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The Treasury
Langton Crescent
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Via email matthew.bowd@treasury.gov.au

Insolvency reforms to support small business - subordinate legislation

Dear Matthew,

CPA Australia's response to the above is set in the context of joint correspondence to you dated 5 November in which the Major Accounting Bodies referenced the proposed establishment of a sub-category or second tier of registered insolvency practitioner – **Small Business Restructuring Practitioner (SBRP).** As such, our comments and suggestions are confined here to the **insolvency Practice Rules (Corporations) Amendment (Corporate Insolvency Reforms) Rules 2020** and the accompany Exposure Draft Explanatory Statement. However, we do remark in passing that the reforms in their entirety are highly complex and thus may fall short in achieving the desired less costly and more accessible small business restructuring process. Further, these complexities render defining the threshold between the professional attributes of a registered liquidator and SBRP far from clear cut.

Therefore, our response focuses on possible strengthening of Rule 20-2 (Qualifications, experience, knowledge and abilities required by applicants to register only as a restructuring practitioner) which would serve both the Government's intentions expressed in the Treasury Fact Sheet *Insolvency reforms to support small business* and safeguard the public interest through greater tightening of the scope of **recognised accountant** (introduced in 20-2(2)(a) and defined in 20-2(3)).

- There is some confusion around defining small business restructuring practitioner in terms of capacities relative to a registered liquidator, to the extent that a particularly narrow reading of both proposed section 456B and the current Rule 20-2(2)(b), could conclude that they are one and the same. The first dot point on page 5 of 15 of the Exposure Draft Explanatory Statement makes clear the intention for a 'second tier' of insolvency practitioner whose practice is limited to that of Part 5.3B administrations. Therefore, we suggest that the bracketed words in the dot point be incorporated with Rule 20-2.

- Rule 20-2(1)(a) cross-references to clause 20-20(4)(a) of the Insolvency Practice Schedule dealing with qualifications, experience, knowledge and abilities. With respect to the significant matters addressed in clause 20-20(4)(b) through (i), relating variously to the taking out of adequate insurance and 'fit and proper' characteristics, we believe these sections should be specifically referenced in the Rules, rather than leaving this to either inference, or indeed separate requirements promulgated by the professional accounting bodies identified in 20-2(3)(a)-(c).

- Rule 20-2, in following on from Rule 20-1, deals specifically with requirements of those seeking registration only as a restructuring practitioner. Again, page 5 of 15 of the Exposure Draft Explanatory Statement provides some clarification, although, in our view it leaves a number of critical aspects uncertain. For example, we refer to section 20-1 in the paragraph which reads “These requirements - - - suitability.” in terms of what is required of a liquidator generally begs the question of the extent to which specific matters dealt with in Rule 20-1 around qualifications and experience are either specifically, or with some variance, intended to be applied to a small business restructuring practitioner applicant. Including the various matters dealt with across 20-1(2) applicable in strict terms to a 20-2 small business restructuring practitioner applicant would seem self-defeating. Allowing these to be matters the registration committee may consider at their discretion lacks the certainty that should be present in such an important area of regulator oversight.

- Regardless of the above uncertainty, criteria similar to that identified in 20-2(b) dealing with academic requirements for registered liquidators will need to be addressed in relation to small business restructuring practitioner applicants. This is critical given both the seminal development of Part 5.3B restructuring and the practitioner being limited to undertaking these engagements.

- Additional to our concern that such matters should, where possible, be articulated in the Rules themselves, there is the practical matter of the speed at which such training of sufficient depth and rigor can be ‘brought to market’. If, again as seems likely, the professional bodies identified as the source of **recognised accountant(s)** will have a significant role to play in such capacity building, it is worth noting that the availability of a suitably equipped cohort of practitioners cannot be expected until well into the new regime’s operation. The cost of developing appropriate and relevant training is not inconsequential, and whilst there may be scope for synergies through collaboration, we suggest that Government consider providing sufficient funding (e.g., for the development of required training) to ensure the broader success of these insolvency law reforms.

If you require further information on the views expressed, please contact Dr John Purcell FCPA, Policy Adviser ESG on 0439 617 108 or at john.purcell@cpaaustralia.com.au.

Yours sincerely,

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