

9 February 2017

Mr Alan Ashford
Australian Securities and Investments Commission
GPO Box 9827
Perth WA 6001

And via email: policy.submissions@asic.gov.au

Dear Mr. Ashford,

Registered Liquidators: Registration, Disciplinary Actions and Insurance Requirements

Consultation Paper 276

We refer to the Australian Securities and Investments Commission's invitation to comment on the proposals disclosed in the Consultation Paper.

Please find attached Ernst and Young's submission in respect to the Consultation Paper.

Should you have any queries in relation to our submission, please contact the writers on (02) 6267 3936 or (02) 6267 3836 or via e-mail at henry.kazar@au.ey.com or michael.slaven@au.ey.com.

Yours faithfully,



Henry Kazar
Partner

Ernst and Young's submission to the Australian Securities and Investments Commission's Consultation Paper 276.

B1 - We [ASIC] propose to update our guidance on how an individual may apply to be a registered 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.

Subject to our response at B1Q2 below, we consider that the evidence and information requirements required of an applicant are sufficient to demonstrate the necessary qualifications, experience, knowledge and abilities that would assist a committee to decide whether an applicant should be registered as a liquidator.

Similarly, the evidence in relation to capacity, insurance, character and residency are all necessary and appropriate factors for a committee when considering an application for registration.

Subject to our response to B1Q2 below, in our view these factors take into account a comprehensive dataset upon which an opinion may be formed by a committee as to whether an applicant should be registered as a liquidator.

B1Q2 - Is guidance needed on any other topic regarding liquidator registration?

Our view that in addition to the current information requirements, it should be mandatory for all applicants to obtain a statement from his/her most recent employer (and it should be mandatory for that employer as a registered liquidator to provide that statement) regarding knowledge of the fact that the applicant has made an application to become a registered liquidator and whether he or she believes there are any matters that may be relevant to the committee when assessing the application made.

We also consider that the committee mandate an exam, written or oral which the applicant must pass to the satisfaction of the committee.

This approach would seek to establish consistency among applicants and align with the approach taken by AFSA when considering applications for registration as a trustee in bankruptcy.

C1 - We [ASIC] 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.

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.

The renewal process required of registered liquidators will require the completion of Form RL05- Application for renewal of registration as a liquidator, firstly in accordance with the transitional requirements of the Act and then every three years. This form has not yet been published. On the basis that:

- ▶ Form RL05 is not materially different from existing annual return Form 908

- ▶ Requires evidence of adequate and appropriate professional indemnity and fidelity insurance against the liabilities that are incurred working as a registered liquidator
- ▶ That the liquidator has complied with any condition imposed on registration during the relevant period dealing with continuing professional education
- ▶ That the liquidator has notified ASIC of any prescribed “significant”, or “other” event

We agree with the additional guidance as proposed, for reason that it aligns with the registration renewal requirements of registered trustee in bankruptcy by imposing a positive obligation on registered liquidators to remain active and vigilant in the discharge and conduct of their activities.

D1 - We [ASIC] propose that the guidance in section D of ... the 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 advise.

No. We consider the current and additional guidance on the disciplinary framework adequate when the committee is considering the conduct of registered liquidators.

E1 - We [ASIC] 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 we agree with this proposal?

We agree with this proposal as it simplifies the ASIC guidelines.

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 consider it essential that the public and those dealing directly with insolvency practitioners have confidence in the integrity of the insolvency profession.

We also consider that a legislative instrument that provides clear guidelines that set out the insurance requirements applicable to registered liquidators, provided they are reasonable, “adequate and appropriate”, and implemented following proper consultation with the industry, is the best means by which stakeholders, including insolvency practitioners are best protected from adverse circumstances.

E2 - We [ASIC] propose that the minimum level 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 schemes, they must review their insurance requirements and ensure that their cover is adequate.

E2Q1 - Do you agree with this proposal?

The minimum level of professional indemnity insurance is a matter specific to the registered liquidator, taking account of current and intended business operations and his or her risk profile.

The CAANZ and CPA Australia have the responsibility of ensuring that members of the public are adequately protected when dealing with their members. Accordingly, we consider the methods approved by the PSC to be the appropriate standard in setting the minimum level of professional indemnity insurance and reflect the current demands of the profession.

E3 - We [ASIC] 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.

We agree with this proposal as we understand there is no current market for this insurance in Australia for registered liquidators.

E3Q2 - Alternately, 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.

On its face third parties dealing with registered liquidators should be entitled to the same protection against fraud or dishonesty whether committed by employees of the practitioner, employees of the firm or the practitioner him/herself.

We see two issues with this proposition:

- ▶ In insured cannot insure and obtain the benefit of a theft against himself or herself
- ▶ In the case of sole practitioners, as there are no oversight procedures in place to govern his/her conduct the opportunity for collusion with third parties raises significant risk of fraud and is the associated cost is likely to outweigh the benefit of genuine losses affecting third parties.

For the above reasons, even if cover was available in the market we do not consider that ASIC mandate this gap in fidelity insurance, as we expect the cost to be prohibitive, even if it was to be made available.

E4 - We [ASIC] propose repealing existing guidance that sets out when maintain 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.

As a basic premise registered liquidators should hold adequate and appropriate professional indemnity and fidelity insurance for the protection of third parties, the practitioner and the firm. ASIC should be alert to any circumstance where this basic premise is not met and accordingly we agree with proposal as stated.

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 are not aware of any other instances where it may be unnecessary for a registered liquidator to maintain adequate and appropriate professional indemnity and fidelity insurance.