Voluntary administration: A guide for creditors

Information sheet – 74

This is **Information Sheet 74 (INFO 74)**. It provides information for unsecured creditors of companies in voluntary administration.

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Who is a creditor?

You are a creditor if the company owes you money. You may be owed money because you:

- supplied goods or services to the company
- made loans to the company
- paid for goods or services that you have not received
- are an employee owed money for unpaid wages and other entitlements.

A 'contingent creditor' is owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company).

Creditors might be secured or unsecured:

- A **secured creditor** holds a security interest, such as a mortgage, in some or all 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. If the creditor wants to ensure their security interest over personal property other than land is enforceable and given priority in an insolvency, they should register the security on the Personal Property Securities Register (PPSR). You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company's assets.
- An **unsecured creditor** does not hold a security interest in the company's assets.

Employees are a special category or class of unsecured creditors. Their outstanding entitlements are usually paid before the claims of other unsecured creditors. For more information, see Information Sheet 75 *Voluntary administration: A guide for employees* (INFO 75).

All references in this information sheet to 'creditors' are to unsecured creditors unless otherwise stated.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future: see Table 1. An independent registered liquidator (the voluntary administrator) takes full control of the company. This allows the director or a third-party time to find a way, if possible, to save the company or its business.

If it is not possible for the director or a third-party to come up with a plan to save the company or its business, the voluntary administrator aims to administer the company's affairs to obtain a better return (payment) to creditors than if the company had been immediately wound up (closed down). A mechanism for achieving these aims is a deed of company arrangement (DOCA).

A DOCA is a binding arrangement between a company and its creditors governing how the company's affairs will be dealt with. It is agreed to after the company enters voluntary administration. The DOCA is generally proposed by the director or any third-party, usually in consultation with the voluntary administrator, and is administered by a deed administrator (usually the registered liquidator who was the voluntary administrator).

A company's director(s) usually appoint/s a voluntary administrator after they determine the company is insolvent or likely to become insolvent. Less commonly, a liquidator, provisional liquidator, or secured creditor may appoint a voluntary administrator.

Table 1: The voluntary administration process

Step	What happens
Appointment of voluntary administrator	A voluntary administrator can be appointed by: • the directors (by resolution of the board and in writing) • a secured creditor (with a security interest in all or substantially all of the company's property) • a liquidator (or provisional liquidator). Voluntary administration begins on the appointment of the voluntary administrator.
First meeting of creditors	The voluntary administrator must hold the first meeting of creditors within eight business days of being appointed, unless the court allows an extension of time. At least five business days' notice of the meeting must be given to creditors. Creditors can vote at the meeting to: • replace the administrator, and/or • form a committee of inspection.
Voluntary administrator's investigation and report	The voluntary administrator must investigate the company's affairs and report to creditors on the alternative options available to the company (see below options)

Step	What happens
Second meeting of creditors – meeting to decide company's future	The voluntary administrator must hold the meeting to decide the company's future within 25 business days of being appointed (or 30 business days if the appointment is around Christmas or Easter), unless the court allows an extension of time. At least five business days' notice of the meeting must be given to creditors. Creditors can decide at this meeting to: • return the company to the directors' control • accept a DOCA (the deed must be signed by the company within 15 business days following the meeting, unless the court allows an extension of time), or • put the company into liquidation (this happens immediately, and the administrator usually becomes the liquidator).

A company in voluntary administration may also be in receivership. For more information, see Information Sheet 54 *Receivership: A guide for creditors* (INFO 54).

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors about the company's business, property, affairs and financial circumstances. They also report on the following three options available to creditors (including employees):

- end the voluntary administration and return the company to the directors' control
- approve a DOCA through which the company will pay all or part of its debts and then be free of those debts
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option, including an opinion on any DOCA proposal, and recommend which option is in the best interests of creditors.

In doing so, the voluntary administrator tries to:

- determine possible solutions to the company's problems
- assess any proposals put forward for the company's future
- compare the possible outcomes of any proposals with the likely outcome in a liquidation.

A creditors' meeting is held about five weeks after the company goes into voluntary administration to decide the company's future. In complex administrations, this meeting may be held later if the court orders.

The voluntary administrator has all the powers of the company and its directors, including the power to sell or close the company's business – or sell individual assets – in the lead up to creditors deciding the company's future.

The voluntary administrator is also responsible for reporting to ASIC possible offences by people involved with the company.

At the end of the administration, the voluntary administrator must lodge a detailed account of receipts and payments (known as the 'end of administration return') with ASIC. A copy of this account of receipts and payments may be obtained by searching ASIC Connect for a fee.

Although the voluntary administrator may be appointed by the directors, they must act fairly and impartially.

Effect of appointment

The effect of the appointment of a voluntary administrator is to provide the company with breathing space while the company's future is resolved. While the company is in voluntary administration:

- unsecured creditors cannot begin, continue or enforce their claims against the company without the administrator's consent or the court's permission
- owners of property (other than perishable property) used or occupied by the company, or people who lease such property to the company, cannot recover their property
- except in limited circumstances, secured creditors cannot enforce their security interest in the company's assets
- creditors or other eligible parties cannot commence a court application to put the company in liquidation
- a creditor holding a personal guarantee from the company's director or other person cannot act under the personal guarantee without the court's consent.

Voluntary administrator's liability

If the voluntary administrator incurs debts for the purchase of goods or services, hiring, leasing, using or occupying property during the administration, under the administrator's authority, they are paid from the available assets of the company as costs of the voluntary administration. The administrator is personally liable to pay these costs, or any shortfall if there are insufficient funds available from company asset sales.

To have the benefit of this protection as a provider of goods or services to a company in voluntary administration, you should ensure you receive a purchase order authorised in the manner advised by the administrator.

The voluntary administrator must decide whether to continue to use or occupy property owned by another party held or occupied by the company at the time of their appointment.

Within five business days after their appointment, the voluntary administrator must notify the owner of property whether they intend to continue to occupy or use the property and, if they do not intend to continue to occupy or use the property, the location of that property (if known). If the voluntary administrator decides to continue to occupy or use the property, they will be personally liable for any rent or amounts payable that arise after the end of the five business days.

Creditors' meetings

Two creditor meetings must be held during the voluntary administration.

First creditors' meeting

The voluntary administrator must hold the first creditors' meeting within eight business days after the voluntary administration begins.

At least five business days before the meeting, the voluntary administrator must notify as many creditors as practical in writing (provide a notice of meeting) and advertise the meeting. The advertisement must appear on ASIC's Published notices website.

The voluntary administrator must also send to creditors declarations about any relationships they may have or indemnities they have been given. This declaration will allow creditors to consider the voluntary administrator's independence and make an informed decision about whether to replace them with another voluntary administrator of the creditors' choice.

The purpose of the first meeting is for creditors to decide whether they want:

- to form a committee of inspection, and, if so, who will be on the committee
- the existing voluntary administrator to be removed and replaced by a voluntary administrator of their choice.

A committee of inspection may be formed to assist and advise the voluntary administrator. The committee of inspection also monitors the conduct of the voluntary administration, may approve certain steps in the administration and may give directions to the voluntary administrator. The voluntary administrator must have regard to the directions but is not always required to comply with them.

A creditor who wishes to nominate an alternative voluntary administrator at the first meeting must approach a registered liquidator before the meeting and obtain written consent that they would be prepared to act as voluntary administrator. The proposed alternative administrator should give to those attending the meeting declarations about any relationships they may have or indemnities they have been given. The voluntary administrator will only be replaced if the resolution to replace them is passed by the creditors at the meeting.

To be eligible to vote at this meeting, you must lodge details of your debt or claim with the voluntary administrator.

This meeting can be chaired by either the voluntary administrator or any other person nominated in writing by the administrator.

Second creditors' meeting (to decide the company's future)

After investigating the company's affairs and forming an opinion on each of the three options available to creditors, the administrator must provide an opinion on which option is in the best interests of creditors. The administrator must then call a second creditors' meeting. At this meeting, creditors are given the opportunity to decide the company's future.

This meeting is usually held about five weeks after the company goes into voluntary administration (six weeks if the appointment is around Christmas or Easter).

In complex voluntary administrations, more time is sometimes needed for the voluntary administrator to report to creditors. In these circumstances, the court can grant an extension of time to hold the meeting.

The voluntary administrator must chair this meeting.

At least five business days before the meeting, the voluntary administrator must send creditors:

- a notice of meeting
- the voluntary administrator's report
- the voluntary administrator's statement.

These will be accompanied by:

- a claim form (usually a 'proof of debt' form)
- a proxy voting form.

The meeting must also be advertised on ASIC's Published notices website.

Either or both the first and second creditors' meeting may be held using telephone, videoconferencing or web-based meeting facilities.

Voluntary administrator's report

This report must give enough information to explain the company's business, property, affairs and financial circumstances. The report should allow you to make an informed decision about the company's future.

The report should also provide an analysis of any proposals for the future of the company, including the possible outcomes, as well as a comparable estimate of what would be available for creditors in a liquidation.

You should read the voluntary administrator's report before you attend the second meeting or decide to appoint someone else to vote on your behalf at that meeting.

Voluntary administrator's statement

The voluntary administrator's statement must include the voluntary administrator's opinion, with reasons, on each of the options available to creditors, as well as an opinion on which option the voluntary administrator believes is in the best interests of creditors. The options are:

- end the voluntary administration and return the company to the directors
- approve a DOCA (if one is proposed)
- wind up the company and appoint a liquidator.

The voluntary administrator's statement must also include other information known to the voluntary administrator that will allow you to make an informed decision about each of the options above.

The statement must also advise whether there are any voidable transactions where money or property may be recoverable by a liquidator, if one were appointed. Voidable transactions include unfair preferences (certain creditors have been paid in preference to other creditors), unfair loans, insolvent trading and creditor-defeating dispositions, including illegal phoenix activity.

If the director or other third parties provide proposals for a DOCA, the voluntary administrator must provide creditors with a statement giving enough detail about each proposal to enable creditors to make an informed decision. The types of proposals allowed in a DOCA are very flexible.

Typically, a DOCA proposal will provide for the company to pay all or part of its debts, possibly over time, and then be free of those debts. It will often provide for the company to continue trading. How these things will happen varies from case to case because the terms allowed in a DOCA are also very flexible.

You should insist on being provided with as much information about the terms of the proposed DOCA as possible before the creditors' meeting. The minimum contents of a DOCA provide a guide on the information you might request if it has not already been provided.

Contact the voluntary administrator before the meeting if you believe the voluntary administrator's report or statement does not contain sufficient information to allow you to decide the company's future.

Voting at a creditors' meeting

To vote at any creditors' meeting you must lodge details of your debt or claim with the voluntary administrator. Usually, the voluntary administrator will provide you with a form called a 'proof of debt' to complete and return before the meeting.

The chairperson of the meeting decides whether to accept the debt or claim for voting purposes. The chairperson may decide a creditor does not have a valid claim. In this case, they may not allow the creditor to vote. If the chairperson is not sure whether to accept the debt or claim, they must mark the vote as 'objected to' and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend (payment of their claim).

You can appeal to the court within 10 business days after the chairperson decides to accept or reject a proof of debt or claim for voting purposes.

A secured creditor can vote for the full amount of their debt without having to deduct the value of their security interest.

Voting by proxy

You can appoint an individual as proxy to attend and vote at a meeting on your behalf. Creditors who are companies will have to nominate a person as proxy so they can participate in the meeting. You do this by completing a proxy form sent out with the notice of meeting. You must provide the completed proxy form to the voluntary administrator before the meeting.

An electronic proxy form may be used if the liquidator allows electronic lodgement.

A 'special proxy' is used when you specify on the proxy form how the proxy is to vote on specified resolutions (the actual resolution wording is on the form). The proxy holder must vote in accordance with that instruction and cannot change the voting at the meeting. Further, the resolution specified in the form is the one you are voting on and if a different resolution is proposed (or the resolution is changed) then your special proxy vote should not counted because you have not indicated how you will vote on that changed or different resolution. A 'general proxy' is used when you leave it to the proxy holder to decide how to vote on each resolution.

You can appoint the chairperson to represent you through either a special or general proxy. The voluntary administrator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the voluntary administrator's fees.

Manner of voting

To vote on any resolution put to a creditors' meeting, creditors state aloud their agreement or disagreement, or a 'poll' is taken

If voting is on the voices, the resolution is passed if a majority present indicate agreement. It is up to the chairperson to decide if a majority is reached.

After the vote, the chairperson must tell those present whether the resolution passed or failed. If the chairperson cannot determine the outcome of a resolution on the voices, they may conduct a poll.

A person participating and entitled to vote can also demand a poll. If a poll is demanded, it must be taken immediately, and the chairperson determines how to take this poll.

If you intend to demand a poll, you must do so before, or as soon as, the chairperson has declared the result of a vote on the voices.

When a poll is taken, a resolution is passed if *both*:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution
- those creditors owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If a majority in both number and value is not reached under a poll (deadlock), the chairperson has a casting vote.

Chairperson's casting vote

When there is a deadlock, the chairperson may use their casting vote (except for resolutions to approve their remuneration) either in favour of or against the resolution. If the resolution relates to the liquidator's removal, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, and then the deadlocked resolution is not passed.

The chairperson must inform the meeting (and include in the written minutes of meeting lodged with ASIC) the reasons why they did or did not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may, in specified circumstances, apply to the court for a review of the chairperson's decision. The court may vary or set aside the resolution or order the resolution is taken to have been passed.

Votes of related creditors

If directors and shareholders, their spouses, relatives and other entities controlled by them are creditors of the company, they are entitled to attend and vote at creditors' meetings, including the meeting to decide the company's future.

If a resolution is passed or defeated based on related creditor votes and you are dissatisfied with the outcome, you may, in specified circumstances,

apply to the court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditor votes. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote is against the interests of all or a class of creditors).

Deciding how to vote at the second meeting

How you vote at the meeting on the three possible options, as well as any competing proposals for a DOCA, is a commercial decision based on your assessment of the company and its future prospects, and your personal circumstances. The information provided by the voluntary administrator, including opinions expressed, will assist you. However, you are not obliged to accept the administrator's recommendation.

If you do not consider you have been given enough information to decide how to vote, and particularly whether to vote for any DOCA proposal, you can ask for a resolution to be put to creditors that the meeting be adjourned (up to a maximum of 45 business days) and for the administrator to provide more information. You must make this request before a vote on the company's future. This resolution must be passed for the adjournment to take place.

Creditors also have the right, when a DOCA is proposed and considered at the meeting, to negotiate specific requirements into the terms of the DOCA (e.g. how the deed administrator is to report to creditors on the progress of the DOCA).

Any request to vary the DOCA proposal to include such requirements should be made before the vote takes place.

Minutes of meeting

The chairperson must prepare minutes of each meeting and a record of those who were present at each meeting.

The minutes must be lodged with ASIC within 10 business days of the meeting. A copy of the minutes of meeting may be obtained by searching ASIC Connect for a fee.

Company returned to directors

Rarely, creditors will resolve to return the company to its directors. If the company is returned to the directors, the directors are responsible for ensuring the company pays its outstanding debts as they fall due.

Liquidation

If creditors resolve the company go into liquidation, the voluntary administrator becomes the liquidator, unless creditors vote at the second meeting to appoint a different liquidator of their choice. The liquidation is a creditors' voluntary liquidation with any payments of dividends to creditors made in the order set out in the *Corporations Act 2001* (Corporations Act). For more information, see Information Sheet 45 *Liquidation: A guide for creditors* (INFO 45).

Deed of company arrangement

If creditors vote that the company enter a DOCA, the company must sign the deed within 15 business days of the creditors' meeting, unless the court allows a longer time. If this does not happen, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

The DOCA binds all unsecured creditors, even if they voted against the proposal. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the DOCA. In certain circumstances, the court can also order that these people are bound by the deed even if they did not vote for it. The DOCA does not prevent a creditor who holds a personal guarantee from the company's director or another person acting under the personal guarantee to be repaid their debt.

Contents of the deed

Whatever the nature of the DOCA, it must contain certain information, including the:

- name of the deed administrator
- property that will be used to pay creditors
- debts covered by the DOCA and the extent to which those debts are released
- order in which the available funds will be paid to creditors (the DOCA must ensure that employees have a priority in payment of outstanding employee entitlements unless eligible employees agree by a majority in both number and value to vary this priority)
- nature and duration of any suspension of rights against the company
- conditions (if any) for the DOCA to come into or continue operation
- circumstances in which the DOCA terminates.

There are also certain terms that will be automatically included in the DOCA, unless the DOCA says they will not apply. These are called the 'prescribed provisions'. They include the powers of the deed administrator, termination of the DOCA and the appointment of a committee of inspection.

The voluntary administrator's report should tell you which prescribed provisions are proposed to be excluded or varied and, if varied, how.

Monitoring the deed

The deed administrator must ensure the company (or others who have made commitments under the DOCA) carries through the commitments. The extent of the deed administrator's ongoing role will be set out in the DOCA.

Creditors can also play a role in monitoring the DOCA. If you are concerned that the company's (or others) obligations under the DOCA are not being met, you should promptly take this up with the deed administrator. Matters that may raise concern include deadlines for payments being missed or other actions promised under the DOCA not occurring.

Creditors have the right when a DOCA is proposed and considered at the second meeting to negotiate consequences of failure to meet deadlines into the terms of the DOCA. Any request to vary the DOCA proposal to include consequences should be made before a vote for the DOCA proposal occurs.

A director must notify the deed administrator if they become aware there has been, or is likely to be, a material contravention of the DOCA. In addition, the deed administrator must give notice to creditors as soon as practicable after becoming aware of a material contravention, or likely material contravention, of the DOCA.

A deed administrator must lodge with ASIC a detailed list of their receipts and payments (known as the annual administration return) annually on the anniversary of their appointment and at the end of their administration. A copy of the receipts and payments may be obtained by searching ASIC Connect for a fee.

Varying the deed

The deed administrator can call a creditors' meeting at any time to consider a proposed variation to the DOCA. The proposed resolutions must be set out in the notice of meeting sent to creditors.

The deed administrator must also call a meeting to consider a resolution to vary the DOCA if:

- the committee of inspection requests it (where there is a committee of inspection)
- creditors pass a resolution requiring the deed administrator call a meeting
- at least 25% in value of creditors request the deed administrator in writing to do so
- less than 25% but more than 10% in value of creditors ask the deed administrator in writing to do so and they pay for the cost of holding the meeting.

If the request to call a meeting is not reasonable, the deed administrator does not have to comply, but they must notify the person or body who made the request and set out reasons why.

The deed administrator may still convene a meeting to consider varying the DOCA if the person or body who made the request agrees (at the deed administrator's request) to pay the costs of calling and holding the meeting.

Payment of dividends under a deed

The order in which creditor claims are paid depends on the terms of the DOCA. Sometimes the DOCA proposal is for creditor claims to be paid in the same order as in a liquidation. Other times, a different order is proposed.

The DOCA must ensure employee entitlements are paid before (in priority to) other unsecured creditors unless eligible employees agreed to vary the order.

Before you decide how to vote at the creditors' meeting, make sure you understand how the DOCA will affect the order of payment of your debt or claim.

You may wish to seek independent legal advice if the DOCA proposes a different order to that in a liquidation, or if creditors approve such a DOCA.

Establishing your claim under a deed

How debts or claims are dealt with under a DOCA depends on the DOCA's terms. Sometimes the DOCA incorporates the Corporations Act provisions for dealing with debts or claims in a liquidation.

Before any dividend is paid to you for your debt or claim, you will need to give the deed administrator information to prove your debt. You may need

to complete a 'proof of debt' form. You should attach copies of all relevant invoices or other supporting documents to the claim form because your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the claim form should be signed by a person authorised by the company.

When you submit your claim, ask the deed administrator to acknowledge receipt of your claim and ask if they require any further information.

If the deed administrator rejects your claim, follow the steps outlined in the notice of rejection and/or seek competent legal advice on your options to appeal the decision to reject your claim. Depending on the terms of the DOCA, you may have a limited time to take legal action to challenge the decision.

Contact the deed administrator if you have questions about the calculation of your claim or the timing of the payment.

How a deed comes to an end

A DOCA may end when:

- the obligations under the DOCA have been fulfilled and creditors have been paid
- the DOCA automatically terminates following certain conditions being met (as set out in the DOCA). In this case, the DOCA may provide that the company will go into liquidation because the conditions have been met
- the deed administrator calls a meeting of creditors (on their own initiative or at the direction of creditors or the committee of inspection if one has been formed), and creditors vote to end the DOCA. This may occur because there has been a breach of the DOCA or it is unlikely the terms of the DOCA can be fulfilled. At this time, creditors may be asked to vote to put the company into liquidation, or
- the DOCA is terminated because a creditor, the company, ASIC or any other interested person applies to the court and the court is satisfied that:
    - creditors were provided false and misleading information when the decision to accept the DOCA proposal was made
    - the voluntary administrator's report left out information material to the decision to accept the DOCA proposal
    - the DOCA cannot proceed without undue delay or injustice
    - the DOCA is unfair or discriminatory to the interests of one or more creditors or against the interests of all creditors.

If the court terminates the DOCA as a result of such an application, the company automatically goes into liquidation.

Approval of administrator's fees

Both a voluntary administrator and deed administrator are entitled to be paid for the necessary work they properly perform. Generally, their fees will be paid from available assets before any payments are made to creditors. If there are no – or only limited – assets the administrator is sometimes not paid (or only partially paid) for the work they do. They may arrange for a third party to contribute to their fees.

An administrator/deed administrator is also entitled to ask for approval to pay their estimated future fees (for work yet to be done). This is usually requested to allow them to continue doing work up to a certain point in time (e.g. to achieve a particular outcome) or to the completion of the administration/deed administration.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Creditors, the voluntary administrator or deed administrator, or ASIC can ask the court to review the amount of fees approved. The voluntary administrator or deed administrator can also put a proposal to creditors to approve their fees without holding a meeting.

If you are asked to approve fees at a general meeting of creditors or at a meeting of a committee of inspection, the voluntary administrator or deed administrator must give you a report with sufficient information to help you assess whether the requested fees are reasonable. This should be given to you at the same time as the notice of the meeting or with the proposal. This report should be in simple language and set out:

- a summary of the major tasks performed or likely to be performed
- the costs of completing those tasks and how they were calculated
- the periods when funds will be drawn to pay the fees
- the estimated total fees or range of fees
- an explanation of the likely impact the fees will have on any payments to creditors
- other information that will assist you to determine whether the fees claimed are reasonable.

If you are in any doubt about how the fees were calculated, ask the voluntary administrator or deed administrator for more information.

If you do not think the fees are reasonable, raise your concerns with the voluntary administrator or deed administrator.

Apart from fees, the voluntary administrator and deed administrator are entitled to reimbursement for out-of-pocket expenses. This reimbursement may require creditor, committee of inspection or court approval.

For further information, see Information Sheet 85 *Approving fees: A guide for creditors* (INFO 85).

Proposals to creditors without a meeting

Instead of convening a creditors' meeting, the voluntary administrator or deed administrator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor entitled to receive notice of a meeting and:

- include a statement of the reasons for the proposal and likely impact the proposal will have on creditors
- invite the creditor to either:
  - vote 'yes' or 'no' for the proposal
  - object to the proposal without a meeting
- specify a reasonable time for the administrator to receive creditor replies.

To vote on the proposal, you must lodge details of your debt or claim with the administrator and complete the provided voting documents.

You can vote 'yes' or 'no' on the proposal and/or object to the proposal without a creditors' meeting. You should return your response to the administrator within the time specified in the notice, which must be at least 15 business days after notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if 25% or less in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The administrator should provide enough information to allow creditors to make an informed decision. Contact the administrator if you need further information to help you decide.

If the proposal without a meeting relates to the approval of remuneration, the voluntary administrator or deed administrator must provide you with the same information as if a meeting had been called.

The administrator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by

searching ASIC Connect for a fee.

Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator or deed administrator. The committee of inspection also:

- monitors the conduct of the voluntary administrator or deed administrator
- may approve certain steps in the voluntary administration or deed administration
- may give directions to the voluntary administrator or deed administrator.

The voluntary administrator or deed administrator must have regard to the directions but is not always required to comply with them.

In a voluntary administration, the committee may be formed at the first creditors' meeting.

All creditors are entitled to stand for committee membership. Members appointed to the committee of inspection represent the interests of all creditors.

If a creditor is a company, the creditor can nominate, in writing, an individual to represent it on the committee.

A person can be appointed as a member of the committee of inspection by:

- resolution of creditors
- a creditor or group of creditors owed at least 10% of the value of creditors' claims
- an employee or group of employees owed at least 50% in value of outstanding employee entitlements.

A member of the committee of inspection must not directly or indirectly derive any profit or advantage from the administration of the company unless creditors resolve to allow it or a court grants leave to derive the profit or advantage. Deriving a profit or advantage can arise during ongoing trading with the company after the liquidator is appointed.

A committee of inspection has various powers and functions, including to:

- approve the voluntary administrator's or deed administrator's remuneration

- direct the voluntary administrator or deed administrator to convene a creditors' meeting
- request the voluntary administrator or deed administrator to give information, provide a report or produce a document
- obtain specialist advice or assistance (with the prior approval of the voluntary administrator, deed administrator or the court) that the committee considers desirable about the conduct of the voluntary administration or the deed administration.

If the request to convene a meeting or provide information is not reasonable, the voluntary administrator or deed administrator is not required to comply with the request.

A committee of inspection can determine its own procedures and exercises its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of its members present at a meeting. The committee of inspection can only act if a majority of its members attend.

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC. A copy of the minutes of the committee of inspection meetings may be obtained by searching ASIC Connect for a fee.

ASIC is entitled to attend a meeting of the committee of inspection.

Directors and voluntary administration

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator by providing the company's books and records, a Report on Company Activities and Property and providing any further information about these that the voluntary administrator reasonably requires.

If the company goes from voluntary administration into a DOCA, the directors' powers depend on the DOCA's terms. When the DOCA is completed, the directors regain full control of the company, unless the DOCA provides for the company to go into liquidation on completion.

If the company goes from voluntary administration or a DOCA into liquidation, the directors cannot use their powers. If creditors resolve that the voluntary administration should end, control of the company goes back to the directors.

Other creditor rights

Request for information

Creditors can, by resolution or individually, request the voluntary administrator or deed administrator to give information, provide a report or produce a document.

The voluntary administrator or deed administrator must comply with this request unless:

- the information, report or document is not relevant to the administration
- the voluntary administrator or deed administrator would breach their duties if they complied with the request
- it is not reasonable to comply with the request.

There are rules governing when a direction is not reasonable, including if the voluntary administrator or deed administrator, acting in good faith, thinks that:

- complying with the request would substantially prejudice the interests of one or more creditors or a third party, and that the prejudice outweighs the benefits of complying with the request
- the information would otherwise be privileged from production in legal proceedings
- there is not enough money to cover the costs incurred to comply with the request.

If the direction is not reasonable, the voluntary administrator or deed administrator must notify the requesting party and set out reasons why the request is not reasonable.

If the requesting party agrees to pay the costs of providing the information and security for those costs (if the voluntary administrator or deed administrator requires it), the voluntary administrator or deed administrator must comply with the request.

Appoint a reviewing liquidator

Creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the voluntary administrator or deed administrator. With the voluntary administrator or deed administrator's agreement, one or more creditors may also appoint a reviewing liquidator.

A creditor can also apply for ASIC to appoint a reviewing liquidator: see Form 5605 *Application for ASIC to appoint a reviewing liquidator*.

Where creditors resolve to appoint a reviewing liquidator, the review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12 months before the reviewing liquidator is appointed (unless the voluntary administrator or deed administrator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get written consent that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm have that might affect their independence to act as reviewing liquidator.

The voluntary administrator or deed administrator, and their staff, must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint a reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the external administration. If one or more creditors appoint the reviewing liquidator with the consent of the voluntary administrator or deed administrator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) who appoint the reviewing liquidator.

Questions and complaints

Contact the voluntary administrator or deed administrator to raise questions or complaints. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a report of misconduct with ASIC. Reports of misconduct against companies and their officers can also be made to ASIC. ASIC does not usually become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

More information

- Information Sheet 39 *Insolvency information for directors, employees, creditors and shareholders* (INFO 39)
- Australian Restructuring Insolvency & Turnaround Association (ARITA) website

- 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. 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 qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

> Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.
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> This information sheet was reissued in June 2023.