

8 February 2017

Mr Alan Ashford  
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Australian Securities and Investments Commission  
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Dear Mr Ashford

**Consultation Paper 276 – Registered liquidators: Registration, disciplinary actions and insurance requirements**

We refer to the above consultation paper and thank you for the opportunity to provide ARITA's views.

This written submission provides largely the same feedback as was discussed in our phone meeting of Thursday 2 February 2017.

We have responded using the questions raised in the discussion paper.

**B1 We propose to update our guidance on how an individual may apply to be registered as a liquidator.**

*B1Q1 Is the information we propose to require of an applicant relevant and appropriate to assist a committee to decide whether an applicant should be registered as a liquidator? Please provide reasons for your view.*

- Table 1 Step 4 – the payment of the application fee should be required, not just expected.
- Table 3 final item – the requirement to provide a copy of your degree, diploma or certificate from the institution that issued the qualification is not appropriate as the subjects undertaken to comply with the education requirement may not result in a “qualification”. Instead, evidence that the required study was undertaken and passed is appropriate.

- RG 000.20 – the law simply requires the completion of a tertiary qualification that includes 3 years of full-time study (or its equivalent in commercial law and accounting). It does not specify what subjects need to be undertaken when obtaining this qualification. We query whether it is necessary or appropriate to specify specific subjects.
- RG 000.31 – clarification on the use of this code should be provided as it is for ACT purposes only.
- RG 000.41ff (“fit and proper person”) – We suggest that you include guidance on the process for advertising applicants and what happens with any feedback (e.g. objections) received from this process. ARITA is strongly supportive of the application process including the advertising of applications to ensure reasonable public transparency and scrutiny.
- RG 000.56 – The law requires only that the applicant is current resident in Australia. Residential addresses for the past five years is, in our view, irrelevant information and should not be required.
- RG 000.65 – this repeats RG 000.61(b).

*B1Q2 Is guidance needed on any other topic regarding liquidator registration? If so, why?*

- In addition to our above comments regarding the advertising of applications on the ASIC website, we consider that the standards set by the ARITA Code of Professional Practice or APES110 may be more appropriate for determining a fit and proper person than APS520.

**C1 We propose to provide guidance on the renewal process for registered Liquidators and the obligation to lodge an annual liquidator return and to notify ASIC of certain events: see Section C of the attached draft regulatory guide.**

*C1Q1 Is there any additional guidance that would be useful to include in Section C of the draft regulatory guide? If so, please give details.*

- RG 000.84 – the statutory requirements should be better expressed so that they are clearer and more easily understood.

**D1 We propose that the guidance in Section D of the attached draft regulatory guide provide an overview of the new disciplinary framework for registered liquidators. We propose reviewing the guidance on our approach to the new disciplinary framework after its first 12–18 months of operation.**

*D1Q1 Is there any other guidance on the disciplinary framework for registered liquidators that would be useful to include in the updated guide? If so, please give details.*

- RG 000.113(c) and RG 000.151 – these standards should be applied to all liquidators, not just to members, as they have been accepted as industry best practice in past court and CALDB decisions, regardless of membership status.

- RG 000.199(b) – We query if this is appropriate if the legal action is in the normal course of an external administration or controllership and is not related to the liquidator’s conduct and could be dealt with by a replacement appointee.
- RG 000.201 and RG 000.202 – the stated expectation that the liquidator should request cancellation or suspension of their registration, even though there may be no express obligation to do so, is not appropriate. ASIC has the power under the Act to cancel or suspend registration and it should be ASIC that takes this step, if appropriate, on notification of one of the prescribed matters.

**E1 We propose incorporating our guidance on the insurance requirements for registered liquidators with our guidance on the registration and disciplinary framework for registered liquidators.**

*E1Q1 Do you agree with this proposal? If not, please explain why not.*

- ARITA agrees that guidance of the insurance requirements for registered liquidators should be incorporated.

*E1Q2 Is there any reason why ASIC should not make a legislative instrument setting out the insurance requirements? Please provide reasons for your view.*

- We have no comment but highlight that ARITA does not have specific expertise in relation to insurance.

**E2 We propose that the minimum limit of indemnity for professional indemnity insurance will generally be adequate if registered liquidators use either of the methods set out in the limitation of liability schemes approved by the PSC for the members of CA ANZ or CPAA. Where a registered liquidator is not eligible for cover under one of these approved schemes, they must review their insurance requirements and ensure that their cover is adequate.**

*E2Q1 Do you agree with this proposal? If not, please explain why not.*

- We have no specific objection but highlight that ARITA does not have specific expertise in relation to insurance. However, we note that there is a substantial difference in the requirements between the two professional bodies and this may result in a substantially different outcome for the affected parties depending on which professional body the practitioner holds their practicing certificate with. We also note that there may be gaps in the past approved PSC Schemes which may result in a gap in coverage.

**E3 We propose removing existing guidance about fidelity insurance under a fidelity bond arrangement.**

*E3Q1 Do you agree with this proposal? If not, please explain why not.*

*E3Q2 Alternatively, do you consider ASIC should require registered liquidators to hold fidelity insurance under a fidelity bond arrangement for registered liquidators who operate as sole practitioners (or all registered liquidators) if such arrangements were available in the market? If so, please explain why.*

ARITA is not an expert in insurance. However, we understand that there may be benefits to a fidelity bond arrangement, including coverage for sole practitioners. ARITA would not be averse to further consideration and consultation be given to fidelity bond arrangements, including consultation with insurance experts in this field. Part of this consideration should include the cost of such an arrangement. We understand that it may be possible for this insurance product to be available in Australia.

**E4 We propose repealing existing guidance that sets out when maintaining adequate and appropriate professional indemnity and fidelity insurance may not be necessary.**

*E4Q1 Do you agree with this proposal? If not, please explain why not.*

- Subject to adequate and complete guidance being incorporated into the guidance as indicated, ARITA agrees with this proposal.

*E4Q2 If you consider there may be other instances where it may be unnecessary to maintain adequate and appropriate professional indemnity and fidelity insurance, please provide details.*

- We have no comment.

Generally, we also note that there is inconsistency in terminology with the terms “external administrator” and “external administrator of companies” used interchangeably.

This feedback is provided in respect of the information released to date and we note that we have not seen any of the approved forms referenced in the guide.

Should you have any queries in respect of our submission, please contact Ms Kim Arnold on telephone 02 8004 4340.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kim Arnold', with a long horizontal flourish extending to the right.

Kim Arnold  
Policy & Education Director