Senate Select Committee on COVID-19

Australian Securities and Investments Commission

Answers to Questions on Notice

Question No	QoN24072020
Topic	Insolvencies
Committee Member	Senator Gallagher
Reference	Written

Question:

1. Has ASIC estimated the amount of insolvencies that would have occurred over the past four months if it was not for the special insolvent trading rules?
2. How many insolvencies is ASIC expecting to occur following the end of the special insolvent trading rules?
3. What provisions are in place to deal with the expected spike in insolvencies?

Answer:

Question 1

ASIC publishes statistics on insolvency appointments at Insolvency statistics.

Series 1 statistics record the number of companies entering into a form of external administration for the first time each month. A company will be included only once in these statistics, regardless of whether it subsequently enters into another form of external administration. The only exception occurs where a company is taken out of external administration (e.g. as the result of a court order), and at a later date re-enters external administration.

Our series 2 insolvency appointments statistics show the number of all insolvency appointments recorded, categorised by type of appointment and region. As a company can be under more than one form of insolvency appointment at any one time and can progress from one type to another, a company can be included in these statistics more than once.

For this reason, the number of insolvency appointments will always be greater than the number of companies going into external administration (series 1) for the first time.

ASIC's analysis of the 2019-2020 series 1 statistics to 1 March 2020 indicated total companies entering a form of insolvency for the first time was tracking at around 2% up on the prior year. Based on this, and historical monthly fluctuations, ASIC estimated a total of approximately 2,870 companies would be expected to enter insolvency for the first time the months March, April, May and June 2020. The actual number of companies entering insolvency for this period was 1,886.

However, it is not possible to identify which of the temporary measures (if any), other Government fiscal support or other factors has influenced this decrease.

On the basis that the 'special insolvent trading rules' impact director-initiated insolvency appointments i.e. voluntary administration and creditors voluntary liquidations, we have separately analysed these for the same periods as follows:

	Creditors Voluntary			Voluntary Administration		
	2019	2020	% change	2019	2020	% change
March	379	385	2%	96	103	7%
April	321	185	-42%	101	103	2%
May	360	220	-39%	132	71	-46%
June	344	206	-40%	101	53	-48%

Question 2

ASIC continues to monitor series 1 and series 2 statistics on a weekly basis (published a fortnight in arrears).

It is not possible to indicate with any certainty the number of insolvencies following the end of the special insolvent trading rules. It will depend on economic conditions, consumer behaviour and what other relevant measures or legislative reforms the Government introduces in future.

Question 3

Corporate insolvencies are administered by Registered Liquidators (RLs). At 30 June 2020 there were 633 RLs – down from 711 at 30 June 2018.

ASIC's review of RLs ceasing registration since July 2018 indicate that the majority who ceased registration had been winding down their practice during the 12 months preceding cessation of their liquidator registration. There remain some RLs who are less active than others and some who for reasons such as voluntary suspension, are not currently taking appointments.

Information published by the Australian Restructuring, Insolvency and Turnaround Association (ARITA) in the June 2020 edition of its Journal and on its website indicates that COVID-19 had impacted RLs with more than half of insolvency firms registering for JobKeeper (or intending to) and some firms making their own staff redundant. This implies reduced RL firm revenue and consequential impact on potential capacity to manage any significant or sudden increase in new insolvency appointments. The information published by ARITA does not indicate a significant number of firms expressing significant concern about their viability.

Importantly, it is possible that many companies entering external administration following COVID-19 may be assetless. If so, it might be that RLs would not be incentivised to accept a significant number of appointments to financially distressed companies because of the impact that unpaid remuneration from these appointments may have on the financial viability of the RL's business.

The impact on ASIC internal resourcing from companies entering external administration following any withdrawal of temporary relief measures will depend on the timing, volume and complexity of company failures, and what other measures or legislative reforms the Government introduces in future.

A significant increase in corporate insolvencies under existing law could potentially see an increasing workload across several ASIC teams, particularly those involved in registered liquidator (RL) regulation, and dealing with misconduct, including illegal phoenix activity, reported to ASIC by RLs.

We will continue to monitor and act to mitigate areas of heightened vulnerability across the financial system; and will raise issues with Government as needed, including, if they arise, any system or ASIC capacity issues.