



LKM Capital Limited (Receivers and Managers Appointed) (In Liquidation)
ACN 091 379 930
(LKM)

Initial Information for Creditors

Kathy Sozou and I were appointed Joint and Several Liquidators of LKM on 31 January 2019.

We have been appointed to represent the interests of all creditors and according to LKM's records, you are, or may be, a creditor.

As Liquidators, we are responsible for locating LKM's assets, investigating LKM's affairs, reporting to the Australian Securities and Investments Commission (**ASIC**) and, if funds become available, paying money owed to creditors.

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

Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

We enclose our DIRRI. Our independent status and who appointed us is outlined in our DIRRI.

What do you need to know?

Question	Answer
What is a court liquidation?	A court liquidation is where a creditor that is owed money by the company successfully applies for an order that the company be placed into liquidation on the grounds that the company is insolvent.
What is the role of the liquidators when LKM has receivers appointed?	As you would be aware, BRI Ferrier were appointed Receivers and Managers of LKM on 5 August 2008 (the Receivers). Given the shortfall to note holders on their secured claim, Sandhurst Trustees Ltd (the Trustee) took steps to wind up LKM and appointed us as Liquidators to consider any claims available to the liquidators (but not the Receivers), which may provide a further return to creditors (including note holders).
What are your rights as a creditor?	We enclose a copy of the information sheet "Creditor Rights in Liquidations" issued by the Australian Restructuring Insolvency & Turnaround Association (ARITA). It includes information on your rights to: <ul style="list-style-type: none">▪ make reasonable requests for a meeting;▪ make reasonable requests for information;▪ give directions to the Liquidators;▪ appoint a reviewing liquidator; and▪ replace us as Liquidators.



Question	Answer
<p>What happens to your debt?</p>	<p>All creditors of LKM (including the Trustee on behalf of note holders) are now creditors in the liquidation and will now be dealt with through the liquidation process. This does not directly impact the ongoing receivership and the Receivers remaining in office. We are not trading the business of LKM.</p> <p>Any money you receive through the liquidation is dependent on recoveries we make, including from locating, securing and selling LKM's assets (if any remain). After paying our fees, creditors share in any remaining money proportionally. If funds are available, the amount paid is called a dividend.</p> <p>A dividend can vary between creditors because the law entitles different types of creditors to be paid before other types of creditors. In addition, a dividend will only be paid where there are sufficient recoveries in the liquidation, which will not always be the case.</p> <p>If you have leased property to LKM, have a retention of title claim or have a registered personal property securities interest in relation to LKM, please contact Alexander Woolcott on (02) 9338 2667 as soon as possible.</p>
<p>Do you have to do anything?</p>	<p>You should read this information. You can choose to participate in the liquidation process, but you don't have to.</p> <p>If we need you to take action, we will write and ask you. For example, we may ask you to provide proof of your debt before we can pay you a dividend.</p> <p>If you do not think you are a creditor, please let us know.</p>
<p>What is the cost of the liquidation?</p>	<p>We get paid out of LKM's money, including realisations from assets or from money paid to us by others, which may include funds contributed by LKM's creditors. If there is not enough money in the liquidation, we do not get paid in full.</p> <p>We have received a limited indemnity from the Trustee for our fees and disbursements. The indemnity is to be met from funds held by the Receivers.</p> <p>We enclose our Initial Remuneration Notice, which provides you with information about how we propose to be paid for undertaking the liquidation.</p> <p>We may write and ask that you approve our remuneration for the work that we do in completing the liquidation. If we do, we will provide you with detailed information about what tasks we have undertaken and the costs of those tasks.</p>
<p>What further communication will you receive?</p>	<p>We will write to you within three months of our appointment advising whether a dividend is likely and update you on the progress of our investigations.</p> <p>We may also send you updates on the progress of the liquidation, or proposals to approve certain matters in the liquidation, at any time.</p> <p>If we consider it to be in the interests of creditors, we will hold a meeting to communicate with creditors. Further, if we receive a request for a meeting that complies with the guidelines set out in the creditor rights information sheet, we will also hold a meeting of creditors.</p>



Question	Answer
What happens next?	We will proceed with the liquidation, which will include: <ul style="list-style-type: none">▪ investigate claims against third parties and take action as required;▪ recovering and selling any available property;▪ reporting to the corporate regulator, ASIC; and▪ distributing any available funds to creditors in accordance with their priority.
Where can you get more information?	ARITA provides information to assist creditors to understand liquidations and insolvency. This information is available from ARITA's website at www.arita.com.au/creditors . A copy of the information sheet, "Insolvency information for directors, employees, creditors and shareholders", issued by ASIC is also enclosed for your information.

If you have any queries, please contact Mr Woolcott via email (lk@mcgrathnicol.com). For further information about this engagement, please refer to the website www.mcgrathnicol.com/creditors.

Dated: 28 February 2019

Barry Kogan
Liquidator

Enclosures:

- 1 ARITA Information Sheet - Creditor Rights in Liquidations
- 2 Declaration of Independence, Relevant Relationships and Indemnities
- 3 Initial Remuneration Notice
- 4 ASIC Information Sheet - Insolvency information for directors, employees, creditors and shareholders

Creditor Rights in Liquidations

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



Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by $\geq 5\%$ of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$ but $< 25\%$ of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$ of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

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

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

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

- (a) complying with the request would prejudice the interests of one or more creditors or a third party
- (b) there is not sufficient available property to comply with the request
- (c) the request is vexatious

Meeting requests only:

- (d) a meeting of creditors dealing with the same matters has been held, or will be held within 15 business days

Information requests only:

- (e) the information requested would be privileged from production in legal proceedings
- (f) disclosure would found an action for breach of confidence
- (g) the information has already been provided
- (h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

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

An individual creditor cannot provide a direction to a liquidator.

Right to appoint a reviewing liquidator

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

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

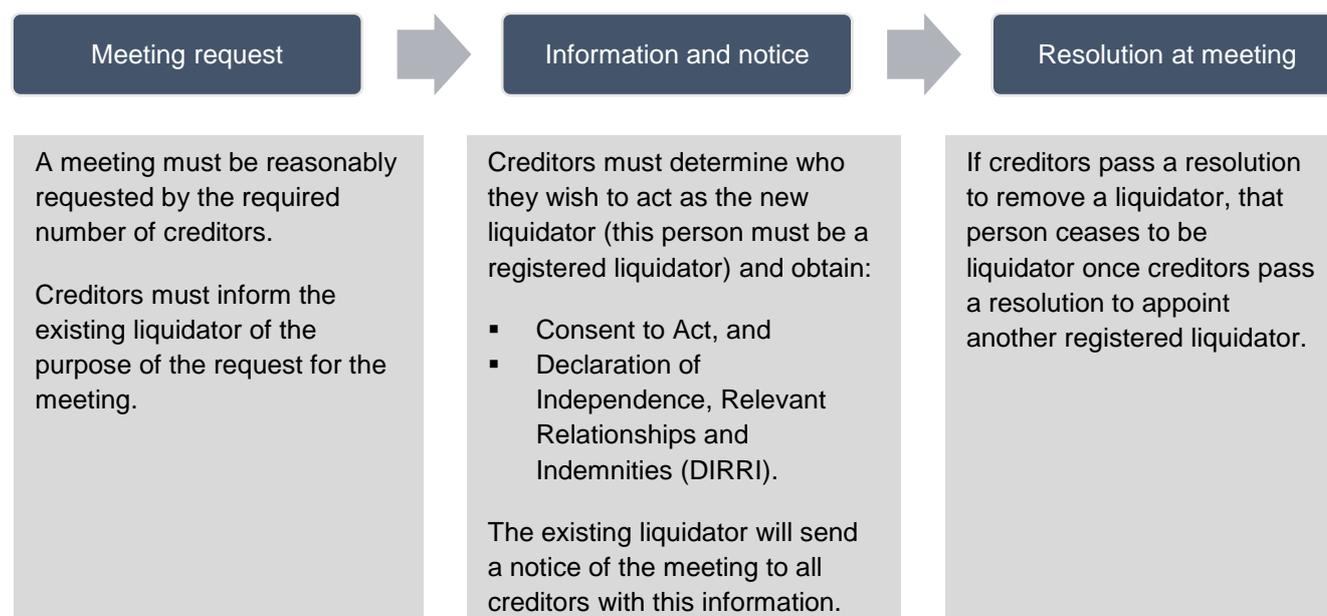
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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

Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



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



Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

LKM Capital Limited (Receivers and Managers Appointed) (In Liquidation)

ACN 091 379 930

(LKM)

The *Corporations Act* (**Act**) and professional standards require the Practitioners appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
 - a) the circumstances of the appointment;
 - b) any relationships with LKM and others within the previous 24 months;
 - c) any prior professional services for LKM within the previous 24 months;
 - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

A. Independence

We, Barry Kogan and Kathy Sozou, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Liquidators of LKM 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.

B. Declaration of Relationships

(i) *Circumstances of appointment*

This appointment was referred to us by Hayden Williams of Sandhurst Trustees Limited (**Sandhurst**). Sandhurst is the petitioning creditor and hold a charge over all or substantially all of LKM's assets, on behalf of secured note holders.

From time to time, we have historically provided services to, or undertaken work for, Sandhurst.

On or about early September 2018, Mr Williams contacted Mr Kogan about consenting to act as Joint and Several Liquidators of LKM.

On 27 November 2018, Sandhurst's lawyers, Baker & Mackenzie, requested that we provide a consent to act and we subsequently did so on the same day.

On 31 January 2019, the Supreme Court of New South Wales ordered that LKM be wound up and Barry Kogan and Kathy Sozou be appointed as Joint and Several Liquidators.

We believe this referral does not result in a conflict of interest or duty because:

- The provision of a consent to act does not result in any duty owed to the petitioning creditor that would conflict with our interests or duties under the Act;



- the referral was unconditional; and
- the limited correspondence with Sandhurst Trustees did not involve any advice to any party, including LKM and its directors.

(ii) *Relevant Relationships (excluding professional services to the Insolvent)*

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with LKM, an associate of LKM, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially whole of LKM's property.

We have also not undertaken work for Sandhurst during the preceding 24 months.

(iii) *Prior professional services to the Insolvent*

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

(iv) *No other relevant relationships to disclose*

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

C. *Indemnities and Up-front Payments*

We have received a limited indemnity of approximately \$75,000 to \$100,000 from the Trustee (to be met from funds held by the Receivers) for our fees and disbursements, based on the fee estimate provided. We have not received any up-front payments in respect of our remuneration or disbursements.

There were no conditions on the conduct or the outcome of the Liquidation attached to the provision of the indemnity.

The indemnity will not be drawn upon to meet our remuneration requirements, until such time that it is approved by creditors, as required by the Corporations Act.

This does not include statutory indemnities. We have not received any other indemnities or upfront payments that should be disclosed.

Dated: 28 February 2019

.....
Barry Kogan

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Kathy Sozou

Note:

- 1 If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors.



- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.



Initial Remuneration Notice

LKM Capital Limited (Receivers and Managers Appointed) (In Liquidation)
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(LKM)

The purpose of the Initial Remuneration Notice is to provide you with information about how we propose our remuneration for undertaking the court liquidation of LKM will be set.

1 Remuneration methods

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

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

2 Method chosen

Given the nature of this external administration, we propose that our remuneration be calculated on a time basis which will be recorded and charged in six minute increments. Details of the hourly rates for different levels of staff are included below. The complexity and demands of the external administration will determine the staff to be utilised for this appointment.

We have chosen the time based method because:

- This method is considered to be most suitable for this appointment as it ensures creditors are only charged for work that is performed in the external administration, which can be difficult to accurately estimate at the date of appointment.
- Even later than the date of appointment, it can be difficult to estimate the time that may be required in advance of the substantive work being undertaken. The time based method in this case again ensures that creditors are only charged for work that is actually performed in the external administration.
- The practitioner is required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditor enquiries, reporting to ASIC and distributing funds in accordance with the provisions of the *Corporations Act*.
- The practitioner has a time recording system that can produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the external administration.
- Time based remuneration calculates fees upon a basis of time spent at the level appropriate to the work performed.



3 **Explanation of Hourly Rates**

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

Title	Description	Hourly rate (excl GST)
Appointee/Partner	Registered liquidator, Chartered Accountant or equivalent and generally degree qualified with more than twelve years of experience. Leads assignments with full accountability for strategy and execution.	\$690
Director 1	Generally Chartered Accountant or comparable qualification and degree qualified with more than ten years of experience, including four years of Director or equivalent experience. Autonomously leads complex insolvency appointments reporting to Appointee/Partner.	\$635
Director	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than nine years of experience. Autonomously leads insolvency appointments reporting to Appointee/Partner.	\$600
Senior Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than seven years of experience. Self-sufficiently conducts small to medium insolvency appointments and leads major workstreams in larger matters.	\$545
Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than five years of experience. Self-sufficiently conducts small insolvency appointments and takes a supervisory role on workstreams in larger matters.	\$515
Assistant Manager	Generally Chartered Accountant or comparable relevant qualification and degree qualified with more than three years of experience. Autonomously manages workstream activity within appointments.	\$465
Senior Accountant	Generally degree qualified and undertaking Chartered Accountant's qualification or comparable relevant qualification with more than 16 months of experience. Completes tasks within workstreams and appointments under supervision.	\$425
Accountant	Generally degree qualified and undertaking or about to undertake Chartered Accountant's qualification or comparable relevant qualification with less than one year of experience. Assists with tasks within workstreams and appointments under supervision.	\$330



Title	Description	Hourly rate (excl GST)
Undergraduate/Cadet	Undertaking relevant degree. Assists with tasks within workstreams and appointments under supervision.	\$200
Practice Services Director	National Practice Service leaders, generally degree qualified with more than ten years of experience and reporting directly to partners. Technical experts in their specific areas and have team management responsibilities.	\$640
Senior Treasury staff	Appropriately experienced and undertakes senior Treasury activities such as oversight of the processing of payment of receipts and banking administration. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$420
Senior Client Administration and Treasury	Appropriately experienced and undertakes senior level administrative support activities or Treasury activities. May be responsible for day to day management of projects or operations and may have supervisory responsibility for junior staff.	\$330
Administration	Appropriately experienced and undertakes support activities such as meeting coordination and preparation of materials where it is efficient and appropriate to do so.	\$180

McGrathNicol reviews its hourly rates on either 31 December or 30 June. Creditors will be advised of any change to the hourly rates for this external administration.

4 **Estimated remuneration**

Subject to the assumptions set out below and experience with other, similar engagements, we estimate that this external administration may involve remuneration for the practitioners of approximately \$90,000. The following variables may have a significant effect on this estimate:

- the time that may be required to obtain books, records, funds and assets (if any) from the parties that hold them;
- the number and value of claims that may be received in the external administration and work that may be required to adjudicate on those claims for voting and/or dividend purposes;
- work that may be required to distribute funds to creditors;
- investigations that may be required to ascertain the existence and location of any other assets, including potential legal actions that may be available to the external administrator;
- where viable legal claims are identified, the timeframe to resolution becomes very significantly impacted by the conduct of the defendant and their willingness to resolve the claim by a negotiated settlement, as well as Court timeframes, both of which are difficult to predict; and
- any identified matters that are required to be reported to statutory authorities such as ASIC.



5 **Disbursements**

Disbursements are divided into three types:

- **Externally provided professional services** – these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- **Externally provided non-professional costs** – such as travel, accommodation, external printing services and search fees – these are recovered at cost.
- **Internal disbursements** – such as photocopying, printing and postage. These disbursements are generally charged at cost but may include, in the case of disbursements such as data storage and hosting, telephone calls, photocopying and printing, both direct variable and fixed costs. For example the rate per page for printing includes a reasonable and commercial allowance for paper, toner, depreciation, power and maintenance.

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

We are required to obtain creditor’s consent for the payment of internal disbursements where there may be a profit or advantage. Creditors will be asked to approve our internal disbursements where there is a profit or advantage prior to these disbursements being paid from the external administration.

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

For clarity, it is noted that any time costs of any employee of McGrathNicol or any associated entity will be reported as part of our remuneration, for which approval may be sought.

Basis of disbursement claim

<i>Disbursement type</i>	<i>Rate (Excl GST)</i>
Externally provided professional services	At cost
Externally provided non-professional services	At cost
Internal disbursements	
Advertising	At cost
Courier	At cost
Data hosting – data loading & processing fee	\$50-\$100 per gigabyte (GB)*



Data hosting – monthly hosting fee (for matters where data is required to be hosted online for more than 1 month)	Standard monthly hosting fee of \$2,000 per month (for up to 500GB of information loaded) plus \$2,000 per month for every additional 500GB block over and above 500GB
Printing – black and white	\$0.09 per page
Printing – Colour	\$0.28 per page
Postage	At cost
Stationery and other incidental disbursements	At cost
Staff per diem travel allowance**	\$89.00 per day***
Staff vehicle use	\$0.68 per km***
Telephony – mobile, fixed line and conference calls	At cost

* Depending on volume of data to be hosted

** Payable when partners or staff are required for business purposes to stay away from their usual place of residence overnight

*** These rates are deemed reasonable by the Australian Taxation Office

Further explanation of data hosting disbursements

In the conduct of this external administration, we may use McGrathNicol Technology Advisory to extract, aggregate, electronically process and/or host electronic data, which could be used for the:

- trade or sale of the business or assets; and/or
- investigations regarding transactions or potential recoveries available to creditors.

If data hosting is required and we choose not to use the services of McGrathNicol Technology Advisory, we will otherwise have to purchase those services from an alternative provider and/or use another method to achieve the same end, which will not be as efficient as using these available internal services.

We note that the data hosting rates above are no more than our standard commercial pricing available for the same services when they are provided to external parties.

28 February 2018



Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [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 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

Where can I get more information?

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

This is **Information Sheet 39 (INFO 39)** 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 10:57