

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

19 June 2018

AFSA update

- AFSA's Personal insolvency compliance programme for 2017-18 has been completed and details of the key outcomes were discussed. The report will be commenced after 30/6/18.
- AFSA's proposed Insolvency Compliance Programme for 2018-19 and the 8 proposed target areas were discussed.
- The trends in personal insolvency were summarised as at 31 March 2018, including the steady increase (1.8% and 3.9%) in bankruptcies and debt agreements in the March 2018 quarter. Business related bankruptcies are running at approximately 16.1% of total personal insolvencies.
- AFSA made observations about industry trends in relation to the number of trustee registrations decreasing since the ILRA commencement on 1/3/17.

ASIC update

- ASIC noted James Shipton had commenced as ASIC Chairman and that the terms of Commissioners Price and Kell had been extended.
- ASIC also noted the proposed appointment of a second Deputy Chair for ASIC with a specific focus on ASIC's enforcement activities.
- ASIC noted the present focus of the Banking Royal Commission on financial advice and small business lending.
- ASIC noted its continued focus on combatting illegal phoenix activity and its ongoing involvement as part of the inter-agency phoenix taskforce.

ARITA update

- ARITA continues to closely monitor the Banking Royal Commission to identify any insolvency aspects.
- ARITA Annual General Meeting was held on 30 May 2018.
- ARITA's Small-Medium Practice conference successfully held in Port Douglas in April with over 100 in attendance.
- John Winter and ARITA President, Ross McClymont, attended INSOL New York.
- ARITA's new Legal Director, Natasha McHattan, to commence at the end of June and will replace Mark Wellard.

Insolvency law reform

- AFSA noted that the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 and the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018 were expected to be considered in the parliamentary sittings commencing 18 June.

- AFSA discussed the steps being taken internally with respect to the impact of the One year bankruptcy amendment in particular re the expected increase in objections lodged and the number of IG review requests.
- AFSA noted that the “Notice of Proposals to Creditors” form is being remodelled to accommodate trustees seeking approval of multiple resolutions. The form is in the final publishing stages and AFSA will advise of the progress in the next 1-2 weeks.
- ARITA noted that it continues to answer a high number of ILRA technical queries.
- ASIC noted other proposed reforms to combat illegal phoenix activity and to prevent the corporate misuse of the Fair Entitlements Guarantee Scheme.

Untrustworthy pre-insolvency advisors and illegal phoenix activity

- AFSA continues to develop an Untrustworthy Advisor (UA) framework and monitors and disrupts matters where it is identified that a UA is involved. This current initiative has seen 12 creditors meetings attended.
- ASIC noted the work being done in the area of data analytics to develop and target disruption strategies to address illegal phoenix activity.
- ARITA noted an emerging trend that untrustworthy advisors are moving away from appointing “friendly liquidators” and abandoning companies after assets are transferred and letting the passage of time act as a deterrent to future recovery action.

AFSA’s Personal insolvency practitioners’ compliance programme 2017-18 (PIPCR)

- AFSA’s report on details of the programme will be commenced after 30 June. A number of positive outcomes to date were noted:
 - (i) **Trust funds** – Observations from the inspection process confirmed that the handling of monies by trustees is being carried out to a high standards.
 - (ii) **Law reform readiness** – Information received from the compliance information requests confirms that the vast majority of practitioners are complying with the new provisions.
 - (iii) **Independence** – AFSA continues to work on this area through a strategy targeting untrustworthy advisors involving disruption and attendance at meetings

Registration committees

- ASIC noted clarification in the recent AAT decision about the requirement for an applicant who wants to be registered as a liquidator to have exposure to processes (including bankruptcy) under the Bankruptcy Act 1966.
- ASIC noted its intention to communicate this decision to registered liquidators.

Mental health working group (MHWG)

- The training program being developed by the MHWG through Mental Health First Aide, a Victorian based not-for-profit organisation, is expected to be finalised in the first week of July.

- At request of MHFA, ARITA ASIC and AFSA will provide key introductory messages re importance of mental health awareness in the insolvency industry.
- Expectation for practitioners is that they will engage with the process within the first 12 months of introduction.

Gender and age diversity

- This issue was discussed. Paul Shaw has prepared a draft plan to consider and address the current situation. The draft strategy has been prepared based on Kotter's 8 step change model and will be developed through ongoing discussions between AFSA, ASIC and ARITA.
- Female registered liquidators comprise approximately 8% of 710 and registered trustees approximately 10% of 206. The age profile of practitioners was also noted. It was agreed that the lack of gender diversity should be considered further.

Creditor attitude to remuneration approval requests

- It was noted that some practitioners are facing increased reluctance from creditors to approve remuneration (both current and prospective remuneration).
- The meeting also noted creditor feedback following the law reform that there is increased paperwork from practitioners.
- ASIC, AFSA and ARITA noted this involved improving communications to creditors to help them better understand the value of the work undertaken by practitioners.

ASIC ARITA AFSA Guidance/Education subcommittee

- The joint ASIC/ARITA/AFSA guidance/education sub-committee (comprising one representative from each organisation) was established to assist with information sharing and communications (so each organisation knew what the others were planning to focus upon) and to assist with a focus of those activities on key issues.
- The sub-committee met in February and March and shared comments and suggestions in relation to the identified areas within the ILRA provisions. All these suggestions/observations have been passed to the relevant policy area, Treasury and AGD. Suggested that a round table discussion be undertaken awaiting notification from Treasury and AGD as to timing.
- Some suggestions for further work by the sub-committee were
 - Improving plain English and communication generally.
 - Remuneration
- Sub-committee to meet again before end of June.

Next meeting

- 13 December 2018