

Australian Credit Forum

150 Lugarno Parade, Lugarno, NSW 2210

Phone: (02) 9466 2702

PLEASE ADDRESS ALL
CORRESPONDENCE TO:

Australian Credit Forum
c/o R. Bates
FUJIFILM Australia Pty Ltd
114 Old Pittwater Road
Brookvale NSW 2100
roger.bates@fujifilm.com.au

23rd February 2007

Corporations Amendment (Insolvency) Bill 2007
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir,

Australian Credit Forum Submission on the Corporations Amendment (Insolvency) Bill 2007

As Chairman of the Australian Credit Forum, I am pleased to attach the Forum's submission on this important law reform package, which impacts the Forum's members on a daily basis.

The Australian Credit Forum, formerly known as the Australian Credit Managers Forum, is an organisation that was founded in excess of 30 years ago. Its purpose is to monitor developments in law, credit practice and business practice. It extensively reviews credit related matters and makes submissions on those developments.

The Forum's membership is comprised of predominantly senior credit managers and people from associated professional areas, such as accountants, lawyers, insolvency practitioners, mercantile agents, credit training and reporting agencies, in both consumer and commercial areas, in Australia and New Zealand.

Yours faithfully,



Roger Bates
Chairman
Australian Credit Forum

Enc.

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AUSTRALIAN CREDIT FORUM

Position Paper

on the

**Exposure Draft
Corporations Amendment (Insolvency) Bill 2007**

February 2007

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1. Introduction

The ACF has been involved regularly in the development of the development and reform process for insolvency. As a national body for senior professionals in credit management and related disciplines we have an active agenda in ensuring that the legislative and regulatory framework for insolvency continues to improve so that it is equitable, efficient and effective.

As a body representative of senior credit management professionals, persons having day-to-day exposure to the workings of insolvency law, the ACF expresses its view that consultation of the ACF by the Committee would have facilitated development of the proposals. Information about the ACF can be viewed on its website <[www. Australiancreditforum.com.au](http://www.Australiancreditforum.com.au)>.

The proposed reforms go a long way to satisfying our objectives.

The document provides a summary of the ACF's position on the proposed reforms. We agree with most of the proposals, but have concerns in some key areas. This document addresses those areas where we have concerns.

Where we have not commented, it can be assumed that the ACF agrees with the proposed legislation.

This document is structured in the following manner:

1. the document is a modification of the response prepared by the Insolvency Practitioners' Association (IPAA), to whose members we are indebted for the intellectual industry they have brought to their paper. While we generally agree with the views, we do not do so in all cases. Some are matters of emphasis
2. the issues have been divided into Most Important, Important and Matters with which the ACF Agrees. Within these sections the issues are presented in the same order as the explanatory statement. The numbering is an internal ACF (ex-IPAA) numbering.
3. the explanatory statement is cross referenced using page numbers designated **ES p#** (the explanatory statement provides the cross references to the sections in the Bill).

2. MOST IMPORTANT

2.1. Improving Outcomes for Creditors

Proposal in Exposure Draft	ACF Comment
<p>1) Administrator to make available a statement of independence</p> <p>ES p33</p> <p>Act is to be amended to require administrators to provide a declaration of relevant relationships and a declaration of indemnities in the following forms:</p> <p>declaration of indemnities, in relation to an administrator of a company under administration, means a written declaration:</p> <p>(a) stating whether the administrator has, to any extent, been indemnified (otherwise than under section 443D), in relation to that administration, for:</p> <p>(i) any debts for which the administrator is, or may become, liable under Subdivision A of Division 9 of Part 5.3A; or</p> <p>(ii) any debts for which the administrator is, or may become, liable under a remittance provision as defined in section 443BA; or</p> <p>(iii) his or her remuneration as fixed under section 449E; and</p> <p>(b) if so, stating:</p> <p>(i) the identity of each indemnifier; and</p> <p>(ii) the extent and nature of each indemnity.</p> <p>declaration of relevant relationships, in relation to an administrator of a company under administration, means a written declaration:</p> <p>(a) stating whether any of the following:</p> <p>(i) the administrator;</p> <p>(ii) if the administrator's firm (if any) is a partnership—a partner in that partnership;</p> <p>(iii) if the administrator's firm (if any) is a body corporate—that body corporate; has had, has or is likely to have a relationship with:</p> <p>(iv) the company; or</p> <p>(v) an associate of the company; or</p> <p>(vi) a former liquidator, or former provisional liquidator, of the company; or</p> <p>(vii) a person who is entitled to enforce a</p>	<p>The ACF considers the use of the words "is likely to have" in respect of relationships to be declared is likely to prove unworkable. We believe that it is unreasonable to expect an administrator to be able to declare possible future relationships that are unknown to the administrator at the time of preparing the declaration.</p> <p>The ACF is concerned that the proposed amendments are restricted to principals of firms and not extended to senior employees, however called. Some of those employees have been principals of other firms of insolvency practitioners or have been operating as insolvency practitioners at a senior level for a number of years. They usually have an established network of contacts both personal and professional, many of which are both personal and professional contacts. The way insolvency practices are operated with extensive delegation means that it is those sub-principal insolvency practitioners who have most of the day-to-day management of the particular insolvency administration and dealings with creditors. Transparency requires that the principal insolvency practitioner disclose the employees proposed to be allocated to the particular insolvency administration and that those employees at manager level or above make the same disclosure as the principal.</p> <p>The ACF suggests that the proposed amendments be extended to an administrator appointed under s 436E(4) or where a different person is appointed Deed Administrator to provide, at any time, a Declaration of Relevant Relationships.</p> <p>It is interesting that there is a requirement for a replacement administrator under s 449C(4)(b) to provide a declaration.</p> <p>A practitioner that is nominated to replace an incumbent administrator under section 436E(4) should be required to provide Declarations of Indemnities and Relevant Relationships prior to the resolution being put to the meeting.</p> <p>A practitioner that is nominated to act as the administrator of a DOCA (if different to the</p>

Proposal in Exposure Draft	ACF Comment
<p>charge on the whole, or substantially the whole, of the company's property; and</p> <p>(b) if so, stating the administrator's reasons for believing that none of the relevant relationships result in the administrator having a conflict of interest or duty.</p> <p>The Explanatory Statement provides that the declaration should be expressed in simple language and should be no more than two pages in length in order to maximise the usefulness of the declaration to creditors.</p>	<p>administrator of the Voluntary Administration) should be required to provide Declarations of Indemnities and Relevant Relationships prior to the resolution that would result in his/her appointment being put to the meeting (s 444A(2)).</p> <p>With the amendments to the commencement of Creditors' Voluntary Liquidations, it is envisaged that there will be a lot more companies entering directly into CVL rather than via a Voluntary Administration. As such, the ACF believes that the requirements for a Declaration of Relevant Relationships and Declaration of Indemnities should be extended to include Liquidators of CVLs.</p>

Proposal in Exposure Draft	ACF Comment
<p data-bbox="225 374 743 430">2) Factors for consideration by a court in setting remuneration</p> <p data-bbox="225 443 339 477">(ES p35)</p> <p data-bbox="225 477 743 645">The Act will be amended to require a court to give consideration to a number of factors when setting or reviewing the remuneration of an insolvency practitioner ("IP"). Relevant factors that the court must consider in setting remuneration include:</p> <ul style="list-style-type: none"> <li data-bbox="225 674 743 757">▪ the extent to which the work performed, or likely to be performed, by the IP was reasonably necessary; <li data-bbox="225 763 743 819">▪ the period during which the work was, or is or likely to be, performed by the IP; <li data-bbox="225 826 743 882">▪ the quality of the work performed, or likely to be performed, by the IP; <li data-bbox="225 889 743 972">▪ the complexity (or otherwise) of the work performed, or likely to be performed, by the IP; <li data-bbox="225 978 743 1061">▪ the extent (if any) to which the IP was, or is likely to be, required to deal with extraordinary issues; <li data-bbox="225 1068 743 1167">▪ the extent (if any) to which the IP was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case; <li data-bbox="225 1173 743 1229">▪ the value and nature of any property dealt with, or likely to be dealt with, by the IP; <li data-bbox="225 1236 743 1344">▪ whether the IP was, or is likely to be, required to deal with one or more liquidators, receivers, or receivers and managers; <li data-bbox="225 1350 743 1429">▪ the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors; <li data-bbox="225 1435 743 1693">▪ if the remuneration is ascertained, in whole or in part, on a time basis: <ul style="list-style-type: none"> <li data-bbox="268 1491 743 1574">· the time properly taken, or likely to be properly taken, by the IP in performing the work; and <li data-bbox="268 1581 743 1615">· market rates of remuneration; and <li data-bbox="268 1621 743 1677">· whether the total remuneration payable to the IP is capped; <li data-bbox="225 1700 743 1733">▪ any other relevant matters. <p data-bbox="225 1718 743 1774">These requirements will apply to all forms of insolvency administration.</p>	<p data-bbox="770 374 1334 456">The ACF agrees with these proposals. They are no more rigorous than the disclosure required of the legal profession in New South Wales since 1994.</p> <p data-bbox="770 486 1334 624">The ACF appreciates that determination of "market rates" may well create legal and practical difficulties for insolvency practitioners but does not consider that should alter the overall thrust of the proposed reforms.</p> <p data-bbox="770 654 1334 741">The ACF considers that greater disclosure of the factors proposed would reduce the incidence of non-approval of IP remuneration.</p> <p data-bbox="770 770 1334 909">Where creditors have provided the IP with the reasons for their rejection of the IP's remuneration, the IP should be under an obligation to disclose those reasons to the Court. That is, an additional factor should be:</p> <p data-bbox="770 938 1334 994"><i>"Any comments made in relation to the IP's remuneration to the IP by a creditor."</i></p>

Proposal in Exposure Draft	ACF Comment
<p>3) Information to be provided to creditors to allow reasonableness to be assessed</p> <p>(ES p36)</p> <p>The proposed amendment will provide that an external administrator must provide sufficient information to enable the approving party to assess remuneration as reasonable. The requirement is to provide a report setting out:</p> <ul style="list-style-type: none"> ▪ such matters as will enable COI / COC / Creditors (as applicable) to make an informed assessment as to whether the proposed remuneration is reasonable; and ▪ a summary description of the major tasks performed, or likely to be performed; and ▪ the costs associated with each of those major tasks. <p>The Explanatory Statement provides that the report to creditors on remuneration should be expressed in simple language and should be no more than two pages in length in order to maximise the usefulness of the report to creditors.</p>	<p>The ACF agrees with this amendment. We are however, concerned with the two page limit as we do not think that the information that creditors need to be provided with can be provided in two pages, even for simple administrations.</p> <p>Rather than a page limit, the requirement should be to have the statement in plain English.</p> <p>Additionally, any creditor may request additional information which must be supplied by the IP not less than 3 business days before the meeting to approve remuneration.</p>
<p>4) Allow a fixed amount of fees to be drawn down where a creditors meeting lacks a quorum</p> <p>(ES p38)</p> <p>The act will be amended to allow liquidators to draw down a maximum of \$5,000 where a liquidator has called a meeting of creditors but failed to obtain approval for remuneration because of a lack of quorum.</p>	<p>The ACF agrees with this amendment and suggests the \$5,000.00 figure be indexed.</p>

Proposal in Exposure Draft	ACF Comment
<p>5) Advertising requirements (ES p40) The following changes to advertising will be made in the effort to reduce costs:</p> <ul style="list-style-type: none"> ▪ Remove requirement to advertise lodgement of Managing Controllers RATA; ▪ Combine notice of appointment and notice of first meeting for VAs; ▪ Remove requirement to advertise a meeting in a DOCA ▪ Remove requirement to advertise notice of execution of a deed; ▪ Remove requirement to advertise failure to execute deed; ▪ Removes requirement to publish notice of termination of deed. 	<p>The ACF agrees that unnecessary advertisements should be removed. it also supports the IPAA's proposal of moving to web-based electronic advertising. Web based advertising will be more cost effective and more readily accessible by more people (information searchable and retained for a longer period). The advertisements would also appear in the same place – rather than being spread through a number of newspapers throughout Australia.</p>

Proposal in Exposure Draft	ACF Comment
<p>6) Pooling in voluntary administration (ES p53)</p> <p>The proposed model allows for pooling in a voluntary administration or a DOCA in a range of circumstances provided it is approved by creditors. It makes provision for objection by dissenting creditors - a pooling determination can be defeated by one creditor dissenting. In such a case the administrator is able to apply to the court for approval of the pooling determination, notwithstanding creditor objection. The Court may make such an order if it considers it just and equitable to do so.</p> <p>Before an administrator many make a pooling they must give written notice to the proposed determination to as many of the company's creditors as reasonably practical, together with a statement identifying each of the companies in the group, creditors' rights to object, the procedures for objecting and the information that will enable creditors to make an informed decision about whether to object.</p> <p>A pooling determination would have the effect that each of the companies in the 'pool' are taken to be jointly and severally liable for each</p>	<p>The ACF supports the pooling proposals and is content to leave commentary on technical aspects of the proposed amendments to the insolvency practitioners who will have to work with them.</p>

Proposal in Exposure Draft	ACF Comment
<p>debt payable by each other company in the group and inter-company debts are extinguished. An administrator would have the power to modify this outcome.</p> <p>The rights of external secured creditors will not be affected by the proposed pooling arrangements either in a voluntary administration or in a DOCA. They will retain their security rights.</p> <p>The introduction of this regime should not limit the matters that may be dealt with by a DOCA for the company (ie. Pooling via a DOCA rather than by determination).</p> <p>Pooling in liquidation (ES p53)</p> <p>The proposed model for pooling in a liquidation is similar to that for a VA, however, it provides for two kinds of pooling in a liquidation: voluntary pooling and Court ordered pooling. It is not necessary to go to the creditors before seeking the approval of the Court in a liquidation.</p> <p>In a voluntary pooling, the winding up of a group of companies may only be the subject of a pooling determination if every eligible unsecured creditor consents. The liquidator may make a determination that the winding up be conducted on a pooled basis. The determination takes effect if no eligible creditor objects to the pooling.</p> <p>In the case of Court ordered pooling, the Court may determine, by order, that a group of companies in liquidation is a pooled group if it is satisfied that it is just and equitable to do so. The Court may make the order despite the objections of creditors.</p> <p>The balance of the procedure is essentially the same as that for a VA or DOCA.</p>	

2.2. Regulations

Proposal in Exposure Draft	ACF Comment
<p>7) Item 1 – Prescribed Disciplinary Bodies (ES p19)</p> <p>The ASIC regulations will be amended to allow ASIC to share confidential information to the Institute of Chartered Accountants, the Certified Practising Accountants and National Institute of Accountants if ASIC are satisfied that particular information will enable or assist these bodies to perform one of its functions.</p>	<p>The ACF supports the IPAA's proposal that it should be added to the list as the peak professional body.</p>

2.3. Outstanding Matters:

8) Chairing of the Second Meeting in a Voluntary Administration –

- The Corporations Regulations¹ currently provide that where a meeting is convened by an administrator of a company under administration the meeting must be chaired by the administrator or a person nominated by that person. However, the Corporations Act² states that at a meeting convened under section 439A (the second meeting of creditors in a Voluntary Administration) the administrator is to preside.

Due to the operation of Regulation 5.6.11(3)(c), where regulation 5.6.17 is inconsistent with a particular requirement of the Act, the regulation does not apply. Accordingly, it appears that for section 439A meetings, the administrator must chair the meeting.

The ACF agrees with the IPAA's opinion that this requirement is impractical. If for some reason the administrator is unable to attend the meeting (for example due to ill health or an accident) the meeting is technically unable to be held. It is also unable to be adjourned. There is some concern that the Courts may not necessarily be prepared to make an order allowing an alternative chair – and in many circumstances this approval may not be able to be sought until after the meeting is held.

The ACF supports the IPAA proposal that section 439B be amended to provide for a representative of the administrator to chair the meeting where the administrator is unable to. It would be reasonable to put restrictions on when an alternative is able to be appointed with suitable repercussions should the use of an alternative be outside of these restrictions. It would also be suitable to require the alternative to have appropriate professional experience.

We note that there are concerns about the need for the administrator to personally conduct such an important meeting, however, there will be instances where the need for delegation is unavoidable. The administrator still retains ultimate responsibility for the conduct of the administration.

¹ Regulation 5.6.17(1)

² Section 439B

3. IMPORTANT

3.1. Improving Outcomes for Creditors

Proposal in Exposure Draft	ACF Comment
<p>9) Mandating the priority debt ranking in deeds of company arrangement (ES p25)</p> <p>All DOCAs will be required to apply the priority set out in subsection 556(1), 560 and 561, unless a majority in number and value of eligible employee creditors agree to vary that priority. The agreement must be obtained prior to, or at the same time as, the section 439A meeting. If consent is not obtained, administrators and other interested parties will have a right to seek an order from the Court to allow such a variation. The Court will be able to make such an order if, in the Court's view, it offers eligible employee creditors the same or a better outcome than they would receive in a winding up.</p>	<p>The ACF supports the proposed amendments.</p>

Proposal in Exposure Draft	ACF Comment
<p>10) SGC and Double payments (ES p29)</p> <p>Situations can arise where:</p> <ul style="list-style-type: none"> ▪ employees/superannuation fund and the ATO may be entitled to prove for essentially the same debt. However, as these debts are legally distinct, the rule against double proofs does not apply and a liquidator is obliged to admit all proofs. The act will be amended to give liquidators and deed administrators the discretion to reject a proof when this scenario arises. ▪ An employer makes a payment of superannuation late giving rise to an SGC. The SGAA was recently amended to allow for offset where superannuation is paid one month late. 	<p>The ACF supports the proposed amendments.</p> <p>The ACF supports the IPAA suggestion that the proposed provisions dealing with double proofs (proposed sections 444DC and 553AB) be extended to also allow the insolvency practitioner to offset any late payments of superannuation made pre-appointment against any SGC proof so that only the balance beyond what has already been paid by the company is provable.</p>

Proposal in Exposure Draft	ACF Comment
<p>11) Annual meeting in a creditors</p>	<p>The ACF supports the proposed amendments.</p>

Proposal in Exposure Draft	ACF Comment
<p data-bbox="252 371 507 400">voluntary winding up</p> <p data-bbox="217 414 328 443">(ES p38)</p> <p data-bbox="217 445 724 557">The Act will be amended to give a liquidator in a CVL the choice of either calling an annual meeting of creditors or lodging with ASIC a report on the progress of the administration.</p>	<p data-bbox="767 427 1337 568">The ACF supports the IPAA suggestion that the requirement for AGM's be amended so that the date to calculate the timeframe for the Annual Meeting is the first day of the liquidation, not the commencement of the liquidation.</p>

Proposal in Exposure Draft	ACF Comment
<p data-bbox="217 884 687 913">12) Creditors' Voluntary winding up</p> <p data-bbox="217 927 328 956">(ES p47)</p> <p data-bbox="217 958 740 1319">To introduce greater flexibility into the process for placing a company into liquidation through a creditors' voluntary liquidation, the required timing for the creditors meeting will be extended to 8 business days after the day of the members' meeting. The extension of this time period will mean that, in circumstances where a meeting of members can be called directly after the directors' meeting (by using the facility for members to consent to short notice under subsection 249H), an insolvent company may be placed into a creditors' voluntary winding up almost immediately.</p>	<p data-bbox="767 965 1286 994">The ACF agrees with this amendment meeting.</p>

Proposal in Exposure Draft	ACF Comment
<p data-bbox="217 1559 647 1615">13) Change of company name in external administration</p> <p data-bbox="217 1628 328 1657">(ES p49)</p> <p data-bbox="217 1659 740 1910">External administrators will be able to change a company's name without the need for a special resolution of members, where it is in the interests of creditors as a whole to do so. The law will also specify that any company that changes its name during, or in the six months prior to, an external administration should be required to disclose its former, as well as its current, name on its public documents for the</p>	<p data-bbox="767 1666 1187 1695">The ACF agrees with this amendment.</p> <p data-bbox="767 1720 1318 1890">The ACF suggests that in all publications, whether in newspaper advertisements, electronic or paper communication from the Insolvency Practitioner to the creditor, that in addition to the company's registered name at ASIC and its Australian Company Number (ACN) that all business names</p>

Proposal in Exposure Draft	ACF Comment
<p>period of that administration or any subsequent liquidation. An administrator of a DOCA will be able to make an application to Court to waive this requirement.</p>	<p>used by the insolvent company, registered or unregistered, also be disclosed. For example, "Flimflam 52 Pty Ltd ACN 123 456 789 trading as Dodge City and Ripoff & Duddem".</p>

3.2. Finetuning Voluntary Administration

Proposal in Exposure Draft	ACF Comment
<p>14) Notification when deed wholly effectuated (ES p73)</p> <p>The requirement to notify ASIC when a DOCA is wholly effectuated will be made a mandatory requirement. A deed administrator will be required certify, in writing, when the deed administrator has applied all of the proceeds of the realisation of assets available for the payment of creditors, or paid to creditors the full sum determined by creditors to be received under the deed. The deed administrator must lodge with ASIC a notice of termination of the deed (prescribed form) within 28 days.</p>	<p>The ACF supports the proposed amendments.</p>
<p>15) Power to consent to a transfer of shares of the company (ES p74)</p> <p>Refer page 5 for discussion on liquidators and administrators powers.</p>	<p>The ACF supports the proposed amendments.</p>
<p>16) Deed Administrator's ability to sell the company's shares (ES p76)</p> <p>The law will be amended to provide that the deed administrator is able to sell shares in the company with either the consent of the holders of those shares, or with leave of the Court in the absence of shareholder consent. The Court may only grant leave if it is satisfied that the sale would not unfairly prejudice the interests of shareholders.</p>	<p>The ACF supports the proposed amendments.</p>

Proposal in Exposure Draft	ACF Comment
<p>17) Power of an administrator to sell property subject to a lien, pledge or reservation of title clause</p> <p>(ES p88)</p> <p>The Act will be amended so that an administrator will have the power to sell property subject to a lien, pledge or ROT clause, in certain situations. A chargee, lienee, pledgee, lessor or owner may apply to the court for an injunction if they believe that a proposed sale of the property would prejudice their interests.</p> <p>The administrator will be provided a right of inspection for property held under a lien or pledge and a right to take possession to sell the property in order to effect a sale. There is an obligation on the administrator to act reasonably in exercising power of sale over property subject to a lien, pledge or retention of title clause. The administrator will have an obligation to set aside the net proceeds of the sale, to the extent required to satisfy the debt secured by the lien, pledge or ROT, or any security that has a priority over the debt secured by the lien, pledge or ROT.</p>	<p>The ACF does not oppose the proposed amendments. However, like the IPAA, we note that "Net Proceeds" is not currently defined and suggest that the uncertainty that will create will need to unnecessary litigation and further depletion of creditors' already depleted funds in the company under administration</p>
<p>18) Right of a creditors to sell property subject to a lien or pledge</p> <p>(ES p89)</p> <p>Where the administrator agrees to a lienee or pledgee selling property in their possession, the power of sale will be subject to a requirement to return to the administrator any sale proceeds in excess of the debt secured by the charge. The power of sale will not be exercisable where there is a security of the property that has a higher priority in liquidation.</p>	<p>The ACF agrees with this amendment.</p> <p>Like the IPAA, we note that "Net Proceeds" is not currently defined and suggest that the uncertainty that will create will need to unnecessary litigation and further depletion of creditors' already depleted funds in the company under administration</p>

Proposal in Exposure Draft	ACF Comment
<p>19) Priority for borrowings during administration</p>	

Proposal in Exposure Draft	ACF Comment
<p>(ES p93)</p> <p>The Act will be amended to include debts incurred by the administrator for money borrowed in section 443A (personal liability of the administrator), so that a similar mechanism can be used to give post-administration borrowings priority over pre-deed creditors. The indemnity will extend to interest on the borrowings and borrowing costs.</p>	<p>The ACF supports the proposed amendments.</p>
<p>20) Report as to affairs</p> <p>(ES p96)</p> <p>The Act will be amended to allow a liquidator who takes office immediately following a period of administration or a DOCA to request a report from any officer of the company (including directors, a previous administrator or deed administrator) about the company's affairs as at a date specified in the notice. There will be an obligation for company officers in receipt of such a notice to provide the information sought. Failure to do so without reasonable excuse will be an offence of strict liability. Reasonable costs of preparing the report may be claimed and paid by the liquidator out of the property of the company as a priority debt.</p>	<p>The ACF supports the proposed amendments.</p>

3.3. Regulations

Proposal in Exposure Draft	ACF Comment
<p>21) Item 17: Chairing a meeting (ES p12) The requirements for the chairing of meetings will be extended to "pooled" meetings.</p>	<p>The ACF supports the proposed amendments.</p>
<p>22) Item 22: Disclosure of the reasons for casting vote decisions (ES p12) A new subregulation will require the chairperson to cause their reasons for exercising, or not exercising, as the case may be, a casting vote to be recorded in the minutes of the meeting.</p>	<p>The ACF supports the proposed amendments.</p>
<p>23) Item 23: Voting by persons advancing money to a company under s560 (ES p13) Proposed regulation will provide that an advancer of monies under section 560 is entitled to only one vote by number at a meeting of creditors, whether he/she has advanced money on one or more than one occasion.</p>	<p>The ACF supports the proposed amendments.</p>

4. MATTERS WITH WHICH THE ACF AGREES

The following matters are all agreed with by the ACF and no separate comments are made.

4.1. Improving Outcomes for Creditors

<p>Proposal in Exposure Draft</p> <p>Treatment of the superannuation guarantee charge ("SGC") under the Corporations Act in external administration</p> <p>(ES p26) SGC is not treated the same as superannuation contributions in the Corporations Act. The act will be amended so that section 556(1)(e) will include superannuation contributions and SGC.</p>
<p>Timing issues and priority for SGC</p> <p>(ES p27) The law will be changed so that it is clear that SGC arising before the relevant date is a debt under 556(1)(e) and SGC arising after the relevant date is a debt with a priority under section 556(1)(a).</p>
<p>SGC and Excluded employees</p> <p>(ES p28) The Superannuation Guarantee Administration Act ("SGAA") currently does not recognise the \$2,000 priority limit for directors for superannuation (and wages). The inclusion of SGC in section 556(1) and an amendment to the SGAA will give the Commissioner discretion to ensure that SGC is properly allocated (will also recognise limits in Bankruptcy Act).</p>
<p>Clarification of the rights of subrogated creditors: section 560</p> <p>(ES p31) Amendments to section 560 will clarify that section 560 may apply to advances that are made before, on or after the relevant date. The law will be amended to ensure subrogated creditors have the same rights the original creditors would have had under Chapter 5 if the advance had not been made. Persons making advances may not split voting rights associated with a single debt among two or more persons. Section 560 will also be amended to overcome difficulties that could arise if the account into which advances were paid was in debit or the amounts advanced are "mingled" with other monies.</p>
<p>Creditors to have power to appoint a different person as liquidator</p> <p>(ES p34) Creditors will be granted the power to appoint a different person as liquidator if they choose to when a company proceeds from Voluntary Administration to liquidation.</p>
<p>ASIC's power to seek court review of remuneration</p> <p>(ES p34) ASIC will be given the power to apply to the court for a review of remuneration of administrators and deed administrators.</p>

<p>Proposal in Exposure Draft</p> <p>Allow administrators to apply to seek approval from a court for remuneration if creditors have not met</p> <p>(ES p37) The Act will be amended to make clear that it is possible for an administrator to apply to court for remuneration to be fixed when creditors have not met.</p>
<p>Clarify the requirements for approval of administrator's remuneration</p> <p>(ES p37) The Act will be amended to make clear that a committee of creditors and a committee of inspection may determine the remuneration to be received by the administrator or deed administrator. The Act will also provide that resolutions regarding fees must deal with fees exclusively (ie cannot get fees approved by passing a resolution accepting the DOCA).</p>
<p>Gazettal requirements for controllerships</p> <p>(ES p43) The act will be amended to remove the requirement for Gazettal of controllership matters</p>
<p>Limiting the requirement to maintain separate bank accounts to managing controllers</p> <p>(ES p43) Controller who are not managing controllers will no longer have to maintain separate bank accounts should they choose not to.</p>
<p>Reporting of misconduct</p> <p>(ES p44) The requirement to report misconduct by an officer, member or employee to ASIC will be extended to Managing Controllers.</p>
<p>Power to consent to a transfer of shares of the company</p> <p>(ES p44) The law will be amended to allow an administrator or liquidator to consent to a transfer of shares or alter the status of members. The administrator/liquidator will need to be first satisfied that it is in the best interests of creditors as a whole. The ability to apply to the court for such an order will be retained, but only available where the administrator's/liquidator's consent has been unsuccessfully sought first. The court's power will be exercisable on application by the prospective transferor or transferee of shares, with the administrator having standing to be heard on any application.</p>
<p>Schemes of compromise or arrangement – court discretion to approve</p> <p>(ES p45) Approval of a members' scheme requires the resolution to be passed by a majority of members present and voting and a special majority (75 per cent) according to the voting rights attaching to share capital.</p> <p>The Act will be amended to give the court a discretion to make an order that the requirement for a majority of members present and voting may be dispensed with. It is expected that the court would only exercise the discretion to disregard the majority vote in circumstances where there is evidence that the result had been unfairly influenced by activities such as share splitting.</p>

Proposal in Exposure Draft
<p>Corporate membership of the committee of creditors and the committee of inspection</p> <p>(ES p46)</p> <p>The Act is being amended to confirm that corporate membership of a committee of creditors and a committee of inspection is possible, and that corporations may be represented at meetings by an officer or employee of the member or some other authorised person.</p>
<p>Multiple liquidators</p> <p>(ES p48)</p> <p>The law will be clarified to make clear that there can be joint and several liquidators appointed and that they can act jointly or severally. A similar amendment will be made in respect of controllers and managing controllers.</p>
<p>Exemption from the requirement to hold an annual general meeting</p> <p>(ES p51)</p> <p>ASIC will be given the discretion to grant an individual company an exemption from the requirement to hold an annual general meeting on application made by an external administrator.</p>

4.2 Deterring Corporate Misconduct

Proposal in Exposure Draft
<p>Compulsory powers to investigate liquidators' conduct</p> <p>(ES p59)</p> <p>ASIC will be empowered to use its compulsory powers in Part 3 of the ASIC Act to investigate liquidators' conduct generally, including the extent to which registered liquidators comply with those fiduciary duties that are not codified in the corporations legislation. In order to use its compulsory powers, ASIC will need to have reason to suspect certain matters, for example that a person has or may have failed to carry out or perform adequately and properly the duties of a liquidator.</p>
<p>Schemes of compromise or arrangement – right of recovery for breach of condition or alternation</p> <p>(ES p60)</p> <p>It is proposed to amend the scheme of compromise or arrangement provisions in the Act to introduce a new right for a person to make an application for a court order to recover compensation where:</p> <ul style="list-style-type: none"> ▪ the court imposes an alteration or condition on the scheme's approval; ▪ that alteration or condition is breached by the Part 5.1 body; and ▪ the person suffers loss or damage as a result of the breach.

<p>Proposal in Exposure Draft</p> <p>Court orders preventing company officers and other from avoiding liability</p> <p>(ES p60)</p> <p>Section 486A allows a Court to make certain orders to prevent a company officer (or related entity of a company) acting in a manner that could allow the officer (or related entity) to avoid their liabilities to a company that is being wound up. Such orders include prohibition on sending funds out of the jurisdiction, prohibitions on leaving the jurisdiction and the surrender of passports. Currently only a liquidator or provisional liquidator can make the application – it is proposed to extend this power to ASIC.</p>
<p>Warrant to arrest a person</p> <p>(ES p61)</p> <p>Section 486B allows a Court to issue a warrant to arrest and bring before the Court a person who is absconding, or who has dealt with property or books, so as to avoid obligations in connection with insolvency proceedings. However, the provision does not provide a procedure for how a person subject to a warrant is to be treated. It is proposed to insert amendments to detail how a person who is subject to a section 486B warrant is to be treated.</p>
<p>Removal of penalty privilege in relation to banning and disqualification</p> <p>(ES p62)</p> <p>It is proposed to remove privilege against exposure to a penalty for proceedings before a Court or CALDB where ASIC is seeking a disqualification, banning, suspension or cancellation order and no other penal or pecuniary penalty. The effect of this amendment would be to allow ASIC to use information on which privilege against exposure to a penalty has been claimed in a proceeding to ban or disqualify a person.</p>
<p>Time limit for the lodgement of reports by liquidators</p> <p>(ES p64)</p> <p>The law will provide for a specific time limit of six months for the lodgement by liquidators of s 533 reports. Failure to lodge in this time will incur the standard late lodgement penalties. There is no scope to apply for an extension. Subsequent reports can be lodged if further information comes to hand after that time.</p>

4.3 Improving Regulation of Insolvency Practitioners

<p>Proposal in Exposure Draft</p> <p>Extending the prohibition on inducements for the referral of work</p> <p>(ES p66)</p> <p>Section 595 will be extended to prohibit inducements being offered to any person or entity with a view to securing appointment as an external administrator.</p>
<p>Education criterion for registration as liquidator</p> <p>(ES p66)</p> <p>The act will be amended to remove the requirement to be a member of a named or prescribed professional body from the qualifications required to be a registered liquidator (will now just be educational requirements). ASIC will still have the power to recognise membership as an alternative form of qualification.</p>

Proposal in Exposure Draft
<p>Experience criterion for registration as a liquidator</p> <p>(ES p67) The Act will be amended so that ASIC may take into consideration experience in all types of external administrations when processing an application for registration of an insolvency practitioner.</p>
<p>Professional indemnity insurance</p> <p>(ES p67) The act will be amended to require registered liquidators to obtain and maintain professional indemnity and fidelity insurance to cover their work as licensed practitioners.</p>
<p>Triennial Statements to be replaced by annual statements</p> <p>(ES p68) The requirement for triennial statements will be replaced by the need for registered liquidators to lodge more detailed annual statements with ASIC. The existing statement requires: the name of the liquidator; the place of practice; a statement regarding residency, disciplinary action, conviction of offences and other matters which will result in disqualification; and a list of liquidations conducted. The new annual statement will require the same information and also details of: professional development courses undertaken, a summary of insolvency work undertaken and details of professional indemnity and fidelity insurance.</p>
<p>Cancellation of registration by ASIC</p> <p>(ES p68) The Act will be amended to allow ASIC to cancel the registration of a liquidator without reference to CALDB in certain objective circumstances – bankruptcy or disqualification from managing corporations and where a person is convicted of a serious criminal offence.</p>
<p>Transfer of books</p> <p>(ES p69) The act will be amended to require a liquidator/receiver/voluntary administrator/deed administrator to transfer documents associated with an external administration to a replacement external administrator in the event of cancellation of their registration.</p>
<p>Disciplinary proceedings – CALDB</p> <p>(ES p69) CALDB will be given:</p> <ul style="list-style-type: none"> ▪ the power to conduct a pre-hearing conference involving only the Chairman (rather than more than one member of the board), for the purpose of determining a timetable for the matter. ▪ the power to admonish or reprimand a person for failing to comply with orders made during the pre-hearing period. ▪ greater flexibility to publish reasons for its decision. ▪ the power to delay the effect of its decisions for a period of up to 90 days. This is in accordance with existing practice of the board, which allows for the orderly transfer or completion of a liquidator's ongoing work.

4.4 Finetuning Voluntary Administration

<p>Proposal in Exposure Draft</p>
<p>Courts power to bind secured creditors</p> <p>(ES p71)</p> <p>The law will be amended to clarify that the Court may only make an order that secured creditors be bound by a DOCA after creditors have formally resolved that the DOCA be executed.</p>
<p>Third party guarantees</p> <p>(ES p71)</p> <p>A DOCA releases the company from a debt in so far as the deed provides for the release and the creditor concerned is bound (section 444H). A possible view is that the acceptance of a DOCA extinguishes the liability of guarantors for debts of the company, by extinguishing the debt that is being guaranteed. The law will be amended to unequivocally state that when creditors resolve to execute a DOCA, creditors' rights under a guarantee or indemnity are unaffected.</p>
<p>Right to terminate a Deed</p> <p>(ES p72)</p> <p>There is a concern that a relatively small number of creditors could force an administrator to convene a meeting of creditors and a majority of those present and voting could terminate the DOCA, even where the company was complying with the terms. To give greater certainty to deeds of company arrangement, creditors will only be entitled to terminate a DOCA by resolution following a material breach of the deed that has not been rectified before the resolution has been passed.</p> <p>In addition, the law will be amended to explicitly provide that ASIC can make an application for termination of a deed under section 445D.</p>
<p>Administrator's right of indemnity</p> <p>(ES p75)</p> <p>An administrator has no statutory rights of indemnity out of the company's property in respect of his or her liabilities that fall outside section 443D. A Court decision has highlighted that there may be limits to administrator's rights of indemnity in areas of tortious liability. The law will be amended to extend the administrator's right of indemnity to include any personal liabilities incurred in the due performance of the administrator's duties (except liabilities incurred negligently or in bad faith).</p>
<p>Lodgement of accounts with ASIC</p> <p>(ES p77)</p> <p>Administrators and Deed Administrators will be required to lodge six monthly receipts and payments with ASIC. The provisions are modelled on the provision for liquidations. Costs of audit in VA are costs of administration; costs of audit in DOCA are to be paid by the company.</p>
<p>Reporting to creditors</p> <p>(ES p78)</p> <p>The Act will be amended to require administrators to include in their s 439A report any other information known to the administrator that will enable creditors to make an informed decision.</p>

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<p>Reporting to creditors</p> <p>(ES p78) The Act will be amended to require administrators to include in their s 439A report any other information known to the administrator that will enable creditors to make an informed decision.</p>

<p>Proposal in Exposure Draft</p> <p>Fundraising in administration (ES p79)</p> <p>It is proposed that the law be amended to provide for an exemption from disclosure requirements for debt for equity swaps in DOCA's – similar to what is currently in place for Schemes. The exemption would not be available for offers or invitations to other parties or where creditors are required to contribute any further consideration. The administrator must make a statement that sets out information about the merits of the offer and indicate that the statement is not a prospectus and therefore may contain less information than a prospectus.</p>
<p>Appointment of administrator by directors and chargees (ES p80)</p> <p>The law will be amended so that directors and substantial chargeholders will not be able to appoint an administrator where there is a provisional liquidator acting.</p>
<p>Transition from liquidation to voluntary administration (ES p81)</p> <p>Currently liquidators or provisional liquidators must obtain leave of the Court to appoint him/her self as administrator where it appears that voluntary administration is the appropriate procedure for a company. The law will be amended to allow a liquidator to appoint himself or herself as administrator without leave of the court where the appointment is supported by creditors. Liquidators will continue to have the right to seek leave of the Court for their appointment as administrator in the absence of a formal resolution of creditors.</p>
<p>Stay and termination of a liquidation (ES p82)</p> <p>A liquidator or provisional liquidator can appoint an administrator where it appears that voluntary administration is the appropriate procedure for a company. If the company then executes a DOCA, an application must be made to the Court for a stay or termination of the winding-up. Deed administrators do not have standing to apply to the Court for a stay or termination of a winding up unless they are also the liquidator. The law will be amended to provide that once creditors have resolved to execute a DOCA, the deed administrator has standing to make an application for a stay or termination of the winding-up.</p> <p>The Court will be directed to have regard to a nonexhaustive list of factors such as any misconduct by the company's officers and the commercial decision of creditors accepting the deed. The Court must have regard to whether the company would remain insolvent after the termination of the winding up (following creditors' acceptance of the DOCA).</p>
<p>Application to replace administrator (ES p83)</p> <p>Liquidators and provisional liquidators will be given the power to apply to the Court to replace an administrator under s 449B.</p>
<p>Meetings (ES p83)</p> <p>Changes to timing of 1st and 2nd meetings in a voluntary administration:</p>

First Meeting	Current	Proposed
<i>Timing of meeting</i>	5 business days	8 business days
<i>Notice of meeting</i>	2 business days	5 business days
Second Meeting	Current	Proposed
<i>Convening of meeting</i>	21 or 28 days	20 or 25 business days calculated from day after administration begins
<i>Notice of meeting</i>	5 business days	No change
<i>Adjournment period</i>	60 days	45 business days

Proposal in Exposure Draft
<p>Conversion of “days” to “business days” (ES p85)</p> <p>All references to days in Part 5.3A will be changed to business days.</p>
<p>Role of administrator and administrator of deed (ES p85)</p> <p>The law will be amended to make clear that the role of the administrator of the deed of company arrangement should commence when the deed of company arrangement is executed by the company and the deed's administrator.</p>
<p>Notification that a company is subject to a deed (ES p86)</p> <p>The Act will be amended to give a company subject to a Deed of Company Arrangement the express right to apply to the Court for an exemption from the requirement to indicate that fact on all public documents and negotiable instruments after the company's name. The Court may grant such an exemption if it is satisfied that the granting of leave will not result in any significant risk to the interests of the company's creditors as a whole. The Court must also consider the interests of prospective (post-deed) creditors, who are at the most risk.</p>
<p>Resolutions for removing an administrator (ES p87)</p> <p>Currently, the replacement of an administrator at the first meeting (subsection 436E(4)) may require creditors to pass two separate resolutions – the first to remove the existing administrator, and the second to appoint a replacement. The law will be amended to include a specific requirement that the removal of a current administrator and the appointment of a new administrator must be effected through a single resolution.</p>

<p>Proposal in Exposure Draft</p> <p>Right of a person to retain pledged property (ES p88)</p> <p>The Act will be amended to provide that a person in possession of company property held under a lien or pledge will be entitled to retain possession of the property, but must not sell the property without leave of the Court or consent of the administrator.</p>
<p>General moratorium for bankers' liens and collateral lodged with clearing and settlement facilities (ES p90)</p> <p>Bankers' liens over, inter alia, unrepresented cheques and bills of exchange would become unworkable if the banker needed to obtain the consent of an administrator or prior leave of the court in order to dispose of such instruments. Similarly, shares are often lodged as security with the Options Clearing House (OCH). OCH has indicated that it would not be able to accept shares or money market securities as collateral should administrators be permitted to sell property that is subject to a lien or pledge.</p> <p>The Act would be amended to provide that Bankers' liens are exempt from the moratorium under Part 5.3A of the Act. Securities lodged as collateral with a clearing and settlement facility would also be exempt from the moratorium under Part 5.3A of the Act.</p>
<p>Clarifying the injunction power allowing a court to prevent enforcement of a charge (ES p90)</p> <p>Where a chargee takes action that falls within section 441B by dealing with property under a charge, the administrator may apply to a court for an injunction to prevent that action. A court's injunction power under paragraph 441D(1)(a) covers actual, but not foreshadowed, enforcement action by a chargee over particular property.</p> <p>The Act would be amended to clarify the power of a court to grant an injunction to prevent threatened enforcement action by a chargee.</p>
<p>Clarifying the powers of a court to allow the enforcement of a charge (ES p91)</p> <p>A chargeholder over all or substantially all the property of a company can continue enforcing its charge if it commenced enforcement before or during the 10 day decision period that follows the commencement of the administration.</p> <p>Other chargeholders can continue enforcing their charges under the circumstances identified in section 441B of the Act.</p> <p>The case of <i>Albert v Namba Pty Ltd</i> (1997) 24 ACSR 577 raised the possibility that chargeholders may not be able to enforce their charges through court proceedings, given the separate prohibition on court enforcement procedures in sections 440F and 440G of the Act.</p> <p>The Act would be amended to clarify that a chargeholder who is permitted to enforce a charge under sections 441A or 441B is able to do so through court enforcement as well as the extra-curial action provided for in those sections.</p>

<p>Proposal in Exposure Draft</p> <p>Relation-back period (ES p92)</p> <p>The Act will be amended to change the relation back day to the date of the initial winding up application was filed, if the application was still on foot, where a liquidation is preceded by a voluntary administration or DOCA, even if the winding up was not a direct result of the application.</p> <p>The ACF considers that it would be desirable to simplify the proposed section.</p>
<p>Priority for debts incurred during a DOCA (ES p93)</p> <p>The Act will be amended to clarify that post-deed creditors have no statutory priority over pre-deed creditors, except where the deed administrator is personally liable for debts that fall within s 556(1)(a).</p>
<p>Uncommercial transactions during voluntary administration deed of company arrangement (ES p94)</p> <p>The Act will be amended to allow uncommercial transactions entered into during a voluntary administration or DOCA immediately preceding a liquidation to be voidable, regardless of whether the company was insolvent at the time of the transaction or became insolvent due to the transaction. However, any transactions done by or under the authority of the administrator or deed administrator will <i>not be voidable</i>.</p>
<p>Period for challenging voidable transactions (ES p95)</p> <p>To address situations where there is a long period between the relation-back day and the termination of a DOCA, the Act will be amended to allow a liquidator either three years from the date relation-back day or one year from their appointment to challenge voidable transactions, whichever is later.</p>
<p>Priority for costs of making a winding up application (ES p97)</p> <p>The Act will be amended for the costs of a winding up application which is not withdrawn or dismissed before the company enters administration to be recoverable as a priority in a subsequent liquidation, even if the liquidation was an outcome of the voluntary administration process rather than as a direct result of the application.</p>

4.5 Miscellaneous

<p>Proposal in Exposure Draft</p> <p>Priority of administrative expenses in voluntary liquidation (ES p99)</p> <p>Section 512 and subsection 556(1) appear to overlap. Both deal with priorities – section 556 for all liquidations, section 512 for CVLs. It is proposed to remove section 512.</p>
<p>Share capital reductions – partly-paid shares (ES p99)</p> <p>The Act will be amended so that it is clear that a cancellation of a party paid share is taken to be for consideration and thus the share cancellation process can only be used to cancel partly paid shares if the cancellation does not materially prejudice the company's ability to pay its creditors.</p>

4.6 Regulations

<p>Proposal in Exposure Draft</p> <p>Item 1: Period for creditor objection to proposed pooling determination (ES p6)</p> <p>Creditors will have 10 business days to object to a pooling determination in a Voluntary Administration and 15 business days in a DOCA. Forms will be prescribed for use for objections.</p>
<p>Item 2: Publication requirements (ES p6)</p> <p>Regulation 5.3A.09 is no longer required as Deed Administrators are no longer required to advertise termination of a DOCA (s 450D(c) will be repealed).</p>
<p>Item 3: Approval by creditors of debt compromises in a liquidation (ES p7)</p> <p>The \$20,000 limit on compromise of a debt to the company will be increased to \$100,000 (s 477(2A), new reg 5.4.02)</p>
<p>Items 4 and 5: Liquidator's General Account: Pooling (ES p7)</p> <p>In the event of pooling, a liquidator will be able to pay money received by the liquidator into a single bank account for all of the companies in the group.</p>
<p>Item6: Deposits of Bills Notes and other Securities (ES p8)</p> <p>Will allow the liquidator to deposit bills, notes and other securities of the pooled group into the bank with which the liquidator's general account was opened.</p>

Proposal in Exposure Draft
<p>Item 7: Payments out of Liquidator's Bank Accounts (ES p8) Liquidators will be able to make payments out of their general account by electronic funds transfer.</p>
<p>Item 8: Consolidated Meetings of Creditors (ES p8) General requirements for notice of, conduct at and voting will be extended to meetings of eligible employee creditors and "pooled" meetings.</p>
<p>Items 10 and 11: Notice of Meeting (ES p10) Extends requirements for notice of meetings to meetings of eligible employee creditors and "pooled" meetings.</p>
<p>Item 13: Eligible employee creditors (ES p10) An administrator will be able to convene a meeting of eligible employee creditors with less than 14 days notice if the administrator considers this appropriate.</p>
<p>Item 14: Meeting at separate venues (ES p11) It is proposed to include a new subregulation to allow a meeting to be held at two or more venues using technology that gives participants a reasonable opportunity to participate.</p>
<p>Item 15: Advertisement of a meeting (ES p11) Reg 5.6.14A will be amended so that it does not apply to a meeting convened under section 445F of the Act or to meetings of eligible employee creditors.</p>
<p>Item 16: Convening of meeting under section 439A (ES p12) Remove reg 5.6.16(5) as it is replicated in reg 5.6.18(2).</p>
<p>Item 19,20 and 21: Exercise of casting votes at meetings of creditors (ES p12) Subregulation 5.6.21(4) will be amended to make it clear that, in a split vote situation, if the chairperson does not exercise their casting vote then the resolution is defeated.</p>
<p>Item 25 and 28: Minutes for consolidated meetings (ES p13) Where a meeting is held on a consolidated basis for a pooled group of companies, the chairperson will only have to prepare and lodge one set of minutes.</p>

Proposal in Exposure Draft
<p>Item 26: Records of attendance (ES p14) A record of attendees will have to be kept for a meeting of eligible employee creditors.</p>
<p>Item 29, 30, 31 and 32: Electronic lodgement of proxy appointments (ES p14) Regulations will be amended to permit the lodgement of proxies electronically in cases where the convenor of the meeting chooses to permit that facility.</p>
<p>Item 33: Directed proxy voting (ES p15) An amendment to subregulation 5.6.33 will remove any restrictions on the exercise of special proxies.</p>
<p>Item 44: Objection to Pooling Determination – Period for objection (ES p16) Creditors will have 21 days to object to a pooling determination in a liquidation.</p>
<p>Item 46: Repeal of regulation 9.2.04 (ES p16) The regulations will be amended to remove the list of prescribed bodies for registration as a liquidator (requirement is now education based with membership one way to prove that).</p>
<p>Item 47: Form 442H, Form 442I (ES p17) New forms for objections to proposed pooling determinations in VAs and DOCA's.</p>
<p>Item 48: Statutory demand: Form 509H (ES p17) Form 509H will be amended to include a clear warning on its face stating that failure to respond to a statutory demand can have very serious consequences for a company.</p>
<p>Item 49: Form 529 (ES p17) The form will be updated to include meetings of creditors under a VA and DOCA.</p>
<p>Item 50: Form 531B (ES p18) Form 531B's use will be extended to meetings of eligible employee creditors.</p>
<p>Item 51: Form 573 (ES p18) This is the form to be used for objection to a pooling determination in a liquidation.</p>

Proposal in Exposure Draft**Item 53: Conversion of days to business days****(ES p18)**

Some regulations to be amended to change reference to days to business days:

- 5.3A.07(5)(a) and 5.6.14(2) — '7 days' to '5 business days';
- 5.3A.04, 5.6.12(3), 5.6.12(4), 5.6.12(5), 5.6.26(3) and 5.6.27(7)(b) — change 4 days' to '10 business days';
- 5.3A.07(5)(b) — '21 days' to '15 business days'; and
- 5.6.16(5) and 5.6.18(2) — '60 days' to '45 business days'.