ASIC
Australian Securities & Investments Commission

Liquidation: A guide for creditors

If a company is in financial difficulty, its shareholders, creditors or the court can put the company into liquidation.

This information sheet (INFO 45) provides general information for unsecured creditors of companies in liquidation. It covers:

- who creditors are
- the purpose of liquidation
- the liquidator's role
- reporting to creditors
- recoveries from creditors
- creditors' meetings
- voting at creditors' meetings
- proposals to creditors without a meeting
- committee of inspection
- approval of liquidator's fees
- payment of dividends
- other creditor rights
- secured creditor rights
- directors and liquidation
- conclusion of liquidation
- queries and complaints

Who is a creditor?

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

A retail customer of a company in liquidation may also be a creditor if they have partly or fully paid for goods and services that they have not received.
An employee owed money for unpaid wages and other entitlements is a creditor.

A person who may be owed money by the company if a certain event occurs (e.g. if they succeed in a legal claim against the company) is also a creditor, and is sometimes referred to as a ‘contingent’ creditor.

There are generally two categories of creditor – secured and unsecured:

- A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company’s assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan. Security interests over personal property other than land are registered on the Personal Property Securities Register (PPSR) if the creditor wants to ensure their security interest is enforceable and accorded priority in an insolvency. You can search the PPSR to find out if anyone holds a security interest (other than a mortgage over land) in the company’s assets.
- An unsecured creditor is a creditor who does not hold a security interest in the company’s assets.

Employees are a special class of unsecured creditors. In a liquidation, their outstanding entitlements are paid in priority to the claims of other unsecured creditors. If you are an employee, see Information Sheet 46 *Liquidation: A guide for employees* (INFO 46).

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

The purpose of liquidation

The purpose of liquidation of an insolvent company is to have an independent and suitably qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors.

There are two types of insolvent liquidation:

- creditors' voluntary liquidation
- court liquidation.

The most common type is a creditors' voluntary liquidation, which usually begins in one of two ways:

- creditors vote for liquidation following a voluntary administration or a terminated deed of company arrangement
- an insolvent company's shareholders resolve to liquidate the company and appoint a liquidator.

In a court liquidation, a liquidator is appointed by the court to wind up a company following an application (usually by a creditor). Others, including a director, a shareholder and ASIC, can also make a winding-up application to the court .

After a company goes into liquidation, unsecured creditors cannot commence or continue legal action against the company, unless the court permits.

It is possible for a company in liquidation to also be in receivership: see Information Sheet 54 *Receivership: A guide for creditors* (INFO 54).

The liquidator's role

When a company is being liquidated because it is insolvent, the liquidator has a duty to all the company's creditors. The liquidator's role is to:

- collect, protect and realise the company's assets
- investigate and report to creditors about the company's affairs, including any unfair preferences that may be recoverable, any uncommercial transactions that may be set aside, and any possible claims against the company's officers
- inquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- after payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation – first to priority creditors, including employees, and then to unsecured creditors.

Except for lodging documents and reports required under the *Corporations Act 2001* (Corporations Act), a liquidator is not required to incur an expense in relation to the winding up unless there are enough assets to pay their costs.

If the company is without sufficient assets, one or more creditors may agree to reimburse a liquidator's costs and expenses of undertaking investigations and taking action to recover further assets for the benefit of creditors.

In this case, if additional assets are recovered, the liquidator or particular creditor can apply to the court for the creditor to be compensated for the risk involved in funding the liquidator's recovery action.

If a liquidator suspects that people involved with the company may have committed offences and the liquidator reports this to ASIC, the liquidator may also be able to apply to ASIC for funding to carry out a further investigation into the allegations.

Reporting to creditors

The liquidator will send the following to creditors:

- initial information about creditors' rights in the liquidation
- a statutory report within three months after their appointment
- such other reports as the liquidator decides or that are reasonably requested by creditors.

Initial information

Within 10 business days after their appointment as liquidator in a creditors' voluntary liquidation (or 20 business days for a court liquidator), the liquidator must give creditors notice of their appointment and information advising creditors of the following:

- their right to request information, reports and documents
- their right to direct that a meeting of creditors be held
- their right to give directions to the liquidator
- their right to appoint a reviewing liquidator
- their right to remove and replace the liquidator
- in a creditors' voluntary liquidation, a summary of the company's affairs and a listing of the names, addresses and estimated amounts owed to the company's creditors (and identifying if any of the creditors are related entities of the company).

The liquidator must also send with this information an initial remuneration notice if they propose to seek fee approval during the liquidation: see Information Sheet 85 *Approving fees: A guide for creditors* (INFO 85).

Statutory report

The liquidator must provide a report to creditors within three months after their appointment containing information about:

- the estimated amount of assets and liabilities of the company
- inquiries undertaken and further inquiries that may need to be undertaken relating to the winding up of the company
- what happened to the business of the company
- the likelihood of creditors receiving a dividend before the affairs of the company are fully wound up
- possible recovery actions.

The report may provide additional information relevant to the liquidation or notify creditors about whether the liquidator proposes to convene a meeting of creditors. The liquidator might also attach details of a proposal to creditors to consider and vote on without the need to hold a meeting. Information about meetings of creditors and voting on proposals without a meeting is included below.

A copy of the report must be lodged with ASIC. A copy of this report may be obtained by searching the ASIC registers and paying the relevant fee.

Other reports

There is no statutory requirement for the liquidator to provide further reports to creditors. However, a liquidator will often provide further reports to creditors updating them on the conduct of the liquidation.

Creditors can request that the liquidator provide a report. The liquidator must comply with a reasonable request. See the information at 'Other creditor rights' below.

Recoveries from creditors

A liquidator has the ability to recover, for the benefit of all creditors, certain payments (known as unfair preferences) made by the company to individual creditors in the six months before the start of the liquidation.

Broadly, a creditor receives an unfair preference if, during the six months prior to liquidation, the company is insolvent, and the creditor suspects the company is insolvent and receives payment of their debt (or part of it) ahead of other creditors. To be an unfair preference, the payment must put the creditor receiving it in a more favourable position than other unsecured creditors.

Not all payments from the company to a creditor in the six months before liquidation are unfair preferences. The Corporations Act provides various defences to an unfair preference claim.

If a liquidator seeks to recover a payment that has been made to you, you may wish to obtain independent legal advice on the merits of the liquidator's claim before repaying any money.

Creditors' meetings

A liquidator may call a creditors' meeting from time to time to inform creditors of the progress of the liquidation, to find out their wishes on a particular matter or seek approval of the liquidator's fees.

You may also use a creditors' meeting to ask questions about the liquidation and inform the liquidator about your knowledge of the company's affairs.

Meetings during a court liquidation

In a court liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and must also call a meeting if:

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

The liquidator is not required to comply with a direction to call a meeting given by a committee of inspection or creditors if that direction is not reasonable. There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the direction would cause substantial prejudice to the interests of creditors or a third party and the prejudice outweighs the benefits of complying with the direction
- there is insufficient available property to comply with the direction.

If the direction is not reasonable, the liquidator must notify the person or body that gave the direction and set out reasons why it is not reasonable. Even if the liquidator decides not to comply with a direction and convene a meeting because it is not reasonable, if the person or body who gave the direction agrees to pay the costs of calling and holding the meeting, and security for those costs is provided if the liquidator requires it, the liquidator must convene the meeting.

Note: See the Insolvency Practice Rules (Corporations) 2016 – s75-250.

Meetings during a creditors' voluntary liquidation

In a creditors' voluntary liquidation, the liquidator is not required to call a creditors' meeting unless a matter requires creditor approval.

The liquidator can call a creditors' meeting at any time and if directed to do so by one of the ways outlined above for court liquidation.

In addition, the liquidator in a creditors' voluntary liquidation must call a meeting if:

- less than 25% but more than 5% in value of creditors direct the liquidator to do so in writing
- none of the creditors who give the direction is a related entity in relation to the company
- the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.

Creditors might direct a meeting be held to ask questions about the liquidation, inform the liquidator about their knowledge of the company's affairs or to consider replacing the liquidator if they have a concern about the independence of the liquidator appointed by the company's shareholders.

As with a court liquidation, the liquidator is not required to comply with a direction by the committee of inspection or creditors to call a meeting if that direction is not reasonable, but they must notify the person or body that gave the direction and set out reasons why it is not reasonable.

Minutes of meetings

The chairperson of a creditors' meeting (usually the liquidator or one of their senior staff) must prepare minutes of the meeting and a record of those who were present at the meeting and lodge them with ASIC within one month. A copy of the minutes of meeting may be obtained by searching the ASIC registers and paying the relevant fee.

Voting at a creditors' meeting

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

The chairperson of the meeting decides whether or not to accept the debt or claim for voting purposes. The chairperson may decide that a creditor does not have a valid claim. In this case, they may not allow the creditor to vote at all. If the chairperson is in doubt whether to accept the debt or claim, they must mark the vote as objected to and allow the creditor to vote subject to the vote being declared invalid if the objection is sustained. This decision is only for voting purposes. It is not relevant to whether a creditor will receive a dividend.

An appeal against a decision by the chairperson to accept or reject a proof of debt or claim for voting purposes may be made to the court within 10 business days after the decision.

Voting by proxy

You may appoint an individual as proxy to attend and vote at a meeting on your behalf. Creditors who are companies will have to nominate a person as proxy so that they can participate in the meeting. This is done using a form sent out with the notice of meeting. The completed proxy form must be provided to the liquidator before the meeting.

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

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

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

Manner of voting

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

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

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

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

The chairperson will determine how this poll is taken.

If you intend to demand that a poll be taken, you must do so before, or as soon as, the chairperson has declared the result of a vote taken by voices.
When a poll is conducted, a resolution is passed if both:

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

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

Chairperson’s casting vote

When a poll is taken and there is a deadlock, the chairperson may use their casting vote (except for resolutions to approve their remuneration) either in favour of or against the resolution. Where the resolution relates to their removal as liquidator, the chairperson may only exercise the casting vote in favour of their removal. The chairperson may also decide not to use their casting vote, in which case the deadlocked resolution is not passed.

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

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may, in specified circumstances, apply to 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.

If a resolution is passed or defeated based on the votes of these related creditors and you are dissatisfied with the outcome, you may, in specified circumstances, apply to 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).

Proposals to creditors without a meeting

Instead of convening a creditors’ meeting, the liquidator can put proposals to creditors by giving notice in writing.

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

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

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

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

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

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

The liquidator must lodge with ASIC a statement about the outcome of the proposal. A copy of the outcome of the proposal may be obtained by searching the ASIC registers and paying the relevant fee.

Committee of inspection

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

The committee may be formed by resolution passed at any meeting of creditors called for that purpose. Creditors also decide who are to be appointed members of the committee of inspection.

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

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

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

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

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

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

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

The liquidator is not required to comply with a direction to convene a meeting or give information if that request is not reasonable. The rules mentioned under the heading 'Meetings during a court liquidation' about when a direction is not reasonable apply to directions given to a liquidator by a committee of inspection.

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

Minutes of meetings of the committee of inspection must be prepared and lodged with ASIC within one month. A copy of the minutes of committee of inspection meetings may be obtained by searching the ASIC registers and paying the relevant fee.

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

Approval of liquidator's fees

A liquidator is 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 any assets.

The fees cannot be paid until the amount has been approved by creditors, a committee of inspection or the court. Alternatively, the liquidator may put a proposal to creditors to approve their fees without holding a meeting.

Note: If fees are not approved by the relevant decision-making body, and the liquidation commenced on or after 1 September 2017, the liquidator is entitled to be paid reasonable fees up to a maximum of $5,000 excluding GST (indexed annually from 1 July 2017).

If you are asked to approve fees, either at a general meeting of creditors or at a meeting of a committee of inspection or by a proposal put to creditors without a meeting, the liquidator must give you, at the same time as the notice of the meeting or with the proposal, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

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

If you are in any doubt about how the fees were calculated, ask for more information.

If you do not think the fees are reasonable, you should raise your concerns with the liquidator.

Generally, if fees are approved and you wish to challenge the decision, you may apply to court and ask the court to review the fees. You may wish to seek your own legal advice if you are considering applying for a court review of fees.

Apart from fees, the liquidator is entitled to reimbursement for out-of-pocket expenses that have arisen in carrying out their administration. This reimbursement may require creditor, committee of inspection or court approval.

For further information, see Information Sheet 85 *Approving fees: A guide for creditors* (INFO 8).

Payment of dividends

If there are funds left over after payment of the costs of the liquidation and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend. Generally, the order in which funds are distributed is:

- costs and expenses of the liquidation, including liquidators' fees
- outstanding employee wages and superannuation
- outstanding employee leave of absence (including annual leave and long service leave)
- employee retrenchment pay
- unsecured creditors.

Each category is paid in full before the next category is paid. If there are insufficient funds to pay a category in full, the available funds are paid on a pro rata basis (and the next category or categories will be paid nothing).

Proving your debt

Before any dividend is paid to you for your debt or claim, you will need to give the liquidator sufficient information to prove your debt.

The liquidator will notify you if there are likely to be funds available for distribution and must call for formal proof of debt forms to be lodged. At least 14 days notice of the deadline for lodging the proof must be given.

This notice must be given to each person claiming to be a creditor whose debt or claim has not already been admitted by the liquidator. It must also be published on ASIC's Published notices website. A copy of the formal proof of debt form will be sent to you with the notice.

You should attach copies of any relevant invoices or other supporting documents to the proof of debt form, as your debt or claim may be rejected if there is insufficient evidence to support it.

If a creditor is a company, the proof of debt form must be signed by a person authorised by the company to do so.

The completed proof of debt form must be delivered or posted to the liquidator. When submitting your claim, ask the liquidator to acknowledge receipt of your claim and advise if any further information is needed.

The liquidator must notify you within seven days if they reject your claim. If you are dissatisfied with the decision, your first step should be to promptly contact the liquidator to see if you can resolve the matter.

If you can't resolve the matter with the liquidator, you may wish to seek your own legal advice, as you have a limited time to appeal to the court. The liquidator will notify you of this time in the notice of rejection. It must be at least 14 days after you receive the notice. The court has the power to extend the time to appeal. If you don't appeal within this time, the liquidator's decision on your claim is final.

If you have a query regarding the calculation of your claim, or the timing of the payment, discuss this with the liquidator.

Other creditor rights

As well as the various rights involving meetings and participation in dividends discussed above, the other rights of creditors include the right to:

- request the liquidator give information, provide a report or produce a document
- inspect certain books of the liquidator
- inform the liquidator about your knowledge of matters relevant to the affairs of the company in liquidation
- appoint a reviewing liquidator
- remove and replace the liquidator by resolution passed at a meeting of creditors
- complain to ASIC or the court about the liquidator's conduct in connection with their duties.

Request for information

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

The liquidator must comply with this request unless:

- the information, report or document is not relevant to the liquidation
- the liquidator would breach their duties if they complied with the request
- it is not reasonable to comply with the request.

There are rules governing when a direction is not reasonable, including if the liquidator, acting in good faith, thinks that:

- complying with the request would substantially prejudice the interests of one or more creditors or a third party and that the prejudice outweighs the benefits of complying with the request
- the information would be privileged from production in legal proceedings
- there is not sufficient available property to comply with the request
- the law requires the information to be provided by the liquidator within 20 business days of the request being made.

If the direction is not reasonable, the liquidator must notify the requesting party and set out reasons why the request is not reasonable.

If the requesting party agrees to pay the costs of providing the information and security for those costs is provided if the liquidator requires it, the liquidator must comply with the request.

Liquidator's books

Liquidators must keep sufficient books to give a complete and correct record of their administration of the company's affairs. These include minutes of meetings and details of all the receipts and payments for the liquidation.

These books must be available at the liquidator's office for inspection by creditors and shareholders.

Copies of minutes of meetings and detailed lists of receipts and payments, as well as a number of other documents, must also be lodged with ASIC. Copies of these documents may be obtained by searching the ASIC registers and paying the relevant fee.

Informing the liquidator

The liquidator must report to ASIC if they suspect that anyone connected to the company may have committed an offence. If you have any information that might assist in preparing such a report, you should let the liquidator know.

These reports are not available for inspection. ASIC reviews these reports and decides whether to take further action, such as banning a person from acting as a company director for a period of time or charging the person with a criminal offence. ASIC considers a range of factors when deciding what action, if any, to take. For further information, see Information Sheet 151 *ASIC's approach to enforcement* (INFO 151).

Appoint a reviewing liquidator

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

This review is limited to:

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

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

The liquidator, and their staff, must cooperate with the reviewing liquidator.

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

Remove and replace the liquidator

Creditors may remove and replace the liquidator at any time by resolution of creditors passed at a creditors' meeting for which at least five business days notice is given.

A creditor who wishes to appoint a replacement liquidator must request that the current liquidator convene a meeting. The liquidator is not required to comply if the request is not reasonable (there are rules about when a request to convene a meeting is reasonable – see the information under the heading 'Meetings during a court liquidation' above). The liquidator must comply with the request if the creditor agrees to pay the cost of calling the meeting, and security for those costs is provided if the liquidator requires it.

The notice of meeting must include details of the proposed resolution and attach a consent to act and declaration of relevant relationships of the proposed replacement liquidator.

Accordingly, a creditor who wishes to remove the current liquidator and appoint a replacement liquidator must approach a registered liquidator to get a written consent from that person that they would be prepared to act as liquidator of the company. The person must also make a written declaration about any relationships they or their firm may have that might affect their independence to act as liquidator.

If the resolution to remove the current liquidator is passed at the meeting, the removal takes effect from when a resolution to appoint the replacement liquidator is passed.

Applications to the court

The court has the power to make such orders as it thinks fit in relation to an external administration. Creditors and other persons with a financial interest in the external administration can apply to the court for these orders which include:

- an order determining any question arising in the external administration
- an order that a person cease to be appointed as the liquidator and that another registered liquidator be appointed
- orders in relation to remuneration.

Making an application to the court can be costly. You should attempt to resolve any problems with the liquidator and only go to court if this fails.

Liquidators, ASIC and other people can also make applications to the court. For example, a liquidator might apply to have questions decided about powers exercised in a liquidation.

Secured creditors' rights

If a company fails to meet its obligations under a security interest (e.g. a charge or a mortgage), a secured creditor can appoint an independent and suitably qualified person (a receiver) to take control of and realise some or all of the secured assets (collateral), in order to repay the secured creditor's debt. This right continues after the company goes into liquidation. For more on receivership, see INFO 54.

Another option available to a secured creditor is to ask the liquidator to deal with the collateral for them and account to them for the proceeds and costs of collecting and selling those assets.

A secured creditor is entitled to vote at creditors' meetings for the amount the company owes them that exceeds the amount they are likely to receive from realisation of the collateral. The secured creditor can participate in any dividend to unsecured creditors on a similar basis.

Directors and liquidation

Directors cannot use their powers after a liquidator has been appointed. They have an obligation to assist the liquidator by:

- advising the liquidator of the location of company property and delivering any such property in their possession to the liquidator
- providing the company's books and records to the liquidator
- advising the liquidator of the whereabouts of other company records
- providing a written report about the company's business, property and financial circumstances within 10 business days of the appointment of the liquidator by the court or within five business days of the appointment of a liquidator in a creditors' voluntary liquidation
- meeting with, or reporting to, the liquidator to help them with their inquiries, as reasonably required
- if required by the liquidator, attending a creditors' meeting to provide information about the company and its business, property, affairs and financial circumstances.

A liquidator has the power to apply to the court to conduct a public examination, under oath, of a director (or other person with information about the company).

Compensation proceedings for amounts lost by creditors as a result of the company trading while insolvent can be initiated against a director personally by ASIC, a liquidator or, in certain circumstances, a creditor.

Conclusion of liquidation

A liquidation effectively comes to an end when the liquidator has realised and distributed all the company's available property and made their report to ASIC.

The liquidator must lodge a final account of their receipts and payments, called an 'end of administration return' and lodge it with ASIC.

Note: For a creditors' voluntary liquidation ending before 1 July 2018, the liquidator must also convene a final meeting of the members and creditors of the company and lodge a return for the final meeting with ASIC.

Alternatively, in a court liquidation, after the liquidator decides that the company's affairs are fully wound up, they may:

- seek an order for release from the court
- seek an order for release and that ASIC deregister the company
- if the liquidation is finalised before 1 July 2018 and there are insufficient assets to obtain a court order for the company's deregistration, request that ASIC deregister the company.

ASIC will deregister the company three months after the end of administration return is lodged (or return for the final meeting of members and creditors in a creditors' voluntary winding up if the administration ends before 1 July 2018).

Queries and complaints

You should first raise any queries or complaints with the liquidator. If this fails to resolve your concerns, including any concerns about the liquidator's conduct, you can lodge a report of misconduct with ASIC – see How to complain.

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

ASIC usually does not become involved in matters of commercial judgement by a liquidator.

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

If you are unable to report misconduct to ASIC online, you can contact us on 1300 300 630.

Where can I get more information?

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

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

Important notice

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

This is **Information Sheet 45 (INFO 45)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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