

30 October 2017

Australian Securities and Investments Commission
By email: policy.submissions@asic.gov.au

Dear Sir/Madam,

**ASIC Supervisory Cost Recovery Levy
Cost Recovery Implementation Statement (CRIS)**

de Vries Tayeh appreciates the opportunity to provide feedback on the CRIS released by ASIC on 8 October 2017.

As registered liquidators in Australia, our comments are primarily focussed on the information in the CRIS relevant to registered liquidators.

As is pointed out in the CRIS, there has been significant consultation in relation to the ASIC industry funding proposal. Throughout this process ARITA, our governing body, has raised substantive concerns which remain unaddressed. These concerns principally related to unintended consequences of the cost of the recovery model on what is a small regulated population.

The information now provided in the CRIS has further consolidated our concerns with a significant (approximately 20%) increase in the costs to be recovered from registered liquidators since the consultation period. This means that the average recovery from a registered liquidator has increased from \$12,000 to \$14,350 in just one year. This is a significant increase over what we were told during the consultation process without any substantiation or reasons being provided.

Specific concerns regarding the CRIS

We have the following specific issues in relation to the CRIS:

1. While registered liquidators have experienced a \$1.7 million (20%) increase in their levy, the companies levy (listed, unlisted public, large proprietary and small proprietary companies) has decreased by \$10.6 million (16%). This seems contradictory considering the significant number of offences reported by liquidators in relation to director misconduct and the government focus on illegal phoenix activity, which, when it occurs, is a breach of director's duties. The CRIS provides no commentary on the reasons for these changes.

2. The levy applied to registered liquidators is disproportionate when compared to any other fees levied on individuals under the model. Each registered liquidator bears an average cost of \$14,350 which is well in excess of any other levy on an individual. All other large levies are imposed on businesses. Globally there is no other jurisdiction with regulatory costs this high for our profession.
 3. ASIC's expenditure on IT support, operations support and property and corporate services appears high in light of the size of the department. As regulated populations are unable to directly influence ASIC's overhead expenditure and thus the amount levied (for example, by reducing the need for regulatory oversight), regulated populations would expect that overhead expenditure be maintained at reasonable levels.
 4. The reporting provided in the CRIS provides insufficient information for the regulated population to understand what activities have been included in the budgeted costs to regulate registered liquidators. This makes it difficult for regulated populations to provide accurate feedback during the consultation process. We recommend that ASIC's levy each year is subject to an independent audit and report to stakeholders to verify that the levy charged to each regulated population is appropriate and complies with the statutory requirements.
 5. The ASIC sourced revenue amount does not appear high enough to include an offset for revenue from registered liquidator notices included on the Public Notices Website (PNW).
 6. Will the increase in the levy by 20% (\$1.7 million) mean that there needs to be an update to the estimated cost per notifiable event? This has been currently set at \$110 per event for registered liquidators. A 20% increase would mean this cost may now need to be \$132.
 7. Further given the reduction in insolvency matters and the reduction in available assets recovered by liquidators this fee and the subsequent increase will adversely affect our ability to remain viable especially coupled with the pre-insolvency work being done which remains unregulated. We envisage as matters reduce the fee per matter will disproportionately increase especially in relation to recoverable assets. Where we might have several matters with average recoverable assets of \$10 – 20,000 we will pay the same amount under this process than bigger firms that might have less matters but considerably more recoverable assets. The creditors of a small creditors' voluntary liquidation are bearing the same costs in relation to this recovery as the creditors of say Arrium. Clearly this is not equitable or sustainable. The result is likely that companies with insufficient assets will not be liquidated but rather deregistered.
-

There is a disincentive in the system now to liquidate assetless companies due to the high out of pocket costs which means directors may get away with offences if they leave the company bare. This should not be what happens.

8. We strongly support ARITA's submissions in relation to this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. de Vries Tayeh', written in a cursive style.

de Vries Tayeh
