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Advisory Update

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A New Banking Universe

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A New Banking Universe

- Feedback from our national Bankers' Boot Camp series – 'taking the pulse'
  - Survey insights
  - Takeaways from our interactive workshops
- Other observations from our own client discussions
- Dealing with banks in 2019

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Navigating the new normal

Bankers' Boot Camp 2018

Which industry has the best prospects for lending growth?

35%

Greatest lending potential:
Health & aged care

Which industry do you think presents the greatest risk?

46%

Greatest potential risk:
Retail & Consumer

The options

- Health & aged care
- Property & construction
- Professional services
- Food & agri-business
- Education
- Advanced manufacturing
- Energy & resources (including renewables)
- Hospitality & tourism
- Retail & consumer
- Other

What poses the greatest risk of disruption to your organisation?

45%

Greatest risk:
Regulatory & compliance pressures

The options

- Increasing competition from fintech companies
- Regulatory & compliance pressures
- Ability to achieve internal efficiencies
- Managing customer expectations and related impact on brand
- Drive to increase margins and profits

If you had the power to change or introduce one law that would have the biggest positive impact on banking, what would it be?

1. **Reducing 'red tape'** by finding a better balance between the increasing burden of compliance and regulation, and the space needed to innovate in order to grow.
2. Banks investing in **better education and awareness** of their own people to ensure improved quality of lending.
3. Building **relationships with advisors** and partners who can support bankers in presenting a future bank-customer relationship built on insights and a deeper understanding of the customers' business.

How does this compare to last year?

1. Using digitisation/AI to automate credit decisions and drive efficiencies in compliance.
2. Better collaboration between regulators to reduce unnecessary costs.
3. Moving further towards Chapter 11-style legislation to better promote entrepreneurial activity and value preservation in the Australian market.

We asked the following questions...

"Are your customers really prepared for a credit tightening?

Identify 3 things that you can proactively be doing to assist your customers."

"Notwithstanding the challenges we have discussed, what growth opportunities does this create for lenders?"

What they said…

Using data analytics to develop and **share sector insights** with clients

Assess the client's capability and discipline regarding **financial reporting and forecasting,** and be prepared to discuss how the client can access better advice to reduce the associated risk of poor reporting and systems

Providing **more transparency** and assisting clients in better understanding how they are assessed and rated by credit

Sharing learnings and tips on how other customers or similar industry players are navigating challenges and solving problems

Educating the bank's own people on technical and non-technical topics so they can provide greater service and develop deeper client relationships

Being **upfront** with clients **early** about the ability to fund the client and any funding gaps that need to be addressed

Test client preparedness by running credit tightening scenarios and assessing the impact

Actively **collaborate** with clients and their advisers

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Our observations

- Little to no **appetite to enforce** against customers who default (2018 approach)
- Enforce = appointing receivers, engaging an IA, taking steps to initiate recovery
- Good time for clients to **negotiate with banks**
- Where there is a default, the **customer has more control** over the process – i.e. can nominate preferred advisor
- Bank may still tell the customer to **refinance** elsewhere
- Key concerns for banks = **bad management, poor financial systems and reporting**
- **Alternate lenders** can play a role for your client, but be aware of the terms and get advice (usually not a long term solution)

A word of caution

- 2018 stance cannot continue forever
- Post banking Royal Commission, we are monitoring enforcement activity

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Issues facing directors

Andrew Hewitt

Partner – Financial Advisory

What is driving the ATO agenda?

New technologies

Lack of trust in institutions

Rising cost of living, especially housing & energy

Globalisation cost vs benefit

Increasing concentration of wealth

Global tax avoidance:
#Lux Leaks
#Panama Papers
#ParadisePapers

Inability to limit phoenixing & similar activities

Global regulatory collaboration/data sharing

Measure	From When?	Current Status
TPRS		
• Building & Construction	2012/13	Law
• Cleaning & Couriers	2018/19	Law
• Road freight, security, investigation, surveillance, IT	2019/20	Bill
Foreign resident CGT withholding	2016/17	Law
GST withholding on residential sales	2018/19	Law
Single Touch Payroll		
• 20 or more employees	2018/19	Law
• <20 employees	2019/20	Bill
Annual tax transparency reporting incl MAAL/CbC	Various	Law
Common Reporting Standard (foreign bank account information exchange)	2017/18	Law
ATO permitted to estimate GST liabilities	2018/19	Bill
Expand ATO power to retain refunds	Royal Assent	Exposure Draft

Measure	From When?	Current Status
Denial of tax deduction for not withholding & remitting PAYG	2019/20	Bill
Extend DPN regime to GST, LCT & WET	Royal Assent	Exposure Draft
Salary & wages: compulsory payment to bank	Unknown	Awaiting
New regulatory framework for ABN system	Unknown	Awaiting
Economy wide B2B $10,000 cash limit	Unknown	Awaiting
Director Identification Number system	Unknown	Awaiting
Limit ability to resign/remove directors	Unknown	Awaiting
New voidable transaction (creditor defeating disposition) rules	Royal Assent	Exposure Draft
Integrity measures for Government contracts > $4m incl GST	Unknown	Awaiting
Crim pen's: fail to follow ATO direction to pay super	SGC 1/7/18	Bill

Measure	From When?	Current Status
Power of ATO to issue directions to pay unpaid superannuation (incl to non-directors)	SGC arising from 1/7/18	Bill
Power of ATO to make education directions & orders (incl to non-directors)	SGC arising from 1/7/18	Bill
Funding for targeted initiatives: • New "mobile strike teams" • Data analytics/matching initiatives • A Black Economy Hotline	Under way	In place
Prohibit supply/use/etc of electronic sales suppression tools	Royal Assent unless held pre-9/5/17	Law

Director Penalty Notices

- Issued to directors personally for company debts
- 21 days to respond
- Personal liability can only be avoided by:
  1. Paying the outstanding debt in full
  2. Entering into a repayment plan and paying the debt in full
  3. Appointment of a liquidator
  4. Appointment of a voluntary administrator

ALERT

Reporting & lodgement obligations

The ATO has a stated position that it will take into account whether the customer:

- Is unwilling to work with the ATO, or to respond to the ATO
- Has repeatedly defaulted on agreed payment plans
  Simply doesn't have the capacity to pay
- Will take steps to resolve their situation
- Has been subject to an audit where deliberate avoidance was detected (i.e. bad behaviours)

New Powers

- Proposal to extend DPNs to **include GST** - same rules as for PAYGW and super
- Proposal to allow ATO **estimation** of GST liabilities (Exposure Draft)
- Proposal to expand the ATO's existing power to retain refunds where tax lodgements are outstanding (impact on customer's cash flow)
- Proposed powers to allow the ATO to report tax debts to **credit reporting agencies.**
- Proposed **criminal penalties** (up to 12 months imprisonment or court ordered financial penalties) for failure to follow an ATO direction to pay employee superannuation
- Proposed education directions and sanctions for non-directors

Personal Insolvency

Nick Mellos

Partner – Financial Advisory

Bankruptcy

- 3 years becomes 1 year – 2020?
- Realisable Assets
- Income - $57,239 net
- Secured & Unsecured creditors
- Restrictions on a bankrupt

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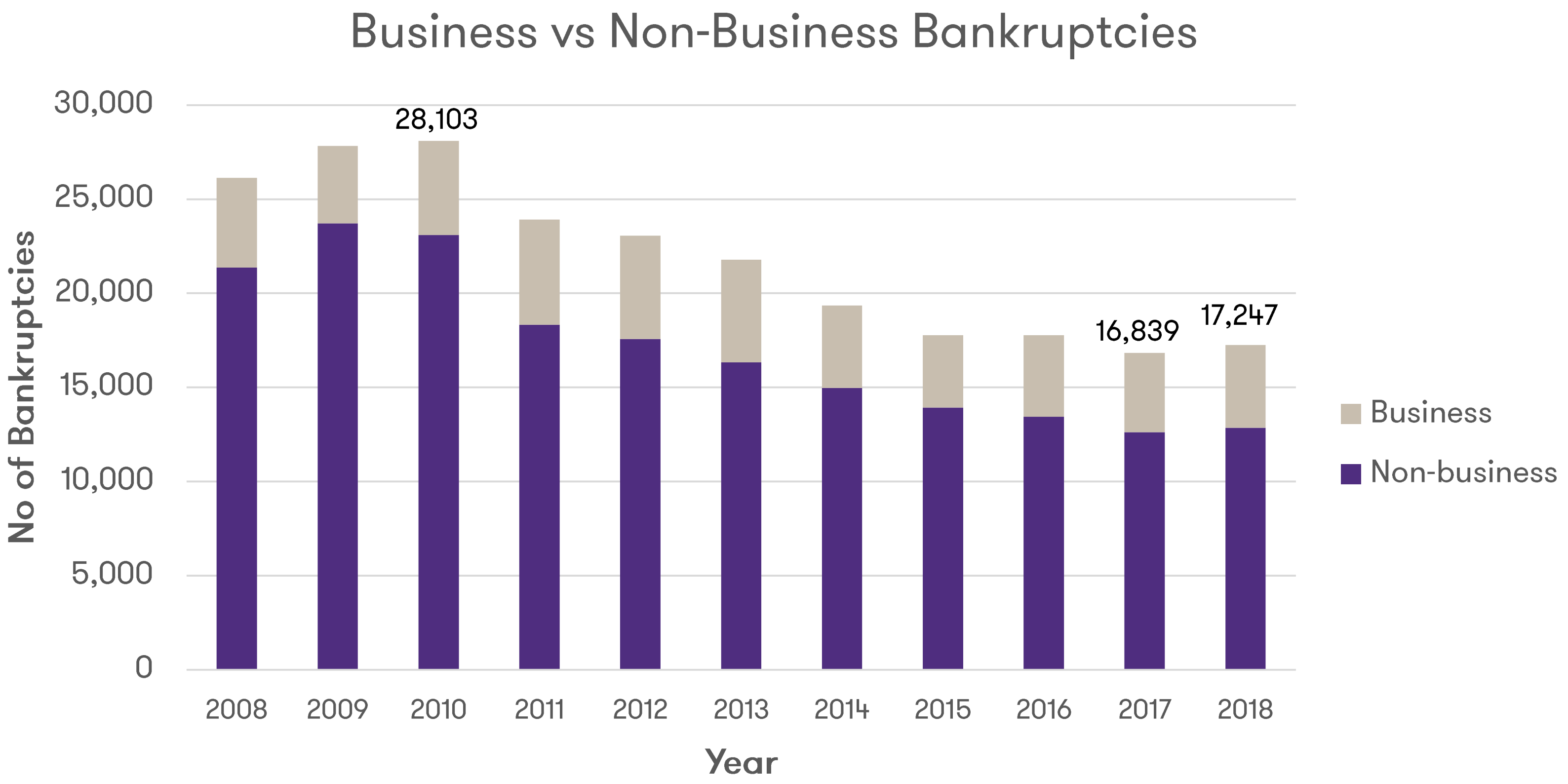
Statistics



Business vs Non-Business Bankruptcies
30,000
25,000
20,000
15,000
10,000
5,000
0
No of Bankruptcies
28,103
16,839
17,247
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
Year
Business
Non-business

Asset Protection

- Overview of Asset Protection strategies
  - Superannuation
  - Trusts
  - Voidable transactions and time frames
  - Limitations on divisible property – s.116(2)(c)

Superannuation

- Most effective and safest – s116(2)(d)
- Super taken out prior to bankruptcy, not protected
- s128B(1) – Transfer of property to super and 'main purpose' was to prevent property going to creditors or to hinder or delay creditors
- s128B(3) – Out of character payments considered in determining 'main purpose'

Trusts

- s116(2)(a) – Property held in trust is not divisible

Trustee

Corporation; or Natural person(s)

Appointor

Only power of appointment
Can remove trustee

Trust

Beneficiaries

Has no proprietary interest

Trusts

s116(1)(b)

- Capacity to exercise power in, over or in respect of property
- Trustee may direct trust to distribute to one beneficiary (Bankrupt)
- However, Trustees of trusts have fiduciary obligations
- Safer if Bankrupt is <u>not</u> the appointor or majority shareholder of the Corporate Trustee
- A lot of complicated legal cases

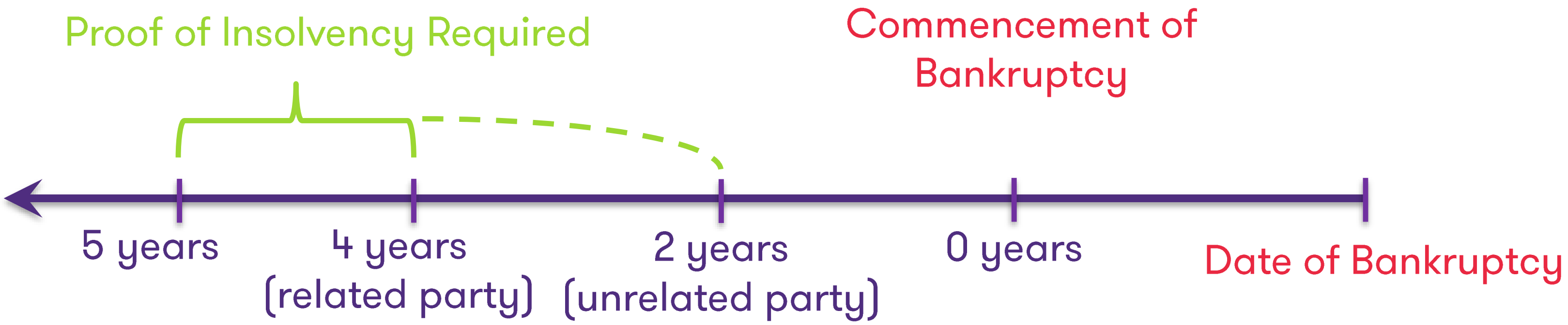
Trust busting

- Loan accounts – How did Trust acquire assets?
- Unpaid distributions to beneficiary
- Income contributions
  - s139Y ‘reasonable remuneration’
  - Rent free benefit
- s139D & s139E – Where Bankrupt supplied personal services, controlled the entity and received:
  - No remuneration or less than reasonable remuneration; and
  - Entity acquired interest in property as a result of bankrupt’s services or net worth of entity increased

Voidable transactions

s120: Undervalued transactions

- Transfer took place, and
- No consideration or less than market value



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Voidable transactions

s121: Transfers to Defeat Creditors

- Property would have become available to creditors; and
- ‘Main purpose’ was to prevent, hinder or delay creditors
- No time limit

s122: Avoidance of Preferences

- Generally 6 months before commencement of bankruptcy