

PERTH

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www.ferrierhodgson.com

29 January 2009

**COMPASS RESOURCES LIMITED ACN 010 536 820
(Administrators Appointed) ("CMR")
(Formerly Compass Resources NL)**

CIRCULAR TO CREDITORS

ADELAIDE
BRISBANE
MELBOURNE
SYDNEY
HONG KONG
JAKARTA
KUALA LUMPUR
MANILA
MUMBAI
SINGAPORE
TOKYO

affiliated through
Kroll Worldwide
UNITED STATES
UNITED KINGDOM

I advise that Martin Jones, Steven Sherman and I were appointed Joint and Several Administrators of the above Company and its subsidiary, Compass Mining Pty Ltd ("CMPL") pursuant to Section 436A of the Corporations Act 2001 ("the Act") on 29 January 2009.

We now control the Company's operations and are assessing the Company's financial position. The Company's directors have been requested to prepare a statement about the Company's business, property, affairs and financial circumstances as at the date of our appointment. I raise the following matters regarding the administration.

1. First Meeting of Creditors

We are required to call a first meeting of creditors within eight business days of our appointment pursuant to Section 436E of the Act. The purpose of this meeting is to provide creditors with an opportunity to:-

- Appoint a Committee of Creditors; and,
- Appoint an alternative Administrator, if they so desire.

In this regard, I enclose the following documents:

- (a) Notice of Meeting of Creditors. Please note that a meeting for CMR will be held at the **Holiday Inn, 122 The Esplanade, Darwin, NT on 10 February 2009, commencing at 9:00am (Central Standard Time)**. A meeting for CMPL will follow this at 10:00am at the same location. *Please note that you should arrive for registration at least 20 minutes prior to the meeting.*

Telephone conference facilities will be available for the CMR meeting only. If you wish to participate by telephone, please contact Clinton Roberts or Georgina Luck of my office before the meeting and, in any event, no later than **4.00pm on the day prior to the meeting** to make arrangement of same.



(b) Informal Claim Form for Voting Purposes.

A person is not entitled to vote at the meeting unless they provide particulars of the debt or claim to the Administrators before the meeting. **Please note this form is for voting purposes only.** All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured, and whether they claim title to any goods supplied to the Company or any lien over goods in their possession which are property of the Company.

(c) Appointment of Proxy form. The form enables you to appoint a person to act on your behalf at the meeting.

(d) A publication of the Insolvency Practitioners Association of Australia (“IPA”) and the Australian Securities and Investments Commission concerning insolvency information for creditors.

The Informal Claim Form for Voting Purposes and Proxy form should be lodged with this office before the meeting and, in any event, no later than **4.00pm on the day prior to the meeting**. Forms can be sent by facsimile on (08) 9214 1400 marked to the attention of Clinton Roberts or Georgina Luck or scanned and emailed to croberts@perth.fh.com.au or gluck@perth.fh.com.au. However, Corporations Regulation 5.6.36A requires lodgement of the original of the Proxy form with the Administrators’ office within 72 hours of lodging the faxed copy.

2. Declaration by Administrators

Pursuant to sections 435DA(2) and (3) of the Act and the IPA Code of Professional Practice, I enclose the Administrators’, ‘Declaration of Independence, Relevant Relationships and Indemnities’.

3. Trading

At this stage, the Administrators intend continuing the Company’s trading and draw your attention to the following.

3.1 Trading Accounts

The Act provides that the Administrators are personally liable for liabilities arising from services rendered, goods bought or property hired, leased, used or occupied during the Administration. Please note that the Administrators do not accept liability for any goods purchased or services rendered without

- A purchase order authorised by one or more of the specified authorised signatories set out in the list accompanying this circular. Please note the authority limits; and,
- A Tax Invoice. Where you do not provide a Tax Invoice, I am obliged by law to deduct 48.5% from any payment due and remit the amount to the Australian Taxation Office.



Please open a new account styled “Compass Resources Limited (Administrators Appointed)” addressed to the Company’s premises and charge future authorised orders to that account. Accounts will be paid in accordance with your usual terms of credit, or other credit terms agreed between you and the Administrators, provided the supply of goods or services has been properly authorised and the invoice value is the amount specified on the authorised order. Invoices submitted for amounts exceeding the authorised amount will only be paid to the amount authorised.

If there are any outstanding or unfulfilled orders placed by either company prior to my appointment, including those under which there are goods in transit, please contact Clinton Roberts or Georgina Luck of this office to obtain written confirmation that the order should proceed.

You may be aware that payment of unsecured creditors’ accounts as at 28 January 2009 is postponed pending the outcome of the second meeting of creditors (see section 6 below).

3.2 Consignment Stock, Retention of Title and Liens/Pledges

If you supplied consignment stock to the Company, or believe you provided stock subject to a ‘Retention of Title’ clause, please contact my office as a matter of urgency.

If you claim a lien/pledge over any of the Company’s assets, you are asked to set out details of your claim in writing to the Administrators immediately.

3.3 Contracts/Agreements

The Administrators expressly refrain from personally adopting any of the Company’s contracts existing at the date of their appointment. All contracts are currently under review. The Administrators will advise the status of contracts as soon as practicable; that is, whether or not they remain on foot.

3.4 Property Used but Not Owned by the Company

In accordance with section 443B of the Act, the Administrators’ liability under hire purchase or lease agreements does not commence until five business days after the Administrators’ appointment. Further, pursuant to section 440C of the Act, the lessor or owner of property in the Company’s control is not entitled to take possession of such property without leave of the Court or the Administrators’ written consent.

I will write separately to known lease and hire purchase creditors regarding such assets. Please contact this office if you do not receive my letter.

4. Legal Proceedings

The appointment of Administrators stays a proceeding in a court against the Company. You cannot commence or continue a proceeding against the Company without my written consent or with the leave of the Court.



5. Employees

I have written separately to employees regarding the appointment of Administrators.

6. Report to Creditors and Second Meeting of Creditors

The Administrators will prepare a report to creditors under section 439A of the Act which will include details on the Company's business, property, affairs and financial circumstances.

A second meeting of creditors will be held on or before **Friday, 6 March 2009** unless the Court extends this date. It is at this meeting that creditors will consider the Administrators' report and consider resolutions regarding the Company's future.

7. Administrators' Remuneration

For the purposes of the Company's administration, the Administrators intend that their remuneration be fixed on the basis of time spent by them, and their staff of an appropriate level having regard to the nature and complexity of the work, and calculated by reference to hourly rates. Enclosed for your information are the following:

- Statement regarding remuneration setting out the four basic methods of calculating remuneration together with an explanation as to why hourly rates are appropriate in this administration
- Schedule of Rates and General Guide to Staff Experience

The Administrators will provide creditors with a remuneration report pursuant to section 449E of the Act with the report to creditors referred to in section 6 above.

An information sheet concerning approval of remuneration in external administrations can be obtained from www.ipaa.com.au or through this office.

8. Electronic Notification

You may elect to receive future correspondence from this office via email. Should you wish to do so, please email croberts@perth.fh.com.au with the following information:

- The person to whom matters regarding the administration should be directed
- The full name of the entity.
- The email address at which the creditor is to receive future correspondence.



9. Further Information

For further information concerning the Voluntary Administration process and Ferrier Hodgson, you may wish to visit our website at www.ferrierhodgson.com.

You may also wish to consider the IPAA's website www.ipaa.com.au, which contains the IPAA's Statements of Best Practice, applicable to IPA members and/or the website www.asic.gov.au for information sheets on the following topics:

- Insolvency: a glossary of terms
- Voluntary administration: a guide for creditors
- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors
- Independence of external administrators: a guide for creditors
- Approving fees: a guide for creditors.

Should you have any queries in relation to this matter, please do not hesitate to contact me, or in my absence, Clinton Roberts or Shannon Coleman of this office.

A handwritten signature in black ink that reads 'D Weaver'.

DARREN WEAVER
Joint and Several Administrator of
Compass Resources Limited

Encl



COMPASS RESOURCES LIMITED ACN 010 536 820 (Administrators Appointed)

STATEMENT REGARDING REMUNERATION

A. 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 fees charged is based on the hourly rate charged for each person who carries out the work multiplied by the number of hours spent by each person on each of task 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 asset realisations.

Contingency

The insolvency practitioner's fee is contingent on achieving a particular outcome.

B. Method Chosen

Time based remuneration is appropriate in this administration given:

- It ensures creditors are only charged for work performed
- I am required to perform tasks unrelated to asset realisations; hence, fees solely based on asset realisation would be unrealistic
- I am unable to provide a reliable estimate of total fees to complete all tasks in the administration.

C. Fee estimate

I estimate fees for the administration of the Company's affairs at between \$180,000.00 and \$200,000.00. Please note this is an estimate only and may vary materially given the circumstances of the administration.

Dated this 29th day of January 2009

A handwritten signature in black ink that reads 'D. Weaver'.

DARREN WEAVER
Joint and Several Administrator of
Compass Resources Limited



SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE

Classification	Rate (\$)	Experience
Partner/Appointee	500.00	The Partner/Appointee is a registered liquidator and member of the ICAA and IPAA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at www.ferrierhodgson.com
Director	425.00	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	350.00	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager	310.00	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	270.00	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior 1	240.00	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA, program. Good knowledge of basic insolvency legislation and issues.
Senior 2	225.00	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate 1	175.00	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate 2	150.00	0 – 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Senior Secretary	150.00	Appropriate skills including machine usage.
Junior/Filing	125.00	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

CORPORATE ADVISORY

FORENSICS

CORPORATE RECOVERY

**Notes:**

1. The hourly rates are exclusive of GST.
2. The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
3. Time is recorded and charged in six-minute increments.
4. Rates are subject to change from time to time. Disbursements are recovered on the following basis.

Disbursements	Charges (Excluding GST)
Postage	At cost
Telephone	At cost
Photocopying	35 cents a copy
Facsimile	\$1.00 per page
Company Search	At cost
File Set up	At cost
Advertising	At cost
Storage	At cost
Couriers	At cost

The Partners of Ferrier Hodgson, Perth are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice.

A copy of the IPA Code of Professional Practice may be found on the IPA website at www.ipaa.com.au.

COMPASS RESOURCES LIMITED ACN 010 536 820
(ADMINISTRATORS APPOINTED)
COMPASS MINING PTY LIMITED ACN 099 550 259
(ADMINISTRATORS APPOINTED)

AUTHORISED SIGNATORIES

SPECIMEN SIGNATURES

NAME: MARTIN JONES

SIGNATURE:

A handwritten signature in black ink, appearing to read 'M Jones', written over a horizontal line.

NAME: DARREN WEAVER

SIGNATURE:

A handwritten signature in black ink, appearing to read 'D Weaver', written over a horizontal line.

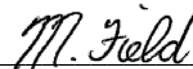
NAME: STEVEN SHERMAN

SIGNATURE:

A handwritten signature in black ink, appearing to read 'S Sherman', written over a horizontal line.

NAME: MALCOLM FIELD

SIGNATURE:

A handwritten signature in black ink, appearing to read 'M. Field', written over a horizontal line.

NAME: SEAN POWELL

SIGNATURE:

A handwritten signature in black ink, appearing to read 'S Powell', written over a horizontal line.

CORPORATIONS ACT 2001

NOTICE OF FIRST MEETING OF
CREDITORS OF COMPANY UNDER ADMINISTRATION

COMPASS RESOURCES LIMITED ACN 010 536 820
(Administrators Appointed)

1. Notice is given that on 29 January 2009, the company under Section 436A of the Corporations Act 2001 appointed Martin Jones and Darren Weaver of Ferrier Hodgson, Level 26 BankWest Tower, 108 St Georges Terrace, PERTH WA 6000, and Steven Sherman, of Ferrier Hodgson, Level 13 Grosvenor Place, 225 George Street, SYDNEY NSW 2000, as the Joint and Several Administrators of the companies.
2. Notice is also given that a meeting of the creditors of the company will be held at the **Holiday Inn, 122 The Esplanade, Darwin, NT on 10 February 2009 at 9:00 am (Central Standard Time)**.
3. The purpose of the meeting is to determine:
 - a. whether to appoint a committee of creditors; and if so,
 - b. who are to be the committee's members.
4. At the meeting, creditors may also, by resolution:
 - a. remove the Joint and Several Administrators from office; and
 - b. appoint someone else as Administrator of the company.
5. Statement of Independence

The Administrators considered the question of their independence prior to accepting appointment as Administrators. The Administrators first met with the company's directors/advisors and confirmed that no conflict of interest existed. Prior to such meeting, and to the best of the Administrators' knowledge, no prior relationship existed with the company, its directors and officers, any associated businesses, subsidiary companies within the meaning of Corporate Groups or major creditors.

The Administrators intend for their remuneration to be based on hourly rates charged from time to time by Ferrier Hodgson.
6. Administrators' Background

The Administrators are Registered Liquidators and Official Liquidators and are partners of Ferrier Hodgson which is national firm with over 30 partners. The Administrators have experience in all types of insolvency administrations and corporate recovery assignments.
7. Should you be unable to attend the meeting in person, telephone conference facilities will be available.

These facilities will be available from 8.45am (Australian Central Standard Time) and the details are:

Australian Toll Free Number: 1800 063705

If you have issues in using this number you may dial: 02 82950913*

Pin Number: 8079887

When you dial in, please follow the prompts, in doing so, you will be required to enter the pin as above.

If you intend to participate in the meeting by telephone, you must lodge with the Administrators, no later than **4.00pm (Australian Western Standard Time) on the day before the meeting.**

- (a) a properly executed Proxy form; and
- (b) a written statement setting out:
 - (1) the name of the person and of the proxy or Attorney (if any); and
 - (2) an address to which notices to the person, proxy of attorney may be sent; and
 - (3) a telephone number at which the person, proxy or attorney may be contacted; and
 - (4) any facsimile transmission number to which notices to the person, proxy or attorney may be sent.

Should you wish to participate via telephone, I advise that you will be responsible for any costs you incur in doing so. You will not be entitled to seek reimbursement for any such costs from the Company or the Administrators.

DATED this 29th day of January 2009.



DARREN WEAVER
Joint and Several Administrator of
Compass Resources Limited

CORPORATIONS ACT 2001

Section 436DA(2)

**COMPASS RESOURCES LIMITED ACN 010 536 820
(Administrators Appointed) (“CMR”)
COMPASS MINING PTY LTD ACN 099 550 259
(Administrators Appointed) (“CMPL”)
(Collectively “the Companies”)**

DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

Independence

We, Darren Weaver, Steven Sherman and Martin Jones have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Companies. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

Relevant Relationships

Aside from the notes below, neither Martin Jones, Steven Sherman or I, nor our firm, have, or have had within the preceding 24 months, any relationships with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any other person or entity that has a charge on the whole or substantially whole of the Companies' property.

Prior Engagements with the Insolvent

Aside from preliminary advice in relation to this appointment (to date unremunerated, that preliminary advice having commenced on 22 January 2009), neither myself, Martin Jones, Steven Sherman or any of our Firm, have undertaken any prior engagements for either CMR or CMPL.

There are no other prior professional relationships or engagements that should be disclosed.

Indemnities

We have not been indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute.

Dated this 29th day of January 2009



DARREN WEAVER
Joint and Several Administrator of
Compass Resources Limited and
Compass Mining Pty Limited

NOTE: *If circumstances change, or new information is identified, we are required under Section 436DA(5) of the Corporations Act 2001 and the IPA Code of Professional Practice to update this declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.*

INFORMAL PROOF OF DEBT FORM

Regulation 5.6.47

Please indicate the company against which your claim is made (please tick)

✓	Name	ACN
	Compass Resources Limited	010 536 820
	Compass Mining Pty Ltd	099 550 259

Name of creditor:

Address of creditor:

.....

ABN:

Telephone number:

Amount of debt claimed: \$..... (including GST \$.....)

Consideration for debt (i.e. the nature of goods or services supplied and the period during which they were supplied):

.....

.....

.....

Is the debt secured? YES/NO

If secured, give details of security including dates, etc:

.....

.....

.....

Other information:

.....

.....

.....
Signature of Creditor
(or person authorised by creditor)

Notes:

Under the Corporations Regulations, a creditor is not entitled to vote at a meeting unless (Regulation 5.6.23):

- a. his or her claim has been admitted, wholly or in part, by the Joint and Several Administrators; or
- b. he or she has lodged with the Joint and Several Administrators particulars of the debt or claim, or if required, a formal proof of debt.

At meetings held under Section 436E and 439A, a secured creditor may vote for the whole of his or her debt without regard to the value of the security.

Proxies must be made available to the Joint and Several Administrators.

CORPORATIONS ACT 2001

APPOINTMENT OF PROXY
CREDITORS MEETING

Please indicate the company against which your claim is made (please tick)

✓	Name	ACN
	Compass Resources Limited	010 536 820
	Compass Mining Pty Ltd	099 550 259

*I/*We (1).....
of
a creditor of the company/companies indicated above, appoint (2)
or in his/her absence
as *my/our *general/special proxy to vote at the meeting of creditors to be held on 10 February 2009 at
122, The Esplanade Darwin, NT or at any adjournment of that meeting.(3)

DATED this day of 2009.

..... OR The Common Seal (6) of
Signature (4) of individual or person (5)
authorised by corporate resolution to
represent the corporation was hereunto affixed in the
 presence of:

.....
Director

.....
Secretary

CERTIFICATE OF WITNESS (7)

I, of
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person
appointing the proxy and read to him or her before he or she signed or marked the instrument.

DATED this day of 2009.

.....
Signature of Witness Description

.....
 Place of Residence

- * Strike out if inapplicable
- (1) If a firm, strike out "I" and set out the full name of the firm.
 - (2) Insert the name, address and description of the person appointed.
 - (3) If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.
 - (4) The signature of the creditor is not to be attested by the person nominated as proxy.
 - (5) Note that a corporation may by resolution of its directors provide standing authority for a person to represent it at members meeting and appoint proxies (Section 249(3)& (5)). Copy of authority to be annexed.
 - (6) The method of affixing the Common Seal should be prescribed by the creditor corporation's articles. See Note (5).
 - (7) This certificate is to be completed only if the person giving the proxy is blind or incapable of writing. The signature of the creditor, contributory, debenture holder must not be witnessed by the person nominated as proxy.



ASIC

Australian Securities & Investments Commission

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 also 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. In some circumstances, their outstanding entitlements are paid in priority to the claims of other unsecured creditors. If you are an employee, see our related information sheet 'Voluntary administration: a guide for employees'.

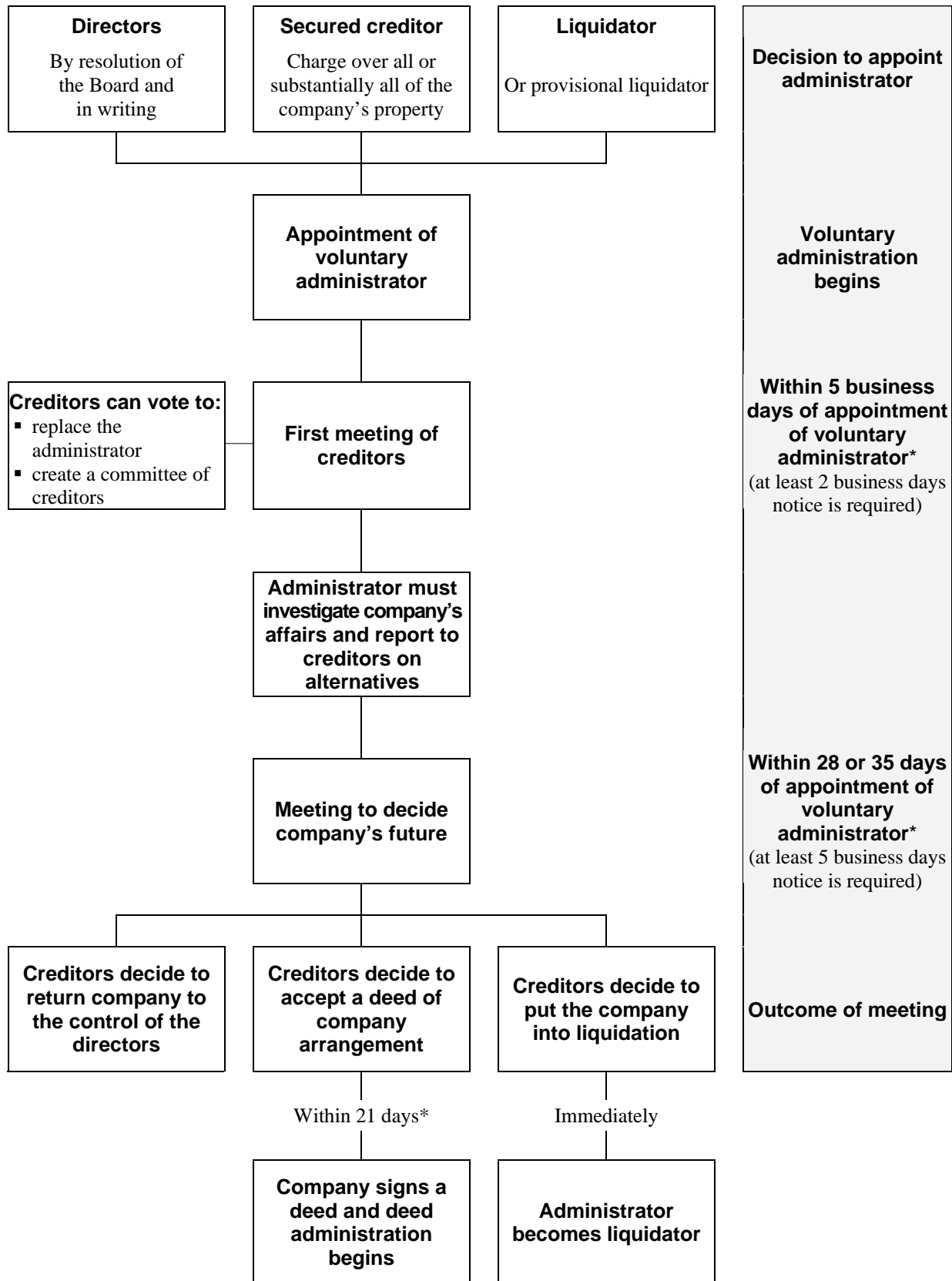
The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly (Figure 1 summarises the process). In a voluntary administration 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.

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 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 company in voluntary administration may also be in receivership.

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 around 4 weeks after the company goes into

voluntary administration to decide on the best option. 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, and
- a court application to put the company in liquidation can't be commenced.

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 7 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 7 days end.

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 5 business days after the voluntary administration begins.

At least 2 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 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 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.

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. 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 around 4 weeks after the company goes into voluntary administration (5 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 5 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.

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 should 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.

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, but they can't use the proxy to vote in favour of a resolution approving payment of the voluntary administrator's remuneration.

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, he or she 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 should inform the meeting of the reasons why they cast the vote 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 they are creditors of the company, directors and shareholders, their spouses and relatives and other entities controlled by them 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 60 days) 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. 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's 'Liquidation: a guide for creditors' information sheet.

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 21 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.

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 extent to which those debts are released
- the order in which the available funds will be paid to creditors
- 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, the appointment of a committee of creditors (called a ‘committee of inspection’), the order funds will be paid to creditors and the requirement for the deed administrator to lodge a detailed list of receipts and payments with ASIC every 6 months.

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.

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.

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 be also be terminated if a creditor, the company 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 on accepting 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 creditors or the court. Alternatively, the court may allow a creditors' committee to approve the fees.

Creditors or the voluntary administrator/deed administrator can ask the court to review the amount of fees approved.

Before approving any fees, make sure that the amount claimed is reasonable given the amount of work involved, the difficulties encountered and the outcome for creditors.

You should be provided with sufficient information to enable you to determine whether the amount being claimed is reasonable. This information includes:

- the total amount of fees sought to be approved and whether this total includes the applicable amount of GST
- how the fees were calculated, and
- a summary of the tasks performed and results achieved in the administration.

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 if the court gives them this responsibility.

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, or write to:

Manager National Assessment & Action
ASIC
GPO Box 9827
IN YOUR CAPITAL CITY

ASIC will usually not become involved in matters of commercial judgment 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's 'Insolvency: a glossary of terms'.

For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- Voluntary administration: a guide for employees
- Liquidation: a guide for creditors
- Liquidation: a guide for employees
- Receivership: a guide for creditors
- Receivership: a guide for employees
- Insolvency: a guide for shareholders
- Insolvency: a guide for directors

These are also available from the Insolvency Practitioners Association of Australia (IPAA) website at www.ipaa.com.au/bestpractice.

The IPAA website also contains the IPAA's Statements of Best Practice, which are applicable to their members.