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Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dennett

CORPORATIONS COMMITTEE OF THE LAW COUNCIL OF AUSTRALIA

SUBMISSION ON CORPORATIONS AMENDMENT (SONS OF GWALIA) BILL 2010 ("the Bill")

1. This paper contains the submissions of the Corporations Committee of the Law Council of Australia (**the Committee**).
2. The Committee notes that the Bill generally adopts the position favoured by the Committee in its submission to CAMAC dated 13 December 2007.
3. The Committee has previously commented on the exposure draft of the Bill and we reiterate our comments in that regard. Please see our letter dated May 2010 to the Manager Governance and Insolvency Unit, Corporations and Financial Services Division, The Treasury.
4. The Committee supports the enactment of the Bill in its present form subject to the following comments, some of which repeat our earlier comments in response to the exposure draft of the Bill.
5. For consistency with other provisions of Subdivision D of Part 5.6, Division 6, and with the proposed s563A(2)(a), we suggest the proposed s563A(1) should refer to 'all other *debts owed by or claims made against* a company.
6. The proposed s563A(2)(b) may be too widely stated, in that it could refer to a claim by a person against a company arising from *another* person dealing in shares. The provision could read: "any other claim *by a person* that arises from *that person*..."

7. The point made at paragraph 5 above also arises in the opening words of the proposed s600H, if the suggestion in that paragraph is adopted we suggest the opening words of s600H refer to 'a person whose *debt or claim* against a company'.
8. The proposed new s600H(a) provides that any person with a subordinate claim (as defined in s563A) is entitled to receive a copy of any notice, report or statement to creditors only if the person asks *the administrator or liquidator* of the company, in writing, for a copy of the notice etc. Paragraph (b) of the proposed s600H goes on to prevent that person from voting in their capacity as a creditor during the *external administration* of the company.
9. The term "external administration" is not defined in the Act. But variations of that wording appear throughout the legislation and not all with a consistent meaning. For example:
 - (a) section 9 includes a definition of *externally administered body corporate* (which includes a body corporate that is being wound up, is in receivership, is under administration, is subject to a deed of company arrangement or has entered into a compromise or arrangement with another person (query if clarification is desirable to include explicit reference to schemes of arrangement under part 5.1));
 - (b) section 580 sets out a definition of *external administration matter*; and
 - (c) there are references to *external administration* in some other existing sections of the Act, for example, ss283BG and 283CD (where the term apparently does not include receivership).

The term is, however, used in headings throughout Chapter 5 of the Act seemingly to refer to all forms of administration covered by Chapter 5 including schemes of arrangement and members' voluntary winding up.

10. We submit that the wording of the proposed s600H ought to be clarified to indicate:
 - (a) if s600H(a) is to apply to Schemes of Arrangement under part 5.1; and
 - (b) the ambit of the term *external administration* in s600H(b) (i.e. whether it is confined to the forms of external administration referred to in paragraph (a)).
11. One possibility is to amend paragraph (b) of s600H to replace 'during the external administration of the company' with '*while the company is an externally administered body corporate*' which makes use of a defined term. However, clarification may still be desirable to explicitly include schemes of arrangement under part 5.1

Please contact Rob McKenzie if you wish to discuss this submission.

Yours sincerely

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