

ASIC's liquidator review finds not very much

A review of liquidators' compliance with lodgement and publication requirements found the vast majority are doing the right thing.

By John Winter*

ASIC's recent report *Registered liquidators' compliance with lodgement and publication requirements* highlights the challenges that liquidators face in their work and gives credit managers some insight into just how burdensome and bureaucratic the insolvency process has become – a situation that has only been exacerbated by the Insolvency Law Reform Act (ILRA) in 2016.

So let's deal with the real headline first: ASIC reviewed an astonishing 281,600 forms required to be lodged on a sample of jobs (about 26,000) spanning a three-year period. In addition, they reviewed 46,378 notices that were required to be published on ASIC's Published Notices Website.

I should remind you at this point that there are only around 700 registered liquidators in Australia and this was only a sample of their requirements. You don't want to do the maths on the volume of forms and notices each liquidator has to bear.

ASIC found a compliance rate of 96.7 percent on form submissions and 93 percent of notices published on their website. Thirty percent of all liquidators had a perfect record despite this rather titanic administrative burden.

It's also worth noting that most of these forms and notices aren't merely simple tick and flick – they require hundreds of hours to complete. All of this work is undertaken at the expense of the insolvent business (or if the business has no assets left, coming out of the pocket of the liquidator). As a creditor, how much value are you getting from this paperwork considering you are funding it?

Now let's talk about the non-compliance. The most significant area of non-lodgement relates to a requirement that no longer exists as it was removed by ILRA. Indeed, the explanatory memorandum to the ILRA even referenced this, saying:

Meetings of creditors

9.266 The removal of the current mandatory including initial and annual meetings in a creditors voluntary winding up, and final meetings in all forms of corporate insolvency will mean that insolvency administrations will no longer be required to incur costs for meetings of creditors where creditors are not interested.

Another area of non-compliance was around meeting notices for



John Winter

Committee of Inspection meetings. Non-compliance was recorded even if each of the committee were individually invited and attended. But because a notice (to advise parties who had no right to attend the meeting that it was being held) wasn't published, the liquidator fell foul.

One cluster of non-compliance was recorded as being due to "ASIC error or ASIC's assessment was incorrect". Nevertheless, non-compliance was still recorded against the practitioner.

The last major area of non-compliance was around what was referred to as "Alternative interpretation of statutory obligations". To help decipher what that means, ASIC kindly offers an example: non-submission of the Form 578 Deregistration request (liquidator not acting or affairs fully wound up).

But here's the clanger: ASIC's Flowchart 2: Liquidator in a creditors' voluntary winding up from *Information Sheet 29 External administrations: Most commonly lodged forms* indicates that a Form 578 deregistration request may be used if a company's affairs are fully wound up and at all times there were insufficient funds to hold a final meeting. However, the commentary provided with the flowchart regarding the form indicated that "there is no statutory requirement to lodge" the form. Even Form 578 itself - accessible from the ASIC website - clearly notes that the form "is not a prescribed form and its use is optional".

Alongside all of this, you'd be right to ask: with such a volume of paperwork, why isn't there a system that tells liquidators when one of these many forms might be overdue? That would seem even more logical if you realise that liquidators are required to log into an ASIC liquidator portal regularly and that any overdue status could be highlighted. But apparently that's not possible...

This review by ASIC has caused an enormous amount of justifiable consternation among registered



This review by ASIC has caused an enormous amount of justifiable consternation among registered liquidators.

liquidators. They would much rather ASIC resources be focussed on cleaning out poorly performing liquidators and shutting down the dodgy pre-insolvency market that is fostering the asset stripping and phoenixing of businesses to the real detriment of you as creditors. ♦

***John Winter** is the Chief Executive Officer of ARITA - the Australian Restructuring Insolvency & Turnaround Association. ARITA has over 2,200 members and subscribers including accountants, lawyers, academics and other professionals with an interest in insolvency and restructuring. Some 84 percent of registered liquidators and 87 percent of registered trustees are ARITA members. www.arita.com.au