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Dear Sir/ Madam

Review of corporate insolvency laws

CPA Australia represents the diverse interests of more than 155,000 members in 118 countries. Our vision is to make CPA Australia the global accountancy designation for strategic business leaders. We make this submission on behalf of our members and in the broader public interest.

CPA Australia has had a long term interest in this area of law reform in Australia having made a submission to the 2015 Productivity Commission inquiry into Business Set-up, Transfer and Closure, and been a member of consultations such as the Insolvency Law Advisory Group, which oversaw the significant 2007 reforms to Chapter 5 (External Administration) of the Corporations Act 2001. Our submission is based on the international and public interest significance of corporate insolvency law and to present CPA Australia's contribution to a 'level playing field' in both insolvency and the broader market for accounting services in New Zealand, as has been established in the case of statutory audits under the New Zealand Auditor Regulation Act 2011 and s 35 of the Financial Reporting Act 2013.

As you will be aware, the *Insolvency Law Reform Act 2016* has recently been enacted in Australia, with provisions affecting registered liquidators coming into effect on 1 March 2017. A number of the schedules and guidance accompanying this reform are yet to be released. CPA Australia's submission is thus based on Australian law as it currently stands.

If you have any questions regarding this submission, please do not hesitate to contact our New Zealand Country Manager Mr David Jenkins on 9 913 7453 or at david.jenkins@cpaaustralia.com.au, or our Policy Adviser ESG, Dr John Purcell FCPA on +61 3 9606 9826 or at john.purcell@cpaaustralia.com.au.

Yours faithfully

Stuart Dignam
General Manager – Policy & Corporate Affairs

Questions for submitters on Report No. 1 Please provide reasons in support of your views for agreeing or disagreeing with the Working Group.	
Insolvency Practitioner regulation	
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.
	CPA Australia concurs with the observations concerning deficiencies in the status quo. We add two further general observations. It is important that the insolvency law be periodically reviewed to ensure its coherence with ancillary legal developments, such as those occurring in relation to contractual remedies and secured transactions, and that it is in harmony with international developments.
2	Do you agree with the listed objectives? (see paragraphs 78-81)
	CPA Australia agrees though suggests the presentation of overarching objectives along those stated by the insolvency law academic Professor Roy Goode, which are: (1) to restore the debtor company to profitable trading where this is practicable; (2) to maximise the return to creditors as a whole where the company itself cannot be saved; (3) to establish a fair and equitable system for ranking of claims and the distribution of assets among creditors; and (4) to provide a mechanism by which the cause of failure can be identified and those guilty of mismanagement brought to account. Aside from emphasising inherent complexity, such presentation would highlight the shifts and trade-offs in associated policy development.
3	Do you generally agree that changes proposed in the Insolvency Practitioners Bill that do not relate to the registration regime proposed in that Bill along with the additional related changes proposed by the Working Group should be progressed? Please include any comments you have on one, some or all of the proposals detailed in Annex 3.
	CPA Australia agrees with these various proposals. Each is consistent with the indicia of an efficient and transparent system for handling corporate failure, recovery and liquidation.
4	Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)
	CPA Australia agrees that the matter of oversight, and in particular deregistration, requires certainty within statutory rules. We note the reference to UK legislation and point out in passing a somewhat different approach adopted in Australia. Here, ASIC has extensive statutory powers in deregistration of liquidators. Liquidators are treated as officers of the court whereas administrators are agents of the company to which they are appointed. Both are "officers of the corporation" per s 9 of the Corporations Act 2001 bringing them within extensive statutory rules related to duties and, importantly, disqualification. The important point, though, is that there should be certainty in the law and capacity to swiftly, though with due process, remove those individuals who should not be in practice.

5	What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)
	CPA Australia does not favour either of Options A and B as these do not meet reasonable expectations within the economy, business community and wider society for professional and ethical handling of business stress and failure. A licensing regime of the type contemplated in Option D, whilst emphasising the public interest, may not fully achieve the desired level of integrity in practice offered by a co-regulatory regime. CPA Australia therefore favours Option C. We observe in passing that the system adopted in Australia, though co-regulatory, is more weighted towards detail within the licensing regime than that contemplated by Option C. For example, the "fit and proper person" requirements are identified in statute and supported by substantial regulatory guidance from ASIC.
6	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)
	R3: Whilst concurring with the logic of the split of responsibility between government regulator and accredited professional body, CPA Australia suggests that the MBIE be fully satisfied that government does not license the individual practitioners. Reference could also be made to competency frameworks in describing the features of the accredited professional body. R4: Consideration should be given to reference being made to pre-insolvency and turnaround advisers. R5: This is sound so long as there are well articulated and understood processes for directors attesting to solvency and treating initially thought solvent companies which prove on investigation to be insolvent. R6: Agree R7: Agree and reference might be made to the application of the UNCITRAL Model Law. R8: CPA Australia makes no specific conclusion on this matter other than urging a consistent approach to regulated professions and professionals, the impact on supply of services and the wider economic and public interest in efficient, ethical and transparent insolvency law. CPA Australia reiterates its willingness and readiness as an accredited professional body to fulfil any such co-regulatory requirements as they emerge.
7	Are there are other feasible options to address the problems identified by the Working Group with the provision of insolvency services?
	No specific comment.

8	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?
	Reiterating the points made above, CPA Australia strongly supports co-regulatory arrangements. Whilst the professional bodies, recognised/ accredited in legislation such as CPA Australia and CAANZ, have a key role to play, the economic and social consequences of corporate insolvency demand strong public policy expressed in law, including, where necessary, regulation of who can and cannot practice.
9	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?
	CPA Australia believes that the highly specialised technical nature and public interest require restriction on who, within an accredited professional body, can provide insolvency services. Reference to specific specialised skills spanning both accounting and law could be embedded in regulation, though allowing for professional education offered by the accounting bodies.
10	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 centres of New Zealand?
	CPA Australia urges recognition of the need to ensure sufficient depth and diversity in the market for insolvency practitioners. This assists in achieving appropriate competitive pricing and acts against risk of excessive cross-referrals. CPA Australia's participation in the New Zealand market is in this regard beneficial.
Voluntary liquidations	
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)
	As remarked above, CPA Australia strongly supports co-regulatory arrangements underpinned by a certain and well articulated licensing regime. We observe though that licensing of company liquidators, of itself, will not mitigate the risks of phoenix activities discussed in paragraphs 174-178, 201. In addition to the vigorous application of Companies Act provisions identified in these paragraphs, we believe licensing should be accompanied by suitable regulator oversight and investigatory powers.
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?
	Experience in Australia points to the need of a multipronged approach to addressing problems of phoenix activities and the avoidance of liability for civil wrongs and breach of contract terms. Phoenixing has been of particular concern in the building and construction industry and there are implications also for criminal law. CPA Australia

	urges also that there is a strong case for agency collaboration and information sharing across such areas as corporate law, revenue and anti-money laundering.
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)
	Measure 1. CPA Australia agrees with this proposal. There are various means by which a liquidator is appointed in Australia. However, once appointed, removal typically requires the intervention of the court upon the showing of cause. The details outlined in para. 191 appear sound. Measure 2: CPA Australia agrees with the proposed strengthening of antecedent transaction recovery measures and suggests also that the capacity for effective and efficient tracing might be further augmented through development of a personal property securities registration scheme of the type used in Canada and Australia.
14	Do you agree with the benefits of a unique identification number for directors?
	CPA Australia supports such measure and notes similar proposals under consideration in Australia as a means of combatting phoenix activities.
15	Do you have any other comments on Report No. 1?
	No further comment