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31 October 2017

Australian Securities & Investments Commission

BY ELECTRONIC MAIL: policy.submissions@asic.gov.au

Dear Sirs,

**RE: COST RECOVERY IMPLEMENTATION STATEMENT (CRIS)
LEVIES FOR ASIC INDUSTRY FUNDING (2017-18)**

We refer to your CRIS dated 11 October 2017 and comment in relation to its application to registered liquidators.

Our comments are an extension to our submission made to Treasury on 25 November 2016.

We note that the budgeted costs to regulate registered liquidators has increased from the initial estimate of \$9 million provided in late 2016 to a budgeted cost of \$10.196 million for the period 1 July 2017 to 30 June 2018 (Table 8).

- This material increase in a space of only 12 months raises some significant concerns as to the accuracy and reliability of the figures provided.
- An even more significant concern is the lack of transparency.
- As registered liquidator, to obtain approval of remuneration, a detailed remuneration report is required to be provided to creditors prior to them voting on this resolution. Further, there is the ability of creditors to seek a review of the remuneration or apply to court for a review of the reasonableness of remuneration.
- The budgeted costs provided by Australian Securities & Investments Commission (ASIC) are divided into separate headings, however no detail as to how the figures are derived are provided.
- It was previously indicated that approximately 14 employees were engaged by ASIC to regulate liquidators. Should this continue to be the case there appears to be a disproportionate amount of costs allocated to the following areas:-
 - IT Support - \$1.291 million.
 - Property and Corporate Services - \$1.622 million.
- It is not unreasonable for a detailed analysis on how all figures are calculated to arrive at the budgeted costs be provided.
- Further, an independent auditor should be appointed to assess the reasonableness of these costs and the appropriateness of their allocation.

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- Paragraph 107 of your report refers to surveillance activities which includes the activities of professional facilitators (including pre-insolvency advisers).
- Paragraph 108 of your report refers to providing input into legislative reforms addressing illegal phoenix activity.

Why is the levy collected to regulate registered liquidators being applied in part to deal with unregulated pre-insolvency advisers and to address concerns in relation to legislation proposed to regulate phoenix activity?

- It was indicated that recovery from lodgements on the Published Notices Website (PNW) would be offset against the levy collected 7 months after the end of the reporting period.

In these circumstances why reduce the cost to advertise notifiable events on the PNW to \$5?

- From a budgeting perspective it is easier to pay the fee at a reasonable rate at the time the notifiable event is lodged.
- It was indicated that high volume practices were a more significant risk area and hence the fee structure.

In light of this claim it is requested that a breakdown of Surveillance and Enforcement expenditure be provided to see if actual expenditure matched this profile. For example was the costs incurred in monitoring the Korda Mentha Network Ten Independence issue is allocated in this matrix and if so what was the quantum of this allocation?

- It was also indicated that the ASIC reporting software was not ready to enable a cost effective implementation of a realisation fee being charged, similar to the system in bankruptcy.

Is the Australian Securities & Investments Commission's infrastructure now sufficiently developed to allow this to occur and is such a system likely?

- It appears that a large amount of investigations are initiated by creditor complaint, the majority of which are unfounded and could have been avoided had there been a better understanding of the role of a liquidator. Are the costs of such investigations allocated against the costs of regulating liquidators? If so this is a misallocation and the costs should be recovered from elsewhere.
- Consideration should be provided to require all company directors to complete an education course which will provide information including the obligations of company directors and the consequences should they transgress, together with details of the role of a liquidator and their obligations. The costs of such a course would be offset against the levy allocated to regulate registered liquidators. The costs of such a course does not need to be significant and should not be viewed as a barrier to entry, but rather a necessary requirement that will assist in the efficient operation of a thriving economic system.

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In summary we submit that:-

- Transparency in the budgeted costs is provided to allow a proper understanding of what makes up this significant figure.
- It is noted that the costs to regulate the estimated 700 regulated liquidators is disproportionate to the costs of the other sectors costs to regulate.
- A review / audit process is put in place to allow a basic right of appeal to be available.
- Directors are required to complete a basic course to ensure that they have knowledge of the duties, responsibilities and consequences, together with an understanding of the role of a registered liquidator. The costs of such a course should be allocated to reduce the levy payable by registered liquidators.
- General overheads should be removed from the level allocated to regulate registered liquidators.


Yours faithfully,



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REGISTERED LIQUIDATOR



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