

ARITA
AUSTRALIAN RESTRUCTURING INSOLVENCY & TURNAROUND ASSOCIATION

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A FACT SHEET FOR DIRECTORS

Simplified Liquidation

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The law provides that a simplified liquidation process may be followed in a creditors' voluntary liquidation for certain eligible companies.

The simplified process is intended to be more cost effective due to reduced investigation, reporting and distribution requirements, however much of the process remains the same.

The liquidation process

Liquidation is the process of converting a company's assets into cash, and using those funds to repay, as much as possible, the company's debts.

Liquidation results in the company being shut down.

There are three different types of liquidation:

- Creditors' voluntary liquidation – is initiated by the company's directors when they are concerned the company can't pay its debts.
- Court liquidation – starts because of a court order, usually made after an application by a creditor of the company.
- Members' voluntary liquidation – is a way for solvent companies (i.e. those not in financial difficulty) to shut down.

Creditors' voluntary liquidation is the most common type of liquidation.

What are the eligibility criteria?

The simplified process may only be adopted where a company in creditors' voluntary liquidation and the company:

- will not be able to pay its debts in full within 12 months of the start of the liquidation
- has no more than $1,000,000 in debts, including amounts for termination of employees (even if they are yet to be terminated)
- is up to date with the lodgement of all returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the *Income Tax Assessment Act 1997*), and
- has not been under restructuring or subject of a simplified liquidation process in the past 7 years.

Directors will have to sign a declaration that the company is eligible.

In addition, the current and recent[1] directors of the company cannot also have been a director of a company that has been under restructuring or subject of a simplified liquidation process in the past 7 years.

How is the simplified process adopted?

Following their appointment, if the liquidator believes a company is eligible, they must provide 10 business days' notice to creditors and members of their intention to adopt a simplified process. There is no guarantee that a simplified liquidation process will be possible, and a liquidator is unable to adopt a simplified liquidation if at least 25% in value of unrelated creditors request them not to or if they determine the company is no longer eligible.

The liquidator only has 20 business days from the appointment to adopt a simplified process.

If the simplified liquidation process is adopted, the directors of the company will be subject to some restrictions on the future use of the simplified liquidation or a small business restructuring process with other companies of which they are, or were, a director.

What has been simplified?

The simplified liquidation process modifies the obligations of the liquidator while they undertake the liquidation. In basic terms it provides for:

- simplified three-month reporting to creditors.
- modified recovery of unfair preferences from unrelated creditors.
- modified reporting to ASIC on possible director offences.

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- modified dividend requirements, including only one dividend being paid.
- no meetings of creditors (resolutions must be passed without a meeting – using proposals[2]), however creditors retain the right to make reasonable requests for information from the liquidator
- no ability to appoint a committee of inspection or reviewing liquidator (unless appointed by the court).

Ceasing the simplified liquidation process.

Directors have no powers in a liquidation and there is no option for appointee to simply opt-out once a simplified liquidation adopted, however the liquidator must cease to follow the simplified process if:

- the eligibility requirements are no longer met or
- the liquidator believes that the company or a director has engaged in conduct involving fraud or dishonesty which has, or is likely to have, a material adverse effect on the interests of all, or a class of, creditors.

Advice you can trust

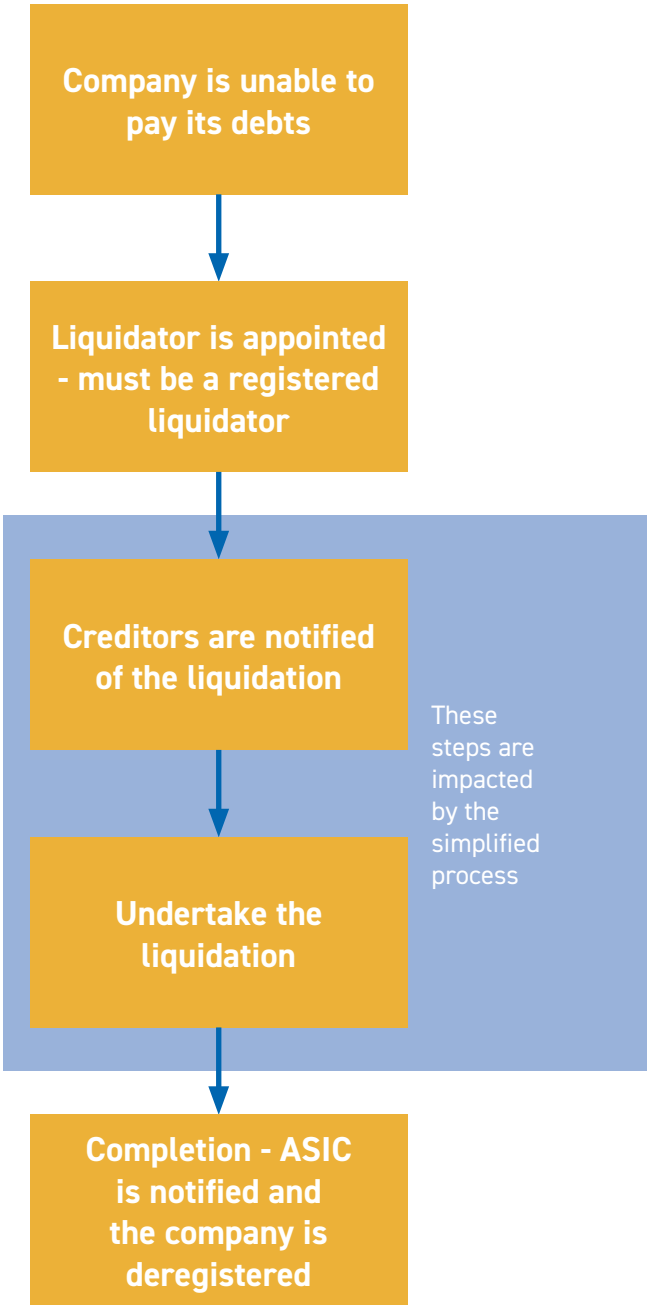
In times of financial uncertainty and distress, it's important to know where to go for help you can trust.

ARITA Professional Members are qualified, professional and regulated, which means you will get accurate, timely and lawful advice to help you deal with a financial crisis.

They can provide the right advice and guidance around insolvency (including bankruptcy) and business restructuring and turnaround.

Most ARITA Professional Members provide an initial meeting to discuss your circumstances, free of charge.

The creditors' voluntary liquidation process



[1] Recent includes directors acting during the preceding 12 months

[2] An information sheet on proposals is available on the ARITA website: www.arita.com.au

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