

8 February 2017

Circular to Employees

Dear Sir/Madam

**Australian Careers Institute Pty Ltd
(Administrators Appointed)
ACN 129 234 920**

**24 Hours Fitness Pty Ltd
(Administrators Appointed)
ACN 080 352 334**

**Nexus Institute Pty Ltd
(Administrators Appointed)
ACN 112 916 944**

**Cyberlife Pty Ltd
(Administrators Appointed)
ACN 074 986 897**

**ACN 162 266 668 Pty Ltd
(Administrators Appointed)
ACN 162 266 668**

**Cyberfit Pty Ltd
(Administrators Appointed)
ACN 085 356 618**

**Cyberscene Pty Ltd
(Administrators Appointed)
ACN 074 770 013**

(Collectively referred to as the 'Group')

John Lindholm and I were appointed joint and several Administrators of the Group on 8 February 2017 pursuant to Section 436A of the Corporations Act 2001 (**the Act**).

The recent changes to government policy in the vocational education and training sector in Australia have had an impact on all providers. Such changes have been significant for the Group, which has been a specialist face-to-face provider that has maintained extensive campus locations and physical and human resources to service its students.

The Administrators understand that there is a potential purchaser of the business and are undertaking an urgent assessment of the business and the potential sale with a view of determining how the Voluntary Administration should proceed. In the meantime, it is business as usual and students should continue to attend their usual classes.

Enclosed is an information sheet from the Australian Securities & Investments Commission which provides general information to employees whose employer is in administration.

We understand that you are a current employee of one of the entities within the Group. This circular is to advise you about the status of your employment and the impact of the voluntary administration.

1 Employment during the administration

The Administrators are now in control of the Group's assets and affairs, and will be undertaking an urgent examination of the Group's financial position with a view to assessing ongoing viability. A further update will be provided to you as soon as possible.

In the interim, your employment continues on the same terms and conditions that existed at the time of our appointment pending completion of our review of the Group's financial position.

I confirm that any post administration wages will be paid by the Administrators in the ordinary course, if they have not already been paid by the Group.

The Administrators expressly refrain from personally adopting any of the Group's pre-administration contracts existing at the date of their appointment.

We have enclosed a Frequently Asked Questions document for your reference which provides additional information about the administration and the minor changes that will affect the operations of the Group's businesses. Ferrier Hodgson staff members will also be available to discuss the effect of the administration and to answer any queries you may have.

As a consequence of the appointment, the Administrators assume responsibility for the Group's management and the control of assets. Without the written authority of the Administrators, you must not, nor must you permit anyone else to:

- Place any orders for goods or services, unless they have been duly authorised by the Administrators or others as notified in our circular to creditors.
- Accept delivery of any goods or services, unless they are the subject of a duly authorised order.
- Supply any services to customers or dispatch any goods to customers.
- Enter into any commitments with suppliers or customers.
- Make any compromise or arrangement with any debtor or creditor of the Group, including the allowance of any set-offs.
- Incur any debts or liabilities in the name of the Group or pledge its assets.
- Return any goods to suppliers.
- Make any payments.
- Remove any of the Group's assets from the Group's custody or control.

All monies received must be forwarded to this office.

Every invoice, order for goods, business letter, or similar document must have the words “(Administrators Appointed)” immediately following the name of the Group.

All of the Group’s assets must be secured against theft.

We must be notified in writing immediately of all known breaches of the law or regulations (for example, health, safety, hygiene, fire, etc).

2 Your employee entitlements at the date of the administration

Outstanding employee entitlements, such as wages, superannuation contributions payable by the Group, holiday pay, long service leave and retrenchment payments, are afforded a statutory priority.

Entitlements of directors and other related persons also have a statutory priority, however the priority for such persons is limited to \$2,000 for wages and superannuation contributions and \$1,500 for holiday pay and long service leave entitlements.

An employee’s priority ranks after the Administrators’ costs and remuneration but ahead of ordinary unsecured creditor claims.

To assist in determining any employee claim you might have, the Administrators will liaise with management and the human resources function of the Group to assist with calculating and confirming the status of your entitlements.

Please advise this office in writing of any change of address. If you do not, you may not receive future communications regarding the Group and your entitlements.

In the event that a sale is not possible and the Group is subsequently placed into liquidation, you may be eligible to submit an application and be compensated for unpaid entitlements under the Federal Government’s Fair Entitlements Guarantee (**FEG**) Scheme, which provides funding in situations where insolvent companies are unable to pay employee entitlements.

Please visit the FEG website at www.employment.gov.au/fair-entitlements-guarantee-feg for more information.

3 Confidentiality

While employed by the Group or after leaving the Group, you must not disclose (except in the proper course of your duties or as is required by law) any confidential information acquired by you about the Group and associated businesses, its products and customers to any person or organisation, including the Group's directors, except where written permission is granted by the Administrators or our authorised representatives. You must not use any confidential information in a manner which may cause injury or loss to the Group and associated businesses.

If you leave the Group's employment, you must return all Group property and confidential documents.

4 Further information

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

Should you have any questions, please contact the Employee Hotline on +61 3 9604 5608 or via email at ACIemployees@fh.com.au.

Yours faithfully



George Georges
Administrator

Encl.



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 75

Voluntary administration: a guide for employees

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

This information sheet provides general information for employees of companies in voluntary administration. Employees should also read ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors*.

Who is an employee?

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

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- 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 has a charge, such as a mortgage, over company assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see ASIC information sheet

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.

INFO 55 *Receivership: a guide for employees.*

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, 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 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.

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 and other employee entitlements that arise 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 a result, unless the voluntary administrator adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during voluntary administration.

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:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. 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 ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

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, and
- 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 General Employee Entitlements and Redundancy Scheme (GEERS)

GEERS is a basic payment scheme designed to assist employees whose employment has been terminated due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS is administered by the Department of Education, Employment and Workplace Relations.

You are not eligible for GEERS assistance if your former employer is a company in voluntary administration or subject to a deed of company arrangement until and unless the company goes into liquidation.

If the company was subject to a deed of company arrangement in the 12 months before the liquidation and:

- the deed had a different priority for payment of outstanding claims, including employee entitlements to that in a liquidation; and/or
- the deed did not provide for the distribution of all of the company's available funds and assets;

this will affect your ability to make a claim under GEERS.

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

For more on liquidation, refer to our related information sheets (listed below).

For more on GEERS, visit www.deewr.gov.au/geers or contact the GEERS Hotline on 1300 135 040 or email GEERS@deewr.gov.au.

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

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 ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

You may also be entitled to make a claim under GEERS 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 GEERS 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 ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

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.

Creditors' committee

A creditors' committee may be formed to consult with the voluntary administrator or deed administrator, and receive reports on the conduct of their administration. In a voluntary administration, this committee is called a 'committee of creditors'. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

Employees may wish to nominate a representative to be on the committee and have a say in matters that may impact on their interests.

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 complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 45 *Liquidation: a guide for creditors*
- INFO 46 *Liquidation: a guide for employees*
- INFO 54 *Receivership: a guide for creditors*
- INFO 55 *Receivership: a guide for employees*
- INFO 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.