



Law Council
OF AUSTRALIA

Business Law Section

Mr Kyle Wright
Corporations
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001
Via email: policy.submissions@asic.gov.au

6 November 2014

Dear Mr Wright,

ASIC Consultation Paper 223 (Relief for externally administered companies and registered schemes being wound up)

This is a joint submission from the Insolvency and Reconstructions Committee and Corporations Committee of the Business Law Section of the Law Council of Australia (**Committees**) on ASIC's Consultation Paper 223 titled "*Relief for externally administered companies and registered schemes being wound up*" (**CP 223**).

We are grateful for the opportunity to provide submissions on CP 223, and for the extension of time within which to do so.

1 Support for ASIC's proposed Option 2

The Committees generally support the position proposed by ASIC. In particular they support Option 2 as set out in paragraph 16(b) of CP 223, on the basis it strikes an appropriate cost/benefit analysis in terms of the benefit of providing information to stakeholders and the cost of doing so.

We make just a few practical points below in relation to aspect C1 of the proposal for ASIC's consideration.

2 Practical points in relation to proposal C1

We understand the reasoning behind ASIC's proposal to defer rather than exempt externally administered companies from the financial reporting obligations. While we support this approach generally, there are a few practical points we wish to make for ASIC's consideration:

- It is important that, where a company is returned from administration to the control of its directors, the company has sufficient time within which to then prepare any "catch-up" accounts. What timing is sufficient will depend on the circumstances, but we suggest that in general it should be at least 3 to 6 months after the conclusion of the administration and may

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need to be longer in particular circumstances. We suggest that the policy should make it clear that ASIC maintains administrative discretion to extend the time for filing catch-up accounts.

- We do not take ASIC to be suggesting that the catch-up accounts would need to be lodged as a *pre-condition* to the company coming out of administration. So just for completeness, we note that it would not be appropriate to do so. That could lead to a “chicken and egg” situation where no one is prepared to sign accounts because of the issues the company has being in administration – and yet to resolve those issues and come out of administration requires someone to sign accounts.
- ASIC contemplates, in paragraph 71 of CP223, that there may be situations where compliance with previously deferred financial reporting obligations might impose an unreasonable burden. The wording of that paragraph and the corresponding wording in the proposed revised guidance note seems to require that “the deferral has been ongoing for a long period of time” for ASIC to grant an exemption.

We suggest less prescriptive wording which uses ongoing long term deferral as an example where an exemption may be appropriate, rather than a requirement in order to obtain an exemption. This is because there may be other circumstances where it would impose an unreasonable burden to require deferred accounts to be produced: For example, if:

- the company had been subject to a deed of company arrangement (**DOCA**) which had dramatically restructured the company; or
- the company had sold the bulk of its previously consolidated subsidiaries during the external administration;

historical accounts would not be particularly informative. The cost/benefit analysis in producing the catch-up accounts may dictate against requiring them to be produced even if the period of administration and the DOCA had been quite short, in which case an exemption may be appropriate.

3 Further discussion

The Committees would be pleased to discuss these submissions in further detail or provide further submissions to expand on or clarify any of the points above. In the first instance, please feel free to contact the Chair of the Corporations Committee, Bruce Cowley, by telephone on 07-3119 6213 or via email: bruce.cowley@minterellison.com.

Yours sincerely,



John Keeves
Chairman, Business Law Section