

20 October 2014

Kyle Wright
Corporations
Australian Securities and Investments Commission
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Dear Kyle,

Consultation Paper 223: Relief for externally administered companies and registered schemes being wound up – RG 174 update

Thank you for the opportunity to comment on Consultation Paper 223 (CP 223) on *Relief for externally administered companies and registered schemes being wound up – RG 174 update*.

The Property Council is the peak body representing the interests of owners and investors in Australia's \$670 billion property investment industry. The Property Council represents members across all four quadrants of property investment, debt, equity, public and private.

The Property Council strongly supports the proposals outlined in CP 223 which provide practical pathways that modify reporting, strip away unnecessary cost and preserve funds for payment to members and creditors.

In particular, we welcome the following proposals to streamline financial reporting obligations of registered schemes and AFS licensees:

Class order exemption for registered schemes being wound up and deemed insolvent:

Under the current rules, all registered schemes are required to comply with the financial reporting obligations contained in the *Corporations Act 2001*.

However, these reporting obligations are of limited value when a scheme is already insolvent and would represent an unnecessary cost.

The financial reporting obligations absorb the critical and limited resources of the insolvent scheme that could be better used for effective management and orderly disposal of the scheme's remaining assets. This places an unreasonable burden on the scheme.

The proposed exemption will allow the scheme's scarce resources to be directed towards the fair, equitable and orderly distribution of the assets to stakeholders.

Individual deferral of up to 12 months for:

- *Registered schemes that are being wound up where "the scheme's solvency is uncertain or unknown"*

The reporting obligations of a scheme are also of limited value when the scheme's solvency is uncertain or unknown.

A deferral of the financial reporting obligations will reduce the administrative and compliance burden of the scheme.

Resources that would otherwise be used to prepare financial reports will be preserved while a decision is made regarding distribution to members and the obligations owed to third parties.

- *Registered schemes with an externally administered responsible entity (RE)*

Where an RE is under administration, the day to day management of the scheme is disrupted. The external administrator needs time to become familiar with the operations of the RE and the scheme.

This makes it difficult for the scheme to comply with its financial reporting obligations by the statutory deadlines.

A deferral of up to 12 months of the scheme's financial reporting obligations will give the administrator sufficient time to focus on day to day management and allow appropriate compliance processes to be put in place.

Relief from financial reporting obligations for AFS licensees

We support ASIC's proposals to provide AFS licensees with:

- A class order exemption from continuing financial reporting obligations once the licence is cancelled;
- A 6 month class order deferral of the financial reporting obligations if the administrator is appointed within 3 months of financial year end; and
- Individual deferral of the financial reporting obligations for up to 12 months where the administrator cannot determine the interests of stakeholders despite their efforts.

These measures will reduce the business costs and compliance where these obligations are either no longer relevant, cannot be reasonably exercised in the time available or the administrator is unable to determine stakeholder interest to properly report.

The proposals will help preserve the licensee's assets which can then be applied for the benefit of all relevant stakeholders. Where the AFS licensee is eligible for deferral, the external administrator will have more time to attend to the most urgent post-appointment matters.

We congratulate ASIC on providing industry with clear and simple guidance.

The Property Council looks forward to the release of the new class order and updated regulatory guide early next year.

Please contact Nayiri Apkarian or me if you have any queries.

Yours sincerely,

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