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Australia

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TO THE CREDITOR AS ADDRESSED

Our ref 30717402_1

7 September 2017

Dear Sir/Madam

Brierty Limited (Administrators Appointed)
ACN 095 459 448 ("the Company")

The purpose of this document is to provide you with information about the voluntary administration of the Company and your rights as a creditor.

1 Notification of appointment

We advise that Hayden White, Clint Joseph and I, Matthew Woods, of KPMG were appointed as joint and several Voluntary Administrators of the Company on 6 September 2017 pursuant to section 436A of the Corporations Act 2001 (Cth) ("the Act"). A copy of our notice of appointment is attached.

2 Declaration of Independence, Relevant Relationships and Indemnities

In accordance with section 436DA of the Act, please find attached a copy of the Declaration of Independence, Relevant Relationships and Indemnities ("DIRRI").

The DIRRI assists you to understand any relevant relationships that we have, and any indemnities or upfront payments that have been provided to us. We have considered each relationship and it is our opinion that none of the relationships disclosed in the DIRRI result in a conflict of interest or duty or affect our independence.

3 What is voluntary administration

A voluntary administration, or VA, is a process initiated by the directors of a Company when they believe that the Company is, or is likely to become, insolvent. This means that the Company is unable to pay its debts, or is likely to become unable to pay its debts.

A voluntary administration gives a Company an opportunity to consider its financial position and its future. Creditors will be given an opportunity to vote on the future of the Company.

According to the Company's records, you may be a creditor of the Company.

The Administrators are currently working, and will continue to work with the Company's senior management team, secured lenders and suppliers whilst undertaking a review of the Company's current operating position, and will maintain regular contact with all key stakeholders throughout the process.

KPMG, an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.

Liability limited by a scheme approved under Professional Standards Legislation.

4 What happens to your debt

All creditors of the Company are now creditors in the voluntary administration for debts outstanding as at 6 September 2017. As a creditor, you have certain rights, although your debt will be dealt with in the voluntary administration.

It is important to note that a voluntary administration creates restrictions on creditors being able to enforce their rights. You generally cannot enforce your claim, recover your property, enforce your security, commence an action to place the Company into liquidation or act on a personal guarantee.

As you will appreciate, at this early stage of the Administration, we are not currently in a position to provide creditors with an estimate of any returns that may be paid to them, nor are we able to provide an estimate of the timing of any potential returns.

If you have leased Company property, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact my staff as soon as possible.

Ongoing trading

We are continuing to trade. If you are a supplier, enclosed is a separate communication on how this appointment impacts your ongoing dealings with the Company.

If you are an employee you should have received by email a separate communication dated 6 September 2017.

If you have not received copies of our correspondence referred to above, please contact this office immediately.

5 Your rights as a creditor

Information regarding your rights as a creditor is provided in the attached information sheets . This includes your right to:

- Make reasonable requests for information;
- Give directions to me;
- Appoint a reviewing liquidator;
- To replace me as voluntary administrator.

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6 Meetings of creditors

As voluntary administrators, we are required to hold two meetings of creditors.

6.1 *First meetings of creditors*

The first meeting of creditors will be held as follows:

Date:	Friday, 15 September 2017
Time:	10:00am (AWST)
Address:	Ground Floor, 235 St Georges Terrace, Perth WA 6000

Electronic facilities will be made available at the meeting via conference telephone call. To access those facilities, you need to provide a statement by email to Niany Ekladious on AU-FMBrierty@kpmg.com.au not later than 2 business days before the meeting which sets out:

- **Name:** The name of the person and of the proxy or attorney (if any)
- **Address:** An address to which notices to the person, proxy or attorney may be sent
- **Contact:** The method of contacting the person, proxy or attorney for the purposes of the meeting.

On receipt of this statement, you will be provided with instructions on how to access the facilities for the meeting.

Should you intend to utilise these facilities, please notify this office as soon as possible.

Further meeting information, including notice of meeting is attached. To participate in this meeting, you are required to:

- Submit a **proof of debt** and information to substantiate your claim.
- Appoint a person – a "**proxy**" or person authorised under a power of attorney – to vote on your behalf at the meeting. This may be necessary if you are unable to attend the meeting, or if the creditor is a company.
- You can appoint the chairperson of the meeting as your proxy and direct the chairperson how you wish your vote to be cast. If you choose to do this, the chairperson must cast your vote as directed.

Proof of debt and proxy forms are included with the notice of meeting. To facilitate the conduct of the meeting, completed proof of debt and, if applicable, proxy forms must be returned to my office by post, fax or email by **4:00pm (AWST) on Thursday, 14 September 2017.**

Committee of Inspection

At this meeting, creditors will consider whether a Committee of Inspection ("COI") should be appointed. The role of a Committee of Inspection is to consult with the voluntary administrators

and receive reports on the conduct of the administration. A creditors' committee can also approve the administrator's fees.

It is our opinion that a COI would be useful to assist with the conduct of the voluntary administration. An information sheet on the role of a COI is attached. You should think about whether you would like to act as a member of the COI.

6.2 *Second meeting of creditors*

We will also in due course call a second meeting of creditors. Before that meeting you will be sent the notice of meeting and a detailed report which sets out the options for the Company's future. We will also give our opinion as to what option we think is in the best interests of creditors. At that second meeting, creditors will decide about the future of the Company.

You are encouraged to attend these meetings and participate in the voluntary administration process.

7 What happens next with the Voluntary Administration?

We will proceed with the voluntary administration, including:

- An assessment of the ongoing trading the business;
- Preparing for and holding the meetings of creditors;
- Undertaking investigations into the Company's affairs;
- Analysing any offer for a Deed of Company Arrangement that is received; and
- Preparing my report to creditors.

As discussed above, you will receive further correspondence from me before the second meeting of creditors.

8 Costs of the voluntary administration

Attached is our Initial Remuneration Notice. This document provides you with information about how we propose to be paid for undertaking the voluntary administration.

We will seek your approval of our remuneration at the second meeting of creditors. We will provide you with detailed information regarding our remuneration before that meeting so that you can understand what tasks we have undertaken or will be required to undertake, and the costs of those tasks.

9 Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association ("ARITA") provides information to assist creditors with understanding voluntary administrations and insolvency.

This information is available from ARITA's website at arita.com.au/creditors.

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at asic.gov.au (search for "insolvency information sheets").

10 What you should do next

You should now:

- read the attached information
- decide whether you are going to attend the first meeting, and
- complete and return your proof of debt, and if required, proxy form by 4pm on Thursday, 14 September 2017.

Should you wish to receive future communication by email, please email AU-FMBrierty@kpmg.com.au and provide your name, name of the creditor entity which you represent (if applicable) and the amount of your claim.

Should you have any queries in relation to this matter, please contact our office via email to AU-FMBrierty@kpmg.com.au.

Yours faithfully

Matthew Woods
Joint and Several Administrator

Attachments:

Notice of appointment
DIRRI
Notice of meeting
Form 535 Formal proof of debt form
Form 532 Proxy form
Initial remuneration notice
ASIC/ARITA Creditor information sheets
COI information sheet
Circular to suppliers dated 7 September 2017

Corporations Act 2001 (Cth)

Section 450A(I)

Notice of Appointment of Administrators

Brierty Limited (Administrators Appointed)

ACN 095 459 448 ("the Company")

Notice is given that Hayden White, Clint Joseph and I, Matthew Woods of KPMG, Level 8, 235 St Georges Terrace, Perth, Western Australia were appointed joint and several administrators of the Company on 6 September 2017 pursuant to section 436A of the Corporations Act 2001.

Dated this 6th Day of September 2017

Matthew David Woods
Joint and Several Administrator

KPMG
Level 8, 235 St Georges Terrace
Perth WA 6000
Tel: (08) 9263 7171
Fax: (08) 9263 7129

Declaration of Independence, Relevant Relationships and Indemnities

Brierty Limited (Administrators Appointed)

ACN 095 459 448 ("the Company")

Practitioner/s appointed to an insolvent entity are required to make declarations as to:

A. their independence generally;

B. relationships, including

   i the circumstances of the appointment;

   ii any relationships with the Company and others within the previous 24 months;

   iii any prior professional services for the Company within the previous 24 months;

   iv. that there are no other relationships to declare; and

C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, Matthew David Woods, Hayden Leigh White and Clint Peter Joseph, our partners and the KPMG Australia Partnership ("KPMG Australia").

A. Independence

We, Matthew David Woods, Hayden Leigh White and Clint Peter Joseph ("the Administrators") of KPMG Australia have undertaken a proper assessment of the risks to our independence in full accordance with the Corporations Act 2001 ("the Act") and the Australian Restructuring, Insolvency and Turnaround Association Code of Professional Practice for Insolvency Practitioners ("the ARITA Code") prior to accepting the appointment as joint and several Administrators of the Company. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

B. Declaration of Relationships

i. Circumstances of appointment

Representatives of KPMG Australia (now the Administrators) were first contacted by the Company's Chairman, Dalton Gooding, on 25 August 2017 regarding the potential for the Company to require solvency advice and the options available to the company.

KPMG Australia attended a meeting at the offices of the Company, on 28 August 2017, to discuss the Company's financial position and options available. In attendance at the meeting was Mr Ray Bushnell, Managing Director of the Company, Mr Bradley Garside, acting Chief Financial Officer of the Company, Mr Mark Davies, General Counsel and Company Secretary of the Company, Matthew Woods, Partner of KPMG Australia and Rebecca Wilson, Manager of KPMG Australia.

Between 25 August 2017 and 5 September 2017, KPMG Australia held four telephone calls and had email correspondence with the Company on the updated financial position of the Company and likelihood or otherwise of the need to appoint administrators.

KPMG Australia attended a meeting on 5 September 2017 with the Company's Board and Secured Creditor, relating to the current financial position of the Company, and the proposed Voluntary Administration.

KPMG Australia attended a meeting of the board of directors on 6 September 2017 where the board resolved to appoint representatives of KPMG as Administrators.

We have received no remuneration in respect of the above.

In our opinion, the above conduct does not result in a conflict of interest or duty as the communications were conducted over a short period of time and were limited to understanding the Company's financial situation, options available, and effectuating the appointment itself. Such communications are consistent with clause 6.8.1B of the ARITA Code.

We have provided no other information or advice to the Company, its Directors or the Company's Secured Creditor prior to our appointment beyond that outlined in this DIRRI.

ii. Relevant Relationships (excluding Professional Services to the Insolvent)

We, or a member of our firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons
Commonwealth Bank of Australia ("CBA")	CBA, through BankWest, has a registered security interest over some or all of the assets of Brierty Limited. KPMG Australia undertakes work from time to time on behalf of the CBA in both an informal and formal capacity. KPMG Australia also undertakes receivership and investigatory accountants' roles for the CBA.	We believe that such relationships are commonplace in insolvency and does not result in a conflict of interest or duty because the work that KPMG Australia undertakes for the CBA will not influence our ability to be able to full comply with the statutory and fiduciary obligations associated with the Voluntary Administration of the Company in an objective and impartial manner.

iii. Prior Professional services to the Insolvent

We, or a member of our firm, have provided the following professional services to the Secured Creditor of the Company in the 24 months prior to the acceptance of this appointment:

Name	Nature of Professional Services	Reasons
Commonwealth Bank of Australia ("CBA" – Secured Creditor of the Company	KPMG Australia undertook five Investigating Accountants engagements for the CBA, through BankWest, on Brierty Ltd, prior to our appointment as Voluntary Administrators. The purpose of these engagements were to consider and review the performance of the Company's major contracts, its financial position and forecasts. I reported direct to the Bank on the outcome of my investigations. The Investigating Accountants engagements were limited in nature and commenced in November 2015 and the last engagement was completed in May 2017, four months prior to our appointment as Voluntary Administrators. I was paid $489,640 by the CBA/BankWest for these engagements. I received the last receipt for these engagements on 19 December 2016.	We believe that this relationship does not result in a conflict of interest or duty because: • The work undertaken during the Investigating Accountants engagement has assisted us in developing an understanding of the Company and its activities. The investigation did not reveal any issues with the validity of the CBA's security in respect of the Company. • The reports that KPMG Australia provided to the CBA are not of the nature that it would be subject to review during the voluntary administration. The work undertaken by our firm for the CBA will not influence our ability to fully comply with the statutory and fiduciary obligations associated with the voluntary administration of the Company in an objective and impartial manner.

iv. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of the Company's property that should be disclosed.

C. Indemnities and up-front payments

The Administrators, have not been indemnified in relation to this Administration other than any indemnities that they may be entitled to under statute. No up-front payments in respect of our remuneration and disbursements have been received.

Dated: 7 September 2017

.....	.....	.....
Matthew David Woods Administrator	Hayden Leigh White Administrator	Clint Peter Joseph Administrator

Note:

1. If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Insolvency Practice Rules
75-15 - 75-35
Corporations Act 2001

NOTICE OF MEETING OF CREDITORS OF COMPANY

Brierty Limited (Administrator Appointed) ACN 095 459 448 ("the Company")

On 6 September 2017 the Company under section 436A appointed Matthew Woods, Hayden White and Clint Joseph of KPMG, 235 St Georges Terrace, Perth, Western Australia as the Administrators of the Company. The Company traded under name, *Brierty*.

Notice is given that a meeting of the creditors of the Company will be held as follows:

Date:	**Friday, 15 September 2017**
Time:	**10:00am (AWST)**
Address:	**Ground Floor Auditorium, 235 St Georges Terrace, Perth WA 6000**

Agenda

The purpose of the meeting is to:

- Provide a brief history of the Company and the background to the appointment.

- The meeting would also determine:
  - whether to appoint a committee of inspection; and
  - if so, who are to be the committee's members.

- At the meeting, creditors may also, by resolution:
  - remove the administrators from office; and
  - appoint someone else as administrator(s) of the Company.

- Discuss any other relevant business which may arise.

Attending and voting at the meeting

Creditors are invited to attend the meeting, however they are not entitled to participate and vote at a meeting unless:

- **Proof of debt**: They have lodged with the Administrators particulars of the debt or claim and the claim has been admitted, wholly or in part, by the Administrators. If a proof of debt has already been lodged, they do not need to do so again. Refer to Note 1 for further guidance on entitlement to vote.

- **Proxies or attendance**: They are either present in person or by electronic facilities or validly represented by proxy, attorney or an authorised person under s250D of the Corporations Act 2001 ("the Act"). If a corporate creditor is represented, a proxy form, power of attorney or evidence of appointment of a company representative pursuant to Section 250D of the Act must be validly completed and provided to the Administrators at or before the meeting.

To enable sufficient time to review, proofs of debt and proxies (or documents authorising the representation) should be submitted to Niany Ekladious at AU-FMBrierty@kpmg.com.au or via post to GPO Box A29, Perth WA 6837 by no later than **4:00pm on Thursday, 14 September 2017**. If you choose to return these documents by post, please allow sufficient time for the documents to be received prior to the due date.

Electronic facilities

Electronic facilities will be made available at the meeting via conference telephone call. To access those facilities, you need to provide a statement by email to Niany Ekladious at AU-FMBrierty@kpmg.com.au, not later than 2 business days before the meeting which sets out:

- **Name:** The name of the person and of the proxy or attorney (if any)
- **Address:** An address to which notices to the person, proxy or attorney may be sent
- **Contact:** The method of contacting the person, proxy or attorney for the purposes of the meeting.

Any queries should be directed to Niany Ekladious at AU-FMBrierty@kpmg.com.au.

Dated this 7th day of September 2017

.....
Matthew Woods
Joint and Several Administrator

235 St Georges Terrace
Perth WA 6000

Note 1: Entitlement to vote and completing proofs

IPR (Corp) 75 85 Entitlement to vote at meetings of creditors

(1) A person other than a creditor (or the creditor's proxy or attorney) is not entitled to vote at a meeting of creditors.
(2) Subject to subsections (3), (4) and (5), each creditor is entitled to vote and has one vote.
(3) A person is not entitled to vote as a creditor at a meeting of creditors unless:
  (a) his or her debt or claim has been admitted wholly or in part by the external administrator; or
  (b) he or she has lodged, with the person presiding at the meeting, or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    (i) those particulars; or
    (ii) if required—a formal proof of the debt or claim.
(4) A creditor must not vote in respect of:
  (a) an unliquidated debt; or
  (b) a contingent debt; or
  (c) an unliquidated or a contingent claim; or
  (d) a debt the value of which is not established;
  unless a just estimate of its value has been made.
(5) A creditor must not vote in respect of a debt or a claim on or secured by a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor unless he or she is willing to do the following:
  (a) treat the liability to him or her on the instrument or security of a person covered by subsection (6) as a security in his or her hands;
  (b) estimate its value;
  (c) for the purposes of voting (but not for the purposes of dividend), to deduct it from his or her debt or claim.
(6) A person is covered by this subsection if:
  (a) the person's liability is a debt or a claim on, or secured by, a bill of exchange, a promissory note or any other negotiable instrument or security held by the creditor; and
  (b) the person is either liable to the company directly, or may be liable to the company on the default of another person with respect to the liability; and
  (c) the person is not an insolvent under administration or a person against whom a winding up order is in force.

Insolvency Practice Rules, 75-25
Corporations Act 2001

APPOINTMENT OF PROXY

Brierty Limited (Administrators Appointed) ACN 095 459 448 ("the Company")

*I/*We _____(name of signatory) of _____(creditor name)

a creditor of the Company appoint _____(name of proxy)

of _____(address of proxy)

or in his or her absence_____(details of alternate proxy)

as *my/*our *general/*special proxy to vote at the meeting of creditors to be held on **Friday, 15 September 2017 at 10:00am (AWST)**, at the Ground Floor Auditorium, 235 St Georges Terrace, Perth WA 6000, at any adjournment of that meeting.

If a special proxy, specify how you wish your proxy to vote for each of the resolutions.

Resolutions

	For	**Against**	**Abstain**
1. "That a Committee of Inspection of Brierty Limited (Administrators Appointed) be appointed."			
2. "That pursuant to section 436E(4) of the Corporations Act 2001 (Cth) ("the Act"), the Administrators, Matthew Woods, Hayden White and Clint Joseph, be removed from office and _____ of _____ be appointed as Administrators of Brierty Limited (Administrators Appointed)."			

*I/*We authorise *my/*our proxy to vote as a general proxy on resolutions other than those specified above (*delete if not required*)

Signature: _____

Dated: _____

*Omit if inapplicable

FORM 535

subregulation 5.6.49(2)
Corporations Act 2001

FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Administration of **Brierty Limited (Administrators Appointed) ACN 095 459 448 ("the Company")**

1. This is to state that the Company was on 6 September 2017, and still is, justly and truly indebted to: _

_____

_____full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for _____ dollars and _____cents

Particulars of the debt are:

Date	Consideration (*state how the debt arose*)	Amount	Remarks (*include details of voucher substantiating payment)*
		$	

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: _____

_____

_____

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount	Due Date
			$	

3. Signed by (select option):

☐ I am the creditor personally.

☐ I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

☐ I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____ Dated: _____

Name: _____ Occupation: _____

Address: _____

RECEIVE REPORTS BY EMAIL	Yes	No
Do you wish to receive all future reports and correspondence from our office via email?	☐	☐
Email:……		

Initial Remuneration Notice

Brierty Limited (Administrators Appointed)

ACN 095 459 448 ("the Company")

The purpose of the Initial Remuneration Notice is to provide you with information about how I propose my remuneration for undertaking the Administration will be set.

1 Remuneration Methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

- ***Time based / hourly rates:*** This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- ***Fixed Fee:*** The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.
- ***Percentage:*** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.
- ***Contingency:*** The practitioner's fee is structured to be contingent on a particular outcome being achieved.

2 Method chosen

Given the nature of this administration I propose that my remuneration be calculated *on* time based / hourly rates. This is because:

- This ensures that the Administrators and their staff will only be paid for the work that has been performed, subject to adequate realisations of the Company's assets;
- In accordance with the provisions of the Corporations Act, we are required to perform a number of tasks which do not relate to the realisation of the Company's assets. Accordingly, fees based only on asset realisation would be unrealistic; and
- We are unable to provide an upfront reliable estimate of the total fees to complete all tasks in the administration.

3 Explanation of Hourly Rates

The rates for my remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

KPMG Restructuring Services Guide to Hourly Rates		
Title	**Description**	**Hourly Rate**
Appointee / Partner	Registered Liquidator. Appointee bringing his or her specialist skills to the administration or insolvency task.	$700
Director	Minimum of twelve years insolvency experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	$595
Associate Director	More than 7 years insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	$525
Manager	6-7 years, qualified accountant, with well-developed technical and commercial skills. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on work streams in larger matters.	$475
Executive	2-4 years. Post graduate qualification (or equivalent) would normally be completed within this period. Assists planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	$350
Analyst	1-2 years. Completed an undergraduate degree. Post graduate qualification (or equivalent) will be commenced in this period. Assists senior staff members on aspects of the administration and completes administrative and statutory tasks independently.	$275
Graduate	0-1 year. Recently completed an undergraduate degree, but with limited experience. Provides assistance in day-to-day fieldwork under supervision of more senior staff.	$275
Team Administrator	Appropriately experienced and undertakes support activities.	$140

4 Estimated remuneration

It is inherently difficult to estimate the total costs of the administration, as the costs may differ depending on our recommendation regarding the future of the Companies, the potential for an adjournment or extension of the convening period and various complexities that can arise through an administration process.

On the basis the administration proceeds as planned, without an adjournment or extension, or other unforeseen circumstances arising, we consider that the Administrators' remuneration up until the first meeting of creditors will be in the vicinity of $200,000 plus GST and disbursements.

Consistent with our Deed of Independence, Relevant Relationships and Indemnities provided with our circular to creditors dated 7 September 2017, The Administrators, have not been indemnified in relation to this Administration other than any indemnities that they may be entitled to under statute. No up-front payments in respect of our remuneration and disbursements have been received.

5 Disbursements

Disbursements are divided into three types:

- ***Externally provided professional services*** - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- ***Externally provided non-professional costs*** such as travel, accommodation and search fees - these are recovered at cost.

- ***Internal disbursement***s such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I am not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, I must be satisfied that these disbursements are appropriate, justified and reasonable.

I am required to obtain creditor's consent for the payment of internal disbursements where there may be a profit or advantage. Creditors will be asked to approve my internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

Basis of disbursement claim

Disbursement type	Rate (excl GST)
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
Internal disbursements	
KPMG's Technology & Administration Charge (TAC) charge An amount equivalent to 2.5% of the remuneration drawn (paid) under the external administration to cover all internal disbursements such as (but not limited to) telecommunications, equipment, stationary, printing, postage, staff vehicle usage, staff travel allowance	2.5% total fees drawn (paid) in the external administration

6 Queries

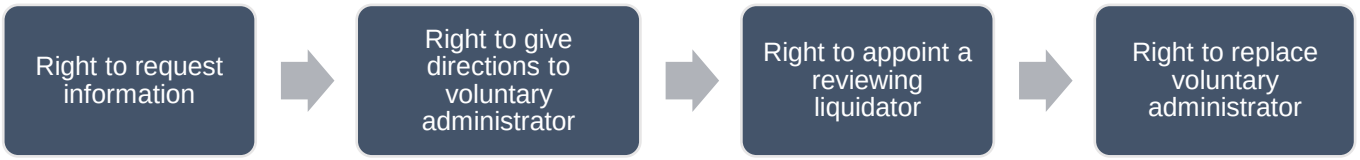
Should you have any queries in relation to this matter, please contact Niany Ekladious, of my staff at AU-FMBrierty@kpmg.com.au

Dated: 7 September 2017

Matthew Woods
Joint and Several Administrators

Creditor Rights in Voluntary Administrations

As a creditor, you have rights to request meetings and information or take certain actions:



Right to request information

Information is communicated to creditors in a voluntary administration through reports and meetings.

In a voluntary administration, two meetings of creditors are automatically held. You should expect to receive reports and notice of these meetings:

- The first meeting is held within 8 business days of the voluntary administrator's appointment. A notice of meeting and other information for this meeting will be issued to all known creditors.
- The second, or decision, meeting is usually held within 6 weeks of the appointment, unless an extension is granted. At this meeting, creditors will get to make a decision about the company's future. Prior to this meeting the voluntary administrator will provide creditors with a notice of the meeting and a detailed report to assist in making your decision.

Important information will be communicated to creditors prior to and during these meetings. Creditors are unable to request additional meetings in a voluntary administration.

Creditors have the right to request information at any time. A voluntary administrator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the voluntary administration, and the provision of the information would not cause the voluntary administrator to breach their duties.

A voluntary administrator must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the voluntary administrator requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

(a) complying with the request would prejudice the interests of one or more creditors or a third party

(b) the information requested would be privileged from production in legal proceedings

(c) disclosure would found an action for breach of confidence

(d) there is not sufficient available property to comply with the request

(e) the information has already been provided

(f) the information is required to be provided under law within 20 business days of the request

(g) the request is vexatious

If a request is not reasonable due to (d), (e) or (f) above, the voluntary administrator must comply if the creditor meets the cost of complying with the request.

Otherwise, a voluntary administrator must inform a creditor if their information request is not reasonable and the reason why.

Right to give directions to voluntary administrator

Creditors, by resolution, may give a voluntary administrator directions in relation to a voluntary administration. A voluntary administrator must have regard to these directions, but they are not required to comply with the directions.

If a voluntary administrator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons for not complying.

An individual creditor cannot provide a direction to a voluntary administrator.

Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a voluntary administrator's remuneration or a cost or expense incurred in a voluntary administration. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

The cost of the reviewing liquidator is paid from the assets of the voluntary administration, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the voluntary administrator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

Right to replace voluntary administrator

At the first meeting, creditors have the right to remove a voluntary administrator and appoint another registered liquidator to act as voluntary administrator.

A creditor must ensure that they have a consent from another registered liquidator prior to the first meeting if they wish to seek the removal and replacement of a voluntary administrator.

Creditors also have the opportunity to replace a voluntary administrator at the second meeting of creditors:

- If creditors vote to accept a proposed deed of company arrangement, they can appoint a different registered liquidator as the deed administrator.
- If creditors vote to place the company into liquidation, they can appoint a different registered liquidator as the liquidator.

It is however usual for the voluntary administrator to act as deed administrator or liquidator. It would be expected that additional costs would be incurred by an alternate deed administrator or liquidator to gain the level of knowledge of the voluntary administrator.

Like with the first meeting, a creditor must ensure that they have a consent from another registered liquidator prior to the second meeting if they wish to seek to appoint an alternative registered liquidator as deed administrator or liquidator.

For more information, go to www.arita.com.au/creditors

Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a liquidation, voluntary administration or deed of company arrangement of a company (collectively referred to as an external administration).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the external administration. The COI advises and assists the external administrator and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- A person holding the power of attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where a claim for financial assistance has, or is likely to be, made in relation to unpaid employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more, or less, depending on the size of the external administration.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the company
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint members to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the liquidator, voluntary administrator or deed administrator (collectively referred to as the external administrator)
- to give directions to the external administrator
- to monitor the conduct of the external administration.

In respect of directions, the external administrator is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the external administrator chooses not to comply with the directions of the COI, the external administrator must document why.

A COI also has the power to:

- approve remuneration of the external administrator after the external administrator has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the external administration)
- approve the use of some of the external administrator's powers in a liquidation (compromise of debts over $100,000 and entering into contracts over 3 months)
- require the external administrator to convene a meeting of the company's creditors
- request information from the external administrator
- approve the destruction of the books and records of the external administration on the conclusion of the external administration
- with the approval of the external administrator, obtain specialist advice or assistance in relation to the conduct of the external administration
- apply to the Court for the Court to enquire into the external administration.

An external administrator is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the external administrator to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the external administration to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the external administrator must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the external administration to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the external administrator must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

An external administrator must inform the COI if their meeting or information request is not reasonable and the reason why.

How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the external administrator by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice.

The external administrator must keep minutes of the meeting and lodge them with ASIC within one month of the end of the meeting.

ASIC is entitled to attend any meeting of a COI.

What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the external administration. This includes by purchasing assets of the company or by entering into a transaction with the company or a creditor of the company. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at www.arita.com.au/creditors.

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at www.asic.gov.au (search "insolvency information sheets").

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INFORMATION SHEET 74

Voluntary administration: a guide for creditors

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet provides general information for unsecured creditors of companies in voluntary administration.

Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor. There are generally two categories of creditor: secured and unsecured:

- A secured creditor is someone who has a 'charge', such as a mortgage, over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.
- An unsecured creditor is a creditor who does not have a charge over the company's assets.

Employees are a special class of unsecured creditors. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see ASIC's information sheet INFO 75 *Voluntary administration: a guide for employees*.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (Figure 1 summarises the process). An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

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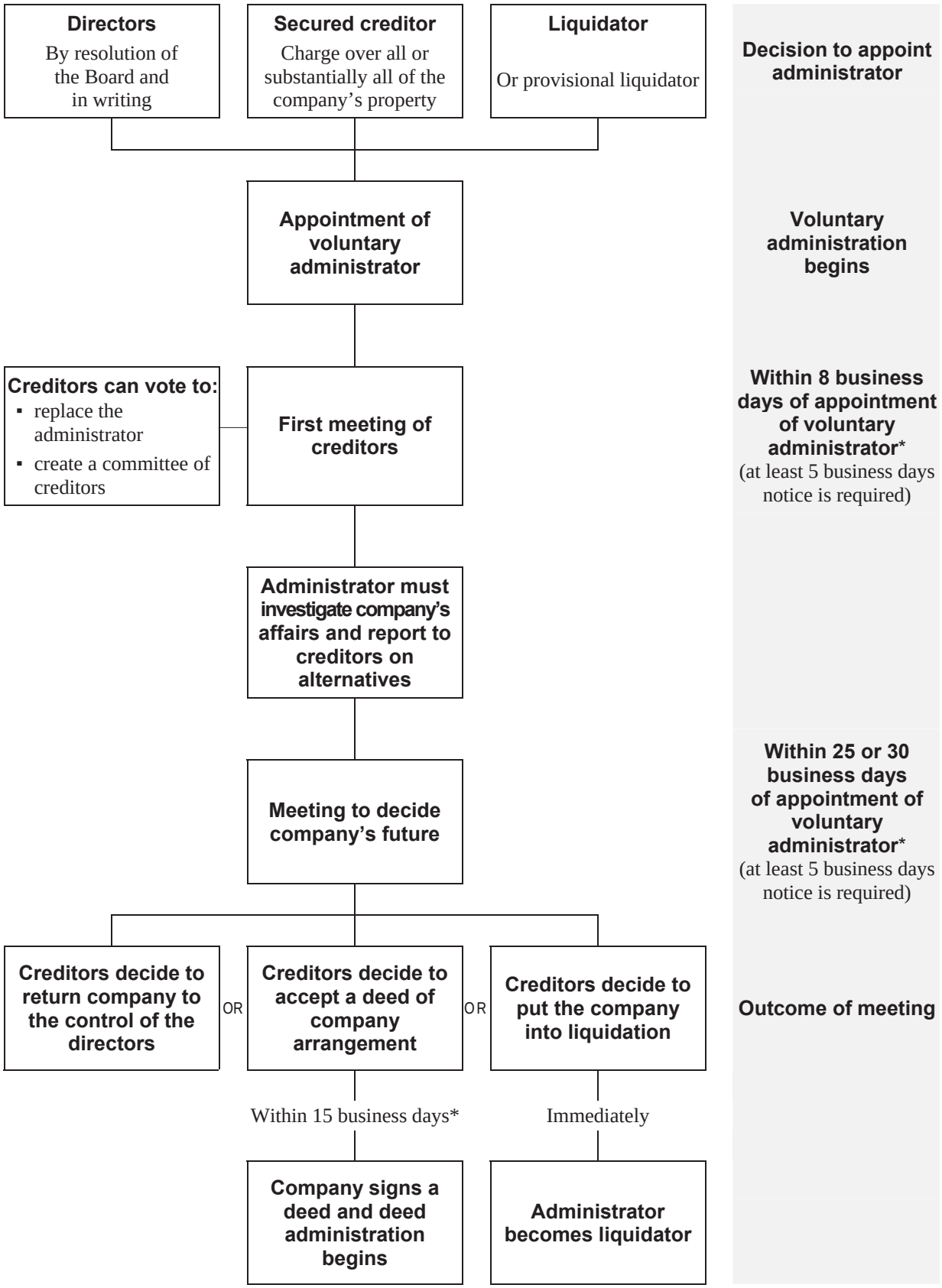
Figure 1: The voluntary administration process



* Unless the court allows an extension of time.

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A company in voluntary administration may also be in receivership: see ASIC information sheet INFO 54 *Receivership: a guide for creditors*.

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors. These are:

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

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

In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

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

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

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 can't 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, can't recover their property
- except in limited circumstances, secured creditors can't enforce their charge over company property
- a court application to put the company in liquidation can't be commenced, and
- a creditor holding a personal guarantee from the company's director or other person can't act under the personal guarantee without the court's consent.

Voluntary administrator's liability

Any debts that arise from the voluntary administrator purchasing goods or services, or hiring, leasing, using or occupying property, are paid from the available assets as costs of the voluntary administration. If there are insufficient funds available from asset realisations to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this protection, you should ensure you receive a purchase order authorised in the manner advised by the voluntary administrator.

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The voluntary administrator must also decide whether to continue to use or occupy property owned by another party that is 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. If the voluntary administrator decides to continue to do so, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

Amounts that become due to employees after the date of the appointment of the voluntary administrator have a priority claim against the company's assets as a cost of the administration. However, the voluntary administrator does not become personally liable for such amounts unless the voluntary administrator adopts employees' contracts of employment or enters into new employment contracts with them.

Creditors' meetings

Two meetings of creditors must be held during the voluntary administration.

First creditors' meeting

The voluntary administrator must call 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 and advertise the meeting. The advertisement must appear in a newspaper circulating in the states or territories in which the company has its registered office or carries on its business.

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

The purpose of the first meeting is for creditors to decide two questions:

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

The role of a committee of creditors is to consult with the voluntary administrator about matters relevant to the voluntary administration and receive and consider reports from the voluntary administrator. The committee can also require the voluntary administrator to report to them about the voluntary administration. It may also approve the voluntary administrator's fees.

A creditor who wishes to nominate an alternative voluntary administrator must approach a registered liquidator before the meeting and get a written consent from that person that they would be prepared to act as voluntary administrator. The proposed alternative administrator should give to 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 (discussed further below).

This meeting can be chaired by either the voluntary administrator or one of their senior staff.

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

After investigating the affairs of the company and forming an opinion on each of the three options available to creditors (outlined above), including an opinion as to which option is in the best interests of creditors, the administrator must 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 at Christmas and Easter).

However, in complex voluntary administrations, often more time is needed for the voluntary administrator to be in a position to report to creditors. In these circumstances, the court can approve an extension of time to hold the meeting.

The voluntary administrator must chair this meeting.

In preparation for the second meeting, the voluntary administrator must send creditors the following documents at least five business days before the meeting:

- a notice of meeting
- the voluntary administrator's report, and
- a statement about any proposals for a deed of company arrangement.

These will be accompanied by:

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

The meeting must also be advertised.

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

Voluntary administrator's report

You should read the voluntary administrator's report before you attend the second meeting or decide whether you want to appoint someone else to vote on your behalf at that meeting. This report must give sufficient information to explain the company's business, property and affairs, and the reasons for the current financial situation, to enable 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.

Finally, the report should include the voluntary administrator's opinion on each of the options available to creditors, as well as an opinion on which is in the best interests of creditors. As noted above, the options are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement (if one is proposed), or
- put the company into liquidation.

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Voluntary administrator's statement about deed

If there are proposals for a deed of company arrangement, the voluntary administrator must provide creditors with a statement giving enough details of each proposal to enable creditors to make an informed decision. The types of proposals allowed in a deed of company arrangement are very flexible.

Typically, a 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, as the terms allowed in a deed of company arrangement are also very flexible. The contents of a deed of company arrangement are discussed below.

You should insist on being provided with as much information about the terms of the proposed deed as possible, before the creditors' meeting. The minimum contents of a deed of company arrangement, discussed below, provide a guide on the information you might request if it hasn't already been provided.

You should also contact the voluntary administrator before the meeting if you believe the report to creditors does not contain sufficient information to enable you to make a decision about 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 be completed and returned before the meeting.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim or the amount of the debt cannot be determined with any certainty at the date of the meeting. In this case, they may not allow the creditor to vote at all, or only to vote for a debt of $1. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 14 days after the decision.

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

Voting by proxy

You may appoint a proxy to attend and vote at a meeting on your behalf. A proxy can be any person who is at least 18 years old. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the voluntary administrator before the meeting. You can fax the proxy form to the voluntary administrator, but must lodge the original within 72 hours of sending the faxed copy.

An electronic form of proxy may be used if the liquidator allows electronic lodgement, provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and e-mailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through 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.

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Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a show of hands. Sometimes a more formal voting procedure called a 'poll' is taken.

If voting is by show of hands or by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost. If the chairperson is unable to determine the outcome of a resolution on a show of hands, they may decide to conduct a poll.

Alternatively, a poll can be demanded by at least two people present who are entitled to vote, or someone who holds more than 10% of the votes of those entitled to vote at the meeting. The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by show of hands or voices.

When a poll is conducted, a resolution is passed if:

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution, and
- those creditors who are 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 (often referred to as a deadlock), the chairperson has a casting vote.

Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote either in favour of or against the resolution. The chairperson may also decide not to use their casting vote.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they cast their vote in a particular way or why they chose 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 apply to the court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

Votes of related creditors

If directors and shareholders, their spouses and 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 the votes of these related creditors, and you are dissatisfied with the outcome, you may apply to the court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

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Deciding how to vote at the second meeting

How you vote at the meeting on the three possible options, including any competing proposals for a deed of company arrangement, 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 that you have been given enough information to decide how to vote, and particularly whether to vote for any deed 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 in total) 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 deed of company arrangement is proposed and considered at the meeting to negotiate specific requirements into the terms of the deed, including, for example, how the deed administrator is to report to them on the progress of the deed.

Any request to vary the deed proposal to include such requirements should be made before the deed proposal is voted on.

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 14 days of the meeting. A copy may be obtained from any ASIC Business Centre on payment of the relevant fee.

Company returned to directors

If the company is returned to the directors, they will be responsible for ensuring that the company pays its outstanding debts as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Liquidation

If creditors resolve that 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 proceeds as a creditors' voluntary liquidation with any payments of dividends to creditors made in the order set out in the *Corporations Act 2001* (Corporations Act). To find out more, see ASIC information sheet INFO 45 *Liquidation: a guide for creditors*.

Deed of company arrangement

If creditors vote for a proposal that the company enter a deed of company arrangement, 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 deed of company arrangement 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 that these people are bound by the deed even if they didn't vote for it. The deed of company arrangement does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee to be repaid their debt.

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Contents of the deed

Whatever the nature of the deed of company arrangement, it must contain certain information, including:

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

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

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

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

Creditors also have the right when a deed of company arrangement is proposed and considered at the second meeting to negotiate consequences of failure to meet such deadlines into the terms of the deed. Any request to vary the deed proposal to include such consequences should be made before the deed proposal is voted on.

The deed administrator must lodge a detailed list of receipts and payments with ASIC every six months.

Varying the deed

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

Creditors owed at least 10% in value of all creditor claims can, by written request, also require the deed administrator to call such a meeting. However, it is unusual for this to happen, as those who make the request must pay the costs of calling and holding the meeting.

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Payment of dividends under a deed

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

The deed must ensure employee entitlements are paid in priority to other unsecured creditors unless eligible employees have agreed to vary their priority.

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

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

Establishing your claim under a deed

How debts or claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed 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 sufficient information to prove your debt. You may be required to complete a claim form (this is called a 'proof of debt' in a liquidation). You should attach copies of any relevant invoices or other supporting documents to the claim form, as 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 to do so.

When submitting a claim, 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 after you have taken the above steps, first contact the deed administrator. You may also wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision.

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

How a deed comes to an end

A deed may come to an end because the obligations under the deed have all been fulfilled and the creditors have been paid. Alternatively, the deed may set out certain conditions where the deed will automatically terminate.

The deed may also provide that the company will go into liquidation if the deed terminates due to these conditions being met.

Another way for the deed to end is if the deed administrator calls a meeting of creditors, and creditors vote to end the deed. This may occur because it appears unlikely that the terms of the deed can be fulfilled.

At the same time, creditors may be asked to vote to put the company into liquidation.

The deed may also be terminated if 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 on which the decision to accept the deed proposal was made
- the voluntary administrator's report left out information that was material to the decision to accept the deed proposal

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- the deed cannot proceed without undue delay or injustice, or
- the deed is unfair or discriminatory to the interests of one or more creditors or against the interests of creditors as a whole.

If the court terminates the deed 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 work they perform. Generally, their fees will be paid from available assets, before any payments are made to creditors. They may have also arranged for a third party to pay any shortfall in their fees if there aren't enough assets.

The fees cannot be paid until the amount has been approved by a creditors' committee, creditors or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees approved.

If you are asked to approve fees, either at a meeting of a creditors' committee or in a general meeting of creditors, the voluntary administrator or deed administrator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a description of the major tasks performed
- the costs of completing these tasks, and
- such other information that will assist in assessing the reasonableness of the fees claimed.

For further information, see ASIC's information sheet INFO 85 *Approving fees: a guide for creditors*. If you are in any doubt about how the fees were calculated, ask for more information.

Apart from fees, the voluntary administrator and deed administrator are entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement does not usually require approval.

Creditors' committee

A creditor's committee may be formed, following a vote of creditors, to consult with the voluntary administrator or deed administrator and receive reports on the conduct of their administration. A creditors' committee can also approve the administrator's fees.

In a voluntary administration, this committee is called a 'committee of creditors' and may be formed at the first creditors' meeting. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. However, to operate efficiently, the committee should not be too large.

If a creditor is a company, the creditor can nominate a director or employee to represent it on the committee.

Directors and voluntary administration

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator, including providing the company's books and records, and a report about the company's business, property, affairs and financial circumstances, as well as any further information about these that the voluntary administrator reasonably requires.

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

If the company goes from voluntary administration or a deed of company arrangement 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.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator or deed administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 75 *Voluntary administration: a guide for employees*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

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INFORMATION SHEET 84

Independence of external administrators: a guide for creditors

If a company is insolvent or in financial difficulty, it can be put into external administration. The three most common forms of external administration are:

- voluntary administration (which may lead to a deed of a company arrangement)
- liquidation, and
- receivership.

When a company enters into voluntary administration, a deed of company arrangement or a liquidation, it is important that the person put in charge (the 'external administrator') is independent of the company and its directors, and acts in the interests of creditors as a whole.

This information sheet provides general information for unsecured creditors in a liquidation, voluntary administration or deed of company arrangement to help assess whether the external administrator is independent.

The independence requirement in other forms of external administration (e.g. receivership) is not discussed in this information sheet.

What it means to be independent

There are different groups of people with different interests involved in the insolvency of a company. These include directors, shareholders, creditors who hold security over assets of the company, unsecured creditors, employees (who may also be creditors) and customers. The external administrator must treat all of these groups fairly and in accordance with their legal rights. For an external administrator to be independent, they must:

- not be biased towards any person or group
- not have, or have had, a close personal or business relationship with any person involved in the insolvency where that relationship would lead someone to suspect that they would favour the interests of that person, and
- not be in a position where their own personal or private interests conflict with their duties in the insolvency.

It is important that the external administrator is, at all times, both independent, and accepted as being independent, by those people interested in the affairs of the insolvent company. An external

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

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administrator may not be accepted as being independent if there is a real chance that circumstances exist that may threaten the person's independence in the future.

Who may be appointed

A person appointed as an external administrator of an insolvent company must be a registered liquidator. They must also be an official liquidator if the appointment as liquidator is made by the court.

At the time of agreeing to take the appointment, the person must both be, and be accepted as being, independent. If the person knows at the time there is the real prospect of a threat to independence arising in the future, the person should not take the appointment (even if they tell creditors about the threat) without the court's approval.

Relationships that prevent appointment

A person must not be appointed as an external administrator of an insolvent company if they have any of the following relationships with the insolvent company, unless the court gives its approval:

- either the person or a company where the person is a substantial shareholder owes more than $5000 to the insolvent company or a related company
- the person is owed more than $5000 by the insolvent company or a related company (other than fees they are owed through their role as an external administrator)
- the person is a director, secretary, senior manager or employee of the insolvent company
- the person is a director, secretary, senior manager or employee of a company that is a mortgagee of the property of the insolvent company
- the person is an auditor of the insolvent company
- the person is a partner or employee of an auditor of the company
- the person is a partner, employer or employee of an officer of the company, or
- the person is a partner or employee of an employee of an officer of the company.

Even if none of these relationships exists, the person must not take on the appointment if, in the circumstances, there is a real risk they cannot be independent and be accepted as being independent by those interested in the affairs of the insolvent company.

Disclosing relationships

If a liquidator is appointed by the court, they act as an officer of the court and they should tell the court before they are appointed of any circumstances they are aware of that might cause doubts about their independence.

A person who is consenting to be appointed as voluntary administrator or liquidator in a creditors' voluntary liquidation must send to creditors, with the notice of the first meeting of creditors, a declaration about any relationships they may have. The declaration must:

- set out whether the person, their partners in a firm or their company or an associated company has, or has had in the past two years, a relationship with either:
  - the insolvent company
  - an associate of that company
  - a former liquidator or former provisional liquidator of that company, or
  - a secured creditor with security over the whole or substantially the whole of the company's property, and

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- state the person's reasons for believing that none of the relationships result in the person having a conflict in accepting the appointment.

The declaration must also be tabled at the meeting of creditors.

If the voluntary administrator or liquidator later realises that the original declaration is out-of-date or contains an error, they must distribute a replacement declaration.

A person who is consenting to be appointed as voluntary administrator must also disclose in writing any indemnities provided to the person to cover their fees and costs (for an explanation of the meaning of an indemnity, refer to ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*).

The declarations must be given to creditors to allow them to consider the person's independence and make an informed decision about whether they want to replace the person with someone of the creditors' choice.

If, as a creditor, you receive a declaration of relationships or indemnities, and you are concerned whether the circumstances might cast doubt upon whether the person would be independent, you should ask the person about the circumstances that lie behind the declaration. You may also consider whether they should be replaced.

Replacing an external administrator

Before a person takes an appointment as an external administrator, they must make reasonable inquiries to ensure there are no real threats to their independence. The person must also continue to monitor their independence during the period of the appointment and take action should such a threat arise. Depending on the threat, this may involve applying to court or calling a meeting of creditors to give details of the potential threat and allow a decision to be made by the court or the creditors about how the threat should be managed and whether the person should continue to act or be replaced.

As discussed below, in some circumstances, you may seek to remove the person if you have doubts as to their independence and replace them with an external administrator of the creditors' choice. Any replacement should also prepare the relevant declaration(s) about their relationships with various specified parties and, in a voluntary administration, also any indemnities they have been given for their fees and costs.

Voluntary administration

In a voluntary administration you are given an opportunity to replace an administrator at the first meeting of creditors, if there is another administrator who has consented to taking on the role and a majority of creditors (in number and value) approve the appointment of that replacement administrator. If you are a creditor, see ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors* for more information about this meeting.

Deed of company arrangement

At the second creditors' meeting in the voluntary administration where creditors agree to accept the proposal for a deed of company arrangement, they can also choose who they wish to be deed administrator. This person does not have to be the current voluntary administrator, but may be someone else of the creditors' choosing.

If the deed of company arrangement fails and creditors resolve to terminate the deed and wind up the company, they can also choose someone other than the deed administrator to be the liquidator (provided the other person has agreed, in writing, to act as liquidator).

Liquidation

If the liquidator has been appointed by the court, only the court can remove the liquidator from acting. Creditors cannot remove a court-appointed liquidator by passing a resolution at a meeting of creditors.

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In a creditors' voluntary liquidation, the creditors may, by a majority in number and value, vote to replace the liquidator appointed by members at the first meeting of creditors. This meeting must be called within 11 days of the liquidator being appointed. See ASIC's information sheet INFO 45 *Liquidation: a guide for creditors*.

If, at the second meeting of creditors in a voluntary administration, creditors vote that the company go into liquidation, it is usual for the voluntary administrator to become the liquidator of the company. Creditors, by majority in number and value, may vote to appoint another person to act as liquidator.

Queries and complaints

You should first raise any queries or complaints with the external administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
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