Rees Logan and Rhys Cain of EY

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.	Yes, the report documents the problems with the status quo well.
2	Do you agree with the listed objectives? (see paragraphs 78-81)	Yes, the report documents the reasons well for regulating insolvency practitioners.
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.	We support the proposed changes but not some specific comments below: *Para 27 Liquidators reports* – We would like to see an amendment that specifically noted that you did not needed to list addresses of certain creditors who should be entitled to privacy such as employees whose addresses are usually their private residence which should not be disclosed in a public forum.
4	Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)	Yes.
5	What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)	Options A and Option B are not adequate and we agree with the reasons noted in the report. Option C would be the easiest option to implement given it is currently in place and is similar to the regime for licensing auditors. Option D is a viable option but given the small number of licensed insolvency practitioners the set up and maintenance cost might

		overshadow the benefits.
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)	Yes, we are strongly supportive of the co-regulation model.
7	Are there are other feasible options to address the problems identified by the Working Group with the provision of insolvency services?	No. The report sets up the main options well.
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?	We do not believe the costs in administering proposed model is cost prohibitive. We believe having an independent regulator provides a more robust model that gives the keen stakeholders in the industry the confidence that those parties acting as regulated insolvency practitioners have the experience and integrity necessary to do this.
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?	Yes. Similar criteria to what is required in the current accreditation regime around demonstrated experience and being a fit and proper person. RITANZ is looking to implement an educational qualification as party of its future criteria. This should be the next step and implemented within the next 5 years.
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?	It is likely to reduce the number of insolvency practitioners, however, those who are unable or unwilling to meeting the new regulation requirements are not people who should be administering insolvencies. While the number of insolvency practitioners are likely to reduce the number is likely to increase from the current number of accredited insolvency of approximately 100. This is a sufficient number to ensure competitive services a provided. There is likely to be less insolvency practitioners outside the main centres, however, there would be nothing preventing a person that previously administered insolvencies, but did not wish to or was unable to become a regulated insolvency practitioner, by providing contractual services to assist the regulated insolvency practitioner. In

		these situations the regulated insolvency practitioner would remain in charge and subject to regulation and supervise the activities of the contracted party. Insolvency practitioners based in the main centres already undertake a large portion of the formal insolvencies located outside the main centres.
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)	In the large part yes as it will ensure all liquidators meet industry standards. However, it also provides an avenue for affected parties to get the matter investigated without having to go to Court.
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. Currently insolvency law has minimal reference to any other industry specific legislation. Any industry specific requirements should be incorporated into legislation governed by those industries unless the key concepts being incorporated can be validly applied across all industries.
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)	Yes, we agree with all of these. We would also like to see court supervision of liquidators' fees (rate and quantum approval) for voluntary liquidations as is done with court appointed liquidations. This would ensure both processes are equal and all liquidators have the same scrutiny of their fees.
14	Do you agree with the benefits of a unique identification number for directors?	Yes. No identification is currently required when consenting to be a director so as liquidators we regularly see use of aliases by Directors. Having a unique identification would provide the benefits identified.
15	Do you have any other comments on Report No. 1?	Yes. **Solvent liquidations**

		Under section 243(8) of the Companies Act 1993 ("the Act") the Board of a company can resolve that the company will be able to pay its debts on appointment of a liquidator. This does not make a company solvent. There is no guidance or case law on what this means or how long they have to pay their debts over (such as in other jurisdictions) and as there is no reference to the solvency test under section 4 of the Act. Accordingly, if solvent liquidations are going to be excluded from regulation, changes need to be made to the Act to give more clarity around what a solvent liquidation is and what it means in terms of liquidators duties and the liquidation process. Our view is that liquidators of solvent companies still have strong fiduciary obligations to act in the interests of the shareholders often holding significant sums of money or assets on trust for shareholders prior to distribution and therefore should be caught under regulation as well. **Creditor Compromises** We believe if an independent party is appointed to administer or manage a creditor compromise, then that party should fall under a regulated insolvency practitioner regime. The key reason for this being these Compromise Managers/Administrators once again act in an important fiduciary capacity. They regularly realise or oversee the realisation of company assets, assess the merits of creditor claims (quite often admitting or rejecting in accordance with the liquidation creditor claim provisions) and hold and distribute funds to creditors. Therefore the parties administering these should be held to account under a regulated regime. **Overseas practitioners** We believe the requirements in the Act in relation to a having a least one director of a company that lives in New Zealand or an enforcement country, as set out below, should be replicated with the requirements for liquidators:

		10 Essential requirements *A company must have—* *……* *(d) 1 or more directors, of whom at least 1 must—* *(i) live in New Zealand; or* *(ii) live in an enforcement country and be a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country.* A key reason for implementing this was that the Registrar of Companies would have someone to question and in certain circumstances hold them to account. This reason is just as valid and important for liquidators. **Audit** Where companies are required to have their annual financial statements audited there is no provision that stops this requirement once a company enters into liquidation. This is a concern for directors given their obligations in relation to audited financial statements and while the Registrar of Companies takes a practical approach to this and does not require companies in liquidation to file audited financial statements there does not appear to be any specific legislative authority for this. We note the following provision from section 330 of the Australian Corporations Act 2001 that would be a practical legislative inclusion. ***Effect of winding up on office of auditor*** *An auditor of a company ceases to hold office if:* *(a) a special resolution is passed for the voluntary winding up of the company; or* (b) *in a case to which paragraph (a) does not apply--an order is made*

		by the Court for the winding up of the company. **S.280 wording ambiguity** Currently s280(1)(cb) states – *"a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation, had a continuing business relationship (other than through the provision of banking or financial services) with the company, its majority shareholder, any of its directors, or any of its secured creditors….".* The ambiguity arises because does it mean a relationship within the previous 2 years with current shareholders/secured creditors/directors or a relationship with anyone who was a shareholder/secured creditor/director in the previous 2 years whether they are still in that position or not? If it is the latter, there are difficulties – how does one know who former secured creditors were in the previous 2 years because once they release their security, they drop off the PPSR and can't be searched. Shareholders can come and go between Annual Returns and no-one would know. Directors are the only ones whose movements are traceable (as long as they are registered) so then why should directors be treated differently under this section than secured creditors or shareholders e.g. a secured creditor might get paid in full a week before liquidation and no-one would know if they release their security off the PPSR – if the section is being consistent that would mean a director could resign the day before liquidation and a liquidator would not have to disclose a relationship with that person because they are not a current director on the day of liquidation. We believe the intention of the section is to include persons who were a director within the previous 2 years but it is not clear it means that. To ensure consistency, we recommend that the PPSR be amended to allow for searching of

		released securities in the previous 2 years, that all changes of shareholding of non-publicly listed companies be required to be notified to the Registrar within 7 days as they are with directors and the wording of 280(1)(cb) be changed to reflect that the section relates to anyone or any company who held one of the specified positions within the 2 years immediately before the commencement of the liquidation.