CREDIT ISSUES

WOODGATE & CO.

Chartered Accountant

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INSOLVENCY UPDATE

Introduction

The Australian Securities and Investments Commission ("ASIC") maintains extensive statistical records of company registrations, deregistrations and external administrations. ASIC also maintains the national business names register, which recorded 1.994M business names, as at 30 June 2014. The Australian Financial Security Authority ("AFSA") maintains records regarding personal insolvencies.

A summary of ASIC's insolvency statistics

During the calendar year ended 31 December 2014, 8,794 companies entered external administration for the first time. This represents a 19% decrease compared to the previous calendar year and is the lowest level of external administrations since 2007. This excludes members' voluntary liquidations of solvent companies.

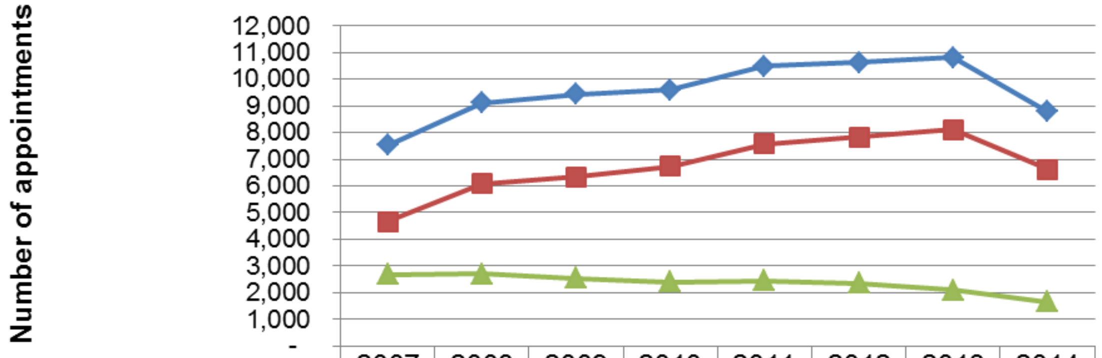
As at 31 December 2014 there were 2.17M companies incorporated in Australia. During the calendar year ended 31 December 2014 ASIC recorded the registration of 223,013 new companies, whilst 109,329 companies were deregistered. The number of companies entering external administration represented 8% of all deregistrations. Therefore, most companies that cease trading do not enter into external administration.

ASIC recorded that court liquidations and creditors' voluntary liquidations amounted to 27% and 48% respectively, of all external administrations for the calendar year ended 31 December 2014. As table 1 shows, an increasing number of companies are being wound up, compared to other insolvency administrations. Voluntary administrations during the same period amounted to 13% of external administrations and the various forms of controllership amounted to 12% of external administrations.

ASIC's insolvency statistics for the years ended 31 December 2013 and 2014 are summarised by region as follows:

Jurisdiction	2013	2014
New South Wales	38%	36%
Victoria	28%	28%
Queensland	20%	20%
South Australia	4%	4%
Western Australia	7%	8%
Other	3%	4%
	100%	100%

Table 1: Corporate insolvencies



	2007	2008	2009	2010	2011	2012	2013	2014
Total appointments	7,521	9,113	9,437	9,601	10,481	10,632	10,821	8,794
Court liqs & CVLs	4,659	6,088	6,345	6,727	7,575	7,840	8,103	6,612
Controllerships & VAs	2,669	2,691	2,545	2,397	2,450	2,341	2,087	1,654

Calendar years ended 31 December

There were decreases in external administrations across all jurisdictions, except for Western Australia and the Northern Territory, which may reflect the end of the mining boom.

The changing face of corporate insolvency

Since 2007 there has been a steady decline in voluntary administrations ("VA") and an increased number of creditors' voluntary liquidations ("CVL"):

Year ended	VA	CVL
31 December 2007	31%	29%
31 December 2008	22%	36%
31 December 2009	18%	40%
31 December 2010	16%	43%
31 December 2011	14%	44%
31 December 2012	15%	47%
31 December 2013	13%	44%
31 December 2014	13%	48%

This was an intended consequence of the December 2007 amendments to the *Corporations Act*.

ASIC's insolvency statistics for the calendar year ended 31 December 2014 recorded a 29% decrease in court liquidations, when compared to the previous year. This was driven by a 39% reduction in court liquidations in NSW, reflecting high court filing fees and changes to scheme agents for the NSW WorkCover Scheme.

ASIC's insolvency statistics for the calendar year ended 31 December 2014 show that the various forms of controllership, such as Controller, Receiver and Manager, Managing Controller and Receiver were 20% less than the previous year. Voluntary administrations were also down by 20% during the period.

Deeds of Company Arrangement ("DOCA") of limited appeal?

During the calendar year ended 31 December 2014, Deed Administrators were appointed to 334 companies, which equates to 29% of new companies entering into voluntary administration and was also a 29% reduction compared to the previous calendar year. Therefore, the most likely outcome from a voluntary administration is still liquidation.

Even if a DOCA is executed, a sample review of DOCAs by Mr Mark Wellard, of Queensland University of

Technology in May 2014, recorded that 72% of DOCAs were straight forward compromises, akin to liquidations, with little or no trading on of the companies' businesses. There was little business rescue or turnaround activity.

The average dividend to ordinary unsecured creditors in the sample DOCAs was 5.86 cents in the dollar.

What types of companies become insolvent?

During the calendar year ended 31 December 2014, the top five industries for the appointment of external administrators were:

	%
Other (business and personal services)	34
Construction	18
Accommodation and food	8
Retail	8
Manufacturing	5
	73%

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 2014, which showed that:

(a) 19% of corporate insolvencies had 21 employees or more;
(b) 14% had assets of $100,000 or more;
(c) 57% had liabilities of $250,000 or less;
(d) 35% had estimated deficiencies in assets to meet liabilities of $500,000 or more;
(e) 32% had secured creditors;
(f) 18% had unpaid taxes and charges amounting to $250,000 or more;
(g) 23% had some unpaid employees' entitlements; and,
(h) 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.

This is consistent with the previous year.

The top three civil 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.

This is also consistent with the previous year.

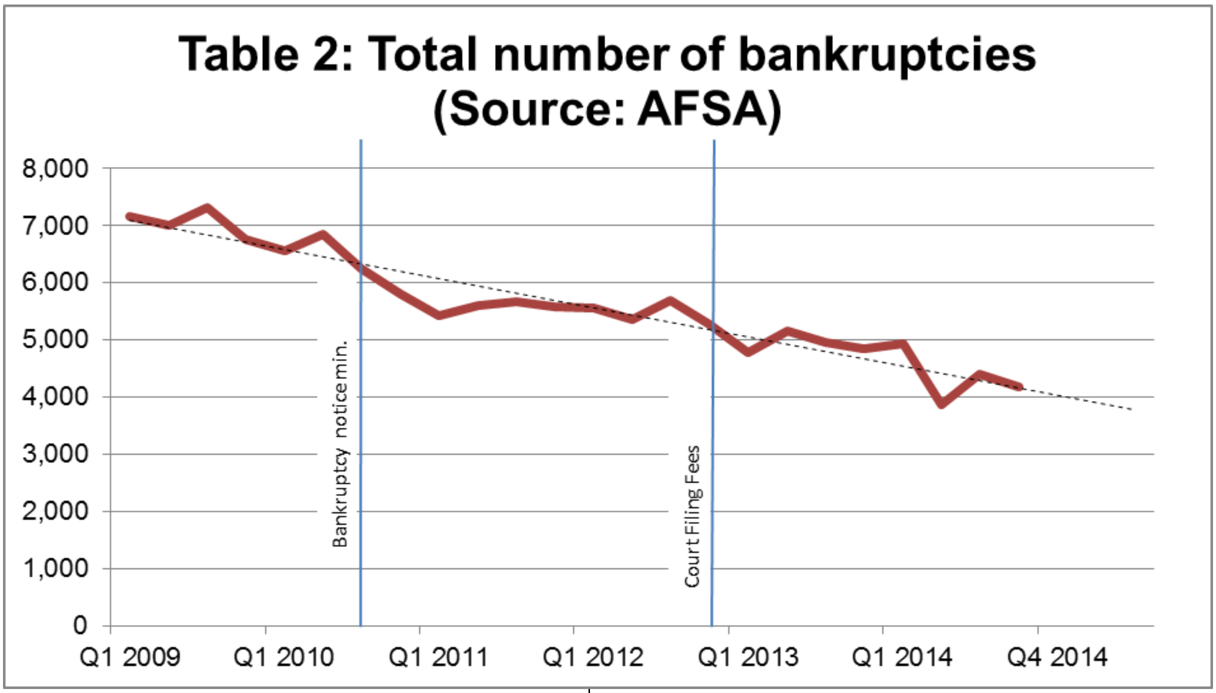
A summary of AFSA's insolvency statistics

During the calendar year ended 31 December 2014 AFSA recorded the following personal insolvencies:

	No.	%
Business	5,032	17%
Non-business	24,581	83%
	29,613	100%

The personal insolvency statistics are further analysed by type of insolvency administration as follows:

	No.	%
Bankruptcy	18,056	61%
Debt arrangements	11,322	38%
Personal Insolvency Agreements	235	1%
	29,613	100%



There has been a clear decline in bankruptcies since the Global Financial Crisis (table 2). The decline in bankruptcies may also be partially due to:

(a) an increase in the statutory minimum amount of a Bankruptcy Notice from $2,000 to $5,000 in August 2010; and,
(b) increases in Court filing fees, particularly after January 2013.

Conclusions

ASIC's insolvency statistics show that, with some exceptions, corporate insolvency in Australia is principally a declining problem of the small and medium enterprise sector. AFSA's statistics show that bankruptcy is also a declining problem.

A question to ponder is what will reverse this tight market for insolvency practitioners.

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