

AFSA - ARITA - ASIC joint liaison meeting discussion points
10 December 2019

AFSA update

- AFSA continues to move to digitise its services with the majority of forms now available on-line. The new Bankruptcy Online Portal will be launched on 2 January 2020. A cloud solution for our National Service Centre has also recently been launched which enables us to keep pace with growing demands from clients through multiple channels.
- AFSA's focus in 2020 will be to continue to simplify compliance and to improve our regulatory intelligence.
- Due to the changing nature in the personal insolvency system, AFSA predicts a future decline in its revenue base. Over 2020, AFSA will review its cost recovery system for the insolvency aspect of its function – there will also be a renewed focus on efficiency to drive down costs to ensure that any increase in fees is minimised.

ASIC update

- ASIC has published its Corporate Plan for 2019-23.
- Key strategic areas of focus for 2019-20 include:
 - High deterrence enforcement action
 - Prioritising implementation and actioning of the recommendations and referrals from the Banking Royal Commission
 - Protecting vulnerable consumers
 - Addressing harms in insurance
 - Improving governance and accountability
 - Enhancing ASIC internal capabilities in key areas; including data analytical skills and behavioural insights and improved communication efforts.
- ASIC noted that the proposed reforms to combat illegal phoenix have been re-introduced.
- ASIC noted that the Prime Minister announced the modernisation of business registers reforms which will see the operation of ASIC's public registers transition to the ATO. This package of reforms includes the introduction of the Director Identification Notice (DIN).
- ASIC noted that the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the regulation of auditing in Australia had commented on the re-integration of insolvency practices into audit firms and concerns about potential conflicts of interest.

ARITA update

- The new ARITA Code of Professional Practice (4th edition) has been finalised and released, including in ARITA's 2020 Handbook. Videos on the code have also been produced and published to assist internal training.
- ARITA event program for 2020 has been amended to allow relevant State conferences in the first half of the year and the national conference in the second half of the year. The full calendar of events for 2020 is now available.
- ARITA's 8 Point Plan has been sent to Ministers and is being consulted upon. Key piece is the Financial Law Reform Commission (FLRC). ARITA is in the process of finalising the FLRC Commissioners list and will then commence its work on a root and branch inquiry of the insolvency system.
- ARITA are looking into supporting Singapore and Hong Kong trade delegations utilising INSOL connections – possibly commencing as soon as February 2020.

Industry trends and current issues

- The ASBFEO Inquiry was discussed noting that consultation is occurring. ASIC, ARITA and AFSA are engaging with the Inquiry and providing information, data and statistics where possible. It was noted that the inquiry's interim report is due in December 2019.
- The ALRC Discussion Paper – "Review of corporate criminal responsibility" was discussed, in particular the review of strict liability offences and alternatives.
- The Continuing Professional Education (CPE) of insolvency practitioners was discussed. ASIC and AFSA are currently discussing their approach to the regulation of CPE with a view to updating guidance for practitioners to assist them comply with their CPE obligations.

Compliance actions, and feedback

- ARITA noted and commended ASIC's recent success in enforcement actions against pre-insolvency advisors.
- ASIC noted the potential for assetless administration funding to conduct public examinations of pre-insolvency advisors, as well as the directors, who are involved in illegal phoenix activity.
- AFSA issued its Personal Insolvency Compliance Report 2018-19 on 10 December 2019 noting the relative strength of the profession – while also noting increased complaint numbers against practitioners and ongoing work in disrupting untrustworthy advisors.
- ARITA noted increased complaints against practitioners in recent months – many without substance or agitating aged issues. AFSA noted a similar trend.
- AFSA are progressing the four strategic areas of their compliance program in 2019-20 – particularly around a draft statement of principles about good culture that will go into the AFSA Sandpit for consultation in February 2020. The relationships of practitioners with referrers will also be tested in a targeted exercise around independence.

Common Risks:

Creditor disengagement

- AFSA noted that at the Personal Insolvency Stakeholder Forum on 14 November 2019 it was suggested a 2 hour forum involving creditors be pursued to improve creditor engagement. There was in-principle support for this for the first quarter of 2020.
- ARITA commented that they are getting regular feedback from registered liquidators about the low level of creditor engagement.
- ASIC noted Commissioner Price's recent presentation at the AICM national conference that focused on ways credit managers can participate in the insolvency process. This followed ASIC's recent article in the July 2019 edition of the AICM Credit Management in Australia publication "Fair pay for fair work – registered liquidators; claims for remuneration" which included a range of matters for creditors to consider to assist their participation in reviewing and approving remuneration.

Untrustworthy pre-insolvency advisors and related illegal activity

- AFSA noted untrustworthy pre-insolvency advisors continue to be a focus for AFSA and to take action when available. AFSA has a number of matters on foot where debtors and bankrupts are assisting with investigations as a means to disrupt untrustworthy advisor activity.

Initiatives:

Insolvency Mental Health Awareness Program (IMHAP)

- AFSA noted the expectation that practitioners complete the on-line overview course this calendar year of the Insolvency Mental Health Awareness Program (IMHAP).
- IMHAP Face to face training has been held internally at AFSA particularly for staff of the Official Trustee.
- ASIC's accountants network also proposes to engage an accredited person to deliver face to face training for staff involved with insolvency matters.
- AFSA intends to place the relevant fact sheets on the AFSA Sandpit.
- ARITA noted work they are doing in this space with Beyond Blue and specific guidance to include in notifications in administrations to debtors, Directors and creditors. The intention is that this work complements the broader work of the IMHAP.

Practitioner gender and age diversity

- The proposed joint gender balance survey was discussed. It was agreed that the survey will be sent in the first week of February 2020.
- It was also agreed that Focus Groups will be organised for March 2020 to discuss the results of the survey.
- AFSA noted that IAIR is also working on the issue of diversity and developing a vision statement for insolvency regulators.

Other business

- Trends in the insolvency sector were discussed.
- AFSA and ASIC to explore correlations between corporate and personal insolvency data in the context of historical and predictive analytics.

Next meeting

- The date for the next meeting to be set. It is intended to continue to hold 2 AFSA-ARITA-ASIC meetings per calendar year.