



Newsletter – no. 2/2016

Stanley Morgan Accountants wishes you a restful, safe and relaxing Easter long weekend.

Reviews of the insolvency industry

Possibly spurred on by recent developments to introduce insolvency law reforms and the 2010 Senate Economics References Committee report of the industry, the two Australian industry statutory bodies have indicated their intentions to review industry practices.

The Australian Financial Security Authority ("AFSA") is currently making enquiries of trustees with relationships with parties that "provide advice or other services to people experiencing financial difficulty (referred to generically as 'pre-insolvency advisors')....".

The purpose of AFSA's enquiries is to ensure that trustee standards and independence are maintained. AFSA's concurrent concern appears to be with the pre-insolvency advisors, and it states that "...there is the potential [for pre-insolvency advisors] to bring disrepute to the personal insolvency profession generally".

AFSA has not provided any specific data to support its concerns, however that may be forthcoming once its enquiries are complete. The enquiries form part of its Insolvency Practitioner Compliance Program 2015/16.

The Australian Securities and Investments Commission ("ASIC") released a four-year plan in August 2015 which includes within its agenda a focus on insolvency practitioners, amongst others.

According to ASIC "poor conduct by gatekeepers, such as directors, auditors and insolvency practitioners, or their failure to identify and report inappropriate conduct of principals, continues to jeopardise market integrity and investor outcomes".

Commentary

The definition applied by AFSA of a 'pre-insolvency advisor' appears to extend to solicitors, accountants, finance intermediaries, financial counsellors, and banks (to name but a few) who, from time to time, deal with clients (or others) that require referral (in some fashion) to an insolvency practitioner. Accordingly, it is unknown how wide the scope of AFSA's review will ultimately be.

In regard to ASIC's review program, it is unclear if additional resources will be devoted to it prosecuting director misconduct reported by insolvency practitioners, something which seems necessary to ensure corporations laws are enforced and poor corporate behaviour is discouraged in the first place.

Further discussion

Should you require further information or have any queries, please contact us to discuss.

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