
CREDIT ISSUES

WOODGATE & CO.

Chartered Accountant
FEBRUARY 2014

INSOLVENCY UPDATE

Introduction

The Australian Securities and Investments Commission ("ASIC") maintains extensive statistical records on external administrations. Further, since 1 July 2013 ASIC has retained records of the number of companies entering into external administration, by industry type.

A summary of ASIC's insolvency statistics

During the year 1 January 2013 to 31 December 2013, 10,821 companies entered external administration for the first time. This excludes companies which were wound up pursuant to members' voluntary liquidations, as those companies were solvent. New South Wales recorded the most external administrations, with 38%, followed by Victoria, with 28%, and then Queensland, with 20%. The other States and Territories comprised 14% of new external administrations.

As at 31 December 2013 there were 2.056M companies incorporated in Australia. Therefore, the number of companies entering into external administrations was less than 1% of all companies. The number of

companies entering into external administration was also significantly less than the number of new company registrations during the year 1 January 2013 to 31 December 2013, which amounted to approximately 202,000.

ASIC recorded that court liquidations and creditors' voluntary liquidations amounted to 31% and 44%, respectively, of all external administrations during the year 1 January 2013 to 31 December 2013. Voluntary administrations during the same period amounted to 13% of external administrations and, receiverships and controllerships each amounted to 6% of external administrations. Therefore, winding up, whether voluntary or by the Court, is the most frequently used corporate insolvency procedure.

By reference to table 1, it is clear that voluntary administrations and bank initiated receiverships are declining whilst liquidations are trending at a relatively high level. On the other hand there has been a clear decline in bankruptcies since the Global Financial Crisis (table 2).

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The material contained in this newsletter is merely general commentary and the comments and information do not represent a legal or professional service. Advice should be sought from Woodgate & Co. in relation to the circumstances of each matter before acting in this area.

The changing face of insolvency

During the year ended 30 June 2007 voluntary administrations amounted to 31% of all new external administrations and creditors' voluntary liquidations amounted to 26% of all new external administrations. Since 2007 there has been a decline in voluntary administrations and an increased number of creditors' voluntary liquidations. This was an intended consequence of the December 2007 amendments to the *Corporations Act* which recognised that many voluntary administrations were commenced with the intention of proceeding to liquidation, such as when the main reason for the appointment was to avoid personal liability for a director penalty notice. In December 2007 the procedures for winding up a company were modified so that many companies could be wound up quickly, assuming 95% of the members consented in writing, to short notice of a meeting of members.

ASIC's insolvency statistics for the year 1 January 2013 to 31 December 2013 show that the various forms of controllership, such as Controller, Receiver and Manager, Managing Controller and Receiver comprised 12% of all external administrations. There has been an increase in the number of controllerships over the past six years. From a low of 6% of all external administrations during the year ended 30 June 2007, the number of controllerships as a percentage of new external administrations, peaked at 15%, during the year ended 30 June 2010, reflecting increased appointments by secured creditors post the global financial crisis.

Voluntary administration does not necessarily avoid liquidation

ASIC does not maintain publicly available records of companies which, having entered voluntary administration, are subsequently wound up or execute Deeds of Company Arrangement. However, ASIC does maintain records of the number of appointments of Deed Administrators. A comparison of the number of Deed Administrators appointed compared to the number of new voluntary administrations during the year 1 January 2013 to 31 December 2013, showed that the number of Deed Administrators appointed equated to 33% of companies entering into a voluntary administration. Therefore, despite the December 2007 amendments to the *Corporations Act*, the most likely outcome from a voluntary administration is liquidation.

What types of companies become insolvent?

During the period from 1 July 2013 to 31 December 2013, the top five industries for the appointment of external administrators were:

	<u>%</u>
Other (business and personal services)	30
Construction	18
Accommodation and food	8
Retail	8
Manufacturing	<u>5</u>
	<u>69%</u>

External administrators are required to lodge reports with ASIC pursuant to various provisions of the *Corporations Act*. ASIC provided a summary of external administrators' reports for the year ended 30 June 2013, which showed that:

- (a) 19% of corporate insolvencies had 21 employees or more;
- (b) 15% had assets of \$100,000 or more;
- (c) 57% had liabilities of \$250,000 or more;
- (d) 31% had secured creditors;
- (e) 11% had unpaid taxes and charges amounting to \$250,000 or more; and,
- (f) 3% of the dividends paid to unsecured creditors were 11 cents in the dollar or more.

ASIC noted that the top three nominated causes of companies' failure, listed by external administrators, were:

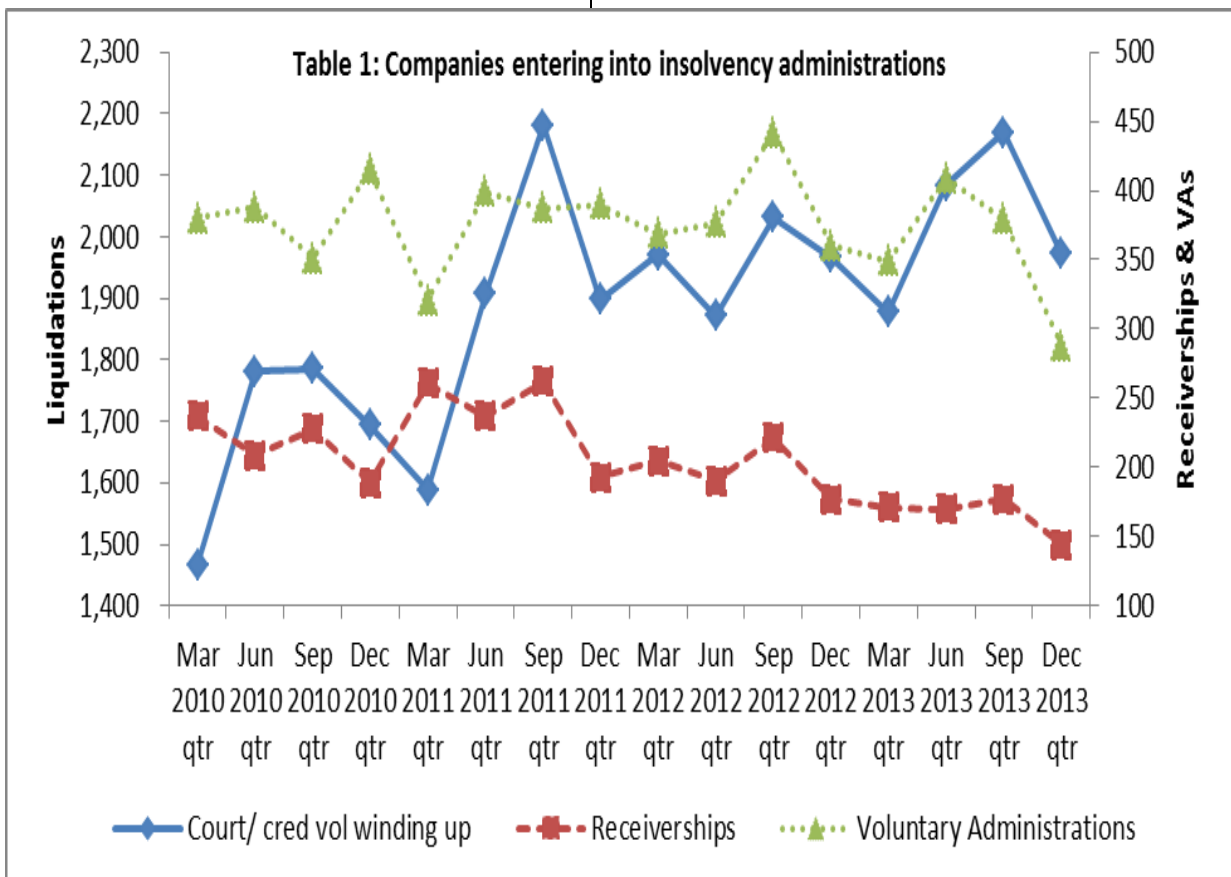
- (a) poor strategic management of business;

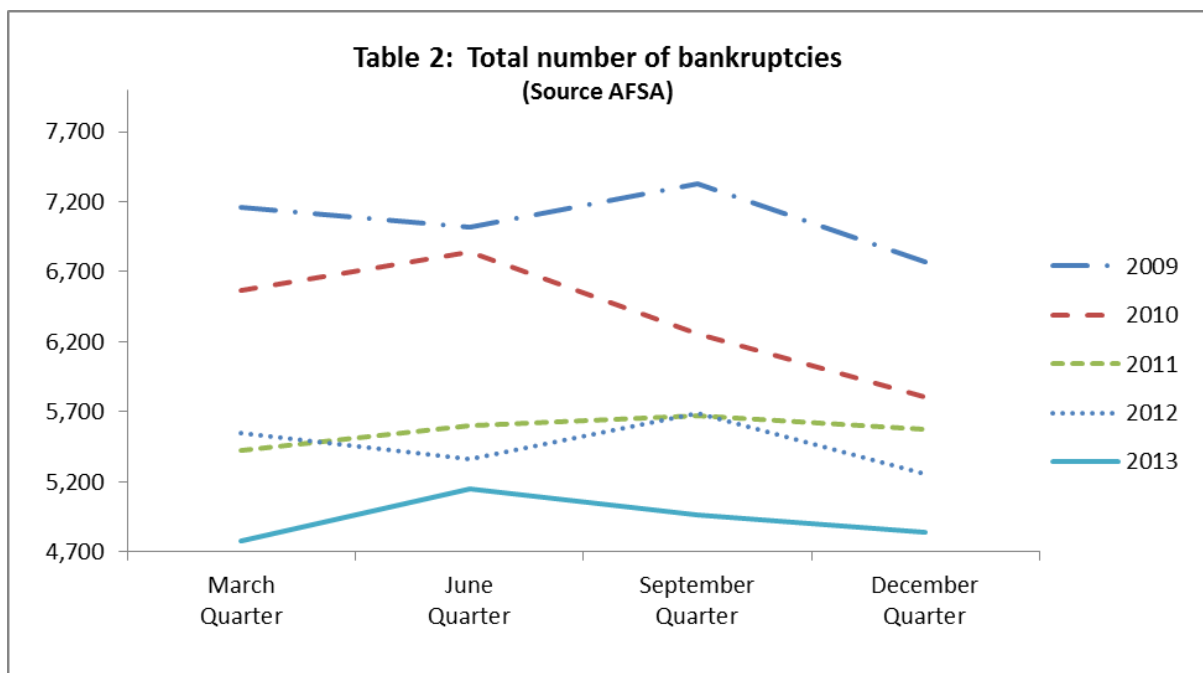
- (b) inadequate cash flow; and,
- (c) trading losses.

However, in only 10% of the cases identified by external administrators as involving possible misconduct, did ASIC request the external administrators to complete supplementary reports to ASIC.

The top three offences reported to ASIC by external administrators were:

- (a) contravention of the insolvent trading provisions;
- (b) failing to keep adequate financial records; and,
- (c) directors failing to perform their duties with care and diligence.





Conclusion

ASIC's insolvency statistics provide useful information concerning the number of companies entering external administration, the type of external administrations utilised and

the types of companies entering external administration. The statistics show that, with some exceptions, corporate insolvency in Australia is principally a problem of the small and medium enterprise sector; but fortunately a declining problem.

WOODGATE & CO.

Chartered Accountant and Insolvency Practitioners

**Business Recovery Services
Official Liquidator & Trustee in Bankruptcy**

Level 8, 6 - 10 O'Connell Street, Sydney, NSW, 2000
GPO Box 882, Sydney, NSW, 2001
Telephone: (02) 9233 6088 Facsimile: (02) 9233 1616

www.woodgateco.com.au

Associated Offices: **Melbourne · Brisbane · Adelaide · Perth**