

VOLUNTARY ADMINISTRATION

The Voluntary Administration process is regulated by the *Corporations Act 2001 (Cth)* ("the Act") and provides for the business, property and affairs of an insolvent company to be administered in a way that:

- maximises the chances of the company continuing in existence, or
- results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

Pursuant to Section 436A of the Act, an Administrator, who must be a registered Liquidator, can be appointed by: -

- the majority of the company's Directors, or
- a Liquidator of the company, or
- a person holding a charge over the whole or substantially the whole of a company's property.

An appointment by the company's directors, can be quickly and easily made, for all they need do is pass a resolution that the company is insolvent or will likely become insolvent.

During the period of the Administration, there is a general stay of proceedings against the company or its property except with the Administrator's consent or with leave of the Court. There are exceptions for secured creditors, holding a charge over the whole or substantially the whole of the company's property, who have thirteen days after receipt of notice in which to exercise powers contained in their security document.

The appointment of an Administrator sets in train a sequence of events, namely:

- the convening of a first meeting of creditors to be held within eight business days after the Administration begins so that creditors can consider whether or not to appoint a Committee of Creditors or to replace the Administrator.
- the preparation of a detailed report to creditors in accordance with Section 439A(4) of the Act that details the business, property, affairs and financial circumstances of the insolvent company, together with the Administrator's opinions on each of the alternative courses of action as set out in the Act and the reasons for those opinions. These alternative courses of action are as follows:
 - that the company execute a Deed of Company Arrangement, or
 - that the Administration should end, or
 - that the company be wound up, in which case, the Administration converts to a Creditors Voluntary Liquidation.
- the convening of a second meeting of creditors to decide the future of the company, such meeting to be held within five business days before or five business days after the end of the convening period, which is normally 20 days beginning on the day the Administration commenced. Attached to the notice of meeting will be a copy of the Administrator's Section

439A report. At this meeting, creditors resolve for the company to adopt one of the alternative courses of action set out above.

If creditors resolve to wind up the company, then they have the option of replacing the Administrator, who in the past would have automatically been appointed the Liquidator of the company.

Alternatively, creditors can resolve to adjourn the meeting from time to time for a period not to exceed 45 business days from the date of the second meeting.

The advantages of Voluntary Administration are:

- allows immediate action to be taken and sets a fixed time frame for dealing with the issues,
- control of the company is given to an independent person,
- prevents unsecured creditors, owners and lessors of property from taking action which may adversely affect the value of the business and assets,
- allows a company and its creditors to consider the merits of a compromise arrangement which may maximise the return to creditors, and
- enables directors in certain circumstances to avoid personal liability for company debts except for debts that have been personally guaranteed.

It should be noted that directors of companies that are insolvent or are likely to become insolvent should seek immediate professional advice in relation to their specific circumstances. The procedure normally requires consultation and certain investigative work before implementation, particularly when a secured creditor is in existence.

DEED OF COMPANY ARRANGEMENT

A Deed of Company Arrangement is the mechanism by which a company enters into a compromise arrangement with its creditors. The arrangement may take many forms and may include the following:

- The continuation of the company's business or part thereof with responsibility for trading resting with either the Directors or the Deed Administrator.
- The injection of capital or the sale of certain assets.
- The payment to creditors of a fixed sum, or specified rate in the dollar or a percentage of profits payable in a lump sum or by way of instalments over a period of time.

A Deed does not require Court approval and may be agreed to by a majority of creditors at a meeting held during the Voluntary Administration. The passing of the resolution to accept a Deed binds all unsecured creditors, even if they did not vote in favour. Secured creditors, owners and lessors of property will only be bound if they vote in favour. The Administrator usually becomes the Deed Administrator.

If the company defaults on the terms of the Deed, the Deed Administrator may call a meeting of creditors to vary or terminate the Deed. If the Deed is terminated, the company is placed into liquidation. Conversely, where the company satisfies all of the requirements of the Deed, it will no longer be subject to administration.

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