



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

15 January 2010

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By email to: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)

Dear Mr Furby

***Duty to prevent insolvent trading:  
Guide for directors***

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency. Members of CSA deal on a day-to-day basis with the Australian Securities and Investments Commission (ASIC) and have a thorough working knowledge of the operations of the financial markets, the needs of investors and the Corporations Act.

***General comments***

CSA commends ASIC for developing the *Duty to prevent insolvent trading: Guide for directors* (the Guide). CSA notes that, while many larger companies have internal resources to assist their directors to be fully cognisant of their duties and responsibilities under the Corporations Act, small-to-medium enterprises (SMEs) will frequently lack any such dedicated internal resource. SMEs therefore may require external assistance to assist their directors to fully understand and comply with their duty to prevent insolvent trading.

While CSA believes that the Guide will assist all directors, we consider that it has particular relevance for the directors of SMEs, given its clarity and accessibility.

CSA notes that the boards of larger companies may delegate more responsibilities to management, and believes that the Regulatory Guide should not impose such day-to-day management tasks on all directors. For example, paragraph RG 000.27 states that 'A director is only able to rely on information provided by a third party if the party ... is fully briefed ... by the director'. In a larger company, management (rather than the directors) may undertake the briefing, and it would be unfair to disallow the director's reliance on the third-party advice in such circumstances. **CSA recommends** that the paragraph refer to the third party being fully briefed by the company (rather than by a director).

CSA is of the view that the Guide is well written and accessible and that it clarifies the key principles that a director needs to take into account in order to comply with their duty to prevent insolvent trading. CSA does not believe that further guidance beyond that already contained in the Guide is required, as the Guide:

- adequately summarises the scope and nature of the director's duty to prevent insolvent trading
- sets out sufficient indicators of potential insolvency in Table 2, and
- provides helpful examples.

### ***Compliance costs and likely effect on competition***

CSA is of the view that there are no additional compliance costs attached to the Guide, given that it provides information on existing statutory obligations. It does not introduce any new obligations. Indeed, CSA believes that the Guide could assist SMEs to reduce compliance costs, given that it clearly articulates a director's duty to prevent insolvent trading and provides guidance on compliance with this duty.

CSA notes that the Guide has no impact on competition.

### ***Dissemination of Guide***

CSA recommends that ASIC take every step to ensure that the Guide is made widely available to all directors.

CSA understands that the Guide will be available on ASIC's website, but recommends that consideration could be given either to including a hard copy of the Guide with the letter sent by ASIC to all new office-holders, or within that letter inserting a link to the Guide on the ASIC website. CSA suggests also that consideration be given to the lodgement of Form 484 notifying ASIC of a new director as a trigger for dissemination of the Guide.

In preparing this submission, CSA has drawn in particular on the experiences of its two national policy committees, comprising members working in both small and large listed companies.

Yours sincerely



Tim Sheehy  
CHIEF EXECUTIVE