



## **Voluntary Administration – a guide for creditors**

### **The object of voluntary administration**

The objective of a voluntary administration under the Companies Act 1993 is to:

- a) Maximise the chances of the company, or as much as possible of its business, continuing in existence; or
- b) If it is not possible for the company or its business to continue in existence, to achieve a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

### **The effect of a voluntary administration**

The appointment of voluntary administrators provides the company with a brief moratorium period while the administrators assess the financial position of the company and develop a proposal to submit to creditors. The creditors will then decide on the future of the company through a formal voting process.

While the company is in voluntary administration:

- Unsecured creditors cannot begin, continue or enforce their claims against the company without the administrator's consent or a Court order;
- Owners of property used or occupied by the company, or those who lease such property to the company, cannot recover their property;
- Except in limited circumstances, secured creditors cannot enforce their charge over company property;
- A court application to put the company in liquidation cannot be commenced; and
- A creditor holding a personal guarantee from the company's director or other person cannot act under the personal guarantee without the Court's consent.

### **What is the administrator's role**

As soon as practicable after appointment and taking control of the company, the administrator is required to investigate the company's affairs and form an opinion as to whether it would be in the creditors' interests for:

- The company to enter into a deed of company arrangement; or
- The administration to end; or
- A liquidator to be appointed.

An administration generally involves two meetings of creditors.

### **The first creditors' meeting**

An administrator must call the first creditors' meeting within eight working days of appointment. The purpose of the first creditors' meeting is to decide whether to:

- Appoint a creditors' committee and, if so, to appoint its members; and
- Replace the administrator if an alternative administrator is proposed at the meeting.



### **The second creditors' meeting - the watershed meeting**

The watershed meeting is a meeting of creditors, to decide the future of the company which must be convened by the administrator 20 working days after the administration appointment. Prior to the watershed meeting the administrator will prepare a report for creditors, which will include:

- Details on the company's business, property, affairs, and financial circumstances and any other matter material to the creditors' decisions to be considered at the meeting; and
- A statement setting out the administrator's opinion, with reasons for that opinion, about each of the following matters:
  - whether it would be in the creditors' interests for the company to execute a deed of company arrangement; or
  - whether it would be in the creditors' interests for the administration to end; or
  - whether it would be in the creditors' interests for the company to be placed in liquidation.
- If a deed of company arrangement is proposed, a statement setting out the details of the proposed deed.

### **Voting at a creditors' meeting**

To vote at a creditors' meeting you must lodge details of your claim (creditors' claim form) with the voluntary administrator, or their appointed representative.

The chairperson of the meeting decides whether or not to accept the claim for voting purposes. The administrator may also estimate the value of your claim for the purposes of voting in the meeting. Creditors' claims admitted for the purposes of voting at the meeting are admitted for those purposes only. It does not constitute acceptance of a creditor's claim for the purposes of any distribution to creditors if a deed of company arrangement is executed or in a liquidation. The administrators reserve their rights to call for new claims if they require.

Should you attend the meeting you will receive a voting form when registering. In the first instance voting may be by way of hands.

A resolution is adopted if a majority in number representing at least 75% in value of the creditors voting in favour of the resolution (note this will include votes conducted by post – see below).

If voting results in a deadlock, the chairperson may exercise a casting vote.

Voting may be done as follows:

#### **Voting by proxy**

If you are unable to attend the meeting, you may appoint a proxy to attend and vote at the meeting on your behalf. A proxy form (Postal/Proxy vote form) is enclosed which is valid only for the meeting indicated and any adjournment of that meeting.

If you are unable to attend the meeting and you do not have a representative who can attend the meeting on your behalf, you may appoint the chairperson as your proxy.

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, by not ticking the ABSTAIN, FOR or AGAINST boxes. This is called a "general proxy".



### **Voting by post**

If you are unable to attend the meeting, or wish to vote prior to the meeting, you can complete a postal vote. A postal vote form (Postal/Proxy vote form) is enclosed which is valid only for the meeting indicated and any adjournment of that meeting.

**Postal/Proxy vote forms must be received not less than 2 working days before the start of the meeting, together with your completed creditors' claim form. Any Postal/Proxy vote forms received after this time will be invalid for the meeting.**