

13 August 2012

CIRCULAR TO EMPLOYEES

Dear Sir/Madam

**D&G Hoists & Cranes Pty Ltd
(Administrators Appointed) (the Company)
ACN 084 148 096**

I refer to my circular to creditors dated 13 August 2012.

In my circular, I advised that I would write separately to employee creditors regarding the appointment of Andrew Saker and myself as the Company's Joint and Several Administrators.

Enclosed is an information sheet from the Australian Securities and Investments Commission and the Insolvency Practitioners Association of Australia, which provides general advice to employees whose employer is in voluntary administration.

This circular is to advise you about the status of your employment by the Company.

1. EMPLOYMENT DURING THE ADMINISTRATION

I am examining the Company's trading position with a view to assessing its future viability. Once determined, I will advise you of my intentions regarding ongoing trading.

In the interim, your employment by the Company continues on the same terms and conditions that existed at the time of my appointment.

As a consequence of the appointment, the Administrators assume responsibility for the Company's management and the control of assets. Without the written authority of the Administrators, you must not, nor must you permit anyone else to:

- Place any orders for goods or services, unless they have been duly authorised by the Administrators or others as notified in my circular to creditors.
- Accept delivery of any goods or services, unless they are the subject of a duly authorised order.
- Supply any services to customers or dispatch any goods to customers.
- Enter into any commitments with suppliers or customers.
- Make any compromise or arrangement with any debtor or creditor of the Company, including the allowance of any set-offs.

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

- Incur any debts or liabilities in the name of the Company or pledge its assets.
- Return any goods to suppliers.
- Make any payments.
- Remove any of the Company's assets from the Company's custody or control.

All monies received must be forwarded to Ferrier Hodgson or paid into the bank account I have opened named "D&G Hoists & Cranes Pty Ltd (Administrators Appointed)".

Every invoice, order for goods, business letter, or similar document must have the words "Administrators Appointed" immediately following the name of the Company.

All Company assets must be secured against theft.

I must be notified in writing immediately of all known breaches of the law or regulations (for example, health, safety, hygiene, fire, etc).

2. YOUR EMPLOYEE ENTITLEMENTS AT THE DATE OF MY APPOINTMENT

As an employee, you have a statutory priority of payment for outstanding entitlements such as wages, superannuation contributions payable by the Company, holiday pay and long service leave. Directors and other related persons also have a statutory priority of payment for these entitlements. However, their priority is subject to a statutory 'cap' of \$2,000 for wages and superannuation contributions and \$1,500 for holiday pay and long service leave entitlements. An employee's priority ranks after the Administrators' costs and remuneration but ahead of ordinary unsecured creditor claims.

I will liaise with the Company's payroll department to determine debts owed to employees, including any leave entitlements. Once this has been reconciled, I will write to employees to advise of the amounts owing to them according to the Company's records. I also enclose a 'Statement of Claim' form that employees may complete and return to my office should they wish to lodge a claim independently of the Company, or should they dispute the entitlements calculated by the Company.

The enclosed information sheet provides information concerning the government's *General Employee Entitlements and Redundancy Scheme* ("GEERS"). Please note that the GEERS does not apply in a voluntary administration.

However, if the Company proceeds to liquidation, you might have standing to submit an application and be compensated for unpaid entitlements under the GEERS. For further information regarding the GEERS, including your eligibility, please contact the Department of Workplace and Employment Relations on 1300 135 040 or geers@deewr.gov.au or visit its website at www.deewr.gov.au/geers.

Please advise me in writing of any change of address. If you do not, you may not receive future communications regarding the Company and your entitlements.

3. CONFIDENTIALITY

While employed by the Company or after leaving the Company, you must not disclose, (except in the proper course of your duties or as is required by law), any confidential information acquired by you about the Company and associated businesses, its products and customers to any person or organisation, including the Company's directors, except where written permission is granted by the Administrators or their authorised representatives. You must not use any confidential information in a manner which may cause injury or loss to the Company and associated businesses.

If you leave the Company's employment, you must return all Company property and confidential documents.

4. 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 should be directed to either (08) 9214 1497 or dghoists@fh.com.au.

Yours faithfully

D & G Hoists & Cranes Pty Ltd



Martin Jones

Joint and Several Administrator

Encl.

**D&G HOISTS & CRANES PTY LTD
(ADMINISTRATORS APPOINTED) (THE COMPANY)
ACN 084 148 096**

CLAIM OF EMPLOYEE

Name _____

Address: Street Number and Name: _____

Suburb: _____ State: _____ Postcode: _____

Contact number: _____

Position: _____

Wages/Salary: \$ _____ per week/fortnight _____

Period of Employment: From / / to / /

Details of Claim: Wages and salaries for the period from / / to
/ / \$ _____

Unused annual leave: _____

Long service leave: _____

Superannuation: _____

Sick Leave: _____

Pay in Lieu of Notice: _____

Other (provide details): _____

Total \$ _____

Please complete to the best of your knowledge and return to Ferrier Hodgson using any of the following methods:

Mail:

Facsimile:

Email:

Ferrier Hodgson
GPO Box 2537
Perth WA 6001

(08) 9214 1497

Attention Jason Soo

dghoists@fh.com.au

HOW YOUR GEERS CLAIM WILL BE ASSESSED

The General Employee Entitlements and Redundancy Scheme (GEERS) is a **basic payment scheme** designed to assist employees who have lost their employment as a result of the insolvency of their employer and are owed certain employee entitlements.

The Department of Education, Employment and Workplace Relations administers the Scheme in accordance with the GEERS Operational Arrangements (OAs). The OAs are used to determine the eligibility of employees and the amount of any GEERS advance. The OAs are available on the department's website at deewr.gov.au/geers.

Who is eligible?

You **may** be eligible for GEERS assistance if you:

- lost your employment because your former employer became bankrupt or a liquidator was appointed **and** are owed employee entitlements
- lodge your claim **within** 12 months of losing your job or the date of which your former employer became bankrupt or went into liquidation, whichever is the later, and
- are entitled to reside permanently in Australia.

You **may** also be eligible for GEERS assistance if you:

- resigned following the appointment of an Insolvency Practitioner (IP) or
- resigned or your employment **was terminated** within six months before the appointment of an IP.

Who is not eligible?

You are **not** eligible to receive GEERS assistance if:

- your former employer is **under the control** of an administrator, a receiver manager, or is **subject to** a Deed of Company Arrangement, a Trust, a Personal Insolvency Agreement, or a Debt Agreement
- you were **not an employee**, i.e. if you were a contractor, sub-contractor or agent
- you lodge your claim **more than 12 months** after your employment was terminated or the date on which your former employer became bankrupt or entered into liquidation, whichever is the later
- you were employed by a partnership and **not all** partners are subject to insolvency, or
- you were an 'excluded employee' (including company directors, principals of bankrupt employers and their relatives) in the 12 month period before the appointment of the IP.

What you may be eligible for

You **may be** eligible to receive assistance under GEERS for the following employee entitlements:

- up to 3 months unpaid wages for the period prior to the appointment of the IP (including amounts deducted from your wages, such as for superannuation, but not passed on to your superannuation fund)
- unpaid annual leave
- unpaid long service leave
- up to a maximum of 5 weeks unpaid payment in lieu of notice, and
- up to a maximum of 4 weeks unpaid redundancy entitlement for each completed year of service you have with your employer.

If you earn **more** than the GEERS maximum annual wage (\$118 100 for 2011–2012¹) at the date that your employment ceased, your GEERS advance will be calculated as if you earned that amount.

¹ The maximum annual wage is indexed annually.

What is an eligible entitlement?

GEERS only covers the entitlements you are legally entitled to receive. Your assistance under GEERS will be calculated in accordance with your entitlements under legislation, an award, a statutory agreement or a written contract of employment, or otherwise as confirmed in writing at the time of the appointment of the IP.

For example, you will not necessarily receive redundancy pay of 4 weeks per year of service—the assistance you receive will be based on the redundancy entitlement provided for in your legal instrument.

Please contact the Fair Work Infoline on 13 13 94 (toll free) or your local state service, to assist you in determining your correct conditions of employment and entitlements.

Processing your claim

After receiving your Claim Form, the department will contact the IP who is managing the affairs of your former employer. The IP will be asked to verify your entitlements using the employer's records. If the IP cannot verify your details, the department may ask an independent GEERS contractor to do this, or you **may be** asked to complete a statutory declaration and provide the department with supporting documents.

Once your employment and entitlements have been verified, the department will process your claim.

The department aims to process your claim as quickly as possible. The time taken to determine your eligibility for GEERS may depend upon the department's ability to obtain sufficient information from you, the IP who is managing your former employer's affairs or any third party, where relevant.

The department will make your GEERS advance to the IP, who will deduct tax and forward the GEERS advance to you. In some cases the amount paid to you may differ from the amount you have put on your Claim Form. This may depend on the information received from the IP and your legal entitlements.

If you receive any payments towards your entitlements from any source connected with your employment, it will be taken into account when calculating your GEERS advance. You must advise the department if this happens.

GEERS advances are treated as advances under the *Corporations Act 2001*. This means that if funds become available during the insolvency process the department will seek to recover payments from the insolvent employer up to the amounts you received under GEERS.

Where the department's recovery rights are not protected, for example where your employer is subject to bankruptcy under the *Bankruptcy Act 1966*, you will be required to sign a Deed of Undertaking prior to payment being released.

The department informs Centrelink of any advances made; this may affect your Centrelink entitlements. To discuss the effect of GEERS payments please contact Centrelink on 13 10 21.

Requests for information

The department may require additional information from you to assess your claim. It is **important** that you reply to the department's requests, or contact us to make other arrangements **within 28 days** from the date of our request. If you **do not** respond within the required timeframe, you may be **deemed ineligible** for GEERS assistance.

It is also important that you update your details if you change your postal address or if any of the details provided in your original GEERS Claim Form change.

Further Information

For further information:

- Contact the IP managing your former employer's affairs
- Contact the GEERS Hotline on **1300 135 040**
- Email **GEERS@deewr.gov.au** or
- Visit the department's website: **deewr.gov.au/geers**



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 75

Voluntary administration: a guide for employees

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

This information sheet provides general information for employees of companies in voluntary administration. Employees should also read ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors*.

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. 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.

A secured creditor is someone who has a charge, such as a mortgage, over company assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see ASIC information sheet

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.

INFO 55 *Receivership: a guide for employees.*

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 (including employees). 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. In complex administrations, the meeting may be held later if the court consents. Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

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.

Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided and other employee entitlements that arise after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees. As a result, unless the voluntary administrator adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during voluntary administration.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements 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.

Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in

a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. retrenchment pay.

Each class is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

To find out more, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees at the same time as the notice of meeting a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion, and
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

The General Employee Entitlements and Redundancy Scheme (GEERS)

GEERS is a basic payment scheme designed to assist employees whose employment has been terminated due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS is administered by the Department of Education, Employment and Workplace Relations.

You are not eligible for GEERS assistance if your former employer is a company in voluntary administration or subject to a deed of company arrangement until and unless the company goes into liquidation.

If the company was subject to a deed of company arrangement in the 12 months before the liquidation and:

- the deed had a different priority for payment of outstanding claims, including employee entitlements to that in a liquidation; and/or
- the deed did not provide for the distribution of all of the company's available funds and assets;

this will affect your ability to make a claim under GEERS.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your ability to make a claim under GEERS if the company subsequently goes into liquidation.

For more on liquidation, refer to our related information sheets (listed below).

For more on GEERS, visit www.deewr.gov.au/geers or contact the GEERS Hotline on 1300 135 040 or email GEERS@deewr.gov.au.

If the deed provides for your ongoing employment, you may wish to seek advice on how this affects payment of your outstanding entitlements.

Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

You may also be entitled to make a claim under GEERS when the company enters into liquidation.

Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish any entitlement to GEERS if the company proceeds to liquidation.

When submitting a claim, 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, you may 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.

For details on proving your claim in a liquidation, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Creditors' committee

A creditors' committee may be formed to consult with the voluntary administrator or deed administrator, and receive reports on the conduct of their administration. In a voluntary administration, this committee is called a 'committee of creditors'. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

Employees may wish to nominate a representative to be on the committee and have a say in matters that may impact on their interests.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's 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, contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

To find out more

For an explanation of terms used in this information sheet, see ASIC's 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 74 *Voluntary administration: a guide for creditors*
- 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.