



**ASIC**

Australian Securities & Investments Commission

## Receivership: A guide for employees

If a company is in financial difficulty, a secured creditor or the court may put the company into receivership.

This information sheet (INFO 55) provides general information for employees of companies in receivership. It covers:

- [who is an employee](#)
- [the purpose of receivership](#)
- [the receiver's role](#)
- [employee entitlements](#)
- [establishing your claim](#)
- [payment summaries and separation certificates](#)
- [queries and complaints](#)

Employees should also read [Information Sheet 54 Receivership: A guide for creditors](#) (INFO 54).

### Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, enterprise agreement, agreement-based transitional instruments (which are agreements in force before the commencement of the *Fair Work Act 2009*) or a contract of employment
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

### The purpose of receivership

A company goes into receivership when an independent and suitably qualified person (the receiver) is appointed by a secured creditor, or in special circumstances by the court, to take control of some or all of the company's assets. Court receiverships are beyond the scope of this information sheet.

A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. The security interest held by the secured creditor under which the appointment of a receiver is made may comprise:

- a non-circulating security interest (e.g. a security interest in land, plant and equipment)
- a circulating security interest in assets that are used and disposed of in the course of normal trading operations (e.g. a security interest in debtors, cash and stock).

The powers of the receiver are set out in the security agreement and the *Corporations Act 2001* (Corporations Act).

If a receiver has, under the terms of their appointment, the power to manage the company's affairs, they are known as a receiver and manager.

It is possible for a company in receivership to also be in provisional liquidation, liquidation, voluntary administration or subject to a deed of company arrangement: see [Information Sheet 46 Liquidation: A guide for employees \(INFO 46\)](#) and [Information Sheet 75 Voluntary administration: A guide for employees \(INFO 75\)](#).

## The receiver's role

The receiver's role is to:

- collect and sell enough of the charged assets (collateral) to repay the debt owed to the secured creditor (this may include selling assets or the company's business)
- pay out the money collected in the order required by law
- report to ASIC any possible offences or other irregular matters they come across.

The receiver's primary duty is to the secured creditor that appointed them. The main duty owed to unsecured creditors is an obligation to take reasonable care to sell collateral for not less than its market value or, if there is no market value, the best price reasonably obtainable. A receiver also has the same general duties as a company director.

The receiver has no obligation to report to unsecured creditors, including employees, about the receivership.

## Employee entitlements

If the receiver continues to trade the business, they must pay out of the company assets available to them ongoing employee wages for services provided after the date of appointment. These payments are treated as an expense of the receivership.

The appointment of a receiver and manager does not automatically terminate the employment of the company's employees. As a result, unless the receiver adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during the receivership.

If the company's business is sold by the receiver as a going concern, it may be that most, if not all, of the company's employees will keep their jobs. In this case, it is usual for the new owner to take over the company's liability for outstanding employee entitlements. You should seek advice about how ongoing trading of the business and the terms of the proposed sale of the business affect the payment of your entitlements.

If there are insufficient funds to pay all creditors in full, the money from the realisation of assets must be distributed as follows:

- money from the sale of non-circulating assets is paid to the secured creditor after the costs and fees of the receiver in collecting this money have been paid, and
- money from the sale of circulating assets is paid out in the following order:
  - the receiver's costs and fees in collecting this money
  - certain priority claims, including employee entitlements (if the liability for these hasn't been transferred to a new owner)
  - repayment of the secured creditor's debt.

In both cases, any funds left over are paid to the company or its external administrator, if one has been appointed.

If the receiver is appointed under a security interest comprising both non-circulating and circulating security interests (which is common), there will be costs and fees of the receivership that cannot be directly allocated to realising the non-circulating assets or circulating assets. These costs are allocated in proportion to the amount realised from the non-circulating assets and circulating assets.

If employee entitlements are to be paid by the receiver under a circulating security interest, the payments must be made in the following order:

- outstanding wages and superannuation
- outstanding leave of absence
- retrenchment pay.

Each class of entitlement is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

The priority claims of directors and their spouses or relatives for the period they are a director, spouse or relative of a director are limited to a maximum of \$2,000 for outstanding wages and superannuation, and \$1,500 for outstanding leave entitlements. Directors and their spouses or relatives are not entitled to any priority retrenchment pay for the period they are a director, spouse or relative of a director.

## The Fair Entitlements Guarantee (FEG)

Employees who are owed certain employee entitlements after losing their job because their employer went into liquidation may be able to get financial help from the Australian Government.

This help is available through the FEG.

The FEG is a scheme of last resort, to assist employees who have lost their job because their employer entered liquidation. The FEG operates in relation to claims for assistance for unpaid employee entitlements for all employer insolvency events that occur on or after 5 December 2012. For more information visit the [FEG website](#), call the FEG hotline on 1300 135 040 or email [FEG@employment.gov.au](mailto:FEG@employment.gov.au).

If you are employed by a company that is in receivership you are not eligible for the FEG until and unless the company enters liquidation.

FEG does not cover unpaid superannuation contributions. To pursue your outstanding superannuation entitlements, you may wish to contact the Australian Taxation Office. For more information about [unpaid superannuation contributions](#), visit the Australian Taxation Office website.

## Establishing your claim

If a receiver must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Promptly contact the receiver if you disagree with their calculation.

You may be required to complete an employee entitlement claim form. In this case, you should contact the receiver's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish any entitlement to the FEG if the company enters liquidation.

When submitting a claim, ask the receiver to acknowledge receipt of your claim and advise if any further information is needed.

If the receiver rejects your claim after you have taken the above steps, seek legal advice. If you have a query about the timing of the payment, discuss this with the receiver.

## Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a receiver pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the receiver to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment and, if so, what period it will cover. The receiver is not obliged to prepare this.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A receiver must prepare a Separation Certificate for any employee whose employment is terminated during the receivership. They are not obliged to prepare one for terminations that occurred prior to the receivership.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

## Queries and complaints

You should first raise any queries or complaints with the receiver. If this fails to resolve your concerns, including any concerns about the receiver's conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest response from ASIC to your concerns.

ASIC usually does not become involved in matters of a receiver's commercial judgement.

Reports of misconduct against companies and their officers can also be made to ASIC.

If you cannot report misconduct to ASIC online, please contact us on 1300 300 630.

## Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 \*Insolvency: A glossary of terms\*](#) (INFO 41).

For more on external administration, see the related information sheets listed in [Information Sheet 39 \*Insolvency information for directors, employees, creditors and shareholders\*](#) (INFO 39).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 55 (INFO 55)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 07:51