Release of the Insolvency Working Group Report No 2

15 May 2017

Questions and Answers

Why was the Insolvency Working Group established?

The Insolvency Working Group was a panel of experts set up in November 2015 to examine aspects of corporate insolvency law.

The areas they looked at were voluntary liquidations, voidable transactions, Ponzi schemes and regulation of insolvency practitioners. The working group also had a mandate to examine other areas of potential corporate insolvency law reform.

What did the Insolvency Working Group's first report cover?

The first report of the Insolvency Working Group recommended introducing a licensing regime for insolvency practitioners and director identification numbers to make it easier for stakeholders to identify and trace activities of directors.

What is a voidable transaction?

A voidable transaction is one where the liquidator can compel a creditor who has received a payment to pay it back if the company was insolvent at the time and the creditor received more than they would have in the liquidation. It concerns payments made to creditors before the company went into liquidation.

Why do we have a voidable transactions regime?

The voidable transactions regime aims to ensure that unsecured creditors of the same class are able to share equally in the distribution of the realised assets of the company.

The voidable transactions regime recognises that a company is normally insolvent for some time prior to it being placed into liquidation. This means that the equal treatment rules should also be applied before the liquidation commences.

What are the interests that need to be balanced in regard to voidable transactions?

There are two important but largely conflicting policy aims.

One aim is to protect an insolvent company's creditors as a whole against the reduction of the pool of assets available to them if individual creditors received more than they would have during the liquidation.

The competing objective is to provide businesses community with certainty that they can rely on the validity of payments. There are risks to commercial confidence if what appear to be normal, everyday commercial transactions are re-opened long after the event.

What are Ponzi schemes and how do they work?

A Ponzi scheme is a fraudulent investment scheme where the operator of the scheme pays returns to investors from new capital paid to the operator by new investors. Ponzi operators entice investors by offering returns on investment that are much higher than market rates of return. The collapse of Ross Asset Management around 2011 uncovered one of the largest Ponzi schemes to operate in New Zealand.

What has the Insolvency Working Group recommended on Ponzi schemes?

Although the Insolvency Working Group noted that insolvency law was never intended or designed to address investment fraud, it identified two potential changes to the Property Law Act 2007 that might aid liquidators with the recovery of funds from Ponzi schemes.

What is a Director Identification Number?

A Director Identification Number (DIN) is a unique identifier tied to an individual person, which is proposed to be introduced for all current and future company directors.

When will the government make decisions on changes to insolvency law or to introduce a director identification number?

The Minister of Commerce and Consumer Affairs expects officials to provide her with advice on any changes by the end of this year.