

AIIP – Association of Independent Insolvency Practitioners



Newsletter: Issue 4, 22 August 2017

To all AIIP members,

AIIP FORUM WITH ARITA

John Winter (ARITA) and Michael Brereton (VP and also, NSW Chair, ARITA) attended an open meeting on 16 August 2017, attended by about 30 practitioners in Sydney. AIIP appreciate their attendance and time.

Discussion was candid and robust. It was also an opportunity for ARITA to again present its 2020 Strategy for those that had not viewed it, and also, to obtain a detailed briefing on the past, present and future initiatives of ARITA.

AIIP members that are either current or aspiring members of ARITA should maintain ARITA membership, or make an application to join ARITA. AIIP is a Discussion Group for attendance by registered liquidators and trustees in bankruptcy (rather than their staff) in smaller practices. ARITA remains the professional association for registered liquidators and trustees in bankruptcy. AIIP are neither competitors nor a break-away group of ARITA. AIIP has raised the profile of smaller practices, and ARITA is acknowledged for focusing on smaller practices in the delivery of education, precedents and in other areas.

As indicated below, there are differences of opinion, and there was ample opportunity to discuss those differences in the hope that ARITA will reconsider several decisions communicated at the meeting.

The outcome of the meeting was as follows:

1. AIIP remain of the view that ARITA have available grandfathering, or similar, to provide an accelerated pathway to ARITA membership for experienced, approved persons. ARITA indicated that it will not entertain grandfathering or similar, but did indicate that they would welcome applications.
2. Access to ARITA precedents is available to ARITA sole practitioners, and also, 2 or more partner firms provided that at least 75% of registered liquidators/trustees are members of ARITA. This policy is causing hardship to several firms including partners that are members of ARITA. Members in attendance requested ARITA to urgently reconsider its policy or offer a solution to members that are in 2 or more partner practices, where the 75% threshold is not achieved. Members have indicated that the policy is unreasonable and prejudicial. Non-members have indicated that they are prepared to pay a premium fee for access. ARITA indicated that the precedents would not be offered to non-members. Satisfactory objective reasons have not been provided by ARITA for the decision to prejudice members that are in partnership with registered liquidators and trustees that are non-members.

3. ARITA are convening a smaller practice committee, and two persons that attend AIP have been invited to participate. This is a positive outcome.

OTHER NEWS ON PRECEDENTS

MYOB Insolvency and Core IPS are both releasing their 1 September 2017 precedents within a few days.

Getting a set of alternative Precedents

Other alternatives to assist AIP members

- Corporate precedents developed by one of Australia's most experienced liquidator's Bill Hamilton, of **WJ Hamilton & Co.**, are available for purchase.
- We have reason to believe that they will be reviewed by ASIC. They are available to AIP members at no cost.

If there is demand for bankruptcy precedents please advise Nicholas Crouch. To discuss this matter please contact him on (02) 8262 9333 or nick@crouch.com.au.

INFORMATION SHEETS FOR CREDITORS

Ginette Muller has drafted an Information Sheet for creditors (for post 1 September 2017).

Creditors Rights

Attached is a **draft** of our first AIP information sheet. It has come about from the team in Brisbane deciding to hold a precedent workshop and sharing some thoughts and resources.

If you have any queries or require further information, please contact Ginette Muller on (07) 3317 4920 or ginette@gmadvisory.com.au.

PRE-INSOLVENCY DISCUSSION PAPER PRESENTED BY RICHARD FISHER AM TO SYDNEY CHAPTER ON 15 AUGUST 2017.

1. Richard Fisher AM was co-author with the late Ron Harmer of the Harmer Report in Australia. The Harmer Report remains as valid and useful today as it was in 1988. The release of the Harmer Report and its Thought Leadership and frameworks led the global profession and global community for more than 10 years in restructuring and insolvency.
2. Other countries have both caught up and overtaken Australia in developing meaningful and productive insolvency reform which is necessary for economies to function; to employ more people; to attract debt and equity funding.
3. Richard was requested to speak on pre-packs and the UK experience, and to consider whether pre-packs were adaptable in Australia.
4. Richard remains an eminent authority on insolvency law having had a distinguished career at Blake Dawson Waldron (now Ashurst), and now at University of Sydney. His ability to present complex issues in Plain English with insight into options and possibilities that can be

commercialised and legislated is unsurpassed. To this day, practitioners, including ARITA, refer to the Harmer Report for its Thought Leadership.

5. Please request a copy of the paper from Stephen Hathway on stephen.hathway@helmadvisory.com.au, together with references to the reports conducted in UK, and undertake to return your written observations or submission within 14 days.
6. Small business drives the Australian economy. Politicians and regulators and ARITA have a responsibility to provide a framework attractive to micro and small businesses with in-built checks and balances to demonstrate transparency including, for example, independent business and share valuations, and if necessary approval by an authority for example, similar to takeovers. This initiative would also act to drive out the unregulated pre-insolvency operators and permit micro and small business to survive, with relevant input from internal and external stakeholders. This proposal is consistent with the current Government's Innovation Reform agenda, and appears to have been overlooked in the recent round of reforms.
7. ARITA has indicated that it is their agenda to develop model insolvency law. Perhaps this issue can take precedence over a whole-of-system review.

We hope this newsletter is helpful. If you would like to unsubscribe please email by return.

Membership forms can now be downloaded from our website on www.aiip.org.au.

You can also email us at admin@aiip.org.au.

Stephen Hathway
AIIP – Sydney Coordinator

CREDITOR RIGHTS

AS APPLICABLE TO LIQUIDATION

Appointment of an External Administrator

You have the right to be advised that the company has been placed into Liquidation. In the case of a voluntary winding-up, you must be notified within 10 days after the day the appointment was made; and in the case of a Court Liquidation, within 20 business days after the day of the appointment.

Right to Request a Meeting

Creditors have the right to request in writing that the Liquidator or as they are also known, External Administrators, hold a meeting of creditors. Requests may be made:

- Within the first 20 business day of the appointment of a liquidator by creditors holding 5% or more of the total debt held by known creditors who have no connection to the company; or
- At any other time by:
 - Creditors holding greater than 10% but less than 25% of the known value of creditors, conditional upon the creditors providing security for the costs of the meeting;
 - Creditors holding greater than 25% of the known value of creditors;
 - Creditors through a resolution; or
 - Committee of Inspection (a small group of creditors elected by all creditors to represent all creditors).

If a request complies with these requirements, the liquidator must hold a meeting of creditors as soon as reasonably practicable. If the request is not reasonable, the liquidator must inform the creditor and provide reason(s) why. **Exceptions** * to this right are discussed on the next page.

Right to Request Information

A Creditor can request an External Administrator to give them information, a report or produce a document. The External Administrator must comply with the request within 5 business days. **Exceptions*** to this right do apply.

Creditor Rights in Summary

- Right to know that an External Administrator has been appointed.
- Right to request the External Administrator call a meeting.
- Right to request Information.
- Right to give directions to the External Administrator.
- Right to appoint a reviewing Liquidator.
- Right to remove and replace the External Administrator.

Further Reading

- ASIC – Creditor Rights & Information
- Insolvency Practice Rules (Corporations) 2016 Section 70-30
- Insolvency Practice Schedule (Corporations) Section 70-50
- Corporations Act 2001 Section 497



CREDITOR RIGHTS

LIQUIDATION

Right to give directions to the Liquidator

Creditors may give directions to an External Administrator in relation to the Liquidation by way of a resolution. A liquidator is not required to comply with the direction but must have regard to it. If a liquidator does not comply they must document their reasons for not complying with the direction given. An individual creditor cannot provide direction to a liquidator.

Right to Appoint a Reviewing Liquidator

Creditors may appoint a reviewing liquidator, by way of a resolution, to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- Remuneration approved in the six months prior to the reviewing liquidator's appointment; and
- Expenses incurred in the 12 months prior to the reviewing liquidator's appointment.

The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditors. An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of the reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace a Liquidator

A Liquidator may be removed and replaced by a resolution of creditors. However, certain requirements must be met:

1. Request a meeting
 - a. A meeting must be reasonably requested by the required number of creditors; and
 - b. The liquidator must be informed by the creditors of the purpose of the request for the meeting; and
2. Information and notice
 - a. Creditors must decide upon the new liquidator and obtain a Consent to Act and a Declaration of Independence, Relevance and Relationships and Indemnities (DIRRI); and
3. The existing liquidator must include this information in the notice of the meeting sent to all creditors.

Exceptions & Reasonable Requests

A request is not reasonable if:

General requirements

- a) Complying with the request would prejudice the interests of one or more creditors or a third party;
- b) There is no sufficient available property to comply with the request; or
- c) The request is vexatious.

Further requirements

Requests for meetings will be unreasonable if:

- d) A meeting of creditors dealing with the same matters as requested has been held or is due to be held within 15 business days.

Requests for information will be unreasonable if:

- e) The information would be privileged from use in legal proceedings;
- f) An action for breach of confidence was arise from the disclosure;
- g) The information has already been provided; or
- h) Within 20 business days of the request the information is required to be provided under law.

If a request is not reasonable due to (b), (d), (g) or (h), the liquidator may still comply if the creditor meets the cost of the complying with the request.