

Australian Securities and Investments Commission

1 November 2017

By email: policy.submissions@asic.gov.au

Dear Sir/Madam

ASIC Supervisory Cost Recovery Levy Cost Recovery Implementation Statement ('CRIS')

This feedback is provided by KordaMentha. We support the feedback provided in respect of the CRIS dated October 2017 by the Australian Restructuring Insolvency and Turnaround Association ('ARITA').

General concerns

We acknowledge that ASIC Industry Funding commenced on 1 July 2017. We are, however, disappointed that many of our concerns in respect of the user pays funding model for registered liquidators, which were raised in our previous submissions, were largely unaddressed and ignored in the final funding model.

The complexity and unpredictability of the levy calculation on individual registered liquidators makes it very difficult as a firm to budget for the levy and recover it. A simple average of the total budgeted costs to be recovered by the levy compared to the number of registered liquidators suggests that each liquidator will bear a cost of \$14,340. The final number for each liquidator will depend on the activities of all other liquidators, a factor no individual liquidator has control over. It is likely, as a firm, our liquidators will bear a higher proportion of the cost to be recovered as a result of the notifiable event and number of specified appointment components of the levy. Our liquidators are routinely appointed to corporate groups which can contain multiple subsidiaries – all of which would be a specified appointment and all of which would attract notifiable events.

Specific Concerns relating to CRIS

Increase in estimated cost recovery

During the consultation phase in December 2016, we were staggered to see that ASIC's expected expenditure and cost recovery in respect of registered liquidators was \$8.5 million. We are even more concerned that this cost estimate has now increased to \$10.2 million. No explanation has been provided as to why the previous estimate was so wrong. As registered liquidators, we would never be able to provide a revised estimate of fees varying this much without a detailed explanation as to the differences.

Disproportionality of levy compared to other regulated individuals

We still do not understand the disproportionality of the levy to be charged to registered liquidators compared to levies to be charged to other regulated individuals. This is despite ongoing acknowledgment from ASIC that the vast majority of registered liquidators 'do the right thing' and ASIC's own reported information on complaints and enforcement outcomes against registered liquidators. The introduction to the CRIS states the industry funding model is intended to 'ensure that our costs are borne by those creating the need for regulation'. We remain deeply concerned that a large proportion of ASIC's costs in dealing with complaints do not involve misconduct on behalf of the registered liquidator. The complaints are as a result of the general public not understanding insolvency law and the implications of the law on various stakeholders. Registered liquidators should not have to bear the cost of educating the public. The estimated cost of 'enforcement' action by ASIC at almost \$400,000 per enforcement outcome in 2016 is extraordinary given the nature of the 12 reported enforcement outcomes.

Transparency and accountability as to costs being included

Table 9 of the CRIS which sets out the budgeted costs to regulate registered liquidators is completely inadequate in terms of understanding what liquidators are being charged for. One of the stated aims of regulating liquidators is to respond to reports of 'remuneration disclosure' issues. It is difficult to understand how ASIC can provide so little information with no supporting calculations when registered liquidators are expected to provide detailed calculations and explanations of any actual or prospective remuneration proposed to creditors or the court. We understand the number of full time equivalent ASIC staff working in the Insolvency Practitioners' Team is approximately 13. Even after removing the estimated cost of 'IT, Operations and Property', the estimated costs of regulating registered liquidators average over \$500,000 per employee. The fact registered liquidators are expected to pay almost \$3.5 million in overheads (averaging almost \$5,000 per liquidator) which they cannot directly influence is unacceptable.

If registered liquidators are to be charged on average \$14,500 each per year, it is expected ASIC will provide far greater detail as to how the costs have been arrived at – just as ASIC expect registered liquidators provide detailed and appropriate disclosure as to how they arrive at their remuneration proposals. These costs should also be independently verified.

Yours faithfully



Mark Korda
Partner