

Australian Credit Forum

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Department of the Senate

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Parliament House

Canberra, ACT 2600

Australia

RE: Inquiry into Liquidators and Administrators

The Australian Credit Forum is an organisation made up of leaders in the Credit Management profession. Information regarding the ACF may be seen on our web site at <http://www.australiancreditforum.com.au/>

Whilst acknowledging that the majority of insolvency practitioners do a good job under difficult circumstances, the Forum believes that there is substantial room for improvement in the conduct of some Administrators and Liquidators and in particular there should be an examination of fees charged.

Administrators and Liquidators utilise the funds in their possession to recover further funds eg preference payments and the like utilising the services of legal firms to further burn up the available funds in sometimes spurious legal action which completely drains any funds that could have been to creditors.

Case in point, recounted by a member of the Forum, is the instance several years ago of a Sydney based Consumer Electronic Company being placed into Liquidation. At the time of the appointment of the Liquidator there were unsecured debts of almost \$800,000 and almost \$700,000 worth of stock (not subject to Retention of Title claims) on hand leaving a shortfall of some \$100,000. Despite most suppliers agreeing to take

their stock back for credit in reduction of their debt the Liquidator arranged for the stock to be sold at auction receiving approximately \$250,000 from the sale. Over the next 18 months the Liquidator utilised the services of a legal firm to claw back a further \$200,000 worth of preference payments. In the final report to creditors issued some two years after his appointment the Liquidator advised that after all his costs and the legal expenses associated with winding down the business etc there was only \$1.00 available for distribution to the \$800,000 worth of unsecured creditors.

The Forum acknowledges that in many cases there are no assets available to Liquidators to cover even the cost of them carrying out the legal requirements and duties in relation to the windup of a company. This naturally means that in those particular cases their firm suffers and bears the cost of their appointment. It has been suggested that some Liquidators may inflate/pad the expenses and costs associated with winding up those companies with assets to make up for the losses caused by those appointments where there are no funds available to cover their costs and expenses. This in turn impacts on the return if any to unsecured creditors of those companies that in fact were asset rich.

The Forum feels that some form of sinking fund from company taxes or registration fees and the like should be established and Liquidators apply for reimbursement of fees and costs associated with liquidating a company which is asset or cash poor.

Despite that fact that most suppliers have Terms & Conditions of Sale that give specific authority for them to enter their customer's premises and carry out stock takes or inspections of their stock Administrators and Liquidators frequently refuse to allow creditors on to the company's premises to carry out supervised stock takes in relation to ROT claims.

With regards to the appointment of Administrators the law requires that the Administrator must declare that they have had no prior involvement with the company. Frequently it is subsequently revealed that the Directors consulted with the Administrator who reviewed the business and financial affairs of the company and then recommended that the company be placed into Administration with him appointed as the Administrator.

The Forum feels that where a company believes that they may be insolvent and there is a need to retain an outside financial consultant to examine their affairs and make recommendations re their continued trading or being placed into Administration then that Financial Consultant or adviser after accessing the company's financial position should refer the Directors to a court approved/appointed Administrator.

Perhaps consideration needs to be given to the need to apply to the court to have an Administrator appointed from a pool of Administrators. Creditors become concerned when they are faced with an Administrator who admits to providing financial advice prior to being appointed the Administrator and then there are questions of impartiality by the Administrator especially if company assets have been disposed of shortly before his appointment.