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Insolvencies enter ‘unchartered waters’ during holiday break

BUSINESS

Small businesses are feeling the pinch with construction and retail in critical territory, Insolvency Australia says.

By Philip King•14 November 2022•6 minute read

Businesses are entering “unchartered waters” with a combination of economic headwinds, revived ATO debt collection and exhausted cash reserves putting construction and hospitality on the critical list, according to Insolvency Australia.

Director Gareth Gammon said regardless of whether Australia goes into a recession, the economic conditions and revival of ATO debt collection would be the last straw for many SMEs.

“We’re likely to continue to see an increase in corporate and personal insolvencies in coming months,” he said in the foreword to Insolvency Australia’s *2021–22 Corporate Insolvency Index*.

“The pain threshold will be too much for many to bear, in particular SMEs whose cash reserves have been exhausted by the pandemic and many other factors beyond their control.

“We’re already in uncharted waters The construction sector has been deemed to be in a crisis state, the hospitality sector, which is still trying to recover from lockdowns, is faced with a critical shortage of staff, a number of retail operations have gone into administration as consumers watch their spending, and many SMEs and family-owned businesses are feeling the pinch.”

ASIC figures reveal 6,483 total insolvency appointments for 2021–22, up 7 per cent on 2020–21 but due to the special pandemic provisions, well below a typical year where the number would be 10,000–11,000.

However company wind-ups continued to rise for the first three months of 2022–23, with 2,521 insolvency appointments up almost 60 per cent on the same period in 2021.

The head of business restructuring and insolvency at Revive Financial, Jarvis Archer, said last year had been either “flat out or very quiet” and involved “cleaning up zombie companies, or looking at Small Business Restructuring Process for debt reduction”.

But this year would be crunch time for many businesses and he agreed that construction and retail were the sectors most at risk.

“We’ve seen some horror stories for retailers that have had sales fall off a cliff in 2022,” he said. “These businesses have often drawn on any cash flow available to keep the doors open and stock flowing.”

“But commercial rents and wages have generally remained steady, causing very tight margins, and in some cases irreparable losses.

“The difficulty in helping these businesses is that there’s often no real pathway to sustainable trading with the current economic outlook.”

For construction companies, how they coped with the holiday break would be a critical.

“The construction industry continues to represent one in four insolvencies though it’s unclear if, and when, the predicted construction insolvency storm will occur. There are still big construction failures each month, and anecdotally builders are asking for variations to fixed price contracts, which indicate the issues remain unresolved.

“If it’s going to occur, the Christmas shutdown period and expected difficult trading conditions of 2023 will likely be the final straw.”

“There are certainly larger businesses in financial difficulty, though they seem to be avoiding, or at least delaying, insolvency appointments through tight cash flow management and ongoing negotiations with the ATO and other creditors.

“For these businesses, the key will be whether their business model can be sustainable in the post-pandemic economy, and whether they can achieve sufficient debt reductions informally.”

Rodgers Reidy director Shelley Brooks expected enquiry rates to rise.

“I think once the flow-on effect of the ATO issuing DPNs and taking further recovery action starts to kick up a notch, plus the increase in interest rates and lending criteria in the banking industry also tightening even further, we will start to see further enquiries and more distress,” she said.

The ATO cautioned against insolvency advice “that could lead to illegal phoenix activity” in an update last week.

“Some insolvency advisers suggest actions designed to help directors avoid paying their creditors and create new companies to continue on without debts,” the ATO said.

“This is illegal phoenix activity and can result in serious penalties. Following this advice could put you at risk of a fine, criminal conviction or even a jail term.”

It said businesses should be on the alert for unsolicited contacts from advisers after creditors had taken court action, as well as any advisers who:

- Suggest transferring assets to a third party without payment

- Advise a business restructure to avoid paying debts

- Offer a fee based on a percentage of debt or obligations

- Recommend a liquidator who can protect personal interests or a valuer willing to under-value assets

- Suggests providing incorrect information to authorities or destroying relevant records

- Wants to become an intermediary with a liquidator or trustee

It said any business experiencing difficulties should get advice straight away or go to an ASIC page with information for directors.

It said registered liquidators or trustees would be able to help with wind-ups or restructuring.

Top 10 insolvency firms by appointment volumes

1. Worrells
2. Cor Cordis
3. SV Partners
4. Hall Chadwick
5. Mackay Goodwin
6. Jirsch Sutherland
7. Rodgers Reidy
8. McGrathNicol
9. HM Advisory
10. RSM Partners

Source: Insolvency Australia Corporate Insolvency Index 2021–22