RUSSELL McVEAGH

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Insolvency Working Group
Ministry of Business, Innovation & Employment
Email: Corporate.Law@mbie.govt.nz

By Email

INSOLVENCY WORKING GROUP REPORT NO.1 - RUSSELL MCVEAGH SUBMISSIONS

1. Russell McVeagh thanks the Insolvency Working Group ("**IWG**") for the opportunity to make a submission on the "Review of Corporate Insolvency Law - Report No.1 of the Insolvency Working Group on insolvency practitioner regulation and voluntary liquidations" ("**Report**").

2. This submission represents the views of Russell McVeagh. Whilst it is based on the firm's experience in advising clients on all aspects of insolvency law, it is made on behalf of the firm and not its clients.

3. All enquiries on this submission may be directed to the authors of the submission (as outlined below).

4. We would also be happy to meet with the IWG to discuss our submission further if that would assist.

Yours faithfully
RUSSELL McVEAGH

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SCHEDULE

	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.
	1. Russell McVeagh broadly agrees with the Working Group's views on the problems with the status quo. 2. It supports the categorisation of existing problems as primarily relating to "unprofessional conduct" and "incompetence". Unprofessional conduct concerns more deliberate behaviour, such as where practitioners charge excessive fees, carry out unnecessary work, or fail to pursue claims (for example, against the company's shareholders or directors). Incompetence generally refers to problems arising due to practitioners having insufficient skills or experience to make quality decisions. Both can be equally corrosive to the stakeholders' confidence in the insolvency process. 3. Russell McVeagh also agrees with the causes of the problems that have been identified. In particular, the relative ease of becoming an insolvency practitioner (Cause 1), and the absence of any requirement for practitioners to operate in accordance with professional and ethical standards (Cause 3) are, in our view, most pressing. There may also be a level of perceived impotence amongst creditors and other stakeholders which limits the likelihood of intervention and allows poor conduct to pass by undetected. **Ease of entry** 4. Given insolvency practitioners' broad range of powers, as well as their statutory priority over other creditors for their costs and expenses, the lack of any entry criteria in New Zealand (in relation to competence, honesty and integrity) is surprising. Russell McVeagh's team includes practitioners with significant experience in Australia and the UK, where practitioners require qualification. While this does not preclude professional issues from arising, it limits opportunity for poor professional standards and imposes strong disincentives. 5. Russell McVeagh notes an inconsistency when compared to the requirements that the Government places on other professionals in whom the public place trust and confidence (for example, solicitors). 6. Further, there is no recognised fiduciary (or similar) relationship (which underpins some deregulated relationships) on which a stakeholder can rely to ensure that the insolvency practitioner carries out his or her role effectively.

Absence of mandatory professional and ethical standards

7. Russell McVeagh agrees that appropriate standards for professional and ethical conduct must be imposed on insolvency practitioners. Those practitioners who do not meet an appropriate standard currently:

   (a) are not necessarily incentivised to be members of a professional body, as it exposes them to a risk of investigation/discipline; and

   (b) are not being held to account for intentional or unintentional mistakes that they make because the cost to creditors or other stakeholders of "holding them to account" for their mistakes may be perceived to be too high.

8. By requiring insolvency practitioners to be subject to a professional disciplinary process and complaints procedure (such as those included as part of the CAANZ/RITANZ regime), practitioners are forced to adhere to the professional and ethical standards that have been put in place by the relevant regulatory scheme. We anticipate that including mandatory professional and ethical standards will have a number of positive outcomes, including:

   (a) reducing the incentive (and increasing the burden) for unqualified practitioners to take on appointments;

   (b) as a result of (a) above, providing for better quality decision-making from those insolvency practitioners who take appointments;

   (c) improving stakeholder confidence and engagement in the insolvency process;

   (d) reducing the risk that appointed insolvency practitioners prefer their own self interests over those of the various relevant stakeholders (as discussed above, on the basis of their statutory priority); and

   (e) enabling codes of conduct to be developed which regulate substandard behaviour fairly and objectively and provide paths for redress.

Scope of harm

9. We are unable to quantify the scope of the harm caused by the problems with the status quo. That said, there can be no doubt that harm occurs, and it is generally harm borne by creditors of insolvent companies. There are undoubtedly (at least) two types of readily identifiable harm caused by the status quo:

   (a) the financial loss caused to creditors and (more rarely) shareholders of companies which enter insolvency processes, which not only occur in instances of deceit but also as a result of poor decision making; and

	(b) stakeholders have little confidence in a system which provides no means to regulate (or deal effectively with complaints in respect of) industry participants.
2.	Do you agree with the listed objectives? (see paragraphs 78-81)
	1. Russell McVeagh agrees with the objectives set out at paragraphs 78-81 of the Working Group Report ("**Report**"). 2. It shares the Working Group's view that ensuring the commercial community has confidence in the insolvency process is of utmost importance (and as discussed above, the status quo does not presently engender confidence in the insolvency process). 3. It also notes that the commercial community, in the context of insolvency, is wide-ranging and includes banks and commercial lenders as well as trade creditors, suppliers, directors and shareholders of large companies. It necessarily follows that a lack of confidence in the operation of corporate insolvency law can have an impact on the confidence of those doing business within a range of industries. The 'phoenixing' of companies in the construction context may act as a real-life example of this.
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.
	1. Russell McVeagh wishes to make the following specific comments on proposed changes in the Insolvency Practitioners Bill that do not relate to the registration regime: (a) **Identification of appointer:** Russell McVeagh agrees that identifying the appointing party in the appointing documents should provide to stakeholders greater transparency to the insolvency process. (b) **Interest statements and frequency of disclosure**: Russell McVeagh agrees with the requirement that a practitioner should disclose relationships it has with the company, its officers, shareholders or creditors at the time of accepting appointments. The content and scale of disclosure needs careful consideration, (c) **Detail required in statements of receipts and payments**: Russell McVeagh believes that the statements of receipts and payments should not have to refer to individual payers and payees, or individual transactions. This level of detail will be disproportionately expensive and adds no material benefit (as long as there is a structure to investigate individual transactions). (d) **Reporting serious problems:** Russell McVeagh is of the opinion that liquidators, receivers and administrators should have the same rights and obligations in this regard. As a result:

	(i) Administrators should have the same protection of absolute privilege as receivers and liquidators; and (ii) the reporting thresholds should be the same. Currently, administrators must report when they "believe" an offence has been committed, while liquidators and receivers must report when they "consider" an offence has been committed. In practice, there may not be a significant difference between these two thresholds, but they should nevertheless be made consistent. Additionally, the threshold should not be so high as to cause practitioners to spend creditors' money conducting investigations to satisfy themselves whether they "believe" or "consider" an offence has been committed. (e) **Section 280 amendments:** We agree that with the Report which identifies that section 280 of the Companies Act 1993 ("**Act**") unnecessarily restricts (without a Court order) the ability for practitioners who have provided advice at the end of the company's life cycle to take an appointment as liquidator. Those practitioners who are closely involved with the company just prior to appointment may have the best understanding of company operations, which should result in significant cost synergies (to the benefit of creditors). We agree with the Working Group's recommendation: (i) that the proposed amendments to section 280 be more closely aligned to the NZICA Insolvency Engagement Standard. Further to the Working Group's recommendations, we consider that section 280 of the Act should expressly recognise that the "continuing business relationship" rule does not preclude a company's investigative accountant from taking appointments; and (ii) to include those further disqualification criteria set out in item 1 of table 1 of Annexure 3 of the Report.
4.	Do you agree with the proposed changes to the High Court supervision of liquidators? (see paragraphs 154-156)
	1. Russell McVeagh agrees that the High Court should maintain its supervisory role in overseeing liquidations. 2. Russell McVeagh also agrees that insolvency practitioners should continue to owe duties to the Court. In acknowledging the difficulties that currently exist in enforcing the High Court's powers to remove liquidators, the absence of any formal entry requirements for liquidators and the limited scope of section 286 of the Companies Act 1993 together make it difficult for the Court to enforce its removal or prohibition order-making powers.

	3. As a result, Russell McVeagh agrees with the Working Group's proposal to repeal section 286 of the Act and amend section 284 of the Act to include powers to make orders to enforce a liquidator's duties and to provide for removal and prohibition orders. Increasing the scope and powers of section 284 of the Act should ensure that the Court is better able to fulfil its supervisory function.
5.	What are your views on the four occupational regulation options proposed by the Working Group? (see paragraphs 116-146)
	1. Russell McVeagh supports the adoption of a co-regulation regime (**Option C**). 2. In relation to the other four occupational regulation options, Russell McVeagh's views are as follows: (a) **Option A - Registration as proposed in the Insolvency Practitioners Bill**: Russell McVeagh shares the Working Group's concerns as to the efficacy of the registration regime proposed under the Bill. Not only does this fail to include an appropriate requirement for honesty or good character, but it is highly likely that this regime will wrongly lead people to believe that those listed on the government register are in some way qualified, regulated or certified by a government regulator. It would not significantly change the status quo. (b) **Option B - No statutory occupational regulation**: As mentioned above and throughout these submissions, there are significant problems with the status quo. Russell McVeagh therefore agrees that relying on the current CAANZ/RITANZ accreditation system is insufficient given that the scheme is voluntary and only applies to members of the respective professional bodies. While Russell McVeagh supports the scheme and acknowledges the gradual impact that it is likely to have as a "baseline of best practice", there is only a limited amount and speed of change that can be effected by a voluntary scheme of this nature. Russell McVeagh is aware of insolvency practitioners opting out of membership rather than pursuing accreditation. (c) **Option C - Co-regulation**: This option provides the benefit of government supervision and involvement (to ensure mandatory compliance), along with a way of successfully leveraging off the current regimes that have been put in place by professional bodies such as CAANZ and RITANZ. Russell McVeagh believes that the regime jointly implemented by CAANZ and RITANZ provides a satisfactory regulatory framework, and that these professional bodies are best placed to regulate entry into the industry and provide and monitor continuing professional development. (d) **Option D - Government licensing**: Russell McVeagh believes that any of the benefits achieved by a scheme comprising government licensing of insolvency practitioners may be achieved at a lower cost and with more market expertise through

	industry bodies such as RITANZ and CAANZ. While the Working Group has acknowledged the risk of an industry body being "unduly partial" to the interests of its members, Russell McVeagh has confidence in the operation of the RITANZ/CAANZ regime and the ability of those two professional bodies to regulate the operation of insolvency practitioners in an impartial manner. Further, RITANZ and CAANZ are closer to the market that is being regulated, which should result in operational efficiencies and better decision making.
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)
	1. Russell McVeagh broadly agrees with the details of the co-regulation system recommended by the Working Group. 2. A number of further submissions are included: (a) **Fundamental disqualification criteria**: Where the Working Group states that consideration will need to be given to whether some fundamental disqualification criteria should remain, Russell McVeagh proposes that the Accreditation Criteria set out in the CAANZ/RITANZ Accreditation Framework would be an appropriate starting position. With regard to the "Fit and Proper Person" requirement, this includes full disclosure of any details of convictions in any jurisdiction involving dishonesty. The accrediting agency (CAANZ) then exercises its discretion and makes a final assessment as to whether it considers an applicant to be fit and proper person to hold accredited status. This scheme has been carefully constructed by experienced professionals and is fit for purpose. (b) **Solvent liquidations**: Russell McVeagh disagrees with the Working Group's proposal at recommendation 5 that the regulator may distinguish between insolvent and solvent liquidations for the following reasons: (i) It is possible that a practitioner who is not licensed (even if they are a member of the New Zealand Law Society or an accredited professional accounting body) ("**Unlicensed Practitioner**") may not be able to identify accurately or expeditiously whether a company purporting to be solvent is in fact insolvent. This would therefore make the distinction meaningless. (ii) There is a financial incentive for the Unlicensed Practitioner not to immediately transfer the liquidation to a licensed insolvency practitioner. Further, the Unlicensed Practitioner would not be subject to the same disciplinary scrutiny as the licensed practitioner and is therefore not immediately accountable to the same degree. (iii) Russell McVeagh recognises the Working Group's concern that the additional cost borne by the shareholders of having to appoint a licensed practitioner

is disproportionate in the majority of instances in a solvent liquidation. However:

(aa) Russell McVeagh considers that any additional cost of retaining a licenced insolvency practitioner is best borne by the shareholders of a solvent company, if that means that the integrity and standards of, and the confidence in, the insolvency profession is maintained. The counterfactual is that without such protection, creditors (in instances of misconduct or incompetence by the Unlicensed Practitioner) may stand to lose amounts that are significant to that creditor with little practical recourse to repayment. The costs of applying to restore the company to the register and then appoint a liquidator to claw back payments may, in many circumstances, be such that recovery is impractical; and

(bb) deregistration under the Act is an established efficient alternative to solvent liquidation, which can be executed without the appointment of an insolvency professional.

(iv) Creditors would bear the cost of transition from an unlicensed solvent liquidator to licensed insolvency practitioner. Inevitably there will be duplication and rework which may impact upon creditors' returns.

(c) **Compromises**: Russell McVeagh believes that practitioners who take on appointments under Part 14 of the Act should also be regulated, contrary to the Working Group proposal, for a number of reasons:

(i) Whilst we accept that compromises may be seen as an efficient form of work out, practitioners who take these appointments are often placed in a position of managing money (similar to administrators, liquidators and receivers).

(ii) Compromises can range in complexity. For the more complex compromises, it is unlikely that the average person who meets the status quo criteria could properly discharge their responsibilities as advisor.

(iii) The inconsistency in regulation between compromises and other insolvency processes may result in unfavourable, unqualified insolvency practitioners focussing on compromises. Whilst there is a mechanism under the Act for unfairly prejudiced creditors to challenge a compromise, this is often a costly application to make.

	(iv) There is no good reason for distinguishing between compromises under Part 14 of the Act and trustees of an insolvent's proposal under the Insolvency Act 2006 ("**Insolvency Act**").
7.	Are there other feasible options to address the problems identified by the Working Group with the provision of insolvency services?
	1. In addition to an effective regulation regime (as is achieved through the co-regulation option), Russell McVeagh has identified a range of other methods by which interested parties can promote professional conduct among insolvency practitioners. These include: (a) **INSOL International affiliation**: Any professional body with delegated statutory power should be required to seek and maintain accreditation with INSOL International; (b) **Qualifications**: Promoting the development of a curriculum or qualification specifically for those involved in the provision of insolvency services, including ongoing education as a requirement for maintaining the accreditation; (c) **Access to the Court**: We consider that under the status quo it is too difficult and expensive to make an application to the Court to enforce the relevant rights and duties set out in the Act; and (d) **Obtaining advice**: CAANZ or RITANZ (or any other professional body with delegated statutory power) should obtain or assist members in obtaining legal advice on any question of general importance or interest to insolvency practitioners (ie where it is in the public interest, or interest of insolvency practitioners generally, to clarify rules, regulations or decisions).
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?
	1. Russell McVeagh believes that at least some form of government supervision is beneficial to achieve an effective regulation regime (despite any incremental costs that occur as a result), for the following reasons: (a) the CAANZ/RITANZ regime is a relatively recent development and whilst it has undoubtedly had a positive impact on delivering a higher standard of accountability for insolvency practitioners, the impact of the scheme may have a significant time lag; (b) it may be perceived that there is more "teeth" behind a co-regulation model where the Government not only supports but is involved in the regulation of an important industry; (c) government supervision provides an additional level of objectivity to the regulatory process; and

	(d) the involvement of a government regulator enables the government to be more closely involved in the industry and therefore law reform and development of policy. 2. As a result, while it is possible that compulsory membership of CAANZ and/or RITANZ (or similar) may provide a sufficient mechanism of regulating the industry, Russell McVeagh is of the opinion that a base level of government involvement is highly beneficial.
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?
	1. As outlined throughout these submissions, Russell McVeagh believes that insolvency services should be restricted to certain members of an accredited professional body who meet the requisite standards. 2. It envisages that there will frequently be examples where individual members of CAANZ, for example, are in an appropriate position to be members of that organisation but are not suitable to provide insolvency services. 3. This is reflected in the rules of RITANZ which prevents members from taking "Regulated Insolvency Engagements" unless they are accredited to do so. Similar changes to CAANZ rules are understood to be in the process of being made. 4. In respect of appointments in solvent liquidations, see further our discussions at paragraph 2(d) of question 6 above. 5. This position is consistent with the model example in Australia.
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?
	1. Russell McVeagh believes that the scheme sought to be imposed is not unduly restrictive and will not have a discernible impact on competition. Further, when considering the "baseline standards" required of industry participants, competitive considerations should be secondary to ensuring the industry is properly regulated. 2. The standards proposed, either through a government licensing system or through reliance on the CAANZ/RITANZ regime, are appropriate for insolvency practitioners to be held to given the position that they are placed in and the power they have to deal in a company's assets. This should not preclude suitable practitioners from becoming licensed to carry out insolvency appointments. 3. Russell McVeagh does not expect there will be any significant negative impact on businesses and creditors outside of New Zealand's main centres through the proposed regime. This is because many national

	advisory practices (as members of CAANZ or RITANZ) have offices or affiliated offices in the provinces. This should provide sufficient access to accredited insolvency practitioners who may be able to supervise, consult to or direct the operation from another office within the country. A local physical presence is also becoming less essential for delivery of professional services. 4. Further, regional practitioners that are unaffiliated to a firm that includes an accredited insolvency practitioner may be able to engage a qualified practitioner and continue the work under their supervision (much like the way solicitors engage barristers or specialist lawyers where appropriate). 5. It is also always open to practitioners who are not insolvency specialists to demonstrate that they are otherwise competent to undertake regulated insolvency engagements. It is in the interests of all stakeholders in the industry for there to be appropriate standards designed to maintain the integrity of and confidence in the industry.
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)
	1. Russell McVeagh agrees that an effective regime for licensing insolvency practitioners would reduce much of the harm potentially raised by aspects of the voluntary liquidation process. 2. As set out above, in order for the licensing regime to be effective it would need to establish proper entry criteria (experience, competence and integrity), set adequately high standards for insolvency practitioners to meet when providing insolvency services, and a correspondingly robust disciplinary process in order to enforce the standards expected of insolvency practitioners. 3. In this way, an effective licensing regime will go a long way towards ensuring that insolvency practitioners utilise the powers and pursue the remedies available to them in the Companies Act in a way that delivers the most effective outcomes for creditors and other stakeholders. This will require an appropriate investigation into the circumstances giving rise to a liquidation including whether market value has been received for assets sold prior to liquidation; enforcement of directors' duties; setting aside prejudicial and voidable transactions; and taking appropriate steps to deal with fraud and dishonesty.
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?
	1. Russell McVeagh notes the difficulties that arise in the latent defects context and the undesirable outcomes that insolvency outcomes provide. However, Russell McVeagh agrees that these issues are best solved by building and construction sector law.

	2. As stated in the Report, "important objectives of insolvency law would be undermined if directors were unable to make a 'fresh start', or if liquidations were to be delayed for several years because there was potential for latent defects to become apparent at some point in the future". Russell McVeagh considers that these are important considerations and their impact must not be understated. 3. In order to strike a balance between these competing considerations, the laws and principles applicable to this area should be addressed by those tasked with identifying and dealing with particular problems that may arise in given industries. Insolvency law reform is unlikely to be the most efficient way of regulating those industries. However, insolvency law reform may assist to bring about better outcomes for creditors if the broader causes of asset-less liquidators are considered. In particular, there are structural impediments to liquidators enforcing director's duties, including the preferential status given to certain Crown debts, which reduces the incentives for legal action by liquidators.
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: Remove the ability to appoint a liquidator after service of a liquidation application 1. Russell McVeagh acknowledges that problems may arise where shareholders voluntarily appoint (debtor-friendly) liquidators up to 10 working days after service on the company of a liquidation application by a creditor. 2. However, there are often occasions where it is practical and appropriate for shareholders to wish to appoint liquidators before the High Court is able to deal with a creditor's application. It has been noted that the High Court may take between 8 - 12 weeks from filing to deal with a liquidation application. 3. Russell McVeagh believes that adopting the suggestions already mentioned above and establishing an effective licensing regime should make it significantly more difficult for debtor-friendly liquidators to be appointed, and thus will hopefully remedy a number of the issues that exist with the voluntary appointment of liquidators after service of a liquidation application. As a result, a blanket prohibition on shareholder appointed liquidators following service of a creditor's application may not be necessary. 4. Possible options that have been identified include: (a) expediting the High Court process in situations where both the petitioning creditor and the shareholders agree that a liquidator needs to be appointed. If the only issue is the identity of the liquidator, this should be able to be dealt with quickly (and on an urgent basis) by the High Court; and

(b) requiring the shareholder-appointed (possibly debtor-friendly) liquidator to hold a creditor's meeting giving the creditor an opportunity to replace that liquidator. Russell McVeagh considers that whilst, in principle, this may be an obvious solution, the cost of convening the meeting may mean it is not the most practical avenue.

5. However, one circumstance where it may be unnecessary to allow shareholders to appoint a liquidator is after the Court appointment of an interim liquidator. At that point, there would be a licensed insolvency practitioner appointed by the Court (as interim liquidator), albeit without the full powers of a liquidator until the order is made. The ability to appoint a liquidator voluntarily is unnecessary and if the shareholders select a different liquidator, there is duplication of costs for the newly appointed liquidator. This could be an express carve-out from the power to appoint.

Measure 2: Avoid transfers of assets after service of a liquidation application

6. Russell McVeagh acknowledges that there have been instances where company assets have been dissipated in the period between service of a liquidation application and the hearing of that application by the High Court. It is often the case that these transfers are made for little value or at undervalue, which cause unjust outcomes for creditors.

7. However, Russell McVeagh is concerned that a blanket prohibition on the transfer of assets may have the following negative effects:

(a) **Uncertainty**: The contemplated prohibition may give rise to unnecessary commercial uncertainty. In particular, it is likely that in the years following the amendment being enacted there could be further dispute as to what constitutes the "ordinary course of business". The proposed prohibition may potentially negatively impact *bona fide* purchasers for value if they assume the risk that the assets may be subject to a clawback action and then the burden for proving the basis on which the assets ought to be retained. There is little protection that a vendor could provide to a purchaser (ie any warranty would likely be rendered worthless in the precise scenario that it was required, being the insolvency of the company).

(b) **Remove the ability to obtain the best value for assets**: It is generally accepted that the sale value of assets will be higher if those assets are sold by the company as opposed to a distressed sale by the liquidators of that company. If a going concern sale is intended, liquidation can be very counterproductive. The contemplated prohibition will remove the company's ability to act in the best interests of all stakeholders and sell some or all of the assets of the company prior to the appointment by the High Court of liquidators. All parties' interests may be served if the sale is for fair value and the proceeds are correctly distributed (either by the company or by the liquidators following their appointment).

	8. The extent of the contemplated prohibition may be unnecessary given the: (a) existing powers afforded to liquidators to avoid transfers at an undervalue (and the corresponding defences available to the transferees); and (b) proposed implementation of an effective licensing regime, which should help ensure that liquidators use those powers in appropriate cases. So, once an appropriate licensing regime is implemented, a blanket prohibition on the transfer of assets after service of a liquidation application, may create more problems than it would solve. 9. Notwithstanding the above, Russell McVeagh considers that the proposed prohibition should apply where: (a) the transferee is an associated party of the transferor (which could be defined to include those parties included in section 298(2) of the Act); and (b) the assets are transferred to a creditor of the company in full or partial satisfaction of their debt (which may be contrary to the *pari passu* rule which underpins liquidators' distributions). 10. Both of the transfers contemplated at paragraph 9 above would be permissible if they were to be subsequently ratified by the liquidator(s) if she or he is satisfied that the transfer occurred for proper value. **Measure 3: Introduce a Director Identification Number** 11. Russell McVeagh agrees with the proposal to introduce a director identification number as a means to better capture relevant information in respect of decision making of directors (which should be publicly available to parties wishing to better understand the company that they are contracting with).
14.	Do you agree with the benefits of a unique identification number for directors?
	1. See our answer above in question 13.
15.	Do you have any other comments on Report No.1?
	1. The views set out in these submissions equally extend to provisional trustees and trustees (under Part 5, subparagraph 2 of Insolvency Act).