



13 June 2018

**Unlockd Limited (Administrators Appointed) ACN 169 872 502**  
**Unlockd IP Pty Ltd (Administrators Appointed) ACN 602 741 355**  
**Unlockd AU Pty Ltd (Administrators Appointed) ACN 602 741 284**  
**Unlockd Operations Pty Ltd (Administrators Appointed) ACN 608 719 375**  
**(combined "Unlockd" or the "Group")**

### **Circular to Suppliers**

Keith Crawford and I were appointed Administrators (**Administrators**) of Unlockd on 12 June 2018. The international operations of Unlockd are not currently subject to the Voluntary Administration appointment.

#### **Immediate objectives**

As Administrators, we have assumed control of Unlockd's affairs and have entered into possession of its assets. It is our intention to continue trading Unlockd's business while we undertake an urgent assessment to determine the best course of action to preserve its business.

#### **Continuing to trade**

The Administrators would appreciate you making goods and services available to Unlockd on your usual trading terms when requested by me or my authorised representatives. All supplies made against signed purchase orders dated 12 June 2018 and beyond will be paid on normal terms.

#### **Procedures for ongoing supply**

Please adopt the following procedure for Unlockd's account:

- close your existing account as at the date of our appointment, being 12 June 2018; and
- open a new account in the name of "Unlockd Limited (Administrators Appointed)".

All purchase orders must be signed by us, as Administrators, or one of the authorised personnel whose specimen signatures appear on the schedule enclosed with this circular. Please do not deliver goods or services without a signed purchase order as this may affect payment for the goods or services by the Administrators.

Payments made by the Administrators must be applied against debts incurred by the Administrators and cannot be applied against any pre-appointment debt owed to you by Unlockd.

Additionally, if you are currently a customer of Unlockd as well as a creditor, any goods or services supplied to you by Unlockd following our appointment must be paid for in full in accordance with Unlockd's normal trading terms. Any goods or services provided by Unlockd are provided in accordance with the above condition.

Please note:

- If there are any outstanding or unfulfilled orders placed by Unlockd prior to our appointment, including those under which there are goods in transit, please contact Ben Lee on (03) 9038 3100 as a matter of urgency to ascertain whether the goods or services are still required by the Administrators. These orders should not be completed unless confirmed in writing in accordance with the above authorisation procedure.
- The Administrators do not personally adopt any contract that exists, or may have existed, between you and Unlockd at the date of appointment of the Administrators. Payment for any goods or services by the Administrators is not an adoption of a contract or liability.



- Any further credit properly incurred for goods and services supplied on the new account will be a liability of the Administrators.
- Under taxation legislation, we are obliged to withhold 46.5% from payments to suppliers who do not quote a current Australian Business Number (**ABN**). Please ensure that a current ABN is quoted for each supply made by you.
- Input tax credits for payments made to registered suppliers cannot be claimed until a valid tax invoice has been received. Accordingly, suppliers must provide a valid tax invoice for GST purposes before payment will be made.

### **Privacy and Personal Information**

We may collect personal information from you, Unlockd or otherwise, in connection with your trading arrangements with Unlockd. McGrathNicol takes all reasonable steps to protect the information that we hold (including personal information) from misuse, loss and from unauthorised access, modification or disclosure. Our Privacy Policy can be found on the McGrathNicol website.

### **Pre-appointment debts**

Amounts owed by Unlockd prior to 12 June 2018 remain a liability of Unlockd and are not payable by the Administrators. These debts represent an unsecured claim against Unlockd and payment is dependent upon the outcome of the administration.

At this stage, it is too early to say if funds will become available to unsecured creditors.

### **Further information**

A copy of the information sheet, "Voluntary administration: a guide for creditors", issued by the Australian Securities & Investments Commission (**ASIC**) is also enclosed for your information.

If you have any queries, please contact Ben Lee on (03) 9038 3100. For further information about this engagement, please refer to the website [www.mcgrathnicol.com](http://www.mcgrathnicol.com).

Thank you in advance for your cooperation.

Dated: 13 June 2018

Robert Smith  
*Joint and several Voluntary Administrator*

Enclosures:

- 1 Schedule of authorised signatories for orders
- 2 ASIC "Voluntary administration: a guide for creditors" information sheet



Unlockd Limited (Administrators Appointed) ACN 169 872 502  
Unlockd IP Pty Ltd (Administrators Appointed) ACN 602 741 355  
Unlockd AU Pty Ltd (Administrators Appointed) ACN 602 741 284  
Unlockd Operations Pty Ltd (Administrators Appointed) ACN 608 719 375  
(combined "Unlockd" or the "Group")

Schedule of authorised signatories for orders

Name

Signature

Keith Crawford

.....

Robert Smith

.....

Emily Seeckts

.....

Christopher Hodge

.....



ASIC

Australian Securities & Investments Commission

## Voluntary administration: A guide for creditors

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

This information sheet (INFO 74) provides general information for unsecured creditors of companies in voluntary administration. It covers:

- [who is a creditor](#)
- [the purpose of voluntary administration](#)
- [the voluntary administrator's role](#)
- [effect of appointment](#)
- [voluntary administrator's liability](#)
- [creditors' meetings](#)
- [voting at a creditors' meeting](#)
- [company returned to directors](#)
- [liquidation](#)
- [deed of company arrangement](#)
- [approval of administrator's fees](#)
- [proposals to creditors without a meeting](#)
- [committee of inspection](#)
- [directors and voluntary administration](#)
- [other creditor rights](#)
- [queries and complaints](#)

### 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.

A retail customer of a company in voluntary administration may also be a creditor if they have partly or fully paid for goods or services that they have not received.

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 holds a security interest, such as a mortgage, in some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. Security interests over personal property other than land are registered on the Personal Property Securities Register (PPSR) if the creditor wants to ensure their security interest is enforceable and accorded priority in an insolvency. You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company's assets.

- An unsecured creditor is a creditor who does not hold a security interest in 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 [Information Sheet 75 Voluntary administration: A guide for employees](#) (INFO 75).

All references in this information sheet to 'creditors' relate to unsecured creditors unless otherwise stated.

## The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (the below table 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.

### The voluntary administration process

Step	What happens
Appointment of voluntary administrator	<p>A decision to appoint a voluntary administrator for a company can be made by:</p> <ul style="list-style-type: none"> <li>• the directors (by resolution of the board and in writing)</li> <li>• a secured creditor (with a security interest in all or substantially all of the company's property), or</li> <li>• a liquidator (or provisional liquidator).</li> </ul> <p>Voluntary administration begins on the appointment of the voluntary administrator.</p>
First meeting of creditors	<p>The voluntary administrator must hold the first meeting of creditors within eight business days of being appointed, unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can vote at this meeting to:</p> <ul style="list-style-type: none"> <li>• replace the administrator, and/or</li> <li>• create a committee of inspection.</li> </ul>
Voluntary administrator's investigation and report	<p>The voluntary administrator must investigate the company's affairs and report to creditors on alternatives.</p>

Step	What happens
Second meeting of creditors – meeting to decide company's future	<p>The voluntary administrator must hold the meeting to decide the company's future within 25 business days of being appointed (or 30 business days if the appointment is around Christmas or Easter), unless the court allows an extension of time.</p> <p>At least five business days notice of the meeting must be given to creditors.</p> <p>Creditors can decide at this meeting to:</p> <ul style="list-style-type: none"> <li>• return the company to the control of the directors</li> <li>• accept a deed of company arrangement (the deed must be signed by the company within 15 business days following the meeting, unless the court allows an extension of time), or</li> <li>• put the company into liquidation (this happens immediately, and the administrator becomes the liquidator).</li> </ul>

A company in voluntary administration may also be in receivership: see [Information Sheet 54 Receivership: A guide for creditors](#) (INFO 54).

## 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
- 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.

At the end of their administration, the voluntary administrator must lodge a detailed account of receipts and payments (known as the 'end of administration return'). A copy of this account of receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

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 security interest in the company's assets
- a court application to put the company in liquidation can't be commenced
- 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 of the company as costs of the voluntary administration. If there are insufficient funds available from asset sales to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this debt protection as a provider of goods or services to a company in voluntary administration, 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 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 and, if they do not intend to continue to occupy or use the property, the location of that property (if known). If the voluntary administrator decides to continue to occupy or use the property, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

## Creditors' meetings

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

### First creditors' meeting

The voluntary administrator must hold 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 on [ASIC's published notices website](#).

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

A committee of inspection may be formed to assist and advise the voluntary administrator. The committee of inspection also monitors the conduct of the voluntary administration, may approve certain steps in the administration and may give directions to the voluntary administrator. The voluntary administrator must have regard to, but is not always required to comply with, such directions.

A creditor who wishes to nominate an alternative voluntary administrator at the first meeting 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.

## 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 if the appointment is around Christmas or 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
- the voluntary administrator's statement.

These will be accompanied by:

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

The meeting must also be advertised on [ASIC's published notices website](#).

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, affairs and financial circumstances, 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.

## Voluntary administrator's statement

The voluntary administrator's statement must include the voluntary administrator's opinion, with reasons, on each of the options available to creditors, as well as an opinion on which option the voluntary administrator believes 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)
- wind up the company and appoint a liquidator.

The voluntary administrator's statement must also include such other information known to the voluntary administrator that will allow you to make an informed decision about each of the options above.



The statement must also advise whether there are any voidable transactions (such as unfair preferences, unfair loans, insolvent trading, etc.) where money or property may be recoverable by a liquidator, if one were appointed.

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 voluntary administrator's report or statement do 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. In this case, they may not allow the creditor to vote at all. If the chairperson is in doubt whether to accept the debt or claim, they must mark the vote as objected to and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. 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 10 business 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 interest.

## Voting by proxy

You may appoint an individual as proxy to attend and vote at a meeting on your behalf. 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.

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 emailing 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 more formal voting procedure called a 'poll'.

If voting is 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 verbal agreement, they may decide to conduct a poll.

Alternatively, a poll can be demanded by the person presiding at the meeting or by a person participating and entitled to vote at the meeting. If a poll is demanded, it must be taken immediately.

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 voices.

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

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution
- 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 (except for resolutions to approve their remuneration) either in favour of or against the resolution. Where the resolution relates to their removal as voluntary administrator, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, in which case the deadlocked resolution is not passed.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they exercised their casting 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, in specified circumstances, 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, in specified circumstances, 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 10 business days of the meeting. A copy of the minutes of meeting may be obtained by searching the [ASIC registers](#) and paying 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 [Information Sheet 45 Liquidation: A guide for creditors](#) (INFO 45).

## 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
- 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.

A director must notify the deed administrator if they become aware that there has been, or is likely to be, a material contravention of the deed. In addition, the deed administrator must give notice to creditors as soon as practicable after becoming aware of the material contravention or if there is likely to be a material contravention of the deed.

A deed administrator must lodge with ASIC a detailed list of their receipts and payments (known as the annual administration return) annually on the anniversary of their appointment and at the end of their administration. A copy of the receipts and payments may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

**Note:** If the deed of company arrangement commenced prior to 1 September 2017, the deed administrator will continue to lodge the six-monthly [Form 524 Presentation of accounts and statement](#) until the six-month period ending on the first anniversary of their appointment date. Thereafter, they will lodge the annual administration return.

## Varying the deed

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

The deed administrator must also call a meeting to consider a resolution to vary the deed if:

- the committee of inspection directs it (where there is a committee of inspection)
- creditors pass a resolution requiring the deed administrator call a meeting
- at least 25% in value of creditors direct the deed administrator to do so in writing
- less than 25% but more than 10% in value of creditors direct the deed administrator to do so in writing and they provide security for the cost of holding the meeting.

The deed administrator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable.

If the deed administrator considers the direction is not reasonable, they must notify the person or body that gave the direction and set out the reasons why it is not reasonable. In this circumstance, the deed administrator may still convene a meeting to consider varying the deed if the person or body who gave the direction agree to 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 (either on their own initiative or at the direction of creditors or the committee of inspection if one has been formed), and creditors vote to end the deed. This may occur because there has been a breach of the deed or 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
- the deed cannot proceed without undue delay or injustice
- 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 creditors, a committee of inspection or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees

approved. Alternatively, the voluntary administrator or deed administrator may put a proposal to creditors to approve their fees without holding a meeting.

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection, 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 summary description of the major tasks performed or likely to be performed
- the costs of completing those tasks and how those costs were calculated
- the periods when funds will be drawn to pay the fees
- the estimated total amount, or range of amounts, of total fees
- an explanation of the likely impact the fees will have on any dividends to creditors
- such other information that will assist in assessing the reasonableness of the fees claimed.

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 may require creditor, committee of inspection or court approval.

For further information, see [Information Sheet 85 Approving fees: A guide for creditors](#) (INFO 85).

## Proposals to creditors without a meeting

Instead of convening a creditors' meeting, the voluntary administrator or deed administrator can put proposals to creditors by giving notice in writing.

This notice must be given to each creditor who would be entitled to receive notice of a meeting and:

- include a statement of the reasons for the proposal and the likely impact the proposal will have on creditors
- invite the creditor to either:
  - vote 'yes' or 'no' for the proposal
  - object to the proposal being resolved without a meeting
- specify a reasonable time for creditors' replies to be received by the administrator.

To vote on the proposal, a creditor must lodge details of their debt or claim with the administrator and complete the voting documents provided by the administrator.

Creditors can vote 'yes' or 'no' on the proposal and/or object to the proposal being resolved without a creditors' meeting. You should return your response to the administrator within the time specified in the notice, which must be at least 15 business days after the notice is given to creditors.

A resolution is passed if the majority of creditors in number and value who responded to the notice voted 'yes' and if not more than 25% in value of the creditors who responded objected to the proposal being resolved without a creditors' meeting.

The administrator should provide creditors enough information to allow them to make an informed decision about the proposal. A creditor should contact the administrator to obtain further information if they think it necessary for them to make a decision.

The administrator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by searching the [ASIC registers](#) and paying the relevant fee.

## Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator or deed administrator. The committee of inspection also monitors the conduct of the voluntary administrator or deed administrator, may approve

certain steps in the voluntary administration or deed administration and may give directions to the voluntary administrator or deed administrator. The voluntary administrator or deed administrator must have regard to, but is not always required to comply with, such directions.

In a voluntary administration, the committee may be formed at the first creditors' meeting.

All creditors are entitled to stand for committee membership. Members appointed to the committee of inspection represent the interests of all creditors.

If a creditor is a company, the creditor can nominate, in writing, an individual to represent it on the committee.

A person can be appointed as a member of the committee of inspection:

- by resolution of creditors
- by a creditor or group of creditors owed at least 10% of the value of creditors' claims
- by an employee or group of employees owed at least 50% in value of outstanding employee entitlements.

A member of the committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

A committee of inspection has various powers and functions, including to:

- approve the remuneration of the voluntary administrator or deed administrator
- direct the voluntary administrator or deed administrator to convene a meeting of creditors
- request the voluntary administrator or deed administrator to give information, provide a report or produce a document
- obtain specialist advice or assistance (with the prior approval of the voluntary administrator, deed administrator or the court) that the committee considers desirable relating to the conduct of the voluntary administration or the deed administration.

The external administrator or deed administrator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable.

A committee of inspection can determine its own procedures and exercises its powers through resolutions passed at meetings of the committee. A resolution is passed by a majority in number of its members present at a meeting. The committee of inspection can only act if a majority of its members attend.

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC.

ASIC is entitled to attend a meeting of the committee of inspection.

## 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.

## Other creditor rights

### Request for information

Creditors can, by resolution passed at a meeting of creditors or individually, request the voluntary administrator or deed administrator to give information, provide a report or produce a document.

The voluntary administrator or deed administrator must comply with this request if:

- the information, report or document is relevant to the administration
- the voluntary administrator or deed administrator would not breach their duty if they comply with the request
- the request is reasonable.

If the voluntary administrator or deed administrator, acting in good faith, believes it is not reasonable to comply with the request they must notify the requesting party and set out their reason for believing the request is not reasonable.

The voluntary administrator or deed administrator may consider the request not reasonable if, for example, complying with the request would substantially prejudice the interests of one or more creditors, the information would otherwise be privileged from production in legal proceedings or if the administration does not have sufficient funds to pay the cost of complying with the request.

If there are insufficient funds, the voluntary administrator or deed administrator may decide to comply with the request if the requesting party agrees to pay the cost of providing the information.

## Appoint a reviewing liquidator

Creditors can resolve to appoint a reviewing liquidator to carry out a review into fees and/or costs incurred by the voluntary administrator or deed administrator. In addition, one or more creditors with the agreement of the voluntary administrator or deed administrator may appoint a reviewing liquidator.

**Note:** A creditor can also apply to ASIC in the approved form for it to appoint a reviewing liquidator (see Form 5605 *Application for ASIC to appoint a reviewing liquidator*).

This review is limited to:

- remuneration approved within the six months before the reviewing liquidator is appointed
- costs or expenses incurred during the 12-month period before the reviewing liquidator is appointed (unless the voluntary administrator or deed administrator agrees to a longer period).

The reviewing liquidator must be a registered liquidator. A creditor who wishes to appoint a reviewing liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as reviewing liquidator. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as reviewing liquidator.

The voluntary administrator or deed administrator, and their staff, must cooperate with the reviewing liquidator.

If creditors pass a resolution to appoint a reviewing liquidator, the reviewing liquidator's costs form part of the expenses of the external administration of the company. If one or more creditors appoint the reviewing liquidator with the consent of the voluntary administrator or deed administrator without passing a resolution, the reviewing liquidator's costs are borne by the creditor(s) appointing the reviewing liquidator.

## 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 report of misconduct with ASIC – see [How to complain](#).

Lodging your report of misconduct online ensures the quickest response from ASIC to your concerns.

ASIC usually does not become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

Reports of misconduct against companies and their officers can also be made to ASIC.



If you cannot report misconduct to ASIC online, you can contact us on 1300 300 630.

## Where can I get more information?

For an explanation of terms used in this information sheet, see [Information Sheet 41 \*Insolvency: A glossary of terms\*](#) (INFO 41). For more on external administration, see the related information sheets listed in [Information Sheet 39 \*Insolvency information for directors, employees, creditors and shareholders\*](#) (INFO 39).

Further information is available from the [Australian Restructuring Insolvency & Turnaround Association \(ARITA\) website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

## Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 74 (INFO 74)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Last updated: 01/09/2017 07:51