CONSULTATION PAPER 326

Chapter 6 relief for share transfers using s444GA of the Corporations Act

January 2020

About this paper

This consultation paper seeks feedback about the circumstances in which ASIC will grant relief from Ch 6 for share transfers using s444GA of the Corporations Act.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 16 January 2020 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on the circumstances where we will grant relief to facilitate s444GA transfers. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 28 February 2020 to:

Terence Kouts
Senior Manager
Corporations
Australian Securities and Investments Commission
Level 5, 100 Market St
Sydney NSW 2000
email: 444GA.Submissions@asic.gov.au

What will happen next?

Stage 1	16 January 2020	ASIC consultation paper released
Stage 2	28 February 2020	Comments due on the consultation paper
Stage 3	March–April 2020	Drafting of regulatory guide
Stage 4	May 2020	Regulatory guide released

A Background to the proposals

Key points

Section 444GA allows shares of a company in administration to be transferred by an administrator as part of a deed of company arrangement (DOCA). The transfer may occur if shareholders consent or when the Court is satisfied it does not 'unfairly prejudice' the interests of shareholders.

ASIC relief is required from the takeover provisions in Ch 6 to facilitate these transactions where a party is increasing their voting interest beyond the 20% threshold.

To assist administrators and advisers, we are proposing to include guidance in Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (RG 6) about when we will grant relief.

In Section B of this paper, we seek your feedback on the proposed changes to RG 6.

What does s444GA enable and what is ASIC's role?

1 Section 444GA of the *Corporations Act 2001* (Corporations Act) empowers a deed administrator as part of a DOCA to transfer shares either with the written consent of the owner of the shares or compulsorily where the Court grants leave.

2 A member of the company, ASIC or an interested person has the right to oppose an administrator's application for leave and the Court may only give leave under s444GA(3) if it is satisfied that the transfer would not 'unfairly prejudice' the interests of members of the company.

3 Where a transfer under s444GA will result in a person acquiring shares carrying voting power in a company of more than 20%, the acquisition will be prohibited unless ASIC grants relief. This is because there is no statutory exception to the takeovers prohibition in s606 for s444GA transfers.

4 In matters to date requiring relief, s444GA has been used to transfer all, or nearly all, the shares in a company without compensation for shareholders.

5 The use of the s444GA power in relation to the securities of a company to which Ch 6 applies is a fairly recent development, with the first application for relief being considered by ASIC in 2014. Since 2014, we have issued s606 relief 10 times to enable a s444GA transfer. We now consider it is an appropriate time to issue guidance on the topic which builds on our experience to date.

Why was s444GA introduced into the legislation?

6 The explanatory memorandum to the Corporations Amendment (Insolvency) Bill 2007 (EM) introduced s444GA in 2007 to allow deed administrators to transfer shares without shareholders' consent to better reflect the object of Pt 5.3A of the Corporations Act aimed at:

(a) maximising the chances of the company continuing to exist; or

(b) where that's not possible, a better return for creditors and shareholders than would result from a liquidation.

7 Before the enactment of s444GA, there was legal doubt as to whether administrators could compulsorily transfer the shares of a shareholder without their consent.

8 The EM at paragraphs 7.54–7.55 notes that a:

> … compulsory sale power may be beneficial … as it may be essential to the success of a deed of a company arrangement that a share sale proceeds … Often, the shares of a company under administration will have little residual value and members will not participate in any distribution.

9 The EM also notes that the provision is consistent with the earlier recommendation in the 1998 CASAC report which considered that:

> … the forced sale of existing shares may enable the administrator to 'clean up' the balance sheet of a listed holding company and thereby enable trading in its shares to resume.
>
> Note: Legal Committee of the Companies and Securities Advisory Committee (CASAC), *Corporate voluntary administration*, report, June 1998 at paragraph 6.74.

10 However, the EM at paragraphs 7.55–7.56 also notes that such a power may be open to abuse. For instance:

> … a deed that involves creditors swapping their debt for equity in the company may unfairly advantage creditors if the underlying business of the company is strong … [and] unfairly prejudice shareholders particularly where there is some residual value in the company.

11 The 1998 CASAC report at paragraph 6.75 took a similar stance and was concerned about:

> … opportunistic creditors who acquire those shares, especially as the test of insolvency is based on cash flow, rather than total assets and liabilities.

12 To safeguard the interests of shareholders who do not provide their consent to the transfer of their shares, the Court needs to grant leave for the share transfer to occur. ASIC was also specifically given a regulatory role in this process, including:

(a) the right to object in Court to such a transfer; and

(b) the requirement to give relief from s606, as no statutory exception to the takeovers prohibition in s606 was included for s444GA transfers.

What have the Courts decided?

13 The Courts have taken a consistent approach to s444GA matters, considering that a transfer cannot cause prejudice if there is no value left for shareholders based on the evidence before them.

14 The interpretation of 'unfairly prejudice' has been the subject of case law, most notably in *Weaver v Noble Resources Ltd* [2010] WASC 182 where Martin CJ at [79] noted that the possibility of prejudice to a shareholder would arise if there were some residual equity in the company:

> … the notion of unfairness only arises if prejudice is established. If the shares have no value, if the company has no residual value to the members and if the members would be unlikely to receive any distribution in the event of a liquidation, and if liquidation is the only alternative to the transfer proposed, then it is difficult to see how members could in those circumstances suffer any prejudice, let alone prejudice that could be described as unfair.

15 White J in *Lewis, In the Matter of Diverse Barrel Solutions Pty Ltd (subject to a Deed of Company Arrangement)* [2014] FCA 53 at [19] noted the following factors may determine unfair prejudice:

(a) whether the shares have any residual value which may be lost to the existing shareholders if the leave is granted;

(b) whether there is a prospect of the shares obtaining some value within a reasonable time;

(c) the steps or measures necessary before the prospect of the shares attaining some value may be realised; and

(d) the attitude of the existing shareholders to providing the means by which the shares may obtain some value or by which the company may continue in existence. A relevant comparison will be between the position of the shareholders if the proposal does not proceed and their position if leave to transfer shares is granted.

16 In terms of the evidence relied on by the Court as to the value of the shares, the precedents suggest the Court is willing to accept liquidation valuation evidence from administrators and/or independent experts, including the conclusion on likely returns from the administrator's report prepared under Rule 75-225(3) of the Insolvency Practice Rules (Corporations) 2016 (formerly prepared under s439A of the Corporations Act) about the company's business, property, affairs and financial circumstances (administrator's report).

Previous ASIC relief decisions

17 In granting s606 relief to date, we have generally made the relief conditional on:

(a) being provided with an independent expert report (IER) prepared in accordance with Regulatory Guide 111 *Content of expert reports* (RG 111) valuing the company in question on both a going and non-going concern (liquidation) basis;

(b) shareholders being provided with an explanatory statement that explains the nature of the application and their right to object, as well as providing links to the IER and the originating process; and

(c) the Court making the s444GA order.

18 Our approach to assessing the value of the shares has historically differed from evidence relied on by the Court in three key areas:

(a) the content requirements for the expert's report;

(b) the basis of valuation; and

(c) the author of the report.

19 Our historical decisions have been based on the fact that an IER is required by operation of the law or market practice for almost all takeover transactions. In our view, consistent with s602 of the Corporations Act, the IER plays a role in ensuring shareholders are given enough information to decide whether to object to a s444GA transaction and understand why their shares are being transferred. While the administrator's report to creditors contains some similar information to that of an IER, it is written to provide creditors with sufficient information to make an informed decision about the future of the company. We are now considering whether the requirement for an IER should be formalised into policy. Please see Proposal B1 for more detail.

20 Our historical requirement for an IER to be prepared on both a going concern and liquidation basis reflects a conservative position. This position was adopted for consistency with IERs in standard control transactions and to ensure that the arrangement is not designed by opportunistic creditors to take over the company to exploit or take advantage of a short-term liquidity crisis. However, we are aware of views that, given the company in a s444GA transaction is insolvent or is likely to become insolvent but for the DOCA being effectuated, a going concern valuation is unnecessary. Further, the Courts have specifically stated that they do not require a going concern valuation for their deliberations. We are now considering whether to maintain the requirement for a going concern valuation. We are presently minded to only require a valuation on a liquidation basis. Please see Proposal B2 for more detail.

21 While ASIC's preferred position to date has been that the IER should be prepared by a party other than the administrator, in a small number of matters the IER has been authored by the administrator. We have had reservations about this practice. Generally, an IER written in accordance with Regulatory Guide 112 *Independence of experts* (RG 112) cannot be authored by the commissioning party or by someone who is heavily involved in structuring the transactions. Administrators once appointed are deemed officers of the company with fiduciary responsibilities and are heavily involved in the business after appointment. If we are still minded to require an IER after consultation, to avoid the heightened perception of a lack of independence, our view is that administrators or others associated with their firms should not be the authors. Please see Proposal B3 for more detail.

B Proposed policy for s444GA transactions

Key points

We propose to include guidance in RG 6 about when we will grant relief to facilitate a s444GA transfer. Our proposed requirements include:

- explanatory materials being made available to shareholders before the s444GA hearing, including an IER being prepared consistent with RG 111;
- the IER being prepared on a liquidation basis; and
- the IER being prepared by an independent expert (not the administrator or other party associated with their firm).

Requirement for IER and explanatory materials

Proposal

B1 We propose to include guidance in RG 6 about when we will grant relief to facilitate a s444GA transfer, namely where:

(a) an IER is prepared in accordance with RG 111; and

(b) the IER and explanatory materials are made available to shareholders before the s444GA hearing.

Your feedback

B1Q1 Do you agree that ASIC should require an IER to be prepared in accordance with RG 111 and that the IER and explanatory materials should be provided to shareholders before the hearing? If not, why not?

B1Q2 Are there situations where you consider the IER might be unnecessary? If so, please outline the circumstances.

B1Q3 Do you consider that the administrator's report to creditors could be used instead of an IER? If so, on what basis? If not, why not?

Rationale

(a) Comparison of information

(i) Administrator's report

22 The administrator must give creditors a report about the company's business, property, affairs and financial circumstances and provide an opinion about whether, in their view, it is in the best interest of creditors that:

(a) the company executes a DOCA;

(b) the company is placed into liquidation; or

(c) administration should end (in which case the company returns to the control of the directors).

23 Apart from the above, the Corporations Act does not specify the matters the administrator must consider in coming to this view. However, Practice Statement Insolvency 4: *Voluntary Administrator's Reports* provides non-mandatory guidance on what the administrator's report should contain. The purpose of the administrator's report is to provide sufficient information to creditors to enable them to make an informed decision about the company's future.

Note: See Practice Statement Insolvency 4: *Voluntary Administrator's Reports*, published with the Australian Restructuring Insolvency & Turnaround Association (ARITA)'s *Code of Professional Practice* (4th edn).

24 ARITA guidance provides that the administrator's report should contain enough information to give creditors an understanding of the history of the company and the circumstances leading up to, and the need for, the appointment of a voluntary administrator. Information that the guidance states should be presented in the administrator's report includes:

(a) a summary of the company's historical financial statements and a preliminary analysis and commentary from the administrator;

(b) an outline of the content of the director's Report on Company Activities and Property, as well as the administrator's comments on the estimated realisable value of assets and liabilities;

(c) an estimated return from a winding up based on the administrator's opinion on the likely realisations from the sale of assets. Where it is not possible to quantify the estimated return from a winding up of the company, the guidance states that the administrator should provide a range of possible outcomes and the factors that influence each outcome; and

(d) where a DOCA is proposed, a table which provides a direct comparison of the estimated return and costs in a liquidation and under the DOCA.

(ii) IER

25 An IER prepared for the purposes of s606 relief that is compliant with RG 111 standards is much more detailed in its disclosure compared with an administrator's report in important areas. IERs are generally required to disclose multiple valuation methods and all the material assumptions underlying those methods. In contrast, there may be circumstances where, for legitimate reasons such as commercial-in-confidence negotiations, an administrator does not want to publicly disclose in the administrator's report a valuation of an individual asset or class of assets.

(b) Argument for and against requiring an IER

26 We are aware that arguments can be made against requiring an IER in addition to the administrator's report because:

(a) an IER can be costly, cause delays and duplicates some of the information already found in an administrator's report;

(b) where an administrator confirms that the value of the business is considerably less than the liabilities, there may be no doubt that shareholders' shares have no value;

(c) in determining a s444GA court application the Court itself does not require an RG 111 compliant IER. The Courts rely on the evidence before them, which may just be the conclusions of the s439A report, about the likely return to shareholders under a liquidation scenario;

(d) if an administrator has thoroughly pursued a sale process, this may be the best indicator of value; and

(e) there are differences in context. In a typical control transaction, shareholders can accept or reject a bid or cast a vote. In a s444GA transaction, they only have the right to object before the Court and it is arguable that Ch 6 principles do not apply in the same manner when a company is in administration. In the matters where s606 relief has been sought to date, no shareholder has been successful in their objections.

27 We believe that, notwithstanding the above, strong arguments can be made for requiring an IER, including that:

(a) consistent with principles in Ch 6 of the Corporations Act, in almost all other contexts where shares are being transferred, production of an IER is either required or market practice, for instance:

(i) schemes of arrangement (Ch 5B of the Corporations Act);

(ii) takeover bids (Ch 6 of the Corporations Act); and

(iii) compulsory acquisitions (Ch 6A of the Corporations Act);

(b) an IER prepared in accordance with RG 111 provides an independent view on whether there is any equity left for shareholders. This report serves to:

(i) help ASIC in its deliberations on whether to grant relief from s606;

(ii) help shareholders decide whether to object and understand why their shares are being expropriated without any consideration. This assists retail shareholders who would not generally have the resources to hire their own expert; and

(iii) provide further evidence to assist the Court; and

(c) as described above, an IER prepared for the purposes of s606 relief in accordance with RG 111 contains more detailed valuation analysis than an administrator's report.

Basis of valuation in IER

Proposal

B2 If we proceed with Proposal B1, we propose that the IER should be prepared solely on a liquidation basis where the only alternative is liquidation. Where the valuation shows no likely return for shareholders on this basis, we will normally grant relief, subject to the IER and explanatory materials being provided to shareholders and the Court granting leave.

Your feedback

B2Q1 Do you agree with our proposal that an IER should only be prepared on a liquidation basis? If not, why not?

B2Q2 Should an independent expert consider, when performing a liquidation valuation, potential recoveries from voidable transactions and other matters as a result of the administrator's investigations? If not, why not?

B2Q3 Do you consider that a 'going concern' valuation of the business is relevant or useful for a company in administration? If so, why?

B2Q4 If you agree with the previous question, should ASIC refuse relief where the going concern value shows the shares have some value?

B2Q5 Are there other factors that we should take into account when considering whether to grant relief?

Rationale

28 Consistent with RG 111 reports required for control transactions, we have previously required valuations by the independent expert to include a going concern analysis as well as a liquidation analysis specific to the circumstances of the company.

29 Going concern valuations can operate as a 'safeguard'. For example, where material value is left for shareholders on a going concern basis it could highlight that the shareholders may be suffering unfair prejudice. However, arguments against this approach include:

(a) a going concern valuation for a company in administration may be a hypothetical exercise. The major assumption, that funding is available to support ongoing business operations, arguably does not have a reasonable basis;

(b) the Court does not require a going concern valuation. In assessing a s444GA court application, once the Court is satisfied that the only likely alternative scenario is liquidation, the Court will consider:

(i) the position in which shareholders will find themselves if leave is granted; compared to

(ii) the likely return to shareholders if there is a liquidation of the company, which is often less favourable to creditors.

30 Based on the above, we do not consider we should continue to require IERs on a going concern basis. However, we note that in some cases appropriate valuation methodologies for specific assets may involve going concern valuation techniques, such as a discounted cash flow for an operating mine.

Who should prepare the IER?

Proposal

B3 If we proceed with Proposal B1, we propose that the IER should be prepared consistent with the principles in RG 112. In our view, this would preclude the administrator (or another member of the administrator's firm or party associated with their firm) being the independent expert.

Your feedback

B3Q1 Do you agree with this view? If not, why not?

B3Q2 Do you agree that the concepts of independence should be based on RG 112? If not, what other standards should be applied?

B3Q3 Do you believe that another member of the administrator's firm or party associated with the administrator's firm (or their advisory/consulting arm), who has not been involved in the administration, should be allowed to prepare an 'independent expert' report? If so, why? If not, why not?

Rationale

31 Our concerns are not related to the competence of the administrator or any perceived bias towards creditors, as the Courts have held that administrators owe their duties to the company, rather than to creditors or shareholders directly. Our main regulatory issue is with the appearance of independence.

32 RG 112 sets out our policy on independence for independent expert reports. The regulatory guide is based on case law establishing the need for an expert to be, and to appear to be, independent. The independence of an expert is considered critical for the protection of security holders. Relevantly, RG 112.25 provides that an expert should seriously consider declining an engagement when (emphasis added):

(a) a person to be involved in preparing the expert report *is an officer of the commissioning party or an interested party*;

…

(c) the expert has *participated in strategic planning work* for the commissioning party as a lawyer, financial consultant, tax adviser or accountant, whether in connection with the relevant transaction or generally (e.g. advising on possible takeovers or takeover defences);

(d) the expert has acted as a lawyer, financial consultant, tax adviser or accountant to the commissioning party (other than providing professional services strictly for compliance purposes rather than strategic or operational decisions or planning).

33 Avoiding the perception of a lack of independence may be difficult for an administrator (or another member of their firm or party associated with the administrator's firm) if they do prepare the IER because:

(a) the administrator acts as the agent of the company in administration (s437B) and is deemed an 'officer' of the company with fiduciary responsibilities under s9 of the Corporations Act. They are therefore both the commissioning party and expert;

(b) the work they perform during an administration is in the nature of 'strategic planning' as they may be involved in assisting the DOCA proponent to formulate the DOCA proposal; and

(c) there is at least the possibility that their ability to recover their fees may be dependent on the success of a DOCA, a situation which could conceivably cause a strong appearance of bias.

34 We appreciate that administrators and other insolvency professionals must comply with their statutory and common law duties (and the guidance and professional standards of bodies to which they are a member). However, when it comes to independence in the context of:

(a) an application for relief from the takeover provisions; and

(b) information for shareholders about a transfer of shares,

our view is that, given the nature of the work, an administrator (or someone else in their firm or associated with their firm) should not prepare 'independent expert' reports as they cannot comply with the RG 112 concepts of independence.

35 We also note that Courts have considered independence in the insolvency context. In *ASIC v Franklin (liquidator), in the matter of Walton Constructions Pty Ltd* [2014] FCAFC 85 the Court confirmed that:

(a) administrators and liquidators can be removed if there is an actual or apprehended (perceived) conflict of interest or bias. The test is the same standard that is applied to judges and considers whether 'a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to their duties'; and

(b) the Court may remove a liquidator applying this test where:

(i) there is a substantial referral relationship between the practitioner and the person who referred the matter to the practitioner; and

(ii) the person who referred the matter was involved in pre-appointment transactions that the practitioner will need to investigate.

36 An independent expert is required to analyse and make inquiries of the company in question to perform the valuation. It is difficult to see how an administrator can perform this independent role and question/query their own work, without the apprehension of bias. We are aware that larger insolvency practices may be able to use separate advisory/consulting arms to prepare an IER. However, we consider it is more consistent with maintaining the appearance of independence if a totally separate expert is engaged.

C Regulatory and financial impact

37 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) ensuring that the interests of shareholders are appropriately protected; and

(b) facilitating the rehabilitation of companies in a timely and efficient manner.

38 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

39 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

40 To ensure that we are able to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits.

See 'The consultation process', p. 4.

Key terms

Term	Meaning in this document
ARITA	Australian Restructuring Insolvency & Turnaround Association
ASIC	Australian Securities and Investments Commission
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
deed administrator or administrator	A person appointed to administer a deed of company arrangement under Pt 5.3A of the Corporations Act
DOCA	Deed of company arrangement
EM	Explanatory memorandum to the Corporations Amendment (Insolvency) Bill 2007
IER	Independent expert report
RG 6 (for example)	An ASIC regulatory guide (in this example numbered 6)
s444GA (for example)	A section of the Corporations Act (in this example numbered 444GA), unless otherwise specified

List of proposals and questions

Proposal		Your feedback	
B1	We propose to include guidance in RG 6 about when we will grant relief to facilitate a s444GA transfer, namely where: (a) an IER is prepared in accordance with RG 111; and (b) the IER and explanatory materials are made available to shareholders before the s444GA hearing.	B1Q1	Do you agree that ASIC should require an IER to be prepared in accordance with RG 111 and that the IER and explanatory materials should be provided to shareholders before the hearing? If not, why not?
		B1Q2	Are there situations where you consider the IER might be unnecessary? If so, please outline the circumstances.
		B1Q3	Do you consider that the administrator's report to creditors could be used instead of an IER? If so, on what basis? If not, why not?
B2	If we proceed with Proposal B1, we propose that the IER should be prepared solely on a liquidation basis where the only alternative is liquidation. Where the valuation shows no likely return for shareholders on this basis, we will normally grant relief, subject to the IER and explanatory materials being provided to shareholders and the Court granting leave.	B2Q1	Do you agree with our proposal that an IER should only be prepared on a liquidation basis? If not, why not?
		B2Q2	Should an independent expert consider, when performing a liquidation valuation, potential recoveries from voidable transactions and other matters as a result of the administrator's investigations? If not, why not?
		B2Q3	Do you consider that a 'going concern' valuation of the business is relevant or useful for a company in administration? If so, why?
		B2Q4	If you agree with the previous question, should ASIC refuse relief where the going concern value shows the shares have some value?
		B2Q5	Are there other factors that we should take into account when considering whether to grant relief?
B3	If we proceed with Proposal B1, we propose that the IER should be prepared consistent with the principles in RG 112. In our view, this would preclude the administrator (or another member of the administrator's firm or party associated with their firm) being the independent expert.	B3Q1	Do you agree with this view? If not, why not?
		B3Q2	Do you agree that the concepts of independence should be based on RG 112? If not, what other standards should be applied?
		B3Q3	Do you believe that another member of the administrator's firm or party associated with the administrator's firm (or their advisory/consulting arm), who has not been involved in the administration, should be allowed to prepare an 'independent expert' report? If so, why? If not, why not?