

12 October 2020

Manager  
Market Conduct Division  
Treasury

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Dear Treasurer

## **Submission: Insolvency reforms to support small business**

### **Introduction of Abigail Curtis**

Abigail has had an international executive career with global services firms Kroll, KordaMentha, Deloitte and Ernst & Young: growing professional services practices; restructuring and recapitalising sovereign debt, listed companies and financial institutions; managing insolvency appointments; identifying fraud and corrupt practices; and managing regulatory investigations and litigations.

Some of her most notable restructuring jobs include:

- Restructuring BFI Finance Indonesia from a market cap of USD29m to USD400m.
- Assisting in the reconciliation process with Ministers of Finance of countries owed more than USD40 billion in debt drafted the fraud risk memorandum on the reconciliation of the External Debt of the Government of Iraq.
- Special Advisor, appointed by the Financial Regulatory Authority of Thailand, to oversee the management and assess the viability of Siam City Syndicate Securities and Finance Public Company Ltd worth USD500 million and suspended from trading under the direction of the IMF at the beginning of the Asian Economic Crisis
- Being the Project Administrator of the London Club debt worth USD25 billion for the Former Soviet Union Foreign Bank – appointed by the IMF.
- Preparing the recapitalisation and restructuring reports for several Vietnamese garment manufacturers- World Bank project.
- Recapitalising plans prepared for several Indonesian banks and Thai financial institutions.

After returning to Australia and being CEO of a disruptive tech platform, she commenced her board career and has been a NED and ARC Chair of four ASX listed companies whilst also assisting businesses to restructure. Abigail is a Chartered Accountant with almost 30 years' experience working in Australia, Asia, Russia and Jordan.

A copy of my CV is enclosed.

## **The issue**

The development of small business restructuring plans (SBRPs) should not be restricted to only insolvency practitioners (IPs). IPs are skilled at winding down businesses and realising assets to bring all company affairs to an end; primarily for the benefit of creditors. Their skillset is highly relevant to terminal businesses and does not focus on the broader stakeholders, preserving value or growing business.

The underlying policy behind the new insolvency reforms is two-fold. It introduces a streamlined liquidation regime for companies that need it; but most pertinently, it introduces a much-needed opportunity for businesses to attempt to revive through a re-structuring plan. It is the latter that is the subject of this submission.

The Government's focus here is clearly on giving suitable businesses the opportunity to survive and continue.

The COVID crisis has been like no other economic crisis. Its impacts have been acute and severe; meaning even well-run businesses that deserve to survive, simply cannot.

I applaud the Treasurer for:

- providing for a legislative process that allows appropriate breathing room to consult an appropriate professional;
- allowing an essential opportunity for companies to restructure and re-emerge as vital contributors to our economy; and
- for giving business owners back their voice in the process.

I ask the Treasurer to ensure that RPs for SBRPs have sufficient skills to look beyond a wind down, and to focus on the myriad of factors and levers that are essential to a SBRP that has a key objective of turn-around.

## **The Solution**

The solution is to allow skilled restructuring experts to qualify to register as RPs for SBRPs, and to extend ASIC's oversight to beyond just Insolvency Practitioners (IPs) to this broader category. RPs would have equivalent or similar qualifications but should have restructuring experience as opposed to "experience in winding up bodies corporate" over the last 10 years.

Please see the <https://asic.gov.au/media/3915155/fee-indexation-2016-info-34-liquidator-registration-kit.pdf> for reference.

As noted above, this is a stark contrast to the pure liquidator skill set which is necessary when they fail; but not imperative in the planning and execution phase of a SBRP and is a completely different skill set and experience. It's like asking a funeral director to preform lifesaving surgery.

All restructuring practitioners must comply with the Corporations Act (whether registered or not) and hence be under the purview of ASIC. But by restricting RPs for SBRPs to Registered Liquidators only makes the objectives of the SBRP legislation difficult to attain, to:

- better serve Australian small businesses, their creditors and their employees;
- introduce new processes suitable for small businesses, reducing complexity, time and costs for small businesses;

- enable more Australian small businesses to quickly restructure and return to profitability, to tax paying corporate citizens and employers.

I respectfully implore the Treasurer to ensure that those with the most compatible experience, skills and expertise are permitted to become registered as RPs for SBRPs as well; and that the role is not limited to those that do not possess the main skills and experience necessary to successfully restructure a company. There is also a potential conflict of interest, in that they may be motivated to see SBRPs fail and for the underlying company to be liquidated as this is where their bulk of fees may be generated.

It is tempting, particularly where law reform is happening (necessarily) under such a pressured time frame, to look for what appears to be the obvious answer. It is understandable that liquidators do not wish to lose their market share or have the COVID golden goose eroded. This is however, one of those cases where the easy answer is not the right answer and will not produce the policy outcomes that are so important to getting the powerhouse of the Australian economy back on its feet. These are our SMEs.

We must not promise the possibility of life saving surgery, and then send in the undertaker.

To date, companies that could have been restructured in this country have been referred to IPs only to be liquidated or sold (allegations of nepotism and cronyism abound) with the vast majority of cases only paying dividends to the IPs and their lawyers. The SBRP has been proposed as an alternative to this. By making IPs the RPs for SBRPs, it only propagates it further.

Historically reciprocity (rather than competitive forces offering clients the best possible solution) has fed the insolvency industry. Even if RPs are restricted from taking a formal liquidation appointment of a company for which it did the SBRP, reciprocal deals will undoubtedly be done to ensure the work stays within their networks.

If only IPs are permitted to execute and manage SBRPs, SBRPs will become another route to liquidation with yet another layer of cost and inefficiency. SBRPs that fail will deliver yet another appointment (whether it be liquidation or voluntary administration is yet to be determined) for the IP or their referral network.

If RPs do not have the necessary expertise and skills to consider all the options and draft suitable SBRPs (to be finessed with creditors), SBRPs will fail. Successful SBRPs must consider the interests of all stakeholders and will compare all the options against liquidation including, but not limited to: right sizing expenses, merging with competitors/ suppliers or customers, recapitalising, debt for equity deals, deregistering or liquidating related companies within the group, rescheduling debts with suppliers and the ATO, obtaining haircuts from lenders, selling non-core assets, refinancing, or selling businesses at market value or a combination of some or all.

Why would you appoint a Liquidator, expert in ending companies to create and nurture a restructuring plan that is designed to succeed in building companies?

To be a Registered Liquidator you are required to have certain qualifications and must have enough experience "in winding up bodies corporates" over the last ten years. Whilst the qualifications are helpful with regards to knowing insolvency laws, adjudicating on debts and paying dividends, there is very little training provided on the options available to restructure a company or to deal with the common issues that arise let alone experience in actually doing a restructuring and obtaining creditor support. Shouldn't it be that RPs of SBRPs require similar qualifications but should have experience in the craft of restructuring as opposed to liquidating?

## Restructuring Skills Comparison

Skills and expertise required for SBRPs	Insolvency Practitioners Skills	Restructuring Practitioners Skills
Finalise balance sheet and lodge (and where required amend last two years of returns) all ATO returns for company and individuals if relevant and required.		✓ with assistance from tax agents and book- keeper
Determine the liquidation value of the company	✓	✓
Determine the best option for the company: review possibility of trading- out; right sizing expenses; growing revenue through merging with or acquiring competitors/ suppliers or customers; recapitalising with private investment or listing; debt for equity conversions; deregistering or liquidating related companies within the group for the sake of strengthening the main business; rescheduling debts with suppliers and the ATO; obtaining covenant waivers, facility extensions and haircuts from lenders; selling non- core assets; refinancing, or selling businesses at market value or a combination of some or all.	✓ Partially	✓
Executing on the option, including: sourcing investors and financiers with an appetite for the risk profile, size and industry; preparing growth strategies; doing transformations; enhancing efficiencies; preparing capital management plans and negotiating with lenders; identifying acquisition and merger targets and negotiating deals; designing successful restructuring plans and negotiating with creditors; arranging a rescheduling agreeable to creditors; arranging going concern sales of assets	✓ Partially	✓
Drafting the restructuring plan to consider priorities for continuing to trade, secured creditors valuations, personal guarantees and caveats and garnering votes	✓	✓
Circulating meeting documents and chairing the meeting	✓	✓
Collecting the proceeds and distributing them after adjudicating on debts	✓	✓

### Further consultation

I would welcome the opportunity to further consult with the Treasurer's department on this matter, including relevant skills and qualifications, and the development of training courses for true turnaround practitioners.

I am willing to set up a meeting or Microsoft Teams call to talk through the problem and how it can be rectified.

Yours faithfully,

**Abigail Cheadle**  
**Practice Lead**  
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**Encl.** Curriculum Vitae of Abigail Cheadle