

8 May 2026

Australian Securities and Investments Committee
GPO Box 9827
SYDNEY NSW 2001

By email: rri.consultation@asic.gov.au

Dear Sir/Madam,

Proposed guidance on ASIC's power to appoint reviewing liquidators

1. This submission is made by the Insolvency and Restructuring Committee of the Business Law Section of the Law Council of Australia (the **Committee**) in response to Proposed guidance on ASIC's power to appoint reviewing liquidators, which was issued by the Australian Securities and Investments Commission (**ASIC**) on 7 April 2026.
2. The draft information sheet concerning ASIC's power to appoint reviewing liquidators has many things to commend it. The reference to "illegal phoenix activity" as the first factor in Table 1 on page three is likely to ensure that ASIC receives fewer unmeritorious applications from creditors, shareholders of officers.
3. That would be, we submit, appropriate, given the rights already granted to creditors and others with a financial interest in a liquidation under the terms of the *Insolvency Practice Schedule (Corporations) 2016 (IPSC)*.¹

Judicial consideration of the potential appointment of a reviewing liquidator

4. As ASIC would be aware, the only superior court decision to consider the principles guiding the appointment of a reviewing liquidator in detail (albeit in the context of an application to Court to so appoint) is *Lewis v Battery Mineral Resources Ltd (in liq)* [2021] FCA 963.

¹ For example, the right of creditors to request information; s 70-40 IPSC; and to require the convening of meetings; s 75-15 IPSC; as well as the rights of anyone with a financial interest in the external administration or an officer to apply to the Court to inquire into the external administration of the company; s 90-10 IPSC.

5. There, Justice Griffiths considered the key matters informing the exercise of the Court’s discretion—which we submit ought to also apply to ASIC—to be as follows:
- The applicant ought to adduce evidence that a liquidator “has engaged in conduct which requires regulation, supervision, discipline or correction”. A review of commercial decisions ought not be a basis to appoint a reviewing liquidator.²
 - Matters for investigation ought to be expressed clearly; and broadly-expressed concerns “unsupported by evidence, are unlikely to justify an appointment”.³
 - Whether “the appointment of a reviewing liquidator would be just and beneficial for the interests of the general body of creditors”, including whether any investigation might lead to recoveries; and whether any investigation would delay the conclusion of the external administration or lead to further expense.⁴
 - The proposed appointment ought not be to further or vindicate the private rights of specific creditors.⁵
6. The Law Council considers these observations to properly reflect the matters that ought to be given weight when considering a request to appoint a reviewing liquidator (whether by the Court or by ASIC).

Proposed additions to the draft information sheet and Form 5605

7. In light of the above, we submit that consideration ought to be given to the inclusion in the draft information sheet of the following further information at Step 2 (with new proposed text in **bold**):

Supporting documents may include documents which evidence or describe the:

- seriousness of the alleged misconduct and when it happened, **including:**
 - **the specific alleged conduct of the liquidator(s);**
 - **when the alleged conduct occurred (including its frequency);**
 - **any special or “aggravating” circumstances, in particular, by reference to any conflicts between the liquidator’s duties and his/her personal interests;**
- economic loss **to the general body of creditors** that the misconduct caused **(if any) and (if applicable) how and in what way any investigation might improve the prospect of a better outcome for the general body of creditors**
- current stage of the external administration;
- name of the current external administrator; and
- **the existence and status of any applications for the appointment of a special purpose liquidator.**

² *Battery Mineral Resources* at [95 (a)].

³ *Ibid* at [95 (b)].

⁴ *Ibid* at [95 (c)].

⁵ *Ibid* at [95 (d)].

8. Additionally, we submit that the Form 5605 could be amended so that, in that part of the Form that includes the heading “Reason for request”, the following further text could be added (proposed addition in **bold**):

Outline your reasons for applying to have ASIC appoint a reviewing liquidator **and why you think that any such appointment is necessary to discipline or correct the liquidator(s) and/or potentially improve the financial position of the general body of creditors**

Summary

9. We submit that some or all of these proposed changes will increase the likelihood that fewer unmeritorious applications are brought and that applicants turn their minds to the important matters that must be addressed in any application to ASIC.
10. We further submit that it is appropriate to specifically refer to the interests of the general body of creditors as an important issue to be addressed in any application because, as is widely accepted, inquiries into the conduct of external administrators should not be the forum for an aggrieved creditor to advance their private rights.⁶
11. The proposed amendments to the draft information sheet and the Form 5605 do not suggest the deletion of any of the text of either document. Instead, we submit that the inclusion of the proposed additional words will better inform proposed applicants of the key matters that need to be addressed and, by extension, those that will likely be irrelevant to ASIC’s deliberations.

Conclusion and further contact

12. The Committee would be pleased to discuss any aspect of this submission with representatives of ASIC.
13. Please contact the [REDACTED] if you wish to do so.

Yours sincerely

[REDACTED]

[REDACTED]

⁶ *BL & GY International Co Ltd v Hypec Electronics Pty Ltd* [2010] NSWSC 9; see also the summary in *CIP Group Pty Ltd v Watters in his capacity as receiver and manager of GGPG Pty Ltd* [2024] FCAFC 5 at [70] to [73].