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The Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
Parkes ACT 2600

Dear Sir

I wish to offer three comments in response to "Options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia" (June 2011).

The comments are confined to insolvency of corporations. They are not intended to reflect any view on the question of harmonisation of the treatment of corporate insolvency and personal insolvency.

First, if it is thought that, for some reason, the clear fiduciary responsibilities of a liquidator are not sufficient to preclude the exercise of that person's casting vote on a proposed resolution fixing the person's remuneration, there should be an explicit statutory prohibition.

Second, the possibility of creating a power of creditors to give a binding direction, by resolution, that a liquidator do or not do a particular thing or follow or not follow a particular course must be approached with extreme care. This could impose an unwieldy fetter that significantly compromises the essential ability of the liquidator to prioritise tasks and to decide how scarce resources will most advantageously be deployed. There really should be no interference in the liquidator's day-to-day administration of the estate.

While a company is a going concern, its members cannot dictate how the directors are to act. It is by no means clear why a power of direction should be put into the hands of the general body of creditors when it is a liquidator who is in control.

Third, however, there is clear merit in the idea that it should be easier for creditors to secure a liquidator's removal from office. Removal by the court for cause represents a high and cumbersome barrier.

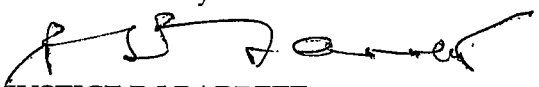
It might be provided that if creditors determine by resolution that the liquidator's tenure should end, then, unless the court otherwise orders on an application made by the liquidator or any aggrieved person within the following 30 days, the liquidator will cease to be liquidator at the expiration of 30 days or, if an application is so made and is dismissed, upon the dismissal. Some majority greater than a bare majority might be appropriate for such a resolution.

Under the existing s 479(2), 10% of creditors by value could require the convening of a meeting for this purpose if the liquidator were not willing to convene without a request. This is probably a sufficient safeguard against the possibility of frivolous or vexatious activity.

A removal regime of this kind would make necessary a mechanism for appointing a replacement liquidator. This could be dealt with by a provision that, if the meeting passing the removal resolution approved the appointment of a replacement, then the approved replacement would fill the office upon its becoming vacant and, in default, ASIC or the court could appoint. It should be the duty of an outgoing liquidator to set matters in train with ASIC or the court if the meeting does not appoint a replacement.

While these comments refer to a liquidator, they are intended to apply also, in general terms, to an administrator under a voluntary administration and an administrator of a deed of company arrangement.

Yours faithfully



JUSTICE R I BARRETT