

## **MEDIA RELEASE**

**24 JUNE 2014**

### **CALDB SUSPENDS THE REGISTRATION OF NSW LIQUIDATOR**

The Companies Auditors and Liquidators Disciplinary Board (“CALDB”) has ordered the suspension for six months of the registration as a liquidator of Mr William James Hamilton who practises in Sydney.

The CALDB made this order on an application to the Board by the Australian Securities and Investments Commission (“ASIC”).

Mr Hamilton was appointed as a joint liquidator of ERB International Pty Ltd in April 2008. It was the usual practice of Mr Hamilton’s firm to accept all insolvency appointments jointly, with one of either of the two partners having the day to day conduct of the insolvency administration. An issue for decision in this matter was the level of involvement and knowledge required of a duly appointed joint liquidator who does not have primary carriage of the matter in order to adequately and properly carry out the duties of the office of liquidator.

In the application, ASIC alleged that Mr Hamilton failed or did not properly carry out a number of the duties of the liquidator’s office. For example Mr Hamilton signed a deed of settlement with ERB and its Directors, as joint liquidator, without adequately and properly assessing certain matters relevant to a decision to enter the Deed on behalf of creditors. Other allegations that were made by ASIC in the proceedings were based on the quality of reports to creditors issued by the liquidators in circumstances where Mr Hamilton had not been involved in the preparation of that documentation, failure by the other joint liquidator to lodge a relevant report with ASIC and to seek necessary approvals from either the court or creditors in connection with actions taken.

Mr Hamilton defended the matter on the basis that where the other joint liquidator had day-to-day conduct and control of the liquidation of ERB, he should not be held liable for any failures to carry out or perform adequately and properly the duties of a liquidator as required by s1292 of the Act, in the liquidation of ERB.

CALDB found that for the purposes of the execution of the function of the office of liquidator, a joint liquidator who does not have the main carriage of the matter still has to have an adequate and proper involvement in the liquidation. How that is to be assessed will depend on the circumstances of each case but the relevant question is whether the action taken by the second liquidator is sufficient to ensure that the inherent duties of the office are adequately and properly discharged.

CALDB concluded that Mr Hamilton had failed to carry out or perform adequately and properly duties or functions of a liquidator. CALDB ordered that Mr Hamilton's registration be suspended for six months and that he provide a series of undertakings to

ASIC including undertakings to complete additional professional development activity and submit to an independent review of the risk management and compliance procedures with respect to the conduct of liquidations and company administrations in place at his firm W J Hamilton and Co, and address any gaps identified, prior to accepting any new appointments as a registered liquidator.

A copy of the CALDB's decision and reasons is published on the CALDB website ([www.caldb.gov.au](http://www.caldb.gov.au)).

The CALDB is an independent statutory body with powers under the Corporations Act to cancel or suspend the registration of auditors and liquidators. The Board's powers are directed to the maintenance of proper professional standards on the part of registered auditors and liquidators.

**For further information contact:**

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