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17 June 2014

Ashly Hope  
Strategic Policy Advisor  
Australian Securities and Investments Commission  
GPO Box 9827  
MELBOURNE VIC 3001

By email: deregulation@asic.gov.au

Dear Sir

## Report 391 - ASIC's Deregulatory Initiatives

We thank ASIC for the opportunity to respond to Report 391, 'ASIC's Deregulatory Initiatives'.

We support the removal, consolidation or streamlining of ASIC's 362 statutory forms where the form does not perform a useful regulatory function and where the legislative amendment seeks to contribute to the Government's red-tape reduction target. The forms identified for removal because the *'information is not used by ASIC'* (per Table 1 of Appendix 1 of Report 391) which are of particular relevance to insolvency practitioners and for which we support removal are as follows:

Form No.	Description
540	Statement in writing of posting of notices of appointment to settle list of contributories
545	Statement in writing of giving notice to persons placed on the list of contributories
555	Notice of controller extending time to submit report as to affairs
558	Court order extending time to provide report as to affairs
562	Notice of liquidator extending time to submit report as to affairs
911	Verification or certification of a document
529	Notice of meeting: Creditors to consider voluntary winding up
905A	Notification of ceasing to act as or change of details of a liquidator



While this response does not seek to address the specific legislative amendments as outlined in Report 391, we take this opportunity to provide comment on forms marked for possible removal where the removal of the requirement to lodge such forms with ASIC will impair the insolvency practitioner in the conduct of their investigations of insolvent companies. Those forms are as follows:

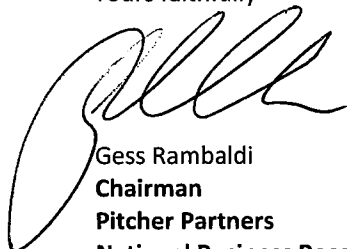
Form No.	Description
909	Notification of office at which registers are kept
991	Notification of location of books on computer
992	Notification of change of location of books kept on computer
313	Notification of address in Australia of information relating to financial records kept outside of Australia

Liquidators are often faced with the task of obtaining information from persons reticent to disclose events which took place while acting as an Officer of the company. Generally, the only source available to the insolvency practitioner is the records of the company such as books and documents, if still available. We refer to the ASIC's Report 372- 'Insolvency statistics: External administrators' reports (July 2012 to June 2013)' at page 26, table 16 in which it is reported that of a total of 2,469 breaches reported to ASIC for possible post-appointment criminal misconduct, 827 breaches or 33% related to possible offences under Section 530B of the Corporations Act 2001. Further at page 33, paragraph 61, it is reported that external administrators indicated they obtained or inspected the company's books and records in 7,129 reports (77%) in 2012-13. Of these, only 4,380 (47%) indicated that the company's books and records were considered adequate.

ASIC has marked these forms for possible removal for the reason that '*the information is available from the company*', however, it is apparent from the insolvency statistical findings as collated by ASIC that frequently the insolvency practitioner finds it difficult to obtain information from the company. As a result, the practitioner is often forced to seek alternative sources of information in order to continue with or complete the investigation process. While we recognise the importance of ASIC's mandate to reduce business costs and administer the law effectively with a minimum of procedural requirements, the information disclosed by the company in such forms, that would otherwise not be available if the legislative requirement to do so is removed, will impact the ability of the insolvency practitioner to locate books and records of the insolvent entity. The proposed removal of these forms suggests that the corresponding legislative compliance procedure is to be abolished, however, we are of the opinion that these forms serve to assist the insolvency practitioner in the efficient investigation of the insolvent entity and should not be characterised as 'red-tape' and removed.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact me on 03 8612 9261 or Olivia Richardson on 03 8612 9305.

Yours faithfully



Gess Rambaldi  
Chairman  
Pitcher Partners  
National Business Recovery and Insolvency Services