

## AFSA – ARITA - ASIC Discussion Points

27 October 2020

**Attendees:** Greg Yanco, Thea Eszenyi, Adrian Furby, John Winter, Kim Arnold, Narelle Ferrier, Scott Atkins, Rachel Burdett, Jason Porter, Hamish McCormick, Gavin McCosker, Paul Shaw, Tim Cole, Cherie Frost

The minutes of previous meeting of 1 April were noted with one clarification in regard to ASIC's abandoned company panel arrangements. Noted the term of the current panel (which was established to facilitate employee access to FEG for payment of outstanding entitlements when a company has been abandoned) expires in 2025.

### ASIC update

- ASIC noted that recent changes within ASIC's leadership has not affected its work, which is continuing without interruption.
- Noted that Thea has taken on the role of Senior Executive Leader for the Financial Reporting and Audit team as well as Insolvency Practitioners. Doug Niven continues with ASIC in the role of Chief Accountant and has ongoing responsibility for audit-related policy work.
- ASIC is continuing to monitor the impacts of COVID-19 and the ability of firms to stay solvent and responsive to the expected increase of insolvency work in the future.

### ARITA update

- ARITA noted the increased regularity of liaison with ASIC and AFSA has been constructive throughout COVID-19. Also noted regular liaison with Treasury.
- Firms remain concerned about the level of resources required to ensure they are adequate with the anticipated uptick in insolvencies. Despite this there is a high level of readiness for any surge that may eventuate.
- Noted ARITA's online conference and forums have taken up considerable resources, as have the ongoing implications of COVID, and law reform.

### AFSA update

- AFSA noted a continuing focus on harms and preparing for a potential surge in insolvencies.
- Noted AFSA are continuing to focus on data, with [statistics](#) released each fortnight.
- Noted a continuing focus on untrustworthy advisors with a broad social and digital campaign. A [short video](#) has been produced which forms the foundation of the campaign which will run throughout November and again in around March/April next year when COVID related government support is expected to reduce. It has been aligned with work of other Commonwealth agencies.
- Noted the launch of new digital Bankruptcy Application Process in October.
- The new PPSR website launched in late August. Noted the high level of trade debt in business related personal insolvencies.

### Law Reform

- The Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 (the Bill) was discussed and the associated challenges regarding the need to prepare for the proposed implementation on 1 January 2021 (subject to legislation passing).
- ASIC noted that work has started on the required IT build. Noted the Fact Sheet released when the reforms were announced proposed the waiver of fees associated with the

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registration as registered liquidator for a period of approximately 2 years until 30 June 2022.

- ARITA noted its submission on Insolvency reforms to support small business (the Bill) and the need to continue its discourse with Treasury in regard to issues and law reform fixes.
- ARITA noted their intention to build three training program streams on the new reforms for members.
- AFSA noted that AGD have advised in a recent stakeholder forum that no decision has been made about reducing the period of bankruptcy to one year, although it is still under consideration. The new legislative instruments for Debt Agreement Law Reform take effect 1 January 2021.

### Current and recent environmental impacts on insolvency

- The ongoing impacts of COVID-19 and uncertainty regarding the impact on the number of insolvencies when the relief measures and other financial assistance packages are withdrawn were discussed. Noted that the Temporary Debt Protection measures have been extended to 31 December 2020.
- AFSA noted they are conducting another practitioner survey in November, similar to the one conducted in June which will include questions regarding financial stress and capacity. The outcomes will be shared with ASIC and ARITA.
- ASIC noted that weekly statistics continue to tell the story that the number of companies entering external administration are significantly down on the corresponding period in the previous year. ASIC continues to monitor the situation.
- AFSA noted that personal insolvencies fell 51% compared to last year. They are at their lowest level since the September quarter 1990. Bankruptcies fell 55% and debt agreements also fell 45% compared to last year. New personal insolvencies have been declining since the June quarter 2018. Since 6 April 2020, bankruptcies have been generally declining each fortnight. While there is some variation between fortnights, on average 36% of bankruptcies per fortnight since 6 April 2020 are involved in a business or company.
- Noted ASIC and AFSA's continuing work in regard to Continuing Professional Education (CPE). Draft guidance document currently being reviewed to offer greater guidance on what constitutes CPE and the meaning of 'independently verifiable' CPE.

### Industry Trends - Practitioners

- AFSA noted that as at 15 October 2020 there were 202 RTs, 19 are women (9%). 16 registration applications in the last 2 financial years of which 11 resulted in registration. Of the 11 registered 6 were registered with conditions.
- AFSA noted there has been 1 Disciplinary Committee and subsequent deregistration since the last joint liaison meeting - note [Thomson media release](#).
- ASIC noted strong applications for registrations this calendar year (26 year to date). As at end Sep 20 – RLs registered and capable of taking new appointments had increased to 635 from the 624 as at 30 June 2020.

### Trustee Compliance monitoring

- AFSA noted its [Insolvency Annual Compliance Program 2020-21](#) has been finalised and compliance actions under that program have now commenced.
- AFSA noted that since 1 October 2020, people who apply for bankruptcy have had access to the new digital bankruptcy application process. The new process has been designed to give the applicant a more intuitive experience, with much more information to assist them as they apply for bankruptcy.
- An AFSA report on the importance of Independence is currently being prepared which will have the same look and feel as the Remuneration Report published in early 2020. Looking to publish the report in early 2021.

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- ASIC noted a compliance focus on high risk registered liquidators. Criteria includes monitoring of reports of misconduct such as meeting behaviours and information being provided to creditors, complaints regarding commercial decisions. Also monitoring compliance regarding lodgements as it can be a lead indicator of competence and resources.
- ASIC noted that going online with the process of request assistance external administrator (formerly called the Liquidator Assistance Programme) seems to be assisting practitioners to obtain ASIC assistance early to obtain ROCAP and Books and Records.
- ASIC noted recent outcomes regarding [Debt Wipeout](#)

### Creditor disengagement

- AFSA has commenced a review of the AFSA/ARITA Creditor Information Sheet on trustee remuneration to promote more engagement by creditors. It better articulates how creditors can influence the level of remuneration.
- ARITA are looking at providing plain English guides to insolvency. ARITA continues to issue a range of guidance and material.
- ASIC has issued a series of Newshub articles aimed at Directors and small business on what to do if you are struggling financially, and where to go to get help. The focus is on acting early and getting advice from a qualified trustworthy advisor. These articles are titled '[experiencing financial distress](#)', '[trading while insolvent](#)', '[help companies dealing with financial distress resources](#)' and '[expiry of small business loan deferral](#)' can be accessed under the '[COVID-19 regulatory information](#)' page on ASIC's website.

### Untrustworthy Advisors

- Noted the renewed interest in this space by pre-insolvency advisors during COVID. ATO are looking at a media campaign regarding this as a part of the Phoenix Taskforce.
- ARITA noted their financial distress training for general accountants and reinforcing the importance of knowing when to reach out for turnaround and insolvency advice. Training will be rolled out the beginning of 2021. ARITA is working closely with CAANZ in this regard.

### Informal agreements

- Noted that AFSA is continuing to consider informal agreements (agreements between debtors and their creditor/s that is outside of the operation of the Bankruptcy Act). Noted that more creditors and RDAs are looking at informal agreements. There are challenges because of their unregulated nature, and lack of information about numbers and outcomes of informal arrangements. A key issue is ensuring debtors and creditors have information about the consequences of informal agreements.

### Insolvency Mental Health Awareness Program

- Noted that mental health continues to be a significant and important issue.
- AFSA advised they are planning on piloting Mental Health First Aiders within its offices in early 2021. The outcomes of this pilot will be shared with ASIC and ARITA.
- ASIC noted their last quarterly newsletter included mental health resources and messaging to remind liquidators to be aware of mental health issues in their dealings with staff and external parties affected by insolvencies.

### Gender and age diversity of insolvency practitioners

- A suggested approach for engaging with an academic for this work has been prepared to assist with bringing the survey data together to build evidence and a business case on diversity.

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- ARITA's Balance Committee has requested Treasury look at alternate liquidator arrangements to allow the capacity for practitioner to step in / out.
- ASIC noted their Women in ASIC Committee was available as a resource to the diversity project and offered to connect the Chair of that group with the Chair of ARITA's Balance Committee.
- Note the IAIR Diversity Community of Practice has reached out to INSOL seeking an opportunity of collaborating together on diversity.

### **Other business**

- Next meeting date to be scheduled around April 2021.