



ASIC Interim Corporate Plan 2020-21 Strategic priorities responding to the impact of the COVID-19 pandemic – impacts on corporate insolvency

Source: The Australian Securities & Investments Commission (ASIC)

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Abstract:

ASIC has published the [ASIC Interim Corporate Plan 2020-21 Strategic priorities responding to the impact of the Covid-19 pandemic](#). It outlines the strategic priorities for the 2020 – 2021 period.

From a corporate insolvency perspective, ASIC raises a concern about there being not enough registered liquidators to cope with the expected increase in insolvencies and sets out in general terms what it plans to do in the area of corporate insolvency.

Will there be liquidator shortage?

It is expected that company insolvencies will significantly increase once the measures aimed at protecting businesses from the coronavirus pandemic are wound back later this year.

ASIC states that as the number of registered liquidators has declined over the last few years, the sector may lack the capacity to respond to a significant increase in insolvencies, should it occur. This may be particularly evident with large and complex appointments.

What are ASIC's plans for corporate insolvency?

ASIC states that in the area of corporate insolvency it plans to:

- Monitor the impact of the COVID-19 pandemic on the number of insolvencies, publish relevant statistics and contribute to policy responses;
- Coordinate an appropriate ASIC-wide response where large or strategically important entities are in external administration;
- Refine the assessment process for the Assetless Administration Fund; and

It also plans to support registered liquidators with guidance, information and stakeholder engagement in the current environment, with particular focus on registered liquidator independence, remuneration and competency.

Liquidators reminded about Assetless Administration Fund

ASIC's plan to refine the assessment process for the Assetless Administration Fund comes on the back of earlier comments in the [ASIC Corporate Insolvency Update – Issue 15](#) reminding registered liquidators that Assetless Administration Fund (AAF) extends beyond funding investigations regarding potential offences committed by directors.

ASIC said that a reinvigorated focus area is funding to take action to recover assets where misconduct is suspected – including, but not limited to, possible fraudulent or unlawful phoenix activity

It commented that over the previous 12 months, only one application has been lodged for asset recovery actions – the application was approved for significant funding. ASIC encouraged liquidators to embrace the opportunity to obtain ASIC funding help with recoveries.

It noted that funding may be available for:

- breaches of directors' and officers' duties (section 180–184);
- uncommercial transactions (section 588FB);
- entering into agreements/transactions to avoid employee entitlements (section 596AB); and
- creditor-defeating dispositions (section 588FDB).

Key takeaways

Practitioners should keep in mind the possible registered liquidator shortage if anticipating insolvency appointments for clients in the later part of this year. This may mean staying in contact with liquidator contacts to obtain information about their capacity.

In appropriate circumstances, practitioners should remind liquidators of the option of making an application for funding to the Assetless Administration Fund, particularly in the case of possible asset recovery actions.

The information about ASIC's priorities is mostly quite general at this point. We will have to await further announcements regarding the specifics of action to be taken as events unfold, particularly from September 2020, assuming measures aimed at protecting businesses from the coronavirus pandemic are wound back from that time.