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Corporate Law
Ministry of Business Innovation & Employment

By email: Corporate.Law@mbie.govt.nz

CORPORATE INSOLVENCY LAW REVIEW – SUBMISSION

I am a Chartered Accountant and the sole director of Corporate Restructuring Limited, a firm specialising in solvent and insolvent liquidations.

Solvent Liquidations

A large proportion of my work is the liquidation of solvent companies, undertaken for a variety of reasons. I believe that all liquidators should be licensed and accredited to undertake the work of a liquidator whether the liquidation is **solvent or not**. This is reiterated in the Insolvency Working Group's Review at R5. It states that "it would be appropriate in our view for that regulator to accredit an organisation to license practitioners who carry out solvent liquidations".

Currently, the perception by many accountants is that the liquidation of a solvent company is "easy and straight-forward". However this is not always the case and I have dealt with many large (capital gains in excess of \$20m) companies where they have extensive issues which need to be dealt with prior to completing the final accounts and tax returns. These can include related-party gains, sales or assignment of assets (eg large partially-developed tracts of land), acrimonious directors and shareholders, relationship property issues, large overdrawn current accounts and related party loans and extensive lease commitments. Inexperienced liquidators are also not dealing with all assets of a company before the company is struck off the Companies Office register and the remaining assets then vest in the Crown. This has caused some major concerns for shareholders who thought they were dealing with experienced liquidators and are then put to the expense of applying to the High Court for reinstatement.

Accountants and lay people are currently able to undertake these liquidations, including the company's own accountant. This does not provide any level of objectivity or independence when dealing with creditors and shareholders. As accountants only undertake these liquidations on an adhoc basis they then have to reacquaint themselves with the provisions of the Companies Act whereby a full time liquidator would complete the liquidation in a shorter time-frame at a lower cost.

I am aware of many instances where the company's accountant has undertaken the solvent liquidation and has not filed the directors solvency resolution with the Companies Office prior to the appointment of themselves as liquidator, in contradiction of s243(8) of the Companies Act 1993. The advertisement states that the liquidation is solvent but no such resolution has been filed.

Further, some accountants and part-time liquidators are filing a "combined" public notice advising the public of their appointment and their finalisation of the liquidation. I have attached a copy of one such

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notice but the same practitioner (CA) continues to flout the clear intention of the Companies Act. (Please note that the notice is **confidential** when attached to this submission as it is only one such example) This notice only allows a short period of time to make a claim or object to the company's removal from the Companies Office register. By doing so, the liquidator is stating that he "knows" there are no creditors, on appointment which must place him in the position of a pseudo director and clearly not independent.

In my view, all liquidators must be seen to be independent therefore I strongly recommend that all liquidators belong to an accredited professional body.

Change of a company's name prior to liquidation

An increasing number of liquidators are not complying with s25(4) of the Companies Act 1993 by not reporting a company's previous name in any public notice, if the name changed within 12 months of the date of liquidation.

It appears that liquidators are not advertising the previous company name to avoid publicity and possibly the receipt of claims in the liquidation. They are also not referring to the former name in their liquidator's reports. In some cases the liquidators have used the justification that "the company's solvent so it doesn't matter". If a liquidator is objective how can they possibly know that the company is solvent unless they advertise the previous name? Section 25(4) makes no allowance for a solvent liquidation. Either way they are deliberately being misleading and are in breach of the Act.

This is another reason that all liquidators must be registered and accredited. These practices can then be reported to their governing body.

Yours faithfully

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