

28 February 2020

Terence Kouts
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Dear Sir or Madam

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

We welcome the opportunity to provide a submission on Consultation Paper 326 – Chapter 6 relief for share transfers using s444GA of the Corporations Act. We have consulted our Insolvency Management Committee and include our responses below.

The Appendix provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

Consultation Questions:

B1Q1 Do you agree that ASIC should require an Independent Expert Report (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?

We support the requirement of an IER when the entity involved is listed or a public company. However, the IER is a costly expense and therefore for other entities, we consider it important to balance the cost of an IER to creditors with the expected benefits to shareholders. We recommend ASIC considers the circumstances when the requirement for an IER is really warranted rather than requiring it in all situations.

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

We consider an IER may not be necessary for smaller unlisted, proprietary limited organisations as associated costs will reduce an organisations recoverability to creditors (and shareholders, if applicable).

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?

The administrator's report (the report) to creditors could be used instead of an IER in smaller voluntary administration Deed of Company Arrangement (DOCA) cases. We also suggest that in situations where the creditors have approved the DOCA and shareholders have agreed, that an administrator's report could be used and ASIC would not need to be involved. Appropriate thresholds for size of entity, proportion of shareholders agreed, related parties etc would need to be determined for when an administrator's report could be used. Alternatively, the thresholds could be set to determine when an IER is required.

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

We agree with proposal

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?

Potential recoveries from voidable transactions and other matters will need to be considered on a case by case basis.

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

A 'going concern' valuation is one method that can be used to determine the value of a business.

However, if an administrator is involved, it is likely that the going concern of the business has already been considered. The administrator would be considering the best options for creditors within their report to creditors (under section 75-225 of the insolvency practice rules) and creditors would have already voted on the plan of action included within the DOCA.

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

No Comment

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

No Comment

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.

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

We agree with this view, as we consider it important for the preparer of the IER to be truly independent. However, it is important to note that the cost of preparing an IER is therefore necessarily high as the expert is new to the engagement and so will take time to acquire the relevant knowledge and understanding to prepare their report.

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

No Comment

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?

In order to retain independence, we recommend that if another member of the administrator's firm or party associated with the administrator's firm is to prepare a report, the relationship should be disclosed, and the report labelled as an expert report (instead of an independent expert report).

Should you have any questions about the matters discussed in this submission or wish to discuss them further, please contact Karen McWilliams via email at

karen.mcwilliams@charteredaccountantsanz.com or phone (612) 8078 5451.

Yours sincerely



**Simon Grant FCA
Group Executive
Advocacy & Professional Standing**



**Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing**

Appendix

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.