



11 February 2010

Mr John Hawkins
Secretary
Senate Economics Committee

Dear Secretary

INQUIRY INTO LIQUIDATORS AND ADMINISTRATORS

I refer to your letter of 3 December 2009, addressed to Dr Ken Henry, Secretary of the Treasury, inviting him to make a submission to the Inquiry into liquidators and administrators.

An overview of the relevant legal framework is attached for the assistance of the Committee.

There are a number of completed reviews and reports that deal with many of the issues encompassed by the Committee's terms of reference. The Committee may find it useful to review these in the course of the Inquiry.

Corporate Insolvency Laws: A Stocktake

The Parliamentary Joint Committee on Corporations and Financial Services (PJC) released the *Corporate Insolvency Laws: A Stocktake* report in 2004. The PJC recommended that the Australian Securities and Investments Commission (ASIC) work with professional bodies to encourage the adoption of best practice standards for remuneration and the prompt disclosure of the basis of fees charged by liquidators and administrators. A copy of this report is available at www.aph.gov.au/senate/committee/corporations_ctte/completed_inquiries/2002-04/ail/index.htm.

Review of the Regulation of Corporate Insolvency Practitioners

A review of the regulation of corporate insolvency practitioners was completed in 1997 (Report of the Working Party on the *Review of the Regulation of Corporate Insolvency Practitioners*, June 1997). The recommendations contained in the Report of the Working Party cover eight areas:

- regulatory system;
- registering authority for insolvency practitioners;
- registration requirements;
- discipline and remedial supervision;
- general supervision;
- appointments and qualifications;
- remuneration of insolvency practitioners; and
- administrative requirements for controllers.

A copy of the Report is available on the Treasury website at:

www.treasury.gov.au/contentitem.asp?NavId=013&ContentID=295 .

The following materials have also been issued by ASIC or by the Insolvency Practitioners Association:

- Guide to Fees of insolvency practitioners
- Approving Fees: a Guide for Creditors

Copies of these documents can be downloaded from www.asic.gov.au.

Insolvency Practitioners Association

The IPA Code of Professional Practice (The Code) addresses a range of matters dealing with the conduct of insolvency practitioners. This includes setting out a series of principles that should be followed in regard to practitioner. Included in the Code is a Creditor Information Sheet for approving remuneration in external administrations. A copy of the Code can be downloaded from www.ipaa.com.au.

Listed below are a number of remuneration and conduct related reforms passed or initiated in recent years.

Corporations Amendment (Insolvency) Act 2007

These amendments were the first significant change to Australia's insolvency laws since 1993 and focused on improving outcomes for creditors, deterring misconduct by company officers, improving regulation of insolvency practitioners and voluntary administration. These reforms introduced the requirement for liquidators and administrators to complete Declarations of Relevant Relationships. Administrators are also required to complete Declarations of Indemnities. In relation to remuneration, there was a codification of principles and improvements in the information available to creditors and the Court. This included the insertion of criteria into the Corporations Act for the Court to consider when assessing the reasonableness of an external administrator's claim for remuneration.

Personal Insolvency Reform

The Bankruptcy Legislation Amendment Bill 2009 was introduced in the House of Representatives on 28 October 2009. The Bill aims to provide a more streamlined process for fixing trustee remuneration and a more transparent process for reviewing remuneration. The Attorney-General's Department has released a discussion paper, Amendments to the Bankruptcy Regulations 1996: Remuneration of Registered Trustees, which is available at www.ag.gov.au.

International resources and guidelines

The Office of Fair Trading (OFT) in the United Kingdom has recently launched a study into Corporate Insolvency. The study will look at the market structure, regulation, remuneration and competition between firms and practitioners. Initially, this will involve collection and analysis of data from interested parties including accountancy and law firms, government, regulators and industry. Further investigations will depend on the results of the initial investigation. The OFT expect to complete their investigation by the end of 2010. Information regarding this study can be found at www.oft.gov.uk/advice_and_resources/resource_base/market-studies/current/corporate-insolvency .

In April 2001 the World Bank released a detailed statement of principles and guidelines for effective insolvency and creditor rights systems (www.worldbank.org/ifa/ipg_eng.pdf).

Thank you for the invitation to make a submission. The contact officers in relation to this matter are Daniel McAuliffe (6263 2879) and Andrew Hall (6263 3927).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Preston', with a large, stylized initial 'K'.

Kate Preston
Manager
Governance and Insolvency Unit
Corporations and Financial Services Division

SENATE ECONOMICS COMMITTEE – INQUIRY INTO LIQUIDATORS AND ADMINISTRATORS

THE ROLE OF THE LIQUIDATOR

The role of the liquidator is, ordinarily, to take control and wind up a corporation. This may include:

- collecting, protecting and realising the corporation's assets;
- investigating and reporting to creditors about the corporation's affairs, including voidable transactions and claims against the corporation's officers;
- enquiring into the failure of the corporation and possible offences by people involved in the corporation and reporting to the Australian Securities and Investments Commission (ASIC);
- distributing the proceeds of realisation of assets including processing claims by creditors — first to secured creditors, then priority creditors (including employees), followed by unsecured creditors; and
- applying for deregistration of the company on completion of the liquidation.

There are three different types of winding up under the *Corporations Act 2001* (Corporations Act): members' voluntary; creditors' voluntary; and compulsory.

Members' voluntary winding up can only be used by solvent corporations. The directors are required to make a declaration to the effect that the corporation is capable of paying its debts in full within a period of 12 months. The members of the company decide who will be appointed as liquidator and what the remuneration will be, subject to the Court's ability, upon an application being made, to review a liquidator's remuneration.¹

Creditors' voluntary winding up is used where a corporation is not solvent. A corporation may enter a creditors' voluntary winding up where the directors are unable to make a declaration of solvency, or where a declaration is made but it later becomes apparent that the company is not solvent. A corporation may enter a creditors' voluntary winding up directly from voluntary administration through deeming provisions in the Corporations Act.

Compulsory winding up is effected by an order of the Court. It most commonly arises where a creditor petitions the Court to have a corporation wound up on grounds of insolvency, relying on failure of the corporation to comply with a demand for repayment of a debt. The liquidator is appointed by the Court and is an officer of the Court. Only official liquidators are eligible to be appointed.

THE ROLE OF THE ADMINISTRATOR

Upon appointment the role of the administrator is to take control of the company and its property and to investigate its affairs. The administrator must be a registered liquidator. The administrator is required to

¹ Section 504 of the Corporations Act

hold an initial meeting of creditors at which creditors may consider whether a committee of creditors should be appointed to liaise with the administrator during the administration, in order to ensure that all creditors are kept fully informed. During this same meeting, the creditors may also resolve to replace the administrator.

The administrator is required to call a second meeting. Prior to this second meeting the administrator must provide a statement to creditors, outlining the administrator's opinion in relation to what should happen to the company, the basis of that opinion and to provide any other information necessary for the creditors to make an informed decision.

At this second meeting, the creditors are able to decide if:

- the company should be wound up;
- the administration should end; or
- the company should execute a Deed of Company Arrangement.²

If creditors resolve to either enter into a Deed of Company Arrangement or to wind up the company, the administrator may become the administrator of the Deed of Company Arrangement or the liquidator, depending on the wishes of creditors.³

LEGAL OBLIGATIONS

The statutory duties contained within the Corporations Act that apply to company officers, similarly apply to liquidators and administrators as they fall within the definition of 'officer'. The obligations of liquidators as officers of the Court are also found in a large body of case law regarding their powers, potential liabilities and obligations. Both administrators and liquidators also owe fiduciary duties to the company to which they are appointed.

The Corporations Act also sets out specific rules in relation to the duties of insolvency practitioners, their regulation and supervision, record keeping and funds handling.

REGISTRATION

Liquidators

To be a registered liquidator, a person has to undertake at least three years tertiary study of accountancy and at least two years study of commercial law (including company law), or otherwise satisfy ASIC that they have equivalent qualifications. The circumstances ASIC considers to be equivalent are outlined at length in *ASIC's Regulatory Guide 186: External Administration: Liquidator registration*.

In addition, ASIC also has to be satisfied of a person's experience in external administration, that the person is capable of performing the duties of a liquidator and is a fit and proper person.⁴

² Section 439C of the Corporations Act

³ Section 446A of the Corporations Act

⁴ Paragraphs 1282(2)(a) to (c) of the Corporations Act

The Corporations Act distinguishes between official liquidators and registered liquidators. ASIC may appoint a person who is already a registered liquidator as an official liquidator, provided additional requirements are met by the applicant. Registered liquidators (who are not also official liquidators) can be appointed to any external administration other than a Court appointed liquidation (including a provisional liquidation). Only official liquidators can be appointed to Court appointed liquidations.

Regulatory Guide 186 interprets the expression 'fit and proper' as referring to:

- an overall capability of performing their duties and functions; and
- honesty, integrity, good reputation and personal solvency.

To maintain registration as a liquidator, a person must not become disqualified from managing a corporation. A liquidator is also required to maintain professional indemnity insurance.

Personal Insolvency

In contrast, the personal insolvency profession is regulated by the office of the Inspector-General in Bankruptcy, the Chief Executive Officer of the Insolvency and Trustee Service Australia (ITSA). To become registered, a person must apply to the Inspector-General to be registered.⁵ The applicant is then interviewed by a committee who determines whether the applicant should be a registered trustee. The committee consists of the Inspector General, an employee of the Australian Public Service and a registered trustee. In addition, to be eligible a person must have qualifications as prescribed by regulation 8.02 of the *Bankruptcy Regulations 1996* or otherwise satisfy the committee as to their suitability. The qualifications are similar to those required by liquidators.

REMUNERATION

The rules regarding liquidators' and administrators' remuneration are contained in the Corporations Act. Members of the Insolvency Practitioners Association (IPA) are also subject to the IPA's Code of Professional Practice which contains Remuneration Principles. The Corporations Act does not prescribe remuneration levels, rather it encourages external administrators and creditors to reach agreement on entitlements to remuneration.

Liquidators

The general rule in liquidations is that all company funds are to be distributed equally and rateably amongst creditors. Secured creditors' rights are not affected and they receive payment before and outside of the distribution to unsecured creditors.

Some unsecured creditors receive special priority under the Corporations Act. Items that receive special priority include the costs of the applicant in obtaining the winding up order and employee entitlements. In relation to liquidators, the expenses they incur in the liquidation receive the first special priority.⁶ This does not include their remuneration, which is also provided a special priority later in the distribution.⁷

⁵ Section 154A of the *Bankruptcy Act 1966*

⁶ Paragraph 556(1)(a) of the Corporations Act

⁷ Paragraph 556(1)(e) of the Corporations Act

Remuneration can only be drawn from available company assets. Often, there are insufficient funds for liquidators to be remunerated in full or at all. By consenting to an appointment, a liquidator risks not being paid in full for their services and not being reimbursed for the expenses they incur. A liquidator is not generally obliged to perform work for which they will not be remunerated.

If the liquidation results in there being funds available, a liquidator is entitled to remuneration as approved by the creditors or the committee of inspection or as determined by the Court. A liquidator is required to provide to creditors a copy of a report setting out the basis of their claim for remuneration so that the creditors (or the committee of inspection) can be in a position to make an informed assessment as to the reasonableness of the proposed remuneration.⁸

The report must:

- set out a summary of the description of the major tasks performed (or likely to be performed) and the costs associated with these tasks; and
- be provided to each creditor or member of the committee of inspection.⁹

If a liquidator cannot obtain approval for their remuneration from either the committee of inspection or the creditors, the liquidator must obtain approval from the Court, which will determine the entitlement to remuneration. The liquidator's remuneration does not include disbursements incurred in the liquidation, such as fees owing to solicitors, however a liquidator is obligated to ensure that any disbursements are reasonable and necessary.

If a liquidator has difficulty achieving a quorum of creditors to approve their remuneration, creditors are taken to have passed a resolution approving up to \$5,000.00 in remuneration.¹⁰

Administrators

An administrator's entitlement to remuneration is similar to a liquidators in that they are entitled to remuneration as determined by agreement with either the committee of inspection, by resolution of the company's creditors, or by the Court.¹¹ An administrator similarly receives a special priority in the distribution in payment of their expenses and their remuneration.¹²

For both liquidators and administrators, there is very little limitation on the form of any fee approval determined by creditors, the committee of creditors or the Court. Fee approvals may be for a fixed fee amount, commission based fees or fees determined on hourly rates. Fee approvals may include caps on the amount of fees that may be taken. Approvals may, subject to some restrictions, be varied.

⁸ Section 473 of the Corporations Act

⁹ Subsections 473(11), (12) (compulsory winding up) and subsections 499(6) and (7) (voluntary winding up) of the Corporations Act

¹⁰ Subsections 499(3A) of the Corporations Act and subsection 473(4A) of the Corporations Act

¹¹ Subsection 449E(1) of the Corporations Act

¹² Paragraph 556(1)(c) of the Corporations Act

The approval of remuneration by creditors or a committee does not override the rule that remuneration must be reasonably and properly incurred. Remuneration may be set prospectively or retrospectively.

Code of Professional Practice

The Insolvency Practitioners Association (IPA) is a voluntary membership organisation that works with ASIC in a co-regulatory role. The IPA has no jurisdiction over insolvency practitioners who are not members. The IPA has released the Code of Professional Practice (the Code). Although the code does not have the force of law, the Federal Court has considered compliance with the Code when assessing the performance of liquidators.¹³

The IPA considers that the purpose of the Code is to:

- set standards of conduct for insolvency professionals;
- inform and educate IPA members as to the standards of conduct required of them in the discharge of their professional responsibilities; and
- provide a reference for stakeholders against which they can gauge the conduct of IPA members.

Contained within the Code are three remuneration principles.

Necessary and Proper – A Practitioner is entitled to claim remuneration and disbursements, in respect of necessary work, properly performed in an administration.

Meaningful Disclosure – A claim by a Practitioner for remuneration must provide sufficient, meaningful, open and clear disclosure to the approving body so as to allow that body to make an informed decision.

Approval before drawing – A Practitioner is entitled to draw remuneration once it is approved and according to the terms of the approval.

Court Review of Remuneration

Liquidators

For both liquidators and administrators, applications can be made to the Court for a review of the remuneration claimed.

In a Court winding up, if the remuneration is approved by a committee of inspection, shareholders (with at least ten per cent of the issued capital), creditors (with at least ten per cent of admitted claims), or ASIC can still apply to the Court for the review of the remuneration.¹⁴

In a creditors' voluntary liquidation, any creditor or shareholder can make such an application.¹⁵

¹³ *Brisconnections Management Co Ltd v Burness & Anor, In the matter of Thames Blund Holdings Pty Ltd (in liquidation)* [2009] FCA 626

¹⁴ Subsection 473(5) of the Corporations Act

¹⁵ Subsection 499(3) of the Corporations Act, Section 504 of the Corporations Act

For both compulsory and voluntary winding up, if an application is made to a Court to review the remuneration, a Court must, when looking at work that has been performed (or will be performed), have regard to:

- whether the work performed by the liquidator was reasonably necessary;
- the period when the work was performed by the liquidator;
- the quality and complexity of the work performed;
- whether the liquidator has to deal with extraordinary circumstances;
- the extent to which the liquidator was required to accept unusually higher risk or responsibility;
- the value and nature of any property dealt with or likely to be dealt with by the liquidator;
- whether the liquidator was required to deal with one or more receivers or one or more receivers and managers;
- the numbers, attributes and behaviour of creditors;
- the time taken to perform work and whether there is any cap; and
- any other relevant matters.¹⁶

When a liquidator consents to act they must comply with Form 8 of the Corporations Rules, which requires disclosure of hourly rates of the liquidator and their partners or employees who may do work during the administration.

Administrators

The Court has the power to review remuneration of a voluntary administrator upon an application being made by either ASIC, a company officer, a creditor or a member of the company. In reviewing remuneration, the Court is required to consider similar matters to those listed above for liquidators.¹⁷

Personal Insolvency

In contrast, in personal insolvency, a trustee in bankruptcy's remuneration is determined by a creditors' resolution or a committee of inspection. If neither fixes the remuneration, a trustee is remunerated according to the regulations. The Court retains a residual power to set remuneration.

INDEPENDENCE

Liquidators and administrators are disqualified from acting as an administrator if they fall into one of several listed categories of relationship with the company. These include being an officer or employee of

¹⁶ Subsection 473(10) of the Corporations Act

¹⁷ Subsections 449E(2) and (4) of the Corporations Act

the company.¹⁸ Even if a person does not fall into one of the listed categories, the Courts have indicated that for a person to maintain their appointment they must not only be independent but there must be an appearance of independence.¹⁹

The Courts have applied two tests to determine whether an external administrator should be removed. One is that the external administrator will be removed if it is in the best interests of the administration for the external administrator to be removed. The second is that it would be in the best interests of the administration to remove an external administrator if there was a reasonable apprehension that the external administrator lacked independence.²⁰ These tests are not set out in the Corporations Act, but find their source in case law.

In voluntary liquidations, a liquidator is required to complete a Declaration of Relevant Relationships when they call a meeting of creditors after a resolution to wind the company up. An administrator is also required to complete a Declaration of Relevant Relationships and a Declaration of Indemnities as soon as practical after being appointed.²¹

A Declaration of Relevant Relationships outlines whether the practitioner or their firm has had any relationship with the company under external administration or with any person who was formerly an external administrator of the company. They are also obliged to state why they consider that any relationship does not prevent them from taking up appointment.²² A Declaration of Indemnities is a declaration provided to creditors informing them of any indemnities that the voluntary administrator has to cover fees or other debts incurred in acting as voluntary administrator of the company.²³

Personal Insolvency

In contrast, in personal insolvency, if it becomes apparent that a trustee has an actual or potential conflict of interest in relation to an administration, the trustee must, as soon as practicable after becoming aware of the conflict of interest: notify the creditors, the person who appointed the trustee, a committee of inspection or the Court, as appropriate, of the conflict of interest; and take appropriate steps to avoid the conflict of interest. There are no prescribed lists of unacceptable conflicts, nor any requirements for Declarations of Relevant Relationships or Indemnities. The Court may remove a trustee if there is an actual or apparent conflict of interest.

DISCIPLINE

Supervision

Liquidators are supervised by both ASIC and the Court.

¹⁸ Administrators – subsections 448C(1) of the Corporations Act; Liquidators – subsections 532(2), (3), (6) and (7)

¹⁹ *Domino Hire Pty Ltd v Pioneer Park Pty Limited (in liq)* (2000) 18 ACLC 13

²⁰ *Central Springworks Australia Pty Ltd (Administrator Appointed)* (2000) 34 ACSR 169

²¹ Subsection 436DA(2) of the Corporations Act

²² Subsections 60(1) and (2) of the Corporations Act

²³ Section 9 of the Corporations Act

The Court or ASIC may inquire into a liquidator's conduct if it appears that the liquidator has not performed their duties correctly or if 'any person' makes a complaint about the liquidator's conduct.²⁴ The Courts may review a liquidator's conduct if there is at least a prima facie case and it is in the public interest. In any such review by ASIC or the Court, the Court is empowered to take any action as it sees fit.

ASIC has the power to commence proceedings against a liquidator and a Court can conduct its own Inquiry. The Court has a power to require answers from a liquidator. The Court also has the power to control the exercise of a liquidator's powers.²⁵ Even if a liquidator has complied with their duties, a good faith decision of a liquidator can be challenged by a 'person aggrieved' who can seek that the Court reverse or modify the act or decision or remedy the omission.²⁶

During the administration, both the liquidator and the Court are to have regard to the directions given by a resolution of creditors or directions of contributories, however the liquidator is required to use their discretion in the management of the affairs of the company. The Court also has the power to give directions to liquidators in their administration of the winding up, to order the staying of a winding up and to order that the liquidator remedy defaults.²⁷

Administrators

The Court has a broad power to supervise the administrator of a company or deed. If the Court is satisfied that the administrator of a company under administration, or of a deed of company arrangement is managing the administration in a way that is prejudicial to creditors, the Court may make such orders as it thinks just.²⁸

Appointment and Removal

Liquidator

Depending on the circumstances, a liquidator can be appointed by the Court, members or creditors, or upon transition from a Deed of Company Arrangement or a Voluntary Administration. The Corporations Act contains a number of provisions governing the circumstances of a liquidator's appointment. These include rules governing the appointment of a liquidator provisionally and when a liquidator is appointed

²⁴ Section 536 of the Corporations Act

²⁵ Provisional Liquidators - subsection 472(6) of the Corporations Act; Liquidators – subsection 477(6) of the Corporations Act

²⁶ Section 1321 of the Corporations Act

²⁷ Subsection 479(4) of the Corporations Act, Section 547 of the Corporations Act, Subsection 479(3) of the Corporations Act, Section 482 of the Corporations Act, Subsection 540(1) of the Corporations Act

²⁸ Section 447E of the Corporations Act

upon transition from a Deed of Company Arrangement or a Voluntary Administration.²⁹ Liquidators and administrators must consent to their appointment.³⁰

Liquidators appointed by the Court can be removed by the Court if cause is shown. Only the Court can replace a Court appointed liquidator.³¹ 'Cause shown' has generally been interpreted as requiring proof of an impermissible actual or apparent conflict of interest, misconduct or negligence.

The Court has the power to appoint a liquidator if there is no liquidator acting and remove a liquidator in voluntary liquidations.

In a Creditors' Voluntary Liquidation, a liquidator may be removed by creditors at the initial meeting of creditors and a replacement appointed. Other than at this meeting, or to fill a vacancy under subsection 499(5) of the Corporations Act, creditors have no general power to remove or replace a liquidator.³²

In a Members' Voluntary Liquidation, the company in a general meeting may fill a vacancy.³³ As in a Creditors' Voluntary Liquidation, there is no general power for them to remove and replace a liquidator.

Administrator

The Voluntary Administration regime provides for the appointment of a voluntary administrator by the board of directors if they place the company into voluntary administration.

Creditors at the first meeting of creditors may remove the initial administrator and appoint a replacement.³⁴ Other than at this meeting, creditors have no general power to remove a liquidator or appoint a replacement.

The Court is able to appoint, remove and replace an administrator upon application by a creditor, ASIC, a liquidator or a provisional liquidator. If there is a vacancy, whoever appointed the administrator is able to appoint a replacement.³⁵ The Government announced the Corporate Insolvency Law Reform Package on 19 January 2010. This package included a proposal to amend the Corporations Act to streamline the appointment of replacement external administrators in the event of a vacancy. The amendments will give both ASIC and the Court the power to fill a vacancy in the office of a liquidator.

²⁹ Upon Transition from a Deed of Company Arrangement section 446A of the Corporations Act, Court Appointed Liquidator subsection 472(1) of the Corporations Act, Provisional Liquidator subsection 472(2) of the Corporations Act, Members Voluntary Liquidation – Subsection 495(1) of the Corporations Act, Creditors' Voluntary Liquidation subsections 496(4)-(7), Subsections 499(2) and (5) of the Corporations Act

³⁰ Liquidators – Subsection 532(9) of the Corporations Act, Administrators – Section 448A of the Corporations Act

³¹ Subsection 473(7) of the Corporations Act

³² Voluntary Liquidations – sections 502 and 503, Court appointed Liquidators – Subsections 473(1) of the Corporations Act, Creditors' Voluntary Liquidation – Subsection 497(11) of the Corporations Act, Voluntary Winding Up – Sections 503 of the Corporations Act

³³ Subsection 495(3) of the Corporations Act

³⁴ Sections 436A - E of the Corporations Act

³⁵ Section 449B and Subsection 449C(6) of the Corporations Act, Section 447E of the Corporations Act

Personal Insolvency

In contrast, in personal insolvency, creditors have a general power to appoint and remove a trustee by resolution. Although no cause need be shown, the Court has shown a willingness to prevent a change of trustee occurring where doing so will allow an abuse of process to occur. A change of trustee due to dissatisfaction with the costs and quality of administration is permissible (even if there has been no improper conduct or negligence).

The Companies Auditors and Liquidators Disciplinary Board

The Companies Auditors and Liquidators Disciplinary Board (CALDB) is established under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and has functions given to it by the Corporations Act.³⁶ The Corporations Act sets out the procedure for the meetings of the disciplinary board as well as the powers the disciplinary board has when conducting disciplinary hearings. These powers include the power to summon witnesses and take evidence.

Upon an application by ASIC, CALDB may order the cancellation or suspension of a person as a liquidator. If a person has their registration cancelled, they are unable to continue working as an external administrator.

CALDB also has the power to:

- admonish or reprimand a person;
- require the person to give an undertaking to engage in, or refrain from engaging in specified conduct; and
- require the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions.³⁷

Decisions of CALDB may be reviewed by the Administrative Appeals Tribunal. A person can also apply for judicial review under the *Administrative Decisions Judicial Review Act 1977* with the review being limited to the legality of the decision.

Personal Insolvency

In contrast, in personal insolvency, the Inspector-General has the power under the *Bankruptcy Act 1966* (Bankruptcy Act) to terminate a trustee's registration. The Inspector-General can cause a committee to be convened to consider whether the trustee should be able to continue to be registered. Grounds for terminating a trustee's registration include a failure for a trustee to comply with a prescribed standard.³⁸

³⁶ Pt 11 of the ASIC Act

³⁷ Subsection 1292(9) of the Corporations Act

³⁸ Paragraph 155H(1)(g) of the Bankruptcy Act

REGULATORY COMPLIANCE

ASIC has instituted a national program involved in assessing compliance with insolvency laws concerned with the quality and extent of disclosure that may impact on an insolvency practitioner's independence. It is expected that the findings will result in improved guidance for practitioners. Further details of its regulatory activities may be found in the ASIC Annual Report for 2008 – 09.

In contrast, the regulatory responsibilities of the Inspector – General in Bankruptcy are undertaken by ITSA's Bankruptcy Regulation Branch, which oversees registered trustees in private practice, the Official Trustee, debt agreement administrators, and solicitors who act as trustees in personal insolvency agreements. Further details of its regulatory activities may be found at page 29 of the ITSA Annual Report for 2008 – 09.