

29 August 2012

TO CREDITORS

Dear Sir/Madam

**Crane Investments (WA) Pty Ltd
(Administrators Appointed) (the Company)
ACN 103 911 226**

I advise that Andrew Saker and I were appointed as Joint and Several Administrators of the Company on 28 August 2012 pursuant to section 436A of the Corporations Act 2001 (the Act).

I now control the Company's operations have assessed the Company's financial position. As a result I have taken the decision to cease the Company's operations and stand down all employees of the Company.

The Company's directors have been requested to prepare a statement about the Company's business, property, affairs and financial circumstances as at the date of my appointment. I raise the following matters regarding the administration.

1. FIRST MEETING OF CREDITORS

I am required to call a first meeting of creditors within eight (8) business days of my appointment pursuant to Section 436E of the Act. The purpose of this meeting is to provide creditors with an opportunity to:

- Appoint a Committee of Creditors; and
- Appoint an alternative Administrator, if they so desire.

In this regard, I enclose the following documents:

- (a) Notice of Meeting of Creditors. *Please note that the meeting commences at 10:30am (AWST). You should arrive for registration at least twenty (20) minutes prior to the commencement of the meeting.*
- (a) Informal Claim Form for Voting Purposes.

*A person is not entitled to vote at the meeting unless they provide particulars of the debt or claim to the Administrators before the meeting. **Please note this form is for voting purposes only.** All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured, and whether they claim title to any goods supplied to the Company or any lien over goods in their possession which are property of the Company.*

SYDNEY
MELBOURNE
ADELAIDE
BRISBANE
PERTH
JAKARTA
KUALA LUMPUR
SINGAPORE
TOKYO

Affiliated through:
Zolfo Cooper
CARIBBEAN
UNITED KINGDOM
UNITED STATES
KLC Kennic Lui & Co.
CHINA
HONG KONG

- (b) Appointment of Proxy form. The form enables you to appoint a person to act on your behalf at the meeting.
- (c) A publication of the Insolvency Practitioners Association of Australia (IPA) and the Australian Securities and Investments Commission concerning insolvency information for directors, employees, creditors and shareholders.

The Informal Claim Form for Voting Purposes and Proxy form should be lodged with this office before the meeting and, in any event, no later than **4:00pm (AWST) Thursday, 6 September 2012**. Forms can be sent by facsimile on (08) 9214 1400 marked to the attention of William Hulmes or scanned and emailed to cranes@fh.com.au. However, Corporations Regulation 5.6.36A requires lodgement of the original of the Proxy form with the Administrators' office within 72 hours of lodging the faxed copy.

2. DECLARATION BY ADMINISTRATORS

Pursuant to Sections 436DA(2) and (3) of the Act and the IPA Code of Professional Practice, I enclose the Joint and Several Administrators' 'Declaration of Independence, Relevant Relationships and Indemnities'.

3. TRADING

The Company has ceased to trade and accordingly the Administrators do not accept liability for the supply of any goods and services from the date of our appointment. In the event that the Company requires goods or services, please ensure that you receive a purchase order authorised by one of the authorised signatories listed in the attached schedule.

If there are any outstanding or unfulfilled orders placed by the Company prior to my appointment, including those under which there are goods in transit, please contact Kieran Chu of this office to obtain written confirmation that the order should proceed.

You may be aware that payment of unsecured creditors' accounts as at 28 August 2012, have been postponed pending the outcome of a second meeting of creditors (see section 8 below).

3.1 Consignment Stock, 'Retention of Title' Stock and Liens/Pledges

If you supplied consignment stock to the Company, or believe you provided stock subject to a 'Retention of Title' clause, or claim a lien/pledge over any of the Company's assets, please contact my office as a matter of urgency.

3.2 Property Used but not Owned by the Company

In accordance with section 443B of the Act, the Administrators' liability under hire purchase or lease agreements does not commence until five business days after the Administrators' appointment. Further, pursuant to section 440C of the Act, the lessor or owner of property in the Company's control is not entitled to take possession of such property without leave of the Court or the Administrators' written consent.

I will write separately to known lease and hire purchase creditors regarding such assets. Please contact this office if you do not receive my letter.

4. LEGAL PROCEEDINGS

The appointment of Administrators stays a proceeding in a Court against the Company. You cannot commence or continue a proceeding against the Company without my written consent or with the leave of the Court.

5. EMPLOYEES

I have written separately to employees regarding the appointment of Administrators.

6. REPORT TO CREDITORS AND SECOND MEETING OF CREDITORS

The Administrators will prepare a report to creditors under section 439A of the Act which will include details on the Company's business, property, affairs and financial circumstances.

A second meeting of creditors will be held on 3 October 2012 unless the Court extends this date. It is at this meeting that creditors will consider the Administrators' report and consider resolutions regarding the Company's future.

7. ADMINISTRATORS' REMUNERATION

For the purposes of the Company's administration, the Administrators intend that their remuneration be fixed on the basis of time spent by them, and their staff of an appropriate level having regard to the nature and complexity of the work, and calculated by reference to hourly rates. Enclosed for your information are the following:

- Statement regarding remuneration setting out the four basic methods of calculating remuneration together with an explanation as to why hourly rates are appropriate in this administration
- Schedule of Rates and General Guide to Staff Experience

The Administrators will provide creditors with a remuneration report pursuant to section 449E of the Act with the report to creditors referred to in section 6 above.

An information sheet concerning approval of remuneration in external administrations can be obtained from www.ipaa.com.au or through this office.

8. FURTHER INFORMATION

For further information concerning the Voluntary Administration process and Ferrier Hodgson, you may wish to visit our website at www.ferrierhodgson.com. Queries regarding the administration can be directed to either cranes@fh.com.au or by telephone to William Hulmes or Jason Soo on 08 9214 1444.

Yours faithfully

Crane Investments (WA) Pty Ltd



Martin Jones

Joint and Several Administrator

Encl.

AUTHORISED SIGNATORIES

**Crane Investments (WA) Pty Ltd
(Administrators Appointed)
ACN 103 911 226**

SPECIMEN SIGNATURES

Name: MARTIN JONES 

Name: ANDREW SAKER 

Name: SEAN POWELL 

Name: MALCOLM FIELD 

Name: KIERAN CHU 

**CRANES INVESTMENTS (WA) PTY LTD
(ADMINISTRATORS APPOINTED)
ACN 103 911 226**

REFERRED TO AS THE COMPANY

DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

This document requires the practitioner/s appointed to an insolvent entity to make declarations as to:

- A. their independence generally;
- B. relationships, including
 - (i) the circumstances of the appointment;
 - (ii) any prior professional services for the Insolvent within the previous 24 months;
 - (iii) any relationships with the Insolvent and others within the previous 24 months;
 - (iv) that there are no other relationships to declare; and
- C. any indemnities given, or upfront payments made, to the practitioner

This declaration is made in respect of ourselves, our partners and our firm, Ferrier Hodgson, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as administrators of the Company in accordance with the law and applicable professional standards. 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.

A. Declaration of Relationships

(i) Circumstances of appointment

We had a meeting with the Companys directors, Mr David Keating and Luigi DeCesare on 28 August 2012 for the purpose of determining the solvency of the Company.

We received no remuneration for this advice. This meeting does not affect our independence for the following reasons:

Ferrier Hodgson's advice was limited to assessing the Company' financial position, the consequences of insolvency and restructuring options. Advice was given to the Company only. We did not advise the director personally or others. The Courts and the IPA's Code of Professional Practice specifically recognise the need for practitioners to provide advice on the insolvency process and the options available and do not consider that such advice results in a conflict or an impediment to accepting the appointment.

(ii) Prior professional services to the Insolvent

Neither us, nor our firm, have provided any professional services to the Company in the previous 24 months.

(iii) Relevant relationships to disclose

We are currently appointed over two related entities, D&G Hoists & Cranes Pty Ltd and D&G Hoists & Cranes (Aus) Pty Ltd, to which Mr Keating and Mr DeCesare are also Directors. All three companies used the same administration and back office staff and systems. This will not affect the independence of the Administrators, and will serve to create synergies, enabling us, as Administrators, to better perform our duties.

B. Indemnities and upfront payments

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute and we have not received any upfront payments in respect of our remuneration or disbursements.

Dated 28th day of August 2012



Martin Jones
Voluntary Administrator



Andrew Saker
Voluntary Administrator

NOTE: *If circumstances change, or new information is identified, we are required under Section 436DA(5) of the Corporations Act 2001 and the IPA Code of Professional Practice to update this declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.*

Any relationships, indemnities or upfront payments disclosed in the declaration must not be such that the practitioner is no longer independent. The purpose of components B and C of the declaration 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.

**Crane Investments (WA) Pty Ltd
(Administrators Appointed) (the Company)
ACN 103 911 226
STATEMENT REGARDING REMUNERATION**

A. 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 fees charged is based on the hourly rate charged for each person who carries out the work multiplied by the number of hours spent by each person on each of task 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 asset realisations.

Contingency

The insolvency practitioner's fee is contingent on achieving a particular outcome.

B. METHOD CHOSEN

Time based remuneration is appropriate in this administration given:

- It ensures creditors are only charged for work performed;
- I am required to perform tasks unrelated to asset realisations; hence, fees solely based on asset realisation would be unrealistic; and
- I am unable to provide a reliable estimate of total fees to complete all tasks in the administration.

C. FEE ESTIMATE

I estimate fees for the administration of the Company's affairs at between **\$200,000** and **\$250,000**. Please note this is an estimate only and may vary materially given the circumstances of the administration.

Dated this 29th day of August 2012



Martin Jones

Joint and Several Administrator

SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE

Title	Rate (\$)	Experience
Partner/Principal/ Appointee	580	The Partner/Appointee is a registered liquidator and member of the ICAA and, generally, the IPA, bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at www.ferrierhodgson.com
Director	490	Generally, minimum of 12 years' experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and, generally, the IPA, with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	440	Generally, more than 7 years' experience with at least 2 years as a Manager. University degree; member of the ICAA and, generally, the IPA; very strong knowledge of relevant insolvency legislation and issues.
Manager	370	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and, generally, the IPA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	330	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior Analyst	285	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA, program. Good knowledge of basic insolvency legislation and issues.
Analyst	255	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Accountant	200	0 to 2 years' experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Junior Accountant	120	0 – 1 years' experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing more complex administrative tasks.
Senior Secretary	170	Appropriate skills including machine usage.
Clerk	170	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

Notes:

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time. Disbursements are recovered on the following basis.

Disbursements	Charges (Excluding GST)
Advertising	At cost
Couriers	At Cost
Mileage Reimbursements	\$0.67 per kilometre
Photocopying (colour)	\$0.50 per page
Photocopying (mono)	\$0.20 per page
Photocopying (outsourced)	At cost
Printing (colour)	\$0.50 per page
Printing (mono)	\$0.20 per page
Printing (outsourced)	At cost
Postage	At cost
Searches	At cost
Storage and Storage Transit	At cost
Telephone Calls	At cost

Note: Other disbursements, not specified above, may be incurred and recovered at cost

Generally, the Partners of Ferrier Hodgson WA are members of the Insolvency Practitioners Association of Australia. Ferrier Hodgson follows the IPA Code of Professional Practice.

A copy of the IPA Code of Professional Practice may be found on the IPA website at www.ipaa.com.au.

**FORM 529A
CORPORATIONS ACT 2001**

Reg 5.6.12(2)(b)

**CRANE INVESTMENTS (WA) PTY LTD
(ADMINISTRATORS APPOINTED) (THE COMPANY)
ACN 103 911 226**

1. Notice is given that on 28 August 2012, the Company, under Section 436A of the Corporations Act 2001, appointed Martin Jones and Andrew Saker of Ferrier Hodgson, Level 26, 108 St Georges Terrace, Perth WA 6000 as the Joint and Several Administrators of the Company.

2. Notice also is given that a meeting of the creditors of the Company will be held at the Hotel Ibis, 334 Murray Street at 10:30am (AWST) on Friday, 7 September 2012.

Please note that you should arrive for registration at least 20 minutes prior to the meeting.

3. At the meeting, creditors will receive the Administrators' Declaration of Independence, Indemnities & Relevant Relationships.

4. The purpose of the meeting is to determine:

- a. Whether to appoint a committee of creditors; and
- b. If so, who are to be the committee's members.

5. At the meeting, creditors may also, by resolution:

- a. Remove the Administrators from office; and
- b. Appoint someone else as Administrator of the Company.

DATED this 29th day of August 2012



Martin Jones

Joint and Several Administrator

**INFORMAL PROOF OF DEBT FORM
FOR CREDITORS**

Regulation 5.6.47

**CRANE INVESTMENTS (WA) PTY LTD
(Administrators Appointed) (the Company)
ACN 103 911 226**

Name of creditor:

Address of creditor:

.....

ABN:

Telephone number:

Amount of debt claimed: \$..... (including GST \$.....)

Consideration for debt (i.e. the nature of goods or services supplied and the period during which they were supplied):

.....
.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....
.....

Other information:

.....
.....

.....
Signature of Creditor
(or person authorised by creditor)

Notes:

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his or her claim has been admitted, wholly or in part, by the Joint and Several Administrators; or
- b. he or she has lodged with the Joint and Several Administrators particulars of the debt or claim, or if required, a formal proof of debt.

At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security. Proxies must be made available to the Joint and Several Administrators.



ASIC

Australian Securities & Investments Commission

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 also 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.

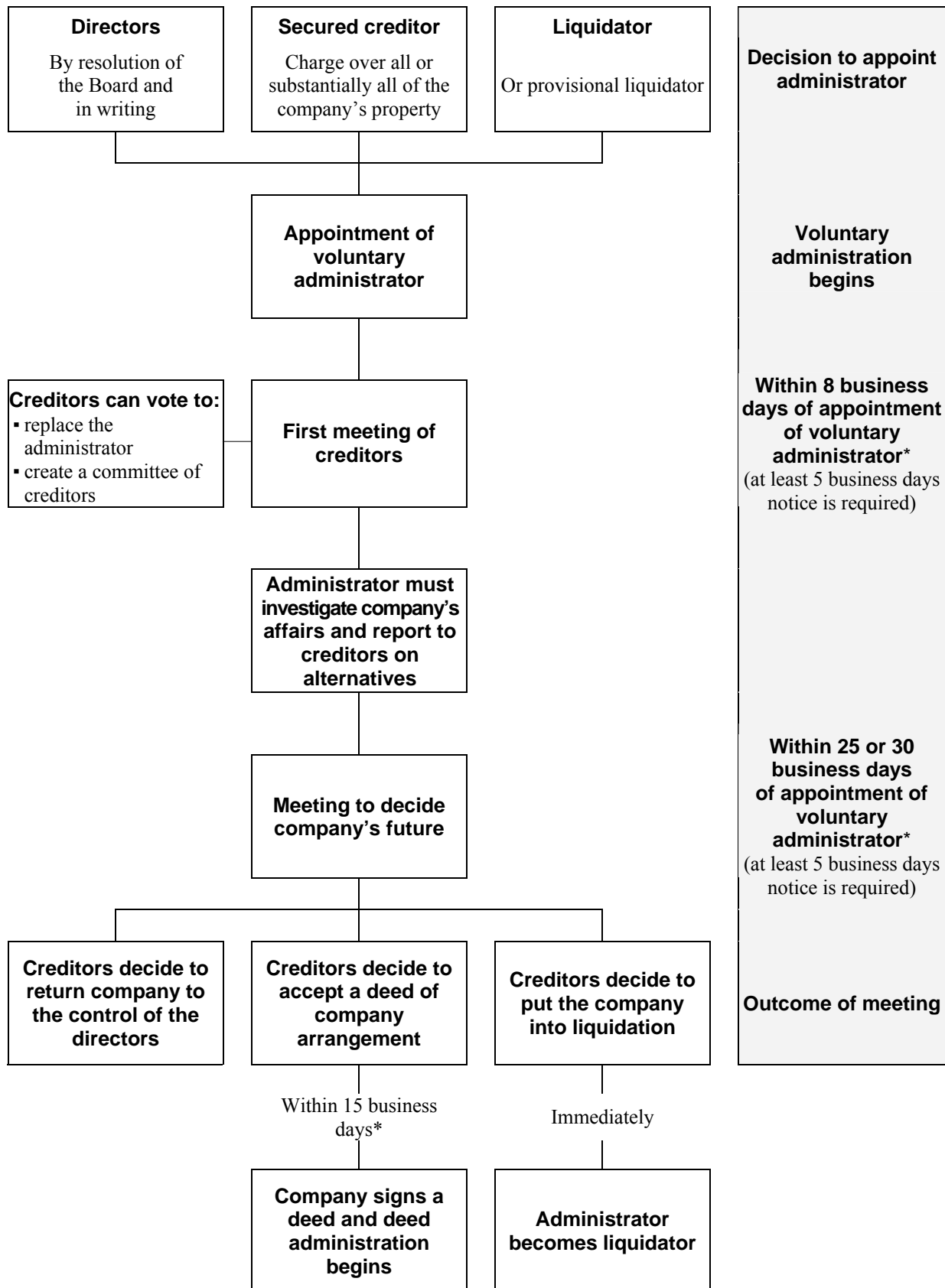
Employees are a special class of unsecured creditors. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see our related information sheet 'Voluntary administration: a guide for employees'.

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.

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.

Figure 1: The voluntary administration process



* Unless the court allows an extension of time.

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.

A company in voluntary administration may also be in receivership.

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 5 weeks after the company goes into voluntary administration to decide on the best option. 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.

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 5 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 5 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 8 business days after the voluntary administration begins.

At least 5 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. The proposed alternative administrator must 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.

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 5 weeks after the company goes into voluntary administration (6 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 5 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.

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.

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 they are creditors of the company, directors and shareholders, their spouses and relatives and other entities controlled by them 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).

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's 'Liquidation: a guide for creditors' information sheet.

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.

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 6 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.

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 on accepting the deed proposal
- 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 '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.

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, or write to:

Manager National Assessment & Action
ASIC
GPO Box 9827
IN YOUR CAPITAL CITY

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's 'Insolvency: a glossary of terms'. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors
- Independence of external administrators: a guide for creditors
- 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.