



7 October 2016

Insolvency Working Group  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140

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**Submission on Report No. 1: Insolvency Working Group, on insolvency practitioner regulation and voluntary liquidations**

Thank you for the opportunity to provide feedback to the Ministry of Business Innovation and Employment (**MBIE**) on the Insolvency Working Group's Report No 1: Insolvency practitioner regulation and voluntary liquidations (**Insolvency Proposals**).

ANZ Bank New Zealand Limited (**ANZ**) supports the recommendations made by the Insolvency Working Group. ANZ thanks the Working Group members for their thorough and considered analysis of the issues addressed in the Insolvency Proposals.

The key messages from a creditor's perspective which ANZ would like to specifically draw to the Insolvency Working Group's attention are set out in the table below.

**Key messages**

1. ANZ supports the introduction of a licensing regime for insolvency practitioners, coupled with minimum and ongoing competency requirements.
2. ANZ's preferred model for occupational regulation of Insolvency Practitioners is the co-regulation model.

More details are provided in Appendix I and ANZ's responses to the specific questions posed in the Report are set out in Appendix II.

**About ANZ**

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments, ANZ New Zealand Securities and Bonus Bonds. ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management services.

**Contact for submission**

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Once again, we thank MBIE for the opportunity to have input to the Insolvency Proposals.

Yours sincerely

James Law  
Head of Lending Services NZ

## **Appendix I – Detail of Key Messages**

### **1. ANZ supports the introduction of a licensing regime for insolvency practitioners, coupled with minimum and ongoing competency requirements.**

ANZ agrees with the introduction of a licensing regime for insolvency practitioners. This regime should be supported by the requirement for practitioners to:

- satisfy minimum competency standards (i.e. are fit and proper persons and sufficiently skilled and qualified),
- be restricted to only members of an accredited professional body that meet the required standards, and
- satisfy standardised competency requirements on an ongoing basis.

Finally, it is ANZ's view that the scope should be expanded to include practitioners managing compromises under Part 14. However, ANZ agrees that more relaxed criteria for solvent liquidators is warranted.

### **2. ANZ's preferred model for occupational regulation of insolvency practitioners is the co-regulation model**

ANZ supports a co-regulation model and agrees with the suggested division of functions as between the government regulator and accredited professional bodies put forward in the Working Group's paper. However, further consideration should be given as to whether there should be only one accredited professional body (as opposed to multiple bodies) as ANZ considers this approach would promote the most consistency and efficiency.

In principle however, ANZ does not object to having multiple professional bodies in the event the government regulator could ensure that consistent standards and processes are applied across the board.

**Appendix II – Answers to specific questions**

<b>ANZ response to specific feedback sought</b>	
<b>#</b>	<b>ANZ Comment</b>
<b>Insolvency Practitioner regulation</b>	
<p>1 Do you agree with the Working Group’s views on the problems with the status quo? (see paragraphs 39-77) What is the scale of harm being caused by these problems? If applicable, please describe the impact of the current insolvency practitioner regulation regime on your business.</p>	<p>Yes. In ANZ’s view, the Working Group has accurately outlined the concerns and difficulties experienced by creditors when dealing with practitioners that are self-interested, debtor friendly and/or lack the requisite experience and skill level. The Working Group has also correctly identified the root causes of these problems.</p> <p>Self-interested and debtor-friendly practitioners are of great concern to ANZ, as these individuals’ lack of honesty and integrity lead to ethical and legal boundaries being crossed. Their behaviour severely undermines creditor confidence in the insolvency process. ANZ fully supports legal reform that:</p> <ul style="list-style-type: none"> <li>(a) prevents practitioners who do not meet a “fit and proper person test” from entering the market; and</li> <li>(b) facilitates holding practitioners to account for their actions.</li> </ul> <p>Although less morally culpable, unskilled and inexperienced practitioners may make poor judgment calls to the significant detriment of the company and its creditors. ANZ also fully supports legal reform imposing a baseline skill requirement for practitioners, and empowering the Court with more effective supervisory powers. Continued education would also be favourably regarded.</p>

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<b>Feedback sought</b>	<p>Although scale of harm caused by these problems is difficult to precisely quantify, ANZ's view is that greater accountability in the industry would increase creditor confidence in the market.</p> <p>As NZ's largest financial institution, ANZ regularly deals with customers in distress. Therefore, ANZ is interested in insolvency law reform and the improvement of market confidence in the fair operation of insolvency law. ANZ also notes that the most vulnerable creditors are the smaller unsecured creditors.</p> <p>The above comments apply not just to insolvency practitioners dealing with companies and their assets (including managers under Companies Act compromises) but equally to provisional trustees and trustees under Part 5, subpart 2 of the Insolvency Act 2006. ANZ's view is that these processes are similarly vulnerable to abuse and the exclusion of any specific process which is part of the insolvency regime could give self-interested practitioners "wriggle room" to get around the reforms put in place.</p>
2	<p>Do you agree with the listed objectives? (see paragraphs 78-81)</p> <p>Yes.</p>
3	<p>Generally, ANZ supports legal reform resulting in:</p> <p>(a) greater clarity on disqualification criteria of practitioners, including the Court's ability to make prohibition orders and scope of such orders;</p>

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<p>proposals detailed in Annex 3.</p>	<p>(b) reduction of unnecessary and unrecoverable legal spend – e.g. re s280(1)(ca) of the Companies Act – having to make Court applications to allow investigative accountants to be appointed as liquidators.</p> <p>(c) greater clarity on roles and duties of practitioners, including:</p> <ul style="list-style-type: none"> <li>• efficient transitions between practitioners;</li> <li>• independence of deed administrators;</li> <li>• prohibition orders to apply as restrictions to practitioners acting in any insolvency arrangement (in particular, a person to whom a prohibition order applies must not act as deed administrators, compromise managers nor proposal trustees);</li> <li>• stricter laws regarding holding of funds – e.g. liquidators (in trust accounts and aligned with rules of relevant professional codes of practice) and receivers (offences to prevent mischief in relation to money);</li> <li>• requirement of interests statements by all practitioners identifying material conflicts (including prior relationships in the last two years) and how they intend to manage any conflicts; and</li> <li>• duty to report not just suspected offences but serious problems by all insolvency practitioners (including administrators).</li> </ul> <p>(d) enhanced transparency and accountability through reporting requirements, particularly in relation to holding of accounts – this would include requiring identity of appointer to be</p>

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	included in notices of appointment and more information to be included in first reports of liquidators.
4	<p>Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)</p> <p>Yes. In many circumstances, having to initiate Court action is a costly and time consuming exercise and therefore, is a decision not made lightly by creditors. In cases where it is considered necessary, ANZ supports greater clarity in the law and the Courts being empowered to exercise a more effective supervisory role – including enforcing liquidator’s duties and allowing removal and prohibition orders. ANZ also supports licensing bodies being able to apply for orders under the proposed amended section 284 to enforce liquidator’s duties and seek removal/prohibition orders.</p>
5	<p>What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)</p> <p><b>Registration as proposed in the Bill and negative licensing</b> – ANZ agrees that there is little point in a licensing regime that does not include any criteria for good character and appropriate skill and experience. Licensing by a government body will create a false impression of endorsement which would be abused by unscrupulous practitioners.</p> <p><b>No statutory occupational regulation</b> – ANZ agrees with the Working Group’s comments.</p> <p><b>Co-regulation</b> – This is ANZ’s preferred option. ANZ agrees with the suggested division of functions as between the government regulator and accredited professional bodies. However, further consideration should be given as to whether there should be only one accredited professional body (as opposed to multiple bodies). Refer to our response at Question 6 (Recommendation 3) below.</p> <p><b>Government licensing</b> - ANZ agrees that co-regulation is preferable due to the market knowledge of professional bodies. The</p>

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	professional bodies' industry knowledge also makes them better placed to implement relevant and effective continuing education programmes to ensure that practitioners maintain an appropriate skill level.
6	<p>Do you agree with the details of the co-regulation system recommended by the Working Group? (see Recommendations 3-8 on pages 3 and 4)</p> <p><b>Recommendation 3:</b> ANZ agrees with the Working Group's proposed functions and powers, but suggests that further consideration be given to whether simply having one well-resourced accredited professional body would meet the aims of the reform. In principle however, ANZ does not object to having multiple professional bodies in the event the government regulator could ensure that consistent standards and processes are applied across the board. In addition, ANZ considers that the requirement to hold adequate professional indemnity insurance cover (potentially at a prescribed minimum threshold) should form part of the initial and ongoing licensing requirements for insolvency practitioners regulated by accredited professional bodies.</p> <p><b>Recommendation 4:</b> ANZ's view is that the scope should be to include practitioners managing compromises under Part 14. These practitioners should not be excluded, particularly in light of the inclusion of trustees of insolvents' proposals under the Insolvency Act 2006. Unprofessional conduct and incompetence by compromise managers and proposal trustees both have a detrimental effect on creditors.</p> <p><b>Recommendation 5:</b> If the reforms suggested by the Working Group are implemented, ANZ agrees that more relaxed criteria for solvent liquidators is potentially warranted. However, simply being registered with a professional body may not be sufficient. ANZ's</p>



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Feedback sought	<p>view is that eligible practitioners should be able to demonstrate relevant finance qualifications, experience and business acumen to ensure that they are able to recognise if a company in a solvent liquidation is in actual fact insolvent, in which instance the insolvency process should be handed on to an accredited insolvency practitioner.</p> <p><b>Recommendation 6:</b> From a creditor's perspective, ANZ's experience has been that local practitioners usually demonstrate greater familiarity with the market and funding and sale opportunities and as a result, can be more effective (including in respect of costs) than overseas practitioners. In addition, local practitioners would generally face greater consequences of any inappropriate conduct than overseas practitioners.</p> <p>When choosing a practitioner for appointment as receiver, ANZ usually considers each case separately and takes into account factors such as the practitioner's experience and skill, knowledge of the relevant market (including the company's business-type and likely sale prospects), professional reputation and likely costs. As a general rule, ANZ appoints local (as opposed to overseas) practitioners as a consequence.</p> <p>ANZ refers to <i>Ex Ced Foods (formerly Cedenco Foods (In Liq) and Cedenco Ohakune (In Liquidation) [2012] NZHC 3037</i> as an example where the appointment of an overseas practitioner as a liquidator had some undesirable outcomes:</p> <ul style="list-style-type: none"> <li>(a) Australian liquidators (John Sheahan and Ian Locke of Sheahan Locke) appointed over Cedenco group, comprising 2 NZ companies and 3 Australia companies.</li> <li>(b) Liquidators sought orders to examine a bank officer.</li> </ul>

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	<p style="text-align: center;"><b>ANZ Comment</b></p> <p>(c) Court refused to make orders for various reasons:</p> <ul style="list-style-type: none"> <li>• Examination of bank officer was for an ulterior purpose – no benefit to Cedenco NZ (as opposed to Cedenco Australia) – and therefore, oppressive.</li> <li>• Where creditors have been paid and liquidators' costs are spiralling upwards, it would be appropriate to terminate the liquidation.</li> </ul> <p>If it is concluded that overseas practitioners should be able to practice in NZ, ANZ agrees that such practitioners would need to be licenced. In addition, ANZ's view is that it would be a fairer outcome if the ability for overseas practitioners to practice in NZ is reciprocated in the relevant overseas jurisdiction.</p> <p><b>Recommendation 7:</b> Agree.</p> <p><b>Recommendation 8:</b> Agree.</p>
7	<p>Are there other feasible options to address the problems identified by the Working Group with the provision of insolvency services?</p> <p>Generally, ANZ has found the Working Group's recommendations to be well thought out and comprehensive.</p> <p>Given that the costs expended in recovering amounts advanced from insolvent entities can often be unrecoverable, creditors are usually cost conscious. Accordingly, ANZ supports law reform that would result in a more cost-effective means of enforcing practitioners' rights and duties.</p>

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8	<p>An alternative option for regulating insolvency practice would be to only require the practitioner to be a member of a professional body, such as CAANZ or RITANZ, without any oversight from an independent government regulator. Would this option provide a more cost effective model for regulating insolvency practitioners?</p>
9	<p>Should insolvency services be restricted to only certain members of an accredited professional body, as opposed to all members of the accredited professional body? If so, what criteria should be applied to determine which members of the accredited professional body would be permitted to provide insolvency services?</p>
10	<p>How might the different options impact on competition within the insolvency services sector? How would the different options impact on the availability of insolvency services to businesses and creditors outside the main</p>

**ANZ Comment**

ANZ's view is that a system overseen by a government regulator is necessary for objectivity and to ensure that consistent standards and processes are applied by professional bodies.

ANZ considers that close assessment of the criteria of membership of an accredited professional body is required in order to determine whether certain members, as opposed to all members of the body should be permitted to provide insolvency services. Depending on criteria of membership of the accredited professional body, it may be that not all members should be able to provide insolvency services.

ANZ's view is that insolvency services should be restricted to members of an accredited professional body that meet the required standards – i.e. fit and proper persons and sufficiently skilled and qualified.

ANZ also considers that the CAANZ/RITANZ recommended accreditation standards should form part of the criteria to determine which members of a professional body should be able to provide insolvency services.

The Working Group's recommendations are not unduly restrictive and, in ANZ's view, will not impact on competition. In any event, we do not view competition as a relevant factor when imposing baseline standards for practitioners. If there are enough sufficiently skilled

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	centres of New Zealand?
	practitioners in the market, there would still be a competitive market and participants would have increased confidence in light of the required competence/fit and proper requirements.  There should be no barriers to practitioners outside the main centres to be licensed if they meet the required standard. In ANZ's experience, it has not had many dealings with practitioners that specialise in specific regions outside the main centres – most practitioners' specialisations are based on industry rather than regions. Regional practitioners can similarly seek to be accredited.
<b>Voluntary liquidations</b>	
11	Do you agree that introducing a licensing regime for insolvency practitioners would reduce much of the harm raised by aspects of the voluntary liquidation process? (see paragraphs 174-178, 201)
	Yes.
12	Do you agree that the latent defect problems in the building and construction sector are issues best solved by building and construction sector law and should not be directly addressed by changing insolvency law? (see paragraphs 179-186) If not, what would you suggest?
	Yes. ANZ's view is that it is difficult to isolate the treatment of one particular industry in a principled manner and without giving rise to an uncertain position.
13	Do you agree that one, some or all of the three measures proposed by the Working Group will address the harm of some voluntary liquidations? (see paragraphs 187-200)
	<b>Measure 1:</b> Removal of ability to appoint liquidator (or deed administrator) after service of a liquidation application should be subject to the petitioning creditor being able to consent to a voluntary appointment. This measure may not be necessary in the event an effective licensing regime has been implemented.  <b>Measure 2:</b> This measure may be too onerous. Companies often intend to effect genuine sales of assets at market value in order to

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14	<p>Do you agree with the benefits of a unique identification number for directors?</p> <p>Refer to our response at Question 13 (Measure 3).</p>
15	<p>Do you have any other comments on Report No. 1?</p> <p>No.</p>