Advisory
10 Shelley Street
Sydney NSW 2000

P O Box H67
Australia Square 1213
Australia

ABN: 51 194 660 183
Telephone: +61 2 9335 7000
Facsimile: +61 2 9335 7001
DX: 1056 Sydney
www.kpmg.com.au

CIRCULAR TO CREDITORS

20 May 2015

Dear Sir/Madam

BBY Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 006 707 777
Broker Services Australia Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 074 976 364

BBY Holdings Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 075 187 432

BBY Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 443

BBY Protection Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 710

Options Research Pty. Ltd. (Administrators Appointed) ACN 006 770 627

Tilbia Nominees Pty Ltd (Administrators Appointed) ACN 007 001 578

BBY Advisory Services Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 102 761 008

BBY Hometrader Pty Ltd (Administrators Appointed) ACN 134 838 207

SmarTrader Limited (Administrators Appointed) ACN 115 752 102

("the Companies")

I advise that Stephen Vaughan and Ian Hall were appointed as joint and several Voluntary Administrators of the Companies on 17 May 2015, pursuant to Section 436A of the Corporations Act 2001 ('the Act').

PPB Advisory were appointed as Receivers and Managers of certain company's on 18 May 2015. They have assumed control of BBY Limited's affairs and have entered into possession of BBY Limited's assets. The positions of the Companies' are currently being analysed to determine the best course of action to preserve and realise the Companies' business and assets.

Trading

The Receivers and Managers, PPB Advisory, will make a detailed assessment of the Companies' trading positions. Please liaise with Link Market Services on 1300 784 494 to confirm the status of trading.

Purchase Orders

All purchase orders for goods or services during the Administration must be approved by the Administrators or our authorised representatives, whose signatures are attached. Approved purchases will be honoured by the Administrators and you may invoice in your usual manner.

Should you have any outstanding orders not yet delivered, please contact Andrew Warden of this office immediately on (03) 9288 5369 or awarden@kpmg.com.au to obtain written confirmation as to whether this order should proceed.

Claims for any goods or services supplied without an authorised purchase order will not be the liability of the Administrators and may not be met.

Pre-appointment Contracts

Any contracts that were entered into by the Companies' prior to our appointment have not and will not be adopted by the Administrators. However, if the businesses of the Companies' continue to trade we may continue to acknowledge and follow certain terms of such contracts, including the payment of goods or services. Such actions should not be construed as adopting any pre-appointment contracts unless explicitly advised by us in writing. Creditors who have any queries or require further clarification of their individual circumstances should contact Andrew Warden of this office.

Pre-appointment Claims

Any debts relating to the provision of goods and services prior to our appointment represent unsecured claims against the relevant company and will not be paid during the Administration. Creditors will be entitled to prove for claims in any subsequent deed of company arrangement or liquidation.

Personal Property Securities Act 2009 ("PPSA")

If you believe you provided property subject to a valid PPSA registration over any of the Company's assets, please contact Andrew Warden of this office immediately on (03) 9288 5369 or awarden@kpmg.com.au.

Leased Assets

If you have provided leased or rented assets to the Companies', please contact us immediately.

Pursuant to section 443B of the Act, the Administrators' liability under lease or hire agreements does not commence until more than five business days following our appointment. There are restrictions on third party rights in relation to property that is used or occupied by the Companies' and property cannot be removed without leave of the Court or written consent from the Administrators.

First meeting of creditors

A first meeting of creditors must be held within eight business days of our appointment pursuant to Section 436E of the Act. The purpose of the meeting is to allow creditors to determine whether a committee of creditors should be appointed (and if so determine its composition) and to consider the appointment of an alternative administrator should such a resolution be put before the meeting.

A joint meeting for the Companies' will be held at the Sydney Masonic Centre, Grand Lodge Room, 66 Goulburn Street, SYDNEY NSW 2000 at 10:00 am on 27 May 2015 (Australian Eastern Daylight Saving Time). Please find attached the following:

- Notice of Appointment of Administrators and notice of Meeting of Creditors (Form 529A);
- Informal Proof of Debt for voting purposes only; and
- Appointment of a Proxy (Form 532).

Attendance in person/ teleconference

Creditors who wish to attend and / or vote at the meeting are required to lodge an Informal Proof of Debt and Proxy form with Link Market Services no later than **4.00pm (Australian Eastern Daylight Saving Time) on Tuesday, 26 May 2015**.

Forms should be sent by email to bby@linkmarketservices.com.au and the original documents should be provided at the meeting. Please be aware that Corporations Regulation 5.6.36A requires an original Proxy form to be lodged at the Administrators' office within 72 hours of the faxed or emailed copy.

There will also be access to ***teleconference*** details for those creditors that cannot attend the meeting in person. To request access to the teleconference facilities please contact Link Market Services on 1300 784 494 or bby@linkmarketservices.com.au no later than 4.00pm (Australian Eastern Daylight Saving Time) on **Tuesday, 26 May 2015**.

Declaration by Administrators

Pursuant to section 436DA(2) and (3) of the Act and the Australian Restructuring Insolvency & Turnaround Association ("ARITA") Code of Professional Practice, we enclose the Administrators' Declaration of Independence, Relevant Relationships and Indemnities.

We have enclosed ASIC's information sheet "INFO 84" regarding independence of external administrators: a guide for creditors.

Administrators' 439A Report and second meeting

All creditors will receive a detailed report from us pursuant to Section 439A of the Act, detailing the Companies' business, property, affairs and financial circumstances before the second meeting of creditors. This meeting will be held in approximately one month.

The purpose of this meeting will be to consider the report issued by us and for creditors to make a decision regarding the Companies' future.

Administrators' Remuneration

With regard to the Administration, we propose that our remuneration be calculated on the basis of time spent by us, and our staff based upon the KPMG Restructuring Services guide to hourly rates. This ensures creditors are only charged for work performed.

Please find attached the following documents:

- Remuneration Advice to creditors; and
- KPMG Restructuring Services Guide to Hourly Rates.

Pursuant to section 449E of the Act, we will provide creditors with a detailed remuneration report along with our report to creditors pursuant to section 439A of the Act prior to the second meeting of creditors. We have enclosed ASIC's information sheet "INFO 85 Approving fees: a guide for creditors" providing further particulars regarding fees. Further information on voluntary administrations can be found from the ARITA website at www.arita.com.au.

Further Information

Please find attached a copy of the Australian Securities and Investments Commission ("ASIC") insolvency information sheet for directors, employees, creditors and shareholders. For an explanation of terms used in this sheet, please see ASIC's 'Insolvency: a glossary of terms'. For additional information, refer to the ASIC website at www.asic.gov.au/insolvencyinfosheets.

Future Communication

Should you have any queries in relation to the Administration, please contact Link Market Services on 1300 784 494 or bby@linkmarketservices.com.au

Yours faithfully

Stephen Vaughan
Joint and Several Administrator

Ian Richard Hall and Stephen Vaughn were appointed joint and several Voluntary Administrators of BBY Ltd, Broker Services Australia Pty Ltd, BBY Holdings Pty Limited, BBY Nominees Pty. Ltd., BBY Protection Nominees Pty. Ltd., Options Research Pty. Ltd., Tilbia Nominees Pty Ltd, BBY Advisory Services Pty Ltd, BBY Hometrader Pty Ltd and SmarTrader Limited on 17 May 2015. Unless expressly agreed, the Voluntary Administrators do not adopt any contracts entered into by the Companies' prior to their appointment and, to the extent permitted by law, the Voluntary Administrators exclude all personal liability.

Enclosures:
1. Notice of Meeting
2. Informal Proof of Debt
3. Appointment of a Proxy
4. Authorised Signatories
5. Declaration of Independence, Relevant Relationships and Indemnities
6. Remuneration Advice to creditors
7. ASIC information guides

Form 529A

Regulation 5.6.12(6)

Corporations Act 2001

NOTICE OF CONCURRENT FIRST MEETINGS OF CREDITORS OF COMPANIES' UNDER ADMINISTRATION

BBY Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 006 707 777

Broker Services Australia Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 074 976 364

BBY Holdings Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 075 187 432

BBY Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 443

BBY Protection Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 710

Options Research Pty. Ltd. (Administrators Appointed) ACN 006 770 627

Tilbia Nominees Pty Ltd (Administrators Appointed) ACN 007 001 578

BBY Advisory Services Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 102 761 008

BBY Hometrader Pty Ltd (Administrators Appointed) ACN 134 838 207

SmarTrader Limited (Administrators Appointed) ACN 115 752 102

("the Companies")

1. On 17 May 2015, the Companies under Section 436A of the Corporations Act 2001 appointed Stephen Vaughan and Ian Hall of KPMG, 10 Shelley Street, Sydney, New South Wales, as the Joint and Several Administrators of the Companies.

2. Notice is given that concurrent meetings of the creditors of each of the Companies will be held at the Sydney Masonic Centre, Grand Lodge Room, 66 Goulburn Street, SYDNEY NSW 2000 at 10:00 am on 27 May 2015 (Australian Eastern Daylight Saving Time).

3. The purpose of the meetings is to determine:

   (a) whether to appoint a committee of creditors; and,
   (b) if so, who are to be the committee's members.

4. At the meetings, creditors may also, by resolution:

   (a) remove the Administrators from office; and,
   (b) appoint someone else as Administrators of the Companies'.

There will be access to teleconference details for those creditors that cannot attend the meeting in person. To request access to the teleconference facilities please contact Link Market Services on bby@linkmarketservices.com.au no later than 4.00pm (Australian Eastern Daylight Saving Time) on Tuesday 26 May 2015.

Dated this 20th day of May 2015

Stephen Vaughan
Joint and Several Administrator
KPMG

KPMG

Declaration of Independence, Relevant Relationships and Indemnities

BBY Limited (Receivers and Managers Appointed) ACN 006 707 777 ("BBYL")
Broker Services Australia Pty Ltd) (Receivers and Managers Appointed) ACN 074 976 364
BBY Holdings Pty Limited (Receivers and Managers Appointed) ACN 075 187 432 ("BBYH")
BBY Nominees Pty. Ltd. ACN 007 001 443
BBY Protection Nominees Pty. Ltd. ACN 007 001 710
Options Research Pty. Ltd. ACN 006 770 627
Tilbia Nominees Pty Ltd ACN 007 001 578
BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) ACN 102 761 008
BBY HomeTrader Pty Ltd ACN 134 838 207
SmarTrader Limited ACN 115 752 102

(All Administrators Appointed) ("the Companies")

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

A. their independence generally;

B. relationships, including

   i the circumstances of the appointment;

   ii any relationships with the Insolvent and others within the previous 24 months;

   iii any prior professional services for the Insolvent within the previous 24 months;

   iv. that there are no other relationships to declare; and

C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, KPMG Australia partnership and related parties covered by the extended definition of firm.

A. Independence

We, Stephen Vaughan and Ian Hall, of the KPMG Australia partnership ("KPMG Australia"), care of KPMG, 10 Shelley Street, Sydney, NSW 2000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Companies in accordance with the law and applicable professional standards, in particular the Code of Professional Practice for Insolvency Practitioners published by the Australian Restructuring Insolvency and Turnaround Association, 3rd edition, effective 1 January 2014 ("the Code").

This assessment identified no real or potential risks to our independence or any matter which results in our having a conflict of interest of duty. We are not aware of any reasons that would prevent us from accepting the appointments.

B. Declaration of Relationships

i) Circumstances of the Appointment

We and KPMG Australia had not had any prior involvement in this matter other than the following:

- In the week of 27 April 2015 members of KPMG's audit practice met with BBYH Director, David Perkins and managing director, David Smith to discuss a forthcoming tender for the statutory audit of BBY for the financial year of 2015.

- BBYH and BBYL issued a request, dated 4 May 2015, to a number of accounting firms for a proposal for provision of various audit and compliance services. On Thursday 7 May 2015 members of KPMG's audit team met with DP and discussed a possible secondment of an accounting resource to work in certain internal accounting functions of the BBY Group for a period of one month. On Friday 8 May 2015, Mr Perkins emailed KPMG to confirm the secondment and it was agreed this should commence on 11 May 2015. As discussed further below, this secondment did not proceed and KPMG were not engaged as auditors.

- On Sunday 10 May 2015, a partner in KPMG's audit team was contacted by David Smith advising that the business was in financial distress as a consequence of certain events in the preceding days, including a requirement to exit its Options clearing business, and that it may be placed into voluntary administration. The KPMG audit partner referred the matter to Carl Gunther a partner in KPMG's Restructuring Services team.

- On Monday 11 May Carl Gunther and Stephen Vaughan of KPMG attended the BBY offices to ascertain further details and discussed the proposed scope of a solvency review. KPMG was engaged, pursuant to an engagement letter dated 11 May 2015, to carry out the following scope of work:

    - A rapid high level assessment of the current and forecast financial position based on Company records and management's short term cash flow forecast and assumptions;
    - An assessment of solvency of the Company;
    - Providing commentary on the consequences of any possible insolvency and courses of action that may be available to the Company in that event; and
    - Liaising with key stakeholders as necessary to gather information or confirm our role, including, among others, the Australian Stock Exchange, ASIC, the secured creditor, St. George Bank and its advisors, PPB Advisory.

- Our fee for this work was $40,000, with funds paid up front on account.

- During 5 days from Tuesday 12 May to Friday 15 May 2015 we worked to understand the nature and extent of issues facing the business and the financial implications. During our work we attended various meetings each day with staff, management and the external stakeholders mentioned above. We were also introduced to representatives of two parties interested in investing in the business, AIMS Financial Group ("AIMS") and Bridge Global Capital Management Limited (HK) ("Bridge") although we were not involved in negotiations.

- On the evening of Friday 15 May 2015, we understand that a memorandum of understanding was executed between BBYH and the two parties, AIMS and Bridge to take a controlling shareholding in BBYH and recapitalise the business with a planned initial contribution of $3 million. This effectively brought our engagement to a conclusion.

- On the afternoon of Sunday, 17 May 2015 Stephen Vaughan received a call from Mr Smith advising that, following completion of some further due diligence during the weekend, AIMS and Bridge had requested amendments to the proposal investment and that negotiations were continuing. DS called again on Sunday evening and advised that AIMS and Bridge had withdrawn from the proposed recapitalisation. DS advised that the Directors planned to meet that evening to review solvency and consider the future of the Companies. He requested that Mr Vaughan attend the meeting. Concurrent meetings of the Companies were held at 11pm on 17 May 2015 at which time resolutions were passed appointing Stephen Vaughan and Ian Hall of KPMG as Voluntary Administrators.

These meetings and correspondence do not affect our independence for the following reasons:

- The need for potentially insolvent companies to seek prompt and appropriate advice about their financial position is emphasised by the law and by the Regulators. It is common for Practitioners to give such advice or other information about the insolvency process and options available to a company prior to taking an Appointment. The work we carried out was over a relatively short period of 5 days and we were paid in advance.

- The discussions were at all times factual in nature, focused on the historical and forecast financial position and performance of the Companies, the consequences of any possible insolvency and courses of action that may be available to the Company in that event.

- The work undertaken during the solvency review engagement assisted us in developing an understanding of the business and its activities. Much of the investigatory work done is work that would have been done in order to be able to report to creditors under s439A of the Corporations Act. As such, this information will be made available to creditors when we report to them in due course.

- We did not provide any report to the Companies. We do not consider the nature of the work performed is such that it would be subject to review and challenge during the course of the voluntary administration. The engagement will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the voluntary administration of the Companies in an objective and impartial manner.

- Neither KPMG nor the Voluntary Administrators provided advice to directors of the Companies in their personal capacity. We understand the directors have sought their own legal advice.

ii) Relevant Relationships (excluding Professional Services to the Insolvent)

We, or a member of our Firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons why no conflict of interest or duty
Westpac Banking Corporation and St George Bank Australia ("Westpac")	Westpac has a registered security interest over whole or substantially whole of the property of the following five entities in the group of Companies. 1. BBY Holdings Pty Limited 2. Broker Services Australia Pty Ltd 3. BBY Limited 4. BBY Advisory Pty Limited KPMG Australia has an ongoing business relationship with Westpac. KPMG has provided Tax, Advisory and other non-audit services to Westpac and/or their international affiliates.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for Westpac is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by Westpac in relation to the affairs of the Companies. Westpac will be treated as a secured creditor during the administration process. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.

Name	Nature of relationship	Reasons why no conflict of interest or duty
ABN Amro Clearing Sydney Pty Limited ("ABN")	ABN has a registered security interest over the assets in the following two entities in the group of Companies: 1. BBY Limited 2. Jaguar Funds Management PL KPMG Australia has an ongoing business relationship with ABN. KPMG has provided external financial audit services to ABN and/or their international affiliates.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for ABN is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by ABN in relation to the affairs of the Companies. ABN will be treated as a secured creditor during the administration process. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.
Konica Minolta Business Solutions Australia Pty Ltd ("Konica")	Konica has a registered security interest over the assets of BBY Limited. KPMG Australia has an ongoing business relationship with Konica. KPMG has provided external financial audit services to Konica and/or their international affiliates.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for Konica is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by Konica in relation to the affairs of the Companies. Konica will be treated as a secured creditor during the administration process. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.

Name	Nature of relationship	Reasons why no conflict of interest or duty
Credit Suisse Holdings (Australia) Limited ("Credit Suisse")	Credit Suisse has a registered security interest over the assets of BBY Limited. KPMG Australia has an ongoing business relationship with Credit Suisse. KPMG has provided external financial audit services to Credit Suisse and/or their international affiliates.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for Credit Suisse is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by Credit Suisse in relation to the affairs of the Companies. Credit Suisse will be treated as a secured creditor during the administration process. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.
Macquarie Leasing Pty Ltd	Macquarie Leasing Pty Ltd has a registered security interest over the assets of BBY Limited. KPMG Australia has not directly performed services for Macquarie Leasing Pty Ltd. However KPMG has an ongoing business relationship with the wider Macquarie banking group through the provision of Tax, Advisory and other non-audit services.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for the Macquarie banking group is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by Macquarie Leasing Pty Ltd in relation to the affairs of the Companies. Macquarie Leasing Pty Ltd will be treated as a secured creditor during the administration process. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.

Name	Nature of relationship	Reasons why no conflict of interest or duty
AIMS Group Financial Holding Pty Ltd ("AIMS Group")	KPMG Australia has provided external financial audit services to AIMS Group. and/or their international affiliates.	There are no matters of which we are aware which give rise to a conflict in this appointment. Each professional engagement undertaken for the AIM Group is conducted on an entirely separate basis and has no bearing on this appointment. Neither KPMG nor the Administrators have been or will be engaged by AIMS Group in relation to the affairs of the Companies. This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the voluntary administration of the Companies in an objective and impartial manner.

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

We do not believe these relationships give rise to us having a conflict of interest or being unable to act as Administrators of the Companies.

iii) Prior professional services to the Insolvent

Neither Stephen Vaughan or Ian Hall, or KPMG Australia, or a related party covered by the extended definition of firm, have provided any professional services to the Companies in the previous 24 months or prior period with the exception of the solvency review conducted over 5 days between 11 May and 15 May 2015.

iv) No other relevant relationships to disclose

There are no other known relevant relationships of the Administrators, including personal, business and professional relationships, from the previous 24 months with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that has a charge on the whole or substantially whole of the Companies property that should be disclosed.

C. Indemnities and up-front payments

We have not been indemnified in relation to this Administration, other than any indemnities that we may be entitled to under statute and we have not received any payments in respect of our remuneration or disbursements.

Dated: 20 May 2015

…….
Stephen Vaughan
Joint and Several Administrator

…….
Ian Hall
Joint and Several Administrator

BBY Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 006 707 777
Broker Services Australia Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 074 976 364

BBY Holdings Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 075 187 432

BBY Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 443

BBY Protection Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 710

Options Research Pty. Ltd. (Administrators Appointed) ACN 006 770 627

Tilbia Nominees Pty Ltd (Administrators Appointed) ACN 007 001 578

BBY Advisory Services Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 102 761 008

BBY Hometrader Pty Ltd (Administrators Appointed) ACN 134 838 207

SmarTrader Limited (Administrators Appointed) ACN 115 752 102

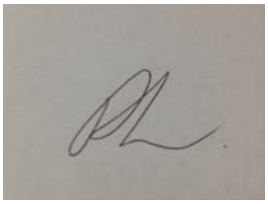
("the Companies")

AUTHORISED SIGNATORIES

SPECIMEN SIGNATURES

_____
Ian Hall
Voluntary Administrator

_____
Stephen Vaughan
Voluntary Administrator



_____
Patrick Lynch
Voluntary Administrator's Representative

Raymond Lay
Voluntary Administrator's Representative

KPMG

BBY Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 006 707 777

Broker Services Australia Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 074 976 364

BBY Holdings Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) ACN 075 187 432

BBY Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 443

BBY Protection Nominees Pty. Ltd. (Administrators Appointed) ACN 007 001 710

Options Research Pty. Ltd. (Administrators Appointed) ACN 006 770 627

Tilbia Nominees Pty Ltd (Administrators Appointed) ACN 007 001 578

BBY Advisory Services Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed) ACN 102 761 008

BBY Hometrader Pty Ltd (Administrators Appointed) ACN 134 838 207

SmarTrader Limited (Administrators Appointed) ACN 115 752 102

("the Companies")

Remuneration Advice to Creditors

Remuneration Methods

There are four basic methods which can be used to calculate the remuneration charged by an Insolvency Practitioner. They are:

1. Time based / Hourly Rates

This is the most common method. The total fees charged are based on the hourly rates for each person who carries out the work multiplied by the number of hours spent by each person on each task performed. The hourly rates are set having regard for the relevant qualifications, experience and credentials of the relevant staff.

2. 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.

3. Percentage

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

4. Contingency

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

Method Chosen

We will be applying the *time based / hourly rates* method to this administration for the following reasons:

- This ensures that the Administrators and their staff will only be paid for work that has been performed, subject to adequate realisations of the Companies assets;
- In accordance with the provisions of the Corporations Act, we are required to perform a number of tasks which do not relate to the realisation of assets. Accordingly, fees based only on asset realisation would be unrealistic; and
- We are unable to provide a detailed upfront estimate of the total fees to complete all tasks in the Administration.

Fee Estimate

Given the complexities of this Administration, the level of fees to be incurred is difficult to estimate.

I estimate fees for the administration of the Companies affairs to the first creditors meeting at $300,000 (excl GST). Please note this is an estimate only and may vary materially given the circumstance of the administration.

Explanation of Hourly Rates

The rates for our remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff that will be engaged in the administration and the role they take in the administration.

The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Title	Description	Hourly Rate (excl GST)
Partner/ Appointee	Registered and / or Official Liquidator, Administrator or Partner, bringing his or her specialist skills to the administration or insolvency task.	$650
Director	Significant insolvency or other relevant experience, at least five years at manager level, qualified accountant and capable of controlling all aspects of an administration.	$600

Title	Description	Hourly Rate (excl GST)
Associate Director	More than 7 years insolvency (or other relevant) experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for all aspects of administration. Experienced at all levels and considered very competent. Control staff and their training.	$550
Manager/ Senior Executive	At least 6-7 years, qualified accountant, with well-developed technical and commercial skills. Should be constantly alert to opportunities to meet clients' needs and to improve the clients' future operation either by revenue enhancement or by reducing costs and improving efficiency.	$500
Executive	4-6 years. Professional accounting training complete (ICAA or CPA). Will have had conduct of minor administrations and experience in control of 1-3 staff. Assists planning and control of medium to larger assignments.	$350
Analyst (Senior)/ Senior Accountant	2-4years. Chartered Accountant (or equivalent) training would normally be completed within this period. Assists planning and control of small to medium sized assignments as well as performing some of the more difficult work on larger assignments.	$250
Analyst	0-2 years. Graduate with little or no professional experience. Required to assist in day-to-day fieldwork under supervision of more senior staff.	$200
Administration	Non-qualified but passed QCE. Classification would depend on experience, salary and complexity of work to be conducted.	$140

Disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.

- Externally provided non-professional costs such as travel, accommodation and search fees - these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost; though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I am/We are not required to seek creditor approval for disbursements, but must account to creditors. Details of the basis of recovering internal disbursements in this administration are provided below. Full details of any actual costs incurred will be provided with future reporting.

Disbursement type	**Rate (Excl GST)**
Advertising	At Cost
Couriers	At Cost
Mileage reimbursement	$0.69 per kilometre
Faxes & Photocopies	$0.50 per page
Printing	$0.50 per page
Postage	At Cost
Searches	At Cost
Storage and storage Transit	At Cost
Telephone Calls	At Cost

Scale applicable for financial year ending 30 June 2015

Dated this 20th day of May 2015

Stephen Vaughan
Joint and Several Administrator

ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 41

Insolvency: a glossary of terms

This is a brief explanation of some of the terms you may come across in company insolvency proceedings. Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.

Asset
Any property of value owned by a person. Can include tangible and intangible assets.

Bankruptcy
An insolvency procedure that applies to a natural person, not to a company.

CALDB
The Company Auditors and Liquidators Disciplinary Board—the body that disciplines external administrators.

Charge
A form of security for a debt taken by a creditor over company assets. A mortgage is a type of charge.

Committee of creditors
A small group of creditors, or their representatives, often appointed by the creditors of a company at the first meeting in a voluntary administration. The committee's role is to consult with the voluntary administrator and to receive and consider reports by the voluntary administrator. The committee may be called upon to approve the voluntary administrator's fees. The voluntary administrator must report to the committee when it reasonably requires.

Committee of inspection
A small group of creditors and shareholders, or their representatives, often appointed by the creditors and shareholders of a company in liquidation to assist the liquidator. The committee is often called on to approve the liquidator's fees and sometimes to approve the compromise of debts or the entry into contracts extending beyond three months by the liquidator.

Compromise
Agree to accept a lesser sum in full payment of a debt.

Contingent asset
An asset that might arise if a certain event occurs (e.g. a current legal action being taken by a company might result in an asset if the company wins the case).

Contingent liability
A liability that might arise if a certain event occurs (e.g. a current legal action against a company might result in a liability if the company loses the case).

Contributory
A shareholder who may be liable to contribute towards a company's debts in a liquidation if their shares are not fully paid.

Controller
A person appointed by a secured creditor to deal with assets subject to a charge. Includes a receiver, and receiver and manager.

Court liquidation
A liquidation that starts as a result of a court order, made after an application to the court, usually by a creditor of the company.

Creditor
A person who is owed money.

Creditors' trust
A separate legal arrangement set up to deal with creditor claims. Creditor claims can be transferred to a creditors' trust as part of a deed of company arrangement.

Creditors' voluntary liquidation
A liquidation for insolvent companies, initiated by the company. Creditors may replace the liquidator appointed by the company in this type of liquidation.

Debenture
A document acknowledging that a company undertakes to repay a sum of money lent to the company by the holder of the document.

Debt
An amount owed.

Debtor
A person who owes a debt.

Declaration of indemnities
A declaration that must be provided to creditors by a voluntary administrator informing them about any indemnities given to the voluntary administrator to cover fees or other debts incurred in acting as voluntary administrator of the company. The declaration provides information to enable creditors to make an informed decision about whether they wish to replace the administrator over concerns about independence.

Declaration of relevant relationships
A declaration that must be provided by a voluntary administrator or a liquidator in a creditors' voluntary liquidation informing creditors about certain relationships. The declaration provides information to enable creditors to make an informed decision about whether they wish to replace the administrator over concerns about independence.

Deed administrator
The external administrator appointed to oversee a deed of company arrangement.

Deed of company arrangement
A binding arrangement between a company and its creditors governing how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. Aims to maximise the chances of the company, or as much as possible of its business, continuing, or to provide a better return for creditors than an immediate winding up of the company, or both.

Director
A natural person appointed as a director of a company who is then responsible for directing and managing the affairs of a company. Also includes a shadow director.

Dividend
A share of the profit of a solvent company paid to shareholders. Also used to describe a sum paid to creditors out of the assets of an insolvent company.

Eligible employee creditor
A creditor (including the Australian Taxation Office in respect of the superannuation guarantee charge) who, in a winding up of a company, would normally be paid their employment-related entitlements in priority to other unsecured debts. These creditors are given a special right to vote on a deed of company arrangement proposal that seeks to modify their priority.

Eligible unsecured creditor
A creditor who is entitled to have a say in a pooling determination made by a liquidator. The term generally covers the external unsecured creditors of the group, but excludes debts owing between companies in the pooled group. A pooling determination relates to a decision to treat the affairs of a group of companies as if it were a single external administration.

Excluded employee
An employee who has also been a director of the company, or a relative of a director, at any time in the 12 months before the appointment of an external administrator. Excluded employees are entitled to only limited priority for repayment of their outstanding entitlements.

External administrator
A general term for an external person formally appointed to a company or its property. Includes provisional liquidator, liquidator, voluntary administrator, deed administrator, controller, receiver, and receiver and manager. Other than a liquidator for a members' voluntary liquidation and a controller who is not a receiver or receiver and manager, an external administrator is required to be registered by ASIC. An external administrator is sometimes also referred to as an insolvency practitioner.

Fixed charge
A charge taken by a lender over particular assets of a company. The company may not dispose of these assets without the consent of the lender.

Floating charge
A charge taken by a lender over general assets of a company. The company is usually able to use and dispose of these assets (e.g. stock, debtors) in the ordinary course of business without the secured creditor's consent. A floating charge converts to a fixed charge over those assets if certain events listed in the charge document occur. These usually include the appointment of a liquidator or other external administrator.

GEERS
The General Employee Entitlements and Redundancy Scheme—a basic payment scheme to assist employees who have lost their jobs as a result of their employer's liquidation or bankruptcy, and are owed certain employee entitlements.

Indemnity
An agreement between the external administrator and a third party to cover the fees and other debts incurred by the external administrator.

Insolvent
Unable to pay all debts when they fall due for payment.

Intangible asset
An asset with no identifiable physical form (e.g. a contractual right, copyrights, patents and goodwill).

IPA
The Insolvency Practitioners Association—the leading professional organisation in Australia for external administrators/insolvency practitioners.

Liability
A legal obligation to pay a person.

Liquidation
The orderly winding up of a company's affairs. It involves realising the company's assets, cessation or sale of its operations, distributing the proceeds of realisation among its creditors and distributing any surplus among its shareholders. The three types of liquidation are: court, creditors' voluntary and members' voluntary.

Liquidator
A natural person appointed to administer the liquidation of a company.

Member (of a company)
A shareholder.

Members' voluntary liquidation
A liquidation for solvent companies, initiated by the company.

Officer (of a company)
A director, secretary or external administrator (in most cases) of the company.

Person
A natural person or a company.

Poll (of creditors)
A voting procedure where both the number of creditors voting a particular way and the value of their debts is considered in deciding if a resolution is approved or not.

Pooling
The practice of treating the affairs of a group of companies as if it were a single external administration.

Prescribed provisions
Provisions that the *Corporations Act 2001* takes to be included in a deed of company arrangement, unless the deed specifically excludes them.

Priorities
The order set down by the *Corporations Act 2001* for the payment of unsecured creditors of an insolvent company by an external administrator.

Priority creditor
An unsecured creditor entitled to be paid ahead of other creditors (e.g. employees).

Proof of debt
A prescribed form to be completed by creditors at the liquidator's request, setting out details of their claim against the company, including how the debt arose and the amount claimed.

Provisional liquidator
A liquidator appointed by the court to preserve a company's assets until a winding-up application is decided.

Proxy
A person appointed by another person to represent them at a meeting. A proxy is usually entitled to attend and vote on behalf of the person who appointed them. In an external administration, the appointer is usually a creditor or shareholder.

Proxy form
A prescribed form that must be completed by creditors or shareholders to appoint a proxy for a creditors' or shareholders' meeting.

Public examination
A liquidator, voluntary administrator, deed administrator, ASIC or a person authorised by ASIC to do so can apply to the court to question an externally administered company's directors or any other person who may be able to give information about the affairs of the company.

Realise
Convert assets into cash, often by selling them.

Receiver
An external administrator appointed by a secured creditor to realise enough of the assets subject to the charge to repay the secured debt. Less commonly, a receiver may also be appointed by a court to protect the company's assets or to carry out specific tasks.

Receiver and manager
A receiver who has, under the terms of their appointment, the power to manage the company's affairs.

Receivership
An insolvency procedure where a receiver, or receiver and manager, is appointed over some or all of the company's assets.

Report as to affairs
A prescribed form required to be completed by the directors and secretary of a company in liquidation or receivership, giving details of the company's assets and liabilities, and the identities of the creditors and debtors.

Secured creditor
A creditor who has a security (e.g. charge or mortgage) over some or all of a company's property.

Shadow director
A natural person not on the public register as a director of a company but who directs and manages the company's affairs and is taken by the *Corporations Act 2001* to be a director.

Tangible asset
An asset with a physical form (e.g. stock or real estate).

Uncommercial transaction
A transaction that was unreasonable for a company to have entered into. It may be able to be set aside by the company's liquidator provided it occurred within 2 years prior to the winding up, and when the company was insolvent or if the company became insolvent by entering into the transaction.

Unfair preference
A payment made or other benefit given to a creditor by an insolvent company which causes that creditor to be in a more favourable position than other unsecured creditors in a liquidation. The company's liquidator can seek to recover an unfair preference provided it occurred within 6 months prior to the liquidation, and when the company was insolvent or if the company became insolvent by making the payment or giving the benefit.

Unsecured creditor
A creditor who does not hold a security over a company's property.

Voluntary administration
An insolvency procedure where the directors of a financially troubled company or a secured creditor with a charge over most of the company's assets appoint an external administrator called a 'voluntary administrator'. The role of the voluntary administrator is to investigate the company's affairs, to report to creditors and to recommend to creditors whether the company should enter into a deed of company arrangement, go into liquidation or be returned to the directors.

Voluntary administrator
An external administrator appointed to carry out the voluntary administration of a company.

Winding-up order
A court order for the winding up of a company. The first step in a court liquidation. Usually made after an application by a creditor.

ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 74

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 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. Their outstanding entitlements are usually paid in priority to the claims of other unsecured creditors. If you are an employee, see ASIC's information sheet INFO 75 *Voluntary administration: a guide for employees*.

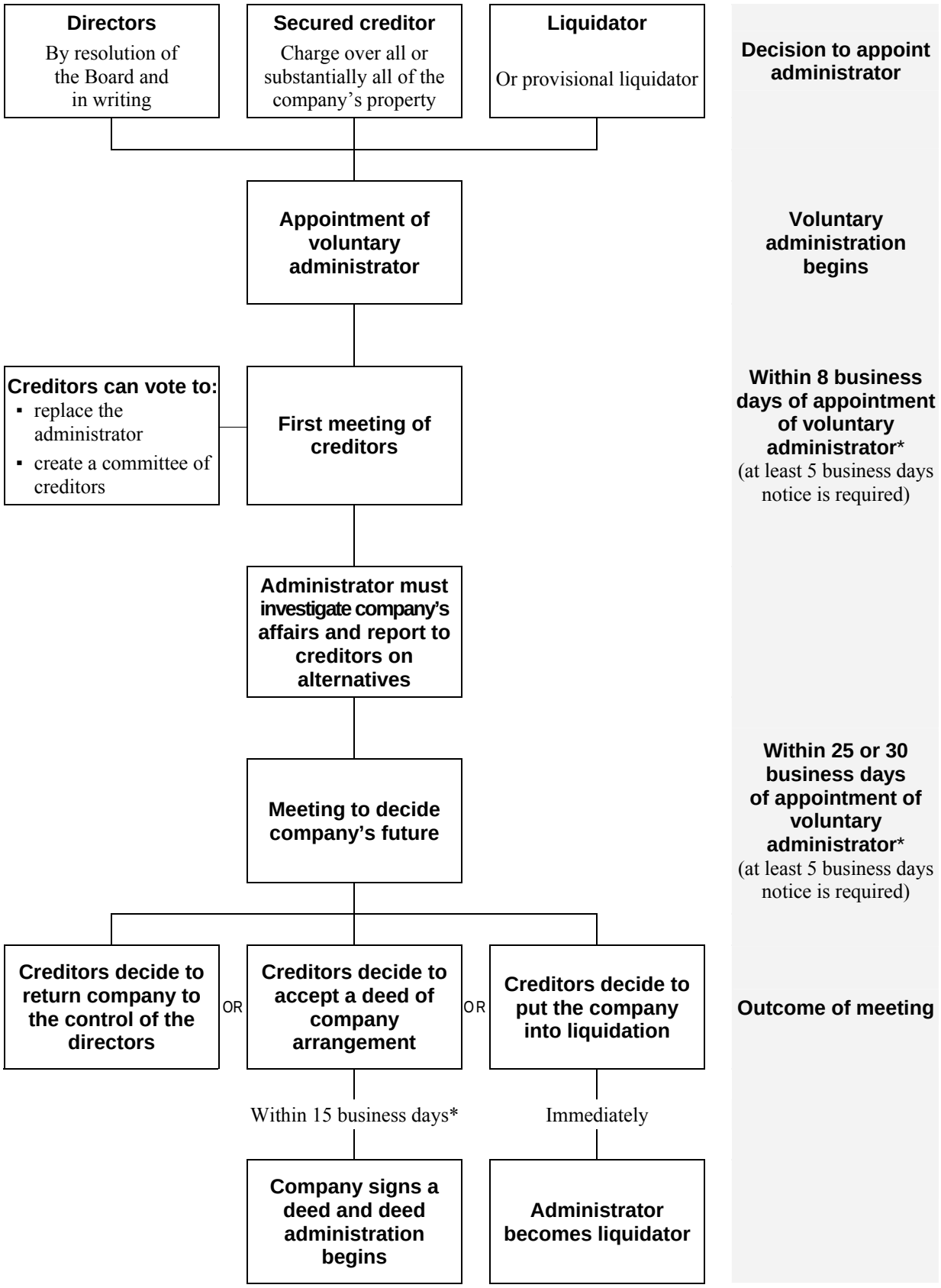
The purpose of voluntary administration

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

Figure 1: The voluntary administration process



* Unless the court allows an extension of time.

A company in voluntary administration may also be in receivership: see ASIC information sheet INFO 54 *Receivership: a guide for creditors*.

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 about five weeks after the company goes into voluntary administration to decide on the best option for the company's future. 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
- a court application to put the company in liquidation can't be commenced, and
- a creditor holding a personal guarantee from the company's director or other person can't act under the personal guarantee without the court's consent.

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 five business 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 end of the five business days.

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 eight business days after the voluntary administration begins.

At least five 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 voluntary administrator must send to creditors, with the notice of meeting, declarations about any relationships they may have, or indemnities they have been given, to allow creditors to consider the voluntary administrator's independence and make an informed decision about whether they want to replace them with another voluntary administrator of the creditors' choice.

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 removed and 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. It may also approve the voluntary administrator's fees.

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 that they would be prepared to act as voluntary administrator. The proposed alternative administrator should give to the meeting declarations about any relationships they may have, or indemnities they have been given. 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 about five weeks after the company goes into voluntary administration (six 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 five 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.

Either or both the first and second creditors' meeting may be held using telephone or videoconferencing facilities.

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 must 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.

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

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

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

Manner of voting

A vote on any resolution put to a creditors' meeting may be taken by creditors stating aloud their agreement or disagreement, or by a 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, they 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 must inform the meeting, and include in the written minutes of meeting that are lodged with ASIC, of the reasons why they cast their vote in a particular way or why they chose not to use their casting vote.

If you are dissatisfied with how the chairperson exercised their casting vote or failed to use their casting vote, you may 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 directors and shareholders, their spouses and relatives and other entities controlled by them are creditors of the company, they are entitled to attend and vote at creditors' meetings, 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 45 business days in total) 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 unless creditors vote at the second meeting to appoint a different liquidator of their choice. 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 information sheet INFO 45 *Liquidation: a guide for creditors*.

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 15 business 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. The deed of company arrangement does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee to be repaid their debt.

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 the extent to which those debts are released
- the order in which the available funds will be paid to creditors (the deed of company arrangement must ensure that employees have a priority in payment of outstanding employee entitlements unless the eligible employees agree by a majority in both number and value to vary this priority)
- 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 and the appointment of a committee of creditors (called a 'committee of inspection').

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.

The deed administrator must lodge a detailed list of receipts and payments with ASIC every six months.

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.

The deed must ensure employee entitlements are paid in priority to other unsecured creditors unless eligible employees have agreed to vary their priority.

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 also be terminated if a creditor, the company, ASIC 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 to accept 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 a creditors' committee, creditors or the court. Creditors, the voluntary administrator/deed administrator or ASIC can ask the court to review the amount of fees approved.

If you are asked to approve fees, either at a meeting of a creditors' committee or in a general meeting of creditors, the voluntary administrator or deed administrator must give you, at the same time as the notice of the meeting, a report that contains sufficient information for you to assess whether the fees claimed are reasonable. This report should be in simple language and set out:

- a description of the major tasks performed
- the costs of completing these tasks, and
- such other information that will assist in assessing the reasonableness of the fees claimed.

For further information, see ASIC's information sheet INFO 85 *Approving fees: a guide for creditors*. 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.

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/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, 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 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 75 *Voluntary administration: a guide for employees*
- 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.

ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 84

Independence of external administrators: a guide for creditors

If a company is insolvent or in financial difficulty, it can be put into external administration. The three most common forms of external administration are:

- voluntary administration (which may lead to a deed of a company arrangement)
- liquidation, and
- receivership.

When a company enters into voluntary administration, a deed of company arrangement or a liquidation, it is important that the person put in charge (the 'external administrator') is independent of the company and its directors, and acts in the interests of creditors as a whole.

This information sheet provides general information for unsecured creditors in a liquidation, voluntary administration or deed of company arrangement to help assess whether the external administrator is independent.

The independence requirement in other forms of external administration (e.g. receivership) is not discussed in this information sheet.

What it means to be independent

There are different groups of people with different interests involved in the insolvency of a company. These include directors, shareholders, creditors who hold security over assets of the company, unsecured creditors, employees (who may also be creditors) and customers. The external administrator must treat all of these groups fairly and in accordance with their legal rights. For an external administrator to be independent, they must:

- not be biased towards any person or group
- not have, or have had, a close personal or business relationship with any person involved in the insolvency where that relationship would lead someone to suspect that they would favour the interests of that person, and
- not be in a position where their own personal or private interests conflict with their duties in the insolvency.

It is important that the external administrator is, at all times, both independent, and accepted as being independent, by those people interested in the affairs of the insolvent company. An external

administrator may not be accepted as being independent if there is a real chance that circumstances exist that may threaten the person's independence in the future.

Who may be appointed

A person appointed as an external administrator of an insolvent company must be a registered liquidator. They must also be an official liquidator if the appointment as liquidator is made by the court.

At the time of agreeing to take the appointment, the person must both be, and be accepted as being, independent. If the person knows at the time there is the real prospect of a threat to independence arising in the future, the person should not take the appointment (even if they tell creditors about the threat) without the court's approval.

Relationships that prevent appointment

A person must not be appointed as an external administrator of an insolvent company if they have any of the following relationships with the insolvent company, unless the court gives its approval:

- either the person or a company where the person is a substantial shareholder owes more than $5000 to the insolvent company or a related company
- the person is owed more than $5000 by the insolvent company or a related company (other than fees they are owed through their role as an external administrator)
- the person is a director, secretary, senior manager or employee of the insolvent company
- the person is a director, secretary, senior manager or employee of a company that is a mortgagee of the property of the insolvent company
- the person is an auditor of the insolvent company
- the person is a partner or employee of an auditor of the company
- the person is a partner, employer or employee of an officer of the company, or
- the person is a partner or employee of an employee of an officer of the company.

Even if none of these relationships exists, the person must not take on the appointment if, in the circumstances, there is a real risk they cannot be independent and be accepted as being independent by those interested in the affairs of the insolvent company.

Disclosing relationships

If a liquidator is appointed by the court, they act as an officer of the court and they should tell the court before they are appointed of any circumstances they are aware of that might cause doubts about their independence.

A person who is consenting to be appointed as voluntary administrator or liquidator in a creditors' voluntary liquidation must send to creditors, with the notice of the first meeting of creditors, a declaration about any relationships they may have. The declaration must:

- set out whether the person, their partners in a firm or their company or an associated company has, or has had in the past two years, a relationship with either:
  - the insolvent company
  - an associate of that company
  - a former liquidator or former provisional liquidator of that company, or
  - a secured creditor with security over the whole or substantially the whole of the company's property, and

- state the person's reasons for believing that none of the relationships result in the person having a conflict in accepting the appointment.

The declaration must also be tabled at the meeting of creditors.

If the voluntary administrator or liquidator later realises that the original declaration is out-of-date or contains an error, they must distribute a replacement declaration.

A person who is consenting to be appointed as voluntary administrator must also disclose in writing any indemnities provided to the person to cover their fees and costs (for an explanation of the meaning of an indemnity, refer to ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*).

The declarations must be given to creditors to allow them to consider the person's independence and make an informed decision about whether they want to replace the person with someone of the creditors' choice.

If, as a creditor, you receive a declaration of relationships or indemnities, and you are concerned whether the circumstances might cast doubt upon whether the person would be independent, you should ask the person about the circumstances that lie behind the declaration. You may also consider whether they should be replaced.

Replacing an external administrator

Before a person takes an appointment as an external administrator, they must make reasonable inquiries to ensure there are no real threats to their independence. The person must also continue to monitor their independence during the period of the appointment and take action should such a threat arise. Depending on the threat, this may involve applying to court or calling a meeting of creditors to give details of the potential threat and allow a decision to be made by the court or the creditors about how the threat should be managed and whether the person should continue to act or be replaced.

As discussed below, in some circumstances, you may seek to remove the person if you have doubts as to their independence and replace them with an external administrator of the creditors' choice. Any replacement should also prepare the relevant declaration(s) about their relationships with various specified parties and, in a voluntary administration, also any indemnities they have been given for their fees and costs.

Voluntary administration

In a voluntary administration you are given an opportunity to replace an administrator at the first meeting of creditors, if there is another administrator who has consented to taking on the role and a majority of creditors (in number and value) approve the appointment of that replacement administrator. If you are a creditor, see ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors* for more information about this meeting.

Deed of company arrangement

At the second creditors' meeting in the voluntary administration where creditors agree to accept the proposal for a deed of company arrangement, they can also choose who they wish to be deed administrator. This person does not have to be the current voluntary administrator, but may be someone else of the creditors' choosing.

If the deed of company arrangement fails and creditors resolve to terminate the deed and wind up the company, they can also choose someone other than the deed administrator to be the liquidator (provided the other person has agreed, in writing, to act as liquidator).

Liquidation

If the liquidator has been appointed by the court, only the court can remove the liquidator from acting. Creditors cannot remove a court-appointed liquidator by passing a resolution at a meeting of creditors.

In a creditors' voluntary liquidation, the creditors may, by a majority in number and value, vote to replace the liquidator appointed by members at the first meeting of creditors. This meeting must be called within 11 days of the liquidator being appointed. See ASIC's information sheet INFO 45 *Liquidation: a guide for creditors*.

If, at the second meeting of creditors in a voluntary administration, creditors vote that the company go into liquidation, it is usual for the voluntary administrator to become the liquidator of the company. Creditors, by majority in number and value, may vote to appoint another person to act as liquidator.

Queries and complaints

You should first raise any queries or complaints with the external 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/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external 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 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 75 *Voluntary administration: a guide for employees*
- 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 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.

ASIC
Australian Securities & Investments Commission

INFORMATION SHEET 85

Approving fees: a guide for creditors

If a company is in financial difficulty, it can be put under the control of an independent external administrator.

This information sheet gives general information for creditors on the approval of an external administrator's fees in a liquidation of an insolvent company, voluntary administration or deed of company arrangement (other forms of external administration are not discussed in this information sheet). It outlines the rights that creditors have in the approval process.

Entitlement to fees and costs

A liquidator, voluntary administrator or deed administrator (i.e. an 'external administrator') is entitled to be:

- paid reasonable *fees*, or remuneration, for the work they perform, once these fees have been approved by a creditors' committee, creditors or a court, and
- reimbursed for out-of-pocket *costs* incurred in performing their role (these costs do not need creditors' committee, creditor or court approval).

External administrators are only entitled to an amount of fees that is reasonable for the work that they and their staff properly perform in the external administration. What is reasonable will depend on the type of external administration and the issues that need to be resolved. Some are straightforward, while others are more complex.

External administrators must undertake some tasks that may not directly benefit creditors. These include reporting potential breaches of the law and lodging a detailed listing of receipts and payments with ASIC every six months. The external administrator is entitled to be paid for completing these statutory tasks.

For more on the tasks involved, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors* and INFO 74 *Voluntary administration: a guide for creditors*.

Out-of-pocket costs that are commonly reimbursed include:

- legal fees
- valuer's, real estate agent's and auctioneer's fees
- stationery, photocopying, telephone and postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the level of fees and costs, as the external administrator will, generally, be paid from the company's available assets before any payments to creditors. If there are not enough assets, the external administrator may have arranged for a third party to pay any shortfall. As a creditor, you should receive details of such an arrangement. If there are not enough assets to pay the fees and costs, and there is no third party payment arrangement, any shortfall is not paid.

Who may approve fees

Who may approve fees depends on the type of external administration: see Table 1. The external administrator must provide sufficient information to enable the relevant decision-making body to assess whether the fees are reasonable.

Table 1: Who may approve fees

	Creditors' committee	Creditors	Court
Administrator in a voluntary administration	✓[1]	✓	✓
Administrator of a deed of company arrangement	✓[1]	✓	✓
Creditors' voluntary liquidator	✓[1]	✓[5]	✗[3]
Court-appointed liquidator	✓[1]	✓[4, 5]	✓[2]

1 If there is one.

2 If there is no approval by the committee or the creditors.

3 Unless an application is made for a fee review.

4 If there is no creditors' committee or the committee fails to approve the fees.

5 If insufficient creditors turn up to the meeting called by the liquidator to approve fees, the liquidator is entitled to be paid up to a maximum of $5000, or more if specified in the Corporations Regulations 2001.

Creditors' committee approval

If there is a creditors' committee, members are chosen by a vote of creditors as a whole. In approving the fees, the members represent the interests of all the creditors, not just their own individual interests.

There is not a creditors' committee in every external administration. A creditors' committee makes its decision by a majority in number of its members present at a meeting, but it can only act if a majority of its members attend.

To find out more about creditors' committees and how they are formed, see ASIC's information sheets INFO 45 *Liquidation: a guide for creditors*, INFO 74 *Voluntary administration: a guide for creditors* and INFO 41 *Insolvency: a glossary of terms*.

Creditors' approval

Creditors approve fees by passing a resolution at a creditors' meeting. Unless creditors call for a poll, the resolution is passed if a simple majority of creditors present and voting, in person or by proxy,

indicate that they agree to the resolution. Unlike where acting as committee members, creditors may vote according to their individual interests.

If a poll is taken, rather than a vote being decided on the voices or by a show of hands, a majority in *number* and *value* of creditors present and voting must agree. A poll requires the votes of each creditor to be recorded.

A separate resolution of creditors is required for approving fees for an administrator in a voluntary administration and an administrator of a deed of company arrangement, even if the administrator is the same person in both administrations.

A proxy is where a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a *general* proxy or a *special* proxy. A general proxy allows the person holding the proxy to vote as they wish on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator, their partners or staff must not use a general proxy to vote on approval of their fees; they must hold a special proxy in order to do this. They must vote all special proxies as directed, even those against approval of their fees.

Calculation of fees

Fees may be calculated using one of a number of different methods, such as:

- on the basis of *time spent* by the external administrator and their staff
- a quoted *fixed fee*, based on an upfront estimate, or
- a percentage of asset realisations.

Charging on a time basis is the most common method. External administrators have a scale of hourly rates, with different rates for each category of staff working on the external administration, including the external administrator.

If the external administrator intends to charge on a time basis, you should receive a copy of these hourly rates soon after their appointment and before you are asked to approve the fees.

The external administrator and their staff will record the time taken for the various tasks involved, and a record will be kept of the nature of the work performed.

It is important to note that the hourly rates do not represent an hourly wage for the external administrator and their staff. The external administrator is running a business—an insolvency practice—and the hourly rates will be based on the cost of running the business, including overheads such as rent for business premises, utilities, wages and superannuation for staff who are not charged out at an hourly rate (such as personal assistants), information technology support, office equipment and supplies, insurances, taxes, and a profit.

External administrators are professionals who are required to have qualifications and experience, be independent and maintain up-to-date skills. Many of the costs of running an insolvency practice are fixed costs that must be paid, even if there are insufficient assets available to pay the external administrator for their services. External administrators compete for work and their rates should reflect this.

These are all matters that committee members or creditors should be aware of when considering the fees presented. However, regardless of these matters, creditors have a right to question the external administrator about the fees and whether the rates are negotiable.

It is up to the external administrator to justify why the method chosen for calculating fees is an appropriate method for the particular external administration. As a creditor, you also have a right to question the external administrator about the calculation method used and how the calculation was made.

Report on proposed fees

When seeking approval of fees, the external administrator must send committee members/creditors a report with the notice of meeting setting out:

- information that will enable the committee members/creditors to make an informed assessment of whether the proposed fees are reasonable
- a summary description of the major tasks performed, or to be performed, and
- the costs associated with each of these tasks.

Committee members/creditors may be asked to approve fees for work already performed or based on an estimate of work yet to be carried out.

If the work is yet to be carried out, it is advisable to set a maximum limit ('cap') on the amount that the external administrator may receive. For example, future fees calculated according to time spent may be approved on the basis of the number of hours worked at the rates charged (as set out in the provided rate scale) up to a cap of $X. If the work involved then exceeds this figure, the external administrator will have to ask the creditors' committee/creditors to approve a further amount of fees, after accounting for the fees already incurred.

Deciding if fees are reasonable

If asked to approve an amount of fees either as a committee member or by resolution at a creditors' meeting, your task is to decide if that amount of fees is reasonable, given the work carried out in the external administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the fees claimed are reasonable:

- the method used to calculate fees
- the major tasks that have been performed, or are likely to be performed, for the fees
- the fees/estimated fees (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the external administration
- the amount of fees (if any) that have previously been approved
- if the fees are calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the fees are for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the fees are for work that is yet to be carried out, whether the fees are capped.

If you need more information about fees than is provided in the external administrator's report, you should let them know before the meeting at which fees will be voted on.

What can you do if you think the fees are not reasonable?

If you do not think the fees being claimed are reasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve fees.

Generally, if fees are approved by a creditors' committee/creditors and you wish to challenge this decision, you may apply to the court and ask the court to review the fees. Special rules apply to court liquidations.

You may wish to seek your own legal advice if you are considering applying for a court review of the fees.

Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the external administration—as careful as if they were dealing with their own money. Their report on fees should also include information on the out-of-pocket costs of the external administration.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' committee/creditors' meeting. If you are still concerned, you have the right to ask the court to review the costs.

Queries and complaints

You should first raise any queries or complaints with the external 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/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by an external 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 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 75 *Voluntary administration: a guide for employees*
- 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*

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.

ASIC
Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- 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*

Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at www.asic.gov.au/insolvencyinfosheets. The information sheets are also available from the 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.

Important note: The information sheets contain 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. These documents 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.