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Corporations and Capital Markets Division
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Dear Sir/Madam

PROPOSALS PAPER: A MODERNISATION AND HARMONISATION OF THE REGULATORY FRAMEWORK APPLYING TO INSOLVENCY PRACTITIONERS IN AUSTRALIA ("THE PROPOSALS PAPER")

This submission is made by Grant Thornton Australia Limited ("GTAL") and our comments refer to the same chapters used in the Proposals Paper.

Standards of entry into the insolvency profession

GTAL is supportive of harmonising a set of entry standards and the ongoing requirements for insolvency practitioners, however, it does not agree with removing the current preference for accounting over legal studies, which would expand the range of persons who can become practitioners.

The day to day course of an administration requires accounting, advisory and commercial insolvency skills, whereas legal advice is only required on an ad hoc basis.

GTAL is in favour of the IPA's Insolvency Education Program ("IEP") to be required as a minimum standard of insolvency specific education and the alignment of experience requirements to three years for both personal and corporate insolvency, balancing the reduction in corporate insolvency with industry wide conditions and closer supervision for two years following registration.

GTAL also recognises that the skills involved in undertaking insolvency appointments vary dependent upon the form of appointments. The greater the degree of complexity an appointment demands, the greater skills, resources and experience the practitioner needs to perform to.

A distinction can often be made (but not always) on the basis of size of the subject company.

In the alternative, a distinction between terminal (liquidations) and non-terminal (receiverships and voluntary administrations) could be introduced and practitioners authorised accordingly, as a chartered accountant.

Finally, the ‘grandfathering’ provisions at paragraph 29 exclude the insolvency education requirement as a condition. As it was possible to obtain a chartered accounting qualification without a degree qualification until the mid 1990’s, there are experienced insolvency practitioners who will not meet the three year tertiary education requirements. As a chartered accountant qualification (or similar) is superior to a first degree, the exemption should be widened.

Registration of insolvency practitioners

GTAL supports enhancements to the registration process for corporate insolvency based on the current personal insolvency structure, by having a committee determine whether a person should be registered, and renewal of registration every three years.

Remuneration framework for insolvency practitioners

GTAL supports amending the Corporations Act to reflect the IPA’s guidelines for preventing a registered liquidator exercising their casting vote in favour of their remuneration. Also to prevent disbursements containing a profit or benefit for the practitioner.

Whilst acknowledging the potential benefit of a cost assessment process, GTAL is concerned about the cost and delay of such a process. Where a cost assessment is required, the practitioners should be allowed to draw 50% of the fees to be assessed immediately. Any additional fee or refund to be made once the assessment is complete.

GTAL also supports the amendment to the Bankruptcy Act to allow the regulator to initiate review of the trustee’s remuneration without a referral.

Communication and monitoring

The alignment of communication and the operations of COI between corporate and personal insolvency is supported to some extent.

Amendments allowing creditors to pass resolutions which practitioners must have due regard to may undermine a practitioner where, for example, where for example, members of the committee are related parties of the directors.

GTAL welcomes the amendment to the annual estate return timeframe and frequency.

Funds handling and record keeping

GTAL opposes the changes proposed for funds handling, record keeping, audit and reviews as regards combining accounts for receipts below a certain sum. Such a provision puts creditors at risk and practitioners, inadvertently or on purpose, may incorrectly ‘cross-subsidise’ funds between estates.

Insurance requirements for insolvency practitioners

GTAL supports the alignment of insurance requirements and annual reporting requirements across personal and corporate insolvency, however the increased penalty of \$110,000 for a breach of this duty is excessive and perhaps, there could be alternate incentives to encourage compliance, for example refusing to renew registration.

Discipline and deregistration of insolvency practitioners

The alignment and strengthening of the disciplinary and deregistration process is welcomed, which would allow more timely and appropriate disciplinary action being taken. This will enhance stakeholders' perception and confidence in the industry and its regulators.

Removal and replacement of insolvency practitioners

GTAL supports the ability for creditors (and members in members' voluntary winding up) to remove practitioners by a resolution passed by majority in value and number and that the same rules should apply to removal of a registered trustee, which is currently upon passing of a resolution by a majority in value only.

Consideration needs to be given on how an outgoing practitioner's outstanding remuneration is considered, should they be replaced.

Further, as liquidations proceed, creditor interest naturally reduces. As such, for smaller liquidations, commonly only related parties continue to attend meetings and may decide to remove a liquidator who was, for example, intending to prosecute them for insolvent trading or similar. Equally, related parties may use their voting powers to keep in a liquidator unsecured creditors wish to remove.

Accordingly, GTAL recommend that related party votes are excluded from such motions.

Regulator powers

GTAL supports the proposal of sharing of information between regulators and to other bodies, such as the IPA, Law Societies, prescribed disciplinary bodies and to the Department of Education, Employment and Workplace Relations.

The strengthening of the regulators powers will provide further confidence to stakeholders and ensure proper maintenance of records for any potential reviews on practitioners by regulators.

Specific issues for small businesses

The additional funding to assist in deterring phoenix behaviour is welcomed. Along with as the harsher penalties on directors to provide a RATA and deliver up the company's books and records.

2010 corporate insolvency reforms

GTAL do not have any issues with the revisions to the 2010 reforms and is supportive of the changes made.

We thank you for the opportunity to present these views. Any queries in relation to this submission should be directed to either Paul Billingham or Melanie McCarthy.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED



Paul Billingham
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