Insolvency: A glossary of terms

Information sheet – 41

> This is **Information Sheet 41 (INFO 41)**. It briefly explains some of the terms you may come across in company insolvency proceedings.

Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.

Glossary of insolvency terms

Term	Meaning
ARITA	The Australian Restructuring Insolvency & Turnaround Association is an organisation in Australia for insolvency professionals
asset	Any property owned by a person or company, including tangible and intangible assets
bankruptcy	An insolvency procedure that applies to a natural person, not to a company
circulating asset	Assets (e.g. trading stock, debtors) that a company is usually able to use, dispose, and deal with, in the ordinary course of business without the need to obtain the secured creditor's consent
circulating security interest	A security interest held by a secured creditor in circulating assets of a company. Previously known as a 'floating charge'
committee of inspection	A small group of creditors, or their representatives, appointed by the creditors of a company in external administration (except simplified liquidation, restructuring and restructuring plans) to assist and advise the external administrator. The committee of inspection monitors the conduct of the external administration, may approve certain steps in the administration and may give directions to the external administrator. The external administrator must have regard to, but is not always required to comply with, such directions
compromise	Agreement to accept a lower amount in full payment of a debt

Term	Meaning
contingent asset	An asset that might arise if a certain event occurs (e.g. current legal action taken by a company may result in an asset if the company wins the case)
contingent liability	A liability that might arise if a certain event occurs (e.g. a current legal action against a company may result in a liability if the company loses the case)
contributory	A shareholder might be liable to contribute toward a company's debts in a liquidation if their shares are not fully paid
controller	A person appointed by a secured creditor to deal with assets subject to a security interest. This includes a receiver and a receiver and manager
controllership	When a person appointed by a secured creditor to deal with assets subject to a security interest, is dealing with a company's assets that are subject to that person's control (i.e. an appointment of a controller)
court liquidation	A liquidation that starts as a result of court order, made after an application to the court, usually by a creditor of the company
creditor	A person who is owed money
creditor-defeating disposition	The disposition of property: • for less than the market value of the property or the best price reasonably obtainable, and • which prevents, hinders or significantly delays the property from becoming available to benefit creditors in the winding up
creditors' trust	A separate legal arrangement to deal with creditor claims. Creditor claims are often transferred to a creditors' trust as part of a deed of company arrangement
creditors' voluntary liquidation	A liquidation for insolvent companies, initiated by the company's director(s) and shareholders. Required before a simplified liquidation process can be adopted
debenture	A document acknowledging that a company undertakes to repay a sum of money lent to the company by the holder of the document

Term	Meaning
debenture trustee	The debenture trustee undertakes a range of functions on behalf of debenture holders, including acting as a liaison between the issuer company and the debenture holders
debt	An amount owed
debtor	A person who owes a debt
declaration of indemnities	A declaration that must be provided to creditors by a voluntary administrator or a liquidator in a creditors' voluntary liquidation informing creditors about any indemnities given to the voluntary administrator or liquidator to cover fees or other debts incurred by them in acting as a voluntary administrator or a liquidator of the company. The declaration provides information to allow creditors to decide whether they wish to replace the voluntary administrator or liquidator over concerns about independence
declaration of relevant relationships	A declaration that a restructuring practitioner, voluntary administrator or a liquidator (in a creditors' voluntary liquidation) must provide informing creditors about certain relationships. The declaration provides information to allow creditors to decide whether they wish to replace the voluntary administrator or liquidator over concerns about independence. Creditors cannot replace a restructuring practitioner
deed administrator	The external administrator appointed to oversee a deed of company arrangement
deed of company arrangement	A binding arrangement between a company and its creditors governing how the company's affairs will be dealt with. It may be agreed as a result of the company entering a voluntary administration. It aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up of the company, or both
director	A natural person appointed as a director of a company who is then responsible for directing and managing the affairs of a company. This also includes a shadow director
dividend	A share of the profit of a solvent company paid to shareholders. Also used to describe a sum paid to creditors out of the assets of an insolvent company

Term	Meaning
eligible employee creditor	A creditor (including the Australian Taxation Office for superannuation guarantee charge) who, in a winding up of a company, would normally be paid their employment related entitlements ahead of (known as "priority") other unsecured debts. These creditors have a special right to vote on a deed of company arrangement proposal that seeks to modify the priority payment order
eligible unsecured creditor	A creditor entitled to have a say in a pooling determination made by a liquidator. The term generally covers the external unsecured creditors of a group of companies, but excludes debts owing between companies in the pooled group. A pooling determination relates to a decision to treat the affairs of a group of companies as if it were a single external administration
excluded employee	An employee who has also been a director of the company, or a relative of a director, at any time in the 12 months before the appointment of an external administrator. Excluded employees are only entitled to limited priority for repayment of their outstanding entitlements
external administrator	A defined term for a registered liquidator formally appointed to control the affairs of a company and its property. Includes a provisional liquidator, liquidator, voluntary administrator and an administrator of a deed of company arrangement. It also includes a restructuring practitioner for a company and for a restructuring plan even though they do not control the affairs of the company. It does not include receivers or controllers
external administration	Companies under external administration include companies in voluntary administration, provisional liquidation, liquidation, restructuring, subject to a restructuring plan or subject to deed of company arrangement. It does not include companies under receivership or controllership
FEG	The Fair Entitlements Guarantee - an Australian Government payment scheme administered by the Attorney-General's Department to assist employees who have lost their jobs as a result of their employer's liquidation or bankruptcy and are owed employee entitlements. The FEG operates in relation to claims for assistance for certain unpaid entitlements for all employer liquidations and bankruptcies that occur on or after 5 December 2012
indemnity	An agreement between the external administrator and a third party to cover some or all of the fees and other debts incurred by the external administrator

Term	Meaning
insolvent	Unable to pay all debts when they fall due for payment
intangible asset	An asset with no identifiable physical form (e.g. a contractual right, copyrights, patents and goodwill)
liability	A legal obligation to pay
liquidator	A person appointed to administer the liquidation of a company
managing controller	A managing controller is a receiver and manager, or any other controller who has functions or powers of management of the company
member (of a company)	A shareholder
members' voluntary liquidation	A liquidation for solvent companies, initiated by the company's shareholders
non-circulating assets	Assets that the company may not dispose of without the consent of the secured creditor
non-circulating security interest	A security interest held by a secured creditor in non-circulating assets of a company
officer (of a company)	A director, secretary or external administrator (in most cases) of the company
poll (of creditors)	A voting procedure where the chair of the meeting must consider both the number of creditors voting the same way and the value of their debts in deciding if a resolution is passed or not
pooling	The practice of treating the affairs of a group of companies as if it were a single external administration
prescribed provisions	Provisions that the *Corporations Act 2001* (Corporations Act) takes to be included in a deed of company arrangement, unless the deed specifically excludes them
priority	The order set down by the Corporations Act for the payment of unsecured creditors of an insolvent company by an external administrator (not applicable for companies subject to a restructuring plan)
priority creditor	An unsecured creditor entitled to be paid ahead of other creditors (e.g. employees)

Term	Meaning
proof of debt	A prescribed form creditors complete setting out details of their claim against the company, including how the debt arose and the amount claimed
provisional liquidator	A registered liquidator appointed by the court to preserve a company's assets until the court decides a winding-up application
proxy	In an external administration a creditor or a shareholder can appoint someone else to represent them at a meeting. Usually a proxy attends and votes on behalf of the creditor or member who appointed them
proxy form	A form that creditors or shareholders must complete to appoint a proxy for a creditors' or shareholders' meeting
public examination	An external administrator, ASIC or a person authorised by ASIC can apply to court to question an externally administered company's directors or any other person who may be able to give information about the affairs of the company
realise	Convert assets into cash, often by selling them
receiver	A registered liquidator appointed by a secured creditor to realise enough of the assets subject to their security interest to repay the secured debt. Less commonly, a court may appoint a receiver to protect the assets or to carry out specific tasks. When ASIC refers to receivers, we mean receivers, receivers and managers and managing controllers (e.g. a person who has control of company property to enforce a debt owed by the company or a person appointed by the court)
receiver and manager	A receiver who has, under the terms of their appointment, the power to manage the company's affairs
receivership	An insolvency procedure where a receiver, or receiver and manager, is appointed over some or all of the company's assets
registered liquidator	A suitability qualified person registered by ASIC to practice as a registered liquidator. Only registered liquidators can act as an external administrator of companies
Report on Company Activities and Property (ROCAP)	A prescribed form required to be completed by the directors and secretary of a company in liquidation, voluntary administration or receivership, giving details of the company's assets and liabilities

Term	Meaning
restructuring practitioner	A person appointed to assist the directors of a company (that has liabilities less than $1 million) develop a plan for the repayment of its debts and to oversee that plan if accepted by creditors. A restructuring practitioner must be a registered liquidator who is either registered to act in all forms of external administration or registered to only act in a restructuring or restructuring plan
safe harbour	Provisions in the Corporations Act giving directors an exemption from insolvent trading liability where they are developing a course(s) of action that is 'reasonably likely' to lead to a 'better outcome' for the company than administration or liquidation. There is a list of factors to be considered by directors in attempting to use the safe harbour provisions and directors should seek appropriate advice from a suitably qualified professional
secured creditor	A creditor who holds a security interest in some or all of a company's property
security interest	A form of security taken by a creditor over company assets, including personal property and real property (previously known as a 'charge'). Personal property of the company includes tangible and intangible property other than real property (e.g. motor vehicles, equipment, intellectual property and company shares). A mortgage and a hire purchase agreement are each a type of security interest
tangible asset	An asset with a physical form (e.g. stock or real estate)
trustee	A person or firm that holds and administers property or assets for the benefit of a third party
uncommercial transaction	A transaction that was unreasonable for a company to have entered into. It may be set aside by the company's liquidator provided it occurred within two years prior to the winding up, and when the company was insolvent or if the company became insolvent by entering into the transaction
unfair preference	A payment made or other benefit given to a creditor by an insolvent company that causes the creditor to be in a more favourable position than other unsecured creditors in a liquidation. The company's liquidator can seek to recover an unfair preference provided it occurred within six months prior to the liquidation, and when the company was insolvent or if the company became insolvent by making the payment or giving the benefit
unsecured creditor	Someone owed money and who does not hold a security interest over a company's property

Term	Meaning
voluntary administration	An insolvency procedure where a financially troubled company appoints a registered liquidator (called a 'voluntary administrator') by: • the directors • a liquidator or provisional liquidator of the company, or • a secured creditor that holds a security interest in the whole, or substantially the whole, of the company's assets. The role of the voluntary administrator is to take control of the company, investigate the company's affairs, report to creditors and recommend to creditors whether the company should enter into a deed of company arrangement, go into liquidation or be returned to the directors
voluntary administrator	A registered liquidator appointed to carry out the voluntary administration of a company
winding-up order	A court order for the winding up of a company (liquidation). The first step in a court liquidation, usually made after an application by a creditor

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.

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. We encourage you to seek your own professional advice to find out how the applicable laws apply to you, as it is your responsibility to determine your obligations.

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

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> Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
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