

Compliance with the Corporations Act: aged external administrations



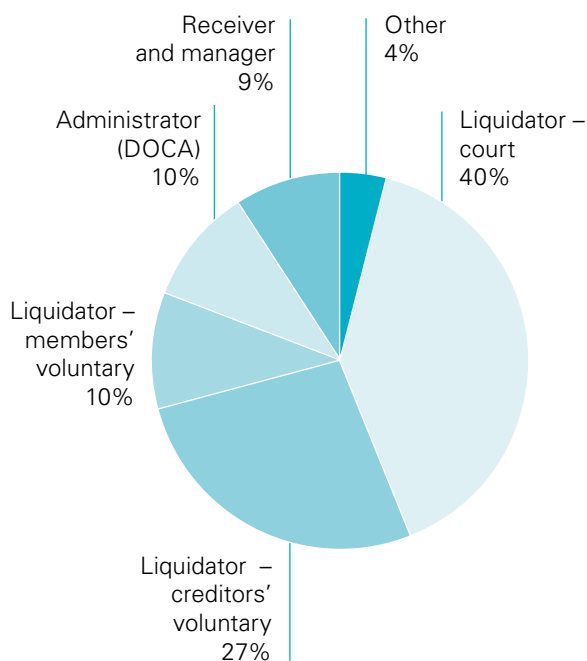
ASIC UPDATE

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ASIC believes that it is important, and in the interests of all stakeholders, that external administrations are finalised as soon as possible. We consider that the obligation for registered liquidators to perform adequately and properly their duties or functions includes completing external administrations in a timely fashion.

ASIC has been reviewing the accuracy of information on the liquidators' register and the corporate database, as well as compliance with certain obligations under the *Corporations Act 2001* (Cth). During this process, we noticed that a considerable number of administrations recorded as active on the corporate database were more than five years old ('aged' external administrations). As at November 2007, there were approximately 2500 of these external administrations (or around 8.5 percent of all open external administrations), dominated by liquidations as shown in the following chart.

Aged external administrations (as at November 2007)



Review of aged external administrations

Late last year, ASIC wrote to each registered liquidator of an aged external administration. In our letter, we asked for certain information about the relevant administration(s). We also asked practitioners to report any material database errors for us to correct.

The information requested was likely to be readily available from practitioners' files, given that the administrations were open. Specific information requested was:

- the estimated date of completion for the administration (or if a reliable estimate could not be provided, the reasons why not)
- for liquidations, whether a section 533 report was required, and if so, whether it had been filed (or the expected date of lodgement)
- any factors that may have prevented or delayed the completion of the external administration, or that may delay it in the future.

Responses to our review

Of the 332 practitioners affected, the response rate was excellent, with 97 percent of practitioners responding reasonably promptly.

The following table summarises the outcome of our review based on the responses received from practitioners. Comments on each category follow.

Aged external administrations - outcome of our review	No.
No further action by ASIC at this time	1160
Closed during project	649
Corrections to database/ASIC assistance required	92
Periodic monitoring/additional information required	603
	2504

No further action by ASIC at this time

No further action by ASIC was warranted for 46 percent (1160) of the aged external administrations. In these cases, the reasons for the administration being aged were adequately explained in the response or in subsequent clarifications.

Some examples (in summary form) of reasons given were:

- litigation in progress
- asset recoveries continuing
- long-tail liability issues
- deed of company arrangement (DOCA) in progress
- ongoing investigations/ASIC investigations
- liquidation open due to receiver and manager in office
- company reinstated by the court.

Closed during project

Our request for information may have prompted some practitioners to review their open matters. Of the aged external administrations, 26 percent (649) were finalised within a few months of our project starting. Generally, practitioners did not give any reason for why those administrations had become aged, but we were pleased to see that they had been finalised.

Corrections to database/ ASIC assistance required

Some responses highlighted possible errors in our database, or information from ASIC was needed to properly close old matters where records were no longer available. These represented only four percent (92) of the aged external administrations.

Periodic monitoring/ additional information required

We are undertaking ongoing scrutiny of the remaining 24 percent (603) of aged external administrations. In some cases, our scrutiny has extended to other open external administrations of these practitioners.

The following table summarises the status of the aged external administrations subject to ongoing scrutiny based on the responses received from practitioners.

Aged external administrations – ongoing scrutiny	No.
Expected to finalise by 31 December 2008	94
Not closed by nominated date	236
Lodgements incomplete	131
Unsatisfactory response	53
Failure to respond	89
	603

In some instances, the reason given for the delay was that the administration was a members' voluntary liquidation. This is not in itself an acceptable reason for an administration to become aged.

Registered liquidators should undertake members' voluntary liquidations with the same level of diligence as for insolvent administrations.

We are continuing to monitor the performance of registered liquidators with aged external administrations who have not provided any satisfactory reason for them remaining open.

Conclusion

Overall, we were pleased with the response from the profession to our project. We also received feedback from many practitioners indicating that they found it to be a useful exercise they would like ASIC to undertake on a regular basis.

We consider that registered liquidators have a duty to complete external administrations in a timely fashion. Failure to do so can add to the costs of the administration and/or delay distributions to creditors and is not in stakeholders' interests generally.

Such failure, and /or not having systems in place to ensure lodgements are properly completed, indicates to ASIC that a practitioner might not have adequate systems or resources to undertake the appointments in a manner expected of a registered liquidator.

This increases the prospects of a registered liquidator being identified for a practice compliance review by us.

In the meantime, if practitioners become aware of errors in our database, please write to catrina.orr@asic.gov.au and provide copies of supporting documents so that we can correct the information. 