



ASIC

Australian Securities & Investments Commission

Insolvency: A glossary of terms

This information sheet (INFO 41) briefly explains some of the terms you may come across in company insolvency proceedings.

Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.

Glossary of insolvency terms

Term	Meaning
ARITA	The Australian Restructuring Insolvency & Turnaround Association – an organisation in Australia for insolvency professionals. Formerly known as the Insolvency Practitioners Association of Australia.
Asset	Any property of value owned by a person. Can include tangible and intangible assets.
Bankruptcy	An insolvency procedure that applies to a natural person, not to a company.
Circulating asset	Assets (e.g. trading stock, debtors) that a company is usually able to use, dispose, and deal with in the ordinary course of business without the need to obtain the secured creditor's consent.
Circulating security interest	A security interest held by a secured creditor in circulating assets of a company. Previously known as a floating charge.
Collateral	Assets that are secured by a security interest and include personal and real property.
Committee of inspection	A small group of creditors, or their representatives, usually appointed by the creditors of a company in external administration to assist and advise the external administrator. The committee of inspection monitors the conduct of the external administration, may approve certain steps in the administration and may give directions to the external administrator. The external administrator must have regard to, but is not always required to comply with such directions.
Committee (convened under Schedule 2 of the Act)	A committee convened by ASIC under Schedule 2 to the Corporations Act 2001 (Corporations Act) to either consider an application by a person to be registered as a liquidator or to consider conduct issues to decide whether to impose disciplinary sanctions against a registered liquidator.
Compromise	Agree to accept a lesser sum in full payment of a debt.
Contingent asset	An asset that might arise if a certain event occurs (e.g. a current legal action being taken by a company might result in an asset if the company wins the case).
Contingent liability	A liability that might arise if a certain event occurs (e.g. a current legal action against a company might result in a liability if the company loses the case).

Term	Meaning
Contributory	A shareholder who may be liable to contribute towards a company's debts in a liquidation if their shares are not fully paid.
Controller	A person appointed by a secured creditor to deal with assets subject to a security interest. This includes a receiver and a receiver and manager.
Court liquidation	A liquidation that starts as a result of a court order, made after an application to the court, usually by a creditor of the company.
Creditor	A person who is owed money.
Creditors' trust	A separate legal arrangement set up to deal with creditor claims. Creditor claims can be transferred to a creditors' trust as part of a deed of company arrangement.
Creditors' voluntary liquidation	A liquidation for insolvent companies, initiated by the company.
Debenture	A document acknowledging that a company undertakes to repay a sum of money lent to the company by the holder of the document.
Debt	An amount owed.
Debtor	A person who owes a debt.
Declaration of indemnities	A declaration that must be provided to creditors by a voluntary administrator or a liquidator in a creditors' voluntary liquidation informing creditors about any indemnities given to the voluntary administrator or liquidator to cover fees or other debts incurred by them in acting as voluntary administrator or liquidator of the company. The declaration provides information to enable creditors to make an informed decision about whether they wish to replace the voluntary administrator or liquidator over concerns about independence.
Declaration of relevant relationships	A declaration that must be provided by a voluntary administrator or a liquidator in a creditors' voluntary liquidation informing creditors about certain relationships. The declaration provides information to enable creditors to make an informed decision about whether they wish to replace the voluntary administrator or liquidator over concerns about independence.
Deed administrator	The external administrator appointed to oversee a deed of company arrangement.
Deed of company arrangement	A binding arrangement between a company and its creditors governing how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. Aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up of the company, or both.
Director	A natural person appointed as a director of a company who is then responsible for directing and managing the affairs of a company. Also includes a shadow director.
Dividend	A share of the profit of a solvent company paid to shareholders. Also used to describe a sum paid to creditors out of the assets of an insolvent company.
Eligible employee creditor	A creditor (including the Australian Taxation Office in respect of the superannuation guarantee charge) who, in a winding up of a company, would normally be paid their employment-related entitlements in priority to other unsecured debts. These creditors are given a special right to vote on a deed of company arrangement proposal that seeks to modify their priority.

Term	Meaning
Eligible unsecured creditor	A creditor who is entitled to have a say in a pooling determination made by a liquidator. The term generally covers the external unsecured creditors of the group, but excludes debts owing between companies in the pooled group. A pooling determination relates to a decision to treat the affairs of a group of companies as if it were a single external administration.
Excluded employee	An employee who has also been a director of the company, or a relative of a director, at any time in the 12 months before the appointment of an external administrator. Excluded employees are entitled to only limited priority for repayment of their outstanding entitlements.
External administrator	A defined term for an external person formally appointed to control the affairs of a company and its property. Includes a provisional liquidator, liquidator, voluntary administrator and an administrator under a deed of company arrangement.
FEG	The Fair Entitlements Guarantee – an Australian Government payment scheme administered by the Department of Employment to assist employees who have lost their jobs as a result of their employer's liquidation or bankruptcy and are owed employee entitlements. The FEG operates in relation to claims for assistance for certain unpaid employee entitlements for all employer liquidations and bankruptcies that occur on or after 5 December 2012.
GEERS	The General Employee Entitlements and Redundancy Scheme – an Australian Government payment scheme to assist employees who have lost their jobs as a result of their employer's liquidation or bankruptcy, and are owed certain employee entitlements. GEERS operates in relation to claims for assistance for certain unpaid employee entitlements for all employer liquidations and bankruptcies that occurred before 5 December 2012.
Indemnity	An agreement between the external administrator and a third party to cover the fees and other debts incurred by the external administrator.
Insolvent	Unable to pay all debts when they fall due for payment.
Intangible asset	An asset with no identifiable physical form (e.g. a contractual right, copyrights, patents and goodwill).
Liability	A legal obligation to pay a person.
Liquidation	The orderly winding up of a company's affairs. It involves realising the company's assets, cessation or sale of its operations, distributing the proceeds of realisation among its creditors and distributing any surplus among its shareholders. The three types of liquidation are: court, creditors' voluntary and members' voluntary.
Liquidator	A natural person appointed to administer the liquidation of a company.
Member (of a company)	A shareholder.
Members' voluntary liquidation	A liquidation for solvent companies, initiated by the company.
Non-circulating assets	Assets that the company may not dispose of without the consent of the secured creditor.
Non-circulating security interest	A security interest held by a secured creditor in non-circulating assets of a company.
Officer (of a company)	A director, secretary or external administrator (in most cases) of the company.

Term	Meaning
Person	A natural person or a company.
Poll (of creditors)	A voting procedure where both the number of creditors voting a particular way and the value of their debts is considered in deciding if a resolution is approved or not.
Pooling	The practice of treating the affairs of a group of companies as if it were a single external administration.
Prescribed provisions	Provisions that the Corporations Act takes to be included in a deed of company arrangement, unless the deed specifically excludes them.
Priorities	The order set down by the Corporations Act for the payment of unsecured creditors of an insolvent company by an external administrator.
Priority creditor	An unsecured creditor entitled to be paid ahead of other creditors (e.g. employees).
Proof of debt	A prescribed form to be completed by creditors at the liquidator's request, setting out details of their claim against the company, including how the debt arose and the amount claimed.
Provisional liquidator	A liquidator appointed by the court to preserve a company's assets until a winding-up application is decided.
Proxy	A person appointed by another person to represent them at a meeting. A proxy is usually entitled to attend and vote on behalf of the person who appointed them. In an external administration, the appointer is usually a creditor or shareholder.
Proxy form	A form that creditors or shareholders must complete to appoint a proxy for a creditors' or shareholders' meeting.
Public examination	A liquidator, voluntary administrator, deed administrator, ASIC or a person authorised by ASIC to do so can apply to the court to question an externally administered company's directors or any other person who may be able to give information about the affairs of the company.
Realise	Convert assets into cash, often by selling them.
Receiver	A natural person appointed by a secured creditor to realise enough of the assets subject to their security interest to repay the secured debt. Less commonly, a court may appoint a receiver to protect the company's assets or to carry out specific tasks. A receiver is required to be a registered liquidator.
Receiver and manager	A receiver who has, under the terms of their appointment, the power to manage the company's affairs.
Receivership	An insolvency procedure where a receiver, or receiver and manager, is appointed over some or all of the company's assets.
Report as to affairs	A prescribed form required to be completed by the directors and secretary of a company in liquidation, voluntary administration or receivership, giving details of the company's assets and liabilities, and the identities of the creditors and debtors.
Reviewing liquidator	A registered liquidator appointed by ASIC or the court to carry out a review into a matter that relates to the external administration of a company. Creditors may appoint a reviewing liquidator to review an external administrator's remuneration and expenses incurred during the external administration.
Secured creditor	A creditor who holds a security interest in some or all of a company's property.

Term	Meaning
Security interest	A form of security taken by a creditor over company assets, including personal property and real property (previously known as a charge). Personal property includes tangible and intangible property other than real property (e.g. motor vehicles, equipment, intellectual property and company shares). A mortgage and a hire purchase agreement are each a type of security interest.
Shadow director	A natural person not on the public register as a director of a company but who directs and manages the company's affairs and is taken by the Corporations Act to be a director.
Tangible asset	An asset with a physical form (e.g. stock or real estate).
Uncommercial transaction	A transaction that was unreasonable for a company to have entered into. It may be able to be set aside by the company's liquidator provided it occurred within two years prior to the winding up, and when the company was insolvent or if the company became insolvent by entering into the transaction.
Unfair preference	A payment made or other benefit given to a creditor by an insolvent company which causes that creditor to be in a more favourable position than other unsecured creditors in a liquidation. The company's liquidator can seek to recover an unfair preference provided it occurred within six months prior to the liquidation, and when the company was insolvent or if the company became insolvent by making the payment or giving the benefit.
Unsecured creditor	A creditor who does not hold a security interest over a company's property.
Voluntary administration	<p>An insolvency procedure where an external administrator (called a 'voluntary administrator') is appointed to a financially troubled company by:</p> <ul style="list-style-type: none"> • the directors • a liquidator or provisional liquidator of the company, or • a secured creditor that holds a security interest in the whole, or substantially the whole, of the company's assets. <p>The role of the voluntary administrator is to take control of the company, investigate the company's affairs, to report to creditors and to recommend to creditors whether the company should enter into a deed of company arrangement, go into liquidation or be returned to the directors.</p>
Voluntary administrator	An external administrator appointed to carry out the voluntary administration of a company.
Winding-up order	A court order for the winding up of a company. The first step in a court liquidation. Usually made after an application by a creditor.

This is **Information Sheet 41 (INFO 41)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.