



ASIC

Australian Securities & Investments Commission

## Voluntary administration: A guide for employees

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

This information sheet (INFO 75) provides general information for employees of companies in voluntary administration. It covers:

- [who is an employee](#)
- [the purpose of voluntary administration](#)
- [the voluntary administrator's role](#)
- [employee entitlements](#)
- [establishing your claim under a deed of company arrangement](#)
- [payment summaries and separation certificates](#)
- [committee of inspection](#)
- [right to request information](#)
- [queries and complaints](#)

Employees should also read [Information Sheet 74](#) *Voluntary administration: A guide for creditors* (INFO 74).

### Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, enterprise agreement, agreement-based transitional instruments (which are agreements in force before the commencement of the *Fair Work Act 2009*) or a contract of employment
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

### The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. 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.

A secured creditor is someone who holds a security interest, such as a mortgage, in some or all of the company assets, to secure a debt owed by the company. Lenders usually require a security interest in company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see [Information Sheet 55 Receivership: A guide for employees](#) (INFO 55).

## 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 (including employees). 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
- 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. In complex administrations, the meeting may be held later if the court consents.

Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

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.

## Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

## Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements 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.

## Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

- outstanding wages and superannuation
- outstanding leave of absence
- retrenchment pay.

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

To find out more, see [Information Sheet 46 Liquidation: A guide for employees](#) (INFO 46).

## Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees, at the same time as the notice of meeting, a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

## The Fair Entitlements Guarantee (FEG)

Employees who are owed certain employee entitlements after losing their job because their employer went into liquidation may be able to get financial help from the Australian Government.

This help is available through the FEG.

The FEG is a scheme of last resort, to assist employees who have lost their job because their employer entered liquidation. The FEG operates in relation to claims for assistance for unpaid employee entitlements for all employer insolvency events that occur on or after 5 December 2012. For more information visit the [FEG website](#), call the FEG hotline on 1300 135 040 or email [FEG@employment.gov.au](mailto:FEG@employment.gov.au).

If you are employed by a company in voluntary administration or subject to a deed of company arrangement you are not eligible for the FEG until and unless the company enters into liquidation.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your claim under the FEG if the company subsequently goes into liquidation.

If the deed provides for your ongoing employment, you may also wish to seek advice on how this affects payment of your outstanding entitlements.

FEG does not cover unpaid superannuation contributions. To pursue your outstanding superannuation entitlements, you may wish to contact the Australian Taxation Office. For more information about [unpaid superannuation contributions](#), visit the Australian Taxation Office website.

## Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see [INFO 46](#).

You may also be entitled to make a claim under the FEG when the company enters into liquidation.

## Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment.

You may also need these records to help you complete your income tax return and establish any entitlement to the FEG if the company proceeds to liquidation.

When submitting a claim, 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, you may 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.

For details on proving your claim in a liquidation, see [INFO 46](#).

## Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary

administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

## Committee of inspection

A committee of inspection may be formed to assist and advise the voluntary administrator. The committee of inspection also monitors the conduct of the voluntary administration, may approve certain steps in the administration and may give directions to the voluntary administrator. The voluntary administrator must have regard to, but is not always required to comply with, such directions. To find out more about committees of inspection see [INFO 74](#).

All creditors, including a representative of the company's employees, are entitled to stand for committee membership to represent the interests of all creditors. Employees and large creditors can appoint their own member.

## Right to request information

As a creditor, you can request the administrator to give information, provide a report or produce a document.

The administrator must provide this information, report or document provided that the request is reasonable, relevant to the administration of the company and complying with the request will not cause the administrator to breach their duties in relation to the administration.

## Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's conduct, you can lodge a report of misconduct with ASIC – see [How to complain](#).

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

ASIC usually does not become involved in matters of a voluntary administrator's or deed administrator's commercial judgement.

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

If you cannot 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 on [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 75 (INFO 75)**, 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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