5 October 2016

Submission on:
Review of Corporate Insolvency Law

Report No. 1 of the Insolvency Working Group, on insolvency practitioner regulation and voluntary liquidations

To:
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From:
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Please note the views in this submission are my personal views and not necessarily the views of BDO Tauranga Limited or any of the other New Zealand BDO offices

Insolvency Practitioners Bill
I am comfortable with the recommendations made regarding insolvency practitioners registration and accept the recommendations R1 to R10 for the reasons given in the review.

Voluntary Liquidations
I agree that introducing a licensing regime for insolvency practitioners would reduce much of the harm raised by aspects of the voluntary liquidation process. It may not completely eradicate all harms but I don't believe any system would. However properly experienced, skilled and registered practitioners would go a long way to ensuring only trained people were involved in insolvency assignments.

I further agree that latent defect problems in the building and construction sector are issues best solved by building and sector law. Changing that to require insolvency practitioners to somehow allow for or provide financially for an event that may or may not happen up to say 10 years away goes completely against the whole insolvency regime of an orderly and fair windup of a company's affairs. While some liquidations can take that long, that is normally for other reasons and to hold up the process for contingencies is plainly wrong.

I do not agree that the three measures proposed by the Working Group will address the harm of some voluntary liquidations. I believe the current 10 day rule is adequate and to extend that out to a longer period; being, after service of a liquidation application in my view gives too long of a restriction for potential liquidators. While the theory of what is espoused may be fine, I believe practically there would be problems, particularly for the smaller and/or regional practitioners. These practitioners tend not to get large amounts of IA, creditor compromise or VA work and rely heavily on a flow of, generally smaller, liquidations. Many small business owners do not accept they are in financial difficulty until a notice of application is filed, so would not be seeking help or an appointment prior to that occurring. While there is the suggested option of an approval process from the petitioning creditor, the largest amount of Court applications are from the Inland Revenue

Department and other larger organisations who have their own panels of appointees and I believe many smaller practitioners would be "shut out" which I feel is unfair and uncompetitive. I am also aware one of the major banks is looking at an approved appointee list also, further indicating to me unless firms or individuals are not on those lists, there is a strong likelihood they will not be approved and the appointment will go to another party, usually one of the larger firms. There are many capable and competent practitioners working in small firms or as consultants in their own name and I believe they provide a valuable service, particularly in the regions and with smaller businesses.

The insolvency practitioners' registration system, in my view is an adequate tool to ensure only the right people get appointments and to extend the 10 day rule is overkill for a procedure that is currently known and understood and fair to the parties involved.

I agree with the benefits of a unique identification number for directors.

Feel free to contact me if you require further elaboration on the points I have made above.

Kenneth Brown
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