Deed of company arrangement for creditors

- What is a deed of company arrangement (DOCA)?
- How will I get paid in a DOCA?
- Who monitors the DOCA?

What is a deed of company arrangement?

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

- maximise the chances of the company, or as much as possible of its business, continuing, and/or
- provide a better return for creditors than an immediate winding up of the company.

If creditors vote for a proposal 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 doesn't 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 deed). In certain circumstances, the Court can also order these people be bound by the deed even if they didn't 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.

Creditors' trust

Sometimes a DOCA can involve the creation of a creditors' trust. A creditors' trust is a separate legal arrangement used to accelerate a company's exit from external

administration. Creditors' claims are transferred to a newly created trust and any return is received from the trustee of the trust, not the deed administrator. The DOCA usually terminates after creditors' claims are moved to the trust. To make sure creditors are fully informed of their choices, external administrators have certain obligations about the information provided where a creditors' trust is proposed: see Regulatory Guide 82 *External administration: Deeds of company arrangement involving a creditors' trust*.

Back to top

How will I get paid in a DOCA?

You will need to give the deed administrator sufficient information to prove your debt. You may be required to complete a claim form (or a 'proof of debt'). To prove your debt, you should:

- complete the claim form within the time specified by the deed administrator
- attach copies of relevant invoices or supporting documents to the claim form.

You may ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

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. You may also contact the deed administrator and seek your own legal advice. This should be done promptly. Depending on the terms of the DOCA, you may have limited time to challenge the decision.

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 priority as in a liquidation. Other times, a different priority is proposed.

The DOCA must ensure employee entitlements have priority over other unsecured creditors unless eligible employees have agreed to vary their priority.

Make sure you understand how the DOCA will affect the priority of payment of your debt or claim, before you vote at the second creditors' meeting.

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

If you have a query about the timing of the payment, discuss this with the deed administrator.

Back to top

Who monitors the DOCA?

It is the role of the deed administrator to make sure the company carries out its 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 the obligations of the company under the DOCA are not being met, you should take this up with the deed administrator (e.g. deadlines for payments or other actions promised under the DOCA being missed).

You can also negotiate the 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 the DOCA proposal is voted on. After a DOCA has been executed, creditors can resolve to vary the terms of a DOCA.

The deed administrator must lodge annual accounts of the receipts and payments in the DOCA with ASIC.

Back to top