

AFSA - ARITA - ASIC joint liaison meeting discussion points

1 April 2020

AFSA update

- Noted that the meeting would have a focus on the implications of COVID-19 on the insolvency system.
- The majority of AFSA's workforce has transitioned to working from home.
- Noted the recent Bankruptcy Act reforms in response to COVID-19.
- Since COVID-19 (mid-March) there has been a slight increase in registry services and a 20% increase in hits to the AFSA website.

ASIC update

- ASIC has issued guidance to registered liquidators advising ASIC is ready to assist practitioners get on with business; including giving relief or taking a 'no action' position where appropriate.
- ASIC and AFSA expressed their hope that any practitioners adversely affected by COVID-19 would reach out to them so that issues could be worked through.
- ASIC has implemented measures to maintain operations and support and protect staff during this time. This includes flexible working arrangements.
- ASIC is monitoring trends in the number and type of external administration appointments, and the firms accepting the appointments, given the disruption caused by COVID-19.
- ASIC is considering whether its existing guidance and abandoned company panel arrangements would operate effectively if there was a significant increase in the number of abandoned companies as a result of the COVID-19 pandemic.

ARITA update

- ARITA's workforce is now working from home.
- All face to face events and education has been cancelled for the next 6 months. ARITA is working on building online delivery of courses and verifiable CPD.
- Plans on undertaking a fortnightly survey to help gain insights on the current market and profession conditions to gain live market data. Noted that anecdotal evidence is that practitioners are busy although there are sharp peaks of enquiry followed by quiet periods, generally associated with the announcement of government stimulus packages.

Law reform, including temporary relief for distressed businesses

- AFSA requested feedback at any time if there were any perceived gaps or issues arising from the recent law reform changes.
- ASIC is considering possible areas where amendments may assist industry during the COVID-19 pandemic.
- ASIC noted the temporary relief for directors in relation to insolvent trading should not be interpreted as an opportunity to run up debt for 6 months and trade while insolvent – care and diligence is still required in the carrying out of director's duties.
- ARITA, ASIC and AFSA agreed to meet regularly throughout the COVID-19 crisis.

Industry trends and current issues

- AFSA and ASIC will continue to monitor insolvency appointments to determine emerging trends and communicate any data about when a peak may occur.
- Meeting noted that the market for assets may be affected and that amounts realised might reduce, increasing pressure on industry.

Compliance actions, and feedback

- AFSA noted the recent publishing of the report on practitioner remuneration.
- AFSA noted that regulatory work was continuing in the usual manner, with some adjustments to interact remotely in the case of creditor meeting attendance and inspections.
- ARITA noted that practitioners were facing a range of issues including how to take possession / protect assets in trade-one situations and with travel and face to face restrictions.
- ASIC noted it was important for practitioners to document well the decisions being made. ASIC are encouraging practitioners to contact them to talk through current issues being experienced and practical options.
- ARITA noted that there was some feedback from industry that 'Independence' standards had "relaxed" in the current climate. Concern was expressed that independence may become an issue if practitioners provide pre- appointment advice and subsequently accept a formal appointment. All noted the importance of messaging that law and expectations on 'independence' had not changed.

Common Risks:

Creditor disengagement

- AFSA noted the tentative date reserved for a Creditor Forum on 8 May.
- Noted that some restrictions introduced in response to COVID-19 might make engaging with creditors more difficult
- Taken on notice for all to consider how best to continue to focus on the importance of creditor confidence in the system – both throughout the pandemic and when it is over.

Untrustworthy pre-insolvency advisors and related illegal activity

- Noted the current environment posed an increased risk for illegal phoenixing and untrustworthy advisor activities. Actions will be taken by each of ASIC, ARITA and AFSA to raise awareness of the dangers of untrustworthy advisors.

Initiatives:

Insolvency Mental Health Awareness Program (IMHAP)

- AFSA noted that fact sheets to assist practitioners and their staff were close to being finalised.
- ARITA noted it had developed a 1-page advice on mental health for those in financial distress – and it will be published shortly.
- Noted the need to support staff in this time of heightened uncertainty and anxiety.

Practitioner gender and age diversity

- The proposed joint gender balance survey was discussed. It was noted that release of the survey has been delayed but the group agreed not to lose sight of this important work.

Other business

- Hamish noted the passing of Trish Talty, a Queensland insolvency practitioner.

Next meeting

- The date for the next meeting scheduled for 27 October 2020.