

CIRCULAR TO THE COMMITTEE OF CREDITORS

[REDACTED]

By Email [REDACTED]

7 January 2013

Dear [REDACTED]

Retail Adventures Pty Limited (Administrators Appointed)
ACN 135 890 845
(the Company)

As you are aware David Lombe, John Greig and I were appointed Joint and Several Administrators of the Company on 26 October 2012 pursuant to Section 436A of the *Corporations Act 2001* ("the Act").

A third committee meeting is proposed to be held as follows:

Date	Friday, 11 January 2013
Time	11.00AM AEDT
Location	Deloitte, Level 9, Grosvenor Place, 225 George Street, Sydney NSW 2000
Dial details	Phone: 1800 681 583 Passcode: 744 681 562 757

Please find attached a Form 529 Notice of Meeting.

The purpose of the meeting is to update the Committee on the progress of the Administration as follows:

1. Update the administration

Provide the Committee members with a further update on the Company's administration.

2. Sale of business

Provide the Committee members with an update on the progress of the Company's sale of business.

3. DSG restructuring plan

Update from DSG regarding progress to date on their restructuring and transformation plan.

4. Administrators' remuneration.

Attached is the Remuneration Report for the period 25 November 2012 to 31 December 2012 and future fees. The following resolutions will be proposed at the meeting:

"That the remuneration of the Administration from 1 January 2013 to 31 January 2013 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 7 January 2013 of \$1,142,385.00 exclusive of GST, and that the Administrators can draw the remuneration as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount then that amount will be subject to a separate fee approval and will not be drawn until approved."

5. Any other business

Any other business

If you have any questions in relation to the above, please contact Terence Law of this office on telephone **02 9322 5827** or email telaw@deloitte.com.au.

Yours faithfully



Jason Tracy
For and on behalf of
Vaughan Neil Strawbridge
Joint and Several Administrator

Encl.

*Form 529 Notice of Meeting
Remuneration Report for the period 25 November 2012 to 31 December 2012 and future fees*

FORM 529

Subregulation 5.6.12(6)

Corporations Act 2001

NOTICE OF MEETING OF THE COMMITTEE OF CREDITORS

**Retail Adventures Pty Limited
(Administrators Appointed)
ACN 135 890 845
("the Company")**

Notice is given that a meeting of the Committee of Creditors of the Company will be held at the offices of Deloitte, Level 9 Grosvenor Place, 225 George Street, Sydney NSW 2000, on Friday 11 January 2013 at 11:00am (AEDT).

Committee members entitled to attend the meeting may attend by telephone. Committee members wishing to attend by teleconference facility are required to contact Terence Law on 02 9322 5827 or email telaw@deloitte.com.au prior to the meeting to arrange their attendance.

DATED this 7th Day of January 2013.



Jason Tracy
For and on behalf of
Vaughan Neil Strawbridge
Joint and Several Administrator

AGENDA

**Retail Adventures Pty Limited
(Administrators Appointed)
ACN 135 890 845
(the Company)**

**Meeting of Committee of Creditors
Friday 11 January 2013 at 11:00AM (AEDT)
Deloitte, Level 9, 225 George Street, Sydney NSW**

- 1. Update of the administration**
- 2. Sale of business**
- 3. DSG restructuring plan**
- 4. Administrators' remuneration**
- 5. Any other business**

Remuneration Report

Initial advice to creditors

Remuneration Methods

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

Time based / hourly rates

This is the most common method. The total 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.

Fixed Fee

The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a Practitioner will finalise an administration for a fixed fee.

Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method chosen

Given the nature of this administration we propose that our remuneration be calculated on a time basis. This is because:

- I will only be paid for work done, subject to sufficient realisations of the company assets.
- It ensures creditors are only charged for work that is performed. Our time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- I am required to perform a number of tasks which do not relate to the realisation of assets, e.g. responding to creditor enquiries, reporting to the ASIC, distributing funds in accordance with the provisions of the Corporations Act 2001.
- I am unable to estimate with certainty the total amount of fees necessary to complete all tasks required in this administration.

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 administration and the role they take in the 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	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$ 625.00
Partner	Registered liquidator. Brings his or her specialist skills to the administration or insolvency task.	\$ 625.00
Director/ Consultant	Typically CA or CPA qualified with in excess of 8 years' experience on insolvency matters with a number of years at manager level. Answerable to the appointee but otherwise responsible for all aspects of an administration. Capable of controlling all aspects of an administration. May be appropriately qualified to take appointments in his/her own right.	\$ 525.00
Manager	Typically CA or CPA qualified with 6 to 8 years' experience working on insolvency matters. Will have experience conducting administrations and directing a number of staff.	\$ 420.00
Senior Analyst	Typically completed or near completion of CA or CPA qualifications with 4 to 6 years insolvency experience. Assists in planning and control of smaller matters as well as performing some more difficult tasks on larger matters.	\$ 320.00
Analyst	Typically studying towards CA or CPA qualification with 2 to 4 years insolvency experience. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$ 250.00
Graduate	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day-to-day fieldwork.	\$ 195.00
Secretary	Advanced secretarial skills	\$ 185.00

A. Approval request report

Part 1: Declaration

We, Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig, have undertaken a proper assessment of this remuneration claim for our appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied that the remuneration claimed is in respect of necessary work, properly performed in the conduct of the Administration.

Part 2: Executive Summary

From 25 November 2012 to 31 December 2012, actual Administrators' remuneration incurred was \$823,262.00.

To assist the Committee, below is additional information on the variance of fees between our estimate and actual fees. The estimate fees refers to the estimate provided to the Committee and discussed at the meeting on 7 December 2012. The Administrators' actual fees for the period were \$298,833 less than the estimate.

By work group the variance is summarised as follows:

	Actual	Estimate	Variance
Assets	137,797.0	138,075.0	(278.0)
Creditors	128,949.0	251,160.0	(122,211.0)
Employees	147,280.5	120,140.0	27,140.5
Investigations	42,795.5	150,395.0	(107,599.5)
Trade on	283,356.0	320,785.0	(37,429.0)
Dividends	-	30,990.0	(30,990.0)
Administration	83,084.0	110,550.0	(27,466.0)
Total \$	823,262.0	1,122,095.0	(298,833.0)

This remuneration report details approval sought for the following fees:

Period	Report Reference	Amount (ex GST)
Current remuneration approval sought:		
<i>Voluntary Administration</i>		
Resolution 1*: 1 January 2013 to 31 January 2013	Part 4.2	\$1,142,385.00
* Approval for the future remuneration sought is based on an estimate of the work necessary to the end of the relevant period. Should additional work be necessary beyond what is forecast, further approval may be sought from the Committee of Creditors.		

Please refer to the report section reference detailed above for full details of the calculation and composition of the remuneration approval sought.

Part 3: Description of work completed

Remuneration for the period 25 November 2012 to 31 December 2012

Company: Retail Adventures Pty Limited (Administrators Appointed)	Period From: 25 November 2012	To	31 December 2012
Practitioner: Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig	Firm: Deloitte Touche Tohmatsu		
Administration Type: Voluntary Administration			

Task Area	General Description	Includes
Assets 342.10 hours \$137,797.00	Sale of Business as a Going Concern	Preparing sale of business flyer Liaising with interested parties Internal meetings to discuss a sale Meetings with senior RAPL staff to obtain key information
	Plant and Equipment	Liaising with valuers, auctioneers and interested parties Reviewing asset listings Inspection of assets
	Assets subject to specific charges	All tasks associated with realising a charged asset
	Debtors	Correspondence with debtors Reviewing and assessing debtors ledgers
	Stock	Dealing with stock on the water and the wharf Discussions/negotiations with freight forwarders and shipping lines Reviewing and monitoring stock values Analysis of new stock arrivals Forecasting of stock levels Liaising with purchasers
	Other Assets	Tasks associated with realising other assets Dealing with insurance claim Requesting refunds of prepayments
	Leasing	Reviewing leasing documents Discussions with DSG regarding leased equipment Liaising with owners/lessors Tasks associated with disclaiming property leases Tasks associated with disclaiming plant and equipment leases
Creditors 335.70 hours \$128,949.00	Creditor Enquiries	Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Retention of Title Claims	Receive 65 initial notifications of creditor's intention to claim Provision of retention of title claim form to creditor Receive completed retention of title claim form Maintain retention of title file Adjudicate retention of title claim Forward correspondence to claimant notifying outcome of adjudication Preparation of payment vouchers to satisfy valid claim Preparation of correspondence to claimant to accompany payment of claim (if valid)
	Secured creditor reporting	Discussion with ANZ and DSG
	Creditor reports	Preparing 439A report, investigation, meeting and general reports to creditors

Task Area	General Description	Includes
	Dealing with proofs of debt	<ul style="list-style-type: none"> Receiving and filing POD's when not related to a dividend Corresponding with OSR and ATO regarding POD's when not related to a dividend Maintain POD register Adjudicating PODs Request further information from claimants regarding POD
	Committee meeting	<ul style="list-style-type: none"> Preparation meeting notices Preparation of meeting file, including agenda, attendance register, presentation to committee members and draft minutes of meeting. Attendance at meeting in Sydney Preparation and lodgement minutes of meetings with ASIC Respond to creditor queries and questions immediately following meeting
<p>Employees 480.90 hours \$147,280.50</p>	Employees enquiry	<ul style="list-style-type: none"> Deal with queries from employees regarding payment and deductions Receive and follow up employee enquiries via telephone Maintain employee enquiry register Review and prepare correspondence to employees and their representatives via facsimile, email and post Preparation of letters to employees advising of their entitlements and options available Receive and prepare correspondence in response to employees objections to leave entitlements
	GEERS	Correspondence and discussion with GEERS
	Calculation of entitlements	<ul style="list-style-type: none"> Calculating employee entitlements Reviewing employee files and company's books and records Reconciling superannuation accounts Reviewing awards Liaising with solicitors regarding entitlements
	Employee dividend	<ul style="list-style-type: none"> Correspondence with employees regarding priority dividend Correspondence with ATO regarding SGC proof of debt Calculating priority dividend Preparing dividend file Preparing distribution Receiving POD's Adjudicating POD's Ensuring PAYG is remitted to ATO Preparation of correspondence to employees regarding priority dividend Payment of priority dividends to employees
	Workers compensation claims	<ul style="list-style-type: none"> Review insurance policies Receipt of claim Liaising with claimant Liaising with insurers and solicitors regarding claims Identification of potential issues requiring attention of insurance specialists Correspondence with Marsh regarding initial and ongoing workers compensation insurance requirements Correspondence with previous brokers
	Other employee issues	<ul style="list-style-type: none"> Implement staff redundancy program Travel to stores for staff meetings Consultation with staff Correspondence with Child Support Correspondence with Centrelink

Task Area	General Description	Includes
Trade On 719.10 hours \$283,356.00	Trade On Management	Liaising with suppliers to RAPL and DSG Liaising with management and staff Attendance at stores and distribution centres Authorising purchase orders for the Administrators' stores and DSG's stores Maintaining purchase order registry Preparing and authorising receipt vouchers Preparing and authorising payment vouchers Reconciling funds received from DSG to meet trading overheads Conduct store closure program for Administrators stores Liaising with superannuation funds regarding contributions Liaising with OSR regarding payroll tax issues Dealing with landlords for stores and distribution stores
	Processing receipts and payments	Entering receipts and payments into accounting system
	Budgeting & financial reporting	Reviewing company's budgets and financial statements Meetings with DSG staff regarding operation of licence agreement Preparing budgets Preparing weekly financial reports Finalising trading profit or loss for Administrators stores Meetings to discuss trading position of Administrators stores Meetings to discuss trading of DSG stores Meetings with DSG finance team regarding accounting issues
Investigation 100.70 hours \$42,795.50	Conducting investigation	Collection of company books and records Meetings with RAPL IT staff to understand IT infrastructure and capture data Receiving Report as to Affairs Reviewing company's books and records Review and preparation of company nature and history Conducting and summarising statutory searches Preparation of comparative financial statements Preparation of deficiency statement Forensic analysis of specific transactions Review of specific transactions and liaising with directors regarding certain transactions Liaising with management and director regarding certain transactions Preparation of investigation file
	ASIC reporting	Preparation of statutory investigation reports Letter to ASIC regarding large company reporting obligations
	Correspondence	General Correspondence
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
	Insurance	Identification of potential issues requiring attention of insurance specialists Correspondence with Marsh regarding initial and ongoing insurance requirements Reviewing insurance policies Correspondence with previous brokers Insurance arrangements for Administrators stores and DSG stores Review of existing public liability claims Deal with post Administration public liability claims

Task Area	General Description	Includes
Administration 272.60 hours \$83,084.00	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Reconciliation of pre and post Administration cash and EFTPOS receipts Correspondence with bank regarding specific transfers Return of EFTPOS terminals
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Notification of appointment to the ATO Preparing BAS
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Review of books and records Prepare listing of books and records Dealing with records stored at distribution centres

Part 3: Description of work to be completed

Remuneration for the period 1 January 2013 to 31 January 2013

Company: Retail Adventures Pty Limited (Administrators Appointed)	Period From: 1 January 2013	To	31 January 2013
Practitioner: Vaughan Neil Strawbridge, David John Frank Lombe and John Lethbridge Greig	Firm: Deloitte Touche Tohmatsu		
Administration Type: Voluntary Administration			

Task Area	General Description	Includes
Assets 350.00 hours \$150,025.00	Sale of Business as a Going Concern	Creation and population of data room Liaising with interested parties Internal meetings to discuss a sale Meetings with senior RAPL staff to obtain information to assist interested parties with their due diligence
	Plant and Equipment	Realisation of surplus plant and equipment in closing stores Liaising with valuers, auctioneers and interested parties
	Assets subject to specific charges	All tasks associated with realising a charged asset
	Debtors	Correspondence with debtors Reviewing and assessing debtors ledgers
	Stock	Finalisation of stock on the water and the wharf Discussions/negotiations with freight forwarders and shipping lines Reviewing and monitoring stock values Analysis of new stock arrivals Forecasting of stock levels Liaising with purchasers
	Other Assets	Tasks associated with realising other assets Dealing with insurance claim Requesting refunds of prepayments
	Leasing	Reviewing leasing documents Discussions with DSG regarding leased equipment required for trading Liaising with owners/lessors

Task Area	General Description	Includes
		<ul style="list-style-type: none"> Tasks associated with disclaiming property leases Tasks associated with disclaiming plant and equipment leases
Creditors 355.00 hours \$138,400.00	Creditor Enquiries	<ul style="list-style-type: none"> Receive and follow up creditor enquiries via telephone Maintaining creditor enquiry register Review and prepare correspondence to creditors and their representatives via facsimile, email and post Correspondence with committee of creditors members
	Retention of Title Claims	<ul style="list-style-type: none"> Receive further notifications of creditor's intention to claim Provision of retention of title claim form to creditor Receive completed retention of title claim form Maintain retention of title file Adjudicate retention of title claim Forward correspondence to claimant notifying outcome of adjudication Negotiations with creditors regarding valid claims Preparation of payment vouchers to satisfy valid claim Preparation of correspondence to claimant to accompany payment of claim (if valid)
	Secured creditor reporting	Discussion with ANZ and DSG
	Creditor reports	<ul style="list-style-type: none"> Preparing 439A report, investigation, meeting and general reports to creditors Internal discussions regarding 439A report Consideration of any DOCA proposals received
	Dealing with proofs of debt	<ul style="list-style-type: none"> Receipting and filing POD's when not related to a dividend Corresponding with OSR and ATO regarding POD's when not related to a dividend Maintain POD register Adjudicating PODs Request further information from claimants regarding POD
	Committee meetings	<ul style="list-style-type: none"> Preparation and circulation of meeting notices Preparation of meeting file, including agenda Preparation of committee meeting presentation Preparation and lodgement minutes of meetings with ASIC Respond to stakeholder queries and questions immediately following meeting
	Shareholder enquires	Initial day one letters
Employees 563.00 hours \$178,560.00	Employees enquiry	<ul style="list-style-type: none"> Deal with queries from employees regarding payment and deductions Receive and follow up employee enquiries via telephone Maintain employee enquiry register Review and prepare correspondence to employees and their representatives via facsimile, email and post Preparation of letters to employees advising of their entitlements and options available Receive and prepare correspondence in response to employees objections to leave entitlements
	GEERS	Correspondence and discussion with GEERS
	Calculation of entitlements	<ul style="list-style-type: none"> Calculating employee entitlements Reviewing employee files and company's books and records Reconciling superannuation accounts Reviewing awards Liaising with solicitors regarding entitlements
	Employee dividend	<ul style="list-style-type: none"> Correspondence with employees regarding priority dividend Correspondence with ATO regarding SGC proof of debt Calculating priority dividend Preparing dividend file Preparing distribution Receipting POD's Adjudicating POD's

Task Area	General Description	Includes
		<p>Ensuring PAYG is remitted to ATO</p> <p>Preparation of correspondence to employees regarding priority dividend</p> <p>Payment of priority dividends to employees</p>
	Workers compensation claims	<p>Review insurance policies</p> <p>Receipt of claim</p> <p>Liaising with claimant</p> <p>Liaising with insurers and solicitors regarding claims</p> <p>Identification of potential issues requiring attention of insurance specialists</p> <p>Correspondence with Marsh regarding initial and ongoing workers compensation insurance requirements</p> <p>Correspondence with previous brokers</p>
	Other employee issues	<p>Implement staff redundancy program</p> <p>Correspondence with Child Support</p> <p>Correspondence with Centrelink</p>
Trade On 808.00 hours \$310,175.00	Trade On Management	<p>Liaising with suppliers to RAPL and DSG</p> <p>Liaising with management and staff</p> <p>Attendance at stores and distribution centres</p> <p>Authorising purchase orders for DSG's stores</p> <p>Maintaining purchase order registry</p> <p>Preparing and authorising receipt vouchers</p> <p>Preparing and authorising payment vouchers</p> <p>Reconciling funds received from DSG to meet trading overheads</p> <p>Conduct further store closure program</p> <p>Liaising with superannuation funds regarding contributions</p> <p>Liaising with OSR regarding payroll tax issues</p> <p>Dealing with landlords for stores and distribution stores</p>
	Processing receipts and payments	<p>Entering receipts and payments into accounting system</p>
	Budgeting & financial reporting	<p>Reviewing company's budgets and financial statements</p> <p>Meetings with DSG staff regarding operation of licence agreement</p> <p>Preparing budgets</p> <p>Preparing weekly financial reports</p> <p>Finalising trading profit or loss for Administrators stores</p> <p>Meetings to discuss trading position of Administrators stores</p> <p>Meetings to discuss trading of DSG stores</p> <p>Meetings with DSG finance team regarding accounting issues</p>
Investigation 385.00 hours \$182,725.00	Conducting investigation	<p>Collection of company books and records</p> <p>Meetings with RAPL IT staff to understand IT infrastructure and capture data</p> <p>Receiving Report as to Affairs</p> <p>Reviewing company's books and records</p> <p>Review and preparation of company nature and history</p> <p>Conducting and summarising statutory searches</p> <p>Preparation of comparative financial statements</p> <p>Preparation of deficiency statement</p> <p>Forensic analysis of specific transactions</p> <p>Review of specific transactions and liaising with directors regarding certain transactions</p> <p>Liaising with management and director regarding certain transactions</p> <p>Preparation of investigation file</p>
	ASIC reporting	<p>Preparation of statutory investigation reports</p> <p>Correspondence with ASIC regarding large company reporting obligations</p>
	Correspondence	<p>General Correspondence</p>

Task Area	General Description	Includes
	Document maintenance/file review/checklist	Filing of documents File reviews Updating checklists
Administration 661.00 hours \$182,500.00	Insurance	Identification of potential issues requiring attention of insurance specialists Correspondence with Marsh regarding initial and ongoing insurance requirements Reviewing insurance policies Correspondence with previous brokers Insurance arrangements for Administrators stores and DSG stores Review of existing public liability claims Deal with post Administration public liability claims
	Bank account administration	Preparing correspondence opening and closing accounts Requesting bank statements Bank account reconciliations Reconciliation of pre and post Administration cash and EFTPOS receipts Correspondence with bank regarding specific transfers
	ASIC Form 524 and other forms	Preparing and lodging ASIC forms Correspondence with ASIC regarding statutory forms
	ATO & other statutory reporting	Preparing BAS Calculation of Payroll Tax
	Planning / Review	Discussions regarding status of administration
	Books and records / storage	Review of books and records Prepare listing of books and records Dealing with records stored at distribution centres

Part 4: Calculation of Remuneration

4.1 Remuneration – 25 November 2012 to 31 December 2012

Refer to Annexure A

4.2 Future Remuneration – 1 January 2013 to 31 January 2013

Refer to Annexure B

Disbursements

Disbursements are divided into three types: **A, B1, B2.**

- A** disbursements are all externally provided professional services. These are recovered at cost. An example of an A disbursement is legal fees.
- B1** disbursements are externally provided non-professional costs such as travel, accommodation and search fees. B1 disbursements are recovered at cost.
- B2** disbursements are internally provided non-professional costs such as photocopying, printing and postage which are charged at 2.5% of standard time costs.

Part 5: Report on Progress of the Administration

Please refer to the Circular to the Committee of Creditors included with this report.

Statement of remuneration claim – Future remuneration 1 January 2013 to 31 January 2013

The following resolution in relation to the Administrators' future remuneration will be proposed to the committee of creditors of Retail Adventures Pty Limited (Administrators Appointed):

“That the remuneration of the Administration from 1 January 2013 to 31 January 2013 is fixed at a sum equal to the cost of time spent by the Administrators and the Administrators' partners and staff, calculated at the hourly rates as detailed in the Remuneration Report of 7 January 2013 of \$1,142,385.00 exclusive of GST, and that the Administrators can draw the remuneration as incurred. Should a lesser amount be actually incurred, only the lesser amount will be drawn. Should the fees be a greater amount then that amount will be subject to a separate fee approval and will not be drawn until approved.”

Queries

At the Committee meeting scheduled for 11 January 2013, we will provide an opportunity for the Committee members to vote on the proposed agreements above. Additionally, we will provide a detailed variance analysis to the appropriate representative body when the proposed futures fees period has ended.

Information Sheet

Please refer to the attached ASIC Guide to Creditors



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 74

Voluntary administration: a guide for creditors

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

This information sheet provides general information for unsecured creditors of companies in voluntary administration.

Who is a creditor?

You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company.

An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a 'contingent' creditor. There are generally two categories of creditor: secured and unsecured:

- A secured creditor is someone who has a 'charge', such as a mortgage, over some or all of the company's assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.
- An unsecured creditor is a creditor who does not have a charge over the company's assets.

Employees are a special class of unsecured creditors. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see ASIC's information sheet INFO 75 *Voluntary administration: a guide for employees*.

The purpose of voluntary administration

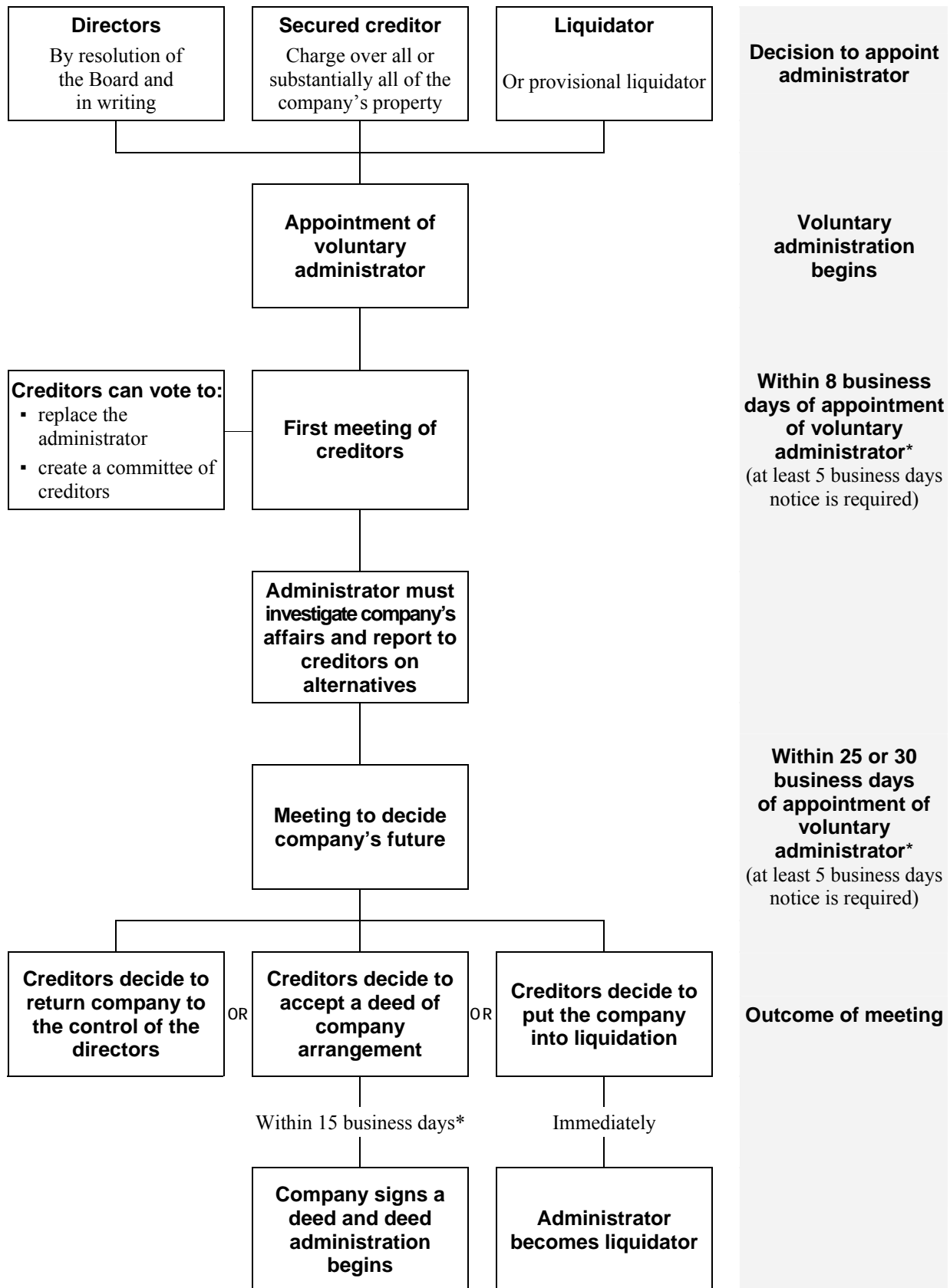
Voluntary administration is designed to resolve a company's future direction quickly (Figure 1 summarises the process). An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

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.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

Figure 1: The voluntary administration process



* Unless the court allows an extension of time.

A company in voluntary administration may also be in receivership: see ASIC information sheet INFO 54 *Receivership: a guide for creditors*.

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors. These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts, or
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors.

In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about 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.

Although the voluntary administrator may be appointed by the directors, they must act fairly and impartially.

Effect of appointment

The effect of the appointment of a voluntary administrator is to provide the company with breathing space while the company's future is resolved. While the company is in voluntary administration:

- unsecured creditors can't begin, continue or enforce their claims against the company without the administrator's consent or the court's permission
- owners of property (other than perishable property) used or occupied by the company, or people who lease such property to the company, can't recover their property
- except in limited circumstances, secured creditors can't enforce their charge over company property
- a court application to put the company in liquidation can't be commenced, and
- a creditor holding a personal guarantee from the company's director or other person can't act under the personal guarantee without the court's consent.

Voluntary administrator's liability

Any debts that arise from the voluntary administrator purchasing goods or services, or hiring, leasing, using or occupying property, are paid from the available assets as costs of the voluntary administration. If there are insufficient funds available from asset realisations to pay these costs, the voluntary administrator is personally liable for the shortfall. To have the benefit of this protection, you should ensure you receive a purchase order authorised in the manner advised by the voluntary administrator.

The voluntary administrator must also decide whether to continue to use or occupy property owned by another party that is held or occupied by the company at the time of their appointment.

Within 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. If the voluntary administrator decides to continue to do so, they will be personally liable for any rent or amounts payable arising after the end of the five business days.

Amounts that become due to employees after the date of the appointment of the voluntary administrator have a priority claim against the company's assets as a cost of the administration. However, the voluntary administrator does not become personally liable for such amounts unless the voluntary administrator adopts employees' contracts of employment or enters into new employment contracts with them.

Creditors' meetings

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

First creditors' meeting

The voluntary administrator must call the first creditors' meeting within 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 in a newspaper circulating in the states or territories in which the company has its registered office or carries on its business.

The voluntary administrator must send to creditors, with the notice of meeting, declarations about any relationships they may have, or indemnities they have been given, to allow creditors to consider the voluntary administrator's independence and make an informed decision about whether they want to replace them with another voluntary administrator of the creditors' choice.

The purpose of the first meeting is for creditors to decide two questions:

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

The role of a committee of creditors is to consult with the voluntary administrator about matters relevant to the voluntary administration and receive and consider reports from the voluntary administrator. The committee can also require the voluntary administrator to report to them about the voluntary administration. It may also approve the voluntary administrator's fees.

A creditor who wishes to nominate an alternative voluntary administrator must approach a registered liquidator before the meeting and get a written consent from that person 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 at Christmas and Easter).

However, in complex voluntary administrations, often more time is needed for the voluntary administrator to be in a position to report to creditors. In these circumstances, the court can approve an extension of time to hold the meeting.

The voluntary administrator must chair this meeting.

In preparation for the second meeting, the voluntary administrator must send creditors the following documents at least five business days before the meeting:

- a notice of meeting
- the voluntary administrator's report, and
- a statement about any proposals for a deed of company arrangement.

These will be accompanied by:

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

The meeting must also be advertised.

Either or both the first and second creditors' meeting may be held using telephone or videoconferencing facilities.

Voluntary administrator's report

You should read the voluntary administrator's report before you attend the second meeting or decide whether you want to appoint someone else to vote on your behalf at that meeting. This report must give sufficient information to explain the company's business, property and affairs, and the reasons for the current financial situation, to enable you to make an informed decision about the company's future.

The report should also provide an analysis of any proposals for the future of the company, including the possible outcomes, as well as a comparable estimate of what would be available for creditors in a liquidation.

Finally, the report should include the voluntary administrator's opinion on each of the options available to creditors, as well as an opinion on which is in the best interests of creditors. As noted above, the options are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement (if one is proposed), or
- put the company into liquidation.

Voluntary administrator's statement about deed

If there are proposals for a deed of company arrangement, the voluntary administrator must provide creditors with a statement giving enough details of each proposal to enable creditors to make an informed decision. The types of proposals allowed in a deed of company arrangement are very flexible.

Typically, a proposal will provide for the company to pay all or part of its debts, possibly over time, and then be free of those debts. It will often provide for the company to continue trading. How these things will happen varies from case to case, as the terms allowed in a deed of company arrangement are also very flexible. The contents of a deed of company arrangement are discussed below.

You should insist on being provided with as much information about the terms of the proposed deed as possible, before the creditors' meeting. The minimum contents of a deed of company arrangement, discussed below, provide a guide on the information you might request if it hasn't already been provided.

You should also contact the voluntary administrator before the meeting if you believe the report to creditors does not contain sufficient information to enable you to make a decision about the company's future.

Voting at a creditors' meeting

To vote at any creditors' meeting you must lodge details of your debt or claim with the voluntary administrator. Usually, the voluntary administrator will provide you with a form called a 'proof of debt' to be completed and returned before the meeting.

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim or the amount of the debt cannot be determined with any certainty at the date of the meeting. In this case, they may not allow the creditor to vote at all, or only to vote for a debt of \$1. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 14 days after the decision.

A secured creditor is entitled to vote for the full amount of their debt without having to deduct the value of their security.

Voting by proxy

You may appoint a proxy to attend and vote at a meeting on your behalf. A proxy can be any person who is at least 18 years old. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the voluntary administrator before the meeting. You can fax the proxy form to the voluntary administrator, but must lodge the original within 72 hours of sending the faxed copy.

An electronic form of proxy may be used if the liquidator allows electronic lodgement, provided there is a way to authenticate the appointment of the proxy (e.g. by scanning and e-mailing a signature or using a digital signature).

You can specify on the proxy form how the proxy is to vote on a particular resolution and the proxy must vote in accordance with that instruction. This is called a 'special proxy'. Alternatively, you can leave it to the proxy to decide how to vote on each of the resolutions put before the meeting. This is called a 'general proxy'.

You can appoint the chairperson to represent you either through a special or general proxy. The voluntary administrator or one of their partners or employees must not use a general proxy to vote in favour of a resolution approving payment of the voluntary administrator's fees.

Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a show of hands. Sometimes a more formal voting procedure called a 'poll' is taken.

If voting is by show of hands or by verbally signalling agreement, the resolution is passed if a majority of those present indicate agreement. It is up to the chairperson to decide if this majority has been reached.

After the vote, the chairperson must tell those present whether the resolution has been passed or lost. If the chairperson is unable to determine the outcome of a resolution on a show of hands, they may decide to conduct a poll.

Alternatively, a poll can be demanded by at least two people present who are entitled to vote, or someone who holds more than 10% of the votes of those entitled to vote at the meeting. The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by show of hands or voices.

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

- more than half the number of creditors who are voting (in person or by proxy) vote in favour of the resolution, and
- those creditors who are owed more than half of the total debt owed to creditors at the meeting vote in favour of the resolution.

This is referred to as a 'majority in number and value'. If a majority in both number and value is not reached under a poll (often referred to as a deadlock), the chairperson has a casting vote.

Chairperson's casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote either in favour of or against the resolution. The chairperson may also decide not to use their casting vote.

The chairperson must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they cast their vote in a particular way or why they chose not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may apply to the court for a review of the chairperson's decision. The court may vary or set aside the resolution or order that the resolution is taken to have been passed.

Votes of related creditors

If 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 apply to the court for the resolution to be set aside and/or for a fresh resolution to be voted on without related creditors being entitled to vote. Certain criteria must be met before the court will make such an order (e.g. the original result of the vote being against the interests of all or a class of creditors).

Deciding how to vote at the second meeting

How you vote at the meeting on the three possible options, including any competing proposals for a deed of company arrangement, is a commercial decision based on your assessment of the company and its future prospects, and your personal circumstances. The information provided by the voluntary administrator, including opinions expressed, will assist you. However, you are not obliged to accept the administrator's recommendation.

If you do not consider that you have been given enough information to decide how to vote, and particularly whether to vote for any deed proposal, you can ask for a resolution to be put to creditors that the meeting be adjourned (up to a maximum of 45 business days in total) and for the administrator to provide more information. You must make this request before a vote on the company's future. This resolution must be passed for the adjournment to take place.

Creditors also have the right when a deed of company arrangement is proposed and considered at the meeting to negotiate specific requirements into the terms of the deed, including, for example, how the deed administrator is to report to them on the progress of the deed.

Any request to vary the deed proposal to include such requirements should be made before the deed proposal is voted on.

Minutes of meeting

The chairperson must prepare minutes of each meeting and a record of those who were present at each meeting.

The minutes must be lodged with ASIC within 14 days of the meeting. A copy may be obtained from any ASIC Business Centre on payment of the relevant fee.

Company returned to directors

If the company is returned to the directors, they will be responsible for ensuring that the company pays its outstanding debts as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Liquidation

If creditors resolve that the company go into liquidation, the voluntary administrator becomes the liquidator unless creditors vote at the second meeting to appoint a different liquidator of their choice. The liquidation proceeds as a creditors' voluntary liquidation with any payments of dividends to creditors made in the order set out in the *Corporations Act 2001* (Corporations Act). To find out more, see ASIC information sheet INFO 45 *Liquidation: a guide for creditors*.

Deed of company arrangement

If creditors vote for a proposal that the company enter a deed of company arrangement, the company must sign the deed within 15 business days of the creditors' meeting, unless the court allows a longer time. If this doesn't happen, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

The deed of company arrangement binds all unsecured creditors, even if they voted against the proposal. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the deed. In certain circumstances, the court can also order that these people are bound by the deed even if they didn't vote for it. The deed of company arrangement does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee to be repaid their debt.

Contents of the deed

Whatever the nature of the deed of company arrangement, it must contain certain information, including:

- the name of the deed administrator
- the property that will be used to pay creditors
- the debts covered by the deed and the extent to which those debts are released
- the order in which the available funds will be paid to creditors (the deed of company arrangement must ensure that employees have a priority in payment of outstanding employee entitlements unless the eligible employees agree by a majority in both number and value to vary this priority)
- the nature and duration of any suspension of rights against the company
- the conditions (if any) for the deed to come into operation
- the conditions (if any) for the deed to continue in operation, and
- the circumstances in which the deed terminates.

There are also certain terms that will be automatically included in the deed, unless the deed says they will not apply. These are called the 'prescribed provisions'. They include such matters as the powers of the deed administrator, termination of the deed and the appointment of a committee of creditors (called a 'committee of inspection').

The voluntary administrator's report should tell you which prescribed provisions are proposed to be excluded or varied, and, if varied, how.

Monitoring the deed

It is the role of the deed administrator to ensure the company (or others who have made commitments under the deed) carries through these commitments. The extent of the deed administrator's ongoing role will be set out in the deed.

Creditors can also play a role in monitoring the deed. If you are concerned that the obligations of the company (or others) under the deed are not being met, you should take this up promptly with the deed administrator. Matters that may give rise for concern include deadlines for payments or other actions promised under the deed being missed.

Creditors also have the right when a deed of company arrangement is proposed and considered at the second meeting to negotiate consequences of failure to meet such deadlines into the terms of the deed. Any request to vary the deed proposal to include such consequences should be made before the deed proposal is voted on.

The deed administrator must lodge a detailed list of receipts and payments with ASIC every six months.

Varying the deed

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

Creditors owed at least 10% in value of all creditor claims can, by written request, also require the deed administrator to call such a meeting. However, it is unusual for this to happen, as those who make the request must pay the costs of calling and holding the meeting.

Payment of dividends under a deed

The order in which creditor claims are paid depends on the terms of the deed. Sometimes the deed proposal is for creditor claims to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

The deed must ensure employee entitlements are paid in priority to other unsecured creditors unless eligible employees have agreed to vary their priority.

Before you decide how to vote at the creditors' meeting, make sure you understand how the deed will affect the priority of payment of your debt or claim.

You may wish to seek independent legal advice if the deed proposes a different priority to that in a liquidation, or if creditors approve such a deed.

Establishing your claim under a deed

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

Before any dividend is paid to you for your debt or claim, you will need to give the deed administrator sufficient information to prove your debt. You may be required to complete a claim form (this is called a 'proof of debt' in a liquidation). You should attach copies of any relevant invoices or other supporting documents to the claim form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the claim form should be signed by a person authorised by the company to do so.

When submitting a claim, you may ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, first contact the deed administrator. You may also wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision.

If you have a query about the timing of the payment, discuss this with the deed administrator.

How a deed comes to an end

A deed may come to an end because the obligations under the deed have all been fulfilled and the creditors have been paid. Alternatively, the deed may set out certain conditions where the deed will automatically terminate.

The deed may also provide that the company will go into liquidation if the deed terminates due to these conditions being met.

Another way for the deed to end is if the deed administrator calls a meeting of creditors, and creditors vote to end the deed. This may occur because it appears unlikely that the terms of the deed can be fulfilled.

At the same time, creditors may be asked to vote to put the company into liquidation.

The deed may also be terminated if a creditor, the company, ASIC or any other interested person applies to the court and the court is satisfied that:

- creditors were provided false and misleading information on which the decision to accept the deed proposal was made
- the voluntary administrator's report left out information that was material to the decision to accept the deed proposal

- the deed cannot proceed without undue delay or injustice, or
- the deed is unfair or discriminatory to the interests of one or more creditors or against the interests of creditors as a whole.

If the court terminates the deed as a result of such an application, the company automatically goes into liquidation.

Approval of administrator's fees

Both a voluntary administrator and deed administrator are entitled to be paid for the work they perform. Generally, their fees will be paid from available assets, before any payments are made to creditors. They may have also arranged for a third party to pay any shortfall in their fees if there aren't enough assets.

The fees cannot be paid until the amount has been approved by a creditors' committee, creditors or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees approved.

If you are asked to approve fees, either at a meeting of a creditors' committee or in a general meeting of creditors, the voluntary administrator or deed administrator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a description of the major tasks performed
- the costs of completing these tasks, and
- such other information that will assist in assessing the reasonableness of the fees claimed.

For further information, see ASIC's information sheet INFO 85 *Approving fees: a guide for creditors*. If you are in any doubt about how the fees were calculated, ask for more information.

Apart from fees, the voluntary administrator and deed administrator are entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement does not usually require approval.

Creditors' committee

A creditor's committee may be formed, following a vote of creditors, to consult with the voluntary administrator or deed administrator and receive reports on the conduct of their administration. A creditors' committee can also approve the administrator's fees.

In a voluntary administration, this committee is called a 'committee of creditors' and may be formed at the first creditors' meeting. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. However, to operate efficiently, the committee should not be too large.

If a creditor is a company, the creditor can nominate a director or employee to represent it on the committee.

Directors and voluntary administration

Directors cannot use their powers while the company is in voluntary administration. They must help the voluntary administrator, including providing the company's books and records, and a report about the company's business, property, affairs and financial circumstances, as well as any further information about these that the voluntary administrator reasonably requires.

If the company goes from voluntary administration into a deed of company arrangement, the directors' powers depend on the deed's terms. When the deed is completed, the directors regain full control, unless the deed provides for the company to go into liquidation on completion.

If the company goes from voluntary administration or a deed of company arrangement into liquidation, the directors cannot use their powers. If creditors resolve that the voluntary administration should end, control of the company goes back to the directors.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator or deed administrator. If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ASIC at www.asic.gov.au/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, email ASIC through infoline@asic.gov.au, or call ASIC's Infoline on 1300 300 630 for the cost of a local call.

To find out more

For an explanation of terms used in this information sheet, see ASIC 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 75 *Voluntary administration: a guide for employees*
- 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.