting that this may only be of assistance to ASIC where firms/practitioners acquire their insurance cover in the domestic market. Larger firms are likely to be acquiring cover in global markets (i.e. London).

Option three: Not supported. Insurance products are readily available and meet stakeholder requirements more efficiently from both an administrative and cost perspective.

Option four: Supported. Either as a mandated periodic check, or as a requirement of registration renewal, if the registration of liquidators is for a defined period.

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8 Discipline and deregistration of insolvency practitioners

Option one: enhanced status quo

Option two: alignment of disciplinary frameworks for practitioners

Option three: enhance the powers of the Court

Paragraph	Question	Response
507	Are there any reforms that should be made to either the Committee's or the CALDB's systems of disciplining practitioners to improve their operation?	The CALDB process is currently viewed as inefficient. The operation of CALDB in respect of allegations against liquidators should be enhanced with stricter timeframes imposed whilst preserving natural justice i.e. ability to respond and confidentiality.
508	Do you think that aligning the disciplinary frameworks will provide for more consistent and improved outcomes for practitioners and other stakeholders between personal and corporate insolvency?	Alignment of the frameworks will enhance stakeholder understanding.
509	If a Committee structure is adopted for registered liquidators:	
	Should there be any amendments to the framework that underpins the current personal insolvency committee system?	No, recent Ferrier Hodgson experience of the committee process is that this works well.
	Should the statutory framework for the committee system currently in the Bankruptcy Act be replicated in the Corporations legislation?	The CALDB regime should be maintained.
	Should ASIC be statutorily required to provide a show-cause notice to the practitioner before establishing a	However, if a committee based disciplinary system is introduced for corporate insolvency, ASIC should be

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8 Discipline and deregistration of insolvency practitioners

Paragraph	Question	Response
	committee?	required to provide a show cause notice to the practitioner before convening a committee.
	Should the committee consist of a member of ASIC, a member of the IPA, and an appointee of the Minister?	The suggested composition of the committee is appropriate. However bias or perceived conflicts in respect of an IPAA member need to be considered.
	Should there be a time limit for decisions by the committee? Should it be aligned with the current time limit for bankruptcy?	There should be decision time limits for any committee convened and these should align with bankruptcy time limits (although this may drive more complex applications directly to Court).
510	If a Committee structure is not adopted for registered liquidators, what specific reform options should be adopted under either the CALDB or Committee regimes? In particular:	
	Should a statutory timeframe be introduced for decisions by the CALDB?	A statutory timeframe for decisions should be imposed on CALDB.
	Are there any powers that the CALDB currently has that should equally be conferred upon a Committee under the Bankruptcy Act or vice versa?	
	What, if any, other reforms should be made in respect of the transparency of Board and Committee hearings and decisions?	

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8 Discipline and deregistration of insolvency practitioners

Paragraph	Question	Response
	Should a committee constituted under the Bankruptcy Act be empowered to summon a third party to appear at a hearing to give evidence and be cross examined?	A committee constituted under the Bankruptcy Act should be empowered to summon a third party to give evidence and by cross examination, however doing so may invoke a natural move into a stricter legal regime with cost consequences.
	Should mechanisms be put in place to impose sanctions on practitioners or witnesses who fail to attend or provide books to a Committee or Board?	Yes, with provision for reasonable excuse and an acknowledgement that in so doing a stricter legal regime may be a natural consequence
	Should the Bankruptcy Act be amended to provide ITSA with the express power to seek to deregister a registered trustee where the trustee is no longer „*fit and proper*"?	Yes, as regulator powers ought to be consistent between corporate and personal insolvency.
511	If the regulatory frameworks are amended to expand the powers of ASIC and ITSA to discipline insolvency practitioners directly, what minor breaches should those powers extend to?	ASIC/ITSA already have powers in respect of directly penalising practitioners in respect of minor breaches, particularly around practitioner failure to prepare and lodge reports.
512	Would the suggested amendments to enhance the powers of the Court breach considerations of natural justice?	It is likely that considerations of natural justice would not be affected if due processes are followed.
513	Should the nature of the role of registered liquidators and registered trustees as officers of the Court, as well as their inherent fiduciary duties, mean that it is reasonable to empower the Court to direct them to stand aside where there are serious allegations that have yet to be resolved?	Only Official Liquidators are officers of the Court. Registered Liquidators and Registered Trustees are not. The Court ought to be able to request its officers to stand aside, where robust evidence of a serious allegation of misconduct, fraud or misfeasance exists. However the position of the Court relative to Registered Liquidator and

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8 Discipline and deregistration of insolvency practitioners

Paragraph	Question	Response
		Registered Trustees would need to be addressed.

Ferrier Hodgson position:

Option one: Supported, placing timeframes on the periods in which CALDB and committee actions and decisions should be made will improve the timeliness of disciplinary action against practitioners in respect of unprofessional conduct, fraud and misfeasance. This will enhance stakeholder perceptions and confidence in the industry and its regulators.

Option two: Supported, if alignment moves the personal regime toward the prevailing corporate disciplinary regime.

Option three: Supported, although the Court already has broad powers.

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9 Removal and replacement of insolvency practitioners

Option one: enhanced status quo

Option two: alignment

Paragraph	Question	Response
568	Should an initial creditors' meeting in a compulsory winding up at which creditors would have the right to replace or appoint a new liquidator be mandated?	Official Liquidators are required to take appointments in compulsory liquidations whether or not assets are available to cover their costs. However this has been tempered significantly by the relatively recent pre application consent regime. Typically fees charged in compulsory liquidations reflect the same competitive rates struck by firms for other formal appointments (administrations and receiverships). Accordingly, it would appear that creating an environment where the liquidator in a compulsory liquidation may be replaced at the first meeting may create a disadvantage for smaller or independent practitioners that take non fee paying engagements. This may ultimately lead to less competition and higher fee rates.
569	If an initial creditors' meeting were mandated for court-ordered windings up: Should there be an exception for assetless administrations?	 Yes. As is presently the case liquidators ought not to be required to incur costs that cannot be recovered. To do so may lead ultimately to a lack of consents being filed and the Courts and regulator needing to contend with that consequence.

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9 Removal and replacement of insolvency practitioners

Paragraph	Question	Response
	Should approval of the appointed registered liquidator be able to be obtained through a mail out? If confirmation/replacement of registered liquidations occurred by postal vote in court ordered liquidations, should this mechanism also replace the opportunity to replace a practitioner provided via initial meetings in other kinds of corporate insolvency?	Is it necessary for creditors to be asked to second guess the judgement of the Court in appointing an appropriately qualified liquidator? Probably not, otherwise what is the benefit of the judicial system in insolvency law?
570	Should creditors in corporate insolvencies be generally empowered to remove a registered liquidator by resolution in the same way as under personal insolvency law? What effect, if any, would the potential for removal be expected to have on remuneration arrangements?	Creditors have the power to seek review or replacement through the Courts, they should not be empowered to directly remove an Official or Registered Liquidator by resolution. The Courts will only replace a liquidator where it can be demonstrated that the alternative appointee will do a materially better job in managing the assignment. There is real risk that giving creditors the power to remove/replace a liquidator will undermine a liquidator's commercial independence and ability to investigate transactions and recover monies from related parties, significant creditors or pools of creditors with a vested interest in protecting their position in respect of insolvent trading and insolvent transactions which may be voidable. Fee scales and arrangements are unlikely to change. The industry rates are competitive in comparison to comparably specialised professionals. There is a real risk that the liquidator's investigation and recovery efforts will be compromised with cost consequences to creditors generally, if the amendment is pursued.

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9 Removal and replacement of insolvency practitioners

Paragraph	Question	Response
	Does the current scheme for the removal of a registered trustee provided sufficient and clear protections against abuses of process?	Yes, the committee will only consider the cancellation of registration in circumstances where there has been a serious breach, or failure to correct continuing systemic issues.
571	If creditors are empowered to remove a liquidator in a creditors' voluntary winding up (subsequent to the first meeting), should members have any corresponding right in a members' voluntary winding up?	Yes, although the benefit of such in a solvent engagement where the liquidator does not need to be a registered liquidator is not apparent.
572	Is there a need to facilitate the transfer of the books of the administration from an outgoing insolvency practitioner to his or her replacement? What barriers, if any, are there to the implementation of such a reform?	A system and clear directions on how the transfer of the practitioner's books and records for a matter from one liquidator/trustee to another practitioner whether replaced by the creditors or the Courts would be considered a marked improvement on current arrangements. The outgoing practitioner should be able to retain a lien on his /her records until outstanding costs are paid in a manner similar to that which applies to legal practitioners.
573	Are any other amendments necessary to assist creditors to use any new power to remove a registered liquidator? What other administrative arrangements would be required to ensure a smooth transition from one registered liquidator to another?	The regulators should develop a creditor awareness paper/guidelines to assist creditors to understand their rights following any legislative amendments. These guidelines ought to include considerations for stakeholders in selecting an appropriate practitioner in the first instance and for that of a replacement. Importantly this guideline would also need to address the consequential cost impact any change may invoke. There may be a role for ASIC / ITSA in assisting in transfers. Perhaps a regulator's right to review or at the

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9 Removal and replacement of insolvency practitioners

Paragraph	Question	Response
		least be informed in relation to the handover of documents and other materials.

Ferrier Hodgson position:

Option one: Not Supported.

Option two: Not supported.

These options are not supported as the existing Court process is sufficient for a properly resourced and pro-active regulator, acting on valid complaints about practitioner misconduct to seek the removal of a liquidator. Further, there is substantial risk that the canvassed amendments could lead to liquidators performing „*light*" investigations in order to retain engagements. Liquidator independence may be significantly compromised. Mandating creditors' meetings in compulsory liquidations may lead to the emergence of a „*meetings*" industry whereby certain practitioners/firms will specialise in accumulating proxies to support their appointment as liquidators in matters that have assets and will pay fees. These firms are unlikely to take on a reasonable share of „*assetless*" matters, which will ultimately reduce competition as practitioners will exit the industry. Mandating change has an obvious cost consequence which will need to be considered and communicated.

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10 Regulator powers

Option one: increase regulators powers in an aligned manner

Option two: ombudsman

Paragraph	Question	Response
624	Are there unjustified divergences between the powers and roles of the insolvency regulators?	There are unjustified divergences between the powers and roles of ASIC and ITSA. Historically, ITSA's surveillance programs have been more regulated than ASIC's, this divergence may have arisen due to ASIC's mandate in corporate law being considerably broader. Consistency in the regulators' approaches to surveillance and responses arising from issues identified would improve the perception of the regulators and the industry.
625	Should a creditor in a corporate insolvency have any right to request that ASIC undertake a review of specified kinds of decision by a liquidator?	Creditors have the capacity to challenge decisions in a corporate insolvency in Court and whilst this may not be the most cost efficient process, it is unclear how ASIC could be resourced either technically or commercially to review matters raised by creditors. It would seem that the likely outcome of giving ASIC a right to review commercial decisions would lead to more legal proceedings between ASIC and practitioners. This would not be appropriate in an efficient industry and would inevitably hinder the effective, timely and cost efficient conduct of an administration.
626	If ASIC was to be empowered, what types of decisions should ASIC be able to review?	ASIC should not be empowered to review practitioners' commercial decisions.

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10 Regulator powers

Paragraph	Question	Response
627	The expansion of ASIC's current functions to include such a review power would have some cost. Given the Government's cost recovery policy how should any expansion of powers be funded?	A levy could be imposed on corporate insolvencies although such a levy might only apply to compulsory liquidations. Fundraising from this source may not raise sufficient revenue due to the typically low recoveries in compulsory liquidations, and would unduly penalise creditors of these entities. As an alternative, broadening the recovery base to all insolvent liquidations may assist; the only equitable method to deal with increased ASIC funding needs is from consolidated revenue, otherwise a narrow pool of creditors who are likely to have already suffered some loss will suffer further losses.
628	Should ASIC and ITSA be given more flexibility to communicate to a complainant (or creditors generally) information obtained by it in relation to the conduct of an external administration?	Yes, subject to ASIC/ITSA not releasing commercially sensitive information on the conduct of an insolvency matter and/or information which may have a material impact on the professional reputation of the practitioner/firm where the complaint is not proven. A large part of creditor frustration relates to complainants not being aware of whether or not a regulator has taken any action in respect of the issues that have been reported. A simple response system might be devised, indicating: ■ Further action/no further action ■ Practitioner contacted/not contacted ■ Timeframe for ASIC actually instigating investigation and contact action: □ 1 month

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10 Regulator powers

Paragraph	Question	Response
		□ 3 month □ 6 month This report might encompass the overall level of complaints received and statistical reporting on the overall level of regulator activity in resolving complaints.
629	Should regulators be able to require a practitioner to sit an examination to test ongoing compliance with the knowledge or skills requirements for registration? Should such a power be extended to enabling regulators to require persons acting under delegation from practitioners to sit an examination?	Ongoing examination of practitioners to test ongoing compliance with knowledge or skill requirements for registration should not be mandated. A strengthened file inspection regime on the part of regulators and active follow up of complaints should identify major technical and skill concerns. The majority of registered practitioners are members of a recognised accounting body and are required to comply with: ■ APES 110 Code of Ethics for Professional Accountants ■ APES 320 Quality Control for Firms ■ APES 330 Insolvency Services Section 130 of APES 110 states: ***Professional Competence and Due Care*** *130.1 The principle of professional competence and due care imposes the following obligations on all Members:* *(a) To maintain professional knowledge and skill at*

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10 Regulator powers

Paragraph	Question	Response
		the level required to ensure that clients or employers receive competent Professional Service; and *(b) To act diligently in accordance with applicable technical and professional standards when providing Professional Services.* *130.2 Competent Professional Service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:* *(a) Attainment of professional competence; and* *(b) Maintenance of professional competence.* *130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a Member to develop and maintain the capabilities to perform competently within the professional environment.* *130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.* *130.5 A Member shall take reasonable steps to ensure that those working under the Member„s authority in a professional capacity have appropriate training and*

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10 Regulator powers

Paragraph	Question	Response
		supervision. *130.6 Where appropriate, a Member shall make clients, employers or other users of the Member„s Professional Services aware of the limitations inherent in the services.* If practitioners are complying with their ethical requirements it is unclear what additional value further written examinations will add to the process.
630	What powers might be appropriate to provide to regulators to facilitate (if necessary) the rights of creditors to call meetings and to ensure such meetings are held in a transparent manner — in particular in relation to the assessment of votes for and against the retention of the current insolvency practitioner?	The Corporations Act sets out the circumstances under which a liquidator must convene a meeting of creditors, for example the section 508 requirement to call annual meetings. ASIC has power under section 536 and section 540 to apply to Court and it appears the Court may make orders under these Sections in relation to calling meetings. The existing rules regarding minuting meetings and conducting polls appear to be operating effectively and do not require any amendment.
631	Does section 536 of the Corporations Act, as currently applied by the Court, provide for the appropriate supervision of registered liquidators by ASIC?	Section 536 appears to be adequate and offers ASIC broad powers; the development of a regulatory guideline on how ASIC may use section 536 would potentially be beneficial to ASIC and practitioners.
632	Should ASIC be able to share information with the IPAA for disciplinary purposes?	ASIC should be empowered to provide information on a member to the IPAA or any other professional body (accounting, legal or otherwise) of which the practitioner is a member assuming that privacy issues are adequately

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10 Regulator powers

Paragraph	Question	Response
		addressed.
633	Should ITSA and ASIC be empowered to impose conditions across the market? If so, what types of conditions should the regulator be empowered to impose?	This question is without context. ASIC and ITSA should not be empowered to impose market conditions; this is a parliamentary role.
634	If a new Ombudsman or external dispute resolution scheme were established:	
	Should the new body be a statutory body (for example, the Superannuation Complaints Tribunal) or a private body (for example, the Financial Ombudsman Service)?	The new body should be a private body.
	Should any new body have the ability to hear disputes in both corporate and personal insolvency?	
	Should the new entity be independent of the two regulators?	Any new body should be able to hear complaints in both corporate and personal insolvency.
	If the body is a statutory entity, what functions of ITSA or ASIC should be given to the new body?	Any new body should be independent of both ASIC and ITSA.
	Should the body have power to obtain information or to inspect the records of an organisation relevant to the complaint?	A statutory body ought to be able to hear complaints and make recommendations.
	If the new body is privately run, what protections would need to be put in place to achieve this?	A statutory body must not have information gathering powers without appropriate judicial authority being granted.

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10 Regulator powers

Paragraph	Question	Response
	How should the new body be funded?	The body should have power to obtain and inspect information. Guidelines similar to other such roles would need to be discussed/canvassed for implementation.
	Should there be any charge to the complainant to investigate a complaint or should it be funded through an industry levy?	Funding may be provided through either: ■ An insurance levy ■ A realisations charge (this would be a direct impost to affected creditors) ■ Government funding from consolidated revenue
	Should the body have an explicit educative role?	Complainants should not have to pay for lodging a complaint. Consolidated revenue should address the complaint/investigation process.
	Should the body have the right to deal with systemic issues or commence its own investigation?	The body should not have an explicit role in educating stakeholders. ASIC/ITSA and the various professional bodies adequately address this requirement.
	If the body is a private entity, what powers should it be given to achieve those objectives?	Matters of a systemic nature requiring detailed intervention should be referred to ASIC/ITSA for follow up.
	What types of disputes should the body be able to hear and deal with?	Any matter where mediation may assist with the outcome.

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10 Regulator powers

Paragraph	Question	Response
	Should the body be able to review remuneration?	The body should be able to review remuneration, but it should not be able to adjudicate on whether remuneration should or should not be approved. This must remain a question for creditors and/or the Courts.
	Should this be done through independent cost assessors?	Independent cost review ‗taxation of costs‘ works well in the legal profession and may work in formal insolvency matters. However the basis for the assessment regime in the law is an established fixed cost regime for generally accepted legal processes. For this to apply to an insolvency regime would require not only the establishment of an acceptable fixed cost/set task regime, but also an understanding of the operating/commercial framework within which a certain action, process was followed and outcome achieved. These issues cannot be assessed on any mutually exclusive basis.

Ferrier Hodgson position:

Option one: Support improved alignment of regulator powers

Option two: Support, in principal, an independent ombudsman‘s office being established, to deal with complaints against liquidators and registered trustees. However, more clarity and discussion on the mandate is required. There should be no overlap with the role of the Courts.

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11 Specific issues for small business

Option one: clarify regulatory obligations of ASIC and ITSA

Option two: expand the scope of the AA Fund

Option three: amend Corporations Act to address phoenix activity

Paragraph	Question	Response
674	Are any statutory reforms required to assist regulators to provide improved regulation in relation to interconnected personal and corporate insolvencies? Are improvements needed in relation to their capacity to share information and cooperate?	Improvements to the capacity of ASIC and ITSA to share information need to be made.
675	If the scope of the AA Fund is broadened to allow for the funding of registered trustees to investigate and report on corporate law breaches, which Corporations Act breaches in particular should be provided for?	It is unclear why a Trustee would be investigating Corporations Act matters. Trustees should as a matter of course be informing ASIC of simple breaches of the Corporation Act i.e. a bankrupt managing a corporation.
676	Should the scope of the AA Fund be broadened to allow for loans to registered liquidators to properly carry out their fiduciary and statutory duties?	Possibly, but other private alternatives appear to exist in the form of litigation funders these however are generally costly sources of funding. The private sector offer ensures that uneconomic or unviable investigations are not pursued. If non-recourse loans were available through the AA fund the number of uneconomic/unviable claims pursued may increase sharply. It is difficult to see how an effective review/approval process could be established or maintained. Care should be taken that any such fund is not used as a remuneration substitute.

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11 Specific issues for small business

Paragraph	Question	Response
677	Should section 305 of the Bankruptcy Act also be expanded to provide for the funding of investigations into corporate law breaches?	This would be a more desirable amendment than allowing Trustees to access the AA Fund administrated by ASIC
678	What steps might be taken to improve efficiency in relation to related personal and corporate insolvencies while appropriately addressing conflicts of interest?	A practitioner should not be accepting roles in the insolvency of both a corporation and its management or owners. The roles should be undertaken by different firms. Maintaining independence is critical to improving perception of the industry with the broader public.
679	What other amendments can be made to assist creditors and directors of small corporates to better engage with the corporate insolvency system?	Improvements in director education with a focus on their roles and responsibilities in managing a corporation.
680	Is there a case for automatic disqualification of directors after a company failure? If so, how many repeated failures should trigger disqualification? Should there be a threshold for failures to trigger disqualification (for example, where less than 50 cents in a dollar are returned to creditors)? Over what period must the failures occur?	The current requirement for „*cause to be shown*" appears to work reasonably efficiently. An automatic disqualification system should not be introduced. Not all corporate ―failures" can be attributed to the directors' actions or lack of actions.
681	Should a registered liquidator be able to assign actions which vest personally in the liquidator? If so, should a registered trustee be likewise able to assign rights of action?	This may be an area for future reform; however, it should not be on the current agenda.
682	Should ASIC be able to automatically disqualify a director of an insolvent company who has not taken reasonable steps to ensure that the company has maintained its financial records?	A ban for failing to produce records might be sensibly considered where the directors fail to assist liquidators, administrators and controllers in respect of any formal appointment.

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11 Specific issues for small business

Ferrier Hodgson position:

Option one: Supported, to the extent that information flows between ASIC and ITSA are improved.

Option two: Not supported. The funding void is presently filled by private funders ensuring only economically and legally viable matters are pursued in corporate insolvencies. Expanding the scope of the AA Fund to provide loans (presumably non-recourse) will result in a sharp increase in the pursuit of uneconomic investigations and recovery actions.

Option three: Steps to reduce the level of phoenix activity are supported, noting that a Deed of Company Arrangement (―DOCA") might be considered a form of phoenix activity; how will ASIC determine whether a DOCA is proper in its purpose or merely a phoenix arrangement?

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12 2010 Corporate insolvency reform package

Paragraph	Question	Response
712	In accordance with the principle of alignment set out earlier in this paper, should any of the earlier announcements be reviewed and or modified to more closely align with personal insolvency law?	Earlier announcements should be reviewed. Determination of whether there should be alignment would depend on the outcome of the review.
713	Alternatively, is it appropriate that the personal insolvency framework be amended to align with the changes discussed above (where necessary, through introducing affected corporate insolvency mechanisms not currently present in personal insolvency law)?	Possibly, however legislators must remain cognisant that personal insolvency matters largely arise from an individual not being able to meet personal debts. These situations are often less complex than business related insolvencies and consequently replicating many of the mechanisms which have evolved in the corporate insolvency regime may not be beneficial in the context of personal insolvency law.

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