

## Discussion points from the joint AFSA/ARITA/ASIC liaison meeting

14 June 2017

### AFSA update

- Law reform continues to be a key focus, in particular the Insolvency Law Reform Act 2016.
- AFSA noted trends in personal insolvency, including an increase in all forms of personal insolvency in the March 2017 quarter.
- In the March quarter 2017, debt agreements accounted for 45.4% of total personal insolvencies. This is the highest proportion since debt agreements commenced in 1997.
- AFSA has re-released five of our most popular videos in languages other than English. The videos, covering a range of topics on personal insolvency and the personal property securities system, are now available in Arabic, Farsi, Korean, Vietnamese, Cantonese and Mandarin. The videos are now available on AFSA's YouTube page (look for the YouTube icon at the bottom of our homepage – [www.afsa.gov.au](http://www.afsa.gov.au)). Information on AFSA's other translated publications is available at: <https://www.afsa.gov.au/help-your-language>.
- It was noted that on Saturday 20 May 2017 the *Personal Property Securities Amendment (PPS Leases) Act 2017* commenced. This Act amends section 13 of the PPS Act to extend the duration of PPS leases from leases or bailment of more than one year, to more than two years.
- AFSA encourages all stakeholders, including corporate insolvency practitioners, to report any suspected mis-use of the PPS register.

### ASIC update

- ASIC's Corporate Plan 2016-2017 to 2019-2020 and the latest corporate insolvency statistics are available on the ASIC website. ASIC expects to publish business plan summaries for the stakeholder teams.
- ASIC is progressing its project to help understand how creditors engage with external administrations and to improve creditor information to empower them to take a more active role.
- Changes to the Commission – Government extended Cathie Armour's commission for another five years. Greg Medcraft, the current Chairman, term ends in late 2017.
- Government continues to progress ASIC's proposed industry funding model.
- ASIC expects to shortly publish its Report into the Supervision of Registered Liquidators for the 2016 calendar. Independence remains a strong focus for ASIC.

### ARITA update

- ARITA's Board met recently and appointed a new President, Mr Ross McClymont.
- Education in 2017 has focused on law reform (including 'train the trainer' offering for firms) and is continuing at pace across the country.
- ARITA's Code of Professional Practice review is underway to rewrite and enhance the code. The updated 4<sup>th</sup> edition will be ready for roll out at the ARITA national conference in August 2017. It will be principles based and supported by practice statements.
- ARITA has commenced work to produce precedent documents for the profession.
- ARITA's 2020 Strategy will, among other things, include a focus on a holistic review of the insolvency system, with AFSA and ARITA being consulted in due course.

### **Insolvency law reform and Insolvency Practice Rules**

- ARITA noted that training is taking place in readiness for Tranche 2 which commences on 1 September 2017.
- Four issues were discussed where clarity around practical implementation is being sought by ARITA on behalf of practitioners. These issues were privacy implications around issuing notices on-line, funds handling, electronic handling of notices regarding creditors meetings and the treatment of disbursements in the context of the new provision 60-20. These matters will be further considered and AFSA and ASIC will provide guidance where possible.

### **Pre-insolvency advisors and illegal phoenix activity**

- This area remains an area of strong interest across a number of Commonwealth agencies including ASIC and AFSA.
- The recent publication of AFSA's YouTube video on "Untrustworthy Advisors" was noted.

### **AFSA's Personal insolvency practitioners' compliance programme 2017-18**

- In 2017-18 AFSA will focus on 5 strategic focus areas:
  - (i) Practical implementation of law reform;
  - (ii) Remuneration and costs;
  - (iii) Independence;
  - (iv) Trust funds; and
  - (v) Information.

### **ASIC's corporate insolvency practitioners' compliance programme 2017-18**

- In 2017-18 ASIC will focus on 3 core areas:
  - (i) Communication and stakeholder liaison (including ASIC's creditor information project);
  - (ii) Law reform implementation; and
  - (iii) Surveillance and enforcement – which aims to build on ASIC's credible enforcement record.

### **Engagement with creditors**

- The importance of engagement and interaction with creditors was discussed. That is, to better understand what motivates them and how best to ensure they are engaged in a proper functioning insolvency system.
- The need for plain English in creditor related documents was noted as paramount to encouraging the optimum amount of creditor engagement.
- It was agreed AFSA, ASIC and ARITA would continue liaison on how creditor engagement could be improved; including development of creditor information.

### **Mental health working group**

- The working group's proposal from Mental Health First Aid, for different levels of courses ranging from a two hour online session to formal two day tailored courses, remains under consideration.
- This will include the need for a video and potential cost sharing options.
- AFSA, ARITA and ASIC aim to progress this and commence development of the relevant material before the next liaison meeting.

### **Trusts and employee entitlements**

- Recent Court decisions have held that section 556 of the Corporations Act regarding priority payments in corporate insolvencies does not apply to trusts – with implications for the priority of employee entitlements (including FEG).

- The meeting noted the potential for legislative reform to remedy the issue of priorities where a company acts as trustee.

#### **Other business**

- Practitioner remuneration – the meeting noted that, in recent corporate cases, Judges continue to turn their mind to the matters outlined in subsection 473(10)<sup>1</sup> of the Corporations Act to determine what is reasonable remuneration necessarily incurred. These matters have equal application and relevance to personal insolvency. ASIC said it wished to work with industry to implement best practice guidance on remuneration charging and reporting that reflects the principles outlined in the cases.

#### **Next meeting**

- To be confirmed – approx. early December 2017

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<sup>1</sup> These matters include the extent to which the work performed was reasonably necessary, the quality and complexity of the work performed, the period in which the work was performed, the value and nature of property the liquidator is required to deal with and the number, behaviour and attributes of the company's creditors.