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Mr Tim Bryant
Committee Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2012

By email: economics.sen@aph.gov.au

Dear Mr Bryant

Inquiry into the Corporations Amendment (Phoenixing and Other Measures) Bill 2012

Thank you for the opportunity to make a submission in relation to the Corporations Amendment (Phoenixing and Other Measures) Bill 2012.

ASIC has previously provided some specific technical drafting comments to the Treasury in relation to the Bill. This submission focuses on more substantive issues relevant to Bill or substantive matters raised in other submissions.

As you are aware, the Bill introduces reforms in respect of the following key areas:

- A discretion allowing ASIC to wind up abandoned companies in certain cases in order to help employees recover their entitlements under the General Employee Entitlements Scheme (GEERS). This scheme is administered by the Department of Employment, Education and Workplace Relations (DEEWR);
- Changes to the way certain notices, including those regarding insolvency, are published;
- Various miscellaneous amendments to provisions relating to insolvency.

Our comments in respect of each of these matters follow.

A. Winding Up

The winding up provisions raise matters relating to ASIC's planned implementation measures for the Bill, funding and the ongoing monitoring of these reforms that we wish to highlight for the Committee.

Implementation

The Bill introduces a significant new discretion for ASIC to wind up an abandoned company to assist employees access GEERS. We consider it desirable that ASIC provide policy guidance on the circumstances when it will use that discretion. In particular, this guidance will need to consider ASIC's role in light of the responsibilities of other key agencies with an interest in this area including DEEWR and the ATO.

We will commence preparing this guidance once the final form of the legislation is known. In accordance with our normal consultation processes, we will consult publicly in respect of any guidance. Any guidance will assist our own staff and the public more generally as to the matters where we would undertake steps to wind up a company. In addition, we will consider what other information is needed for employees seeking to access GEERS following these reforms. This may require some additional material on our website.

In cases where ASIC does take winding up action under the Bill, it will seek to do so in a cost effective manner. That will likely mean that ASIC will seek tenders from firms interested in providing winding up services at a fixed rate. Again, we will commence that tender process once the final form of the Bill is known.

Funding

ASIC will need to absorb the internal staff costs involved in implementing the reforms, and identifying and collecting materials to assist with any winding up under the Bill on an ongoing basis. ASIC intends to seek reimbursement for ongoing costs of an external nature (e.g. a liquidator's fees incurred under the Bill) from the Assetless Administration Fund (AAF). ASIC will carefully monitor the impact of the Bill on the AAF and will notify Treasury of any ongoing issues.

Preliminary enquiries suggest up to 50 companies per annum may be wound up under the Bill. Assuming liquidator's fees of approximately $5,500 per matter that would lead to an annual cost to the AAF of $275,000.

In addition, there will be an initial 'group' of companies that may qualify for winding up under the Bill upon its commencement. Based on figures provided by DEEWR, we estimate there are approximately 100 companies in this category. At this stage, ASIC is still considering how to resource these matters and, in particular, how to fund any external liquidator costs associated with them.

A further initial group of 107 companies might have qualified for winding up but have already been deregistered, often some years ago. Given the legal requirements for re-registration of companies, we do not anticipate at this stage that a material number of these companies will be re-instated. Therefore, at this stage, we believe it is unlikely that many companies within this group will be wound up under the Bill.

Ongoing Monitoring

We note that some submissions have suggested the possibility that directors who may have previously paid for the winding up of an abandoned company might now seek to rely on ASIC exercising the winding up provisions in the Bill.

To the extent possible, we will monitor whether this occurs and seek to develop policy to try and deal with this concern.

B. Publication of notices

The Bill also gives effect to reforms to the current methods for publication of administrative notices upon the external administration of a company. We note that savings to the insolvency sector arising from this measure amount to around $15 million over the forward estimates, which could have a positive effect on lowering the costs associated with insolvency.

ASIC has commenced 'building' the new website required to implement these reforms. We will work with the industry to ensure an effective transition to the new system.

C. Miscellaneous amendments

ASIC has no substantive comments in regard to this part of the Bill.

Concluding comments

ASIC appreciates the opportunity to comment on the Bill and welcomes the interest taken into this matter by the Committee.

Yours sincerely

John Price
Commissioner