Response to Questions for submitters on from David Thomas, Accountant, Tauranga.

Email david-thomas@vodafone.co.nz,

INSOLVENCY PRACTITIONER REGULATION

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.

1 I agree with the proposal that insolvency practitioners should be fit and proper people. That Insolvency practitioners should not have criminal convictions, or tax evasion, or avoidance convictions.

2 Do you agree with the listed objectives? (see paragraphs 78-81)

Yes

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.

I generally agree with the proposals in Annex 3. But from a functional view the changes are just good practice.

I don't think that, the recommended changes assist the liquidator to do a more efficient and effective job. Particularly when dealing with uncooperative shareholders, directors, or professionals.

I stress throughout this document the need for insolvency to remain independent, from the influence of shareholders and creditors, to give no advantage to one party over another.

But the act does need to afford both creditors and shareholders equal rights and remedies. Particularly when dealing with unreasonable requests or behaviours of insolvency professionals.

All too often from what I have witnessed insolvency professionals, are finding themselves in adversarial relationships with director and shareholders.

4 *Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)*

Yes, I agree with these proposed changes

5 What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)

I share the groups view of the need for an independent government licencing body.

I don't agree that CAANZ/RITANZ should hold any influence in the licencing process.

My view is different where CAANZ/RITANZ is concerned, because I don't think membership offers any higher claim to integrity, professionalism, experience of independence. There are other inherent problems with this organisation that I will detail later.

The alternative qualification regime I would propose for licencing is;

1. On-going Education - partner with a tertiary education provider and create a post-graduate diploma in Insolvency, and ongoing learning requirements.

2. Make the Educational requirement of acceptance is that a licence must hold a law or business degree from a reputable university
3. Age – raised 25 years to act unsupervised.

4. Require that Insolvency practitioners are unable to operate a trust account much like barristers, that moneys are held in an independent solicitor's, or accountants trust fund and distributed from there.

5. I agree with the need to hold professional indemnity insurance

This proposal has zero cost to government. It requires that one has to have completed a minimum study of a bachelor's degree will eliminate many unqualified practitioners, it should be the watermark.

There are practitioners who are members of CAANZ/RITANZ, that don't hold degrees. This is not acceptable.

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)

I don't agree with co-regulation I view it as a function of good government to monitor and enforce law and regulation.

7 Are there are other feasible options to address the problems identified by the Working Group with the provision of insolvency services?

Yes, there are, firstly, the qualification criterial I have proposed.

But there is a problem with institutional v Small business practitioners. From my observations institutional practitioners are less suited to the Small business type client.

The problem lays with experience and communication.

Having worked for large accounting firms and government institutions, the accounting and approach for the Large business/organisation, and small businesses is very different.

I have seen institutional accountant practitioners struggle with communication and getting an understanding of small businesses and that has led to some very poor outcomes to creditors

Business might seem the same but there is a vast difference between large and small enterprises, and the people who work and operate in those entities.

As discussed previously I think there should be two sorts of licences granted corporate and small business insolvency.

Corporate Liquidators would need to work large cases in a firm structure, so the licence is granted to partners, who can delegate their powers, to staff.

The small business specialise in the small business sector. Small business liquidators could operate similar to a barrister does. In that they are stand alone. In that they cannot hold a trust fund they have to use a lawyer or accountants trust fund. The importance is being independent of the interest of shareholder or creditors.

They might employ staff or contract staff, but they should be independent of accounting or law offices, and they only do liquidation work.

This approach where there is an election and specialisation would mean that large enterprise liquidations would only be conducted by approved firms.

With Small enterprise liquidators, accountants referring clients don't face the prospect of losing clients, and there is no possibility of conflict of interest with creditors and shareholders because there is no ongoing relationship, once the liquidation has been completed.

At present IRD operates a stable of preferred creditors. I am not picking on IRD, what I am saying is that if you have ongoing work for a creditor, it is difficult to argue this is not and ongoing relationship and therefore a conflict of interests, and independence.

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?

I am eligible to re-join CAANZ, and could join RITSOL. I choose not to be a member and not for professional reasons. But because CAANZ and RITSOL don't inspire me to become a member. They continue to be bias towards large practices and government department that provide them with a large percentage of their membership.

I don't think they have been consistent with some rulings, but that's my opinion based on my observations.

From the many small accounting practitioners I speak with they would not belong if there was a credible alternative. I like the fact I don't have to belong.

But not belonging is not an excuse for me to follow best practice. I have extensive commercial experience running my own small businesses. I hold two double majored degrees from Victoria University.

I work closely with and have my work scrutinised by a lawyer, (and barrister when required). Funds are held in a solicitor's trust fund. Plus, I have my accounting work checked by a chartered accountant, when required.

These are my self-imposed checks to ensure transparency, and integrity, on every job. I believe I am holding myself to a higher standard of care.

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?

My proposal to use degrees as minimum requirement eliminates the need to belong to professional bodies. Because each individual licence holder must have a tertiary education and be at least 25 years of age.

I strongly oppose the requirement of membership to CAANZ and RITSOL furthermore it concerns me that membership of a private organisation should even be a requisite of licencing. CAANZ and RITSOL are not tertiary institutions. Training is provided by members.

Just the fit am proper person, no criminal or tax convictions, and requirement of holding a commerce or law degree will disqualify all of the unfit practitioners.

There should be no grandfather clauses, strictly the degree qualification should apply to everyone.

This will increase the workload for the qualified and fit practitioners. So there will be no need to add the further step of belonging to a professional body.

If a tertiary institution is engaged to provide ongoing education as a requirement

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?

There needs to continue to be a high court guide for fees and a function of the court to monitor fees. Fee's in the main centres are running over the high court guide, this needs to be addressed.

VOLUNTARY LIQUIDATIONS

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)

I disagree with the proposition that voluntary liquidation is a problem. MY view is that voluntary liquidation is the most efficient form of liquidation

I am concerned that this committee, seems to take issues with voluntary liquidation.

I know from discussion that Voluntary liquidation is a regime that is frowned upon by IRD because of control issues. It is one of the main sources of work for the smaller firms. This keeps the market efficient

This view of voluntary liquidation ignores the harm that creditor application liquidation brings.

Court appointed liquidations can be more problematic than Voluntary, because, Voluntary liquidation starts with the shareholders realising they have to do something, about the situation.

Court appointed liquidations start from the point where the shareholder has not come to that conclusion.

If a creditor has the right to choose their liquidator, in a court appointed liquidation that right should be equally afforded to shareholders and directors.

The real issue is the advice that business professionals, give director and shareholders whose companies are under stress. I have seen many issues of advice that is just unprofessional and could be considered negligent, from Chartered Accountants, Accountants, Business advisors, and bookkeepers.

In order to protect creditors, I think there should be a clause similar to section 135 for directors. That covers a business's professional advisors.

Plus, section 135 needs to be beefed up and liquidators should be able to more easily hold director responsible for their decisions, that cause losses.

This will create a more cautious director and advisor, and likely lead to lower creditor losses.

With voluntary liquidation Shareholders that take responsibility are more likely to co-operate with their choice of liquidator. This reduces cost to liquidations.

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)

Voluntary liquidation presumes the shareholders right to choose their own liquidator. That right should not be eroded further.

My concern about the view of the committee with respect to voluntary liquidation largely ignores the problems with creditor application liquidations. That it reflects the view of some Inland Revenue officials.

Inland Revenue seek to appoint only the large accounting firms to liquidations. This raises the cost of liquidation. Because large firms have large overheads, that need to be incorporated into every job, in order to remain profitable

Inland Revenue argue that they get good returns, but I have first-hand experience of identical companies and there being a 125% difference between the large firm's fees and my fees for the same work.

Large firms, in order to be competitive require maximum return for the very least effort. From what I have seen they take the easiest option to achieve that. Sometimes that is correct. But sometimes other approaches might have yield better results for creditors. The cost factor is further argument as to why there should be demarcation between large and small enterprise liquidation.

I don't believe that large firms can be competitive with small operators without cutting the corners pointed out in this letter ultimately it is the creditor paying for the waterfront offices and designer fit outs. That is the problem, with the large firms taking on small jobs. If they can't be efficient or effective in that market, then they should not be in it. This is just the way the market is.

14 Do you agree with the benefits of a unique identification number for directors?

There are a percentage of the population who have multiple identities, I have experience of people with 2+ drivers licences, specifically to have another identity.

Where it's an idea there will be ways around it. Yes this would help, but I also think there should be a provision that allows a liquidator to request information on the company director and shareholders under section 261.

I have had the privacy act used in cases where I know private accounts of directors, have assets, or revenue put in them.

15 Do you have any other comments on Report No. 1?

I think the penalties for refusal or non-compliance for giving information under section 261 should be toughened and made easier to prosecute.

I think there should be a section for obstructing a liquidator in the course of their duties, that applies to third parties, which could be prosecuted by the police.

I think there has to be a clear demarcation between institutional and small business liquidations.

There is an alternative and that is for all liquidations application be made to court or the companies office and, the court or companies office assign the liquidation to each liquidator on an equitable basis. Therefore, removing any possible influence.

(The above is written as my opinion based from my observations, of the industry and the stakeholders. I don't profess to have all the answers, or even have all the information in writing this opinion,

I have tried to be thoughtful, balanced and helpful. Please excuse any typos or spelling mistakes)