

FORM 986

REFERRAL OF MATTER TO SCHEDULE 2 COMMITTEE

FULL NAME OF LIQUIDATOR Dennis Anthony Turner

REGISTERED LIQUIDATOR NUMBER 81678

1. On 9 March 2018, a committee convened under section 40-45 of Schedule 2 - Insolvency Practice Schedule (Corporations) to the *Corporations Act 2001 (the Act)*, made a decision in respect of Mr Dennis Anthony Turner (**Mr Turner**), a registered liquidator.

Decision

2. The Committee decided:
 - a. Under s40-55(1)(a) Mr Turner should continue to be registered as a liquidator.
 - b. Under s40-55(1)(f) Mr Turner's registration as a liquidator be subject to a condition that he, by 20 July 2018, undertake the ARITA course entitled "Essential Skills Insolvency: Independence" and that he, within 7 days of undertaking the course, provide ASIC with evidence of the undertaking of the course.
 - c. Under s40-55(1)(h) ASIC should publish a summary of the report of the decision if ASIC is of the opinion that such publication will further the objectives of ASIC as set out in s 1(2) of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.
3. ASIC is required under s40-65 to give effect to the committee's decision. ASIC is of the opinion that publication of a summary of the decision will further the objectives of ASIC as set out in s1(2) of the ASIC Act. This is a summary of the report to give effect to the decision of the committee made under s40-55(1)(h)

ASIC Concerns

4. In reaching its decision, the committee considered each of ASIC's five concerns in relation to Mr Turner's conduct.

First concern – "Accepting an appointment as an administrator in circumstances of conflict or potential conflict"

5. A liquidator should only accept an appointment if in taking the appointment, the liquidator will be independent and be seen to be independent. A liquidator should not accept an appointment if a conflict is likely to arise.
6. Mr Turner accepted the appointment as voluntary joint administrator of four companies (**the Entities**) on 11 December 2015. ASIC considered a conflict or potential conflict arose due to Mr Turner's position in as the trustee in bankruptcy in mid-2014 of an individual who:
 - a. had an association with a company (the Company), which was indebted to three of the four Entities; and
 - b. whose bankrupt estate had an indirect interest, via shareholding, in the Company.
7. The committee was of the view that there was *"nothing so remarkable about the information [obtained by Mr Turner as trustee in bankruptcy] such that a person becoming aware of [the] information in the middle of 2014(as was the case with Mr Turner would necessarily readily recollect it in December 2015 in the context of his impending appointment as joint administrator of the [Entities] in December 2015"*. The facts did not, in the committee's view, support a finding that as at 11 December 2015, Mr Turner was aware or should have been aware of the individual's association with the Company, and his bankrupt estate's indirect interest in the Company.
8. The first concern was not made out.

Second concern – "Continuing to act as an administrator in circumstances of conflict or potential conflict

9. ASIC was concerned that Mr Turner, knowing of the conflict or potential conflict, took no steps to address the conflict or potential conflict.
10. The committee was not satisfied that Mr Turner read, or should have read, an email copied to Mr Turner on 12 December 2015 attaching documents which showed an association between the individual and the Company. On 17 December 2015, Mr Turner was sent an email that referred to the individual, the Company, the Entities and the possibility of the Entities entering into deeds of company arrangement. . The committee was satisfied that, on the facts before it, that prior to 18 December 2015, was aware, or should have been aware, of the connection between the individual and the Company.
11. The committee was not satisfied that in the time between becoming aware of the connection his ceasing to be joint administrator of the Entities on Monday, 21 December 2015, having been replaced by court appointed provisional liquidators, Mr Turner could have taken steps to cease as administrator of the Entities.
12. The second concern was not made out.

Third concern – "Inadequate DIRRs"

13. ASIC was concerned that the DIRRIs that Mr Turner signed for the Entities were inadequate in that each of them failed to disclose all relevant pre-appointment meetings and that he was the trustee in bankruptcy for the individual considered in relation to the First concern.
14. The committee was satisfied that the DIRRIs erroneously disclosed only one meeting held with the Entities and that the "*creditors may have been misled about the pre-appointment contact that Mr Turner had with [the Entities]*". On that basis, the committee was satisfied that Mr Turner, in relation to each DIRRI, failed to carry out adequately and properly the duties of a liquidator.
15. The third concern was made out.

Fourth Concern - "Consenting to appointment as a provisional liquidator by the Court and failure to make proper disclosure to the Court"

16. ASIC was concerned that, in executing an affidavit which stated that the individual referred to in the first concern was bankrupt but failed to disclose that he (Mr Turner) was the trustee in bankruptcy, Mr Turner had failed to carry out adequately and properly the duties of a liquidator.
17. The committee was satisfied that Mr Turner "*should have been more candid with the Court*" as the information may have been relevant to the court if it was considering appointing the individual as provisional liquidator of the Entities. In omitting the information from his affidavit he had failed to carry out adequately and properly the duties of a liquidator.
18. The fourth concern was made out.

Fifth Concern – "Not a fit and proper person to be registered as a liquidator"

19. ASIC was concerned that Mr Turner's failure to recognise that he was in a position of conflict or potential conflict and belief that conflicts or potential conflicts could be cured by the provision of updated DIRRIs that disclosed the conflict were such that Mr Turner was not a fit and proper person to be registered as a liquidator.
20. The committee was not satisfied that the material before it substantiated those matters. While the committee found that the third and fourth concerns were at least partially made out, the transgressions were not considered "*serious, or the result of anything other than minor omissions or errors of judgement*". The committee considered that Mr Turner is a fit and proper person to continue to be registered.
21. The fifth concern was not made out.